Senate Standing Committees on Education and Employment

Social Security Legislation Amendment (Streamlined Participation Requirements and Other Measures) Bill 2021
QUESTION ON NOTICE

Outcome: Employment

Department of Education, Skills and Employment Question No. IQ21-000046

Senator Louise Pratt provided in writing.

Bill proposed changes

Question

In order to aid the understanding of the committee as to the proposed changes in the bill compared to what is currently legislated, could the department please fill out the table below for each clause or set of clauses in each schedule that are amended by the bill with an accompanying statement outlining what the change will achieve and/or why it is necessary?

Answer

It is not possible to provide a one for one mapping of which provisions in the Social Security Legislation Amendment (Streamlined Participation Requirements and Other Measures) Bill 2021 (the Bill) replace existing provisions due to the complexity of the interactions and the streamlined structure of provisions in the Bill. For example, section 606 of the *Social Security Act (1991) 'Jobseeker Employment Pathway Plans—terms'* has elements being replicated in new provisions 40D, 40F, 40K, 40V and 40W.

To aid the committee in its understanding of the changes, 'marked up' versions of the *Social Security Act (1991)* and *Social Security (Administration) Act 1999* have been provided. Also provided is the Explanatory Memorandum to the Bill, which outlines in detail how the amendments will operate and how existing protections will be retained.

Social Security Act 1991

No. 46, 1991

This future law compilation was prepared on 8 June 2021 taking into account amendments made by the Social Security Legislation Amendment (Streamlined Participation Requirements and Other Measures) Bill 2021.

The date of commencement for the incorporated amendments was unknown at the time of preparation.

Volume 1: sections 1–660M
Volume 2: sections 665A–1067L
Volume 3: sections 1068–1263
Schedule 1A
Volume 4: Endnotes 1–4
Volume 5: Endnote 5

Each volume has its own contents

Prepared by the Office of Parliamentary Counsel, Canberra

About this compilation

This compilation

This is a future compilation of the *Social Security Act 1991* that shows the expected text of the law as amended by the Social Security Legislation Amendment (Streamlined Participation Requirements and Other Measures) Bill 2021.

The notes at the end of this compilation (the ***endnotes***) include information about amending laws and the amendment history of provisions of the future compilation.

Future amendments

The details of expected future amendments incorporated into the text, that have not yet commenced are underlined in the endnotes.

Any future amendments that are included in the endnotes are underlined.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

Contents

Chapter 1—Introductory 1

Part 1.1—Formal matters 1

1 Short title....1
2 Commencement....1
3 Application of the *Criminal Code*....1
3AA Norfolk Island....1

Part 1.2—Definitions 2

3A Power of Secretary to make determinations etc....2
3B Definitions—simplified outline....2
4 *Family relationships* definitions—couples....3
5 *Family relationships* definitions—children....11
5A Single person sharing accommodation....21
5B Registered and active foster carers....24
5C Home educators....25
5D Distance educators....25
5E Relatives (other than parents)....25
5F Secondary pupil child....26
5G Main supporter of secondary pupil child....27
6 *Double orphan pension* definitions....27
6A Concession card definitions....27
7 *Australian residence* definitions....29
8 *Income test* definitions....37
9 Financial assets and income streams definitions....58
9A Meaning of *asset-test exempt income stream*—lifetime income streams....69
9B Meaning of *asset-test exempt income stream*—life expectancy income streams....78
9BA Meaning of *asset-test exempt income stream*—market-linked income streams....86
9C Family law affected income streams....92
9D Asset-tested status of secondary FLA income streams....93
9E Asset-tested income stream (lifetime)....93
10 *Maintenance income* definitions....94
10A Definitions for carer allowance and seniors health card provisions....95
11 *Assets test* definitions....107

11A *Principal home* definition for the purpose of the assets test....113
12 *Retirement villages* definitions....120
12A *Granny flat* definitions....122
12B *Sale leaseback* definitions....122
12C *Special residence and residents* definitions....124
13 *Rent* definitions....125
14 *Remote area* definitions....131
14A *Social security benefit liquid assets test* definitions....132
16 *Industrial action* definitions....136
16A *Seasonal work* definitions....137
16B Partial capacity to work....147
17 *Compensation recovery* definitions....149
18 Parenting payment definitions....157
19 *Mobility allowance* definitions....157
19A Fares allowance definitions....158
19AA Student start-up loan definitions....159
19AB Student Financial Supplement Scheme definitions....161
19B Financial hardship (Carer payment) liquid assets test definition....166
19C Severe financial hardship definitions....167
19D Severe financial hardship—crisis payment definition....173
19DA Experiencing a personal financial crisis definition....175
19E Exempt funeral investments....176
20 *Indexation and rate adjustment* definitions....176
20A Pension supplement rate definitions....178
21 *Bereavement* definitions....181
23 Dictionary....182

Part 1.3—Determinations having interpretative effect 231

24 Person may be treated as not being a member of a couple (subsection 4(2))....231
24A Approved scholarship....232
25 Refugee visas....232
26 Impairment Tables and rules for applying them 233
27 Application of Impairment Tables....233

28 Approved programs of work for income support payment....235
28A Approval of programs of assistance....236
28B Approved training courses for training supplement....236
28C Declared program participants....236
29 Approval of friendly societies....236
30 Approval of mental hospitals....236
31 Approval of follow-up rehabilitation programs..237
32 Approval of sheltered employment—non-profit organisation....237
33 Approval of sheltered employment—supported employment....238
35 Approval of care organisation....238
35A Personal Care Support....239
35B Declared overseas terrorist act....239
36 Major disaster....239
36A Part 2.23B major disaster....240
37 Dependent child—inmate of a mental hospital..241
38B Notional continuous period of receipt of income support payments....242
38C Adult Disability Assessment Tool....244
38E Disability Care Load Assessment (Child) Determination....244
38F Treating health professional....245

Part 1.3A—Green Army Programme 245

38G Simplified outline of this Part....245
38H Non-payment of security benefit or social security pension if person receiving green army allowance....245
38J Certain participants in Green Army Programme are not workers or employees under Commonwealth laws....245
38K Income test for person's social security pension if green army allowance payable to person's partner....245

Part 1.3B—Loss of social security payments and concessions for persons on security grounds 246

38L Simplified outline of this Part....246

OFFICIAL: Sensitive // Legal Privilege

38M Loss of social security payments and concessions for persons on security grounds 246
38N Security notice from Home Affairs Minister 247
38P Notice from Foreign Affairs Minister 248
38R Copy of security notice to be given to Secretaries 248
38S Period security notice is in force 249
38SA Annual review of security notice 249
38T Revoking a security notice 249
38U Notices may contain personal information 250
38V Decisions under Part not decisions of officers 250
38W Notices not legislative instruments 250

Part 1.4—Miscellaneous 251
39 Tables, calculators etc. form part of section 251

Chapter 2—Pensions, benefits and allowances 252

Part 2.2—Age pension 254

Division 1—Qualification for and payability of age pension 254

Subdivision A—Qualification 254
43 Qualification for age pension 254

Subdivision B—Payability 255
44 Age pension not payable if pension rate nil 255
47 Multiple entitlement exclusion 255
47A Exclusion of certain participants in ABSTUDY Scheme 258

Division 4—Rate of age pension 259
55 How to work out a person's age pension rate 259

Division 9—Bereavement payments 260

Subdivision A—Death of partner 260
82 Qualification for payments under this Subdivision 260
83 Continued payment of deceased partner's previous entitlement 262
84 Lump sum payable in some circumstances 262
85 Adjustment of person's age pension rate 264
86 Effect of death of person entitled to payments under this Subdivision 265

OFFICIAL: Sensitive // Legal Privilege

87 Matters affecting payment of benefits under this Subdivision 266
Subdivision C—Death of recipient 267
91 Death of recipient....267
Part 2.2A—Pension bonus 269
Division 1—Introduction 269
92A Simplified outline 269
92B Definitions 270
Division 2—Qualification for pension bonus 271
92C Qualification for pension bonus....271
Division 3—Registration as a member of the pension bonus scheme 273
Subdivision A—Membership of the pension bonus scheme 273
92D Application for registration....273
92E Form of application....273
92F Relevant information 273
92G Lodgment of application....274
92H Timing of application and registration....274
92J Registration....275
92K Duration of membership 276
92L Cancellation of membership 276
92M Application for registration is not to be treated as a claim....276
Subdivision B—Classification of membership of the pension bonus scheme 277
92N Accruing membership....277
92P Non-accruing membership—preclusion periods 277
92Q Non-accruing membership—Secretary's discretion 278
92R Continuity of accruing membership is not broken by a period of non-accruing membership 279
92S Post-75 membership 279
Division 4—Accrual of bonus periods 280
92T Accrual of bonus periods 280
Division 5—Passing the work test 282
Subdivision A—The work test 282

OFFICIAL: Sensitive // Legal Privilege

92U Work test—full-year period....282
92V Work test—part-year period....283
92W Secretary's discretion to treat gainful work outside Australia as gainful work in Australia....284

Subdivision B—Gainful work 285

92X Gainful work—basic rule....285
92Y Secretary's discretion to treat activity as gainful work....285
92Z Irregular, infrequent and minor absences from a workplace count as gainful work....285
93 Management of family financial investments does not count as gainful work....286
93A Domestic duties in relation to a person's place of residence do not count as gainful work....287
93B Evidentiary certificate....288

Subdivision C—Record-keeping requirements 290

93C Record-keeping requirements....290

Division 6—Amount of pension bonus 293

93D How to calculate the amount of pension bonus....293
93E Qualifying bonus periods....293
93F Overall qualifying period....294
93G Pension multiple....294
93H Annual pension rate....295
93J Amount of pension bonus....296
93K Top up of pension bonus for increased rate of age pension....299
93L Top up of pension bonus in specified circumstances....300

Division 11—Preclusion periods 301

93U Disposal preclusion period—disposals before 1 July 2002....301
93UA Disposal preclusion period—disposals on or after 1 July 2002....302
93V Compensation preclusion period....302
93W Carer preclusion period....302

Division 12—Pension bonus bereavement payment 304

93WA Qualification for pension bonus bereavement payment....304

OFFICIAL: Sensitive // Legal Privilege

93WB Amount of pension bonus bereavement payment 304
93WC Definition of *PBBP employment income* 304

Part 2.3—Disability support pension 306

Division 1—Qualification for and payability of disability support pension 306

Subdivision A—Qualification 306

94 Qualification for disability support pension 306
94A Participation requirements 311
94B Participation plans....312
94C Illness or accident 313
94D Pre-natal and post-natal relief....314
94E Supported employment....314
94F Special circumstances....314
95 Qualification for disability support pension—permanent blindness 315
96 Continuation of disability support pension....316

Subdivision B—Payability 317

98 Disability support pension not payable if pension rate nil 317
103 Multiple entitlement exclusion 317
103A Exclusion of certain participants in ABSTUDY Scheme....319
104 Seasonal workers—preclusion period 320

Division 5—Rate of disability support pension 322

117 How to work out a person's disability support pension rate 322
118 Approved program of work supplement....322
119 Approved program of work supplement not payable in certain circumstances 322
120 Effect of participation in an approved program of work for income support payment....323

Division 10—Bereavement payments 324

Subdivision A—Death of partner 324

146F Qualification for payments under this Subdivision 324
146G Continued payment of deceased partner's previous entitlement 326
146H Lump sum payable in some circumstances....327

146J Adjustment of person's disability support pension rate 328
146K Effect of death of person entitled to payments under this Subdivision 329
146L Matters affecting payment of benefits under this Subdivision 330
Subdivision C—Death of recipient 331
146Q Death of recipient....331
Part 2.5—Carer payment 333
Division 1A—Interpretation 333
197 Definitions 333
Division 1—Qualification for and payability of carer payment 336
Subdivision A—Qualification 336
197A Overview—circumstances in which person is qualified for carer payment....336
197B Qualification—child with a severe disability or severe medical condition 336
197C Qualification—2 or more children each with a disability or medical condition 338
197D Qualification—disabled adult and one or more children each with a disability or medical condition 339
197E Qualification—child who has a terminal condition 340
197F Qualification—exchanged care of children 342
197G Qualification—short term or episodic care of children 344
197H Qualification—extension of short term or episodic care....345
197J Qualification following qualification for short term or episodic care 347
197K Remaining qualified for up to 3 months after child turns 16 349
198 Qualification—disabled adult or disabled adult and dependent child....349
198AAA Continuation of qualification when person receiving care admitted to institution....352
198AA Qualification for carer payment—hospitalisation 353

198AB	Care not required to be in private residence during portability period....355
198AC	Effect of cessation of care etc. on carer payment 356
198AD	Qualification—wife pension and carer allowance recipient 360
198A	Income test....360
198B	Taxable income....361
198C	Appropriate tax year 363
198D	Assets test 367
198E	Working out the value of assets....369
198F	Disposal of assets—care receiver assets test 369
198G	Amount of disposition—care receiver assets test 371
198H	Disposal of assets in pre-pension years—individual higher ADAT score adults....371
198HA	Disposal of assets in pre-pension years—profoundly disabled child or disabled children..372
198HB	Disposal of assets in pre-pension years—lower ADAT score adult and dependent child....373
198J	Disposal of assets before 1 July 2002—individual higher ADAT score adults 375
198JA	Disposal of assets before 1 July 2002—profoundly disabled children or disabled children 376
198JB	Disposal of assets before 1 July 2002—lower ADAT score adult and dependent child....378
198JC	Disposal of assets in income year—individual higher ADAT score adults 380
198JD	Disposal of assets in 5 year period—individual higher ADAT score adults 381
198JE	Disposal of assets in income year—sole care children 382
198JF	Disposal of assets in 5 year period—sole care child 382
198JG	Disposal of assets in income year—lower ADAT score adult and child or children....383
198JH	Disposal of assets in 5 year period—lower ADAT score adult and child or children....385
198K	Disposal of assets in pre-pension years—members of couples including higher ADAT score adults 387

OFFICIAL: Sensitive // Legal Privilege

198L Disposal of assets before 1 July 2002—members of couples including higher ADAT score adults 389
198LA Disposal of assets in income year—members of couples including higher ADAT score adults....391
198LB Disposal of assets in 5 year period—members of couples including higher ADAT score adults....392
198M Certain dispositions to be disregarded for care receiver assets test....394
198MA Other disposals to be disregarded for care receiver assets test....395
198N Exemption from care receiver assets test....395
198P Date of effect of favourable decision under section 198N....402
198Q Date of effect of adverse decision under section 198N....405

Subdivision B—Payability 406
199 Carer payment not payable if payment rate nil..406
201AA Newly arrived resident's waiting period....406
201AB Duration of newly arrived resident's waiting period....407
202 Multiple entitlement exclusion....408
202A Exclusion of certain participants in ABSTUDY Scheme....409
203 Seasonal workers—preclusion period....410

Division 4—Rate of carer payment 412
210 How to work out a person's carer payment rate 412

Division 9—Bereavement payments 413

Subdivision A—Continuation of carer payment 413
235 Continuation of carer payment for bereavement period where person cared for dies....413
236 Continued carer payment rate....414
236A Lump sum payable in some circumstances....414
236B Subdivision not to apply in certain cases involving simultaneous death....415

Subdivision B—Death of partner 416
237 Qualification for payments under this Subdivision 416
238 Continued payment of deceased partner's previous entitlement....418

239 Lump sum payable in some circumstances.....419
240 Adjustment of person's carer payment rate.....421
241 Effect of death of person entitled to payments under this Subdivision.....421
242 Benefits under this Subdivision.....423
243 Subdivision not to apply in certain cases involving simultaneous death.....424

Subdivision D—Death of recipient 424
246 Death of recipient.....424

Part 2.5A—One-off payments to carers eligible for carer payment 426

Division 1—One-off payment to carers eligible for carer payment 426
247 One-off payment to carers (carer payment related).....426
248 What is the amount of the payment?.....426

Division 2—2005 one-off payment to carers eligible for carer payment 427
249 2005 one-off payment to carers (carer payment related).....427
250 What is the amount of the payment?.....427

Division 3—2005 one-off payment to carers eligible for carer service pension 428
251 2005 one-off payment to carers (carer service pension related).....428
252 What is the amount of the payment?.....428

Division 4—2006 one-off payment to carers eligible for carer payment 429
253 2006 one-off payment to carers (carer payment related).....429
254 Amount of the one-off payment.....429

Division 5—2006 one-off payment to carers eligible for wife pension 430
255 2006 one-off payment to carers (wife pension related).....430
256 Amount of the one-off payment.....430

OFFICIAL: Sensitive // Legal Privilege

Division 6—2006 one-off payment to carers eligible for partner service pension 431

257 2006 one-off payment to carers (partner service pension related)....431

258 Amount of the one-off payment....431

Division 7—2006 one-off payment to carers eligible for carer service pension 432

259 2006 one-off payment to carers (carer service pension related)....432

260 Amount of the one-off payment....432

Division 8—2007 one-off payment to carers eligible for carer payment 433

261 2007 one-off payment to carers (carer payment related)....433

262 Amount of the one-off payment....433

Division 9—2007 one-off payment to carers eligible for wife pension 434

263 2007 one-off payment to carers (wife pension related)....434

264 Amount of the one-off payment....434

Division 10—2007 one-off payment to carers eligible for partner service pension 435

265 2007 one-off payment to carers (partner service pension related)....435

266 Amount of the one-off payment....435

Division 11—2007 one-off payment to carers eligible for carer service pension 436

267 2007 one-off payment to carers (carer service pension related)....436

268 Amount of the one-off payment....436

Division 12—2008 one-off payment to carers eligible for carer payment 437

269 2008 one-off payment to carers (carer payment related)....437

270 Amount of the one-off payment....437

OFFICIAL: Sensitive // Legal Privilege

Division 13—2008 one-off payment to carers eligible for wife pension 438
271 2008 one-off payment to carers (wife pension related) 438
272 Amount of the one-off payment....438
Division 14—2008 one-off payment to carers eligible for partner service pension 439
273 2008 one-off payment to carers (partner service pension related)....439
274 Amount of the one-off payment....439
Division 15—2008 one-off payment to carers eligible for carer service pension 440
275 2008 one-off payment to carers (carer service pension related)....440
276 Amount of the one-off payment....440
Part 2.6—One-off energy assistance payment 441
300 One-off energy assistance payment 441
301 Amount of one-off energy assistance payment..441
Part 2.6A—2019 one-off energy assistance payment 443
302 One-off energy assistance payment 443
303 Amount of one-off energy assistance payment..444
Part 2.6B—2020 economic support payments 445
Division 1—First 2020 economic support payment 445
304 First 2020 economic support payment....445
305 Amount of first 2020 economic support payment 445
Division 2—Second 2020 economic support payment 446
306 Second 2020 economic support payment 446
307 Amount of second 2020 economic support payment....446
Division 3—Eligibility 447
308 Eligibility 447
Part 2.6C—Additional economic support payments 449
Division 1—Additional economic support payment 2020 449
309 Additional economic support payment 2020 449

OFFICIAL: Sensitive // Legal Privilege

310 Amount of additional economic support payment 2020 449

Division 2—Additional economic support payment 2021 450

311 Additional economic support payment 2021 450

312 Amount of additional economic support payment 2021 450

Division 3—Eligibility 451

313 Eligibility 451

Part 2.8A—Widow allowance 453

Division 1—Time limit on grants of widow allowance 453

408AA Time limit on grants....453

Division 2—Qualification for and payability of widow allowance 454

Subdivision A—Qualification 454

408BA Qualification for widow allowance....454

408BB Assurance of support 455

Subdivision B—Payability 455

408CA Widow allowance not payable if allowance rate nil 455

408CE Assets test—allowance not payable if assets value limit exceeded....456

408CF Multiple entitlement exclusion 456

408CG Maximum basic rate and remote area allowance not payable to CDEP Scheme participant....458

408CH Seasonal workers 458

Division 5—Rate of widow allowance 460

408FA How to work out a woman's widow allowance rate 460

408GI CDEP Scheme participant may accumulate widow allowance 460

Part 2.10—Parenting payment 461

Division 1—Qualification for and payability of parenting payment 461

Subdivision A—Qualification 461

500 Qualification for parenting payment....461

500A Participation requirements 463

500B Qualification—assurance of support 463
500C Qualification affecting member of couple—unemployment due to industrial action....464
500D PP child....465
500E Prospective determinations for some recipients 465
Subdivision B—General principles relating to payability 466
500I Parenting payment not payable if payment rate nil 466
500J Situations where payment not payable for failure to comply with certain requirements 467
500Q Assets test—payment not payable if assets value limit exceeded....467
500S Multiple entitlement exclusion 469
500V Educational schemes exclusion—person member of a couple....470
500VA Exclusion of certain participants in ABSTUDY Scheme....471
500W Maximum basic rate and remote area allowance not payable to CDEP Scheme participant who is a member of a couple....472
500WA Ordinary waiting period....472
500WB Duration of ordinary waiting period 473
500X Newly arrived resident's waiting period....474
500Y Duration of newly arrived resident's waiting period 475
500Z Seasonal workers—preclusion period 476
Division 2—Parenting Payment Employment Pathway Plans 476
501 Parenting Payment Employment Pathway Plans 476
501A Parenting Payment Employment Pathway Plan—terms....476
501B Parenting Payment Employment Pathway Plans—requirement to look for work of appropriate number of hours per week 476
501C Parenting Payment Employment Pathway Plans—people with partial capacity to work....476
501D Parenting Payment Employment Pathway Plans—requirement to participate in an approved program of work....476
501E Parenting Payment Employment Pathway Plans—suspension of plans 476

OFFICIAL: Sensitive // Legal Privilege

Division 3—Additional participation requirements 476
502 Secretary may impose additional participation requirements....476
502A People 55 and over who are engaged in work ...476
502B Persons engaged in suitable paid work for at least 30 hours per fortnight 476
Division 3A—Participation exemptions 476
502BA Death of person's partner....476
502C Domestic violence etc. 476
502D People with disabled children and other circumstances....476
502E Training camps 476
502F Special circumstances....476
502G Pre-natal and post-natal relief....476
502H Temporary incapacity 476
502J Time limit for temporary incapacity exemption—Secretary satisfied person can undertake activity 476
502K Time limit for temporary incapacity exemption—end of person's maximum exemption period 476
Division 4—Rate of parenting payment 477
Subdivision A—Rate of parenting payment 477
503 How to work out a person's parenting payment rate 477
503A Approved program of work supplement....477
503AA Approved program of work supplement not payable in certain circumstances 477
503B Training supplement 478
503C National Green Jobs Corps supplement....478
Subdivision C—Accumulation of parenting payments by CDEP Scheme participants 478
504N CDEP Scheme participant may accumulate parenting payment....478
Division 9—Bereavement payments 479
Subdivision A—Continuation of parenting payment after death of child 479
512 Death of PP child—continuation of qualification for 14 weeks....479
Subdivision B—Death of recipient 479

OFFICIAL: Sensitive // Legal Privilege

513 Death of recipient—recipient not member of a couple....479
513A Death of recipient—recipient member of a couple....480
Subdivision C—Death of partner 480
514 Surviving partner and deceased partner....480
514A Qualification for payments under this Subdivision....481
514B Continued payment of deceased partner's previous entitlement....482
514C Lump sum payable in some circumstances....482
514D Adjustment of person's parenting payment rate 484
514E Effect of death of surviving partner....484
514F Matters affecting payments under this Subdivision....486
Subdivision D—Bereavement payment in respect of a person who was a CDEP Scheme participant 487
514FA Calculation of bereavement payment in respect of former CDEP Scheme participant....487
Part 2.11—Youth allowance 488
Division 1—Qualification for youth allowance 488
Subdivision A—Basic qualifications 488
540 Qualification for youth allowance—general rule....488
540A Qualification for youth allowance—claimants for disability support pension....488
540AA Qualification for youth allowance—new apprentices....490
540AB Qualification for youth allowance—claimants with medical conditions affecting their capacity to work....491
540B Qualification for youth allowance—transferee from social security pension....493
540BA Qualification for youth allowance—coronavirus....493
540C Qualification for youth allowance may continue to end of payment period....494
Subdivision B—Activity test 495
541 Activity test....495
541A Failure to satisfy the activity test....495

OFFICIAL: Sensitive // Legal Privilege

541B Undertaking full-time study....495
541C One course of education....498
541D Unsuitable paid work....499
Subdivision C—Exemptions from the activity test 499
542 Situations in which a person is not required to satisfy the activity test....499
542A Temporary incapacity exemption....499
542B Failure to attend interview etc. may result in cessation of temporary incapacity exemption....501
542BA Time limit for temporary incapacity exemptions—capacity to undertake activity....502
542C Time limit for temporary incapacity exemptions—maximum exemption period....502
542D Pre-natal and post-natal exemptions....505
542E Remote area exemption....505
542EA Relief from activity test—death of person's partner....505
542F Domestic violence or other special family circumstances exemption....507
542FA Disabled children or other family circumstances exemption....508
542FB New claimants exemption....512
542G Training camp exemption....512
542H Special circumstances exemption....512
Subdivision D—Youth allowance age 513
543 Youth allowance age....513
543A Minimum age for youth allowance....514
543B Maximum age for youth allowance....517
Subdivision E—Youth Allowance Employment Pathway Plans 518
544 Requirements relating to Youth Allowance Employment Pathway Plans....518
544A Youth Allowance Employment Pathway Plans—requirement....518
544B Youth Allowance Employment Pathway Plans—terms....518
544C Youth Allowance Employment Pathway Plans—principal carers....518
544D Youth Allowance Employment Pathway Plans—people with partial capacity to work....518

OFFICIAL: Sensitive // Legal Privilege

544DA Youth Allowance Employment Pathway Plans—early school leavers....518
544E Youth Allowance Employment Pathway Plans—suspension of plans for people with certain exemptions....518
Subdivision G—Miscellaneous 518
546 Prospective determinations for some allowance recipients....518
Division 2—Situations in which youth allowance is not payable 520
Subdivision A—Situations in which allowance not payable (general) 520
547 Youth allowance not payable if allowance rate nil....520
547AA Youth allowance not payable if person fails to attend interview etc. in certain circumstances....520
547AB Situations where allowance not payable for failure to comply with certain requirements....520
Subdivision AB—Assets test 520
547A Allowance not payable if assets value limit exceeded....520
547B Who is excluded from application of assets test?....521
547C Assets value limit....521
547D Value of person's assets to include value of assets of partner in certain circumstances....521
Subdivision C—Waiting periods 522
549 Waiting periods....522
549A Liquid assets test waiting period....522
549B Start of liquid assets test waiting period....524
549C Length of liquid assets test waiting period....525
549CA Ordinary waiting period....526
549CB Duration of ordinary waiting period....527
549D Newly arrived resident's waiting period....529
549E Length of newly arrived resident's waiting period....530
549F Effect of being subject to multiple waiting periods....531
Subdivision D—Situations where allowance not payable because of youth allowance participation failure 531

OFFICIAL: Sensitive // Legal Privilege

549G Application of Subdivision 531
550 Youth allowance participation failures 531
550B Allowance not payable because of youth allowance participation failure....533
550C When the period of non-payment starts 534
550D When the period of non-payment ends 534
Subdivision E—Situations where allowance not payable because of repeated failure 535
550E Application of Subdivision 535
551 Allowance not payable because of repeated failure 535
551A When the period of non-payment starts 536
Subdivision F—Multiple entitlement exclusions 536
552 Multiple entitlement exclusions 536
552A Person receiving payment under certain schemes 537
552B Assurance of support 538
552C Maximum basic rate and remote area allowance not payable to CDEP Scheme participant 538
Subdivision G—Employment-related exclusions 538
553 Employment-related exclusions 538
553A Unemployment due to industrial action 539
553B Move to area of lower employment prospects 540
553C Seasonal workers 542
Division 5—Rate of youth allowance 545
556 How to work out a person's youth allowance rate 545
556A Approved program of work supplement 545
556B National Green Jobs Corps supplement 545
559J CDEP Scheme participant may accumulate youth allowance 545
Division 10—Bereavement payments 547
Subdivision A—Ongoing payments for death of partner 547
567 Qualification for payments under this Subdivision 547
567A Continued payment of partner's pension or benefit 548
567B Lump sum payable in some circumstances 549
567C Adjustment of person's youth allowance rate 550

OFFICIAL: Sensitive // Legal Privilege

567D Effect of death of person entitled to payments under this Subdivision 550
567E Matters affecting payments under this Subdivision 552
567F Calculation of bereavement payment in respect of former CDEP Scheme participant....553
Subdivision AA—One-off payment for death of partner 553
567FA Qualification for payment under this Subdivision 553
567FB Amount of payment 554
Subdivision B—Continuation of youth allowance rate after death of child 556
567G Death of child—continuation of youth allowance rate for 14 weeks....556
Part 2.11A—Austudy payment 557
Division 1—Qualification for austudy payment 557
Subdivision A—Basic qualifications 557
568 Qualification for austudy payment—general rule 557
568AA Qualification for austudy payment—new apprentices 557
568A Qualification for austudy payment—transferee from social security pension 557
Subdivision B—Activity test 558
569 Activity test....558
569A Undertaking qualifying study 558
569AA One course of education 559
569B Approved course of education or study 560
569C Full-time students 560
569D Concessional study-load students 560
569E Normal amount of full-time study 562
569F First fortnight of classes....563
569G Progress rules—secondary students....563
569H Progress rules—tertiary students 565
Subdivision C—Austudy age 571
570 Austudy age 571

OFFICIAL: Sensitive // Legal Privilege

Division 2—Situations in which austudy payment is not payable 572

Subdivision A—Situation in which austudy payment not payable (general) 572

572 Austudy payment not payable if payment rate nil 572

572A Situations where austudy payment not payable for failure to comply with certain requirements....572

Subdivision B—Assets test 572

573 Austudy payment not payable if assets value limit exceeded....572

573B Assets value limit....573

573C Value of person's assets to include value of assets of partner....573

Subdivision D—Waiting periods 573

575 Waiting periods....573

575A Liquid assets test waiting period....574

575B Start of liquid assets test waiting period....575

575C Length of liquid assets test waiting period....575

575D Newly arrived resident's waiting period....576

575E Length of newly arrived resident's waiting period 577

575EA Seasonal workers—preclusion period....578

575F Effect of being subject to 2 waiting periods....579

Subdivision E—Situations where austudy payment not payable because of austudy participation failure 579

576 Austudy participation failures....579

576A Allowance not payable because of austudy participation failure....581

576B When the period of non-payment starts....582

576C When the period of non-payment ends....582

Subdivision F—Situations where payment not payable because of repeated failure 583

577 Payment not payable because of repeated failure 583

577A When the period of non-payment starts....583

Subdivision G—Multiple entitlement exclusions 584

578 Multiple entitlement exclusions....584

OFFICIAL: Sensitive // Legal Privilege

578A Person receiving payment under certain schemes 585
578B Assurance of support 586
Division 5—Rate of austudy payment 587
581 How to work out a person's austudy payment rate 587
Division 10—Bereavement payments on death of partner 588
592 Qualification for payments under this Division.588
592A Continued payment of partner's pension or benefit 589
592B Lump sum payable in some circumstances....590
592C Adjustment of person's austudy payment rate...591
592D Effect of death of person entitled to payments under this Division....591
592E Matters affecting payments under this Division 593
Part 2.11B—Scholarship payments for students 595
Division 2—Relocation scholarship payment 595
592J Qualification for relocation scholarship payment 595
592K Circumstances in which person is not qualified for relocation scholarship payment 596
592L Amount of relocation scholarship payment....598
Division 3—Approved scholarship course 602
592M Definition....602
592N Approved scholarship course....602
Part 2.12—Jobseeker payment 603
Division 1—Qualification for and payability of jobseeker payment 603
Subdivision A—Basic qualifications 603
593 Qualification for jobseeker payment....603
595 Persons may be treated as unemployed 609
596 Unemployment due to industrial action....610
596A Assurance of support 611
598 Liquid assets test waiting period....612
600 Prospective determinations for some jobseeker payment recipients 617
Subdivision B—Activity test 618

OFFICIAL: Sensitive // Legal Privilege

601 Activity test....618
602A Relief from activity test—persons to whom subsection 614(6) applies....618
602AA Relief from activity test—death of person's partner....618
602B Relief from activity test—domestic violence etc. 618
602C Relief from activity test—people with disabled children and other circumstances....618
602D Relief from activity test—rehabilitation program 618
603 Relief from activity test—general....618
603A Relief from activity test—special circumstances 618
603AAA Pre-natal and post-natal relief from activity test618
603AA Relief from activity test—people 55 and over who are engaged in work....618
603AB Relief from activity test—certain principal carers and people with partial capacity to work....618
603AC Relief from activity test—cessation of claims for widow allowance....618

Subdivision BA—Exemption from activity test—people temporarily incapacitated for work 618

603BA Subdivision not to apply to a person with a pending claim for disability support pension....618
603B Interpretation....618
603C Incapacitated person not required to satisfy activity test....618
603D Time limit for exemption—Secretary satisfied person can undertake activity....618
603F Time limit for exemption—end of person's maximum exemption period....618

Subdivision C—Jobseeker Employment Pathway Plans 618

605 Jobseeker Employment Pathway Plans—requirement....618
606 Jobseeker Employment Pathway Plans—terms.618
607 Jobseeker Employment Pathway Plans—principal carers....618
607A Jobseeker Employment Pathway Plans—people with partial capacity to work....618

OFFICIAL: Sensitive // Legal Privilege

607B Jobseeker Employment Pathway Plans—requirement to participate in an approved program of work 618
607C Jobseeker Employment Pathway Plans—suspension of plans 618

Subdivision D—Situations where jobseeker payment not payable (general) 618
608 Jobseeker payment not payable if payment rate nil 618
611 Assets test—jobseeker payment not payable if assets value limit exceeded 619
612 Value of assets of members of couples 620
613 Full-time students 621
614 Multiple entitlement exclusion 621
614A Maximum basic rate and remote area allowance not payable to CDEP Scheme participant 624
615 Jobseeker payment not payable if person fails to attend interview etc. in certain circumstances 624

Subdivision E—Situations where jobseeker payment not payable (waiting periods) 624
620 Ordinary waiting period 624
621 Duration of ordinary waiting period 626
623A Newly arrived resident's waiting period 627
623B Duration of newly arrived resident's waiting period 629

Subdivision G—Situations where jobseeker payment not payable (administrative breaches) 629
631 Situations where jobseeker payment not payable for failure to comply with certain requirements 629

Subdivision GA—Activities that do not give rise to employment under certain industrial relations legislation 629
631C Activities that do not give rise to employment under certain industrial relations legislation 629

Subdivision H—Other situations where jobseeker payment not payable 629
633 Seasonal workers 629
634 Move to area of lower employment prospects 631

Division 4—Rate of jobseeker payment 633
643 How to work out a person's jobseeker payment rate 633

OFFICIAL: Sensitive // Legal Privilege

644AAA Approved program of work supplement.....633
644AAB Approved program of work supplement not payable in certain circumstances.....633
644AAC Training supplement.....633
645 National Green Jobs Corps supplement.....633
653A CDEP Scheme participant may accumulate newstart allowance.....633
654 Rate of jobseeker payment for former recipients of wife pension.....634
655 Wife pension transition rate—method 1.....636
656 Wife pension transition rate—method 2.....637

Division 9—Bereavement payments 639

Subdivision AA—Ongoing payments for death of partner 639

660LA Qualification for payments under this Subdivision.....639
660LB Continued payment of partner's pension or benefit.....640
660LC Lump sum payable in some circumstances.....640
660LD Adjustment of a person's jobseeker payment rate.....642
660LE Effect of death of person entitled to payments under this Subdivision.....642
660LF Matters affecting payments under this Subdivision.....644
660LG Calculation of bereavement payment in respect of former CDEP Scheme participant.....645

Subdivision A—One-off payment for death of partner 645

660LH Qualification for payment under this Subdivision.....645
660LI Amount of payment.....646

Subdivision B—Continuation of jobseeker payment rate after death of child 648

660M Death of child—continuation of jobseeker payment rate for 14 weeks.....648

OFFICIAL: Sensitive // Legal Privilege

An Act to provide for the payment of certain pensions, benefits and allowances, and for related purposes

Chapter 1—Introductory

Part 1.1—Formal matters

1 Short title

This Act may be cited as the *Social Security Act 1991*.

2 Commencement

This Act commences on 1 July 1991.

3 Application of the *Criminal Code*

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

3AA Norfolk Island

This Act extends to Norfolk Island.

Part 1.2—Definitions

3A Power of Secretary to make determinations etc.

If:

(a) a provision of this Act refers to a determination made, approval given or other act done by the Secretary; and

(b) there is no other provision of this Act expressly conferring power on the Secretary to make the determination, give the approval or do the act;

the Secretary has power by this section to make such a determination, give such an approval or do such an act, as the case requires.

3AB References to Employment Secretary

A reference in a provision of this Act or the Administration Act to the Employment Secretary does not, by implication, affect the meaning of a reference to the Secretary in any other provision of this Act or the Administration Act.

Note: Under subsection 23(1), ***Secretary*** generally means the Secretary of the Department. Applying section 19A of the *Acts Interpretation Act 1901* (which deals with references in provisions of Acts to the Department), the Secretary referred to in many provisions of this Act or the Administration Act will be the Employment Secretary.

3B Definitions—simplified outline

Sections 4 to 23 contain definitions of terms that are used in the social security law.

Subsection 23(1) contains an entry for each expression that is defined for the purposes of this Act. That subsection is like a Dictionary.

The entry is either an actual definition of the expression or a signpost definition that identifies the provision that defines the expression.

Many other sections in this Part contain the actual definitions relating to a particular topic. For example, sections 4 and 5 contain family relationship definitions and section 8 contains income test definitions.

4 *Family relationships* definitions—couples

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

approved respite care has the meaning given by subsection (9).

armed services widow means a woman who was the partner of:

(a) a person who was a veteran for the purposes of any provisions of the Veterans' Entitlements Act; or

(b) a person who was a member of the forces for the purposes of Part IV of that Act; or

(c) a person who was a member of a peacekeeping force for the purposes of Part IV of that Act; or

(d) a person who was a member within the meaning of the Military Rehabilitation and Compensation Act for the purposes of that Act;

immediately before the death of the person.

armed services widower means a man who was the partner of:

(a) a person who was a veteran for the purposes of any provisions of the Veterans' Entitlements Act; or

(b) a person who was a member of the Forces for the purposes of Part IV of that Act; or

(c) a person who was a member of a Peacekeeping Force for the purposes of Part IV of that Act; or

(d) a person who was a member within the meaning of the Military Rehabilitation and Compensation Act for the purposes of that Act;

immediately before the death of the person.

illness separated couple has the meaning given by subsection (7).

member of a couple has the meaning given by subsections (2), (3), (3A), (6) and (6A).

partner, in relation to a person who is a ***member of a couple***, means the other member of the couple.

partnered has the meaning given by subsection (11).

partnered (partner getting benefit) has the meaning given by subsection (11).

partnered (partner getting neither pension nor benefit) has the meaning given by subsection (11).

partnered (partner getting pension) has the meaning given by subsection (11).

partnered (partner getting pension or benefit) has the meaning given by subsection (11).

partnered (partner in gaol) has the meaning given by subsection (11).

prohibited relationship has the meaning given by subsections (12) and (13).

respite care couple has the meaning given by subsection (8).

Member of a couple—general

(2) Subject to subsection (3), a person is a ***member of a couple*** for the purposes of this Act if:

(a) the person is legally married to another person and is not, in the Secretary's opinion (formed as mentioned in subsection (3)), living separately and apart from the other person on a permanent or indefinite basis; or

(aa) both of the following conditions are met:

(i) a relationship between the person and another person (whether of the same sex or a different sex) is registered under a law of a State or Territory prescribed for the purposes of section 2E of the *Acts Interpretation Act 1901* as a kind of relationship prescribed for the purposes of that section;

(ii) the person is not, in the Secretary's opinion (formed as mentioned in subsection (3)), living separately and apart from the other person on a permanent or indefinite basis; or

(b) all of the following conditions are met:

(i) the person has a relationship with another person, whether of the same sex or a different sex (in this paragraph called the ***partner***);

(ii) the person is not legally married to the partner;

(iii) the relationship between the person and the partner is, in the Secretary's opinion (formed as mentioned in subsections (3) and (3A)), a de facto relationship;

(iv) both the person and the partner are over the age of consent applicable in the State or Territory in which they live;

(v) the person and the partner are not within a prohibited relationship.

Member of a couple—criteria for forming opinion about relationship

(3) In forming an opinion about the relationship between 2 people for the purposes of paragraph (2)(a), subparagraph (2)(aa)(ii) or subparagraph (2)(b)(iii), the Secretary is to have regard to all the circumstances of the relationship including, in particular, the following matters:

(a) the financial aspects of the relationship, including:

(i) any joint ownership of real estate or other major assets and any joint liabilities; and

(ii) any significant pooling of financial resources especially in relation to major financial commitments; and

(iii) any legal obligations owed by one person in respect of the other person; and

(iv) the basis of any sharing of day-to-day household expenses;

(b) the nature of the household, including:

(i) any joint responsibility for providing care or support of children; and

(ii) the living arrangements of the people; and

(iii) the basis on which responsibility for housework is distributed;

(c) the social aspects of the relationship, including:

(i) whether the people hold themselves out as married to, or in a de facto relationship with, each other; and

(ii) the assessment of friends and regular associates of the people about the nature of their relationship; and

(iii) the basis on which the people make plans for, or engage in, joint social activities;

(d) any sexual relationship between the people;

(e) the nature of the people's commitment to each other, including:

(i) the length of the relationship; and

(ii) the nature of any companionship and emotional support that the people provide to each other; and

(iii) whether the people consider that the relationship is likely to continue indefinitely; and

(iv) whether the people see their relationship as a marriage-like relationship or a de facto relationship.

(3A) The Secretary must not form the opinion that the relationship between a person and his or her partner is a de facto relationship if the person is living separately and apart from the partner on a permanent or indefinite basis.

Member of a couple—special excluding determination

(6) A person is not a ***member of a couple*** if a determination under section 24 is in force in relation to the person.

Note: Section 24 allows the Secretary to treat a person who is a member of a couple as not being a member of a couple in special circumstances.

(6A) A person who:

(a) has claimed youth allowance and is not independent within the meaning of Part 3.5; or

(b) is receiving a youth allowance and is not independent within the meaning of Part 3.5; or

(c) is a member of a couple of which a person referred to in paragraph (b) is the other member;

is not a ***member of a couple*** for the purposes of:

(d) the provisions of this Act referred to in the table at the end of this subsection; and

(e) any provision of this Act that applies for the purposes of a provision mentioned in paragraph (d); and

(f) any provision of this Act that applies for the purposes of Module E (Ordinary income test) of the Pension PP (Single) Rate Calculator in section 1068A.

Note: Paragraphs (e) and (f) have the effect of treating a person as not being a member of a couple in provisions that apply for the purposes of the income test, assets test, liquid assets test or compensation recovery provisions, including section 8 (Income test definitions), sections 11 and 11A (Assets test definitions), section 14A (Social security benefit liquid assets test provisions), section 17 (Compensation recovery definitions), section 19B (Financial hardship provisions liquid assets test definition), Part 2.26 (Fares allowance), Part 3.10 (General provisions relating to the ordinary income test) and Part 3.12 (General provisions relating to the assets test).

Affected provisions

Item	Provisions of this Act	Subject matter
1	Subdivision AB of Division 2 of Part 2.11	Youth allowance assets test
1A	section 500Q	Parenting payment assets test

Section 4

Affected provisions		
Item	**Provisions of this Act**	**Subject matter**
2	sections 549A to 549C	Youth allowance liquid assets test
3	Subdivision B of Division 2 of Part 2.11A	Austudy payment assets test
4	sections 575A to 575C	Austudy payment liquid assets test
5	section 598	Jobseeker payment liquid assets test
6	sections 611 and 612	Jobseeker payment assets test
10	sections 733 and 734	Special benefit assets test
11	section 771HF	Partner allowance assets test
11A	Part 2.26	Fares allowance
12	Module E of Pension Rate Calculator A	Ordinary income test
13	Module G of Pension Rate Calculator A	Assets test
14	Module F of Pension Rate Calculator D	Ordinary income test
15	Module H of Pension Rate Calculator D	Assets test
16	Module H of Youth Allowance Rate Calculator	Income test
17	Module D of the Austudy Payment Rate Calculator	Income test
18	Module G of Benefit Rate Calculator B	Income test
19	Part 3.14	Compensation recovery

Illness separated couple

(7) Where 2 people are members of a couple, they are members of an ***illness separated couple*** if:

(a) they are unable to live together in their home as a result of the illness or infirmity of either or both of them; and

(b) because of that inability to live together, their living expenses are, or are likely to be, greater than they would otherwise be; and

(c) that inability is likely to continue indefinitely.

Respite care couple

(8) Where 2 people are members of a couple, they are members of a ***respite care couple*** if:

(a) one of the members of the couple has entered approved respite care; and

(b) the member who has entered the approved respite care has remained, or is likely to remain, in that care for at least 14 consecutive days.

(9) For the purpose of this Act, a person is in ***approved respite care*** on a particular day if the person is eligible for:

(a) a respite supplement in respect of that day under the Subsidy Principles made for the purposes of subparagraph 44-5(1)(a)(i) of the *Aged Care Act 1997*; or

(b) a respite care supplement in respect of that day under section 44-12 of the *Aged Care (Transitional Provisions) Act 1997*.

Temporarily separated couple

(9A) Two people are members of a ***temporarily separated couple*** if they:

(a) are members of a couple for the purposes of this Act; and

(c) are living separately and apart from each other but not on a permanent or indefinite basis; and

(d) are neither an illness separated nor a respite care couple.

Note: For ***member of a couple*** see subsection 4(2) and section 24.

Standard family situation categories

(11) For the purposes of this Act:

(a) a person is ***partnered*** if the person is a member of a couple; and

(b) a person is ***partnered (partner getting neither pension nor benefit)*** if the person is a member of a couple and the person's partner:

(i) is not receiving a social security pension; and

(ii) is not receiving a social security benefit; and

(iii) is not receiving a service pension, income support supplement or a veteran payment; and

(c) a person is ***partnered (partner getting pension or benefit)*** if the person is a member of a couple and the person's partner is receiving:

(i) a social security pension; or

(ii) a social security benefit; or

(iii) a service pension, income support supplement or a veteran payment; and

(d) a person is ***partnered (partner getting pension)*** if the person is a member of a couple and the person's partner is receiving:

(i) a social security pension; or

(ii) a service pension, income support supplement or a veteran payment; and

(e) a person is ***partnered (partner getting benefit)*** if the person is a member of a couple and the person's partner is receiving a social security benefit; and

(f) a person is ***partnered (partner in gaol)*** if the person is a member of a couple and the person's partner is:

(i) in gaol; or

(ii) undergoing psychiatric confinement because the partner has been charged with committing an offence.

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

Note 2: For ***in gaol*** see subsection 23(5).

Note 3: For ***psychiatric confinement*** see subsections 23(8) and (9).

Prohibited relationship

(12) For the purposes of this Act, a person and his or her partner are within a ***prohibited relationship*** if the person is:

(a) an ancestor or a descendant of the partner; or

(b) a brother, sister, half-brother or half-sister of the partner.

(13) For the purposes of subsection (12), a child who is, or has ever been, an adopted child of a person is taken to be the natural child of that person and the person is taken to be the natural parent of the child.

5 *Family relationships* definitions—children

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

adopted child means a young person adopted under the law of any place, whether in Australia or not, relating to the adoption of children.

child: without limiting who is a child of a person for the purposes of this Act, someone is the ***child*** of a person if he or she is a child of the person within the meaning of the *Family Law Act 1975*.

dependent child has the meaning given by subsections (2) to (8A).

independent, in Parts 2.11, 2.11B, 3.4A, 3.4B, 3.5 and 3.7, has the meaning given in section 1067A.

main supporter of a secondary pupil child has the meaning given by section 5G.

parent means:

(a) (except in Part 2.11, section 592L, subsection 1067A(10L) and the Youth Allowance Rate Calculator in section 1067G):

(i) in relation to a person (the ***relevant person***), other than an adopted child—a natural parent or relationship parent of the relevant person; or

(ii) in relation to an adopted child—an adoptive parent of the child; or

(b) in Part 2.11, section 592L, subsection 1067A(10L) and the Youth Allowance Rate Calculator in section 1067G, in relation to a person (***relevant person***):

(i) a natural parent, adoptive parent or relationship parent of the relevant person with whom the relevant person normally lives; or

(ii) if a parent referred to in subparagraph (b)(i) is a member of a couple and normally lives with the other member of the couple—the other member of the couple; or

(iii) any other person (other than the relevant person's partner) on whom the relevant person is wholly or substantially dependent; or

(iv) if none of the preceding paragraphs applies—the natural parent, adoptive parent or relationship parent of the relevant person with whom the relevant person last lived.

prescribed educational scheme means:

(b) the ABSTUDY Scheme; or

(ca) a Student Financial Supplement Scheme; or

(e) the Veterans' Children Education Scheme; or

(ea) the scheme to provide education and training under section 258 of the Military Rehabilitation and Compensation Act; or

(f) the Post-Graduate Awards Scheme.

Note: For paragraph (ca), an application under the Student Financial Supplement Scheme cannot be made in respect of a year, or a part of a year, that begins on or after the day on which the *Student Assistance Legislation Amendment Act 2006* receives the Royal Assent (see subsection 1061ZY(2)).

prescribed student child has the meaning given by subsection (11).

principal carer, of a child, has the meaning given by subsections (15) to (24).

relationship child has the meaning given by subsection (25).

relationship parent has the meaning given by subsection (25).

secondary pupil child has the meaning given by section 5F.

step-child: without limiting who is a step-child of a person for the purposes of this Act, someone who is a child of a partner of the person is the ***step-child*** of the person, if he or she would be the person's step-child except that the person is not legally married to the partner.

step-parent: without limiting who is a step-parent of a person for the purposes of this Act, someone who is a partner of a parent of the person is the ***step-parent*** of the person, if he or she would be the person's step-parent except that he or she is not legally married to the person's parent.

student child has the meaning given by subsection (1A).

young person:

(a) except in Part 2.20—has the meaning given by subsection (1B) of this section; and

(b) in Part 2.20—means a person who is under 20 years of age.

(1A) A person is a ***student child*** at a particular time if:

(a) at the time, the person:

(i) has reached 16, but is under 22, years of age; and

(ii) is receiving full-time education at a school, college or university; and

(b) the person's income in the financial year in which that time occurs will not be more than $6,403.

(1B) A person is a ***young person*** at a particular time if at that time the person:

(a) is under 16 years of age; or

(b) is a student child.

Dependent child—under 16

(2) Subject to subsections (3) and (6) to (8), a young person who has not turned 16 is a ***dependent child*** of another person (in this subsection called the ***adult***) if:

(a) the adult is legally responsible (whether alone or jointly with another person) for the day-to-day care, welfare and development of the young person, and the young person is in the adult's care; or

(b) the young person:

(i) is not a dependent child of someone else under paragraph (a) or (aa); and

(ii) is wholly or substantially in the adult's care.

Note: For paragraph (a), see also subsection (16).

(3) A young person who has not turned 16 cannot be a ***dependent child*** if:

(a) the young person is not in full-time education; and

(b) the young person is in receipt of income; and

(c) the rate of that income exceeds $107.70 per week.

Note: The amount in paragraph (c) is indexed annually in line with CPI increases (see sections 1191 to 1194).

Dependent child—16 to 21 years of age

(4) Subject to subsections (5) to (8), a young person is a ***dependent child*** of another person at a particular time if:

(a) at that time, the young person:

(i) has reached 16, but is under 22, years of age; and

(ii) is wholly or substantially dependent on the other person; and

(b) the young person's income in the financial year in which that time occurs will not be more than $6,403.

(5) A young person who has turned 16 cannot be a ***dependent child*** of another person if the other person is the young person's partner.

Dependent child—pension, benefit and Labour Market Program recipients

(6) A young person cannot be a ***dependent child*** for the purposes of this Act if:

(a) the young person is receiving a social security pension; or

(b) the young person is receiving a social security benefit; or

(c) the young person is receiving payments under a program included in the programs known as Labour Market Programs.

Dependent child—residence requirements

(7) For the purposes of this Act (other than the provisions dealing with special benefit), a young person is not to be treated as a ***dependent child*** of another person (in this subsection called the ***adult***) unless:

(a) if the adult is an Australian resident:

(i) the young person is an Australian resident; or

(ii) the young person is living with the adult; or

(b) if the adult is not an Australian resident:

(i) the young person is an Australian resident; or

(ii) the young person has been an Australian resident and is living with the adult outside Australia; or

(iii) the young person had been living with the adult in Australia and is living with the adult outside Australia.

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

(8) For the purposes of working out the maximum rate of special benefit under subsection 746(2), a young person is not to be treated as a ***dependent child*** of another person (in this subsection called the ***adult***) unless:

(a) if the adult is an Australian resident:

(i) the young person is an Australian resident or a resident of Australia; or

(ii) the young person is living with the adult; or

(b) if the adult is not an Australian resident—the young person is an Australian resident or a resident of Australia.

OFFICIAL: Sensitive // Legal Privilege

Note: ***Australian resident*** is defined by subsection 7(2) but ***resident of Australia*** has its ordinary meaning and is not given any special definition by this Act. Subsection 7(3) is relevant to the question of whether a person is ***residing in Australia***.

(8A) For the purposes of Part 2.10, a young person who is an inmate of a mental hospital is a ***dependent child*** of a member of a couple if there is in force under section 37 a determination in respect of the young person and the member of the couple.

Prescribed student child

(11) A person is a ***prescribed student child*** if:

(a) the person is a young person who has reached 16, but is under 22, years of age; and

(b) the young person is qualified to receive payments under a prescribed educational scheme.

(12) For the purposes of subsection (11), a young person is, subject to subsection (13), qualified to receive a payment under a prescribed educational scheme if:

(a) the young person is receiving a payment under a prescribed educational scheme; or

(b) someone else is receiving, in respect of the young person, a payment under a prescribed educational scheme; or

(c) the Secretary has not formed the opinion that:

(i) the young person will not, or would not if an application were duly made, receive a payment under a prescribed educational scheme; and

(ii) no other person will, or would if an application were duly made, receive, in respect of the young person, a payment under a prescribed educational scheme.

(13) For the purposes of subsection (11), a young person is not qualified to receive a payment under a prescribed educational scheme if:

(a) the young person is not receiving a payment under a prescribed educational scheme; and

(b) no other person is receiving, in respect of the young person, a payment under a prescribed educational scheme; and

(c) the Secretary is satisfied that the educational scheme rate would be less than the social security rate.

(14) For the purposes of subsection (13):

(a) the ***educational scheme rate*** is the total of the amounts that would be payable to or in respect of the young person under the prescribed educational scheme; and

(b) the ***social security rate*** is the Part A rate of family tax benefit for which a person would be eligible (in respect of the young person) if the young person were not a prescribed student child.

Principal carer

(15) A person is the ***principal carer*** of a child if:

(a) the child is a dependent child of the person; and

(b) the child has not turned 16.

Note: The definition of ***dependent child*** in subsection (2) requires:

(a) the adult to be legally responsible (whether alone or jointly with another person) for the day-to-day care, welfare and development of the child: subsection (16) deals with the circumstances in which a step-parent is taken to have such legal responsibility; and

(b) a child to be in an adult's care: subsection (17) deals with the circumstances in which a child is taken to remain in an adult's care.

(16) For the purpose of determining whether a person is the ***principal carer*** of a child, the person is taken to be legally responsible (whether alone or jointly with another person) for the day-to-day care, welfare and development of the child if:

(a) the person is the step-parent of the child; and

(b) the person is living with the child and a parent of the child; and

(c) the person and the parent are members of the same couple.

This subsection does not, by implication, affect the determination of whether a person is taken to be legally responsible (whether alone or jointly with another person) for the day-to-day care, welfare and development of a child in cases to which this subsection does not apply.

(17) For the purpose of determining whether a person is the ***principal carer*** of a child, the child is taken to remain in the person's care if:

(a) at the start of a period not exceeding 8 weeks, the child leaves the person's care; and

(b) throughout the period, the child is the dependent child of another person; and

(c) the child returns, or the Secretary is satisfied that the child will return, to the first person's care at the end of the period.

This subsection does not, by implication, affect the determination of whether a child is in the care of a person in cases to which this subsection does not apply (for example, if the period exceeds 8 weeks).

Principal carer—a child can only have one principal carer

(18) Only one person at a time can be the principal carer of a particular child.

(19) If the Secretary is satisfied that, but for subsection (18), 2 or more persons (***adults***) would be principal carers of the same child, the Secretary must:

(a) make a written determination specifying one of the adults as the principal carer of the child; and

(b) give a copy of the determination to each adult.

(20) The Secretary may make the determination even if all the adults have not claimed a social security payment that is based on, or would be affected by, the adult being the principal carer of the child.

Principal carer—which member of a couple can be a principal carer

(20A) Subject to subsection (20B), a person is not the principal carer of any child if:

(a) the person is a member of a couple; and

(b) the other member of the couple is, or apart from this subsection would be, the principal carer of one or more children; and

(c) the other member of the couple is receiving parenting payment, youth allowance, jobseeker payment or special benefit; and

(d) the payment, allowance or benefit is based on or affected by the other member of the couple being the principal carer of a child.

(20B) If:

(a) a member of a couple is receiving, or has made a claim for, a social security payment that is or would be based on or affected by the person being the principal carer of a child; and

(b) the other member of the couple is receiving, or has made a claim for, a social security payment that is or would be based on or affected by the person being the principal carer of a child; and

(c) apart from subsection (20C), the application of subsection (20A) would, or would if the claim or claims were granted, prevent each member of the couple from being the principal carer of any child;

the Secretary must determine in writing that one of them can be a principal carer of a child.

(20C) The determination has effect accordingly, despite subsection (20A).

(20D) The Secretary must give a copy of the determination to each member of the couple.

Principal carer—child absent from Australia

(21) If a child:

(a) leaves Australia temporarily; and

(b) continues to be absent from Australia for more than 6 weeks;

a person cannot be the principal carer of the child at any time after the 6 weeks while the child remains absent from Australia unless, at that time:

(c) the child is in the company of a person to whom Division 2 of Part 4.2 applies; and

(d) but for this subsection, the person would be the principal carer of the child; and

(e) the person's portability period (within the meaning of that Division) for a social security payment:

(i) that the person was receiving immediately before the person's absence from Australia; or

(ii) the person's claim for which was granted during the absence;

has not ended.

(22) For the purposes of subsection (21), in determining if an absence is temporary, regard must be had to the following factors:

(a) the purpose of the absence;

(b) the intended duration of the absence;

(c) the frequency of such absences.

(23) If a child:

(a) is born outside Australia; and

(b) continues to be absent from Australia for a period of more than 6 weeks immediately following the child's birth;

a person cannot be the principal carer of the child at any time after the 6 weeks while the child remains absent from Australia unless, at that time:

(c) the child is in the company of a person to whom Division 2 of Part 4.2 applies; and

(d) but for this subsection, the person would be the principal carer of the child; and

(e) the person's portability period (within the meaning of that Division) for a social security payment:

(i) that the person was receiving immediately before the person's absence from Australia; or

(ii) the person's claim for which was granted during the absence;

has not ended.

(24) If:

(a) a person is not the principal carer of a child because of subsection (21) (absence from Australia) or (23) (birth outside Australia), or because of a previous application of this subsection; and

(b) the child comes to Australia; and

(c) the child leaves Australia less than 6 weeks later;

a person cannot be the principal carer of the child when the child leaves Australia as mentioned in paragraph (c).

Relationship child and relationship parent

(25) If:

(a) someone is a child of a person because of:

(i) the definition of ***child*** in subsection (1); or

(ii) paragraph (b) of the definition of ***child*** in section 1207A; or

(iii) paragraph (b) of the definition of ***child*** in subsection 1209R(5); and

(b) he or she is not a biological or adopted child of the person;

the child is the ***relationship child*** of the person and the person is the ***relationship parent*** of the child.

5A Single person sharing accommodation

(1) For the purposes of this Act, a person is to be treated as a ***single person sharing accommodation*** if the person:

(a) is not a member of a couple; and

(b) has no dependent children; and

(c) has, in common with one or more other people, the right to use at least one major area of accommodation.

(2) A person is not to be treated as a single person sharing accommodation if the person:

(a) pays, or is liable to pay, amounts for the person's board and lodging; or

(ab) is residing in exempt accommodation (see subsections (5A), (5B) and (5C)); or

(b) is the recipient of a disability support pension or a carer pension; or

(c) is residing in a nursing home.

(3) A person who has the exclusive right to use a bathroom, a kitchen and a bedroom is not to be treated as a single person sharing accommodation solely because the person has the right, in common with one or more other people, to use other major areas of accommodation.

(4) A person is not to be treated as a single person sharing accommodation solely because the person shares accommodation with one or more recipient children of the person.

(5) If:

(a) a person lives alone in a caravan or mobile home, or on board a vessel; or

(b) a person shares accommodation in a caravan, mobile home or vessel solely with one or more recipient children of the person;

the person is not to be treated as a single person sharing accommodation solely because the person has the right, in common with one or more other people, to use one or more major areas of accommodation in a caravan park or marina.

(5A) A person's accommodation is ***exempt accommodation*** if it is in premises that are, in the Secretary's opinion, a boarding house, guest house, hostel, hotel, private hotel, rooming house, lodging house or similar premises.

(5B) In forming an opinion about a person's accommodation for the purposes of subsection (5A), the Secretary is to have regard to the

OFFICIAL: Sensitive // Legal Privilege

characteristics of the accommodation including, in particular, whether or not the following are characteristics of the accommodation:

(a) the premises are known as a boarding house, guest house, hostel, hotel, private hotel, rooming house, lodging house or similar premises;

(b) a manager or administrator (other than a real estate agent) is retained to manage the premises or administer the accommodation on a daily or other frequent regular basis;

(c) staff are retained by the proprietor or manager of the premises to work in the premises on a daily or other frequent regular basis;

(d) the residents lack control over the day-to-day management of the premises;

(e) there are house rules, imposed by the proprietor or manager, that result in residents having rights that are more limited than those normally enjoyed by a lessee of private residential accommodation (for example, rules limiting the hours of residents' access to their accommodation or limiting residents' access to cooking facilities in the premises);

(f) the person does not have obligations to pay for his or her costs of gas, water or electricity separately from the cost of the accommodation;

(g) the accommodation is not private residential accommodation, having regard to:

(i) the number and nature of bedrooms in the premises; or

(ii) the number of people who are not related to one another living at the premises; or

(iii) the number and nature of bathrooms in the premises;

(h) the person's accommodation has not been offered to the person on a leasehold basis;

(j) there is no requirement that the person pay a bond as security for either the payment of rent or the cost of any damage caused by the person, or for both;

(k) the person's accommodation is available on a daily or other short-term basis.

OFFICIAL: Sensitive // Legal Privilege

(5C) Each of the characteristics set out in subsection (5B) points towards the accommodation in question being exempt accommodation.

(6) In this section:

major area of accommodation means any of the following, whether identifiably separate from other areas of accommodation or not:

(a) a bathroom;

(b) a kitchen;

(c) a bedroom.

recipient child means a child who receives any of the following, but who does not receive any amount by way of rent assistance:

(a) a social security payment;

(c) a payment under the ABSTUDY Schooling scheme or the ABSTUDY Tertiary scheme;

(d) a service pension;

(da) a veteran payment;

(e) a youth training allowance.

5B Registered and active foster carers

(1) A person is a ***registered and active foster carer*** if the Secretary is satisfied that:

(a) the person meets the requirements (if any) of the law of the State or Territory in which the person resides that the person must meet in order to be permitted, under the law of that State or Territory, to provide foster care in that State or Territory; and

(b) the person is taken, in accordance with guidelines made under subsection (2), to be actively involved in providing foster care in that State or Territory.

(2) The Secretary may, by legislative instrument, make guidelines setting out the circumstances in which persons are taken, for the

OFFICIAL: Sensitive // Legal Privilege

purposes of the social security law, to be actively involved in providing foster care in that State or Territory.

5C Home educators

A person is a ***home educator*** of a child if the Secretary is satisfied that:

(a) the child is receiving, in the person's home, education that wholly or substantially replaces the education that the child would otherwise receive by attending a school; and

(b) the person meets the requirements (if any) of the law of the State or Territory in which the person resides that the person must meet in order to be permitted, under the law of that State or Territory, to provide that education to the child; and

(c) the person is suitably involved in providing and supervising that education.

5D Distance educators

A person is a ***distance educator*** of a child if the Secretary is satisfied that:

(a) the child is enrolled to receive education by undertaking a distance education curriculum; and

(b) the child is undertaking that curriculum; and

(c) the person is suitably involved in assisting and supervising the child in relation to that curriculum.

5E Relatives (other than parents)

(1) A person is a ***relative (other than a parent)*** of a child if:

(a) the person is not the child's parent or step-parent; and

(b) any of the following apply to the person:

(i) the person is related to the child by blood, adoption or marriage;

(ii) if the child is an Aboriginal or Torres Strait Islander child who has traditional Aboriginal or Torres Strait

Islander kinship ties—the person is related to the child under Aboriginal or Torres Strait Islander kinship rules;

(iii) if the child is a member of a community that accepts relationships other than those referred to in subparagraphs (i) and (ii) as kinship ties—the person is accepted by the community to be related to the child.

(2) For the purposes of subparagraph (1)(b)(i), if one person is a relationship child, or a step-child, of another person, relationships traced to or through the person are to be determined on the basis that the person is related by blood to the other person.

5F Secondary pupil child

A person is a ***secondary pupil child*** of another person at a time in a financial year if:

(a) at the time, the person:

(i) has turned 16 but has not turned 19; and

(ii) has not completed the final year of secondary school or an equivalent level of education; and

(iii) is undertaking secondary education or a course of study or instruction that is determined under section 5D of the *Student Assistance Act 1973* to be a secondary course; and

(b) the person's income in the financial year will not be more than $6,403; and

(c) at the time, the person:

(i) lives with the other person; and

(ii) is wholly or substantially dependent on the other person; and

(d) if the person is a member of a couple, the other person is not the person's partner; and

(e) the other person is claiming or receiving any of the following at the time:

(i) parenting payment;

(ii) youth allowance;

(iii) jobseeker payment;
(iv) special benefit.

Note: The amount in paragraph (b) is indexed annually in line with CPI increases (see sections 1191 to 1194).

5G Main supporter of secondary pupil child

(1) If someone is a secondary pupil child of a person, the person is the ***main supporter*** of the secondary pupil child, subject to subsection (2).

(2) Subsections 5(18) to (22) (inclusive) and subsection 5(24) apply for the purposes of determining whether a person is the main supporter of a secondary pupil child in the same way as they apply for the purposes of determining whether a person is the principal carer of a child.

Note: Subsections 5(18) to (20D) (inclusive) are about identifying the one person who is the principal carer of a child. Subsections 5(21), (22) and (24) prevent a person from being the principal carer of a child who has left Australia and has been absent from Australia for more than 6 weeks.

6 *Double orphan pension* definitions

In this Act, unless the contrary intention appears:

approved care organisation means an organisation approved by the Secretary under subsection 35(1).

double orphan means a young person who is a double orphan in accordance with section 993 or 994.

6A Concession card definitions

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

automatic issue card means:
(a) a pensioner concession card; or
(b) an automatic issue health care card.

automatic issue health care card means a health care card issued to a person qualified for the card under Subdivision A of Division 3 of Part 2A.1.

concession card means:

(a) a pensioner concession card; or

(b) a health care card; or

(c) a seniors health card.

dependant, in relation to a person who is the holder of a pensioner concession card or an automatic issue health care card (other than a health care card for which the person is qualified under subsection 1061ZK(4)), means a person who is:

(a) the partner; or

(b) a dependent child;

of the holder of the card.

dependant, in relation to a person who is the holder of a health care card for which the person is qualified under subsection 1061ZK(4) or Subdivision B of Division 3 of Part 2A.1, means a person who is:

(a) the partner; or

(b) an FTB child; or

(c) a regular care child;

of the holder of the card.

dependant, in relation to a person, other than a child in foster care, who has made a claim for a health care card (the ***claimant***), means a person who is:

(a) the partner; or

(b) an FTB child; or

(c) a regular care child;

of the claimant.

income-tested: a health care card is ***income-tested*** for a person if the person is required by paragraph 1061ZO(2)(d), (3)(e) or (4)(d)

to satisfy the health care card income test in order to qualify for the health care card.

(2) For the purposes of the operation of a definition of ***dependant*** in subsection (1) in relation to a provision of Part 2A.1, a person (the ***child***) is an FTB child, or a regular care child, of another person (the ***adult***) if:

(a) the child is an FTB child, or a regular care child, (as the case requires) of the adult within the meaning of the Family Assistance Act; and

(b) either:

(i) the child is under 16 years of age; or

(ii) the child is 16, but not yet 19, years of age and is undertaking secondary studies.

7 *Australian residence* definitions

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

Australian resident has the meaning given by subsection (2).

former refugee means a person who was a refugee but does not include a person who ceased to be a refugee because his or her visa or entry permit (as the case may be) was cancelled.

holder, in relation to a visa, has the same meaning as in the *Migration Act 1958*.

new PRC (temporary) entry permit means an entry permit within class 437 of Division 2.6—Group 2.6 in Part 2 of Schedule 1 to the Migration (1993) Regulations as in force before 1 September 1994.

old PRC (temporary) entry permit means a PRC (temporary) entry permit within the meaning of the Migration (1989) Regulations as in force before 1 February 1993.

permanent visa, ***special category visa*** and ***visa*** have the same meaning as in the *Migration Act 1958*.

protected SCV holder has the meaning given by subsections (2A), (2B), (2C) and (2D).

qualifying Australian residence has the meaning given by subsection (5).

qualifying residence exemption has the meaning given in subsections (6) and (6AA).

(2) An ***Australian resident*** is a person who:

(a) resides in Australia; and

(b) is one of the following:

(i) an Australian citizen;

(ii) the holder of a permanent visa;

(iii) a special category visa holder who is a protected SCV holder.

Note: For ***holder*** and ***permanent visa*** see subsection (1).

(2A) A person is a ***protected SCV holder*** if:

(a) the person was in Australia on 26 February 2001, and was a special category visa holder on that day; or

(b) the person had been in Australia for a period of, or for periods totalling, 12 months during the period of 2 years immediately before 26 February 2001, and returned to Australia after that day.

(2B) A person is a ***protected SCV holder*** if the person:

(a) was residing in Australia on 26 February 2001; and

(b) was temporarily absent from Australia on 26 February 2001; and

(c) was a special category visa holder immediately before the beginning of the temporary absence; and

(d) was receiving a social security payment on 26 February 2001; and

(e) returned to Australia before the later of the following:

(i) the end of the period of 26 weeks beginning on 26 February 2001;

(ii) if the Secretary extended the person's portability period for the payment under section 1218C—the end of the extended period.

(2C) A person who commenced, or recommenced, residing in Australia during the period of 3 months beginning on 26 February 2001 is a ***protected SCV holder*** at a particular time if:

(a) the time is during the period of 3 years beginning on 26 February 2001; or

(b) the time is after the end of that period, and either:

(i) a determination under subsection (2E) is in force in respect of the person; or

(ii) the person claimed a payment under the social security law during that period, and the claim was granted on the basis that the person was a protected SCV holder.

(2D) A person who, on 26 February 2001:

(a) was residing in Australia; and

(b) was temporarily absent from Australia; and

(c) was not receiving a social security payment;

is a ***protected SCV holder*** at a particular time if:

(d) the time is during the period of 12 months beginning on 26 February 2001; or

(e) the time is after the end of that period, and either:

(i) at that time, a determination under subsection (2E) is in force in respect of the person; or

(ii) the person claimed a payment under the social security law during that period, and the claim was granted on the basis that the person was a protected SCV holder.

(2E) A person who is residing in Australia and is in Australia may apply to the Secretary for a determination under this subsection stating that:

(a) the person was residing in Australia on 26 February 2001, but was temporarily absent from Australia on that day; or

OFFICIAL: Sensitive // Legal Privilege

(b) the person commenced, or recommenced, residing in Australia during the period of 3 months beginning on 26 February 2001.

(2F) If a person makes an application under subsection (2E), the Secretary must make the determination if:

(a) the Secretary is satisfied that paragraph (2E)(a) or (2E)(b) applies to the person; and

(b) the application was made within whichever of the following periods is applicable:

(i) if paragraph (2E)(a) applies to the person—the period of 12 months beginning on 26 February 2001;

(ii) if paragraph (2E)(b) applies to the person—the period of 3 years beginning on 26 February 2001.

The Secretary must give a copy of the determination to the person.

(2G) The Secretary must make a determination under this subsection in respect of a person if the person is a protected SCV holder because of subsection (2B). If the Secretary is required to make such a determination:

(a) the determination must state that the person was residing in Australia on 26 February 2001, but was temporarily absent from Australia on that day; and

(b) the determination must be made within the period of 6 months of the person's return to Australia; and

(c) a copy of the determination must be given to the person.

(3) In deciding for the purposes of this Act whether or not a person is residing in Australia, regard must be had to:

(a) the nature of the accommodation used by the person in Australia; and

(b) the nature and extent of the family relationships the person has in Australia; and

(c) the nature and extent of the person's employment, business or financial ties with Australia; and

(d) the nature and extent of the person's assets located in Australia; and

(e) the frequency and duration of the person's travel outside Australia; and

(f) any other matter relevant to determining whether the person intends to remain permanently in Australia.

(3A) For the purposes of determining, under subsections (2A) to (2D), whether a person is a protected SCV holder, Australia is taken, at all relevant times, to have included Norfolk Island.

(4) For the purposes of:

(a) Part 2.2 (age pension); and

(b) Part 2.3 (disability support pension);

residence of a claimant in an external Territory is taken to be residence in Australia.

(4AA) Whether residence in a particular place is residence in an external territory for the purposes of subsection (4) is to be determined as at the time of residence.

(4B) For the purposes of a newly arrived resident's waiting period, the day on which a permanent visa is granted to a person or a person becomes the holder of a permanent visa is:

(a) if an initial decision maker decides to grant a visa to the person—that day; or

(b) if:

(i) an initial decision maker decides not to grant a visa to the person; and

(ii) on a review of the decision referred to in subparagraph (i), that decision is set aside (however described) and a visa is granted to the person;

the day on which the initial decision maker decided not to grant the visa to the person.

(5) A person has 10 years ***qualifying Australian residence*** if and only if:

(a) the person has, at any time, been an Australian resident for a continuous period of not less than 10 years; or

OFFICIAL: Sensitive // Legal Privilege

(b) the person has been an Australian resident during more than one period and:

(i) at least one of those periods is 5 years or more; and

(ii) the aggregate of those periods exceeds 10 years.

(6) A person has a ***qualifying residence exemption*** for a social security pension (other than carer payment) or a social security benefit (other than youth allowance, austudy payment, jobseeker payment, special benefit or partner allowance) if, and only if, the person:

(a) resides in Australia; and

(b) is either:

(i) a refugee; or

(ii) a former refugee.

(6AA) A person also has a ***qualifying residence exemption*** for a social security benefit (other than a special benefit), a pension PP (single), carer payment, carer allowance, a mobility allowance, a seniors health card or a health care card if, and only if, the person:

(b) except in relation to pension PP (single), benefit PP (partnered), youth allowance, austudy payment, jobseeker payment, partner allowance, carer payment, carer allowance, mobility allowance, a seniors health card or a health care card—was a family member of a refugee, or former refugee, at the time the refugee or former refugee arrived in Australia; or

(f) in any case—holds or was the former holder of a visa that is in a class of visas determined, by legislative instrument, by the Minister for the purposes of this paragraph.

(6B) A person is a ***refugee*** for the purposes of this section if the person:

(a) is taken, under the Migration Reform (Transitional Provisions) Regulations, to be the holder of a transitional (permanent) visa because the person was, immediately before 1 September 1994, the holder of:

(i) a visa or entry permit that fell within Division 1.3—Group 1.3 (Permanent resident (refugee and

humanitarian) (offshore)) in Part 1 of Schedule 1 to the Migration (1993) Regulations as then in force; or

(ii) a visa or entry permit that fell within Division 1.5—Group 1.5 (Permanent resident (refugee and humanitarian) (on-shore)) in Part 1 of Schedule 1 to the Migration (1993) Regulations as then in force; or

(b) was, immediately before 1 February 1993, the holder of a visa or entry permit of a class prescribed under the Migration Regulations as then in force that corresponds to a visa or entry permit referred to in subparagraph (a)(i) or (ii); or

(c) is the holder of:

(i) a permanent protection visa; or

(ii) a permanent visa of a class referred to in the Table at the end of this subsection; or

(iii) a permanent visa of a class referred to in a declaration of the Minister under section 25 that is in force.

Table—Classes of permanent visas giving refugee status and qualifying residence exemption

Item No.	Class description	Relevant item in Schedule 1 to Migration Regulations
1.	Burmese in Burma (Special Assistance) (Class AB)	1102
2.	Burmese in Thailand (Special Assistance) (Class AC)	1103
3.	Cambodian (Special Assistance) (Class AE)	1105
4.	Camp Clearance (Migrant) (Class AF)	1106
5.	Citizens of the Former Yugoslavia (Special Assistance) (Class AI)	1109
6.	East Timorese in Portugal, Macau and Mozambique (Special Assistance) (Class AM)	1113

Table—Classes of permanent visas giving refugee status and qualifying residence exemption		
Item No.	**Class description**	**Relevant item in Schedule 1 to Migration Regulations**
7.	Minorities of Former USSR (Special Assistance) (Class AV)	1122
8.	Refugee and Humanitarian (Migrant) (Class BA)	1127
8A	Sri Lankan (Special Assistance) (Class BF)	1129A
9.	Sudanese (Special Assistance) (Class BD)	1130
10.	Territorial Asylum (Residence) (Class BE)	1131

(6D) For the purposes of subsection (6AA):

family member, in relation to a person, means:

(a) a partner of the person; or

(b) a dependent child of the person; or

(c) another person who, in the opinion of the Secretary, should be treated for the purposes of this definition as a person described in paragraph (a) or (b).

(6E) The Minister may, by legislative instrument:

(a) set guidelines for the exercise of the Secretary's power under paragraph (6D)(c); and

(b) revoke or vary those guidelines.

(7) For the purposes of subparagraphs ~~540(d)(ii)~~540(1)(d)(ii), 540BA(f)(ii) and 593(1)(g)(ii), (1D)(b)(ii) and (5)(e)(ii) and paragraph 666(1)(g), a person is ***exempt from the residence requirement*** in respect of a period if:

(a) throughout the period, the person was the holder of a special category visa; and

(b) immediately before the period commenced, the person had been residing in Australia for a continuous period of at least 10 years, being a period commencing on or after 26 February 2001;

unless the person's exemption from the residence requirement in respect of the period would result in the person:

(c) receiving jobseeker payment or youth allowance for a continuous period of more than 6 months because of this subsection; or

(d) receiving jobseeker payment or youth allowance for more than one non-continuous period because of this subsection; or

(e) receiving more than one of that payment and that allowance because of this subsection.

8 *Income test* definitions

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

approved exchange trading system has the meaning given by subsection (10).

approved scholarship means a scholarship in relation to which a determination under section 24A is in force.

available money, in relation to a person, means money that:

(a) is held by or on behalf of the person; and

(b) is not deposit money of the person; and

(c) is not the subject of a loan made by the person.

dad and partner pay means dad and partner pay under the *Paid Parental Leave Act 2010*.

deposit money, in relation to a person, means the person's money that is deposited in an account with a financial institution.

disposes of ordinary income has the meaning given by sections 1106 to 1111.

domestic payment has the meaning given by subsection (3).

earned, derived or received has the meaning given by subsection (2).

employment income, in relation to a person, means ordinary income of the person that comprises employment income under subsection (1A) and includes ordinary income that is characterised as employment income of the person because of the operation of subsection (1B).

exchange trading system has the meaning given by subsection (9).

exempt lump sum has the meaning given by subsection (11).

home equity conversion agreement, in relation to a person, means an agreement under which the repayment of an amount paid to or on behalf of the person, or the person's partner, is secured by a mortgage of the principal home of the person or the person's partner.

Note: See also subsection (7).

income, in relation to a person, means:

(a) an income amount earned, derived or received by the person for the person's own use or benefit; or

(b) a periodical payment by way of gift or allowance; or

(c) a periodical benefit by way of gift or allowance;

but does not include an amount that is excluded under subsection (4), (5) or (8).

Note 1: See also sections 1074 and 1075 (business income), Division 1B of Part 3.10 (income from financial assets (including income streams (short term) and certain income streams (long term)), Division 1C of Part 3.10 (income from income streams not covered by Division 1B of Part 3.10), section 1099F (exempt bond amount does not count as income) and section 1099K (refunded amount does not count as income).

Note 2: Where a person or a person's partner has disposed of income, the person's income may be taken to include the amount which has been disposed of—see sections 1106-1112.

Note 3: Income is equivalent to ordinary income plus maintenance income.

income amount means:

(a) valuable consideration; or

(b) personal earnings; or

(c) moneys; or

(d) profits;

(whether of a capital nature or not).

income from personal exertion means an income amount that is earned, derived or received by a person by way of payment for personal exertion by the person but does not include an income amount received as compensation for the person's inability to earn, derive or receive income through personal exertion.

instalment of parental leave pay means an instalment of parental leave pay under the *Paid Parental Leave Act 2010*.

ordinary income means income that is not maintenance income or an exempt lump sum.

Note 1: For ***maintenance income*** see section 10.

Note 2: Amounts received as a series of periodic compensation payments may result in reduction of the person's rate of social security pension or benefit under Part 3.14: if this happens the amounts are not counted as ordinary income (see section 1176).

Note 3: For provisions affecting the amount of a person's ordinary income see Division 1 of Part 3.10 (ordinary income concept and treatment of certain income amounts), sections 1074 and 1075 (business income), Division 1B of Part 3.10 (income from financial assets (including income streams (short term) and certain income streams (long term)) and Division 1C of Part 3.10 (income from income streams not covered by Division 1B of Part 3.10).

student income bank means the student income bank set out:

(a) in Module J of the Youth Allowance Rate Calculator; or

(b) in Module E of the Austudy Payment Rate Calculator.

working credit participant means a person who is a working credit participant within the meaning of section 1073D.

Section 8

(1A) A reference in this Act to ***employment income***, in relation to a person, is a reference to ordinary income of the person:

(a) that is for remunerative work of the person as an employee in an employer/employee relationship; and

(b) that includes, but is not limited to:

(i) salary, wages, commissions and employment-related fringe benefits; and

(ii) if the person is engaged on a continuing basis in that employer/employee relationship—a leave payment to the person;

but does not include:

(c) a superannuation payment to the person; or

(d) a payment of compensation, or a payment to the person under an insurance scheme, in relation to the person's inability to earn, derive or receive income from that remunerative work; or

(e) if the person is not engaged on a continuing basis in that employer/employee relationship—a leave payment to the person; or

(f) a payment to the person by a former employer of the person in relation to the termination of the person's employment; or

(g) a comparable foreign payment; or

(h) an instalment of parental leave pay; or

(i) dad and partner pay.

(1B) For the avoidance of doubt, if:

(a) a person is treated, for the purposes of working out the person's ordinary income, as having ordinary income of the person's partner; and

(b) that ordinary income would be characterised as employment income in the hands of the partner if the partner were not a member of a couple;

then, for the purposes of this Act, that ordinary income is to be similarly characterised in the hands of the person.

(1C) For the purposes of subsection (1A), a leave payment:

(a) includes a payment in respect of personal/carer's leave, annual leave, maternity leave or long service leave; and
(b) may be made as a lump sum payment, a payment that is one of a series of regular payments or otherwise; and
(c) is taken to be made to the person if it is made to another person:
(i) at the direction of the first-mentioned person or of a court; or
(ii) on behalf of the first-mentioned person; or
(iii) for the benefit of the first-mentioned person; or
(iv) if the first-mentioned person waives or assigns his or her right to the payment.

Earned, derived or received

(2) A reference in this Act to an income amount ***earned, derived or received*** is a reference to:
(a) an income amount earned, derived or received by any means; and
(b) an income amount earned, derived or received from any source (whether within or outside Australia).

Domestic payments

(3) A payment received by a person is a ***domestic payment*** for the purposes of this Act if:
(a) the person receives the payment on the disposal of an asset of the person; and
(b) the asset was used, immediately before the disposal, by the person or the person's partner for private or domestic purposes; and
(c) the asset was used by the person or the person's partner for those purposes for:
(i) a period of 12 months before the disposal; or
(ii) if the Secretary considers it appropriate—a period of less than 12 months before the disposal.

Excluded amounts—home equity conversion (not member of a couple)

(4) If a person is not a member of a couple, an amount paid to or on behalf of the person under a home equity conversion agreement is an ***excluded amount*** for the person to the extent that the total amount owed by the person from time to time under home equity conversion agreements does not exceed $40,000.

Excluded amounts—home equity conversion (member of a couple)

(5) If a person is a member of a couple, an amount paid to or on behalf of the person or the person's partner under a home equity conversion agreement is an ***excluded amount*** for the person to the extent that the total amount owed by the person and the person's partner under home equity conversion agreements from time to time does not exceed $40,000.

Home equity conversion (amount owed)

(6) For the purposes of this Act, the amount owed by a person under a home equity conversion agreement is the principal amount secured by the mortgage concerned and does not include:
  (a) any amount representing mortgage fees; or
  (b) any amount representing interest; or
  (c) any similar liability whose repayment is also secured by the mortgage.

Home equity conversion (principal home)

(7) For the purposes of the definition of ***home equity conversion agreement*** in subsection (1), an asset cannot be a person's ***principal home*** unless the person or the person's partner has a beneficial interest (but not necessarily the sole beneficial interest) in the asset.

Excluded amounts—general

(8) The following amounts are not income for the purposes of this Act:

(a) a payment under this Act;

(b) any return on a person's investment in:

(i) a superannuation fund; or

(ii) an approved deposit fund; or

(iv) an ATO small superannuation account;

until the person:

(v) reaches pension age; or

(vi) starts to receive a pension or annuity out of the fund;

(c) the value of emergency relief or like assistance;

(e) a payment under the *Handicapped Persons Assistance Act 1974*;

(f) a payment under Part III of the *Disability Services Act 1986* or the value of any rehabilitation program (including any follow-up program) provided under that Part;

(g) a payment of domiciliary nursing care benefit under Part VB of the *National Health Act 1953* as in force immediately before 1 July 1999;

(h) a payment under a law of the Commonwealth, being a law having an object of assisting persons to purchase or build their own homes;

(ha) a payment made by a State or Territory for the purpose of assisting the person to purchase or build his or her own home;

(j) a payment made to the person for or in respect of a dependent child of the person;

(jaa) a payment of family assistance, or of one-off payment to families, economic security strategy payment to families, back to school bonus, single income family bonus, clean energy advance, ETR payment, first 2020 economic support payment, second 2020 economic support payment, additional economic support payment 2020 or additional economic support payment 2021, under the Family Assistance Act;

(jab) a payment under the scheme determined under Schedule 3 to the *Family Assistance Legislation Amendment (More Help for Families—One-off Payments) Act 2004*;

OFFICIAL: Sensitive // Legal Privilege

(jaba) a payment under the scheme determined under Part 2 of Schedule 1 to the *Family Assistance and Other Legislation Amendment (Schoolkids Bonus Budget Measures) Act 2012*;

(jac) a payment under the scheme determined under Schedule 2 to the *Social Security Legislation Amendment (One-off Payments for Carers) Act 2005*;

(jad) a payment under the scheme determined under Schedule 4 to the *Social Security and Veterans' Entitlements Legislation Amendment (One-off Payments to Increase Assistance for Older Australians and Carers and Other Measures) Act 2006*;

(jae) a payment under the scheme determined under Schedule 4 to the *Social Security and Veterans' Affairs Legislation Amendment (One-off Payments and Other 2007 Budget Measures) Act 2007*;

(jaf) a payment under the scheme determined under Schedule 4 to the *Social Security and Veterans' Entitlements Legislation Amendment (One-off Payments and Other Budget Measures) Act 2008*;

(jag) an NDIS amount;

(jah) any return on a person's NDIS amounts that the person earns, derives or receives;

(jai) a payment of a bursary under the program established by the Commonwealth and known as the Young Carer Bursary Programme;

(ja) disability expenses maintenance;

(jb) a payment under the *Business Services Wage Assessment Tool Payment Scheme Act 2015*;

(jc) a payment under the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018*;

(k) insurance or compensation payments made by reason of the loss of, or damage to, buildings, plant or personal effects;

(ka) where:

(i) the person owes money under a mortgage or other arrangement; and

(ii) the person has insurance which requires the insurer to make payments to the creditor when the person is unemployed or ill or in other specified circumstances; and

(iii) payments are made to the creditor under the insurance;

a payment so made;

(m) money from an investment that is:

(i) an investment of payments of the kind referred to in paragraph (k); and

(ii) an investment for:

(A) a period of not more than 12 months after the person receives the payments; or

(B) if the Secretary thinks it appropriate—of 12 months or more after the person receives those payments;

(ma) money from an exempt funeral investment;

Note: For ***exempt funeral investment*** see section 19E.

(n) an amount paid, under a law of, or applying in, a country or part of a country, by way of compensation for a victim of National Socialist persecution;

(q) in the case of a person who pays or who is liable to pay rent, a payment by way of rent subsidy made by the Commonwealth, by a State or Territory or by an authority of the Commonwealth or of a State or Territory to or on behalf of the person who pays or who is liable to pay rent;

(r) a payment received by a trainee in full-time training under a program included in the programs known as Labour Market Programs, to the extent that the payment includes one or more of the following amounts:

(i) an amount calculated by reference to a rate of jobseeker payment;

(ii) an amount known as the training component;

(iii) an amount by way of a living away from home allowance;

OFFICIAL: Sensitive // Legal Privilege

(s) in the case of a person who is receiving a social security pension, a social security benefit, a service pension, income support supplement or a veteran payment and is in part-time training, or engaged in part-time work experience, under a program included in the programs known as Labour Market Programs—a payment received by the person under that program in respect of the person's expenses associated with his or her participation in the training or work experience;

(t) a payment received by the person under the scheme known as the New Enterprise Incentive Scheme;

(ta) a payment made by the Commonwealth known as the Apprenticeship Wage Top-Up to the person;

(tb) a payment to the person made by the Commonwealth under the program known as Skills for Sustainability for Australian Apprentices;

(tc) a payment to the person made by the Commonwealth under the program known as Tools for Your Trade (within the program known as the Australian Apprenticeships Incentives Program);

(td) a payment made by the Commonwealth, under the program established by the Commonwealth and known as "Youth Jobs PaTH", to an individual placed in an internship under that program;

(u) a benefit under a law of the Commonwealth that relates to the provision of:

(i) pharmaceutical, sickness or hospital benefits; or

(ii) medical or dental services;

(v) a payment (other than a periodical payment or a payment representing an accumulation of instalments) made for or in respect of expenses incurred by a person for hospital, medical, dental or similar treatment;

(va) a payment made by the Mark Fitzpatrick Trust to a person by way of assistance with expenses incurred in relation to a person who has medically acquired HIV infection;

(vb) a payment made by the New South Wales Medically-Acquired HIV Trust to a person by way of

financial assistance with expenses incurred in relation to a person who has medically acquired HIV infection;

(vc) a payment by the Thalidomide Australia Fixed Trust:

(i) made to, or applied for the benefit of, a beneficiary of the Trust; or

(ii) made to a person in respect of a beneficiary of the Trust;

(w) in the case of a member of:

(i) the Naval Reserve; or

(ii) the Army Reserve; or

(iii) the Air Force Reserve;

the pay and allowances paid to the person as such a member (other than pay and allowances in respect of continuous full-time service);

(y) a payment by way of:

(i) service pension, income support supplement or veteran payment; or

(ii) attendant allowance under section 98 of the Veterans' Entitlements Act; or

(iii) recreation allowance under section 104 of that Act; or

(iv) an allowance for the running and maintenance of a motor vehicle under the Vehicle Assistance Scheme referred to in section 105 of that Act; or

(v) decoration allowance under section 102 of that Act; or

(vi) Victoria Cross allowance under section 103 of that Act; or

(via) a payment, by a foreign country, of an allowance or annuity that is of a similar kind to decoration allowance payable under section 102 of that Act or to Victoria Cross allowance payable under section 103 of that Act; or

(vii) clothing allowance under section 97 of that Act; or

(viiaaa) prisoner of war recognition supplement under Part VIB of that Act; or

(viiaa) a payment known as a student start-up scholarship payment, or a relocation scholarship payment, under the

scheme referred to in section 117 of the Veterans' Entitlements Act; or

(viiab) a payment known as a student start-up scholarship payment, or a relocation scholarship payment, under the scheme referred to in section 258 of the Military Rehabilitation and Compensation Act; or

(viia) veterans supplement under Part VIIA of the Veterans' Entitlements Act; or

(viib) energy supplement under Part VIIAD of that Act; or

(viii) a bereavement payment under Part IIIB, or section 98A of that Act; or

(ix) a funeral benefit under Part VI of that Act; or

(x) a payment under Part VIIAB (DFISA) of that Act (including a payment made under regulations made under that Part);

(ya) a payment made by the Commonwealth and known as the one-off payment to the aged; or

(yc) a payment under a scheme determined under Schedule 2 to the *Social Security and Veterans' Entitlements Legislation Amendment (One-off Payments to Increase Assistance for Older Australians and Carers and Other Measures) Act 2006*;

(ye) a payment under a scheme determined under Schedule 2 to the *Social Security and Veterans' Affairs Legislation Amendment (One-off Payments and Other 2007 Budget Measures) Act 2007*;

(yg) a payment under a scheme determined under Schedule 2 to the *Social Security and Veterans' Entitlements Legislation Amendment (One-off Payments and Other Budget Measures) Act 2008*;

(yha) a clean energy payment under the Veterans' Entitlements Act;

(yi) a payment under the scheme determined under Schedule 4 to the *Social Security and Other Legislation Amendment (Economic Security Strategy) Act 2008*;

(yj) a payment under the scheme determined under Schedule 4 to the *Household Stimulus Package Act (No. 2) 2009*;

(yk) a one-off energy assistance payment under Part IIIF of the Veterans' Entitlements Act;

(yl) a one-off energy assistance payment under Part IIIG of the Veterans' Entitlements Act;

(ym) a first 2020 economic support payment under Division 1 of Part IIIH of the Veterans' Entitlements Act;

(yn) a second 2020 economic support payment under Division 2 of Part IIIH of the Veterans' Entitlements Act;

(yo) an additional economic support payment 2020 under Division 1 of Part IIIJ of the Veterans' Entitlements Act;

(yp) an additional economic support payment 2021 under Division 2 of Part IIIJ of the Veterans' Entitlements Act;

(z) a periodical payment by way of gift or allowance, or a periodical benefit by way of gift or allowance, from a parent, child, brother or sister of the person;

(za) the value of board or lodging received by the person;

(zaa) an amount received under the scheme known as the Western Australian Cost of Living Rebate Scheme;

(zab) the value of a benefit obtained by using a card known as the Western Australian Country Age Pension Fuel Card;

(zac) a payment, known as the Cost of Living Concession, made by the Government of South Australia;

(zb) a domestic payment;

(zc) so much of a payment received by the person as is, in accordance with an agreement between the Commonwealth and a foreign country, applied in reduction of the amount of social security payment that would otherwise be payable to the person under this Act;

(zd) a payment made to the person by the Government of New Zealand, being a payment known as:

(i) accommodation benefit; or

(ii) disability allowance; or

(iii) home help payment; or

OFFICIAL: Sensitive // Legal Privilege

(iv) special benefit; or
(v) training incentive allowance;

(ze) a payment made to the person by the Government of the United Kingdom, being a payment known as:
(i) clothing allowance; or
(ii) constant attendance allowance; or
(iii) decoration allowance; or
(iv) mobility supplement;

(zf) a payment under the ABSTUDY Scheme;

(zfa) a payment of financial supplement made to the person under a Student Financial Supplement Scheme;

(zg) a payment received by the person for serving, or being summoned to serve, on a jury;

(zh) a payment received by the person for expenses as a witness, other than an expert witness, before a court, tribunal or commission;

(zi) a payment towards the cost of personal care support services for the person, being a payment made under a scheme approved under section 35A;

(zia) the amount or value of a scholarship known as a Commonwealth Trade Learning Scholarship;

(zj) a payment of an approved scholarship awarded on or after 1 September 1990;

Note: For ***approved scholarship*** see subsection 8(1).

(zja) the amount or value of:
(ia) a scholarship provided for under Part 2-2A of the *Higher Education Support Act 2003* (Indigenous student assistance grants) and specified by the Secretary under subsection (8AAA) of this section.
(i) a scholarship known as a Commonwealth Education Costs Scholarship; or
(ii) a scholarship known as a Commonwealth Accommodation Scholarship;

(zjb) an amount covered by subsection (8B) (about reductions of amounts payable for enrolment or tuition in certain courses);

(zjc) a payment covered by subsection (8C) (about payments that are made to an educational institution or the Commonwealth to reduce a person's liability to the educational institution or Commonwealth and that are made by someone other than the person);

(zjd) a payment of a scholarship to a person during a calendar year (other than an excluded payment):

(i) for the person to study, or to undertake research, at an educational institution; or

(ii) for the person's achievement in studying, or in undertaking research, at an educational institution;

to the extent that the payment does not exceed the person's threshold amount for that year;

Note: For ***excluded payment*** see subsection (8AA). For ***educational institution*** see subsection 23(1). For ***threshold amount*** see subsection (8AB).

(zk) an amount paid by a buyer under a sale leaseback agreement;

(zl) if a person is a member of an approved exchange trading system—an amount credited to the person's account for the purposes of the scheme in respect of any goods or services provided by the person to another member.

Note: For ***approved exchange trading system*** see subsections (9) and (10).

(zm) if a person:

(i) is a member of a couple; and

(ii) is receiving a social security benefit;

a payment received by the person either directly or indirectly from his or her partner.

(zn) while a person is accruing a liability to pay an accommodation charge—any rent from the person's principal home that the person, or the person's partner, earns, derives or receives from another person;

Note 1: For ***rent***, see subsection 13(2).

Note 2: Under subsections 11A(8) and (9), the principal home of a person in a care situation may be a place other than the place where the person receives care.

Note 3: See subsections (10A) and (10B) for the circumstances in which this paragraph does not apply in relation to a person who enters a residential care service or a flexible care service on or after the commencement of those subsections.

(zna) while a person is liable to pay all or some of an accommodation bond by periodic payments—any rent from the person's principal home that the person, or the person's partner, earns, derives or receives from another person;

Note 1: For ***rent***, see subsection 13(2).

Note 2: Under subsections 11A(8) and (9), the principal home of a person in a care situation may be a place other than the place where the person receives care.

Note 3: See subsections (10A) and (10B) for the circumstances in which this paragraph does not apply in relation to a person who enters a residential care service or a flexible care service on or after the commencement of those subsections.

(znaa) while a person is liable to pay all or some of a daily accommodation payment or a daily accommodation contribution—any rent from the person's principal home that the person, or the person's partner, earns, derives or receives from another person;

Note 1: For ***rent***, see subsection 13(2).

Note 2: Under subsections 11A(8) and (9), the principal home of a person in a care situation may be a place other than the place where the person receives care.

Note 3: See subsections (10A) and (10B) for the circumstances in which this paragraph does not apply in relation to a person who enters a residential care service or a flexible care service on or after the commencement of those subsections.

(znb) a clean energy payment under the Military Rehabilitation and Compensation Act;

(zo) a payment under section 47, 56, 81, 205, 214, 217, 226, 239 or 266 of the Military Rehabilitation and Compensation Act to reimburse costs incurred in respect of the provision of goods or services (other than a payment to the person who provided the goods or service);

(zp) if subsection 204(5) of the Military Rehabilitation and Compensation Act applies to a person—an amount per fortnight, worked out under subsection (12) of this section,

that would, apart from this paragraph, be income of the person;

Note: Subsection 204(5) of the Military Rehabilitation and Compensation Act reduces a Special Rate Disability Pension by reference to amounts of Commonwealth superannuation that the person has received or is receiving.

(zq) a payment under the Motor Vehicle Compensation Scheme under section 212 of the Military Rehabilitation and Compensation Act;

(zr) a payment under section 242 of the Military Rehabilitation and Compensation Act (continuing permanent impairment and incapacity etc. payments);

(zs) the value of the benefit provided under the initiative known as the Tools for Your Trade initiative;

(zt) a cash flow boost (within the meaning of the *Boosting Cash Flow for Employers (Coronavirus Economic Response Package) Act 2020*);

(zu) a payment:

(i) paid in accordance with rules made under the *Coronavirus Economic Response Package (Payments and Benefits) Act 2020*; and

(ii) stated, in those rules, not to be income in relation to the person for the purposes of this Act;~~,~~

(zv) a payment made by the Commonwealth to an individual under a program that is established by the Commonwealth and is determined in an instrument under subsection (8AC) to be an employment program;

(zw) a payment made by a State or Territory to an individual under a program that is established by the State or Territory and is determined in an instrument under subsection (8AC) to be an employment program.

(8AAA) The Secretary may, by legislative instrument, specify a scholarship for the purposes of subparagraph (8)(zja)(ia).

(8AA) For the purposes of paragraph (8)(zjd), each of the following is an ***excluded payment***:

(a) a payment of a scholarship referred to in paragraph (8)(zia), (zj) or (zja);

(b) a scholarship payment under Part 2.11B;

(c) a scholarship payment under the ABSTUDY Scheme;

(d) a payment known as a student start-up scholarship payment, or a relocation scholarship payment, under the scheme referred to in section 117 of the Veterans' Entitlements Act;

(e) a payment known as a student start-up scholarship payment, or a relocation scholarship payment, under the scheme referred to in section 258 of the Military Rehabilitation and Compensation Act.

(8AB) For the purposes of paragraph (8)(zjd), a person's ***threshold amount***, for a calendar year, means $6,762 less the amount of any payment made to that person during that year that is not income for the purposes of this Act because of that paragraph.

Note: The dollar amount mentioned in this subsection is indexed annually in line with CPI increases (see sections 1190 to 1194).

Example: On 15 April 2010 a person is paid a scholarship of $3,000 to study at an educational institution. The threshold amount is $6,762 (as no other payment has been excluded under paragraph (8)(zjd) for 2010). The $3,000 is not income under that paragraph and the threshold amount is reduced to $3,762.

On 1 May 2010 the person is paid a scholarship of $5,000 to study at an educational institution. Of the $5,000, $3,762 is not income under that paragraph. The threshold amount is reduced to zero.

There can be no further payments excluded under that paragraph for that person for 2010.

(8AC) The Employment Secretary may, by notifiable instrument, determine programs to be employment programs for the purposes of paragraph (8)(zv) or (zw).

(8A) For the purposes of the operation of section 5 in determining whether a person is:

(a) a student child; or

(b) a dependent child of another person;

this section has effect as if paragraph (8)(zf) were not included.

(8B) This subsection covers the amount of a reduction (by discount, remission or waiver) of an amount that would otherwise be payable by a person:

(a) to an educational institution for enrolment or tuition of the person by the institution in a course that:

(i) is determined, under section 5D of the *Student Assistance Act 1973*, to be a secondary course or a tertiary course for the purposes of that Act; or

(ii) is a Masters or Doctoral degree course accredited as a higher education course by the authority responsible for accrediting higher education courses in the State or Territory in which the course is conducted or by the institution, if it is permitted by a law of the Commonwealth, a State or a Territory to accredit higher education courses that it conducts; or

(iii) is a course of vocational training; or

(b) to the Commonwealth as a result of the person's enrolment in, or undertaking of, such a course at an educational institution.

(8C) This subsection covers a payment:

(a) that is made to discharge, or to prevent from arising, to any extent:

(i) a person's actual or anticipated liability to an educational institution for enrolment or tuition of the person by the institution in a course described in paragraph (8B)(a); or

(ii) a person's actual or anticipated liability to the Commonwealth resulting from the person's enrolment in, or undertaking of, such a course at an educational institution; and

(b) that is made by someone other than the person; and

(c) that is made to the institution or the Commonwealth; and

(d) that is not made at the direction of the person.

OFFICIAL: Sensitive // Legal Privilege

(9) An ***exchange trading system*** is an arrangement between a number of persons (***members***) under which each member may obtain goods or services from another member for consideration that is wholly or partly in kind rather than in cash. Each member has, for the purposes of the arrangement, an account:

(a) to which is credited:

(i) the amount representing the value of any goods or services provided by the member to another member; or

(ii) if the goods or services were partly paid for in cash—the amount referred to in subparagraph (i) less the amount so paid in cash; and

(b) to which is debited:

(i) the amount representing the value of any goods or services supplied to the member by another member; or

(ii) if the goods or services were partly paid for in cash—the amount referred to in subparagraph (i) less the amount so paid in cash.

(10) An exchange trading system is an ***approved exchange trading system*** if the Secretary is satisfied that:

(a) it is a local community-based system; and

(b) its primary purpose is to help persons maintain their labour skills and keep them in touch with the labour market; and

(c) it is not a system run by a person or organisation for profit.

(10A) Paragraphs (8)(zn), (zna) and (znaa) do not apply in relation to a person who first enters a residential care service or a flexible care service on or after the commencement of this subsection.

(10B) Paragraphs (8)(zn), (zna) and (znaa) do not apply, and never again apply, in relation to a person if:

(a) the person enters a residential care service or a flexible care service on or after the commencement of this subsection; and

(b) that entry occurs more than 28 days after the day the person last ceased being provided with residential care or flexible care through a residential care service or a flexible care service (other than because the person was on leave).

(10C) An expression used in subsection (10A) or (10B) and in the *Aged Care Act 1997* has the same meaning in that subsection as in that Act.

(11) An amount received by a person is an ***exempt lump sum*** if:

(a) the amount is not a periodic amount (within the meaning of subsection (11A)); and

(b) the amount is not a leave payment within the meaning of points 1067G-H20, 1067L-D16 and 1068-G7AR; and

(c) the amount is not income from remunerative work undertaken by the person; and

(d) the amount is an amount, or class of amounts, determined by the Secretary to be an exempt lump sum.

Note: Some examples of the kinds of lump sums that the Secretary may determine to be exempt lump sums include a lottery win or other windfall, a legacy or bequest, or a gift—if it is a one-off gift.

(11A) An amount is a ***periodic amount*** if it is:

(a) the amount of one payment in a series of related payments, even if the payments are irregular in time and amount; or

(b) the amount of a payment making up for arrears in such a series.

(12) For the purposes of paragraph 8(8)(zp), the amount per fortnight that is not income for the purposes of this Act is:

$$\text{Special Rate Disability Pension reduction amount} \times \frac{10}{6}$$

where:

Special Rate Disability Pension reduction amount means the amount by which the Special Rate Disability Pension (as reduced under subsection 204(3)) is reduced under subsection 204(6) of the Military Rehabilitation and Compensation Act (but not below zero).

OFFICIAL: Sensitive // Legal Privilege

9 Financial assets and income streams definitions

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

approved deposit fund has the same meaning as in the *Income Tax Assessment Act 1997*.

asset-tested income stream (lifetime) has the meaning given by section 9E.

asset-tested income stream (long term) means an income stream that is an asset-tested income stream (long term) under section 9D or an income stream that:

(a) is not an asset-test exempt income stream; and

(b) has, on its commencement day:

(i) a specified term of more than 5 years; or

(ii) if the person who has acquired the income stream has a life expectancy of 5 years or less—a specified term equal to or greater than the person's life expectancy.

Note: Since the income stream must be for a specified term, an asset-tested income stream (long term) cannot be an asset-tested income stream (lifetime).

asset-tested income stream (short term) means an income stream that is an asset-tested income stream (short term) under section 9D or an income stream that is none of the following:

(a) an asset-test exempt income stream;

(b) an asset-tested income stream (long term);

(c) an asset-tested income stream (lifetime).

asset-test exempt income stream has the meanings given by sections 9A, 9B and 9BA.

ATO small superannuation account means an account kept in the name of an individual under the *Small Superannuation Accounts Act 1995*.

commencement day, in relation to an income stream, means the first day of the period to which the first payment under the income stream relates.

deductible amount, in relation to a defined benefit income stream for a year, means the sum of the amounts that are the tax free components (worked out under Subdivision 307-C of the *Income Tax Assessment Act 1997* or, if applicable, section 307-125 of the *Income Tax (Transitional Provisions) Act 1997*) of the payments received from the defined benefit income stream during the year.

defined benefit income stream has the meaning given by subsection (1F).

deprived asset has the meaning given by subsection (4).

designated NDIS amount means:

(a) an NDIS amount that is deposited in an account with a financial institution; and

(b) any return on the NDIS amount that a person earns, derives or receives.

family law affected income stream has the meaning given by section 9C.

financial asset means:

(a) a financial investment; or

(b) a deprived asset.

Note: For ***deprived asset*** see subsection (4).

financial investment means:

(a) available money; or

(b) deposit money; or

(c) a managed investment; or

(d) a listed security; or

(e) a loan that has not been repaid in full; or

(f) an unlisted public security; or

(g) gold, silver or platinum bullion; or

(h) an asset-tested income stream (short term); or

(i) an asset-tested income stream (long term) that is an account-based pension within the meaning of the *Superannuation Industry (Supervision) Regulations 1994*; or

(j) an asset-tested income stream (long term) that is an annuity (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) provided under a contract that meets the requirements determined in an instrument under subsection (1EA);

but does not include a designated NDIS amount.

friendly society means:

(a) a body that is a friendly society for the purposes of the *Life Insurance Act 1995*; or

(b) a body that is registered or incorporated as a friendly society under a law of a State or Territory; or

(c) a body that is permitted, by a law of a State or Territory, to assume or use the expression ***friendly society***; or

(d) a body that, immediately before the date that is the transfer date for the purposes of the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999*, was registered or incorporated as a friendly society under a law of a State or Territory; or

(e) a body that had, before 13 December 1987, been approved for the purpose of the definition of ***friendly society*** in subsection 115(1) of the 1947 Act.

governing rules, in relation to an income stream, means any trust instrument, other document or legislation, or combination of them, governing the establishment and operation of the income stream.

income stream means:

(a) an income stream arising under arrangements that are regulated by the *Superannuation Industry (Supervision) Act 1993*; or

(b) an income stream arising under a public sector superannuation scheme (within the meaning of that Act); or

(c) an income stream arising under a retirement savings account; or

(d) an income stream provided as life insurance business by a life company registered under section 21 of the *Life Insurance Act 1995*; or

(f) an income stream designated in writing by the Secretary for the purposes of this definition, having regard to the guidelines determined under subsection (1E); or

(fa) a family law affected income stream;

but does not include any of the following:

(g) available money;

(h) deposit money;

(i) a managed investment;

(j) a listed security;

(k) a loan that has not been repaid in full;

(l) an unlisted public security;

(m) gold, silver or platinum bullion;

(n) a payment of compensation to a person, or a payment to a person under an insurance scheme, in relation to:

(i) the person's inability to earn, derive or receive income from remunerative work; or

(ii) the person's total and permanent disability or incapacity.

investment:

(a) in relation to a superannuation fund or approved deposit fund—has the meaning given by subsection (9); or

(b) in relation to an ATO small superannuation account—has the meaning given by subsection (9A).

investor, in relation to an ATO small superannuation account, means the person in whose name the account is kept.

life expectancy has the same meaning as ***life expectation factor*** has in section 27H of the Income Tax Assessment Act.

listed security means:

(a) a share in a company; or

(b) another security;

listed on a stock exchange.

managed investment has the meaning given by subsections (1A), (1B) and (1C).

military defined benefit income stream means a defined benefit income stream provided under:

(a) the scheme provided for by the *Defence Forces Retirement Benefits Act 1948*; or

(b) the scheme provided for by the *Defence Force Retirement and Death Benefits Act 1973*; or

(c) the superannuation scheme referred to in section 4 of the *Military Superannuation and Benefits Act 1991*; or

(d) a superannuation scheme specified in an instrument under subsection (2).

original family law affected income stream has the meaning given by section 9C.

pensioner couple means a couple, one or both of the members of which are receiving a social security pension, a service pension, income support supplement or a veteran payment.

primary FLA income stream has the meaning given by section 9C.

public unit trust means a unit trust that:

(a) except where paragraph (b) applies—was, in relation to the unit trust's last year of income, a public unit trust for the purposes of Division 6B of Part III of the Income Tax Assessment Act; or

(b) where the first year of income of the unit trust has not yet finished—has, at some time since the trust was established, satisfied at least one of the paragraphs of subsection 102G(1) of the Income Tax Assessment Act.

purchase price, in relation to an income stream, means the sum of the payments made to purchase the income stream (including amounts paid by way of employer and employee contributions) less any commuted amounts.

relevant number, in relation to an income stream, means:

(a) if the income stream is payable for a fixed number of years—that number; or

(b) if the income stream is payable during the lifetime of a person and no longer—the number of years of the person's life expectancy; or

(c) if the income stream:

(i) is jointly owned by a person and his or her partner and is payable for the lifetime of the person or the partner; or

(ii) is payable during the lifetime of a person and then for the lifetime of a reversionary beneficiary;

the number of years of the longer of the relevant life expectancies; or

(d) in any other case—the number that the Secretary considers appropriate having regard to the number of years in the total period during which the income stream will be, or may reasonably be expected to be, payable.

residual capital value, in relation to an income stream, means the capital amount payable on the termination of the income stream.

Note: An account-based income stream does not have a residual capital value (see subsection (10) of this section).

retirement savings account has the meaning that it has in the *Retirement Savings Accounts Act 1997*.

return:

(a) in relation to an ATO small superannuation account—means so much of the balance of the account as is attributable to interest; or

(b) in relation to any other investment in the nature of superannuation—means any increase, whether of a capital or

OFFICIAL: Sensitive // Legal Privilege

income nature and whether or not distributed, in the value or amount of the investment.

secondary FLA income stream has the meaning given by section 9C.

superannuation benefit, in relation to a person, means:

(a) a benefit arising directly or indirectly from amounts contributed (whether by the person or by any other person) to a superannuation fund in respect of the person; or

(b) a payment under Part 7 of the *Small Superannuation Accounts Act 1995*, where the payment is in respect of an ATO small superannuation account kept in the name of the person.

superannuation contributions surcharge has the meaning that it has in the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*.

superannuation fund means:

(a) a fund that is or has been a complying superannuation fund within the meaning of section 45 of the *Superannuation Industry (Supervision) Act 1993* in relation to any tax year; or

(b) an Australian superannuation fund (within the meaning of the *Income Tax Assessment Act 1997*) that is not a complying superannuation fund mentioned in paragraph (a) in relation to any tax year; or

(c) a scheme for the payment of benefits upon retirement or death that is constituted by or under a law of the Commonwealth or of a State or Territory; or

(d) an RSA within the meaning of the *Retirement Savings Accounts Act 1997*; or

(e) any of the following funds (unless the fund is a foreign superannuation fund within the meaning of the *Income Tax Assessment Act 1997*):

(i) a fund to which paragraph 23(jaa), or section 23FC, 121CC or 121DAB, of the *Income Tax Assessment Act 1936* (as in force at any time before the commencement

of section 1 of the *Taxation Laws Amendment Act (No. 2) 1989*) has applied in relation to any tax year;

(ii) a fund to which paragraph 23(ja), or section 23F or 23FB, of the *Income Tax Assessment Act 1936* (as in force at any time before the commencement of paragraph (a) of the definition of ***superannuation fund*** in former subsection 27A(1) of the *Income Tax Assessment Act 1936*) has applied in relation to the tax year that started on 1 July 1985 or an earlier tax year;

(iii) a fund to which section 79 of the *Income Tax Assessment Act 1936* (as in force at any time before 25 June 1984) has applied in relation to the tax year that started on 1 July 1983 or an earlier tax year.

unlisted public security means:

(a) a share in a public company; or

(b) another security;

that is not listed on a stock exchange.

(1A) Subject to subsections (1B) and (1C), an investment is a ***managed investment*** for the purposes of this Act if:

(a) the money or property invested is paid by the investor directly or indirectly to a body corporate or into a trust fund; and

(b) the assets that represent the money or property invested (the ***invested assets***) are not held in the names of investors; and

(c) the investor does not have effective control over the management of the invested assets; and

(d) the investor has a legally enforceable right to share in any distribution of income or profits derived from the invested assets.

(1B) Without limiting the generality of subsection (1A) but subject to subsection (1C), the following are ***managed investments*** for the purposes of this Act:

(a) an investment in a public unit trust;

(b) an investment in an insurance bond;

(c) an investment with a friendly society;
(d) an investment in a superannuation fund;
(e) an investment in an approved deposit fund;
(g) an investment in an ATO small superannuation account;
(h) an asset-tested income stream (lifetime) that does not arise under arrangements that are regulated by the *Superannuation Industry (Supervision) Act 1993*.

Note 1: For paragraph (d), see paragraph (1C)(a) for superannuation investments held before pension age is reached.

Note 2: For paragraph (e), see paragraph (1C)(b) for investments in approved deposit funds held before pension age is reached.

Note 4: For paragraph (g), see paragraph (1C)(ca) for investments in ATO small superannuation accounts held before pension age is reached.

Note 5: For paragraph (h), see paragraph (1C)(j) for a person's asset-tested income stream (lifetime) that does not arise under arrangements that are regulated by the *Superannuation Industry (Supervision) Act 1993* if the person's assessment day (within the meaning of section 1120AB) for the income stream has occurred.

(1C) The following are not managed investments for the purposes of this Act:
(a) an investment in a superannuation fund if the investor has not yet reached pension age;
(b) an investment in an approved deposit fund if the investor has not yet reached pension age;
(ca) an investment in an ATO small superannuation account if the investor has not yet reached pension age;
(d) deposit money;
(e) a loan;
(f) an asset-test exempt income stream;
(g) an asset-tested income stream (long term);
(h) an asset-tested income stream (short term);
(i) a person's asset-tested income stream (lifetime) that arises under arrangements that are regulated by the *Superannuation Industry (Supervision) Act 1993*;

(j) a person's asset-tested income stream (lifetime) that does not arise under arrangements that are regulated by the *Superannuation Industry (Supervision) Act 1993* if the person's assessment day (within the meaning of section 1120AB) for the income stream has occurred.

Note 2: For ***deposit money*** see subsection 8(1).

Note 3: For provisions relating to when a loan is taken to be made see subsection (2).

(1D) To avoid doubt, none of the following is a financial investment for the purposes of this Act:

(a) an accommodation bond;

(b) an accommodation bond balance;

(c) a refundable deposit;

(d) a refundable deposit balance.

(1E) The Secretary may, by legislative instrument, determine guidelines to be complied with when designating an income stream for the purposes of the definition of ***income stream*** in subsection (1).

(1EA) The Minister may, by legislative instrument, determine requirements for the purposes of paragraph (j) of the definition of ***financial investment*** in subsection (1).

(1F) An income stream is a ***defined benefit income stream*** if:

(a) under the *Superannuation Industry (Supervision) Regulations 1994*, the income stream is taken to be a pension for the purposes of the *Superannuation Industry (Supervision) Act 1993*; and

(b) except in the case of an income stream arising under a superannuation fund established before 20 September 1998—the income stream is provided under rules that meet the standards of subregulation 1.06(2) of the *Superannuation Industry (Supervision) Regulations 1994*; and

(ba) in the case of an income stream arising under a superannuation fund established before 20 September 1998—the income stream is provided under rules that meet the

standards determined, by legislative instrument, by the Minister; and

(c) in any case—the income stream is attributable to a defined benefit interest within the meaning of the *Superannuation Industry (Supervision) Regulations 1994* (for this purpose, disregard subparagraph 1.03AA(1)(b)(ii) of those regulations).

(2) The Secretary may, by legislative instrument, specify superannuation schemes for the purposes of paragraph (d) of the definition of ***military defined benefit income stream*** in subsection (1).

(4) For the purposes of this Act, an asset is a ***deprived asset*** if:

(a) a person has disposed of the asset; and

(b) the value of the asset is included in the value of the person's assets by section 1124A, 1125, 1125A, 1126, 1126AA, 1126AB, 1126AC or 1126AD or an amount is included in the value of the person's assets in respect of the disposal by section 1126E (so far as that section relates to section 1126AA, 1126AB, 1126AC or 1126AD).

(9) For the purposes of this Act, a person has an ***investment*** in a superannuation fund or approved deposit fund if the person has benefits in the fund (whether the benefits are attributable to amounts paid by the person or someone else).

(9A) For the purposes of this Act:

(a) a person has an ***investment*** in an ATO small superannuation account if:

(i) the account is kept in the name of the person; and

(ii) the balance of the account exceeds nil; and

(b) the amount or value of that investment equals the balance of the account.

(10) To avoid doubt, for the purposes of this Act, an account-based income stream does not have a ***residual capital value***.

OFFICIAL: Sensitive // Legal Privilege

9A Meaning of *asset-test exempt income stream*—lifetime income streams

General requirements

(1) An income stream provided to a person is an asset-test exempt income stream for the purposes of this Act if:

(aa) subject to subsection (1AA), the income stream's commencement day happens before 20 September 2007; and

(a) it is an income stream arising under a contract, or governing rules, that meet the requirements of subsection (2) and the Secretary has not made a determination under subsection (4) in respect of the income stream; and

(b) subject to subsections (1B), (1C) and (1D), the Secretary is satisfied that in relation to an income stream, provided by a class of provider specified by the Secretary for the purposes of this paragraph, there is in force a current actuarial certificate that states that the actuary is of the opinion that, for the financial year in which the certificate is given, there is a high probability that the provider of the income stream will be able to pay the income stream as required under the contract or governing rules; and

(c) the Secretary is satisfied that the requirements of subsection (2) are being given effect to from the day the income stream commences to be paid.

Note: For paragraph (b), ***financial year*** means a period of 12 months commencing on 1 July: see the *Acts Interpretation Act 1901*.

Determination under subsection (5)

(1A) An income stream provided to a person is an asset-test exempt income stream for the purposes of this Act if the Secretary has made a determination under subsection (5) in respect of the income stream.

Defined benefit income streams

(1AA) Paragraph (1)(aa) does not apply if the income stream is a defined benefit income stream.

Guidelines relating to actuarial certificates

(1B) The Secretary may determine, in writing, guidelines to be complied with when determining whether an actuarial certificate is in force and what constitutes a high probability that the provider of the income stream will be able to pay the income stream as required under the contract or governing rules.

Exception to paragraph (1)(b)

(1C) If, on 30 June in a financial year, an actuarial certificate referred to in paragraph (1)(b) is in force in relation to an income stream, then paragraph (1)(b) does not apply in relation to the next financial year (the ***later year***) for the period:

(a) beginning on 1 July of the later year; and

(b) ending at the earlier of the following:

(i) the start of the first day in the later year on which any actuarial certificate is given to the Secretary in relation to that income stream;

(ii) the end of the period of 26 weeks beginning on 1 July of the later year.

One certificate a financial year

(1D) For the purposes of paragraph (1)(b), if an actuarial certificate is given to the Secretary in a financial year in relation to an income stream, then any actuarial certificate given to the Secretary later in that financial year in relation to that income stream has no effect.

Requirements of contract/governing rules for provision of income stream

(2) A contract, or the governing rules, for the provision of an income stream to a person meet the requirements of this subsection if the contract or governing rules specify:

(a) that payments under the income stream are to be made at least annually throughout the life of the person and, if there is a reversionary beneficiary:

(i) throughout the reversionary beneficiary's life; or

(ii) if the reversionary beneficiary is a child of the person or of a former reversionary beneficiary under the income stream—at least until he or she turns 16; or

(iii) if the child referred to in subparagraph (ii) is a full-time student who has turned 16—at least until the end of his or her full-time studies or until he or she turns 25, whichever occurs sooner; and

(b) the total amount of the payments that may be made under the income stream in the first year after the commencement day of the income stream (not taking commuted amounts into account); and

(c) that the total amount of the payments that may be made under the income stream in any other year (not taking commuted amounts into account) may not fall below the total amount of the payments made under the income stream in the immediately preceding year (the ***previous total***), and may not exceed the previous total:

(i) if subparagraph (ii) does not apply—by more than 5% of the previous total; or

(ii) if the index number for the second last quarter before the day on which the first of those payments is to be made (***recent index number***) exceeds the index number for the same quarter in the immediately preceding year (***base index number***) by more than 4% of the base index number—by more than such percentage of the previous total as is worked out under the formula:

$$100 \times \left[\frac{\text{Recent index number} - \text{Base index number}}{\text{Base index number}} \right] + 1$$

(d) if the income stream is purchased by or for the primary beneficiary—that the first payment under the income stream relates to the period commencing on the day of that purchase; and

(e) if the income stream is not purchased, but acquired, by or for the primary beneficiary—that the first payment under the income stream relates to the period commencing on the day of that acquisition; and

(f) if the income stream is not a defined benefit income stream—that the amount paid as the purchase price for the income stream is wholly converted into income; and

(g) that the income stream has no residual capital value; and

(h) that the income stream cannot be commuted except:

(i) if the income stream is a non-commutation funded income stream and the commutation is made within 6 months after the commencement day of the income stream; or

(ii) if the commutation is made to the benefit of a reversionary beneficiary or of the person's estate, on the death of the person within the life expectancy period for the income stream; or

(iii) if the payment resulting from the commutation is transferred directly to the purchase of another income stream that is an asset-test exempt income stream; or

(iv) to the extent necessary to cover any superannuation contributions surcharge relating to the income stream; or

(iva) to the extent necessary to give effect to an entitlement of the person's partner or former partner under a payment split under Part VIIIB of the *Family Law Act 1975*; or

(ivb) to the extent necessary to give effect to an order under Part VIIIAA of the *Family Law Act 1975*; or

(v) to the extent necessary to pay a hardship amount; and

(i) that the income stream cannot be transferred to a person except:
  (i) on the death of the primary beneficiary, to a reversionary beneficiary; or
  (ii) on the death of a reversionary beneficiary, to another reversionary beneficiary; and

(j) that neither the capital value of the income stream, nor the income from it, can be used as security for a borrowing; and

(k) that, if the income stream reverts, it must not have a reversionary component greater than the benefit that was payable immediately before the reversion; and

(l) that, if the income stream is commuted, the commuted amount must not be greater than the benefit that was payable immediately before the commutation.

(2A) A contract, or the governing rules, for the provision to a person of an income stream that meets all of the requirements of subsection (2), except the requirement of paragraph (2)(c), are taken to meet the requirements of subsection (2) if the contract or governing rules specify that any provision included in the contract or governing rules in accordance with paragraph (2)(c) does not apply in any year in which:

(a) the person ceases to receive income under an income stream jointly and begins to receive income under a single income stream; and

(b) the total amount received in the year under the single income stream is less than the total amount received by the person in the previous year but is not nil.

Matters not required of income stream

(3) For the purpose of determining whether an income stream meets the requirements of subsection (2), it is immaterial that:

(a) if the primary beneficiary dies within the life expectancy period for the income stream, a surviving reversionary beneficiary may be paid an amount equal to the total of the payments that the primary beneficiary would (if he or she had

not died) have received from the day of the death until the end of that period; and

(b) if:

(i) the primary beneficiary dies within the life expectancy period for the income stream; and

(ii) there is no surviving reversionary beneficiary;

an amount, not exceeding the difference between:

(iii) the sum of the amounts that would have been so payable to the primary beneficiary in that period; and

(iv) the sum of the amounts paid to the primary beneficiary;

is payable to the primary beneficiary's estate, and

(c) if:

(i) the primary beneficiary dies within the life expectancy period for the income stream; and

(ii) there is a surviving reversionary beneficiary who also dies within that period;

there is payable to the reversionary beneficiary's estate an amount determined as described in paragraph (b) as if that paragraph applied to the reversionary beneficiary.

Determination that income stream not asset-test exempt

(4) The Secretary may determine that an income stream that meets the requirements of subsection (2) is not an asset-test exempt income stream if the Secretary is satisfied that the person who has purchased the income stream has commuted an asset-test exempt income stream within 6 months after its commencement day on at least 3 occasions since the person first received a social security payment.

Determination that income stream is asset-test exempt

(5) The Secretary may determine, in writing, that an income stream is an asset-test exempt income stream for the purposes of this Act. In making the determination, the Secretary is to have regard to the guidelines (if any) determined under subsection (6).

(5A) To avoid doubt, a determination under subsection (5) may be made in respect of an income stream regardless of the income stream's commencement day.

(5B) A determination under subsection (5) is not a legislative instrument.

Guidelines to be complied with in making determination

(6) The Secretary may, by legislative instrument, determine guidelines to be complied with when making a determination under subsection (5).

(7) In this section:

hardship amount, in relation to a person, means an amount determined by the Secretary for the purposes of this definition if:

(a) the person applies in writing to the Secretary to be allowed to commute the whole or part of an income stream because of extreme financial hardship; and

(b) the Secretary is satisfied that:

(i) the person's circumstances are exceptional and could not be reasonably foreseen at the time the person purchased the income stream; and

(ii) the person has insufficient liquid assets or other assets (excluding the person's principal home) that could be realised to avoid the extreme financial hardship; and

(iii) that amount is required to meet unavoidable expenditure.

life expectancy period, for an income stream, means:

(a) in a case where:

(i) there was only one primary beneficiary on the commencement day; and

(ii) the primary beneficiary has decided not to round up his or her life expectancy for the purposes of this definition;

the period starting on the income stream's commencement day, and equal to the shorter of:

OFFICIAL: Sensitive // Legal Privilege

(iii) the primary beneficiary's life expectancy on the commencement day; and

(iv) 20 years; or

(b) in a case where:

(i) there was only one primary beneficiary on the commencement day; and

(ii) paragraph (a) does not apply;

the period starting on the income stream's commencement day, and equal to the shorter of:

(iii) the primary beneficiary's life expectancy (rounded up, if not consisting of a whole number of years, to the next whole number) on the commencement day; and

(iv) 20 years; or

(c) in a case where:

(i) there were 2 primary beneficiaries on the commencement day; and

(ii) those primary beneficiaries have decided not to round up their life expectancies for the purposes of this definition;

the period starting on the income stream's commencement day, and equal to the shorter of:

(iii) the greater of the life expectancies, on the commencement day, of the primary beneficiaries; and

(iv) 20 years; or

(d) in a case where:

(i) there were 2 primary beneficiaries on the commencement day; and

(ii) paragraph (c) does not apply;

the period starting on the income stream's commencement day, and equal to the shorter of:

(iii) the greater of the life expectancies (rounded up, if not consisting of a whole number of years, to the next whole number), on the commencement day, of the primary beneficiaries; and

(iv) 20 years.

liquid assets, in relation to a person, means the person's cash and readily realisable assets, and includes:

(a) the person's shares and debentures in a public company within the meaning of the *Corporations Act 2001*; and

(b) managed investments; and

(c) insurance policies that can be surrendered for money; and

(d) amounts deposited with, or lent to, a bank or other financial institution by the person (whether or not the amount can be withdrawn or repaid immediately); and

(e) amounts due, and able to be paid, to the person by, or on behalf of, a former employer of the person; but does not include the sum of NDIS amounts paid to the person and any return on those amounts that the person earns, derives or receives, less the sum of amounts spent by the person in accordance with an NDIS plan under which the amounts were paid.

non-commutation funded income stream means an income stream that has not been purchased by transferring directly to the purchase of the income stream a payment resulting from the commutation of another asset-test exempt income stream.

unavoidable expenditure, in relation to a person, means one or more of the following:

(a) essential medical expenses of the person, or the person's partner, to the extent that the expenses are not covered by health insurance or other contracts or arrangements;

(b) the cost of:

(i) replacing the person's principal home; or

(ii) essential repairs to the person's principal home;

to the extent that the cost of the replacement or repairs is not covered by an insurance policy;

(c) expenditure to buy replacement essential household goods because of the loss of those goods to the extent that the cost of replacement is not covered by an insurance policy.

OFFICIAL: Sensitive // Legal Privilege

9B Meaning of *asset-test exempt income stream*—life expectancy income streams

(1) An income stream provided to a person is also an asset-test exempt income stream for the purposes of this Act if:

(a) the following criteria are satisfied:

(i) the income stream's commencement day happens before 20 September 2007;

(ii) subsection (1A) applies; or

(b) subsection (1B) applies.

(1A) This subsection applies if:

(aa) the person to whom the income stream is being provided is:

(i) the primary beneficiary; or

(ii) the primary beneficiary's reversionary partner (if any) on the day of the primary beneficiary's death; and

(a) the income stream is an income stream arising under a contract, or governing rules, that meet the requirements of subsection (2) and the Secretary has not made a determination under subsection (3) in respect of the income stream; and

(b) subject to subsections (1C), (1D) and (1E), the Secretary is satisfied that, in relation to an income stream provided by a class of provider specified by the Secretary for the purposes of this paragraph, there is in force a current actuarial certificate that states that the actuary is of the opinion that, for the financial year in which the certificate is given, there is a high probability that the provider of the income stream will be able to pay the income stream as required under the contract or governing rules; and

(c) the Secretary is satisfied that the requirements of subsection (2) have been given effect to from the day the income stream commenced to be paid; and

(d) in the case of an income stream acquired before 20 September 2004 that is provided to a primary beneficiary's reversionary beneficiary—the remaining term (in years) of the income stream is equal to the life expectancy

(in years) of the primary beneficiary's reversionary beneficiary.

Note: For paragraph (b), ***financial year*** means a period of 12 months commencing on 1 July: see the *Acts Interpretation Act 1901*.

(1B) This subsection applies if the Secretary has made a determination under subsection (4) in respect of the income stream.

Exception to paragraph (1A)(b)

(1C) If, on 30 June in a financial year, an actuarial certificate referred to in paragraph (1A)(b) is in force in relation to an income stream, then paragraph (1A)(b) does not apply in relation to the next financial year (the ***later year***) for the period:

(a) beginning on 1 July of the later year; and

(b) ending at the earlier of the following:

(i) the start of the first day in the later year on which any actuarial certificate is given to the Secretary in relation to that income stream;

(ii) the end of the period of 26 weeks beginning on 1 July of the later year.

Guidelines relating to actuarial certificates

(1D) The Secretary may determine, in writing, guidelines to be complied with when determining whether an actuarial certificate is in force and what constitutes a high probability that the provider of the income stream will be able to pay the income stream as required under the contract or governing rules.

One certificate a financial year

(1E) For the purposes of paragraph (1A)(b), if an actuarial certificate is given to the Secretary in a financial year in relation to an income stream, then any actuarial certificate given to the Secretary later in that financial year in relation to that income stream has no effect.

OFFICIAL: Sensitive // Legal Privilege

Requirements of contract/governing rules for provision of income stream

(2) A contract, or the governing rules, for the provision of an income stream to a person meets the requirements of this subsection if the contract or governing rules specify:

(a) the income stream's term, which must comply with subsection (2B), (2C) or (2E); and

(aa) that payments under the income stream are to be made at least annually during the income stream's term; and

(b) the total amount of the payments that may be made under the income stream in the first year after the commencement day of the income stream (not taking commuted amounts into account); and

(c) that the total amount of the payments that may be made under the income stream in any other year (not taking commuted amounts into account) may not fall below the total amount of the payments made under the income stream in the immediately preceding year (the ***previous total***), and may not exceed the previous total:

(i) if subparagraph (ii) does not apply—by more than 5% of the previous total; or

(ii) if the index number for the second last quarter before the day on which the first of those payments is to be made (***recent index number***) exceeds the index number for the same quarter in the immediately preceding year (***base index number***) by more than 4% of the base index number—by more than such percentage of the previous total as is worked out under the formula:

$$100 \times \left[\frac{\text{Recent index number} - \text{Base index number}}{\text{Base index number}} \right] + 1$$

(d) if the income stream is purchased by or for the primary beneficiary—that the first payment under the income stream relates to the period commencing on the day of that purchase; and

(e) if the income stream is not purchased, but acquired, by or for the primary beneficiary—that the first payment under the income stream relates to the period commencing on the day of that acquisition; and

(f) if the income stream is not a defined benefit income stream—that the amount paid as the purchase price for the income stream is wholly converted into income; and

(g) that the income stream has no residual capital value; and

(h) that the income stream cannot be commuted except:

(i) if the income stream is a non-commutation funded income stream and the commutation is made within 6 months after the commencement day of the income stream; or

(ii) if the payment resulting from the commutation is transferred directly to the purchase of another income stream that is an asset-test exempt income stream; or

(iii) if the primary beneficiary's reversionary partner (if any) on the day of the primary beneficiary's death survives the primary beneficiary—on or after the partner's death; or

(iiia) if subparagraph (iii) does not apply—on or after the primary beneficiary's death; or

(iv) to the extent necessary to cover any superannuation contributions surcharge relating to the income stream; or

(iva) to the extent necessary to give effect to an entitlement of the person's partner or former partner under a payment split under Part VIIIB of the *Family Law Act 1975*; or

(ivb) to the extent necessary to give effect to an order under Part VIIIAA of the *Family Law Act 1975*; or

(v) to the extent necessary to pay a hardship amount; and

(i) that the income stream cannot be transferred except on death; and

(j) that neither the capital value of the income stream, nor the income from it, can be used as security for a borrowing; and

(k) that, if the income stream reverts, it must not have a reversionary component greater than the benefit that was payable immediately before the reversion; and

(l) that, if the income stream is commuted, the commuted amount must not be greater than the benefit that was payable immediately before the commutation.

(2A) A contract, or the governing rules, for the provision to a person of an income stream that meets all of the requirements of subsection (2), except the requirement of paragraph (2)(c), are taken to meet the requirements of subsection (2) if the contract or governing rules specify that any provision included in the contract or governing rules in accordance with paragraph (2)(c) does not apply in any year in which:

(a) the person ceases to receive income under an income stream jointly and begins to receive income under a single income stream; and

(b) the total amount received in the year under the single income stream is less than the total amount received by the person in the previous year but is not nil.

Term of the income stream

(2B) If, on an income stream's commencement day, there is only one primary beneficiary, the income stream's ***term*** complies with this subsection if it is a period of whole years that:

(a) starts on the income stream's commencement day; and

(b) is at least as long as the primary beneficiary's life expectancy (rounded up, if not consisting of a whole number of years, to the next whole number) on the commencement day; and

(c) is at most as long as the greater of:

(i) what would be the primary beneficiary's life expectancy (rounded up, if not consisting of a whole number of years, to the next whole number) on the commencement day if the primary beneficiary were 5 years younger; and

(ii) the period (rounded up, if not consisting of a whole number of years, to the next whole number) starting on the commencement day and ending on the day on which the primary beneficiary reaches age 100 (assuming that the primary beneficiary lives until then).

(2C) If, on an income stream's commencement day, there is only one primary beneficiary, the income stream's ***term*** complies with this subsection if it is a period of whole years that:

(a) starts on the income stream's commencement day; and

(b) is at least as long as the greater of the life expectancies (rounded up, if not consisting of a whole number of years, to the next whole number), on the commencement day, of:

(i) the primary beneficiary; and

(ii) the primary beneficiary's reversionary partner on that day; and

(c) is at most as long as the period worked out under subsection (2D).

(2D) For the purposes of paragraph (2C)(c), the period is the greater of:

(a) the greater of what would be the life expectancies (rounded up, if not consisting of a whole number of years, to the next whole number), on the commencement day, of:

(i) the primary beneficiary, if the primary beneficiary were 5 years younger; and

(ii) the primary beneficiary's reversionary partner on that day, if the partner were 5 years younger; and

(b) the greater of:

(i) the period (rounded up, if not consisting of a whole number of years, to the next whole number) starting on the commencement day and ending on the day on which the primary beneficiary reaches age 100 (assuming that the primary beneficiary lives until then); and

(ii) the period (rounded up, if not consisting of a whole number of years, to the next whole number) starting on the commencement day and ending on the day on which the primary beneficiary's reversionary partner on the

commencement day reaches age 100 (assuming that the partner lives until then).

(2E) If, on an income stream's commencement day, there are 2 primary beneficiaries (the ***first primary beneficiary*** and the ***second primary beneficiary***), the income stream's ***term*** complies with this subsection if it is a period of whole years that:

(a) starts on the income stream's commencement day; and

(b) is at least as long as the lesser of the life expectancies (rounded up, if not consisting of a whole number of years, to the next whole number), on the commencement day, of:

(i) the first primary beneficiary; and

(ii) the second primary beneficiary; and

(c) is at most as long as the period worked out under subsection (2F).

(2F) For the purposes of paragraph (2E)(c), the period is the greater of:

(a) the greater of what would be the life expectancies (rounded up, if not consisting of a whole number of years, to the next whole number), on the commencement day, of:

(i) the first primary beneficiary, if the first primary beneficiary were 5 years younger; and

(ii) the second primary beneficiary, if the second primary beneficiary were 5 years younger; and

(b) the greater of:

(i) the period (rounded up, if not consisting of a whole number of years, to the next whole number) starting on the commencement day and ending on the day on which the first primary beneficiary reaches age 100 (assuming that the first primary beneficiary lives until then); and

(ii) the period (rounded up, if not consisting of a whole number of years, to the next whole number) starting on the commencement day and ending on the day on which the second primary beneficiary reaches age 100 (assuming that the second primary beneficiary lives until then).

Determination that income stream not asset-test exempt

(3) The Secretary may determine that an income stream that meets the requirements of subsection (2) is not an asset-test exempt income stream if the Secretary is satisfied that the person who has purchased the income stream has commuted an asset-test exempt income stream within 6 months after its commencement day on at least 3 occasions since the person first received a social security payment.

Determination that income stream is asset-test exempt

(4) The Secretary may determine, in writing, that an income stream is an asset-test exempt income stream for the purposes of this Act. In making the determination, the Secretary is to have regard to the guidelines (if any) determined under subsection (5).

(4A) To avoid doubt, a determination under subsection (4) may be made in respect of an income stream regardless of the income stream's commencement day.

(4B) A determination under subsection (4) is not a legislative instrument.

Guidelines to be complied with in making determination

(5) The Secretary may, by legislative instrument, determine guidelines to be complied with when making a determination under subsection (4).

(6) In this section:

hardship amount has the same meaning as in section 9A.

non-commutation funded income stream means an income stream that has not been purchased by transferring directly to the purchase of the income stream a payment resulting from the commutation of another asset-test exempt income stream.

OFFICIAL: Sensitive // Legal Privilege

reversionary partner, in relation to the primary beneficiary of an income stream and a particular day, means another person who, on that day:

(a) is a member of a couple with the primary beneficiary; and

(b) is the person to whom the income stream will revert on the primary beneficiary's death.

9BA Meaning of *asset-test exempt income stream*—market-linked income streams

General requirements

(1) An income stream provided to a person is also an asset-test exempt income stream for the purposes of this Act if:

(a) all of the following criteria are satisfied:

(i) the income stream's commencement day happens during the period from 20 September 2004 to 19 September 2007 (both dates inclusive);

(ii) the person to whom the income stream is being provided is the primary beneficiary or the primary beneficiary's reversionary partner (if any) on the day of the primary beneficiary's death;

(iii) the income stream is an income stream arising under a contract, or governing rules, that meets the requirements of subsection (2);

(iv) the Secretary has not made a determination under subsection (10) in respect of the income stream;

(v) the Secretary is satisfied that the requirements of subsection (2) have been given effect to from the day the income stream commenced to be paid; or

(b) the Secretary has made a determination under subsection (11) in respect of the income stream.

Requirements of contract/governing rules for provision of income stream

(2) A contract, or the governing rules, for the provision of an income stream to a person meets the requirements of this subsection if the contract or governing rules specify:

(a) the income stream's term, which must comply with subsection (3) or (4); and

(b) obligations for the making of payments under the income stream that satisfy the requirements of subsections (5) to (9); and

(c) if the income stream is purchased by or for the primary beneficiary—that the first payment under the income stream relates to the period commencing on the day of that purchase; and

(d) if the income stream is not purchased, but acquired, by or for the primary beneficiary—that the first payment under the income stream relates to the period commencing on the day of that acquisition; and

(e) that the income stream has no residual capital value; and

(f) that the income stream cannot be commuted except:

(i) if the income stream is a non-commutation funded income stream and the commutation is made within 6 months after the commencement day of the income stream; or

(ii) if the payment resulting from the commutation is transferred directly to the purchase of another income stream that is an asset-test exempt income stream; or

(iii) if the primary beneficiary's reversionary partner (if any) on the day of the primary beneficiary's death survives the primary beneficiary—on or after the partner's death; or

(iv) if subparagraph (iii) does not apply—on or after the primary beneficiary's death; or

(v) to the extent necessary to cover any superannuation contributions surcharge relating to the income stream; or

(vi) to the extent necessary to give effect to an entitlement of the person's partner or former partner under a payment split under Part VIIIB of the *Family Law Act 1975*; or

(vii) to the extent necessary to pay a hardship amount; and

(g) that the income stream cannot be transferred except on death; and

(h) that neither the capital value of the income stream, nor the income from it, can be used as security for a borrowing; and

(i) that, if the income stream reverts, it must not have a reversionary component greater than the account balance immediately before the reversion; and

(j) that, if the income stream is commuted, the commuted amount must not be greater than the account balance immediately before the commutation.

Term of the income stream

(3) An income stream's ***term*** complies with this subsection if it is a period of whole years that:

(a) starts on the income stream's commencement day; and

(b) is at least as long as the primary beneficiary's life expectancy (rounded up, if not consisting of a whole number of years, to the next whole number) on the commencement day; and

(c) is at most as long as the greater of:

(i) what would be the primary beneficiary's life expectancy (rounded up, if not consisting of a whole number of years, to the next whole number) on the commencement day if the primary beneficiary were 5 years younger; and

(ii) the period (rounded up, if not consisting of a whole number of years, to the next whole number) starting on the commencement day and ending on the day on which the primary beneficiary reaches age 100 (assuming that the primary beneficiary lives until then).

(4) An income stream's ***term*** complies with this subsection if it is a period of whole years that:

(a) starts on the income stream's commencement day; and
(b) is at least as long as the greater of the life expectancies (rounded up, if not consisting of a whole number of years, to the next whole number), on the commencement day, of:
(i) the primary beneficiary; and
(ii) the primary beneficiary's reversionary partner on that day; and
(c) is at most as long as the period worked out under subsection (4A).

(4A) For the purposes of paragraph (4)(c), the period is the greater of:
(a) the greater of what would be the life expectancies (rounded up, if not consisting of a whole number of years, to the next whole number), on the commencement day, of:
(i) the primary beneficiary, if the primary beneficiary were 5 years younger; and
(ii) the primary beneficiary's reversionary partner on that day, if the partner were 5 years younger; and
(b) the greater of:
(i) the period (rounded up, if not consisting of a whole number of years, to the next whole number) starting on the commencement day and ending on the day on which the primary beneficiary reaches age 100 (assuming that the primary beneficiary lives until then); and
(ii) the period (rounded up, if not consisting of a whole number of years, to the next whole number) starting on the commencement day and ending on the day on which the primary beneficiary's reversionary partner on the commencement day reaches age 100 (assuming that the partner lives until then).

Total amount payable in each financial year—general rule

(5) For each financial year wholly or partly within the income stream's term, the total amount of the payments to be made under the income stream must not be less than 90%, nor greater than 110%, of the amount worked out under the formula:

OFFICIAL: Sensitive // Legal Privilege

$$\frac{\text{Account balance}}{\text{PF}}$$

where:

account balance means:

(a) if the financial year includes the income stream's commencement day—the opening account balance for the income stream; or

(b) otherwise—the account balance for the income stream at the start of the financial year.

PF means the payment factor for the income stream for the financial year, worked out under principles determined, by legislative instrument, by the Secretary.

Other rules about payments under the income stream

(6) If the income stream's commencement day is not a 1 July, a total amount worked out under subsection (5) for the financial year starting on the preceding 1 July must be reduced on a pro-rata basis by reference to the number of days in the financial year that are on and after the commencement day.

(7) If:

(a) the income stream's commencement day happens in June; and

(b) no payment is made under the income stream for the financial year in which the commencement day happens;

subsections (5) and (6) do not apply to the income stream for that financial year.

(8) If the amount (the ***test amount***) of a payment to be made under the income stream on a day in a financial year:

(a) is worked out by reference to a total amount worked out under subsection (5) (and subsection (6), if applicable) for the financial year; and

(b) exceeds the income stream's account balance on that day;

then:

(c) the account balance (if any) must be paid instead of the test amount; and

(d) that total amount described in paragraph (a) must be reduced by the amount of the excess.

(9) If the income stream has a positive account balance at the end of its term, a payment equal to that account balance must be made within 28 days after the end of the term.

Determination that income stream not asset-test exempt

(10) The Secretary may determine that an income stream that meets the requirements of subsection (2) is not an asset-test exempt income stream if the Secretary is satisfied that:

(a) the primary beneficiary has commuted an asset-test exempt income stream on at least 3 occasions since the person first received a social security payment; and

(b) on at least 3 of those occasions, the commutation happened within 6 months after the commencement day of the income stream concerned.

Determination that income stream is asset-test exempt

(11) The Secretary may determine, in writing, that an income stream is an asset-test exempt income stream for the purposes of this Act. In making the determination, the Secretary must have regard to the guidelines (if any) determined under subsection (12).

(11A) To avoid doubt, a determination under subsection (11) may be made in respect of an income stream regardless of the income stream's commencement day.

(11B) A determination under subsection (11) is not a legislative instrument.

Guidelines to be complied with in making determination

(12) The Secretary may determine, by legislative instrument, guidelines to be complied with when making a determination under subsection (11).

Definitions

(14) In this section:

hardship amount has the same meaning as in section 9A.

non-commutation funded income stream means an income stream that has not been purchased by transferring directly to the purchase of the income stream a payment resulting from the commutation of another asset-test exempt income stream.

reversionary partner, in relation to the primary beneficiary of an income stream and a particular day, means another person who, on that day:

(a) is a member of a couple with the primary beneficiary; and

(b) is the person to whom the income stream will revert on the primary beneficiary's death.

9C Family law affected income streams

If:

(a) an income stream is acquired or purchased (the ***original family law affected income stream***) by a person (the ***member***); and

(b) the member's partner or former partner (the ***non-member***) becomes entitled to be paid some or all of that income stream under:

(i) a payment split under Part VIIIB of the *Family Law Act 1975*; or

(ii) an order under Part VIIIAA of the *Family Law Act 1975*;

then so much (if any) of the income stream paid to the non-member as a series of ongoing payments (***secondary FLA income stream***)

and the remainder (if any) of the income stream paid to the member as such a series of payments (***primary FLA income stream***) are each ***family law affected income streams***.

9D Asset-tested status of secondary FLA income streams

If there is a primary FLA income stream

(1) If a primary FLA income stream is, or would be if the income stream were assessed for the purposes of this Act:
   (a) an asset-tested income stream (long term); or
   (b) an asset-tested income stream (short term); or
   (c) an asset-tested income stream (lifetime);

then a secondary FLA income stream to which it is related is also to be treated as if it were assessed as an income stream of that kind.

If there is no primary FLA income stream

(2) If:
   (a) there is no primary FLA income stream in relation to a secondary FLA income stream; and
   (b) had there been a primary FLA income stream in relation to that secondary FLA income stream it would have been assessed for the purposes of this Act as an asset-tested income stream (long term), an asset-tested income stream (short term) or an asset-tested income stream (lifetime);

then the secondary FLA income stream is to be treated as if it were assessed as an income stream of that kind.

9E Asset-tested income stream (lifetime)

(1) Subject to subsection (2), an income stream is an ***asset-tested income stream (lifetime)*** if:
   (a) the contract, or governing rules, for the provision of the income stream ensure that, once payments of the income stream start, the income stream is to continue for the remainder of the life of one or more individuals; and

(b) the contract, or governing rules, for the provision of the income stream ensure that the amounts of those payments are determined by having regard to the age, life expectancy or other factors relevant to the mortality of those individuals; and

(c) the income stream is not an asset-test exempt income stream; and

(d) the income stream is not a defined benefit income stream.

(2) If:

(a) paragraphs (1)(a) to (d) are satisfied in relation to an income stream; and

(b) the income stream is of a kind determined in an instrument under subsection (3);

the income stream is an ***asset-tested income stream (lifetime)*** only to the extent determined in the instrument.

(3) The Secretary may make a legislative instrument for the purposes of subsection (2).

(4) An income stream is an ***asset-tested income stream (lifetime)*** if:

(a) the income stream satisfies the conditions determined in an instrument under subsection (5); and

(b) the income stream is not an asset-test exempt income stream; and

(c) the income stream is not a defined benefit income stream.

(5) The Secretary may, by legislative instrument, determine conditions for the purposes of paragraph (4)(a).

10 *Maintenance income* definitions

In this Act, unless the contrary intention appears, the expressions ***disability expenses maintenance***, ***maintenance*** and ***maintenance income*** have the same respective meanings as in the Family Assistance Act.

10A Definitions for carer allowance and seniors health card provisions

(1) Some of the definitions in this section are the same as definitions in the *Fringe Benefits Tax Assessment Act 1986*. Most of the other definitions in this section are based on definitions in that Act.

(2) In this section and in Parts 2.19, 3.9 and 3.12A, unless the contrary intention appears:

arm's length loan means a loan where the parties to the loan are dealing with each other at arm's length in relation to the loan.

arm's length transaction means a transaction where the parties to the transaction are dealing with each other at arm's length in relation to the transaction.

arrangement means:

(a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied, and whether or not enforceable, or intended to be enforceable, by legal proceedings; and

(b) any scheme, plan, proposal, action, course of action or course of conduct, whether unilateral or otherwise.

assessable fringe benefit means a fringe benefit that is:

(a) a car benefit (see section 1157C); or

(b) a school fees benefit (see section 1157E); or

(c) health insurance benefit (see section 1157F); or

(d) a loan benefit (see section 1157G); or

(e) a housing benefit (see section 1157I); or

(f) an expense benefit (see section 1157JA); or

(g) a financial investment benefit (see section 1157JC);

but does not include a car benefit, loan benefit, housing benefit or expense benefit that is exempt.

Note: For exempt benefits see sections 1157D (car benefits), 1157H (loan benefits), 1157J (housing benefits) and 1157JB (expense benefits).

OFFICIAL: Sensitive // Legal Privilege

associate has the same meaning as in the *Fringe Benefits Tax Assessment Act 1986*.

Note: Subsection 136(1) of the Fringe Benefits Tax Assessment Act adopts the definition of ***associate*** in section 318 of the Income Tax Assessment Act. Section 159 of the Fringe Benefits Tax Assessment Act modifies the way in which the income tax definition applies and also extends that definition in other ways.

Australian Parliament means:

(a) the Parliament of the Commonwealth of Australia; or

(b) the Parliament of a State; or

(c) the Legislative Assembly for the Australian Capital Territory; or

(d) the Legislative Assembly of the Northern Territory of Australia.

Note: See paragraph (d) of the definition of ***current employee***.

car means a motor vehicle that is a road vehicle designed to carry a load of less than 1 tonne or fewer than 9 passengers but does not include a motor cycle or similar vehicle.

car benefit has the meaning given by section 1157C.

car fringe benefit means a fringe benefit that is a car benefit.

census population, in relation to an urban centre, means the census count on an actual location basis of the population of that urban centre specified in the results of the Census of Population and Housing taken by the Australian Statistician on 30 June 1981, being the results published by the Australian Statistician in the document entitled "Persons and Dwellings in Local Government Areas and Urban Centres".

current employee means:

(a) a person who is an employee within the ordinary meaning of that word; and

(b) a person who holds or performs the duties of an appointment, office or position under the Constitution or under a law of the Commonwealth, a State or a Territory; and

(c) a person who is otherwise in the service of the Commonwealth, a State or a Territory (including service as a member of the Defence Force or as a member of a police force); and

(d) a member of an Australian Parliament.

current employer means a person who pays or is liable to pay any salary or wages to an employee, and includes:

(a) in the case of an unincorporated body of persons other than a partnership—the manager or other principal officer of that body; and

(b) in the case of a partnership—each partner; and

(c) a government body.

disadvantaged person means a person who is intellectually, psychiatrically or physically handicapped.

dwelling has the meaning given by subsection (7).

eligible urban area means:

(a) an area that:

(i) is situated in an area described in Schedule 2 to the Income Tax Assessment Act; and

(ii) is an urban centre with a census population of 28,000 or more; or

(b) any other area that is an urban centre with a census population of 14,000 or more.

Note: See paragraph (c) of the definition of ***special housing location*** in subsection (5).

employee means:

(a) a current employee; or

(b) a future employee; or

(c) a former employee.

employer means:

(a) a current employer; or

(b) a future employer; or

(c) a former employer.

employment, in relation to a person, means the holding of any office or appointment, the performance of any functions or duties, the engaging in of any work, or the doing of any acts or things that results, will result or has resulted in the person being treated as an employee.

expense benefit has the meaning given by section 1157JA.

expense fringe benefit means a fringe benefit that is an expense benefit.

financial investment benefit has the meaning given by section 1157JC.

financial investment fringe benefit means a fringe benefit that is a financial investment benefit.

foreign income, in relation to a person, means:

(a) an income amount earned, derived or received by the person from a source outside Australia for the person's own use or benefit; or

(b) a periodical payment by way of gift or allowance from a source outside Australia; or

(c) a periodical benefit by way of gift or allowance from a source outside Australia.

Note 1: For ***income amount*** see subsection 8(1).

Note 2: For ***earned, derived or received*** see subsection 8(2).

Note 3: This definition does not make use of the definition of ***income*** in subsection 8(1) and, as a result, the exclusions provided for by subsections 8(4), (5) and (8) do not apply to foreign income.

former employee means a person who has been a current employee.

former employer means a person who has been a current employer.

fringe benefit means a benefit that is provided to an employee or to an associate of the employee by:

(a) the employer of the employee; or
(b) an associate of the employer; or
(c) a person (the ***arranger***) other than the employer or an associate of the employer under an arrangement between:
(i) the employer or an associate of the employer; and
(ii) the arranger or another person;

and that is provided in respect of the employment of the employee.

future employee means a person who will become a current employee.

future employer means a person who will become a current employer.

government body means the Commonwealth, a State, a Territory or an authority of the Commonwealth or a State or Territory.

Note: See paragraph (c) of the definition of ***current employer***.

health insurance benefit has the meaning given by section 1157F.

health insurance fringe benefit means a fringe benefit that is a health insurance benefit.

housing benefit has the meaning given by section 1157I.

housing fringe benefit means a fringe benefit that is a housing benefit.

housing loan has the meaning given by subsection (9).

housing right, in relation to a person, means a lease or licence granted to the person to occupy or use a unit of accommodation, in so far as that lease or licence subsists at a time when the unit of accommodation is the person's usual place of residence.

in respect of, in relation to the employment of an employee, includes by reason of, by virtue of, or for or in relation directly or indirectly to, that employment.

Note: See definition of ***fringe benefit***.

lease includes a sub-lease.

loan includes:

(a) an advance of money; and

(b) the provision of credit or any other form of financial accommodation; and

(c) the payment of an amount for, on account of, on behalf of or at the request of a person where there is an obligation (whether expressed or implied) to repay the amount; and

(d) a transaction (whatever its terms or form) which in substance effects a loan of money.

loan benefit has the meaning given by section 1157G.

loan fringe benefit means a fringe benefit that is a loan benefit.

mature person means a person who has reached the age of 60 years.

metropolitan location has the meaning given by subsection (3).

non-arm's length arrangement means an arrangement other than an arm's length arrangement.

non-metropolitan location has the meaning given by subsection (4).

obligation, in relation to the payment or repayment of an amount, includes an obligation that is not enforceable by legal proceedings.

place of residence, in relation to a person, means:

(a) a place at which the person resides; or

(b) a place at which the person has sleeping accommodation;

whether on a permanent or temporary basis and whether or not on a shared basis.

private use, in relation to a car and in relation to an employee or an associate of an employee, means any use of the car by the employee or associate that is not exclusively within the employee's employment.

provide, in relation to a benefit, includes allow, confer, give, grant or perform.

provider, in relation to a benefit, means the person who provides the benefit.

recipient, in relation to a benefit, means the person to whom the benefit is provided.

salary or wages means salary, wages, commission, bonuses or allowances paid (whether at piece-work rates or otherwise) to an employee as such.

school means a school, college or other educational institution that provides primary or secondary level education.

school fees benefit has the meaning given by section 1157E.

school fees fringe benefit means a fringe benefit that is a school fees benefit.

special housing location has the meaning given by subsections (5) and (6).

stratum unit has the meaning given by subsection (8).

surface route means a route other than an air route.

target foreign income means foreign income that is not:
(a) taxable income; or
(b) received in the form of a fringe benefit.

taxi means a motor vehicle that is licensed to operate as a taxi.

unit of accommodation includes:
(a) a house, flat or home unit; and
(b) accommodation in a house, flat or home unit; and
(c) accommodation in a hotel, hostel, motel or guesthouse; and
(d) accommodation in a bunkhouse or any living quarters; and
(e) accommodation in a ship, vessel or floating structure; and

(f) a caravan or other mobile home.

urban centre means an area that is described as an urban centre or bounded locality in the results of the Census of Population and Housing taken by the Australian Statistician on 30 June 1981 and that were published by the Australian Statistician in the document entitled "Persons and Dwellings in Local Government Areas and Urban Centres".

work-related travel, in relation to an employee, means:

(a) travel by the employee between:
  (i) the employee's place of residence; and
  (ii) the employee's place of employment or any other place from which or at which the employee performs duties of his or her employment; or

(b) travel by the employee that is incidental to travel in the course of performing the duties of his or her employment.

Metropolitan location

(3) The following cities are ***metropolitan locations***:

(a) Adelaide;
(b) Brisbane;
(c) Canberra;
(d) Darwin;
(e) Hobart;
(f) Melbourne;
(g) Perth;
(h) Sydney.

Non-metropolitan location

(4) A unit of accommodation is in a ***non-metropolitan location*** if the unit of accommodation:

(a) is in Australia; and
(b) is not in a metropolitan location; and
(c) is not in a special housing location.

Special housing location

(5) A unit of accommodation is in a ***special housing location*** if the unit of accommodation is at a location that is in Australia and one of the following paragraphs applies to the unit of accommodation:

(a) the unit of accommodation is at a location that is in an area that:

(i) is described in Schedule 2 to the Income Tax Assessment Act; and

(ii) is an urban centre with a census population of less than 28,000;

(b) the unit of accommodation is at a location that is in an area that:

(i) is not described in Schedule 2 to the Income Tax Assessment Act; and

(ii) is an urban centre with a census population of less than 14,000;

(c) at the date of commencement of this section, the unit of accommodation is at a location that is:

(i) 40 kilometres or more, by the shortest practicable surface route, from the centre point of an eligible urban area with a census population of less than 130,000; or

(ii) 100 kilometres or more, by the shortest practicable surface route, from the centre point of an eligible urban area with a census population of more than 130,000.

(6) For the purposes of paragraph (5)(c), the distance, by the shortest practicable surface route, between a location (the ***tested location***) and the centre point of an eligible urban area is:

(a) if there is only one location within the eligible urban area from which distances between the eligible urban area and other places are usually measured—the distance, by the shortest practicable surface route, between the tested location and that location; and

(b) if there are 2 or more locations within the eligible urban area from which distances between parts of the eligible urban area and other places are usually measured—the distance, by the

OFFICIAL: Sensitive // Legal Privilege

shortest practicable surface route, between the tested location and the location that is the principal location of those parts.

(7) A unit of accommodation is a ***dwelling*** if:

(a) the unit of accommodation is constituted by, or contained in, a building; and

(b) the unit consists, in whole or in substantial part, of residential accommodation.

(8) A unit is a ***stratum unit*** in relation to a dwelling if:

(a) the unit is a unit on a unit plan registered under a law of a State or Territory that provides for the registration of titles of a kind known as unit titles or strata titles; and

(b) the unit comprises:

(i) a part of a building that contains the dwelling and consists of a flat or home unit; or

(ii) a part of a parcel of land and the building containing the dwelling is constructed on that part.

Housing loan

(9) A loan is taken to be a ***housing loan*** if:

(a) the loan is made to, or used by, a person (whether in his or her own right or jointly with his or her partner) wholly:

(i) to enable the person to acquire a prescribed interest in land on which a dwelling or a building containing a dwelling was subsequently to be constructed; or

(ii) to enable the person to acquire a prescribed interest in land and construct, or complete the construction of, a dwelling or a building containing a dwelling on the land; or

(iii) to enable the person to construct, or complete the construction of, a dwelling or a building containing a dwelling on land in which the person held a prescribed interest; or

(iv) to enable the person to acquire a prescribed interest in land on which there was a dwelling or a building containing a dwelling; or

(v) to enable the person to acquire a prescribed interest in a stratum unit in relation to a dwelling; or

(vi) to enable the person to extend a building that:

(A) is a dwelling or contains a dwelling; and

(B) is constructed on land in which the person held a prescribed interest;

by adding a room or part of a room to the building or the part of the building containing the dwelling, as the case may be; or

(vii) in a case where the person held a prescribed interest in a stratum unit in relation to a dwelling—to enable the person to extend the dwelling by adding a room or part of a room to the dwelling; or

(viii) to enable the person to repay a loan that was made to, and used by, the person wholly for a purpose mentioned in subparagraphs (i) to (vii); and

(b) at the time the loan was made, the dwelling was used or proposed to be used as the person's usual place of residence.

Note: For prescribed interest see subsections (10) to (14).

Freehold interest

(10) If:

(a) a person; or

(b) 2 or more persons as joint tenants or tenants in common;

acquire, hold or held an estate in fee simple in land or in a stratum unit, the person or those persons are taken to acquire or hold, or to have held, a prescribed interest in that land or stratum unit.

OFFICIAL: Sensitive // Legal Privilege

Leasehold interest

(11) If:

(a) a person acquires, holds or held an interest in land or in a stratum unit as lessee or licensee under a lease or licence; and

(b) the Secretary is satisfied that the lease or licence gives or gave reasonable security of tenure to the lessee or licensee, for a period of, or for periods aggregating, 10 years or more;

the person is taken to acquire or hold, or to have held, a prescribed interest in that land or stratum unit.

Instalment contract

(12) If:

(a) a person acquires, holds or held interest in land or in a stratum unit as purchaser of an estate in fee simple in the land or in the stratum unit under an agreement; and

(b) the agreement provides or provided for payment of the purchase price, or a part of the purchase price, to be made at a future time or by instalments;

the person is taken to acquire or hold, or to have held, a prescribed interest in that land or stratum unit.

Right to acquire leasehold

(13) If:

(a) a person acquires, holds or held an interest in land or in a stratum unit as purchaser of a right to be granted a lease of the land or of the stratum unit under an agreement; and

(b) the agreement provides or provided for payment of the purchase price, or a part of the purchase price, for the lease to be made at a future time or by instalments; and

(c) the Secretary is satisfied that the lease will give reasonable security of tenure, to the lessee for a period of, or for periods aggregating, 10 years or more;

the person is taken to acquire or hold, or to have held, a prescribed interest in that land or stratum unit.

Two or more persons acquiring or holding interest under subsection (11), (12) or (13)

(14) If:

(a) 2 or more persons acquire, hold or held an interest referred to in paragraph (11)(a), (12)(a) or (13)(a) in land or in a stratum unit as joint tenants or tenants in common; and

(b) paragraph (11)(b) or (12)(b) or paragraphs (13)(b) and (c) are satisfied;

those persons are taken to acquire or hold, or to have held, a prescribed interest in that land or stratum unit.

11 *Assets test* definitions

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

accommodation bond has the same meaning as in the *Aged Care Act 1997*.

accommodation bond balance has the same meaning as in the *Aged Care Act 1997*.

accommodation charge has the same meaning as in the *Aged Care Act 1997*.

asset means property or money (including property or money outside Australia).

charge exempt resident has the same meaning as in the *Aged Care (Transitional Provisions) Act 1997*.

daily accommodation contribution has the same meaning as in the *Aged Care Act 1997*.

daily accommodation payment has the same meaning as in the *Aged Care Act 1997*.

disposes of assets has the meaning given by section 1123.

exempt assets means assets described in subsection 1118(1).

fishing operations means:

(a) operations relating directly to the taking or catching of fish, turtles, crustacea, oysters or other shellfish; or

(b) oyster farming; or

(c) pearling operations;

but does not include:

(d) whaling; or

(e) operations conducted otherwise than for the purposes of a business.

forest operations means:

(a) the planting or tending in a plantation or forest of trees intended for felling; or

(b) the felling of trees in a plantation or forest;

but does not include operations conducted otherwise than for the purposes of a business.

homeowner has the meaning given by subsection (4).

income year has the same meaning as in the *Income Tax Assessment Act 1997*.

pension year has the meaning given by subsections (10) and (10AAA).

primary producer means a person whose principal occupation is primary production.

primary production means production resulting directly from:

(a) the cultivation of land; or

(b) the maintenance of animals or poultry for the purpose of selling them or their bodily produce, including natural increase; or

(c) fishing operations; or

(d) forest operations;

and includes the manufacture of dairy produce by the person who produced the raw material used in that manufacture.

principal home has the meaning given by section 11A.

reasonable security of tenure has the meaning given by subsection 11A(10).

refundable deposit has the same meaning as in the *Aged Care Act 1997*.

refundable deposit balance has the same meaning as in the *Aged Care Act 1997*.

unrealisable asset has the meaning given by subsections (12) and (13).

value of a charge or encumbrance on an asset has the meaning given by subsection (3).

value of a liability has the meaning given by subsection (3A).

value of a particular asset has the meaning given by subsection (2).

Note: see also sections 1118 (certain assets to be disregarded in calculating the value of a person's assets), 1121 (effect of charge or encumbrance on value of property) and 1145-1157 (retirement villages).

(2) A reference in this Act to the ***value of a particular asset*** of a person is, if the asset is owned by the person jointly or in common with another person or persons, a reference to the value of the person's interest in the asset.

(3) A reference in this Act to the ***value of a charge or encumbrance on an asset*** of a person is, if the asset is owned by the person jointly or in common with another person or persons, a reference to the value of that charge or encumbrance in so far as it relates to the person's interest in the asset.

(3A) A reference in this Act to the ***value of a liability*** of a person is, if the liability is shared by the person with another person, a reference to the value of the person's share of the liability.

(3AA) To avoid doubt, a refundable deposit balance in respect of a refundable deposit paid by a person is taken to be an asset of the person.

(3B) To avoid doubt, an accommodation bond balance in respect of an accommodation bond paid by a person is taken to be an asset of the person.

(3C) To avoid doubt, a person's entitlement to be paid a pension bonus or pension bonus bereavement payment is taken not to be an asset of the person for the purposes of this Act.

(3D) Subsection (3C) is to be disregarded in determining whether any other entitlement is an asset for the purposes of this Act.

Homeowner

(4) For the purposes of this Act:

(a) a person who is not a member of a couple is a ***homeowner*** if:

(i) the person has a right or interest in the person's principal home; and

(ii) the person's right or interest in the home gives the person reasonable security of tenure in the home; and

(b) a person who is a member of a couple is a ***homeowner*** if:

(i) the person, or the person's partner, has a right or interest in one residence that is:

(A) the person's principal home; or

(B) the partner's principal home; or

(C) the principal home of both of them; and

(ii) the person's right or interest, or the partner's right or interest, in the home gives the person, or the person's partner, reasonable security of tenure in the home; and

(c) a person (whether a member of a couple or not) is a ***homeowner*** while:

(i) the whole or a part of the proceeds of the sale of the person's principal home are disregarded under subsection 1118(2); or

(ii) the value of a residence, land or a structure is disregarded under subsection 1118(2).

Note: See also section 1145-1157 (retirement villages).

Pension year—disposal of assets

(10) A reference in sections 1123 to 1128 (disposal of assets) to a ***pension year***, in relation to a person who is receiving:

(a) a social security or service pension, income support supplement or a veteran payment; or

(b) a social security benefit;

is a reference to:

(d) if the person is a member of a couple and, immediately before the person and the person's partner became members of that couple, the person was receiving a pension, supplement, payment or benefit referred to in paragraph (a) or (b) or a job search allowance and the person's partner was receiving such a pension, supplement, payment or benefit or a job search allowance—the period of 12 months beginning on the day on which they became members of that couple; or

(e) if:

(i) the person is a member of a couple but paragraph (d) does not apply; and

(ii) the person's partner is receiving a pension, supplement, payment or benefit referred to in paragraph (a) or (b) or a job search allowance;

the period of 12 months beginning on the day on which:

(iii) the pension, supplement, payment or benefit referred to in paragraph (a) or (b) or the job search allowance first became payable to the person; or

(iv) the pension, supplement, payment or benefit referred to in paragraph (a) or (b) or the job search allowance first became payable to the person's partner;

whichever was the earlier; or

(f) otherwise—the period of 12 months beginning on the day on which a pension, supplement, payment or benefit referred to

in paragraph (a) or (b) or a job search allowance first became payable to the person;

and to each following and each preceding period of 12 months.

No pension year to extend beyond 30 June 2002

(10AAA) No period after 30 June 2002 is, or is a part of, a pension year of a person. If, apart from this subsection, a period beginning before 1 July 2002 and ending on or after that date would be a pension year of a person, the part of that period that ends immediately before that date is taken to be a pension year of the person.

(10AA) References in subsection (10) to a social security benefit include references to a non-benefit PP (partnered) and a non-benefit parenting allowance.

Pre-pension year—disposal of assets

(10A) A reference in sections 1124A and 1125A (disposal of assets) to a ***pre-pension year***, in relation to a person who is claiming:

(a) a social security or service pension or income support supplement; or

(b) a social security benefit; or

(d) a non-benefit PP (partnered); or

(e) a non-benefit parenting allowance;

is a reference to the period of 12 months finishing on the day that is the person's start day and each preceding period of 12 months.

No pre-pension year to extend beyond 30 June 2002

(10B) No period after 30 June 2002 is, or is a part of, a pre-pension year of a person. If, apart from this subsection, a period beginning before 1 July 2002 and ending on or after that date would be a pre-pension year of a person, the part of that period that ends immediately before that date is taken to be a pre-pension year of the person.

Unrealisable asset

(12) An asset of a person is an ***unrealisable asset*** if:
  (a) the person cannot sell or realise the asset; and
  (b) the person cannot use the asset as a security for borrowing.

(13) For the purposes of the application of this Act to a social security pension (other than a pension PP (single)), an asset of a person is also an ***unrealisable asset*** if:
  (a) the person could not reasonably be expected to sell or realise the asset; and
  (b) the person could not reasonably be expected to use the asset as a security for borrowing.

11A *Principal home* definition for the purpose of the assets test

Principal home

(1) A reference in this Act to the ***principal home*** of a person includes a reference to:
  (a) if the principal home is a dwelling-house—the land adjacent to the dwelling-house to the extent that:
    (i) the land is held under the same title document as the land on which the dwelling-house is located; and
    (ii) the private land use test in subsection (3) is satisfied in relation to the land or, if the person is one to whom the extended land use test applies in relation to the land, the extended land use test in subsection (6) is satisfied in relation to the land; or
  (b) if the principal home is a flat or home unit—a garage or storeroom that is used primarily for private or domestic purposes in association with the flat or home unit.

(2) The Secretary may determine that land is to be treated, for the purpose of subparagraph (1)(a)(i), as if it were held on the same title document as other land if any of the following apply:
  (a) the dwelling-house is located on both blocks of land;

(b) the dwelling-house is located on one of the blocks of land but that block and the other block, taken together, are a place, or are part of a place, that is protected under a law of the Commonwealth, or of a State or Territory, because of its natural, historic or indigenous heritage;

(c) the alienation of one of the blocks of land without the other would seriously undermine the function of the house as a dwelling.

Note: A mere loss of amenity, such as the loss of a swimming pool, garden, tennis court or view, would not seriously undermine the function of a house as a dwelling.

Private land use test

(3) The ***private land use test*** is satisfied in relation to land if:

(a) the area of the land, together with the area of the ground floor of the dwelling-house, is not more than 2 hectares; and

(b) the land is used primarily for private or domestic purposes in association with the dwelling-house.

To whom does the extended land use test apply?

(4) The extended land use test applies to a person in relation to land adjacent to the dwelling-house if:

(a) the person has reached pension age; and

(b) the person is qualified for an age pension or carer payment and that pension or payment is payable to the person; and

(c) the dwelling-house has been the person's principal home for 20 years or more continuously.

(5) Where a person (the ***first person***) to whom the extended land use test applies in relation to land adjacent to the dwelling-house in which the person lives is a member of a couple:

(a) the extended land use test applies to the first person's partner (the ***second person***); and

(b) the extended land use test continues to apply to the second person if the first person and the second person cease to be members of a couple for any reason, provided the

dwelling-house continues to be the second person's principal home.

Extended land use test

(6) The ***extended land use test*** is satisfied in relation to land if:

(a) the area of the land, together with the area of the ground floor of the dwelling-house, is more than 2 hectares; and

(b) the Secretary determines that, given the circumstances of the person to whom the test is applied in relation to the land, the person is making effective use of the land.

(7) In determining whether a person is making effective use of the land, the Secretary is to take into account the following matters:

(a) where the land is located;

(b) the size of the block of land;

(c) the person's family situation;

(d) the person's health;

(e) whether the land contains a dwelling-house occupied by a family member of the person, or a child of a family member of the person, receiving an income support payment;

(f) whether the land is being used to support:

(i) a family member of the person; or

(ii) a child of a family member of the person;

(g) any current commercial use of the land;

(h) any potential commercial use of the land;

(i) whether the person's capacity to make commercial use of the land is diminished because the person, or the person's partner, has responsibility for the care of another person;

(j) whether the block of land is an amalgamation of 2 or more blocks and, if so:

(i) when the amalgamation occurred; and

(ii) whether the amalgamation reduced the potential for the land to produce personal income or to support the person;

(k) environmental issues relating to the land;

OFFICIAL: Sensitive // Legal Privilege

(l) any other matter that the Secretary considers relevant.

Effect of absences from principal home

(8) A residence of a person is taken to be the person's ***principal home*** during:

(a) if the Secretary is satisfied that the residence was previously the person's principal home but that the person left it for the purpose of going into a care situation—any period during which:

(i) the person is accruing a liability to pay an accommodation charge (or would be accruing such a liability, assuming that no sanctions under Part 7B of the *Aged Care Quality and Safety Commission Act 2018* were currently being imposed on the provider of the care concerned); and

(ii) the person, or the person's partner, is earning, deriving or receiving rent for the residence from another person; and

Note 1: For ***rent***, see subsection 13(2).

Note 2: A person can be liable to pay an accommodation charge only if certain conditions are met: see Division 57A of the *Aged Care (Transitional Provisions) Act 1997*.

(b) if the Secretary is satisfied that the residence was previously the person's principal home but that the person left it for the purpose of going into a care situation—any period during which:

(i) the person is liable to pay all or some of an accommodation bond by periodic payments (or would be liable to do so, assuming that no sanctions under Part 7B of the *Aged Care Quality and Safety Commission Act 2018* were currently being imposed on the provider of the care concerned); and

(ii) the person, or the person's partner, is earning, deriving or receiving rent for the residence from another person; and

(ba) if the Secretary is satisfied that the residence was previously the person's principal home but that the person left it for the purpose of going into a care situation—any period during which:

(i) the person is liable to pay all or some of a daily accommodation payment or a daily accommodation contribution (or would be so liable to do so, assuming that no sanctions under Part 7B of the *Aged Care Quality and Safety Commission Act 2018* were currently being imposed on the provider of the care concerned); and

(ii) the person, or the person's partner, is earning, deriving or receiving rent for the residence from another person; and

(c) any period during which the residence is, because of paragraph (a), (b) or (ba), the principal home of the person's partner.

Note: This subsection is not meant to imply that a person may have more than one principal home at the same time.

(8A) Subsection (8) does not apply in relation to a person who first enters a residential care service or a flexible care service on or after the commencement of this subsection.

(8B) Subsection (8) does not apply, and never again applies, in relation to a person if:

(a) the person enters a residential care service or a flexible care service on or after the commencement of this subsection; and

(b) that entry occurs more than 28 days after the day the person last ceased being provided with residential care or flexible care through a residential care service or a flexible care service (other than because the person was on leave).

(8C) An expression used in subsection (8A) or (8B) and in the *Aged Care Act 1997* has the same meaning in that subsection as in that Act.

(9) A residence of a person is to be taken to continue to be the person's ***principal home*** during:

(a) any period (not exceeding 12 months or any longer period determined under subsection (9A) or (9B)) during which the person is temporarily absent from the residence; and

(b) if the person is in a care situation or residential care—the period of 2 years beginning when the person started to be in a care situation or residential care; and

(c) any period during which:

(i) the person is in a care situation or residential care; and

(ii) the residence is, or because of paragraph (a) or (b) continues to be, the principal home of the person's partner; and

(d) if:

(i) the person is in a care situation or residential care; and

(ii) the person's partner dies while in a care situation or residential care; and

(iii) the person's partner had been in a care situation or residential care for less than 2 years;

the period of 2 years beginning at the time the person's partner started to be in a care situation or residential care; and

(e) where:

(i) the person is in a care situation or residential care; and

(ii) the person's partner dies while not in a care situation or residential care;

the period of 2 years from the partner's death; and

(f) any period of up to 2 years while the person is absent from the residence and is personally providing a substantial level of care in another private residence for another person who needs, or in the Secretary's opinion is likely to need, that level of care in a private residence for at least 14 consecutive days.

Note: For ***in a care situation***, see subsection 13(9); for ***in residential care*** see subsection 23(4CA).

OFFICIAL: Sensitive // Legal Privilege

(9A) For the purposes of paragraph (9)(a), the Secretary may determine, in writing, a period of up to 24 months if:

(a) a person's principal home is lost or damaged (including, for example, by a natural disaster); and

(b) the loss or damage was not wilfully caused by the person; and

(c) the person is making reasonable attempts, as a result of the loss or damage, to:

(i) rebuild or repair the principal home; or

(ii) sell the principal home in order to purchase or build another residence that is to be the person's principal home; or

(iii) purchase or build another residence that is to be the person's principal home; and

(d) the person has made those attempts within a reasonable period after the loss or damage; and

(e) the person has experienced delays beyond his or her control in:

(i) rebuilding, repairing or selling the principal home; or

(ii) purchasing or building the other residence.

(9B) For the purposes of paragraph (9)(a), the Secretary may, in relation to a person and a residence of the person, determine, in writing, a longer period if:

(a) the Secretary is satisfied that the person is temporarily absent from that residence because the person is absent from Australia; and

(b) the Secretary is satisfied that the person's absence from Australia is temporary; and

(c) the Secretary is satisfied that the person is unable to return to Australia before the end of the following period because of circumstances beyond the person's control:

(i) the 12 months mentioned in paragraph (9)(a), unless subparagraph (ii) of this paragraph applies;

OFFICIAL: Sensitive // Legal Privilege

(ii) if the Secretary has determined a period under subsection (9A) in relation to the person and that residence—that period.

Reasonable security of tenure

(10) If a person has a right or interest in the person's principal home, the person is to be taken to have a right or interest that gives the person ***reasonable security of tenure*** in the home unless the Secretary is satisfied that the right or interest does not give the person reasonable security of tenure in the home.

Definition of title document

(11) In this section:

title document, in relation to land, means:

(a) in relation to land title which is registered under a Torrens system of registration—the certificate of title for the land; or

(b) in any other case—the last instrument by which title to the land was conveyed.

Application of the Legislation Act 2003

(12) A determination under subsection (2) or paragraph (6)(b) is not a legislative instrument.

12 *Retirement villages* definitions

(1) In this Act:

member of an ordinary couple with different principal homes has the meaning given by subsection (2).

retirement village has the meaning given by subsections (3) and (4).

retirement village resident has the meaning given by subsection (5).

(2) A person is a ***member of an ordinary couple with different principal homes*** if:

(a) the person is a member of a couple; and

(b) the person does not share the person's principal home with the person's partner; and

(c) the person is not a member of an illness separated couple.

(3) Premises constitute a ***retirement village*** for the purposes of this Act if:

(a) the premises are residential premises; and

(b) accommodation in the premises is primarily intended for persons who are at least 55 years old; and

(c) the premises consist of:

(i) one or more of the following kinds of accommodation:

(A) self-care units;

(B) serviced units;

(C) hostel units; and

(ii) communal facilities for use by occupants of the units referred to in subparagraph (i).

(3A) For the purposes of paragraph (3)(b), if accommodation in premises is primarily intended for persons who are a certain age that is more than 55 years, the accommodation in those premises is taken to be primarily intended for persons who are at least 55 years old.

(4) Residential premises are also to be taken to constitute a ***retirement village*** for the purposes of this Act if the Secretary is satisfied that the residential premises have similar functions to those referred to in subsection (3).

(5) A person is a ***retirement village resident*** if the person's principal home is in a retirement village.

Note: Subsection (3A) was inserted as a response to the decision of the Federal Court in *Repatriation Commission v Clarke* (unreported, VG73 of 1991).

12A *Granny flat* definitions

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

granny flat interest has the meaning given by subsection (2).

granny flat resident has the meaning given by subsection (3).

(2) A person has a ***granny flat interest*** in the person's principal home if:

(a) the residence that is the person's principal home is a private residence; and

(b) the person has acquired for valuable consideration or has retained:

(i) a right to accommodation for life in the residence; or

(ii) a life interest in the residence.

(3) A person is a ***granny flat resident*** if the person has a granny flat interest in the person's principal home.

12B *Sale leaseback* definitions

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

deferred payment amount has the meaning given by subsections (6), (7) and (8).

initial payment amount has the meaning given by subsection (4).

sale leaseback agreement has the meaning given by subsections (2) and (3).

sale leaseback home has the meaning given by subsection (9).

sale leaseback resident has the meaning given by subsections (10) and (11).

(2) An agreement is a ***sale leaseback agreement***, in relation to a person, if:

(a) under the agreement the person agrees to sell his or her principal home; and
(b) the residence that is the person's principal home is a private residence; and
(c) under the agreement the person retains a right to accommodation in the residence; and
(d) under the agreement the buyer is to pay an amount when the person vacates the residence or when the person dies.

(3) An agreement is also a ***sale leaseback agreement*** if the Secretary is satisfied that the agreement is substantially similar in its effect to an agreement referred to in subsection (2).

(4) The ***initial payment amount***, in relation to a sale leaseback agreement, is the amount that the Secretary determines to be the initial amount that the buyer is to pay under the sale leaseback agreement.

(5) In making the determination the Secretary is to have regard to the following:
(a) the consideration to be provided by the parties to the sale leaseback agreement;
(b) when that consideration is to be provided;
(c) the payments that are to be made under the sale leaseback agreement;
(d) when those payments are to be made;
(e) any other relevant matters.

(6) The ***deferred payment amount***, in relation to a sale leaseback agreement, is the total amount to be paid by the buyer under the sale leaseback agreement less the initial payment amount.

(7) If the Secretary considers that, for any special reason in a particular case, the deferred payment amount should be another amount, the ***deferred payment amount*** is that other amount.

Note: Sections 1123 to 1128 (disposal of assets) may be relevant to working out the deferred payment amount.

(8) Without limiting subsection (7), the Secretary may consider that the deferred payment amount should be another amount if:
  (a) the parties to the sale leaseback agreement are not at arm's length; or
  (b) the parties to the sale leaseback agreement have undervalued the sale leaseback home so as to reduce the total amount to be paid by the buyer under the agreement.

(9) A residence is a ***sale leaseback home*** if the residence is subject to a sale leaseback agreement.

(10) A person is a ***sale leaseback resident*** if:
  (a) the person's principal home is subject to a sale leaseback agreement; and
  (b) the person is a party to the sale leaseback agreement.

(11) If a person is a member of a couple, the person is a ***sale leaseback resident*** if:
  (a) the person lives in the sale leaseback home; and
  (b) the person's partner is a sale leaseback resident.

Note: Subsection (11) will only be used if a person is not a sale leaseback resident under subsection (10).

12C *Special residence and residents* definitions

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

special residence has the meaning given by subsection (2).

special resident has the meaning given by subsection (3).

(2) A residence is a ***special residence*** if the residence is:
  (a) in a retirement village; or
  (b) a granny flat; or
  (c) a sale leaseback home.

(3) A person is a ***special resident*** if the person is:
  (a) a retirement village resident; or

(b) a granny flat resident; or
(c) a sale leaseback resident.

(4) In Division 5 of Part 3.12 (sections 1145A to 1157), a reference to the ***actual value*** of the assets of a member of a couple is a reference to the value of the assets that are actually assets of the person rather than the person's partner, that is, the value that would be the value of the person's assets apart from the couple's assets deeming provisions.

(5) In subsection (4):

couple's assets deeming provisions means:
(a) Pension Rate Calculator A (point 1064-G2); and
(ba) subsections 500Q(4) and (5); and
(d) section 612; and
(f) subsection 895(2); and
(g) section 734.

13 *Rent* definitions

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

amount of rent paid or payable has the meaning given by subsections (6) and (7).

board, when used in the expression ***board and lodging***, means the provision of meals on a regular basis in connection with the provision of lodging.

Government rent means rent payable to any of the following authorities:
(a) The Housing Commission of New South Wales;
(b) the Director, within the meaning of the *Housing Act 1983* of the State of Victoria;
(c) The Queensland Housing Commission;
(d) The Corporation of the Director of Aboriginal and Islanders Advancement established by a law of Queensland;

(e) the South Australian Housing Trust;
(f) The State Housing Commission established by a law of Western Australia;
(g) the Director-General of Housing and Construction holding office under a law of Tasmania;
(h) the Northern Territory Housing Commission;
(j) The Commissioner for Housing within the meaning of the *Housing Assistance Act 1987* of the Australian Capital Territory.

Note: Rent payable by a person for living in premises in respect of which someone else pays Government rent may also be regarded as Government rent (see subsection (3AC)).

ineligible homeowner means a homeowner other than:

(a) a person who is a homeowner by virtue of paragraph 11(4)(c); or
(b) a person who:
  (i) is absent from the person's principal home, in relation to which the person is a homeowner; and
  (ii) is personally providing a substantial level of care in another private residence for another person who needs, or in the Secretary's opinion is likely to need, that level of care in a private residence for at least 14 consecutive days; and
  (iii) has been absent from the principal home for less than 2 years while providing care as described in subparagraph (ii); or
(c) a person who is in a care situation but is not residing in a retirement village; or
(d) a person who pays amounts for the use of a site for a caravan or other vehicle, or a structure, that is the person's principal home; or
(e) a person who pays amounts for the right to moor a vessel that is the person's principal home.

Note: For ***approved respite care*** see subsection 4(9), for ***in a care situation*** see subsection 13(9), for ***retirement village*** see subsections 12(3) and

(4), for ***homeowner*** see subsection 11(4) and for ***principal home*** see section 11A.

rent has the meaning given by this section.

residing in a nursing home has the meaning given by subsection (8).

(2) Amounts are ***rent*** in relation to the person if:

(a) the amounts are payable by the person:

(i) as a condition of occupancy of premises, or of a part of premises, occupied by the person as the person's principal home; or

(ia) as a condition of occupancy of premises, or of a part of premises, occupied by the person to allow him or her to provide personally a substantial level of care in a private residence for another person who needs, or in the Secretary's opinion is likely to need, that level of care in a private residence for at least 14 consecutive days; or

(ii) for services provided in a retirement village that is the person's principal home; or

(iii) if the person is in a care situation and the place where the person receives the care is the person's principal home or would be the person's principal home apart from subsection 11A(8) or (9)—for accommodation in the place where the person receives care; or

(iv) for lodging in premises that are the person's principal home; or

(v) for the use of a site for:

(A) a caravan or other vehicle; or

(B) a structure;

occupied by the person as the person's principal home; or

(vi) for the right to moor a vessel that is occupied by the person as the person's principal home; and

(b) either:

(i) the amounts are payable every 3 months or more frequently; or

(ii) the amounts are payable at regular intervals (greater than 3 months) and the Secretary is satisfied that the amounts should be treated as rent for the purposes of this Act.

Note: For ***retirement village*** see subsections 12(3) and (4) and for ***principal home*** see section 11A.

(2A) If:

(a) youth allowance is payable to a person; and

(b) the person is not independent (see section 1067A) and is required to live away from home (see section 1067D); and

(c) the person is attending boarding school while living away from home;

then, for the purposes of subsection (2):

(d) the boarding school is taken to be the person's principal home while the person is attending the school; and

(e) any fees charged for attending the boarding school are taken to be payable by the person.

(3) Subparagraphs (2)(a)(ii) to (vi) (inclusive) do not limit the generality of subparagraph (2)(a)(i).

(3AA) To avoid doubt, an amount that is paid or becomes payable by a person is not rent in relation to the person (either at the time when it is paid or becomes payable or at any later time) if the amount is, or forms part of, a special resident's entry contribution in relation to the person in respect of a retirement village under section 1147, whether the amount is paid or payable (whether wholly or partly) in a lump sum, by instalments or otherwise.

(3AB) If the whole or any part of an amount that is not rent in relation to a person as mentioned in subsection (3AA) is, or will or may become, repayable to the person, any amount by which the amount so repayable is reduced is not rent in relation to the person (either at the time when the reduction occurs or at any later time).

(3AC) If a person pays, or is liable to pay, rent for living in premises in respect of which someone else pays Government rent (other than Government rent paid at or above a rate that the authority receiving the rent has told the Department is the market rate), the rent paid or payable by the person for living in those premises is taken to be ***Government rent***, unless the person shares the premises with the person who pays, or is liable to pay, Government rent in respect of those premises and the person's income has been taken into account in calculating the amount of Government rent payable in respect of those premises.

(3A) If a person is in a care situation and the person's principal home is not the place where the person receives the care, the person's rent may be an amount described in any of the subparagraphs of paragraph 13(2)(a) that applies to the person but cannot include amounts described in different subparagraphs of paragraph 13(2)(a).

Note: Under subsection 11A(8) or (9), the principal home of a person in a care situation may be a place other than the place where the person receives care.

(3B) If an amount described in subparagraph 13(2)(a)(ia) and an amount described in another subparagraph of paragraph 13(2)(a) are payable by a person, the person's rent may be an amount described in either of those subparagraphs but cannot include amounts described in different subparagraphs.

Note: Under subsection 11A(8) or (9), premises occupied by a person as described in subparagraph 13(2)(a)(ia) may not be the person's principal home.

(5) If a law of a State, the Northern Territory or the Australian Capital Territory alters the ***name of an authority*** referred to in the definition of ***Government rent*** in subsection (1), a reference to that authority in that definition is to be construed as a reference to the authority under the new name.

Board and lodging

(6) Where:

(a) a person pays, or is liable to pay, amounts for board and lodging; and

(b) it is not possible to work out the part of each of those amounts that is paid or payable for lodging;

the ***amount of rent paid or payable*** by the person is, for the purposes of this Act, to be taken to be two-thirds of the amounts paid or payable as mentioned in paragraph (a).

Nursing homes

(7) Where:

(a) a person in a care situation pays, or is liable to pay, amounts for accommodation and other services in the care situation; and

(b) it is not possible to work out the part of each of those amounts that is paid or payable in respect of accommodation;

the ***amount of rent paid or payable*** by the person is, for the purposes of this Act, to be taken to be two-thirds of the amounts paid or payable as mentioned in paragraph (a).

(8) Unless the contrary intention appears, a reference in this Act to a person ***residing in a nursing home*** is a reference to a person who is:

(a) residing in premises at which accommodation is provided exclusively or principally for persons who have a mental disability; or

(c) a nursing-home type patient, within the meaning of the *Health Insurance Act 1973*, of a hospital.

(8A) Subject to subsections (8B) and (8C), a person is an ***aged care resident*** for the purposes of this Act if:

(a) the person is in residential care; and

(b) an approval for residential care or flexible care under Part 2.3 of the *Aged Care Act 1997* is in force in respect of the person.

(8B) Without limiting subsection (8A), a person is taken not to be an aged care resident if:

(a) the person is in approved respite care, and has been in approved respite care for a continuous period of 52 days or less; and

(b) immediately before the person became a person in approved respite care, the person was receiving rent assistance.

(8C) The Secretary may determine, for the purposes of subsection (8A), that a person is taken not to be an aged care resident on a day that occurs:

(a) after the person in fact became an aged care resident; and

(b) before the day occurring 15 days after the person in fact became an aged care resident;

if the Secretary is satisfied that, immediately before the day, the person was liable to pay rent.

(8D) In this section, ***rent assistance*** means an amount paid or payable under this Act to help cover the cost of rent.

(9) For the purposes of this Act, unless the contrary intention appears, a person is ***in a care situation*** if:

(a) the person is residing in a nursing home; or

(b) the person needs and has been receiving a substantial level of care in a private residence for at least 14 consecutive days; or

(c) in the Secretary's opinion, the person needs and is likely to receive, a substantial level of care in a private residence for at least 14 consecutive days.

14 *Remote area* definitions

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

physically present in a remote area has the meaning given by subsection (2).

remote area means:

(a) those parts of Australia referred to in paragraphs 1 and 2 of Part I of Schedule 2 to the Income Tax Assessment Act; and

(aa) those parts of Australia referred to in Part II of Schedule 2 to the Income Tax Assessment Act that are more than 250 kilometres by the shortest practicable surface route from the centre point of the nearest urban centre with a census population (within the meaning of that Act) of 2,500 or more; and

(ab) those places in Australia that, for the purposes of the Income Tax Assessment Act, are treated by the Commissioner for Taxation as being in a part of Australia referred to in paragraph (aa); and

(ac) Norfolk Island; and

(b) the Territory of Cocos (Keeling) Islands; and

(c) the Territory of Christmas Island; and

(d) Lord Howe Island.

(2) If:

(a) a person's usual place of residence is in the remote area; and

(b) the person is absent from the remote area for a period;

the person is to be taken to be ***physically present in the remote area*** during:

(c) if the period does not exceed 8 weeks—the whole of that period; or

(d) if the period exceeds 8 weeks—the first 8 weeks of that period.

14A *Social security benefit liquid assets test* definitions

(1) For the purposes of Parts 2.11, 2.11A, 2.12 and 2.23A and Division 3A of Part 3 of the Administration Act:

liquid assets, in relation to a person, means the person's cash and readily realisable assets, and includes:

(a) the person's shares and debentures in a public company within the meaning of the *Corporations Act 2001*; and

(b) amounts deposited with, or lent to, a bank or other financial institution by the person (whether or not the amount can be withdrawn or repaid immediately); and

(c) amounts due, and able to be paid, to the person by, or on behalf of, a former employer of the person;

but does not include:

(d) a roll-over superannuation benefit (within the meaning of the *Income Tax Assessment Act 1997*); or

(daa) a superannuation lump sum (within the meaning of that Act) that is a contributions-splitting superannuation benefit (within the meaning of that Act); or

(dac) the surrender value of a life policy (within the meaning of the *Life Insurance Act 1995*); or

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

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

(dc) the sum of NDIS amounts paid to the person and any return on those amounts that the person earns, derives or receives, less the sum of amounts spent by the person in accordance with an NDIS plan under which the amounts were paid; or

(e) in the case of a person who:

(i) has claimed or is receiving a youth allowance or an austudy payment; and

(ii) is undertaking a tertiary course of education in any year or part of a year;

an amount necessary to cover the reasonable expenses incurred, or likely to be incurred, by the person in that year or that part of a year and that are directly related to his or her undertaking the course, including:

(iii) up front course fees; and

(iv) HECS payments; and

(v) union fees; and

(vi) costs of text books; and

(vii) costs of any tools or equipment required to undertake the course, including computer software; and

(viii) expenses directly related to any field trips undertaken for the purposes of the course; and

(ix) such other expenses as are approved by the Secretary.

maximum reserve, in relation to a person, means:

(a) if the person is not a member of a couple and does not have a dependent child—$5,000; or

(b) in any other case—$10,000.

(2) For the purposes of Parts 2.11, 2.11A, 2.12 and 2.23A and Division 3A of Part 3 of the Administration Act, a person's ***liquid assets*** are to be taken to include:

(a) the liquid assets of the person's partner; and

(b) the liquid assets of the person and the person's partner.

(3) If:

(a) during the 4 weeks immediately before a person claims youth allowance, austudy payment or jobseeker payment, the person or the person's partner transfers liquid assets to a person of any age who is the natural child, adopted child or relationship child of the person or the partner; and

(b) either:

(i) the person transferring receives no consideration or inadequate consideration, in money or money's worth for the transfer; or

(ii) the Secretary is satisfied that the purpose, or the dominant purpose, of the transfer was to enable the claimant to obtain youth allowance, austudy payment or jobseeker payment;

then the transfer is to be taken, for the purposes of this section, not to have occurred.

(4) If:

(a) a person sells the person's principal home; and

(b) the person is likely, within 12 months, to apply the whole or part of the proceeds of the sale in acquiring another residence that is to be the person's principal home;

so much of the proceeds of the sale as the person is likely to apply in acquiring the other residence is to be disregarded during that period for the purposes of determining the amount of the person's liquid assets.

(5) If:

(a) a person has or had a debt not related to the person's principal home or to any other residential property in which the person holds or held, solely or jointly, any right or interest; and

(b) since becoming unemployed or incapacitated for work or study (as the case requires), the person has, in order to discharge the debt in whole or in part, made a payment that the person was not obliged to make; and

(c) since becoming unemployed or incapacitated for work or study (as the case requires), the person had not already made such a payment in order to discharge that debt in part;

the amount of the payment referred to in paragraph (b) is to be disregarded for the purposes of determining the amount of the person's liquid assets.

(5A) If:

(a) a person has or had a debt not related to the person's principal home or to any other residential property in which the person holds or held, solely or jointly, any right or interest; and

(b) since becoming qualified for youth allowance or austudy payment (as the case requires), the person has, in order to discharge the debt in whole or in part, made a payment that the person was not obliged to make; and

(c) since becoming qualified for youth allowance or austudy payments (as the case requires), the person had not already made such a payment in order to discharge that debt in part;

OFFICIAL: Sensitive // Legal Privilege

the amount of the payment referred to in paragraph (b) is to be disregarded for the purposes of determining the amount of the person's liquid assets.

(6) For the purpose of determining whether a liquid assets test waiting period applies in relation to a claim for a social security benefit, subsection (5) can apply to a payment made after the claim if the payment is made before such a liquid assets test waiting period would end under section 549A, 575A or 598 (whichever is applicable).

(7) For the purposes of Division 3A of Part 3 of the Administration Act, a person is ***in severe financial hardship*** if the value of the person's liquid assets does not exceed:

(a) if the person is not a member of a couple and does not have a dependent child—$2,500; or

(b) in any other case—$5,000.

16 *Industrial action* definitions

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

industrial action means any of the following that is not authorised by the employer of the person concerned:

(a) the performance of work in a manner different from that in which it is customarily performed, or the adoption of a practice in relation to work, result of which is a restriction or limitation on, or a delay in, the performance of the work;

(b) a ban, limitation or restriction on the performance of work or on acceptance of, or offering for, work;

(c) a failure or refusal by a person to attend for work or a failure or refusal to perform any work at all by a person who attends for work.

Note: See also subsection (2).

trade union includes any organisation or association of employees (whether corporate or unincorporate) that exists or is carried on for

the purpose, or for purposes that include the purpose, of furthering the interests of its members in relation to their employment.

Note: See also subsection (3).

unemployment, in relation to a person, includes:

(a) unemployment of the person arising from:

(i) a person or persons being, or having been, engaged in industrial action; and

(ii) the termination of the person's employment; and

(b) a situation where the person:

(i) is, or has been, stood down from the person's employment or work; or

(ii) is, or has been, suspended from the person's employment or work.

Industrial action

(2) For the purposes of the definition of ***industrial action*** in subsection (1), conduct that relates to part only of the duties that a person is required to perform in the course of his or her employment is capable of being ***industrial action***.

Trade unions divided into branches

(3) If a trade union is divided into branches (whether or not the branches are themselves trade unions), persons who are members of the respective branches are taken to be ***members*** of the trade union.

16A *Seasonal work* definitions

Definitions

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

relevant AWOTE, in relation to a calendar year, means the amount that, under the heading "Trend Estimates" in the document entitled "Average Weekly Earnings, States and Australia" last published by

OFFICIAL: Sensitive // Legal Privilege

the Australian Bureau of Statistics before 1 January in that year, is specified as being the full-time adult ordinary time earnings for Australia for the quarter to which the document relates.

seasonal work means:

(a) work that, because of its nature or of factors peculiar to the industry in which it is performed, is available, at approximately the same time or times every year, for part or parts only of the year; or

(aa) work:

(i) that is intermittent; and

(ii) that is to be performed for a period of less than 12 months; and

(iii) that is to be performed for a specified period or a period that can reasonably be calculated by reference to the completion of a specified task; and

(iv) for which the person performing the work does not accrue leave entitlements; or

(b) work that is intermittent and is determined, under subsection (2), to be seasonal work for the purposes of this Act.

Examples: Examples of work described in paragraph (a) are fishing, fruit picking, shearing and work in an industry that is subject to Christmas shutdowns. Examples of work that is intermittent are relief teaching and work as a locum.

seasonal work income means gross income from seasonal work less amounts necessarily expended in relation to that seasonal work that the person can demonstrate are allowable deductions for the purposes of the *Income Tax Assessment Act 1936* or the *Income Tax Assessment Act 1997*, as the case may be.

seasonal work preclusion period has the meaning given by subsections (3) and (4).

subject to a seasonal work preclusion period has the meaning given by subsection (11).

(1A) Paragraph (aa) of the definition of ***seasonal work*** in subsection (1) does not apply to a person undertaking seasonal work if the person was receiving income support payments (whether or not the kind of payment received has changed over the period and whether any part of it occurred before or after the commencement of this section) in respect of a continuous period exceeding 12 months immediately before the person commenced the seasonal work.

Secretary's determination—seasonal work

(2) The Secretary may, by legislative instrument, determine that a specified kind of work that is intermittent is seasonal work for the purposes of this Act.

Seasonal work preclusion periods

(3) If:

(a) a person is not a member of a couple; and

(b) the person has made a claim for jobseeker payment, widow allowance, youth allowance, special benefit, parenting payment, disability support pension, carer payment or austudy payment; and

(c) the person was engaged in seasonal work at any time during the 6 months immediately before the day on which the person lodged the claim;

the person's ***seasonal work preclusion period*** in relation to the claim is the period consisting of the number of weeks worked out under subsection (5) that starts on the day on which the claim was lodged.

(4) If:

(a) a person is a member of a couple; and

(b) the person has made a claim for jobseeker payment, partner allowance, parenting payment, youth allowance, special benefit, disability support pension, carer payment or austudy payment; and

(c) the person, or the person's partner, or both, were engaged in seasonal work at any time during the 6 months immediately before the day on which the person lodged the claim;

the person's ***seasonal work preclusion period*** in relation to the claim is the period consisting of the number of weeks worked out under subsection (6), (7) or (8) that starts on the day on which the claim was lodged.

(5) If the person is not a member of a couple, the number of weeks in the person's seasonal work preclusion period is worked out as follows:

Method statement

Step 1. Identify each period of continuous seasonal work by the person that ended during the 6 months immediately before the day on which the claim was lodged. If the person has performed seasonal work during 2 periods that are less than 14 days apart, the periods of work and the intervening period are taken to be one continuous period during which the person has performed seasonal work.

Step 2. If a period identified in Step 1 has already been taken into account when working out a seasonal work preclusion period in relation to a previous claim by the person (whether for the same or a different allowance or payment), disregard the period. Each remaining period is called a ***relevant period of seasonal work***.

Step 3. Work out the amount of seasonal work income earned by the person during each of the person's relevant periods of seasonal work, disregarding any income by way of a lump sum that was earned during that period but was not paid to the person before the day on which the claim was lodged.

Step 4. Add together the amounts worked out in Step 3. The result is called the person's ***seasonal work earnings***.

Step 5.	Divide the person's seasonal work earnings by the amount of the relevant AWOTE for the calendar year in which the claim was lodged. The result is called the person's ***AWOTE weeks*** and represents the number of weeks (including any part of a week) that a person paid at a rate equal to the relevant AWOTE for that calendar year would have to work to earn an amount equal to the person's seasonal work earnings.
Step 6.	Work out the number of weeks in the person's relevant periods of seasonal work by dividing the total number of days included in those periods by 7. The result (including any part of a week) is called the person's ***seasonal work weeks***.
Step 6A.	If there is a period between one relevant period of seasonal work and another, or between a relevant period of seasonal work and the day on which the claim was lodged, work out the number of weeks in the period (the ***intervening period***). This is done by dividing the total number of days in the intervening period by 7.
Step 6B.	If there is more than one intervening period, add together the number of weeks worked out for each intervening period. The result (including any part of a week) is called the person's ***intervening weeks***.
Step 6C.	Add together the number of seasonal work weeks worked out under Step 6 and the number of intervening weeks (if any) worked out under Step 6B. The result (including any part of a week) is called the person's ***self-supported weeks***.

Step 7.	Subtract the person's self-supported weeks from the person's AWOTE weeks. The result (rounded down, if necessary, to the nearest whole number) is the ***number of weeks in the person's seasonal work preclusion period***. If the result is a negative number, the number of weeks in the period is taken to be nil.

Note 1: For ***relevant AWOTE*** see subsection (1).

Note 2: For ***seasonal work*** see subsection (1).

Note 3: For ***seasonal work income*** see subsection (1).

(6) If:

(a) the person is a member of a couple; and

(b) the person was engaged in seasonal work at any time during the 6 months immediately before the day on which the person lodged the claim (the ***relevant period***); and

(c) the person's partner was not engaged in seasonal work at any time during the relevant period;

the number of weeks in the person's seasonal work preclusion period is worked out as follows:

Method statement

Step 1.	Identify each period of continuous seasonal work by the person that ended during the 6 months immediately before the day on which the claim was lodged. If the person has performed seasonal work during 2 periods that are less than 14 days apart, the periods of work and the intervening period are taken to be one continuous period during which the person has performed seasonal work.
Step 2.	If a period identified in Step 1 has already been taken into account when working out a seasonal work preclusion period in relation to a previous claim by the person (whether for the same or a different allowance or payment), disregard the period. Each remaining period is called a ***relevant period of seasonal work***.

Step 3. Work out the amount of seasonal work income earned by the person during each of the person's relevant periods of seasonal work, disregarding any income by way of a lump sum that was earned during that period but was not paid to the person before the day on which the claim was lodged.

Step 4. Add together the amounts worked out in Step 3. The result is called the person's ***seasonal work earnings***.

Step 5. Work out the total amount of income from personal exertion earned by the person's partner during the person's relevant periods of seasonal work. Add the amount obtained to the person's seasonal work earnings. The result is called the ***couple's combined earnings***.

Step 6. Divide the couple's combined earnings by twice the amount of the relevant AWOTE for the calendar year in which the claim was lodged. The result is called the couple's ***AWOTE weeks*** and represents the number of weeks (including any part of a week) that 2 persons, each paid at a rate equal to the relevant AWOTE for that calendar year, would have to work to earn together an amount equal to the couple's combined earnings.

Step 7. Work out the number of weeks in the person's relevant periods of seasonal work by dividing the total number of days included in those periods by 7. The result (including any part of a week) is called the person's ***seasonal work weeks***.

Step 7A. If there is a period between one relevant period of seasonal work and another, or between a relevant period of seasonal work and the day on which the claim was lodged, work out the number of weeks in the period (the ***intervening period***). This is done by dividing the total number of days in the intervening period by 7.

Step 7B.	If there is more than one intervening period, add together the number of weeks worked out for each intervening period. The result (including any part of a week) is called the person's ***intervening weeks***.
Step 7C.	Add together the number of seasonal work weeks worked out under Step 7 and the number of intervening weeks (if any) worked out under Step 7B. The result (including any part of a week) is called the person's ***self-supported weeks***.
Step 8.	Subtract the person's self-supported weeks from the couple's AWOTE weeks. The result (rounded down, if necessary, to the nearest whole number) is the ***number of weeks in the person's seasonal work preclusion period***. If the result is a negative number, the number of weeks in the period is taken to be nil.

Note 1: For ***relevant AWOTE*** see subsection (1).

Note 2: For ***seasonal work*** see subsection (1).

Note 3: For ***seasonal work income*** see subsection (1).

(7) If:

(a) the person is a member of a couple; and

(b) the person was not engaged in seasonal work at any time during the 6 months immediately before the day on which the person lodged the claim (the ***relevant period***); and

(c) the person's partner was engaged in seasonal work at any time during the relevant period;

the number of weeks in the person's seasonal work preclusion period is worked out as follows:

Method statement

Step 1. Identify each period of continuous seasonal work by the partner that ended during the 6 months immediately before the day on which the claim was lodged. If the partner has performed seasonal work during 2 periods that are less than 14 days apart, the periods of work and the intervening period are taken to be one continuous period during which the partner has performed seasonal work.

Step 2. If a period identified in Step 1 has already been taken into account when working out a seasonal work preclusion period in relation to a previous claim by the person (whether for the same or a different allowance or payment), disregard the period. Each remaining period is called a ***relevant period of seasonal work***.

Step 3. Work out the total amount of income from personal exertion earned by the person during the partner's relevant periods of seasonal work. The result is called the ***person's earnings***.

Step 4. Work out the amount of seasonal work income earned by the partner during each of the partner's relevant periods of seasonal work, disregarding any income by way of a lump sum that was earned during that period but was not paid to the partner before the day on which the claim was lodged.

Step 5. Add together the amounts worked out in Step 4. The result is called the partner's ***seasonal work earnings***.

Step 6. Add the partner's seasonal work earnings and the person's earnings. The result is called the ***couple's combined earnings***.

Step 7. Divide the couple's combined earnings by twice the amount of the relevant AWOTE for the calendar year in which the claim was lodged. The result is called the couple's ***AWOTE weeks*** and represents the number of weeks (including any part of a week) that 2 persons, each paid at a rate equal to the relevant AWOTE for that calendar year, would have to work to earn together an amount equal to the couple's combined earnings.

Step 8. Work out the number of weeks in the partner's relevant periods of seasonal work by dividing the total number of days included in those periods by 7. The result (including any part of a week) is called the partner's ***seasonal work weeks***.

Step 8A. If there is a period between one relevant period of seasonal work and another, or between a relevant period of seasonal work and the day on which the claim was lodged, work out the number of weeks in the period (the ***intervening period***). This is done by dividing the total number of days in the intervening period by 7.

Step 8B. If there is more than one intervening period, add together the number of weeks worked out for each intervening period. The result (including any part of a week) is called the partner's ***intervening weeks***.

Step 8C. Add together the number of seasonal work weeks worked out under Step 8 and the number of intervening weeks (if any) worked out under Step 8B. The result (including any part of a week) is called the partner's ***self-supported weeks***.

Step 9.	Subtract the partner's self-supported weeks from the couple's AWOTE weeks. The result (rounded down, if necessary, to the nearest whole number) is the ***number of weeks in the person's seasonal work preclusion period***. If the result is a negative number, the number of weeks in the period is taken to be nil.

Note 1: For ***relevant AWOTE*** see subsection (1).

Note 2: For ***seasonal work*** see subsection (1).

Note 3: For ***seasonal work income*** see subsection (1).

(8) If:

(a) the person is a member of a couple; and

(b) both the person and the person's partner have engaged in seasonal work during the 6 months immediately before the day on which the claim was lodged;

the number of weeks in the person's seasonal work preclusion period is worked out as follows:

Method statement

Step 1.	Work out what would be the number of weeks in the person's seasonal work preclusion period if subsection (6) applied to the person.
Step 2.	Work out what would be the number of weeks in the person's seasonal work preclusion period if subsection (7) applied to the person.
Step 3.	Compare the number of weeks in each period. The ***number of weeks in the person's seasonal work preclusion period*** is equal to the number of weeks in the longer of the 2 periods.

Subject to a seasonal work preclusion period

(11) If a person's seasonal work preclusion period in relation to a claim consists of a number of weeks that is greater than nil, then, except as otherwise provided under this Act, the person is ***subject to that period*** for the purposes of this Act.

16B Partial capacity to work

(1) A person has a ***partial capacity to work*** if:
  (a) the person has a physical, intellectual or psychiatric impairment; and
  (b) the Secretary is satisfied that:
    (i) the impairment of itself prevents the person from doing 30 hours per week of work independently of a program of support within the next 2 years; and
    (ii) no training activity is likely (because of the impairment) to enable the person to do 30 hours per week of work independently of a program of support within the next 2 years.

(2) A person is treated as doing work ***independently of a program of support*** if the Secretary is satisfied that to do the work the person:
  (a) is unlikely to need a program of support that:
    (i) is designed to assist the person to prepare for, find or maintain work; and
    (ii) is funded (wholly or partly) by the Commonwealth or is of a type that the Secretary considers is similar to a program of support that is funded (wholly or partly) by the Commonwealth; or
  (b) is likely to need such a program of support provided occasionally; or
  (c) is likely to need such a program of support that is not ongoing.

(3) In deciding whether he or she is satisfied as mentioned in paragraph (1)(b) or subsection (2), the Secretary must comply with

OFFICIAL: Sensitive // Legal Privilege

the guidelines (if any) determined and in force under subsection (4).

(4) The Minister may, by legislative instrument, determine guidelines to be complied with by the Secretary in deciding whether he or she is satisfied as mentioned in paragraph (1)(b).

(5) In this section:

30 hours per week of work means work:

(a) that is for at least 30 hours per week on wages that are at or above the relevant minimum wage; and

(b) that exists in Australia, even if not within the person's locally accessible labour market.

training activity means one or more of the following activities, whether or not the activity is designed specifically for people with physical, intellectual or psychiatric impairments:

(a) education;

(b) pre-vocational training;

(c) vocational training;

(d) vocational rehabilitation;

(e) work-related training (including on-the-job training).

17 *Compensation recovery* definitions

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

compensation has the meaning given by subsection (2).

Note: See also section 1163B.

compensation affected payment means:

(aa) an age pension; or

(a) a disability support pension; or

(b) a parenting payment; or

(c) a social security benefit; or

(f) a carer payment; or

(g) a special needs disability support pension; or
(h) a special needs disability support wife pension; or
(k) a former payment type; or
(l) any of the following:
(i) an advance pharmaceutical allowance;
(ii) a telephone allowance;
(iv) an education entry payment;
(v) a pensioner education supplement;
where, in order to be qualified for the allowance, payment or supplement, a person must be receiving, or receiving at a particular time, another kind of payment and that other kind of payment (the ***underlying compensation affected payment***) is a compensation affected payment to which any of paragraphs (aa) to (k) applies; or
(m) a fares allowance, where:
(i) if subparagraph 1061ZAAA(1)(b)(i), (ii) or (iii) applies—the allowance or payment (the ***underlying compensation affected payment***) mentioned in that subparagraph is a compensation affected payment to which any of paragraphs (aa) to (k) of this definition applies; or
(ii) if subparagraph 1061ZAAA(1)(b)(iv) applies—in order to be qualified for the supplement mentioned in that subparagraph, a person must be receiving another kind of payment and that other kind of payment (the ***underlying compensation affected payment***) is a compensation affected payment to which any of paragraphs (aa) to (k) of this definition applies; or
(n) a CDEP Scheme Participant Supplement, where the pension, payment or allowance (the ***underlying compensation affected payment***) mentioned in paragraph 1188D(2)(a) is a compensation affected payment to which any of paragraphs (aa) to (k) of this definition applies.

compensation part, in relation to a lump sum compensation payment, has the meaning given by subsections (3) and (4).

compensation payer means:

(a) a person who is liable to make a compensation payment; or

(b) an authority of a State or Territory that has determined that it will make a payment by way of compensation to another person, whether or not the authority is liable to make the payment.

event that gives rise to a person's entitlement to compensation has the meaning given by subsection (5A).

former payment type means:

(a) an invalid pension under the 1947 Act; or

(b) an invalid pension under this Act as previously in force; or

(ba) a disability wage supplement under this Act as previously in force; or

(c) a sheltered employment allowance under the 1947 Act; or

(d) a sheltered employment allowance under this Act as previously in force; or

(e) an unemployment benefit under the 1947 Act; or

(f) a sickness benefit under the 1947 Act; or

(g) a special benefit under the 1947 Act; or

(h) a sickness benefit under this Act as previously in force; or

(ha) a job search allowance under this Act as previously in force; or

(i) a rehabilitation allowance under the 1947 Act payable in place of:

(i) an invalid pension under the 1947 Act; or

(ii) a sheltered employment allowance under the 1947 Act; or

(iii) an unemployment benefit under the 1947 Act; or

(iv) a sickness benefit under the 1947 Act; or

(v) a special benefit under the 1947 Act; or

(j) a rehabilitation allowance under this Act as previously in force payable in place of:

(i) a disability support pension; or

(ii) an invalid pension under this Act as previously in force; or
(iii) a sheltered employment allowance under this Act as previously in force; or
(iv) a social security benefit; or
(v) a sickness benefit under this Act as previously in force; or

(k) an invalid wife pension under the 1947 Act; or
(l) an invalid wife pension under this Act as previously in force; or
(m) a special needs invalid pension under this Act as previously in force; or
(n) a special needs invalid wife pension under this Act as previously in force; or
(o) a carer payment under this Act as previously in force; or
(p) a sole parent pension under this Act as previously in force; or
(q) a parenting allowance under this Act as previously in force; or
(r) a parenting payment under this Act as in force immediately before 1 July 2000; or
(s) a youth training allowance under Part 8 of the *Student Assistance Act 1973* as previously in force; or
(t) a payment under this Act as previously in force declared by the Minister, by legislative instrument, to be a former payment type for the purposes of Part 3.14.

income cut-out amount, in relation to a person who has received a compensation payment, means the amount worked out using the formula in subsection (8), as in force at the time when the compensation was received.

invalid wife pension means:

(a) in relation to the 1947 Act, a wife's pension under the 1947 Act for a woman whose husband received an invalid pension under the 1947 Act; or

(b) in relation to this Act as previously in force, a wife pension for a woman whose partner received an invalid pension under this Act as previously in force.

periodic payments period means:

(a) the period to which a periodic compensation payment, or a series of periodic compensation payments, relates; or

(b) in the case of a payment of arrears of periodic compensation payments—the period to which those payments would have related if they had not been made by way of an arrears payment.

potential compensation payer means a person who, in the Secretary's opinion, may become a compensation payer.

receives compensation has the meaning given by subsection (5).

special needs disability support wife pension means a special needs wife pension for a woman whose partner receives a special needs disability support pension.

special needs invalid wife pension means a special needs wife pension for a woman whose partner received a special needs invalid pension under this Act as previously in force.

Compensation

(2) Subject to subsection (2B), for the purposes of this Act, ***compensation*** means:

(a) a payment of damages; or

(b) a payment under a scheme of insurance or compensation under a Commonwealth, State or Territory law, including a payment under a contract entered into under such a scheme; or

(c) a payment (with or without admission of liability) in settlement of a claim for damages or a claim under such an insurance scheme; or

(d) any other compensation or damages payment;

(whether the payment is in the form of a lump sum or in the form of a series of periodic payments and whether it is made within or outside Australia) that is made wholly or partly in respect of lost earnings or lost capacity to earn resulting from personal injury.

(2A) Paragraph (2)(d) does not apply to a compensation payment if:

(a) the recipient has made contributions (for example, by way of insurance premiums) towards the payment; and

(b) either:

(i) the agreement under which the contributions are made does not provide for the amounts that would otherwise be payable under the agreement being reduced or not payable because the recipient is eligible for or receives payments under this Act that are compensation affected payments; or

(ii) the agreement does so provide but the compensation payment has been calculated without reference to the provision.

(2B) A payment under a law of the Commonwealth, a State or a Territory that provides for the payment of compensation for a criminal injury does not constitute compensation for the purposes of this Act.

(2C) The reference in subsection (2B) to a criminal injury is a reference to a personal injury suffered, or a disease or condition contracted, as a result of the commission of an offence.

Compensation part of a lump sum

(3) Subject to subsection (4), for the purposes of this Act, the ***compensation part of a lump sum compensation payment*** is:

(a) 50% of the payment if the following circumstances apply:

(i) the payment is made (either with or without admission of liability) in settlement of a claim that is, in whole or in part, related to a disease, injury or condition; and

(ii) the claim was settled, either by consent judgment being entered in respect of the settlement or otherwise; or

(ab) 50% of the payment if the following circumstances apply:

(i) the payment represents that part of a person's entitlement to periodic compensation payments that the person has chosen to receive in the form of a lump sum; and

(ii) the entitlement to periodic compensation payments arose from the settlement (either with or without admission of liability) of a claim that is, in whole or in part, related to a disease, injury or condition; and

(iii) the claim was settled, either by consent judgment being entered in respect of the settlement or otherwise; or

(b) if those circumstances do not apply—so much of the payment as is, in the Secretary's opinion, in respect of lost earnings or lost capacity to earn, or both.

(4) Where a person:

(a) has received periodic compensation payments; and

(b) after receiving those payments, receives a lump sum compensation payment (in this subsection called the ***LSP***); and

(c) because of receiving the LSP, becomes liable to repay an amount (in this subsection called the ***Repaid Periodic Compensation Payment—RPCP***) equal to the periodic compensation payments received;

then, for the purposes of subsection (3), the amount of the lump sum compensation payment is:

LSP – RPCP

(4A) For the purposes of this Act, a payment of arrears of periodic compensation payments is not a lump sum compensation payment.

Receives compensation

(5) A person ***receives compensation*** whether he or she receives it directly or whether another person receives it, on behalf of, or at the direction of the first person.

(5A) For the purposes of subsection (2B) of this section and Part 3.14, the ***event that gives rise to a person's entitlement to compensation*** for a disease, injury or condition is:

(a) if the disease, injury or condition was caused by an accident—the accident; or

(b) in any other case—the disease, injury or condition first becoming apparent;

and is not, for example, the decision or settlement under which the compensation is payable.

Insurer

(6) A reference in Part 3.14 to an ***insurer who is, under a contract of insurance, liable to indemnify*** a compensation payer or a potential compensation payer against a liability arising from a claim for compensation includes a reference to:

(a) an authority of a State or Territory that is liable to indemnify a compensation payer against such a liability, whether the authority is so liable under a contract, a law or otherwise; or

(b) an authority of a State or Territory that determines to make a payment to indemnify a compensation payer against such a liability, whether or not the authority is liable to do so.

(8) For the purposes of the definition of ***income cut-out amount*** in subsection (1), the formula is as follows:

$$\frac{2 \times \left(\text{Maximum basic rate} + \text{Pension supplement component} + \text{Energy supplement component} \right) + \text{Ordinary free area limit}}{52}$$

where:

energy supplement component means the energy supplement worked out under point 1064-C3 for a person who is not a member of a couple:

(a) whether or not the person for whom the income cut-out amount is being worked out is a member of a couple; and

(b) whether or not that point applies to the person for whom the income cut-out amount is being worked out.

maximum basic rate means the amount specified in column 3 of item 1 of the table in point 1064-B1.

ordinary free area limit means the amount specified in column 3 of item 1 of the table in point 1064-E4.

pension supplement component means the pension supplement amount worked out under point 1064-BA3 for a person who is not a member of a couple:

(a) whether or not the person for whom the income cut-out amount is being worked out is a member of a couple; and

(b) whether or not that point applies to the person for whom the income cut-out amount is being worked out.

18 Parenting payment definitions

In this Act, unless the contrary intention appears:

benefit PP (partnered) means parenting payment whose rate is worked out under the Benefit PP (Partnered) Rate Calculator in section 1068B.

non-benefit PP (partnered) means non-benefit PP (partnered) under this Act as in force immediately before the commencement of the *A New Tax System (Family Assistance) (Consequential and Related Measures) Act (No. 1) 1999*.

parenting payment means:

(a) pension PP (single); or

(b) benefit PP (partnered).

pension PP (single) means parenting payment whose rate is worked out under the Pension PP (Single) Rate Calculator in section 1068A.

19 *Mobility allowance* definitions

In this Act, unless the contrary intention appears:

gainful employment means:

(a) paid employment (including sheltered employment); and

(b) self-employment that is intended to result in financial gain.

handicapped person means a person who:

(a) has a physical or mental disability; and

(b) has turned 16.

sheltered employment means paid employment in respect of which a determination under section 32 or 33 is in force.

vocational training includes training for a profession or occupation and, where used in Part 2.21 (Mobility allowance), also includes training known as independent living skills or life skills training.

19A Fares allowance definitions

(1) This section has effect for the purposes of Part 2.26.

(2) Unless the contrary intention appears:

~~***activity test*** means the test set out in section 541.~~

approved course has the meaning given by subsection 1061ZAAA(1).

approved tertiary course means a course of education or study that is determined, under section 5D of the *Student Assistance Act 1973*, to be a tertiary course for the purposes of that Act.

external student, in relation to an approved course at a relevant educational institution, means a student enrolled for the course who

is subject to a requirement, being a requirement that is a compulsory component of the course, to attend the institution for a period of time.

independent has the same meaning as in Parts 2.11 and 3.5 (see section 1067A).

permanent home has the meaning given by subsections (3) to (6).

public transport does not include a taxi.

relevant educational institution has the meaning given by subsection 1061ZAAA(1).

required to live away from his or her permanent home has the meaning given by subsection (7).

study year means the period in which one complete year of an approved tertiary course (as defined by this subsection) starts and finishes.

(3) Subject to subsection (5), if a person is receiving youth allowance and is not independent, the person's ***permanent home*** is the home of the parent whose income components are assessed under Submodule 4 of Module F of the Youth Allowance Rate Calculator in section 1067G.

(4) Subject to subsection (5), if subsection 1061ZAAA(5) applies to a person, the person's ***permanent home*** is the home of the parent whose income components were assessed, immediately before the person became independent, under Submodule 4 of Module F of the Youth Allowance Rate Calculator in section 1067G.

(5) If the parent uses more than one home, the person's ***permanent home*** is:
  (a) the home that the parent uses most frequently; or
  (b) if the parent uses more than one home for equal periods, the home that the person nominates.

(6) The ***permanent home*** of a person to whom none of the preceding subsections applies is the person's usual place of residence.

(7) A person is taken to be ***required to live away from his or her permanent home*** in order to undertake an approved tertiary course of education or study if:

(a) the person is not independent; and

(b) the person does not live at the person's permanent home; and

(c) the Secretary determines that the person needs to live away from the person's permanent home in order to undertake the course.

19AA Student start-up loan definitions

For the purposes of Chapter 2AA:

accumulated SSL debt has the meaning given by section 1061ZVEC.

approved form has the meaning given by section 388-50 in Schedule 1 to the *Taxation Administration Act 1953*.

Commissioner means the Commissioner of Taxation.

compulsory SSL repayment amount means an amount that:

(a) is required to be paid in respect of an accumulated SSL debt under section 1061ZVHA; and

(b) is included in a notice of assessment made under section 1061ZVHC.

enrolment test day has the meaning given by subsection 1061ZVDA(5).

former accumulated SSL debt has the meaning given by section 1061ZVEB.

HELP debt indexation factor has the same meaning as in the *Higher Education Support Act 2003*.

HELP repayment income has the same meaning as ***repayment income*** has in the *Higher Education Support Act 2003*.

income tax has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

income tax law has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

income year has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

Medicare levy means the Medicare levy imposed by the *Medicare Levy Act 1986*.

minimum HELP repayment income has the same meaning as ***minimum repayment income*** has in the *Higher Education Support Act 2003*.

qualification period, for a student start-up loan, means a period of 6 months starting on 1 January or 1 July in any year.

qualification test day has the meaning given by subsection 1061ZVBB(3).

repayable SSL debt has the meaning given by section 1061ZVHB.

return means an income tax return within the meaning of subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

SSL debt means a debt incurred under section 1061ZVDA.

student start-up loan means a loan for which a person qualifies under Part 2AA.2.

voluntary SSL repayment means a payment made to the Commissioner in discharge of an accumulated SSL debt or an SSL debt. It does not include a payment made in discharge of a compulsory SSL repayment amount.

19AB Student Financial Supplement Scheme definitions

(1) This section has effect for the purposes of Chapter 2B.

(2) Unless the contrary intention appears:

OFFICIAL: Sensitive // Legal Privilege

accumulated FS debt has the meaning given by section 1061ZZEQ.

adjusted accumulated FS debt has the meaning given by section 1061ZZES.

amount notionally repaid has the meaning given by subsection 1061ZZCN(5) or (7), as applicable.

amount outstanding has the meaning given by section 1061ZZCG or 1061ZZCH, as applicable.

amount repaid has the meaning given by subsection 1061ZZCJ(3), as affected by section 1061ZZCL.

approved course of education or study has the same meaning as in subsection 541B(5).

Note: This expression is used, with the same meaning, in sections 569B and 1061PC.

austudy payment general rate has the meaning given by subsection (3).

AWE has the meaning given by section 1061ZZFF.

category 1 student has the meaning given by section 1061ZZ.

category 2 student has the meaning given by section 1061ZZA.

Commissioner means Commissioner of Taxation.

Commissioner of Taxation includes a Second Commissioner of Taxation and a Deputy Commissioner of Taxation.

compulsory repayment amount means an amount that:

(a) is required to be paid in respect of an accumulated FS debt under section 1061ZZEZ; and

(b) is included in a notice of an assessment made under section 1061ZZFH.

contract period of a financial supplement contract has the meaning given by subsection 1061ZZAX(7) or 1061ZZAY(3).

cooling off period means a period referred to in section 1061ZZBD.

discount has the meaning given by section 1061ZZCM.

earlier date has the meaning given by paragraph 1061ZZEQ(2)(b).

eligibility period for a person means an eligibility period under section 1061ZY and includes an eligibility period for the purposes of the Social Security Student Financial Supplement Scheme 1998.

exempt foreign income has the meaning given by subsection 1061ZZFA(4).

financial corporation means:

(a) a foreign corporation within the meaning of paragraph 51(xx) of the Constitution whose sole or principal business activities in Australia are the borrowing of money and the provision of finance; or

(b) a financial corporation within the meaning of that paragraph;

and includes a bank.

financial supplement contract means a contract referred to in subsection 1061ZZAX(2) or 1061ZZAY(1).

FS assessment debt means an amount that is required to be paid in respect of an accumulated FS debt under section 1061ZZEZ and is included in an assessment made under Division 7 of Part 2B.3 or under the corresponding provision of the Social Security Student Financial Supplement Scheme 1998 or of the *Student Assistance Act 1973* as in force at a time before 1 July 1998.

FS debt has the meaning given by section 1061ZZEO.

income tax has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

income tax law has the meaning given by section 14ZAAA of the *Taxation Administration Act 1953*.

income year has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

index number for a quarter means the All Groups Consumer Price Index number, being the weighted average of the 8 capital cities, published by the Australian Statistician for the quarter.

intending to undertake a course: see subsection (5).

interest subsidy, in relation to financial supplement paid to a person by a participating corporation under a financial supplement contract, means the part of any subsidy paid by the Commonwealth to the corporation, without cost to the person, in respect of the supplement under the agreement entered into with the corporation under section 1061ZZAG, that is in lieu of interest.

later date has the meaning given by paragraph 1061ZZEQ(1)(a) or (2)(a), as the case requires.

maximum amount of financial supplement has the meaning given by section 1061ZZAK or 1061ZZAO, as the case requires, as affected by section 1061ZZAQ.

Medicare levy means the Medicare levy imposed by the *Medicare Levy Act 1986*.

minimum amount of financial supplement has the meaning given by section 1061ZZAP.

minimum repayment income has the meaning given by section 1061ZZFB.

office means a branch office but does not include an agency or administrative office.

original amount has the meaning given by subsection 1061ZZCW(1).

overpayment, for a person in relation to an eligibility period, means either of the following:

(a) a debt or overpayment that is to be recovered under Chapter 5 from the person during the eligibility period;

(b) an amount the person is liable to pay to the Commonwealth under section 1061ZZDE, 1061ZZDL, 1061ZZDV or 1061ZZEE that the Secretary has decided is to be recovered during the eligibility period.

participating corporation has the meaning given by subsection 1061ZZAG(3).

principal sum, at a time during the contract period of a financial supplement contract, means the total of the amounts of financial supplement paid under the contract before that time by the participating corporation to the other party to the contract.

repayable debt, for an income year, has the meaning given by section 1061ZZFC.

repayment income has the meaning given by section 1061ZZFA.

revised amount has the meaning given by subsection 1061ZZCW(1).

saved amount means an amount referred to in subsection 1061ZZBO(3).

short course means a tertiary course that is designed to be completed in, at most, 30 weeks (including vacations).

Social Security Student Financial Supplement Scheme 1998 means the scheme of that name established by the Minister under Chapter 2B of this Act as in force before the commencement of this section.

supplement entitlement notice given to a person means a notice given to the person under subsection 1061ZZAC(3) or 1061ZZAD(4), or a notice referred to in subsection 1061ZZAE(3).

taxable income has the meaning given by section 4-15 of the *Income Tax Assessment Act 1997*.

termination date of a financial supplement contract means the date set out in the contract under subsection 1061ZZAX(6) or as mentioned in subsection 1061ZZAY(2).

termination notice means a notice given under section 1061ZZCQ or under the corresponding provision of the Social Security Student Financial Supplement Scheme 1998 or of the *Student Assistance Act 1973* as in force at a time before 1 July 1998.

tertiary course means a tertiary course that is an approved course of education or study.

trade back has the meaning given by section 1061ZZAT.

trade in has the meaning given by section 1061ZZAR.

undertaking a course: see subsection (5).

wrongly paid supplement has the meaning given by subsections 1061ZZDB(4), 1061ZZDI(4), 1061ZZDS(4) and 1061ZZEC(4).

year means a calendar year.

year of income has the same meaning as in the *Income Tax Assessment Act 1936*.

youth allowance general rate has the meaning given by subsection (4).

(3) A person's ***austudy payment general rate*** is the rate of austudy payment that would be payable to the person if the rate were worked out:

(a) using the Austudy Payment Rate Calculator; and

(b) not including any amount as pharmaceutical allowance or remote area allowance.

OFFICIAL: Sensitive // Legal Privilege

(4) A person's ***youth allowance general rate*** is the rate of youth allowance that would be payable to the person if the rate were worked out:

(a) using the Youth Allowance Rate Calculator; and

(b) not including any amount as pharmaceutical allowance, rent assistance or remote area allowance.

(5) The question whether a person is ***intending to undertake a course*** or is ***undertaking a course*** is to be determined, so far as practicable and with any necessary changes, in the same way as the question whether a person is intending to undertake study or is undertaking study, as the case may be, is determined under section 541B.

19B Financial hardship (Carer payment) liquid assets test definition

In section 198N (exemption from care receiver assets test):

liquid assets, in relation to a person, means:

(a) the person's cash; and

(b) the person's shares and debentures in a public company within the meaning of the *Corporations Act 2001*; and

(c) any amount deposited with, or lent to, a bank or other financial institution by the person (whether or not the amount can be withdrawn or repaid immediately); and

(d) any amount due, and able to be paid, to the person by, or on behalf of, a former employer of the person; and

(e) any other readily realisable assets of the person;

but does not include:

(f) a roll-over superannuation benefit (within the meaning of the *Income Tax Assessment Act 1997*); or

(fa) a superannuation lump sum (within the meaning of that Act) that is a contributions-splitting superannuation benefit (within the meaning of that Act); or

(fc) the surrender value of a life policy (within the meaning of the *Life Insurance Act 1995*); or

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

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

(i) the sum of NDIS amounts paid to the person and any return on those amounts that the person earns, derives or receives, less the sum of amounts spent by the person in accordance with an NDIS plan under which the amounts were paid.

19C Severe financial hardship definitions

Application of definitions in this section

(1) The definitions in this section relate to:

(a) ordinary waiting periods; and

(b) liquid assets test waiting periods; and

(c) seasonal work preclusion periods; and

(d) income maintenance periods.

*Meaning of **in severe financial hardship**: person who is not a member of a couple*

(2) A person who is not a member of a couple and who makes a claim for parenting payment, jobseeker payment, austudy payment, special benefit, disability support pension, carer payment or one of the following allowances:

(b) widow allowance;

(e) youth allowance;

is ***in severe financial hardship*** if the value of the person's liquid assets (within the meaning of subsection 14A(1)) is less than the fortnightly amount at the maximum payment rate of the payment, benefit, pension or allowance that would be payable to the person:

(f) if the person's claim were granted; and

(g) in the case of a person to whom an income maintenance period applies, if that period did not apply.

Note: For ***maximum payment rate*** see subsection (8).

*Meaning of **in severe financial hardship**: person who is a member of a couple*

(3) A member of a couple who makes a claim for parenting payment, jobseeker payment, austudy payment, special benefit, disability support pension, carer payment or one of the following allowances:

(b) partner allowance;

(e) youth allowance;

is ***in severe financial hardship*** if the value of the couple's liquid assets (within the meaning of subsections 14A(1) and (2)) is less than twice the fortnightly amount at the maximum payment rate of the payment, benefit, pension or allowance that would be payable to the person:

(f) if the person's claim were granted; and

(g) in the case of a person to whom an income maintenance period applies, if that period did not apply.

Note: For ***maximum payment rate*** see subsection (8).

*Meaning of **unavoidable or reasonable expenditure***

(4) ***Unavoidable or reasonable expenditure***, in relation to a person who is serving a liquid assets test waiting period or is subject to a seasonal work preclusion period, or a person to whom an income maintenance period applies, or in relation to working out if a person is subject to an ordinary waiting period, includes, but is not limited to, the following expenditure:

(a) the reasonable costs of living that the person is taken, under subsection (6) or (7), to have incurred in respect of:

(i) if the person is serving a liquid assets test waiting period—that part of the period that the person has served; or

(ii) if the person is subject to a seasonal work preclusion period—that part of the period that has expired; or

OFFICIAL: Sensitive // Legal Privilege

(iii) if an income maintenance period applies to the person—that part of the period that has already applied to the person; or

(iv) in relation to working out if the person is subject to an ordinary waiting period—the 4 weeks immediately before the person's start day mentioned in paragraph 500WA(1)(a), 549CA(2)(a), 620(1)(a) or 693(a);

(b) the costs of repairs to, or replacement of, essential whitegoods situated in the person's home;

(c) school expenses;

(d) funeral expenses;

(e) essential expenses arising on the birth of the person's child or the adoption of a child by the person;

(f) expenditure to buy replacement essential household goods because of loss of those goods through theft or natural disaster when the cost of replacement is not the subject of an insurance policy;

(g) the costs of essential repairs to the person's car or home;

(h) premiums in respect of vehicle or home insurance;

(i) expenses in respect of vehicle registration;

(j) essential medical expenses;

(k) any other costs that the Secretary determines are unavoidable or reasonable expenditure in the circumstances in relation to a person.

However, ***unavoidable or reasonable expenditure*** does not include any reasonable costs of living other than those referred to in paragraph (a).

Meaning of ***reasonable costs of living***

(5) The ***reasonable costs of living*** of a person include, but are not limited to, the following costs:

(a) food costs;

(b) rent or mortgage payments;

(c) regular medical expenses;

(d) rates, water and sewerage payments;
(e) gas, electricity and telephone bills;
(f) costs of petrol for the person's vehicle;
(g) public transport costs;
(h) any other cost that the Secretary determines is a reasonable cost of living in relation to a person.

(6) For the purposes of paragraph (4)(a), the amount of reasonable ***costs of living*** that a person who is not a member of a couple is taken to have incurred, may not exceed:
(a) in the case of a person who is serving a liquid assets test waiting period—the amount of jobseeker payment or allowance that would have been payable to the person during that part of the waiting period that the person has already served, if the person were not subject to the period; or
(b) in the case of a person who is subject to a seasonal work preclusion period—the amount of jobseeker payment or allowance that would have been payable to the person during that part of the person's preclusion period that has already expired, if the person were not subject to the period; or
(c) in the case of a person to whom an income maintenance period applies—the amount of jobseeker payment, allowance or parenting payment (as the case may be) that would have been payable to the person during that part of the income maintenance period that has already applied to the person, if the period did not apply to the person; or
(d) in relation to working out if the person is subject to an ordinary waiting period—the amount of jobseeker payment, allowance or parenting payment (as the case may be) that would have been payable to the person during the 4-week period mentioned in subparagraph (4)(a)(iv) if that payment or allowance were payable to the person for that period.

(7) For the purposes of paragraph (4)(a), the amount of reasonable ***costs of living*** that a person who is a member of a couple is taken to have incurred, may not exceed:

(a) in the case of a person who is serving a liquid assets test waiting period—twice the amount of jobseeker payment or allowance that would have been payable to the person during that part of the waiting period that the person has already served, if the person were not subject to the period; or

(b) in the case of a person who is subject to a seasonal work preclusion period—twice the amount of jobseeker payment, allowance or parenting payment (as the case may be) that would have been payable to the person during that part of the person's preclusion period that has already expired, if the person were not subject to the period; or

(c) in the case of a person to whom an income maintenance period applies—twice the amount of jobseeker payment, allowance or parenting payment (as the case may be) that would have been payable to the person during that part of the income maintenance period that has already applied to the person, if the period did not apply to the person; or

(d) in relation to working out if the person is subject to an ordinary waiting period—twice the amount of jobseeker payment, allowance or parenting payment (as the case may be) that would have been payable to the person during the 4-week period mentioned in subparagraph (4)(a)(iv) if that payment or allowance were payable to the person for that period.

Meaning of ***maximum payment rate***

(8) For the purposes of subsections (2) and (3), ***maximum payment rate***:

(aa) in relation to disability support pension—means the rate worked out at:

(i) Step 4 of the Method statement in Module A of Pension Rate Calculator A; or

(ii) Step 5 of the Method statement in Module A of Pension Rate Calculator D; or

(ab) in relation to carer payment—means the rate worked out at Step 4 of the Method statement in Module A of Pension Rate Calculator A; or

(b) in relation to jobseeker payment and, if the person has turned 22, in relation to special benefit—means the rate worked out at Step 4 of the Method statement in Module A of the applicable rate calculator; or

(c) in relation to youth allowance and, if the person has not turned 22, in relation to special benefit—means the maximum payment rate worked out at Step 4 of the Method statement in Module A of the Youth Allowance Rate Calculator in section 1067G; or

(ca) in relation to austudy payment—means the maximum payment rate worked out at Step 3 of the Method statement in Module A of the Austudy Payment Rate Calculator in section 1067L; or

(d) in relation to widow allowance, partner allowance and mature age allowance under Part 2.12B—means the rate worked out at Step 4 of the method statement in Module A of Benefit Rate Calculator B; or

(da) in relation to pension PP (single)—means the rate worked out at Step 4 of the method statement in point 1068A-A1 in Module A of the Pension PP Rate Calculator; or

(e) in relation to benefit PP (partnered)—means the rate worked out at step 4 of whichever of the method statements in points 1068B-A2 and 1068B-A3 in Module A of the Benefit PP (Partnered) Rate Calculator is applicable to the person.

Secretary to give notice of determination

(10) If the Secretary makes a determination in relation to a person under paragraph (4)(k) or paragraph (5)(h), the Secretary must give written notice of the determination to the person.

19D Severe financial hardship—crisis payment definition

(1) The definition in this section relates to one of the qualifications for crisis payment (see sections 1061JG, 1061JH, 1061JHA and 1061JI).

(2) A person who is not a member of a couple is ***in severe financial hardship*** for the purposes of qualifying for a crisis payment if the value of the person's liquid assets (within the meaning of subsection 14A(1)) is less than the fortnightly amount at the maximum payment rate of the social security pension or the social security benefit that is payable to the person.

(3) A person who is a member of a couple is ***in severe financial hardship*** for the purposes of qualifying for a crisis payment if the value of the person's liquid assets (within the meaning of subsections 14A(1) and (2)) is less than twice the fortnightly amount at the maximum payment rate of the social security pension or the social security benefit that is payable to the person.

(4) For the purposes of working out whether a CDEP Scheme participant is in severe financial hardship as defined in this section, the maximum payment rate of social security pension or social security benefit that would have been payable to the participant if he or she had not been a CDEP Scheme participant is taken to be payable to the participant.

Note: For ***CDEP Scheme Participant*** see section 1188B.

(5) In this section:

maximum payment rate, in relation to each of the following social security payments, means (unless otherwise stated below) the rate worked out at Step 4 of the Method statement in Module A of the relevant Rate Calculator:

(a) for the following pensions if the recipient is not blind:

(i) age pension;

(ii) disability support pension (recipient has turned 21, or is under 21 and has one or more dependent children);

(iii) carer pension;

the Rate Calculator at the end of section 1064; or

(b) for age pension and disability support pension (recipient has turned 21, or is under 21 and has one or more dependent children) if the recipient is blind—the Rate Calculator at the end of section 1065; or

(d) for disability support pension if the recipient is under 21, is not blind and does not have any dependent children—Step 5 of the Method statement in Module A of the Rate Calculator at the end of section 1066A; or

(e) for disability support pension if the recipient is under 21, is blind and does not have any dependent children—Step 5 of the Method statement in Module A of the Rate Calculator at the end of section 1066B; or

(f) for the following:

(i) jobseeker payment;

(ii) widow allowance;

(iv) partner allowance;

(v) mature age allowance granted under Part 2.12B;

the Rate Calculator at the end of section 1068; or

(h) for a pension PP (single)—the Rate Calculator at the end of section 1068A; or

(i) for benefit PP (partnered)—point 1068B-A4; or

(k) for special benefit—section 746; or

(l) for youth allowance—the Rate Calculator at the end of section 1067G; or

(m) for austudy payment—Step 3 of the Method statement in Module A of the Rate Calculator at the end of section 1067L.

19DA Experiencing a personal financial crisis definition

(1) A person is ***experiencing a personal financial crisis*** if and only if:

(a) the person is in severe financial hardship; and

(b) subsection (2), (3) or (4) applies to the person.

Note 1: This definition relates to ordinary waiting periods.

OFFICIAL: Sensitive // Legal Privilege

Note 2: For ***in severe financial hardship*** see subsection 19C(2) (person who is not a member of a couple) and subsection 19C(3) (person who is a member of a couple).

Domestic violence

(2) This subsection applies to the person if the person was subjected to domestic violence at some time in the 4 weeks immediately before the person's start day mentioned in paragraph 500WA(1)(a), 549CA(2)(a), 620(1)(a) or 693(a).

Unavoidable or reasonable expenditure

(3) This subsection applies to the person if the person is in severe financial hardship because the person has incurred unavoidable or reasonable expenditure in the 4 weeks immediately before the person's start day mentioned in paragraph 500WA(1)(a), 549CA(2)(a), 620(1)(a) or 693(a).

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

Other circumstances

(4) This subsection applies to the person if the person satisfies the circumstances prescribed in an instrument under subsection (5).

(5) The Secretary may, by legislative instrument, prescribe circumstances for the purposes of subsection (4).

Evidence

(6) Without limiting subsection (2), (3) or (4), that subsection does not apply to the person unless he or she produces evidence that demonstrates a reasonable possibility that it applies to the person.

19E Exempt funeral investments

(1) Work out whether a funeral investment that relates to a particular funeral is an ***exempt funeral investment*** by applying these rules:

(a) the expenses for the funeral must not be prepaid; and

(b) in relation to that funeral:

(i) only one investment of not more than $10,000 can be an exempt funeral investment; or

(ii) only two investments that combined are not more than $10,000 can be exempt funeral investments.

Note: The amounts in paragraph (1)(b) are indexed each year on 1 July (see Division 2 of Part 3.16).

(2) Disregard any return on an investment in determining the amount of an investment for the purposes of this section.

(3) For the purposes of subsection (1), a ***funeral investment*** means an investment, being an investment that cannot be realised before maturity and the return on which is not payable before maturity, that:

(a) matures on the death of whichever member of a couple dies first or dies last and is to be applied on maturity to the expenses of the funeral of that member of the couple; or

(b) matures on the death of:

(i) the investor; or

(ii) 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.

20 *Indexation and rate adjustment* definitions

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

current figure, as at a particular time and in relation to an amount that is to be indexed or adjusted under Part 3.16, means:

(a) if the amount has not yet been indexed or adjusted under Part 3.16 before that time—the amount; and

(b) if the amount has been indexed or adjusted under Part 3.16 before that time—the amount most recently substituted for the amount under Part 3.16 before that time.

index number, in relation to a quarter, means the All Groups Consumer Price Index number that is the weighted average of the 8

capital cities and is published by the Australian Statistician in respect of that quarter.

November earnings average, in relation to a year, means the amount called the "All Employees—Average Weekly Total Earnings—Persons" published by the Australian Statistician in respect of a period ending on or before a particular day in November in that year but does not include a preliminary estimate of that amount.

Publication of substituted index numbers

(4) Subject to subsection (5), if at any time (whether before or after the commencement of this section), the Australian Statistician publishes an index number for a quarter in substitution for an index number previously published by the Australian Statistician for that quarter, the publication of the later index number is to be disregarded for the purposes of this section.

Change to CPI index reference period

(5) If at any time (whether before or after the commencement of this section) the Australian Statistician changes the index reference period for the Consumer Price Index, regard is to be had, for the purposes of applying this section after the change takes place, only to index numbers published in terms of the new index reference period.

Publication of substituted AWE amount

(6) If at any time (whether before or after the commencement of this section) the Australian Statistician publishes an amount in substitution for a November earnings average previously published by the Australian Statistician, for that year, the publication of the later amount is to be disregarded for the purposes of this section.

OFFICIAL: Sensitive // Legal Privilege

20A Pension supplement rate definitions

(1) The ***combined couple rate of pension supplement*** is the sum of the following:

(a) 4 times the annual rate of utilities allowance for a person who is a member of a couple (other than an illness separated couple, respite care couple or temporarily separated couple);

(b) twice the annual rate of telephone allowance for a person:

(i) to whom section 1061SB (increased rate for home internet) applies; and

(ii) who is partnered (partner getting pension or benefit, and partner getting telephone allowance at the increased rate);

(c) twice the annual rate of pharmaceutical allowance for a person who is partnered;

(d) twice the pension supplement basic amount for a person who is partnered;

(e) if $525.20 exceeds twice the annual rate of utilities allowance for a person who is a member of a couple (other than an illness separated couple, respite care couple or temporarily separated couple)—the amount of the excess;

rounded up to the nearest multiple of $5.20.

Note 1: This rate is indexed 6 monthly in line with CPI increases (see sections 1191 to 1194).

Note 2: This rate is an annual rate.

(2) The ***combined couple rate of minimum pension supplement*** is the sum of the following:

(a) 4 times the annual rate of utilities allowance for a person who is a member of a couple (other than an illness separated couple, respite care couple or temporarily separated couple);

(b) twice the annual rate of telephone allowance for a person:

(i) to whom section 1061SB (increased rate for home internet) applies; and

(ii) who is partnered (partner getting pension or benefit, and partner getting telephone allowance at the increased rate);

rounded up to the nearest multiple of $5.20.

Note 1: This rate is indexed 6 monthly in line with CPI increases (see sections 1191 to 1194).

Note 2: This rate is an annual rate.

(3) For the purposes of subsection (1) or (2), a rate mentioned in a paragraph of that subsection is that rate as at 20 September 2009.

Note: Those subsections adopt those rates as indexed on 20 September 2009.

(4) A person's ***minimum pension supplement amount*** is the amount worked out by:

(a) applying the applicable percentage in the following table to the combined couple rate of minimum pension supplement; and

(b) if:

(i) the person is not partnered; and

(ii) the amount resulting from paragraph (a) is not a multiple of $2.60;

rounding the amount up or down to the nearest multiple of $2.60 (rounding up if the amount is not a multiple of $2.60 but is a multiple of $1.30).

Item	Person's family situation	Use this %
1	Not member of couple	66.33%
2	Partnered	50%
3	Member of illness separated couple	66.33%
4	Member of respite care couple	66.33%
5	Partnered (partner in gaol)	66.33%

Note: A person's minimum pension supplement amount is an annual rate.

(5) A person's ***pension supplement basic amount*** depends on which family situation in the following table applies to the person. The

person's ***pension supplement basic amount*** immediately before 20 September 2009 is the corresponding amount set out in the table.

Item	Person's family situation	Amount as at 19 September 2009
1	Not member of couple	$507
2	Partnered	$423.80
3	Member of illness separated couple	$507
4	Member of respite care couple	$507
5	Partnered (partner in gaol)	$507

Note 2: For the purposes of provisions other than subsection (1), the amount in each item of the table will be indexed 6 monthly in line with CPI increases (see sections 1191 to 1194).

Note 3: A person's pension supplement basic amount is an annual rate.

(6) The daily rate of ***tax-exempt pension supplement***, for a person who is receiving a social security payment calculated for that day using a pension supplement amount, is the amount worked out as follows:

(a) subtract the person's pension supplement basic amount from:

(i) if the Rate Calculator produces an annual rate—the person's pension supplement amount; or

(ii) if the Rate Calculator produces a fortnightly rate—26 times the person's pension supplement amount;

(b) divide the result of paragraph (a) by 364.

Note: The portion of the person's social security payment equal to the tax-exempt pension supplement is exempt from income tax (see sections 52-10 and 52-15 of the *Income Tax Assessment Act 1997*).

OFFICIAL: Sensitive // Legal Privilege

Section 21

21 *Bereavement* definitions

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

partner bereavement payment means a payment under section 83, 146G, 238, 514B, 771NW or 823.

(2) For the purposes of this Act, if a person dies:

(a) the ***bereavement period*** in relation to the person's death is the period of 14 weeks that starts on the day on which the person dies; and

(b) the ***bereavement notification day*** in relation to the person's death is the day on which the Secretary becomes aware of the death; and

(c) the ***first available bereavement adjustment payday*** in relation to the person's death is the first payday of the person after the bereavement notification day for which it is practicable to terminate or adjust payments under this Act to take account of the person's death; and

(d) the ***bereavement rate continuation period*** in relation to the person's death is the period:

(i) that begins on the day on which the bereavement period begins; and

(ii) that ends:

(A) if the first available bereavement adjustment payday is before the end of the bereavement period—on the day before the first available bereavement adjustment payday; or

(B) if the first available bereavement adjustment payday occurs on or after the day on which the bereavement period ends—the day on which the bereavement period ends; and

(e) there is a ***bereavement lump sum period*** in relation to the person's death if the first available bereavement adjustment payday occurs before the end of the bereavement period and the bereavement lump sum period is the period that begins on

OFFICIAL: Sensitive // Legal Privilege

the first available bereavement adjustment payday and ends on the day on which the bereavement period ends.

23 Dictionary

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

1947 Act means the *Social Security Act 1947*.

AAT means the Administrative Appeals Tribunal.

AAT Act means the *Administrative Appeals Tribunal Act 1975*.

AAT first review has the same meaning as in the Administration Act.

AAT second review has the same meaning as in the Administration Act.

Aboriginal or Torres Strait Islander child means a child who is a descendant of:

(a) an Indigenous inhabitant of Australia; or

(b) an Indigenous inhabitant of the Torres Strait Islands.

Aboriginal study assistance scheme means:

(a) the ABSTUDY Scheme; or

(b) the Aboriginal Overseas Study Assistance Scheme; or

(c) a scheme prescribed for the purposes of this definition.

ABSTUDY means the ABSTUDY scheme to the extent that it provides means-test allowances.

ABSTUDY Schooling scheme means the ABSTUDY Schooling part of the ABSTUDY scheme.

ABSTUDY Tertiary scheme means the ABSTUDY Tertiary part of the ABSTUDY scheme.

accommodation bond: see subsection 11(1).

accommodation bond balance: see subsection 11(1).

accommodation charge: see subsection 11(1).

account, in relation to a financial institution, means an account maintained by a person with the institution to which is accredited money received on deposit by the institution from that person.

accumulated SSL debt has the meaning given by section 1061ZVEC.

ACNC type of entity means an entity that meets the description of a type of entity in column 1 of the table in subsection 25-5(5) of the *Australian Charities and Not-for-profits Commission Act 2012*.

Administration Act means the *Social Security (Administration) Act 1999*.

adopted child: see subsection 5(1).

Adult Disability Assessment Tool: see subsection 38C(3).

advance payment qualifying amount, for a person, means:

(a) if the person is receiving a social security pension worked out under Pension Rate Calculator A—the sum of the following amounts:
  (i) the person's maximum basic rate;
  (ii) the amount (if any) by which the person's pension supplement amount exceeds the person's minimum pension supplement amount; or

(b) otherwise—the result of paragraph (a) worked out as if the person were receiving a social security pension worked out under Pension Rate Calculator A.

advance qualification day means:

(a) for a person qualifying for a clean energy advance because of a determination made under subsection 914(1) or 914A(1)—the day that determination is made; or

(b) for a person qualifying for a clean energy advance because of a determination made under subsection 914(2)—the day

specified in that determination because of subsection 914(3); or

(c) for a person qualifying for a clean energy advance because of a determination made under subsection 914A(2) or (3)—the day specified in that determination because of subsection 914A(4).

Note: The day specified in the determination because of subsection 914(3) or 914A(4) is the first day during the clean energy advance period for which the person satisfies the qualification requirements, disregarding any short temporary absence from Australia.

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

AGDRP: see Australian Government Disaster Recovery Payment.

aged care resident: see subsections 13(8A), (8B) and (8C).

amount of rent paid or payable: see subsections 13(6) and (7).

applicable statutory conditions, in relation to particular work, means the minimum terms and conditions of employment (including wages) applicable under law in relation to that work.

approved care organisation: see section 6.

approved deposit fund: see subsection 9(1).

approved friendly society means a society, person or body in relation to whom or in relation to which a determination under section 29 is in force.

approved program of work for income support payment means a program of work that is declared by the Secretary, under section 28, to be an approved program of work for income support payment.

approved program of work supplement means:

(aa) an amount under section 118 to a person receiving disability support pension; or

(a) an amount payable under section 503A to a person receiving parenting payment; or
(b) an amount payable under section 556A to a person receiving youth allowance; or
(c) an amount payable under section 644AAA to a person receiving jobseeker payment.

approved respite care: see subsection 4(9).

approved scholarship: see subsection 8(1).

approved scholarship course has the meaning given by section 592M.

~~***approved training course for training supplement***, for a person, means a training course that is approved by the Secretary under section 28B for training supplement for the person.~~

armed services widow: see subsection 4(1).

armed services widower: see subsection 4(1).

asset: see subsections 11(1), (3AA), (3B), (3C) and (3D).

asset-tested income stream (long term): see subsection 9(1).

asset-tested income stream (short term): see subsection 9(1).

asset-test exempt income stream: see sections 9A, 9B and 9BA.

assurance of support means an assurance of support within the meaning of:
(a) the Migration (1989) Regulations; or
(b) the Migration (1993) Regulations; or
(c) Subdivision 2.7.1 or 2.7.2 of the *Migration Regulations 1994* as in force on or after 1 September 1994; or
(d) Chapter 2C.

assurance of support debt has the meaning given by subsection 1227(2).

ATO small superannuation account: see subsection 9(1).

Australia includes Norfolk Island, the Territory of Cocos (Keeling) Islands and the Territory of Christmas Island.

Note 1: In Part 5.5 of Chapter 5 (about departure prohibition orders), ***Australia*** has an extended meaning.

Note 2: See also subsections 7(4), (6) and (7) for special residence rules for external Territories.

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

Australian resident: see subsection 7(2).

Australian travel document has the same meaning as in the *Australian Passports Act 2005*.

Australian Victim of Terrorism Overseas Payment or ***AVTOP*** means a payment under Part 2.24AA.

AUSTUDY allowance means a benefit paid under the AUSTUDY scheme, being the scheme under Part 2 of the *Student Assistance Act 1973* as previously in force.

austudy participation failure has the meaning given by section 576.

automatic issue card: see subsection 6A(1).

automatic issue health care card: see subsection 6A(1).

available money: see subsection 8(1).

AVTOP: see ***Australian Victim of Terrorism Overseas Payment***.

AVTOP Principles means the AVTOP Principles made by the Minister under section 1061PAF.

bank includes, but is not limited to, a body corporate that is an ADI (authorised deposit-taking institution) for the purposes of the *Banking Act 1959*.

benefit parenting allowance means benefit parenting allowance under this Act as previously in force.

benefit PP (partnered): see section 18.

bereavement lump sum period: see paragraph 21(2)(e).

bereavement notification day: see paragraph 21(2)(b).

bereavement period: see paragraph 21(2)(a).

bereavement rate continuation period: see paragraph 21(2)(d).

board when used in the expression ***board and lodging***: see subsection 13(1).

carer supplement means carer supplement under Part 2.19B.

CDEPManager means the computer system known as CDEPManager.

CDEP Scheme means the scheme known as the Community Development Employment Projects Scheme.

CDEP Scheme participant has the meaning given by section 1188B.

CDEP Scheme payment means a payment (expressed as a fortnightly rate) made from the wages component grant under the CDEP Scheme.

CDEP Scheme provider means a person or organisation that is a party to a Programme Funding Agreement with the Commonwealth under which the person or organisation receives Commonwealth funding to deliver the CDEP Scheme.

CDEP Scheme quarter means:

(a) such period (if any) as the Secretary determines in respect of the provision in which the expression occurs; or

(b) in relation to a provision in respect of which there is no determination by the Secretary in force under

OFFICIAL: Sensitive // Legal Privilege

paragraph (a)—a quarter within the meaning of the CDEP Scheme.

centrelink program has the same meaning as in the *Human Services (Centrelink) Act 1997*.

charge exempt resident: see subsection 11(1).

Chief Executive Centrelink has the same meaning as in the *Human Services (Centrelink) Act 1997*.

child: see subsection 5(1).

child disability allowance means child disability allowance under Part 2.19 of this Act as in force at any time before 1 July 1999.

child disability assistance means child disability assistance under Part 2.19AA.

clean energy advance means an advance described in Subdivision A or C of Division 1 of Part 2.18A.

clean energy advance daily rate has the meaning given by section 914E.

clean energy advance period means:

(a) for a person qualifying under section 914 for a clean energy advance—the period starting on 1 July 2012 and ending on 19 March 2013; or

(b) for a person qualifying under subsection 914A(1) or (2) for a clean energy advance—the period starting on 1 July 2012 and ending on 30 June 2013; or

(c) for a person qualifying under subsection 914A(3) for a clean energy advance—the period starting on 1 July 2013 and ending on 31 December 2013.

clean energy bonus under an Act or scheme means any of the following that is provided for by the Act or scheme:

(a) a payment known as a clean energy advance;

(b) a payment known as an energy supplement or a quarterly energy supplement;
(c) an increase that is described using the phrase "energy supplement" and affects the rate of another payment that is provided for by the Act or scheme.

clean energy payment means:
(a) clean energy advance; or
(b) quarterly energy supplement; or
(d) an essential medical equipment payment.

clean energy qualifying payment, for a person, means:
(a) for a person qualifying under section 914 for a clean energy advance—the social security payment set out in subsection 914(4) that the person is receiving on the advance qualification day; or
(b) for a person qualifying under section 914A for a clean energy advance—the social security payment set out in subsection 914A(5) that the person is receiving on the advance qualification day.

close family member has the meaning given by subsection 1061PAA(4).

combined couple rate of minimum pension supplement has the meaning given by subsection 20A(2).

combined couple rate of pension supplement has the meaning given by subsection 20A(1).

commencement day in relation to an income stream: see subsection 9(1).

Commonwealth Accommodation Scholarship means a scholarship of that name provided for under the Commonwealth Scholarships Guidelines made for the purposes of Part 2-4 of the *Higher Education Support Act 2003*.

Commonwealth Education Costs Scholarship means any scholarship provided to assist with education costs under the Commonwealth Scholarships Guidelines made for the purposes of Part 2-4 of the *Higher Education Support Act 2003*.

comparable foreign payment means a payment-type that is:

(a) available from a foreign country; and

(b) similar to a social security pension.

compensation: see section 17.

compensation affected payment: see subsection 17(1).

compensation part in relation to a lump sum compensation payment: see subsection 17(1).

compensation payer: see subsection 17(1).

compliance penalty period, in relation to a person, means:

(aa) for a person other than a declared program participant—any of the following periods during which a participation payment (within the meaning of the Administration Act) is not payable to the person:

(i) a payment suspension period (within the meaning of that Act);

(ii) an unemployment preclusion period (within the meaning of that Act);

(iii) a post-cancellation non-payment period (within the meaning of that Act); or

(a) for a declared program participant—a period during which a participation payment (within the meaning of the Administration Act) is not payable because of subsection 42P(1) (serious failures) or 42S(1) (unemployment non-payment periods) of that Act; or

(b) in any case—a period during which youth allowance is not payable to the person because of section 550B or 551 of this Act; or

OFFICIAL: Sensitive // Legal Privilege

(c) in any case—a period during which austudy payment is not payable to the person because of section 576A or 577 of this Act.

computer means a device that is used by the Department for storing or processing information.

concession card: see subsection 6A(1).

current figure: see subsection 20(1).

current period as an Australian resident, of a person in relation to parenting payment, youth allowance or jobseeker payment, is a period that satisfies both the following conditions:

(a) the person has been an Australian resident for the entire period;

(b) the person lodged the claim for the payment or allowance during the period.

current special educational assistance scheme means:

(a) the Assistance for Isolated Children Scheme; or

(b) the ABSTUDY Scheme (also known as the Aboriginal Study Assistance Scheme).

dad and partner pay: see subsection 8(1).

daily accommodation contribution: see subsection 11(1).

daily accommodation payment: see subsection 11(1).

decision has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

Note: Subsection 3(3) of the *Administrative Appeals Tribunal Act 1975* defines ***decision*** as including:

- making, suspending, revoking or refusing to make an order or determination;
- giving, suspending, revoking or refusing to give a certificate, direction, approval, consent or permission;
- issuing, suspending, revoking or refusing to issue a licence, authority or other instrument;

- imposing a condition or restriction;
- making a declaration, demand or requirement;
- retaining, or refusing to deliver up, an article;
- doing or refusing to do any other act or thing.

declared overseas terrorist act means a terrorist act in respect of which there is a declaration under subsection 35B(1).

declared program participant means a person who is a participant, in accordance with the applicable provisions (if any) of a determination made under section 28C, in an employment services program specified in that determination.

deductible amount in relation to a defined benefit income stream for a year: see subsection 9(1).

Defence Force Income Support Allowance or ***DFISA*** means Defence Force Income Support Allowance under Part VIIAB of the Veterans' Entitlements Act.

deferred payment amount in relation to a sale leaseback agreement: see subsections 12B(6), (7) and (8).

defined benefit income stream: see subsection 9(1F).

departure authorisation certificate means a certificate under Division 4 of Part 5.5.

departure prohibition order means an order under Division 1 of Part 5.5 (including such an order varied under Division 3 of that Part).

dependant:

(a) in relation to a person who is the holder of a pensioner concession card or an automatic issue health care card (other than a health care card for which the person is qualified under subsection 1061ZK(4))—see section 6A; or

(b) in relation to a person who is the holder of a health care card for which the person is qualified under subsection 1061ZK(4)

OFFICIAL: Sensitive // Legal Privilege

or Subdivision B of Division 3 of Part 2A.1—see section 6A; or

(c) in relation to a person, other than a child in foster care, who has made a claim for a health care card—see section 6A.

dependent child: see subsections 5(2) to (8A).

deposit money: see subsection 8(1).

deprived asset: see subsection 9(4).

designated NDIS amount: see subsection 9(1).

disability expenses maintenance: see section 10.

Disaster Recovery Allowance means Disaster Recovery Allowance under Part 2.23B.

disposes of assets: see section 1123.

disposes of ordinary income: see sections 1106 to 1111.

disqualifying accommodation scholarship means:

(a) a scholarship:
  (i) provided for under Part 2-2A of the *Higher Education Support Act 2003* (Indigenous student assistance grants); and
  (ii) specified by the Secretary under subsection (24) of this section for the purposes of this subparagraph; or

(b) a Commonwealth Accommodation Scholarship.

disqualifying education costs scholarship means:

(a) a scholarship:
  (i) provided for under Part 2-2A of the *Higher Education Support Act 2003* (Indigenous student assistance grants); and
  (ii) specified by the Secretary under subsection (24) of this section for the purposes of this subparagraph; or

(b) a Commonwealth Education Costs Scholarship.

distance educator has the meaning given by section 5D.

domestic payment: see subsection 8(3).

double orphan: see sections 993 and 994.

early school leaver means a person who:

(a) is less than 22 years old; and

(b) has not completed the final year of secondary school, or an equivalent level of education; and

(c) is not undertaking full-time study.

earned, derived or received: see subsection 8(2).

educational institution means an education institution within the meaning of subsection 3(1) of the *Student Assistance Act 1973*.

EMEP residence has the meaning given by section 917A.

Employment Department means the Department administered by the Minister administering ~~the *Fair Entitlements Guarantee Act 2012*~~Division 3AA of Part 3 of the Administration Act.

employment income: see subsections 8(1), (1A) and (1B).

~~***employment pathway plan*** means:~~

~~(a) a Parenting Payment Employment Pathway Plan; or~~

~~(b) a Youth Allowance Employment Pathway Plan; or~~

~~(c) a Jobseeker Employment Pathway Plan; or~~

~~(d) a Special Benefit Employment Pathway Plan.~~

Employment Minister means the Minister who administers Division 3AA of Part 3 of the Administration Act.

employment pathway plan means an employment pathway plan under Division 2A of Part 3 of the Administration Act.

Employment Secretary means the Secretary of the Employment Department.

energy supplement, for a person, means the addition under the energy supplement Module (if any) of the relevant Rate Calculator when working out the rate of the person's social security payment.

enrolment test day has the meaning given by subsection 1061ZVDA(5).

essential medical equipment payment has the meaning given by section 917A.

event that gives rise to a person's entitlement to compensation: see subsection 17(5A).

exempt assets: see subsection 11(1).

exempt funeral investment has the meaning given by section 19E.

exempt lump sum: see subsection 8(11).

experiencing a personal financial crisis: see section 19DA.

external Territory does not include Norfolk Island, the Territory of Cocos (Keeling) Islands or the Territory of Christmas Island.

Family Assistance Act means the *A New Tax System (Family Assistance) Act 1999.*

Family Assistance Administration Act means the *A New Tax System (Family Assistance) (Administration) Act 1999.*

family assistance law has the meaning given by subsection 3(1) of the Family Assistance Administration Act.

family law affected income stream: see section 9C.

family law order means:

(a) a parenting order; or

(b) a family violence order within the meaning of section 4 of the *Family Law Act 1975*; or

(c) a State child order registered under Subdivision B of Division 13 of Part VII of that Act; or

(d) an overseas child order registered under Subdivision C of Division 13 of Part VII of that Act.

family member has the meaning given by subsections (14) and (15).

family tax benefit has the meaning given by the Family Assistance Act.

fares allowance means fares allowance under Part 2.26 or under the Social Security (Fares Allowance) Rules 1998, as the case may be.

financial asset: see subsection 9(1).

financial institution means a corporation that is an ADI for the purposes of the *Banking Act 1959*.

financial investment: see subsections 9(1) and (1D).

financial supplement means a loan that has been or may be made under a financial supplement contract as defined by section 19AB.

first available bereavement adjustment payday: see paragraph 21(2)(c).

fishing operations: see subsection 11(1).

Foreign Affairs Minister means the Minister administering the *Australian Passports Act 2005*.

forest operations: see subsection 11(1).

former payment type: see subsection 17(1).

former refugee: see subsection 7(1).

friendly society: see subsection 9(1).

FTB child has the meaning given by section 3 of the Family Assistance Act.

full-time student load for a course of study: see subsection (20).

full year course has the meaning given by subsection (10C).

funeral investment: see subsection 19E(3).

gainful employment: see section 19.

governing rules in relation to an income stream: see subsection 9(1).

Government rent: see subsections 13(1), (3AC) and (5).

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

granny flat resident: see subsection 12A(3).

~~***green army allowance*** means green army allowance paid under the Green Army Programme.~~

~~***Green Army Programme*** means the program administered by the Commonwealth and known as the Green Army Programme.~~

handicapped person: see section 19.

health care card means a card under Division 3 of Part 2A.1.

higher education institution means an institution that is a higher education institution for the purposes of the *Student Assistance Act 1973*.

holder in relation to a visa: see subsection 7(1).

Home Affairs Minister means the Minister administering the *Australian Security Intelligence Organisation Act 1979*.

home educator has the meaning given by section 5C.

home equity conversion agreement: see subsections 8(1) and (7).

homeowner: see subsection 11(4).

Human Services Department means Services Australia.

Human Services Secretary means the Chief Executive Officer of Services Australia.

illness separated couple: see subsection 4(7).

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

(a) who is a parent or step-parent of the person; or

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

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

(d) who is a sibling of the person.

Impairment Tables means the tables determined by an instrument under subsection 26(1).

in a care situation: see subsection 13(9).

income: see subsection 8(1).

income amount: see subsection 8(1).

income cut-out amount in relation to a person who has received a compensation payment: see subsections 17(1) and (8).

income from personal exertion: see subsection 8(1).

income maintenance period has the meaning given in points 1064-F4 and 1064-F5, 1066A-G4 and 1066A-G5, 1067G-H11 and 1067G-H12, 1067L-D5 and 1067L-D6, 1068-G7AG and 1068-G7AH, 1068A-E3 and 1068A-E4 and 1068B-D9 and 1068B-D10.

income stream: see subsections 9(1) and (1E).

income support payment means a payment of:

(a) a social security benefit; or

(aa) a job search allowance; or

(b) a social security pension; or

(c) a youth training allowance; or

(d) a service pension; or

(e) income support supplement; or
(f) a veteran payment.

income support supplement means income support supplement under Part IIIA of the Veterans' Entitlements Act.

Income Tax Assessment Act means the *Income Tax Assessment Act 1936* and the *Income Tax Assessment Act 1997*.

income-tested in relation to a health care card: see subsection 6A(1).

income year: see subsection 11(1).

independent:
(a) in Parts 2.11, 2.11B, 3.4A, 3.4B, 3.5 and 3.7—see section 1067A; and
(b) in Part 2.24A—see section 1061PL.

independently of a program of support: see subsection 16B(2).

index number: see subsections 20(1), (4) and (5).

in disability accommodation: see subsection (4C).

industrial action: see subsections 16(1) and (2).

ineligible homeowner: see subsection 13(1).

in gaol: see subsection (5).

initial payment amount in relation to a sale leaseback agreement: see subsection 12B(4).

in residential care: see subsection (4CA).

in severe financial hardship: see subsections 19C(2) and (3) and section 19D.

instalment of parental leave pay: see subsection 8(1).

instalment period, in relation to a person, means a period that is determined by the Secretary under section 43 of the *Social Security (Administration) Act 1999* to be an instalment period of the person.

invalid wife pension: see subsection 17(1).

investment:

(a) in relation to a superannuation fund or approved deposit fund—see subsection 9(9); or

(b) in relation to an ATO small superannuation account—see subsection 9(9A).

investor in relation to an ATO small superannuation account: see subsection 9(1).

involved in the commission of a declared overseas terrorist act has the meaning given by subsection 1061PAA(5).

job search allowance means job search allowance under this Act as previously in force.

joint ownership includes ownership as joint tenants or as tenants in common.

late starting course has the meaning given by subsection (10D).

life expectancy: see subsection 9(1).

liquid assets test waiting period: see sections 549A to 549C, 575A to 575C and 598.

listed security: see subsection 9(1).

living away from the person's parental home: see subsection (4D).

lone parent: a person is a lone parent on a particular day if, on that day:

(a) the person is not a member of a couple; and

(b) the person has a dependent child.

long-term social security recipient, as at a particular time, means:

(a) a person who, at that time, has had social security recipient status continuously for the previous 52 weeks; or

(b) a person:

(i) who has not, at that time, had social security recipient status continuously for the previous 52 weeks; and

(ii) who had social security recipient status at the beginning of the previous 52 weeks; and

(iii) who did not lose social security recipient status for more than 6 weeks of the previous 52 weeks.

Note: See also the definition of ***social security recipient status*** in this subsection.

main supporter of a secondary pupil child: see section 5G.

maintenance: see section 10.

maintenance income: see section 10.

major disaster means a disaster in respect of which a declaration is in force under section 36.

managed investment: see subsections 9(1A), (1B) and (1C).

maximum Part A rate of family tax benefit is the maximum rate worked out in step 1 of the method statement in clause 3 or 28A of Schedule 1 to the Family Assistance Act.

medical equipment has the meaning given by section 917A.

medical practitioner means a person registered and licensed as a medical practitioner under a State or Territory law that provides for the registration or licensing of medical practitioners.

medicare program has the same meaning as in the *Human Services (Medicare) Act 1973*.

member of a couple: see subsections 4(2), (3), (3A), (6) and (6A).

member of an ordinary couple with different principal homes: see subsection 12(2).

members of a trade union: see subsection 16(3).

mental hospital means premises in relation to which a declaration by the Secretary under section 30 is in force.

mental hospital patient means:

(a) a person who:
  (i) has been admitted to a mental hospital as a patient of the hospital; and
  (ii) is shown on the records of the hospital as a patient (other than an outpatient) of the hospital; or

(b) a person who:
  (i) is being transferred to a mental hospital; and
  (ii) will become a mental hospital patient within the meaning of paragraph (a) at that hospital; and
  (iii) immediately before being transferred, was a mental hospital patient within the meaning of paragraph (a) at another mental hospital.

military defined benefit income stream: see subsection 9(1).

Military Rehabilitation and Compensation Act or ***MRCA*** means the *Military Rehabilitation and Compensation Act 2004*.

Military Rehabilitation and Compensation Act Education and Training Scheme has the meaning given by the Family Assistance Act.

minimum pension supplement amount has the meaning given by subsection 20A(4).

~~***National Green Jobs Corps program*** means the program administered by the Commonwealth known as the National Green Jobs Corps Program.~~

~~***National Green Jobs Corps supplement*** means:~~

~~(a) an amount payable under subsection 503C(2) to a person receiving a parenting payment; or~~

~~(b) an amount payable under subsection 556B(2) to a person receiving youth allowance; or~~

~~(c) an amount payable under subsection 645(2) to a person receiving newstart allowance.~~

NDIS amount has the same meaning as in the *National Disability Insurance Scheme Act 2013*.

NDIS participant means a participant within the meaning of the *National Disability Insurance Scheme Act 2013*.

NDIS plan means a plan, for an NDIS participant, within the meaning of the *National Disability Insurance Scheme Act 2013*.

NEIS payment means a payment under the scheme known as the New Enterprise Incentive Scheme.

new apprentice means a person who satisfies the requirements determined in an instrument under subsection (7).

newly arrived resident's waiting period means:

(a) a carer payment newly arrived resident's waiting period under sections 201AA and 201AB; or

(b) a bereavement allowance newly arrived resident's waiting period under sections 322 and 323; or

(bb) a parenting payment newly arrived resident's waiting period under sections 500X and 500Y; or

(c) a youth allowance newly arrived resident's waiting period under section 549D; or

(ca) an austudy payment newly arrived resident's waiting period under section 575D; or

(cb) a pensioner education supplement newly arrived resident's waiting period under section 1061PU; or

(e) a jobseeker payment newly arrived resident's waiting period under sections 623A and 623B; or

(g) a special benefit newly arrived resident's waiting period under sections 732 and 739A; or

(h) a partner allowance newly arrived resident's waiting period under sections 771HC and 771HNA; or

(i) a carer allowance newly arrived resident's waiting period under sections 966 and 967; or

(j) a mobility allowance newly arrived resident's waiting period under sections 1039AA and 1039AB; or

(k) a seniors health card newly arrived resident's waiting period under section 1061ZH; or

(ka) a health care card newly arrived resident's waiting period under section 1061ZQ.

new PRC (temporary) entry permit: see subsection 7(1).

~~***nominated visa holder*** means a person to whom, in accordance with section 731, Subdivision AA of Division 1 of Part 2.15 applies.~~

nominated visa holder means a person who is:

(a) the holder of a visa that is included in a class of visas that is issued for temporary protection, humanitarian, or safe haven purposes and that is determined by the Minister to be a class of visas to which subparagraph 729(2)(g)(i) applies; and

(b) a person to whom subsection 729(2A) applies.

non-benefit parenting allowance means non-benefit parenting allowance under this Act as previously in force.

non-benefit PP (partnered): see section 18.

Northern Territory CDEP transition payment means a Northern Territory CDEP transition payment under Part 2.27.

not payable in relation to a social security payment: see subsection (16).

November earnings average: see subsections 20(1) and (6).

number of advance days has the meaning given by section 914F.

officer means a person performing duties, or exercising powers or functions, under or in relation to the social security law.

old PRC (temporary) entry permit: see subsection 7(1).

ordinary income: see subsection 8(1) and section 1072.

ordinary waiting period means:

(aa) a parenting payment ordinary waiting period under sections 500WA and 500WB; or

(ab) a youth allowance ordinary waiting period under sections 549CA and 549CB; or

(a) a jobseeker payment ordinary waiting period under sections 620 and 621.

original family law affected income stream: see section 9C.

parent: see subsection 5(1).

parenting allowance means parenting allowance under this Act as previously in force.

parenting order has the meaning given by section 64B of the *Family Law Act 1975*.

parenting payment: see section 18.

parenting plan has the meaning given by the *Family Law Act 1975*.

Part 2.23B major disaster means a disaster in respect of which a determination is in force under section 36A.

Part A rate of family tax benefit is the Part A rate of family tax benefit worked out under Part 2 or 3 of Schedule 1 to the Family Assistance Act.

partial capacity to work has the meaning given by section 16B.

participating in the pension loans scheme: see subsection (11).

participation failure instalment period:

(a) in relation to the payability of youth allowance—has the meaning given by subsection 550B(3); and
(b) in relation to the payability of austudy payment—has the meaning given by subsection 576A(3).

partner: see subsection 4(1).

partner bereavement payment: see subsection 21(1).

partnered: see paragraph 4(11)(a).

partnered (partner getting benefit): see paragraph 4(11)(e).

partnered (partner getting neither pension nor benefit): see paragraph 4(11)(b).

partnered (partner getting pension): see paragraph 4(11)(d).

partnered (partner getting pension or benefit): see paragraph 4(11)(c).

partnered (partner in gaol): see paragraph 4(11)(f).

partner of a non-independent YA recipient means a person who is a member of a couple the other member of which is receiving a youth allowance and is not independent within the meaning of Part 3.5.

payday, in relation to a person, means:
(a) if the person is receiving a social security pension, a social security benefit, a carer allowance, a double orphan pension or a pensioner education supplement—a day on which an instalment of the pension, benefit, supplement or allowance is, or would normally be, paid to the person; or

(b) if the person is receiving a service pension, income support supplement or a veteran payment—a day on which an instalment of the service pension, income support supplement or veteran payment is, or would normally be, paid to the person under the Veterans' Entitlements Act.

Note: Subsection 43(3E) of the Administration Act affects when an instalment is, or would normally be, paid to a person if the Secretary has determined under subsection 43(3A) of that Act that the person is to be paid the total amount of a social security periodic payment relating to an instalment period in 2 payments.

PBBP employment income (short for pension bonus bereavement payment employment income) has the meaning given by section 93WC.

pension age has the meaning given by subsections (5A), (5B), (5C) and (5D).

pension bonus means pension bonus under Part 2.2A (and does not include a pension bonus bereavement payment under Division 12 of that Part).

pension bonus bereavement payment means a pension bonus bereavement payment under Division 12 of Part 2.2A.

pensioner concession card means a card under Division 1 of Part 2A.1.

pensioner couple: see subsection 9(1).

pension payday means:

(a) the Thursday that falls on 4 July 1991; and

(b) each succeeding alternate Thursday up to, and including, Thursday 24 June 1999.

pension period means the instalment period of an instalment of a social security pension.

pension PP (single): see section 18.

pension supplement amount, for a person, means the amount added under the pension supplement Module (if any) of the Rate Calculator when working out the rate of the person's social security payment.

pension supplement basic amount has the meaning given by subsection 20A(5).

pension year: see subsections 11(10) and (10AAA).

periodic payments period: see subsection 17(1).

permanent visa: see subsection 7(1).

person with medical needs has the meaning given by section 917A.

physical impairment includes sensory impairment.

physically present in a remote area: see subsection 14(2).

potential compensation payer: see subsection 17(1).

prescribed educational scheme: see subsection 5(1).

prescribed student child: see subsection 5(11).

primary FLA income stream: see section 9C.

primary producer: see subsection 11(1).

primary production: see subsection 11(1).

primary victim of a declared overseas terrorist act has the meaning given by subsection 1061PAA(2).

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

principal carer of a child: see subsections 5(15) to (24).

principal home: see section 11A.

OFFICIAL: Sensitive // Legal Privilege

program of assistance means:

(a) a program approved under section 28A; or

(b) a program offered as part of the competitive employment training and placement services as defined by section 7 of the *Disability Services Act 1986.*

prohibited relationship has the meaning given by subsections 4(12) and (13).

proprietary company has the same meaning as in the *Corporations Act 2001*.

protected information means:

(a) information about a person that:

(i) was obtained by an officer under the social security law; and

(ii) is or was held in the records of the Department; or

(aa) information about a person that:

(i) was obtained by an officer under the social security law; and

(ii) is or was held in the records of the Human Services Department within the meaning of this Act as in force at any time; or

(b) information about a person obtained by an officer under the family assistance law that is or was held in the records of the Australian Taxation Office; or

(baa) information about a person that was held in the records of the Commonwealth Services Delivery Agency (within the meaning of the *Commonwealth Services Delivery Agency Act 1997* as in force before 1 July 2011); or

(bab) information about a person that:

(i) was obtained by an officer under the family assistance law; and

(ii) was held in the records of Medicare Australia (within the meaning of the *Medicare Australia Act 1973* as in force before 1 July 2011); or

(ba) information about a person obtained by an officer under the family assistance law that was held in the records of the Health Insurance Commission; or

(c) information to the effect that there is no information about a person held in the records of one or more of the following:

(i) the Department;

(ii) the Human Services Department;

(iii) the Australian Taxation Office.

protected SCV holder: see subsections 7(2A), (2B), (2C) and (2D).

psychiatric confinement: see subsections (8) and (9).

public unit trust: see subsection 9(1).

purchase price in relation to an income stream: see subsection 9(1).

qualification period, for a student start-up loan, has the meaning given by section 19AA.

qualifying Australian residence: see subsection 7(5).

qualifying residence exemption: see subsections 7(6) and (6AA).

quarterly energy supplement means the separate social security payment described in Division 2 of Part 2.18A.

quarterly pension supplement means the separate social security payment described in subsection 1061VA(1).

reasonable security of tenure: see subsection 11A(10).

receive has the meaning given by subsections (2), (4), (4A) and (4AA).

receives compensation: see subsection 17(5).

refundable deposit: see subsection 11(1).

refundable deposit balance: see subsection 11(1).

registered and active foster carer has the meaning given by section 5B.

registered charity means an entity that is registered under the *Australian Charities and Not-for-profits Commission Act 2012* as the type of entity mentioned in column 1 of item 1 of the table in subsection 25-5(5) of that Act.

registered parenting plan has the meaning given by the *Family Law Act 1975*.

registered public benevolent institution means an institution that is:

(a) a registered charity; and

(b) registered under the *Australian Charities and Not-for-profits Commission Act 2012* as the subtype of entity mentioned in column 2 of item 14 of the table in subsection 25-5(5) of that Act.

registered religious institution means an institution that is:

(a) a registered charity; and

(b) registered under the *Australian Charities and Not-for-profits Commission Act 2012* as the subtype of entity mentioned in column 2 of item 4 of the table in subsection 25-5(5) of that Act.

regular care child has the meaning given by subsection 3(1) of the Family Assistance Act.

rehabilitation program means:

(a) a rehabilitation program under Part III of the *Disability Services Act 1986*; or

(b) a follow-up program in relation to which a determination by the Secretary under section 31 is in force.

relationship child has the meaning given by subsection 5(25).

relationship parent has the meaning given by subsection 5(25).

relative (other than a parent): see section 5E.

relevant AWOTE: see subsection 16A(1).

relevant minimum wage, for an employee, means the minimum wage payable to the employee under law.

relevant number in relation to an income stream: see subsection 9(1).

remote area: see subsection 14(1).

rent: see section 13.

rent assistance child has the meaning given by subsection 3(1) of the Family Assistance Act.

Reserves means:

(a) the Naval Reserve; or

(b) the Army Reserve; or

(c) the Air Force Reserve.

residing in a nursing home: see subsection 13(8).

residual capital value in relation to an income stream: see subsections 9(1) and (10).

respite care couple: see subsection 4(8).

retirement savings account: see subsection 9(1).

retirement village: see subsections 12(3) and (4).

retirement village resident: see subsection 12(5).

return:

(a) in relation to an ATO small superannuation account—see subsection 9(1); or

(b) in relation to any other investment in the nature of superannuation—see subsection 9(1).

sale leaseback agreement: see subsections 12B(2) and (3).

sale leaseback home: see subsection 12B(9).

sale leaseback resident: see subsections 12B(10) and (11).

satisfies the employment pathway plan requirements: a person ***satisfies the employment pathway plan requirements*** if the following apply:

(a) the person enters into an employment pathway plan if required to do so by the Employment Secretary under subsection 40A(1) or (2) of the Administration Act;

(b) while an employment pathway plan is in force in relation to the person, the person satisfies the Employment Secretary that the person is complying with the requirements in the plan.

seasonal work: see subsections 16A(1), (1A) and (2).

seasonal work income: see subsection 16A(1).

seasonal work preclusion period: see subsections 16A(3) and (4).

secondary FLA income stream: see sections 9C and 9D.

secondary pupil child: see section 5F.

secondary victim of a declared overseas terrorist act has the meaning given by subsection 1061PAA(3).

Secretary means:

(a) except in relation to Subdivision D of Division 2 of Part 4A of the Administration Act—the Secretary of the Department; or

(b) in relation to Subdivision D of Division 2 of Part 4A of the Administration Act:

(i) in the review of a decision made by the Chief Executive Centrelink or a Departmental employee (within the meaning of the *Human Services (Centrelink) Act 1997*) as a delegate of the Secretary of the Department or of the Secretary of the Employment Department—the Chief Executive Centrelink; or

(iii) in the review of any other decision—the Secretary of the Department.

security notice means a notice under section 38N.

seniors health card means a card under Division 2 of Part 2A.1.

served the waiting period: see subsections (10) and (10A).

service payday means a pension payday within the meaning of the Veterans' Entitlements Act.

service pension means:

(a) an age service pension under Part III of the Veterans' Entitlements Act; or

(b) an invalidity service pension under Part III of the Veterans' Entitlements Act; or

(c) a partner service pension under Part III of the Veterans' Entitlements Act; or

(d) a carer service pension under Part III of the Veterans' Entitlements Act.

severely disabled: see subsection (4B).

sheltered employment: see section 19.

short course means a course of education that lasts for 30 weeks or less including vacations.

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

single person sharing accommodation: see section 5A.

social security benefit means:

(aa) widow allowance; or

(aab) youth allowance; or

(aac) austudy payment; or

(a) jobseeker payment; or

OFFICIAL: Sensitive // Legal Privilege

(d) special benefit; or
(e) partner allowance; or
(f) benefit PP (partnered); or
(g) parenting allowance (other than non-benefit allowance).

social security entitlement means:
(a) an age pension; or
(b) a disability support pension; or
(d) a carer payment; or
(e) a parenting payment; or
(g) a widow allowance; or
(ha) a youth allowance; or
(hb) an austudy payment; or
(i) a job search allowance; or
(j) a jobseeker payment.

Social Security (Fares Allowance) Rules 1998, in relation to a time after the commencement of Schedule 1 to the *Youth Allowance Consolidation Act 2000*, means those Rules as they continue in force under clause 126 of Schedule 1A.

social security law: see subsection (17).

social security payment means:
(a) a social security pension; or
(b) a social security benefit; or
(c) an allowance under this Act; or
(e) any other kind of payment under Chapter 2 of this Act; or
(ea) a payment under Chapter 2AA of this Act (Student start-up loans); or
(f) a pension, benefit or allowance under the 1947 Act.

social security pension means:
(a) an age pension; or
(b) a disability support pension; or
(d) a carer payment; or

(e) a pension PP (single); or
(ea) a sole parent pension; or
(k) a special needs pension.

social security recipient status, for the purposes of the definition of ***long-term social security recipient***, means:

(a) in the case of a person who is receiving a youth allowance, an austudy payment or jobseeker payment—status as a recipient of a social security pension, a social security benefit, a youth training allowance, an ABSTUDY allowance, an AUSTUDY allowance, a service pension or income support supplement; or
(b) in any other case—status as a recipient of a social security pension, a social security benefit, a youth training allowance, a service pension, income support supplement or a veteran payment;

and includes status held on or after 20 March 2000 as a CDEP Scheme participant receiving the CDEP Scheme Participant Supplement.

sole parent pension means sole parent pension under this Act as previously in force.

special category visa: see subsection 7(1).

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

special employment advance qualifying entitlement means:

(a) an austudy payment; or
(b) a carer payment; or
(c) a disability support pension; or
(f) a jobseeker payment; or
(g) a pension PP (single); or
(i) a widow allowance; or
(k) a youth allowance.

special needs disability support wife pension: see subsection 17(1).

special needs invalid wife pension: see subsection 17(1).

special residence: see subsection 12C(2).

special resident: see subsection 12C(3).

step-child: see subsection 5(1).

step-parent: see subsection 5(1).

student child: see subsection 5(1A).

Student Financial Supplement Scheme means:

(a) the scheme constituted by Part 4A of the *Student Assistance Act 1973*; or

(b) the scheme established under Chapter 2B of this Act.

student income bank: see subsection 8(1).

student start-up loan has the meaning given by section 19AA.

study includes vocational training.

subject to a seasonal work preclusion period: see subsection 16A(11).

~~***subject to participation requirements***: a person is subject to participation requirements if, because of paragraph 500(1)(c) or (1)(ca), the person cannot be qualified for parenting payment unless the person meets any participation requirements that apply to the person under section 500A.~~

superannuation benefit: see subsection 9(1).

superannuation contributions surcharge: see subsection 9(1).

superannuation fund: see subsection 9(1).

TAFE institution means an institution that is a technical and further education institution for the purposes of the *Student Assistance Act 1973*.

taxable income has the same meaning as in the Income Tax Assessment Act.

tax-exempt pension supplement has the meaning given by subsection 20A(6).

tax file number has the same meaning as in Part VA of the Income Tax Assessment Act.

tax year has the same meaning as ***year of income*** has in the Income Tax Assessment Act.

Note: Section 6 of the Income Tax Assessment Act defines ***year of income*** as the financial year (1 July to 30 June) or, if another accounting period has been adopted under section 18 of that Act instead of the financial year, that accounting period.

temporarily separated couple: see subsection 4(9A).

terrorist act has the same meaning as in subsection 100.1(1) of the *Criminal Code*.

TFN declaration has the same meaning as in Part VA of the *Income Tax Assessment Act 1936*.

this Act means this Act as originally enacted or as amended and in force at any time.

trade union: see subsection 16(1).

~~***training supplement*** means:~~

~~(a) an amount payable under subsection 503B(2) to a person receiving a parenting payment; or~~

~~(b) an amount payable under subsection 644AAC(2) to a person receiving newstart allowance.~~

transfer day, in relation to a transferee to a social security pension or benefit, has the same meaning as in the Administration Act.

transferee, in relation to a social security pension or benefit, has the same meaning as in the Administration Act.

OFFICIAL: Sensitive // Legal Privilege

transitional DSP applicant means a person:

(a) who made a claim for a disability support pension on or after 11 May 2005 and before 1 July 2006; and

(b) to whom, on or after 1 July 2006, a notice under subsection 63(2) or (4) of the Administration Act is given; and

(c) who is required under the notice to undertake a specified activity for the purpose of reviewing his or her capacity to perform work.

transition day, for a person affected by Part 2.27 (Northern Territory CDEP transition payment), has the meaning given by section 1061ZAAM.

treating health professional: see section 38F.

unavoidable or reasonable expenditure: see subsection 19C(4).

undertaking full-time study has the meaning given in section 541B.

unemployment: see subsection 16(1).

unlisted public security: see subsection 9(1).

unrealisable asset: see subsections 11(12) and (13).

unsuitable: particular paid work is ***unsuitable*** to be done by a person in the circumstances set out in section 40X of the Administration Act.

utilities allowance means utilities allowance under Part 2.25A.

value of a charge or encumbrance on an asset: see subsection 11(3).

value of a liability: see subsection 11(3A).

value of a particular asset: see subsection 11(2).

OFFICIAL: Sensitive // Legal Privilege

veteran payment means a veteran payment made under an instrument made under section 45SB of the *Veterans' Entitlements Act 1986*.

Veterans' Children Education Scheme has the meaning given by the Family Assistance Act.

Veterans' Entitlements Act or ***VEA*** means the *Veterans' Entitlements Act 1986*.

VET provider means a registered training organisation (within the meaning of the *National Vocational Education and Training Regulator Act 2011*) that provides vocational education and training.

visa: see subsection 7(1).

vocational training: see section 19.

waiting period means:

(aa) a carer payment newly arrived resident's waiting period under sections 201AA and 201AB; or

(ab) a bereavement allowance newly arrived resident's waiting period under sections 322 and 323; or

(ac) a parenting payment ordinary waiting period under sections 500WA and 500WB; or

(aca) a parenting payment newly arrived resident's waiting period under sections 500X and 500Y; or

(ad) a youth allowance ordinary waiting period under sections 549CA and 549CB; or

(ae) a youth allowance newly arrived resident's waiting period under sections 549D and 549E; or

(b) jobseeker payment ordinary waiting period under sections 620 and 621; or

(ca) a jobseeker payment newly arrived resident's waiting period under sections 623A and 623B; or

(ka) a special benefit newly arrived resident's waiting period under sections 732 and 739A; or

OFFICIAL: Sensitive // Legal Privilege

(kb) a partner allowance newly arrived resident's waiting period under sections 771HC and 771HNA; or

(l) a carer allowance newly arrived resident's waiting period under sections 966 and 967; or

(n) a mobility allowance newly arrived resident's waiting period under sections 1039AA and 1039AB; or

(o) a seniors health card newly arrived resident's waiting period under section 1061ZA.

working credit participant: see subsection 8(1).

young person: see subsection 5(1B).

youth allowance participation failure has the meaning given by section 550.

youth allowance payment period means a period under section 43 of the Administration Act for which youth allowance is or may be payable.

youth training allowance means a youth training allowance under Part 8 of the *Student Assistance Act 1973* as previously in force.

(1A) Where:

(a) a provision of this Act refers to:

(i) the greater or greatest, or the higher or highest; or

(ii) the lesser or least, or the lower or lowest;

of 2 or more amounts; and

(b) the amounts are equal;

the provision is taken to refer to one only of the amounts.

(1B) Where:

(a) a provision of this Act refers to the greatest or highest of 3 or more amounts; and

(b) 2 or more (but not all) of the amounts are equal and exceed the other amount or other amounts;

the provision is taken to refer to one only of those equal amounts.

(1C) Where:

(a) a provision of this Act refers to the least or lowest of 3 or more amounts; and

(b) 2 or more (but not all) of the amounts are equal and are less than the other amount or other amounts;

the provision is taken to refer to one only of those equal amounts.

(1D) If, on a day that is on or after 20 September 2004:

(a) adjusted disability pension (within the meaning of section 118NA of the Veterans' Entitlements Act) is payable to a person or a person's partner; and

(b) apart from this subsection, a social security pension or social security benefit is not payable to the person, but only because the rate of the pension or benefit would be nil; and

(c) the rate of the social security pension or social security benefit would not be nil if the 2 assumptions (that relate to the adjusted disability pension) referred to in step 2 of method statement 1 in subsection 118NC(1) of the Veterans' Entitlements Act were made;

then, despite any other provision of this Act:

(e) the social security pension or social security benefit is taken to be payable to the person on that day; and

(f) the person is taken to be receiving the social security pension or social security benefit on that day.

Note: This subsection overrides provisions of this Act (for example, sections 44 and 98) that provide that a social security pension or social security benefit is not payable where the rate of the pension or benefit would be nil, but only where the rate would not be nil if the 2 assumptions referred to in paragraph (c) were made.

(2) For the purposes of this Act (other than section 735), a person is taken to be ***receiving*** a payment under this Act from the earliest day on which the payment is payable to the person even if the first instalment of the payment is not paid until a later day.

(4) For the purposes of this Act, a person is taken to be ***receiving*** a social security payment until the latest day on which the payment

OFFICIAL: Sensitive // Legal Privilege

is payable to the person even if the last instalment of the payment is not paid until a later day.

(4A) Despite subsection (4), if:

(a) a person is receiving a social security pension or social security benefit; and

(b) the person's rate of payment of the pension or benefit is worked out with regard to the income test module of a rate calculator in Chapter 3; and

(d) the person or the person's partner has employment income; and

(e) the person would, but for this subsection, cease to be receiving the pension or benefit on and from a day (the ***cessation day***):

(i) if paragraph (d) applies to the person—because of the employment income of the person (either alone or in combination with any other ordinary income earned, derived or received, or taken to have been earned, derived or received, by the person); or

(ii) if paragraph (d) applies to the partner—because of the employment income of the partner (either alone or in combination with any other ordinary income earned, derived or received, or taken to have been earned, derived or received, by the partner); and

(f) but for the employment income, or the combined income, referred to in paragraph (e), the pension or benefit would continue to be payable to the person on and from the cessation day; and

(g) the person continues to be qualified for the pension or benefit on and from the cessation day;

then, for the purposes only of the provisions of this Act that are specified in subsection (4AA), the person is taken to be ***receiving*** the pension or benefit until:

(h) 12 weeks after the end of the instalment period in which the cessation day occurs; or

(j) the day the pension or benefit would cease to be payable to the person for a reason other than the employment income, or the combined income, referred to in paragraph (e); or

(k) the day the person ceases to be qualified as mentioned in paragraph (g);

whichever happens first.

(4AA) For the purposes of subsection (4A), the following are the specified provisions of this Act:

(a) provisions in Chapter 2 that provide for an increase in a person's rate of payment by an amount to be known as the approved program of work supplement;

~~(aa) provisions in Chapter 2 that provide for an increase in a person's rate of payment by an amount to be known as the training supplement;~~

~~(ab) provisions in Chapter 2 that provide for an increase in a person's rate of payment by a National Green Jobs Corps supplement;~~

(ac) Part 2.6B (2020 economic support payments);

(ad) paragraph 313(2)(a);

(b) section 1048;

(c) section 1061PJ;

(d) section 1061Q;

(e) subsection 1061ZK(5);

(f) 1070W;

(g) 1070X;

(h) provisions within the income test module of a rate calculator in Chapter 3 prescribing the partner income free area or the partner income excess for a person.

(4B) For the purposes of this Act, a person is ***severely disabled*** if:

(a) a physical impairment, a psychiatric impairment, an intellectual impairment, or 2 or all of such impairments, of the person make the person, without taking into account any other factor, totally unable:

(i) to work for at least the next 2 years; and

(ii) unable to benefit within the next 2 years from participation in a program of assistance or a rehabilitation program; or

(b) the person is permanently blind.

(4C) For the purposes of this Act, a person is ***in disability accommodation*** if:

(a) the person:

(i) is in accommodation for people with disabilities; or

(ii) is:

(A) in accommodation that is not the principal home of the parents or a parent of the person; and

(B) receiving accommodation support services for people with disabilities; and

(b) the accommodation, or services, for people with disabilities are funded wholly or partly by the Commonwealth, a State or a Territory.

(4CA) For the purposes of this Act, a person is ***in residential care*** if the person is being provided with residential care through an aged care service conducted by an approved provider (within the meaning of the *Aged Care Quality and Safety Commission Act 2018*).

(4CB) An expression used in subsection (4CA) and in the *Aged Care Act 1997* has the same meaning in that subsection as in that Act.

(4D) For the purposes of this Act, a person is ***living away from the person's parental home*** if the person is living away from:

(a) where the person's parents have the same principal home—that home; or

(b) where the person has only one parent—the principal home of that parent; or

(c) where the person's parents have different principal homes—all of those homes.

(5) For the purposes of this Act, a person is ***in gaol*** if:

(a) the person is being lawfully detained (in prison or elsewhere) while under sentence for conviction of an offence and not on release on parole or licence; or

(b) the person is undergoing a period of custody pending trial or sentencing for an offence.

Pension age

(5A) A man born during the period specified in column 2 of an item in the following table reaches ***pension age*** when he turns the age specified in column 3 of that item.

Table—Pension age for men

Column 1 Item	Column 2 Period during which man was born	Column 3 Pension age
1	On or before 30 June 1952	65 years
2	1 July 1952 to 31 December 1953	65 years and 6 months
3	1 January 1954 to 30 June 1955	66 years
4	1 July 1955 to 31 December 1956	66 years and 6 months
5	On or after 1 January 1957	67 years

(5B) A woman born before 1 July 1935 reaches ***pension age*** when she turns 60.

(5C) A woman born within the period specified in column 2 of an item in the following Table reaches ***pension age*** when she turns the age specified in column 3 of that item.

Table—Pension age for women

Column 1 Item no.	Column 2 Period within which woman was born (both dates inclusive)	Column 3 Pension age
1.	From 1 July 1935 to 31 December 1936	60 years and 6 months
2.	From 1 January 1937 to 30 June 1938	61 years
3.	From 1 July 1938 to 31 December 1939	61 years and 6 months

Table—Pension age for women		
Column 1 **Item no.**	**Column 2** **Period within which woman was born (both dates inclusive)**	**Column 3** **Pension age**
4.	From 1 January 1940 to 30 June 1941	62 years
5.	From 1 July 1941 to 31 December 1942	62 years and 6 months
6.	From 1 January 1943 to 30 June 1944	63 years
7.	From 1 July 1944 to 31 December 1945	63 years and 6 months
8.	From 1 January 1946 to 30 June 1947	64 years
9.	From 1 July 1947 to 31 December 1948	64 years and 6 months

(5D) A woman born during the period specified in column 2 of an item in the following table reaches ***pension age*** when she turns the age specified in column 3 of that item.

Table—Pension age for women		
Column 1 **Item**	**Column 2** **Period during which woman was born**	**Column 3** **Pension age**
1	1 January 1949 to 30 June 1952	65 years
2	1 July 1952 to 31 December 1953	65 years and 6 months
3	1 January 1954 to 30 June 1955	66 years
4	1 July 1955 to 31 December 1956	66 years and 6 months
5	On or after 1 January 1957	67 years

New apprentice

(7) The Minister may, by legislative instrument, determine requirements for the purposes of the definition of ***new apprentice*** in subsection (1).

Psychiatric confinement

(8) Subject to subsection (9), ***psychiatric confinement*** in relation to a person includes confinement in:

(a) a psychiatric section of a hospital; and

(b) any other place where persons with psychiatric disabilities are, from time to time, confined.

(9) The confinement of a person in a psychiatric institution during a period when the person is undertaking a course of rehabilitation is not to be taken to be ***psychiatric confinement***.

Served the waiting period

(10) If a person is subject to an ordinary waiting period for a social security benefit or social security pension, the person is to be taken to have ***served the waiting period*** if, and only if:

(a) the waiting period has ended; and

(b) the person was, throughout the waiting period, qualified for the social security benefit.

Note: For ***ordinary waiting period*** see subsection (1).

(10A) If a person is subject to a liquid assets test waiting period for a social security benefit, the person is to be taken to have ***served the waiting period*** if, and only if:

(a) the waiting period has ended; and

(b) the person was, apart from the liquid assets test provision concerned, qualified for the benefit throughout so much of the waiting period as occurs after the claim for the benefit was made.

(10B) For the purposes of subsection (10A), the liquid assets test provisions are sections 549A to 549C, 575A to 575C and 598.

(10C) For the purposes of this Act:

full year course means:

(a) a course of education that starts:

(i) on 1 January; or

(ii) after 1 January and before 1 April; or

(iii) on 1 July; or

(iv) after 1 July and before 1 August;

and lasts for more than 30 weeks (including vacations); or

(b) an articulated short course sequence whose first course starts:
(i) on 1 January; or
(ii) after 1 January and before 1 April; or
(iii) on 1 July; or
(iv) after 1 July and before 1 August;
and the length of whose courses (including vacations) add up to more than 30 weeks.

(10D) For the purposes of this Act:

late starting course means:
(a) a course of education that starts:
(i) on 1 April; or
(ii) after 1 April and before 1 July; or
(iii) after 31 July;
and lasts for more than 30 weeks (including vacations); or
(b) an articulated short course sequence whose first course starts:
(i) on 1 April; or
(ii) after 1 April and before 1 July; or
(iii) after 31 July;
and the length of whose courses (including vacations) add up to more than 30 weeks.

(10E) In subsections (10C) and (10D):

articulated short course sequence means a sequence of 2 or more articulated short courses that:
(a) is undertaken by a person during a 12 month period; and
(b) begins on the first day of the first course in the sequence; and
(c) ends at the end of the last day of the last course in the sequence.

(10F) For the purposes of subsection (10E), if:
(a) a person undertakes at least 2 short courses of education; and
(b) the person starts the second short course and (if applicable) each subsequent short course:

(i) within 28 days after completing the immediately preceding short course; or

(ii) within such longer period after completing the immediately preceding short course as the Secretary approves on being satisfied that this was due to circumstances beyond the person's control; and

(c) each of the short courses is an approved course of education or study within the meaning of paragraph 1061PB(1)(b); and

(d) the person may, as a result of undertaking each of the short courses, receive an accreditation or an award from an educational institution for another approved course of education or study within the meaning of paragraph 1061PB(1)(b);

each of the short courses is an ***articulated short course***.

Participation in pension loans scheme

(11) For the purposes of this Act, a person is ***participating in the pension loans scheme*** if:

(a) the person has made a request to participate in the scheme under section 1136; and

(b) because of the request, the rate of the pension payable to the person is the rate covered by paragraph 1134(1)(e); and

(c) the person owes a debt to the Commonwealth under section 1135.

(12) If:

(a) section 237 of the Administration Act applies to a notice of a decision under this Act; or

(b) sections 28A and 29 of the *Acts Interpretation Act 1901* (the ***Interpretation Act***) apply to a notice under this Act;

section 237 of the Administration Act, or sections 28A and 29 of the Interpretation Act, as the case may be, apply to the notice even if the Secretary is satisfied that the person did not actually receive the notice.

OFFICIAL: Sensitive // Legal Privilege

(14) For the purposes of this Act other than Part 2.11 and the Youth Allowance Rate Calculator in section 1067G, each of the following is a ***family member*** in relation to a person (the ***relevant person***):

(a) the partner or a parent of the relevant person;

(b) a sister, brother or child of the relevant person;

(c) any other person who, in the opinion of the Secretary, should be treated for the purposes of this definition as one of the relevant person's relations described in paragraph (a) or (b).

Note: For parent see subsection 5(1), paragraph (a) of the definition of ***parent***.

(15) For the purposes of Part 2.11 and the Youth Allowance Rate Calculator in section 1067G, each of the following is a ***family member*** in relation to a person (the ***relevant person***):

(a) a parent of the relevant person;

(b) a child of a parent of the relevant person who is wholly or substantially dependent on the parent, being either a child under 16 or a child who:

(i) is at least 16 years of age but has not yet attained the maximum age for youth allowance under section 543B (disregarding subsection 543B(2)); and

(ii) is not independent (see section 1067A); and

(iii) is not receiving a pension, benefit or allowance referred to in Module L of the Rate Calculator.

Note: For parent see subsection 5(1), paragraph (b) of the definition of ***parent***.

(16) A reference in this Act to a social security payment being not payable includes a reference to its being not payable under the Administration Act.

(17) For the purposes of this Act, the ***social security law*** is:

(a) this Act; and

(b) the Administration Act; and

(c) any other Act, or provision of an Act, that is expressed to form part of the social security law; and

(d) a legislative instrument made under an Act or provision referred to in paragraph (a), (b) or (c).

(20) For the purposes of this Act, a ***full-time student load***, for a course of study, is the study load represented by units of study, forming part of the course, that have a total EFTSL value of one EFTSL.

(21) Expressions used in subsection (20) that are defined in the *Higher Education Support Act 2003* have in that subsection, unless the contrary intention appears, the same meaning as in that Act.

(22) For the purposes of this Act, if one person is the relationship child of another person, relationships traced to or through the person are to be determined on the basis that the person is the child of the other person.

(23) Subsection (22) does not apply for the purposes of determining when a person and his or her partner are within a prohibited relationship under subsection 4(12).

Indigenous student assistance scholarships

(24) The Secretary may, by legislative instrument, specify a scholarship for the purposes of:

(a) subparagraph (a)(ii) of the definition of ***disqualifying accommodation scholarship*** in subsection (1); or

(b) subparagraph (a)(ii) of the definition of ***disqualifying education costs scholarship*** in subsection (1).

OFFICIAL: Sensitive // Legal Privilege

Part 1.3—Determinations having interpretative effect

24 Person may be treated as not being a member of a couple (subsection 4(2))

(1) Where:

(a) a person is legally married to another person; and

(b) the person is not living separately and apart from the other person on a permanent or indefinite basis; and

(c) the Secretary is satisfied that the person should, for a special reason in the particular case, not be treated as a member of a couple;

the Secretary may determine, in writing, that the person is not to be treated as a member of a couple for the purposes of this Act.

(1A) If:

(a) a relationship between a person and another person (whether of the same sex or a different sex) is registered under a law of a State or Territory prescribed for the purposes of section 2E of the *Acts Interpretation Act 1901* as a kind of relationship prescribed for the purposes of that section; and

(b) the person is not living separately and apart from the other person on a permanent or indefinite basis; and

(c) the Secretary is satisfied that the person should, for a special reason in the particular case, not be treated as a member of a couple;

the Secretary may determine, in writing, that the person is not to be treated as a member of a couple for the purposes of this Act.

(2) Where:

(a) a person has a relationship with another person, whether of the same sex or a different sex (the ***partner***); and

(b) the person is not legally married to the partner; and

OFFICIAL: Sensitive // Legal Privilege

(c) the relationship between the person and the partner is a de facto relationship; and

(d) the Secretary is satisfied that the person should, for a special reason in the particular case, not be treated as a member of a couple;

the Secretary may determine, in writing, that the person is not to be treated as a member of a couple for the purposes of this Act.

(3) A determination made under subsection (1), (1A) or (2) is not a legislative instrument.

24A Approved scholarship

(1) The Minister may determine in writing that a scholarship, or a class of scholarships:

(a) awarded outside Australia; and

(b) not intended to be used wholly or partly to assist recipients to meet living expenses;

is an approved scholarship, or a class of approved scholarships, as the case may be, for the purposes of this Act.

(2) The Minister must cause a copy of a determination to be laid before each House of the Parliament within 15 sitting days of that House after the determination is made.

25 Refugee visas

If:

(a) after the commencement of this section, a class of permanent visas (other than a class referred to in the Table in subsection 7(6B)) is prescribed by regulations made for the purposes of section 31 of the *Migration Act 1958*; and

(b) the Minister is of the view that a person holding a visa of that class should be regarded as a refugee for the purposes of section 7;

the Minister may, by legislative instrument, declare that class of visas to be a class of visas for the purposes of subparagraph 7(6B)(c)(iii).

OFFICIAL: Sensitive // Legal Privilege

26 Impairment Tables and rules for applying them

Impairment Tables

(1) The Minister may, by legislative instrument, determine tables relating to the assessment of work-related impairment for disability support pension.

(2) An instrument under subsection (1) may contain such ancillary or incidental provisions relating to those tables as the Minister considers appropriate.

Rules for applying Impairment Tables

(3) The Minister may, in an instrument under subsection (1), determine rules that are to be complied with in applying the tables referred to in subsection (1) and the provisions referred to in subsection (2).

(4) An instrument under subsection (1) may contain such ancillary or incidental provisions relating to those rules as the Minister considers appropriate.

27 Application of Impairment Tables

Claims for disability support pension

(1) If a person makes a claim, or is taken to have made a claim, for disability support pension, the Secretary, in determining the claim, must apply the instrument in force under section 26 on the day the claim was made or taken to have been made.

Note: Sections 12, 13 and 15 of the Administration Act and clause 4 of Schedule 2 to that Act deal with claims for disability support pension that are taken to have been made.

(2) If:

(a) the Secretary makes a decision (the ***original decision***) relating to a claim referred to in subsection (1); and

(b) the Secretary or the AAT is reviewing the original decision or a later decision arising out of the original decision;

the Secretary or the AAT, in making a decision on the review, must apply the instrument in force under section 26 on the day the claim was made or taken to have been made.

Note: The effect of this subsection is that any change to the instrument under section 26 from the making of the claim to the making of a decision on the review must be disregarded.

Review of qualification for disability support pension

(3) If:

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

(b) the Secretary gives the person a notice (the ***assessment notice***) under subsection 63(2) or (4) of the Administration Act in relation to assessing the person's qualification for that pension;

the Secretary, in assessing the person's qualification for that pension, must apply the instrument in force under section 26 of this Act on the day the assessment notice was given.

(4) If:

(a) after assessing the person's qualification for that pension, the Secretary makes a determination under section 80 of the Administration Act in relation to that pension; and

(b) the Secretary or the AAT is reviewing that determination or a later decision arising out of that determination;

the Secretary or the AAT, in making a decision on the review, must apply the instrument in force under section 26 of this Act on the day the assessment notice was given.

Note: The effect of this subsection is that any change to the instrument under section 26 from the giving of the assessment notice to the making of a decision on the review must be disregarded.

OFFICIAL: Sensitive // Legal Privilege

28 Approved programs of work for income support payment

(1) The Secretary may ~~declare, in writing,~~ by legislative instrument, declare particular programs of work to be approved programs of work for income support payment.

(2) The Secretary must not declare a particular program of work to be an approved program of work for income support payment if persons participating in the program would be required to work:

(a) if the persons are under 21 and subsection (4) does not apply to them—more than 24 hours in each fortnight of their respective participation in the program; and

(b) if the persons are not under 21 and subsection (4) does not apply to them—more than 30 hours for each fortnight of their respective participation in the program; and

(c) if subsection (4) applies to the persons—more than 50 hours for each fortnight of their respective participation in the program.

(3) For the purposes of subsection (2), each fortnight of participation in the program is a fortnight in respect of which the person receives a social security payment.

(4) This subsection applies to a person if:

(a) the person is under 60; and

(b) the Secretary determines that the person is a person to whom this subsection applies.

(5) The Secretary may determine either one or both of the following by legislative instrument:

(a) matters that the Secretary is to take into account in making a determination under paragraph (4)(b);

(b) matters that the Secretary is not to take into account in making a determination under paragraph (4)(b).

(6) A determination under subsection (5) does not, to the extent that it is a determination under paragraph (5)(a), limit the matters that the Secretary may take into account in making a determination under paragraph (4)(b).

OFFICIAL: Sensitive // Legal Privilege

28A Approval of programs of assistance

The Secretary may, by writing, approve:

(a) a course of vocational training; or

(b) a labour market program; or

(c) another course or program;

(other than a rehabilitation program) as a program of assistance for the purposes of this Act.

~~**28B Approved training courses for training supplement**~~

~~(1) The Secretary may approve a training course for training supplement for a person if:~~

~~(a) subsection (2) applies in relation to the person; and~~

~~(b) subsection (3) applies in relation to the course; and~~

~~(c) the Secretary is satisfied that the person will meet the requirements set out in paragraph (4)(a) or (b).~~

~~(2) This subsection applies in relation to the person if:~~

~~(a) the person has not completed the final year of secondary school or an equivalent level of education; or~~

~~(b) the person:~~

~~(i) has been awarded a VET qualification accredited at Certificate I, Certificate II, Certificate III or Certificate IV level in the Australian Qualifications Framework; and~~

~~(ii) is not studying for, and has not been awarded, a qualification accredited at diploma level or higher in the Australian Qualifications Framework.~~

~~(3) This subsection applies in relation to the course if:~~

~~(a) the course lasts not more than 12 months; and~~

~~(b) the course:~~

~~(i) is accredited at Certificate I, Certificate II, Certificate III or Certificate IV level in the Australian Qualifications Framework; or~~

~~(ii) in the Secretary's opinion, is equivalent to a course accredited at any of those levels; and~~

~~(c) in a case where paragraph (2)(b) applies in relation to the person, the course:~~

~~(i) leads to a qualification that, in the Australian Qualifications Framework, is directly related to, and at a higher level than, the person's VET qualification; or~~

~~(ii) would, in the Secretary's opinion, enhance the person's prospects of employment by allowing the person to acquire skills in a trade or field other than the trade or field covered by the person's VET qualification.~~

~~(4) The requirements referred to in paragraph (1)(c) are that:~~

~~(a) the person will be a full-time student in respect of the course within the meaning given by section 569C; or~~

~~(b) if the person has a partial capacity to work or is the principal carer of at least one child—the person will undertake a number of hours of study per week in respect of the course as is reasonable in the person's circumstances.~~

~~(5) In this section:~~

~~***Australian Qualifications Framework*** has the meaning given by the *Higher Education Support Act 2003*.~~

28C Declared program participants

(1) The Secretary may, by legislative instrument, make a determination for the purposes of the definition of ***declared program participant*** in subsection 23(1).

(2) The determination may provide for the operation of the social security law in relation to a person who becomes, or stops being, a declared program participant at a particular time (including in relation to things that happened before that time).

29 Approval of friendly societies

The Secretary may determine that:

OFFICIAL: Sensitive // Legal Privilege

(a) a friendly society; or
(b) a person or body that, in the Secretary's opinion:
(i) is similar in character to a friendly society; and
(ii) provides benefits similar to the benefits provided by a friendly society;

is an ***approved friendly society*** for the purposes of this Act.

30 Approval of mental hospitals

If the Secretary is satisfied that accommodation for persons with a mental disability is provided at particular premises, he or she may declare the premises to be a mental hospital for the purposes of this Act.

31 Approval of follow-up rehabilitation programs

The Secretary may determine that:
(a) a follow-up program under Part III of the *Disability Services Act 1986*; or
(b) each of the programs included in a class of follow-up programs under that Part;

are follow-up programs for the purposes of this Act.

32 Approval of sheltered employment—non-profit organisation

(1) If the Secretary is satisfied that:
(a) one of the following provides paid employment for disabled persons at certain premises:
(i) an entity registered under the *Australian Charities and Not-for-profits Commission Act 2012*;
(ii) a not-for-profit entity that is not an ACNC type of entity; and
(b) at least 50% of the persons employed at the premises are disabled persons;

the Secretary may determine that the paid employment provided at the premises by the organisation is sheltered employment.

OFFICIAL: Sensitive // Legal Privilege

Note: ***Sheltered employment*** is relevant to the definition of ***gainful employment*** in section 19.

(2) For the purposes of subsection (1), a ***disabled person*** is a person:

(a) who is:

(i) permanently incapacitated for work; and

(ii) the degree of the incapacity for work is 85% or more; and

(iii) 50% or more of the incapacity for work is directly caused by a physical or mental impairment; or

(b) who, in the Secretary's opinion, would satisfy paragraph (a) if the person were no longer engaged in paid employment.

33 Approval of sheltered employment—supported employment

(1) If:

(a) the Minister administering the *Disability Services Act 1986* has approved a grant of financial assistance to a non-profit organisation under subsection 10(1) of that Act; and

(b) the financial assistance relates to the provision by the organisation of supported employment services within the meaning of section 7 of that Act;

the Secretary may determine that the paid employment to which those supported employment services relates is sheltered employment.

Note: ***Sheltered employment*** is relevant to the definition of ***gainful employment*** in section 19.

(2) Subject to subsection (3), a determination under subsection (1) may relate to employment provided before or after the day of determination.

(3) A determination under subsection (1) may not relate to employment provided before 5 June 1987.

35 Approval of care organisation

(1) The Secretary may approve:

OFFICIAL: Sensitive // Legal Privilege

(a) an organisation registered under the *Australian Charities and Not-for-profits Commission Act 2012*; and

(b) an organisation that is not an ACNC type of entity;

that co-ordinates or provides residential care services to young people in Australia, as an approved care organisation, for the purposes of this Act.

(2) The Secretary may approve, under subsection (1), a registered charity which is wholly or partly funded by contributions from:

(a) the Consolidated Revenue Fund of the Commonwealth; or

(b) the consolidated revenue of a State or of the Australian Capital Territory or the Northern Territory.

35A Personal Care Support

The Minister may, in writing, determine that a scheme for the provision of personal care support is an approved scheme for the purposes of this Act.

35B Declared overseas terrorist act

(1) The Prime Minister may, by legislative instrument, declare that a terrorist act that occurs outside Australia is a declared overseas terrorist act.

(2) If the Prime Minister makes a declaration under subsection (1), then the Minister is taken to have made a determination under subsection 36(1) that the terrorist act is a major disaster.

36 Major disaster

(1) The Minister may determine in writing that an event is a major disaster if:

(a) the Minister is satisfied that the event is a disaster that has such a significant impact on individuals that a government response is required; or

(b) if a national emergency declaration (within the meaning of the *National Emergency Declaration Act 2020*) is in force—the event is an emergency to which the declaration relates.

Note: If the Prime Minister makes a declaration under subsection 35B(1) that a terrorist act is a declared overseas terrorist act, the Minister is taken to have made a determination under subsection (1) of this section that the terrorist act is a major disaster (see subsection 35B(2)).

(1A) In deciding whether to make a determination under paragraph (1)(b), the Minister may have regard to the matter in paragraph (1)(a).

(2) Without limiting the matters to which the Minister may have regard in considering the impact of the event on individuals, the Minister must have regard to:

(a) the number of individuals affected; and

(b) the extent to which the nature or extent of the disaster is unusual.

(3) The event:

(a) may be one that occurs naturally or otherwise; and

(b) may be one that occurs in Australia or outside Australia.

(4) If the same event has an impact in 2 or more locations, the Minister may:

(a) make a single declaration under this section relating to some or all of the locations; or

(b) make 2 or more declarations under this section, each relating to one or more of the locations (whether or not the declarations cover all of the locations).

However, the Minister must not make a determination that relates both to a location in Australia and a location outside Australia.

(5) A determination made under this section is not a legislative instrument.

OFFICIAL: Sensitive // Legal Privilege

36A Part 2.23B major disaster

(1) The Minister may determine in writing that an event is a Part 2.23B major disaster if the Minister is satisfied that:

(a) the event is a disaster that has such a significant impact on one or more industries and/or one or more areas that a government response in the form of income support is required; and

(b) either:

(i) the event is of national significance; or

(ii) if a national emergency declaration (within the meaning of the *National Emergency Declaration Act 2020*) is in force—the event is an emergency to which the declaration relates.

(1A) In deciding whether to make a determination under subparagraph (1)(b)(ii), the Minister may have regard to the matters in paragraph (1)(a) and subparagraph (1)(b)(i).

(2) Without limiting the matters to which the Minister may have regard for the purposes of subsection (1), the Minister must have regard to:

(a) unless subparagraph (1)(b)(ii) applies—the extent to which the nature or extent of the disaster is unusual; and

(b) the number of workplaces that are disrupted.

(3) The event may be one that occurs naturally or otherwise.

(4) The event must be one that occurs in Australia.

(5) In a determination made under this section, the Minister must do one of the following:

(a) specify one or more industries affected by the event and one or more areas affected by the event;

(b) specify one or more areas affected by the event.

(6) A determination made under this section is not a legislative instrument.

OFFICIAL: Sensitive // Legal Privilege

37 Dependent child—inmate of a mental hospital

A young person is taken to be a ***dependent child*** of a member of a couple (the ***adult***) for the purposes of Part 2.10 (parenting payment) if:

(a) the young person is an inmate of a mental hospital; and

(b) the mental hospital is either:

(i) maintained by the Commonwealth, a State, the Australian Capital Territory or the Northern Territory; or

(ii) mainly dependent upon financial assistance from the Commonwealth, a State, the Australian Capital Territory or the Northern Territory; and

(c) the adult is making a reasonable contribution towards the expenses of maintaining the young person; and

(d) the Secretary determines that the young person is to be taken to be a dependent child of the adult.

38B Notional continuous period of receipt of income support payments

(1) The object of this section is to treat a person in certain circumstances as having received an income support payment in respect of a continuous period even though the person did not actually receive such a payment during a part or parts of the period.

(2) A continuous period in respect of which a person has received income support payments can only start on a day on which the person is receiving such a payment and can only end on a day when the person is receiving such a payment, and the following provisions of this section have effect subject to this section.

(3) Subject to subsection (4), in determining the continuous period in respect of which a person has received income support payments, any period of not longer than 6 weeks in respect of which the person did not receive an income support payment is taken to have been a period in respect of which the person received such a payment.

(4) If a person is taken, because of subsection (3), to have received income support payments in respect of a continuous period of at least 12 months, then, in determining, as at a time after the end of that period of 12 months, the continuous period in respect of which the person has received income support payments, any period of not longer than 13 weeks in respect of which the person did not receive an income support payment is taken to have been a period in respect of which the person received such a payment.

(5) In determining for the purposes of subsection (4) the length of a period in respect of which a person did not receive an income support payment, any part of the period that occurred immediately before the end of the period of 12 months referred to in that subsection is to be taken into account.

EXAMPLE OF APPLICATION OF SUBSECTION (5)

Facts:

John receives an income support payment for 48 weeks. He is then employed for 14 weeks. After the 14 weeks he again begins to receive an income support payment. How does his break in payments affect the calculation of his continuous period of receipt of income support payments?

Application:

At the end of the first 4 weeks of John's employment he may be taken, under subsection 38B(3), to have received income support payments for a continuous period of 12 months because no longer than 6 weeks have elapsed since he actually received such a payment.

Therefore, as John may be taken to have accrued 12 months continuous receipt of income support payments, he may have a period, under subsection 38B(4), of not longer than 13 weeks without income support payments and still be taken to be in continuous receipt.

However, under subsection 38B(5), the period of not longer than 13 weeks allowed under subsection 38B(4) must include the period of 4 weeks that occurred immediately before, as well as the 10 weeks immediately after, John was taken to have accrued 12 months duration.

As his total period in which he did not receive income support payments was 14 weeks, it exceeds the 13 weeks allowed under subsection 38B(4). His continuous period in receipt of income support ceased, under subsection 38B(2), on the last day he received payment before he started employment.

A new period of continuous receipt of income support payments will begin when John resumes income support payments after his 14 week break.

(6) For the purposes of this section, a person who was receiving an income support payment is taken to have continued to receive the payment in respect of a period if:

(a) for the duration of the period, the person remained qualified to receive the income support payment by the operation of the exercise of the discretion under:

(i) section 516 of this Act as in force at a time before 20 September 1996; or

(ii) section 595 of this Act (disregard a period of employment);

but the person's rate of payment was reduced to nil because of the operation of:

(iii) section 1067G, 1067L or 1068 of this Act; or

(b) the period was a compliance penalty period that applied to the person in respect of the income support ~~payment; or~~payment.

~~(c) subsection 547AA(1), 615(1) or 771HF(1) applied to the person in respect of the income support payment for the duration of the period.~~

Note: For ***income support payment*** see subsection 23(1).

38C Adult Disability Assessment Tool

(1) The Secretary may, by legislative instrument (the ***determination***):

(a) devise a test for assessing the disability, emotional state, behaviour and special care needs of a person aged 16 or more; and

(b) provide a method for rating the person by giving him or her, on the basis of the results of the test, a score in accordance with a scale of the kind described in subsection (2).

(2) The scale referred to in subsection (1) is a scale that provides for a range of scores that indicate the different levels of physical, intellectual or psychiatric disability of persons.

(3) The determination is, in this Act, referred to as the ***Adult Disability Assessment Tool***.

38E Disability Care Load Assessment (Child) Determination

(1) The Secretary may, by legislative instrument (the ***Disability Care Load Assessment (Child) Determination***):

(a) devise a test for assessing the functional ability, behaviour and special care needs of a person aged under 16 (the ***child***), that includes an assessment that must be completed only by a treating health professional; and

(b) provide a method for rating the care needs of the child; and

(c) provide a method for giving a qualifying rating to a person (the ***carer***) who is caring for the child that takes into account:

(i) the care provided for the child by the carer; and

(ii) the assessment completed by the treating health professional.

(2) If a carer who is caring for a child also cares for one or more other persons (whether or not aged under 16), the Disability Care Load Assessment (Child) Determination may provide a method for giving a qualifying rating to the carer that takes into account:

(a) both:

(i) the care provided for the child by the carer; and

(ii) the assessment completed by the treating health professional; and

(b) the care provided by the carer for each other person.

(3) The Disability Care Load Assessment (Child) Determination may, in addition, declare that a physical, intellectual or psychiatric disability specified in the determination is a recognised disability for the purposes of section 953.

38F Treating health professional

The Secretary may, by legislative instrument, determine that a person, or any person included in a class of persons, is a treating health professional for the purposes of this Act (other than for the purposes of the Adult Disability Assessment Tool).

Part 1.3A—Green Army Programme

38G Simplified outline of this Part

If a person is receiving green army allowance under the Green Army Programme, a social security benefit or social security pension is not payable to the person.

Certain persons participating in the Green Army Programme will not be workers or employees for the purposes of various Commonwealth laws (for example, the *Fair Work Act 2009*).

If a person is receiving a social security pension and the person's partner is receiving green army allowance, some or all of that allowance may not be counted as ordinary income in working out the person's rate of social security pension.

38H Non-payment of security benefit or social security pension if person receiving green army allowance

Despite any other provision of the social security law, a social security benefit or social security pension is not payable to a person if the person is receiving green army allowance.

Note: For ***green army allowance*** see subsection 23(1).

38J Certain participants in Green Army Programme are not workers or employees under Commonwealth laws

(1) A person:

(a) who participates in the Green Army Programme on a full-time or a part-time basis and who is receiving green army allowance; or

(b) who participates in the Green Army Programme on a part-time basis and who is not receiving green army allowance;

is not taken to be:

(c) a worker carrying out work in any capacity for the Commonwealth, or an employee of the Commonwealth, for the purposes of the *Work Health and Safety Act 2011*; or

(d) an employee within the meaning of section 5 of the *Safety, Rehabilitation and Compensation Act 1988*; or

(e) an employee for the purposes of the *Fair Work Act 2009*;

merely because of that participation.

Note: For ***Green Army Programme*** and ***green army allowance*** see subsection 23(1).

(2) Paragraph (1)(b) does not apply to a person included in a class of persons prescribed in an instrument under subsection (3).

(3) The Secretary may, by legislative instrument, prescribe a class of persons for the purposes of subsection (2).

38K Income test for person's social security pension if green army allowance payable to person's partner

(1) If:

(a) an instalment of a social security pension relating to an instalment period is payable to a person; and

(b) green army allowance is payable to the person's partner in respect of some or all of that period;

then:

(c) if the amount of the green army allowance does not exceed the threshold applicable under subsection (2)—the green army allowance is not ordinary income of the person's partner; or

(d) if the amount of the green army allowance exceeds the threshold applicable under subsection (2):

(i) the part of the green army allowance that does not exceed that threshold is not ordinary income of the person's partner; and

(ii) the part of the green army allowance that exceeds that threshold is ordinary income of the person's partner.

Note 1: For ***green army allowance*** see subsection 23(1).

Note 2: Any part of green army allowance that is ordinary income of the person's partner will be taken into account in applying the ordinary income test in working out the person's rate of social security pension.

(2) The threshold is:

(a) if the person's partner is aged under 22:

(i) if the person's partner has a dependent child—the amount under column 3 of item 7 of Table BB in point 1067G-B3; or

(ii) otherwise—the amount under column 3 of item 8 of Table BB in point 1067G-B3; or

(b) if the person's partner is aged 22 or over—the amount under column 3B of item 7 of Table B in point 1068-B1.

OFFICIAL: Sensitive // Legal Privilege

Part 1.3B—Loss of social security payments and concessions for persons on security grounds

38L Simplified outline of this Part

Persons who might prejudice the security of Australia or a foreign country may lose social security payments or concession cards.

38M Loss of social security payments and concessions for persons on security grounds

(1) If a security notice is given to the Minister in relation to a person, then while the notice is in force:
  (a) no social security payment is to be paid to the person; and
  (b) the person is not qualified for a social security payment; and
  (c) a social security payment is not payable to the person; and
  (d) the person is not qualified for a concession card.

Note: A security notice is a notice under section 38N.

(2) If a security notice is given to the Minister in relation to a person, then any social security payment of the person is cancelled on the day the notice comes into force.

(3) If a security notice is given to the Minister in relation to a person, then any concession card the person holds is cancelled on the day the notice comes into force.

(4) If a security notice given to the Minister in relation to a person ceases to be in force, then for any day while the notice was in force:
  (a) the person is not qualified for a social security payment; and
  (b) a social security payment is not payable to the person; and
  (c) the person is not qualified for a concession card.

(5) Subsections (1) to (4) have effect despite any other provision of the social security law.

(6) If a person's social security payment is cancelled by subsection (2), or a person's concession card is cancelled by subsection (3), the Secretary must cause reasonable steps to be taken to notify the person of the cancellation.

38N Security notice from Home Affairs Minister

(1) The Home Affairs Minister may give the Minister a written notice requiring that this Part apply in relation to a specified person if:

(a) the Foreign Affairs Minister gives the Home Affairs Minister a notice under section 38P in relation to the person; or

(b) the person's visa is cancelled under section 116 or 128 of the *Migration Act 1958* because of an assessment by the Australian Security Intelligence Organisation that the person is directly or indirectly a risk to security (within the meaning of section 4 of the *Australian Security Intelligence Organisation Act 1979*); or

(c) the person's visa is cancelled under section 134B of the *Migration Act 1958* (emergency cancellation on security grounds) and the cancellation has not been revoked because of subsection 134C(3) of that Act; or

(d) the person's visa is cancelled under section 501 of the *Migration Act 1958* and there is an assessment by the Australian Security Intelligence Organisation that the person is directly or indirectly a risk to security (within the meaning of section 4 of the *Australian Security Intelligence Organisation Act 1979*).

(2) Before giving a notice under this section, the Home Affairs Minister must have regard to the following:

(a) the extent (if any) that any social security payments of the person are being, or may be, used for a purpose that might prejudice the security of Australia or a foreign country, if the Home Affairs Minister is aware of that extent;

(b) the likely effect of the operation of section 38M on the person's dependants, if the Home Affairs Minister is aware of those dependants.

(3) The Secretary of the Department administered by the Home Affairs Minister must:
(a) seek the advice of the Human Services Secretary in relation to paragraph (2)(b); and
(b) inform the Home Affairs Minister of that advice.

(4) Subsection (2) does not limit the matters to which regard may be had.

38P Notice from Foreign Affairs Minister

If:
(a) either:
(i) under subsection 14(2) of the *Australian Passports Act 2005*, the Foreign Affairs Minister refuses to issue a person an Australian travel document; or
(ii) under section 22 of that Act, the Foreign Affairs Minister cancels a person's Australian travel document; and
(b) the refusal or cancellation was because of a refusal/cancellation request made in relation to the person under subsection 14(1) of that Act; and
(c) the request was made on the basis of the circumstance mentioned in subparagraph 14(1)(a)(i) of that Act;

the Foreign Affairs Minister may give the Home Affairs Minister a written notice setting out those matters.

38R Copy of security notice to be given to Secretaries

The Minister must give a copy of a security notice to:
(a) the Secretary of the Department; and
(b) the Human Services Secretary.

Section 38S

38S Period security notice is in force

A security notice comes into force on the day it is given to the Minister, and remains in force until it is revoked.

38SA Annual review of security notice

Before the end of the following periods, the Home Affairs Minister must consider whether to revoke a security notice (if it has not already been revoked):

(a) 12 months after it came into force;

(b) 12 months after the Home Affairs Minister last considered whether to revoke it.

38T Revoking a security notice

(1) The Home Affairs Minister may, by written notice given to the Minister, revoke a security notice.

(2) The revocation takes effect on the day it is made.

(3) The Minister must give a copy of a notice under subsection (1) to:

(a) the Secretary of the Department; and

(b) the Human Services Secretary.

(4) If:

(a) a person's social security payment is cancelled by subsection 38M(2) or a person's concession card is cancelled by subsection 38M(3); and

(b) the Home Affairs Minister revokes the security notice concerned;

the Secretary of the Department must cause reasonable steps to be taken to notify the person of the revocation.

OFFICIAL: Sensitive // Legal Privilege

38U Notices may contain personal information

A notice under this Part in relation to a person may contain personal information (within the meaning of the *Privacy Act 1988*) about the person.

38V Decisions under Part not decisions of officers

For the purposes of Part 4 of the Administration Act, a decision under this Part is taken not to be a decision of an officer under the social security law.

38W Notices not legislative instruments

A notice under this Part is not a legislative instrument.

OFFICIAL: Sensitive // Legal Privilege

Part 1.4—Miscellaneous

39 Tables, calculators etc. form part of section

(1) For the purposes of this Act, a Table and a Key to a Table are to be taken to be part of:
  (a) if the Table occurs in a section containing subsections—the subsection immediately preceding the Table; and
  (b) if the Table occurs in a section that does not contain subsections—the section.

(1A) For the purposes of this Act, a Note is to be taken to be part of:
  (a) if the Note immediately follows a section that does not contain subsections—the section; or
  (b) if the Note immediately follows a subsection—the subsection; or
  (c) if the Note immediately follows a point in a Rate Calculator—the point; or
  (d) if the Note immediately follows a Step in a Method Statement and is aligned with the text of the Step—the Step; or
  (e) if the Note immediately follows a Table—the Table; or
  (f) if the Note immediately follows a paragraph and is aligned with the text of the paragraph—the paragraph; or
  (g) if the Note immediately follows a clause in a Schedule—the clause in the Schedule; or
  (h) if the Note immediately follows a subclause in a Schedule—the subclause in the Schedule.

(2) For the purposes of this Act, a Calculator (whether a Rate Calculator, a Lump Sum Calculator or any other Calculator) is to be taken to be part of the section immediately preceding the Calculator.

(3) Rate Calculators are divided into Modules (for example, Module A).

(4) A Module of a Rate Calculator is divided into points and some points are divided into subpoints.

(5) The points in a Module are numbered as follows:

(a) the initial number (followed by a dash) identifies the section that immediately precedes the Rate Calculator;

(b) the letter following the dash is the letter allocated to the Module in which the point occurs;

(c) the final number identifies the order of the point within the Module.

Example: Point 1068-E8 is the eighth point in Module E of the Rate Calculator at the end of section 1068.

Note: Paragraph (5)(a) has been adopted so that if a reader is looking for a particular section of the Act and opens a page that happens to be in the middle of a Rate Calculator, the reader will know whether the section the reader is looking for is before or after that page.

40 Activities that do not give rise to employment under certain industrial relations legislation

(1) If a person:

(a) participates in an approved program of work for income support payment or in an employment program; or

(b) undertakes an activity (other than paid work) in accordance with a requirement, or an optional term, of an employment pathway plan;

the person is not to be taken to be one of the following merely because of that participation or of the undertaking of that activity:

(c) a worker carrying out work in any capacity for the Commonwealth, or an employee of the Commonwealth, for the purposes of the *Work Health and Safety Act 2011*;

(d) an employee within the meaning of section 5 of the *Safety, Rehabilitation and Compensation Act 1988*;

(e) an employee for the purposes of the *Superannuation Guarantee (Administration) Act 1992*;

(f) an employee for the purposes of the *Fair Work Act 2009*.

Section 40

(2) For the purposes of this section, an ***employment program*** is a program that is established by the Commonwealth and is determined in an instrument under subsection (3) to be an employment program.

(3) The Employment Secretary may, by notifiable instrument, determine programs to be employment programs for the purposes of subsection (2).

OFFICIAL: Sensitive // Legal Privilege

Chapter 2—Pensions, benefits and allowances

Part 2.2—Age pension

Division 1—Qualification for and payability of age pension

Subdivision A—Qualification

43 Qualification for age pension

(1) A person is qualified for an age pension if the person has reached pension age and any of the following applies:

(a) the person has 10 years qualifying Australian residence;

(b) the person has a qualifying residence exemption for an age pension;

(c) the person was receiving a widow B pension, a widow allowance, a mature age allowance or a partner allowance, immediately before reaching that age;

(d) if the person reached pension age before 20 March 1997—the person was receiving a widow B pension, a widow allowance or a partner allowance, immediately before 20 March 1997.

Note 1: For ***qualifying Australian residence*** see section 7.

Note 2: For ***pension age*** see subsections 23(5A), (5B) (5C) and (5D).

(1A) A woman is qualified for an age pension if:

(a) the woman has reached pension age; and

(b) the woman's partner has died; and

(c) both the woman and her partner were Australian residents when her partner died; and

(d) the woman was an Australian resident for a continuous period of at least 104 weeks immediately before the day she lodged the claim for the age pension.

(1B) A woman is qualified for an age pension if:

(a) immediately before 20 March 2020:

(i) the woman was receiving a wife pension under Part 2.4; or

(ii) the woman was receiving a wife pension under a scheduled international social security agreement; and

(b) immediately before 20 March 2020, the woman was not receiving carer allowance under Part 2.19; and

(c) the woman has reached pension age; and

(d) the woman is not otherwise qualified for an age pension.

Note: For ***pension age*** see subsections 23(5A), (5B) (5C) and (5D).

(3) Subsection (1) has effect subject to subsection 6(3) of the *Social Security (International Agreements) Act 1999*.

(4) A woman is qualified for an age pension if:

(a) the woman was receiving a special needs widow B pension under Part 2.16 immediately before 20 March 2020; and

(b) the woman is not otherwise qualified for an age pension.

Subdivision B—Payability

44 Age pension not payable if pension rate nil

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

(2) Subsection (1) does not apply to a person if the person's rate would be nil merely because an election by the person under subsection 915A(1) (about quarterly energy supplement) or 1061VA(1) (about quarterly pension supplement) is in force.

47 Multiple entitlement exclusion

(1) An age pension is not payable to a person if the person is already receiving a service pension or a veteran payment.

(2) If:

(a) a person is receiving an age pension; and

(b) another social security pension, a service pension or a veteran payment becomes payable to the person;

the age pension is not payable to the person.

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

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

(3) An age pension is not payable to a person who:

(a) is an armed services widow or an armed services widower; and

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

(c) is receiving income support supplement under Part IIIA of that Act or would be eligible for income support supplement under that Part if he or she made a claim under section 45I of that Act.

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

(a) the person:

(i) was on 20 March 1995 receiving; and

(ii) has from that day continuously received; and

(iii) is receiving;

the age pension; and

(b) the person elected under subsection 45E(2) of the Veterans' Entitlements Act, or is taken under subsection 45E(3) of that Act to have elected, to continue to receive the age pension.

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

(a) before 20 March 1995, the person had made a claim for age pension; and

(b) the person elected under subsection 45F(2) of the Veterans' Entitlements Act, or is taken under subsection 45F(3) of that Act to have elected, to receive the pension in the event that it were granted to him or her; and

OFFICIAL: Sensitive // Legal Privilege

(c) on or after 20 March 1995, the person was granted age pension; and

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

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

(a) before 20 March 1995:

(i) the person had made a claim for age pension; and

(ii) the claim had been rejected; and

(iii) the person had applied, under Chapter 6, for a review of the decision to reject the claim; and

(b) the person elected under subsection 45G(2) of the Veterans' Entitlements Act, or is taken under subsection 45G(3) of that Act to have elected, to receive the pension in the event that it were granted to him or her after review of the decision; and

(c) on or after 20 March 1995, the decision to reject the claim was set aside and the person was granted age pension; and

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

(7) An age pension is not payable to a person who:

(a) is an armed services widow or an armed services widower; and

(b) is receiving the weekly amount mentioned in paragraph 234(1)(b) of the MRCA (including a reduced weekly amount because of a choice under section 236 of the MRCA) or has received a lump sum mentioned in subsection 236(5) of the MRCA; and

(c) is receiving income support supplement or would be eligible for income support supplement if he or she made a claim under section 45I of the VEA.

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

Note 2: For ***MRCA*** and ***VEA*** see subsection 23(1).

OFFICIAL: Sensitive // Legal Privilege

47A Exclusion of certain participants in ABSTUDY Scheme

(1) If:

(a) a payment is made in respect of a person under the ABSTUDY Scheme; and

(b) the payment is made on the basis that the person is a full-time student; and

(c) in the calculation of the payment, an amount identified as living allowance (the ***basic payment***) is included; and

(d) the payment relates to a period;

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

(2) If:

(a) a person is qualified for a payment under the ABSTUDY Scheme; and

(b) the payment for which the person is qualified is a payment that:

(i) is made on the basis that the person is a full-time student; and

(ii) is calculated on the basis that an amount identified as living allowance (the ***basic payment***) is included; and

(iii) relates to a period;

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

(3) If:

(a) a person may enrol in a full-time course of education; and

(b) a payment referred to in subsection (2) may be made in respect of the person;

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

OFFICIAL: Sensitive // Legal Privilege

Division 4—Rate of age pension

55 How to work out a person's age pension rate

A person's age pension rate is worked out:

(a) if the person is not permanently blind—using Pension Rate Calculator A at the end of section 1064 (see Part 3.2); or

(b) if the person is permanently blind—using Pension Rate Calculator B at the end of section 1065 (see Part 3.3).

OFFICIAL: Sensitive // Legal Privilege

Division 9—Bereavement payments

Subdivision A—Death of partner

82 Qualification for payments under this Subdivision

(1) If:

(a) a person is receiving an age pension; and

(b) the person is a member of a couple; and

(c) the person's partner dies; and

(d) immediately before the partner died, the partner:

(i) was receiving a social security pension; or

(ii) was receiving a service pension, income support supplement or a veteran payment; or

(iii) was a long-term social security recipient; and

(e) on the person's payday immediately before the first available bereavement adjustment payday, the amount that would be payable to the person if the person were not qualified for payments under this Subdivision is less than the sum of:

(i) the amount that would otherwise be payable to the person under section 85 (person's continued rate) on that payday; and

(ii) the amount that would otherwise be payable to the person under section 83 (continued payment of partner's pension or benefit) on the partner's payday immediately before the first available bereavement adjustment payday;

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

Note 1: Section 83 provides for the payment to the person, up to the first available bereavement adjustment payday, of amounts equal to the instalments that would have been paid to the person's partner during that period if the partner had not died.

Note 2: Section 84 provides for a lump sum that represents the instalments that would have been paid to the person's partner, between the first available bereavement adjustment payday and the end of the bereavement period, if the partner had not died.

OFFICIAL: Sensitive // Legal Privilege

(1A) If:

(a) a person is receiving an age pension; and

(b) immediately before starting to receive the age pension the person was receiving partner bereavement payments; and

(c) the bereavement rate continuation period in relation to the death of the person's partner has not ended;

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

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

(3) An election under subsection (2):

(a) must be made by written notice to the Secretary; and

(b) may be made after the person has been paid an amount or amounts under this Subdivision; and

(c) cannot be withdrawn after the Department has taken all the action required to give effect to that election.

(4) If a person is qualified for payments under this Subdivision in relation to the partner's death, the rate at which age pension is payable to the person during the bereavement period is, unless the person has made an election under subsection (2), governed by section 85.

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

(a) the person is receiving a social security benefit; and

(b) in respect of the previous 12 months, the person:

(i) was receiving a social security pension; or

(ii) was receiving a social security benefit; or

(iia) was receiving a youth training allowance; or

(iii) was receiving a service pension, income support supplement or a veteran payment.

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

(a) the person was receiving one or a combination of the payments referred to in that paragraph for a continuous period of 12 months; or

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

83 Continued payment of deceased partner's previous entitlement

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

(a) where the partner was receiving a social security pension or social security benefit—the amount that would have been payable to the partner on the payday if the partner had not died; or

(b) where the partner was receiving a service pension, income support supplement or a veteran payment—the amount that would have been payable to the partner under Part III, IIIA or IIIAA of the Veterans' Entitlements Act on the service payday that:

(i) where the first Thursday after the partner's death was a service payday—precedes the partner's payday; or

(ii) in any other case—follows the partner's payday;

if the partner had not died.

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

84 Lump sum payable in some circumstances

If:

(a) a person is qualified for payments under this Subdivision in relation to the death of the person's partner; and

(b) the first available bereavement adjustment payday occurs before the end of the bereavement period;

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

LUMP SUM CALCULATOR

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

Method statement

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

(a) the person's partner had not died; and

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

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

(a) the partner had not died; and

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

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

Step 4.	Work out the amount that, but for section 85, would have been payable to the person on the person's payday immediately before the first available bereavement adjustment payday: the result is called the ***person's individual rate***.
Step 5.	Take the person's individual rate away from the combined rate: the result is called the ***partner's instalment component***.
Step 6.	Work out the number of paydays of the partner in the bereavement lump sum period.
Step 7.	Multiply the partner's instalment component by the number obtained in Step 6: the result is the amount of the lump sum payable to the person under this section.

85 Adjustment of person's age pension rate

If:

(a) a person is qualified for payments under this Subdivision; and

(b) the person does not elect under subsection 82(2) not to receive payments under this Subdivision;

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

(c) during the bereavement rate continuation period, the rate of age pension payable to the person is the rate at which the pension would have been payable to the person if:

(i) the person's partner had not died; and

(ii) where immediately before the partner's death the couple were an illness separated couple or a respite care couple—they were not such a couple;

(d) during the bereavement lump sum period (if any), the rate at which age pension is payable to the person is the rate at

which the age pension would be payable to the person apart from this Subdivision.

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

If:

(a) a person is qualified for payments under this Subdivision in relation to the death of the person's partner; and

(b) the person dies within the bereavement period; and

(c) the Secretary does not become aware of the death of the person's partner before the person dies;

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

LUMP SUM CALCULATOR

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

Method statement

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

(a) neither the person nor the person's partner had died; and

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

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

(a) neither the person nor the partner had died; and

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

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

Step 4. Work out the amount that, but for section 85, would have been payable to the person on the person's payday immediately after the day on which the person died if the person had not died: the result is called the ***person's individual rate***.

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

Step 6. Work out the number of paydays of the partner in the period that commences on the day on which the person dies and ends on the day on which the bereavement period ends.

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

87 Matters affecting payment of benefits under this Subdivision

(1) If:

(a) a person is qualified for payments under this Subdivision in relation to the death of the person's partner; and

(b) after the person's partner died, an amount to which the partner would have been entitled if the partner had not died has been paid under this Act or under Part III or IIIA of the Veterans' Entitlements Act; and

(c) the Secretary is not satisfied that the person has not had the benefit of that amount;

the following provisions have effect:

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

(e) the amount payable to the person under this Subdivision is to be reduced by the amount referred to in paragraph (b).

(2) If:

(a) a person is qualified for payments under this Subdivision in relation to the death of the person's partner; and

(b) an amount to which the person's partner would have been entitled if the person's partner had not died has been paid under this Act or under Part III or IIIA of the Veterans' Entitlements Act, within the bereavement period, into an account with a bank; and

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

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

Subdivision C—Death of recipient

91 Death of recipient

(1) If:

(a) a person is receiving age pension; and

(b) either:

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

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

OFFICIAL: Sensitive // Legal Privilege

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

(C) is not receiving a service pension, income support supplement or a veteran payment; and

(c) the person dies;

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

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

Note 1: For amounts owing to the recipient before the recipient's death see section 65.

Note 2: For death of a person qualified for bereavement payments under Subdivision A see section 86.

Part 2.2A—Pension bonus

Division 1—Introduction

92A Simplified outline

The following is a simplified outline of this Part:

- A person who qualifies for an age pension but defers claiming that pension may be able to get a single lump-sum ***pension bonus***.
- A person who wants to get a pension bonus must ***register*** as a ***member of the pension bonus scheme***. An application for registration cannot be made on or after 1 July 2014.
- To get a pension bonus, a person must accrue between 1 and 5 ***bonus periods*** while deferring age pension.
- Generally, a bonus period runs for 1 year.
- To accrue a bonus period, the person must ***pass the work test*** for that period.
- To pass the work test for a year, either the person, or the person's partner, must ***gainfully work*** for at least 960 hours during that year.
- The amount of a person's pension bonus depends on the number of accrued bonus periods and the person's annual rate of age pension. A person may get a bigger bonus by accruing more bonus periods.

92B Definitions

In this Part:

accruing member of the pension bonus scheme has the meaning given by section 92N.

bonus period has the meaning given by section 92T.

carer preclusion period has the meaning given by section 93W.

compensation preclusion period has the meaning given by section 93V.

disposal preclusion period has the meaning given by section 93U or 93UA.

full-year period means a continuous period of 365 days.

gainful work has the meaning given by sections 92X to 93A (inclusive).

non-accruing member of the pension bonus scheme has the meaning given by sections 92P and 92Q.

part-year period means a continuous period of less than 365 days.

passing the work test has the meaning given by sections 92U and 92V.

post-75 member of the pension bonus scheme has the meaning given by section 92S.

registration as a member of the pension bonus scheme means registration under section 92J.

OFFICIAL: Sensitive // Legal Privilege

Division 2—Qualification for pension bonus

92C Qualification for pension bonus

A person is qualified for a pension bonus if:

(a) both:

(i) the person starts to receive an age pension at or after the time when the person makes a claim for the pension bonus; and

(ii) that age pension is received otherwise than because of a scheduled international social security agreement (see section 5 of the *Social Security (International Agreements) Act 1999*); and

(b) the person has not received an age pension at any time before making a claim for the pension bonus; and

(c) the person is registered as a member of the pension bonus scheme; and

(d) the person has accrued at least one full-year bonus period while registered as a member of the pension bonus scheme; and

(e) the person has not received:

(i) a social security pension (other than an age pension or a carer payment); or

(ii) a social security benefit; or

(iii) a service pension (other than a carer service pension); or

(iv) an income support supplement (other than an income support supplement that is payable as a result of the operation of subclause 8(3) of Schedule 5 to the Veterans' Entitlements Act); or

(v) a veteran payment;

at any time after the person qualified for an age pension; and

Note: Even though the person may not have actually received an amount of social security pension or benefit because the rate of the pension or benefit was nil, in some cases the person will be taken to have received the pension or benefit if adjusted disability pension (within the meaning of section 118NA of the

Veterans' Entitlements Act) was payable to the person or the person's partner: see subsection 23(1D) of this Act.

(f) the person has not already received:

(i) another pension bonus; or

(ii) a bonus under Part IIIAB of the Veterans' Entitlements Act; or

(iii) DFISA bonus under Part VIIAB of the Veterans' Entitlements Act.

Note: Subclause 8(3) of Schedule 5 to the Veterans' Entitlements Act deals with income support supplement for carers.

OFFICIAL: Sensitive // Legal Privilege

Division 3—Registration as a member of the pension bonus scheme

Subdivision A—Membership of the pension bonus scheme

92D Application for registration

(1) A person may apply for registration as a member of the pension bonus scheme.

(2) However, a person cannot make an application on or after 1 July 2014.

92E Form of application

An application must be in writing and must be in accordance with a form approved by the Secretary.

92F Relevant information

(1) An approved form may require the applicant to provide relevant information (see subsection (4)).

(2) The Secretary may, by written notice given to the applicant, require the applicant to give the Secretary, within a specified period, further relevant information. The Secretary may refuse to register the applicant until the applicant gives the Secretary the information.

(3) A period specified for the purposes of subsection (2) must run for at least 14 days after the notice was given.

(4) For the purposes of this section, ***relevant information*** includes (but is not limited to):

(a) information that would be likely to assist the Secretary in advising the applicant about the operation of this Part; and

(b) information that is relevant to determining whether a disposal preclusion period, compensation preclusion period or carer

preclusion period has arisen, or is likely to arise, in relation to the applicant; and

(c) a statement of the applicant's present expectations in relation to any or all of the following matters:

(i) the number of bonus periods that the person is likely to accrue while registered as a member of the pension bonus scheme;

(ii) the likely nature and extent of the person's participation in the workforce during those periods;

(iii) if the person has a partner—the likely nature and extent of the partner's participation in the workforce during those periods.

92G Lodgment of application

(1) An application must be lodged:

(a) at an office of the Department; or

(b) at a place approved by the Secretary; or

(c) with a person approved by the Secretary.

(2) A place or person approved under subsection (1) may be a place or person within or outside Australia.

92H Timing of application and registration

Age pension qualification date on or after 1 July 1998

(1) If a person's date of qualification for the age pension occurs on or after 1 July 1998:

(a) the person must lodge an application during the period that begins 13 weeks before the person's date of qualification for the age pension and ends 13 weeks after that date; and

(b) if registration occurs as a result of an application lodged within that period—the registration takes effect on the person's date of qualification for the age pension.

OFFICIAL: Sensitive // Legal Privilege

Age pension qualification date before 1 July 1998

(2) If a person's date of qualification for the age pension occurs before 1 July 1998:

(a) the person must lodge an application during the period that begins on the commencement of this section and ends 13 weeks after 1 July 1998; and

(b) if registration occurs as a result of an application lodged within that period—the registration takes effect on 1 July 1998.

Date of qualification for the age pension

(8) For the purposes of this section, a person's ***date of qualification for the age pension*** is to be worked out on the assumption that being an Australian resident were an additional qualification for an age pension.

(9) For the purposes of this section, if a person would otherwise have 2 or more dates of qualification for the age pension, only the first date is to be counted.

92J Registration

(1) If an application is made in accordance with this Subdivision, the Secretary must register the applicant as a member of the pension bonus scheme.

(1A) However, the Secretary must not register a person as a member of the pension bonus scheme if the person's date of qualification for the age pension occurs on or after 20 September 2009.

(1B) For the purposes of subsection (1A), subsections 92H(8) and (9) apply in a way corresponding to the way in which they apply for the purposes of section 92H.

(2) This section has effect subject to subsection 92F(2).

92K Duration of membership

A person's membership of the pension bonus scheme begins on the date on which the registration of that membership takes effect and continues until the membership is cancelled under this Act.

92L Cancellation of membership

A person's membership of the pension bonus scheme is cancelled if:

(a) the person's claim for pension bonus is determined; or

(b) the person starts to receive:

(i) a social security pension (other than an age pension or a carer payment); or

(ii) a social security benefit; or

(iii) a service pension (other than a carer service pension); or

(iv) an income support supplement (other than an income support supplement that is payable as a result of the operation of subclause 8(3) of Schedule 5 to the Veterans' Entitlements Act); or

(v) a veteran payment;

at any time after the person qualified for an age pension; or

(c) the person does not make a proper claim for a pension bonus when the person claims age pension; or

(d) the person requests the Secretary, in writing, to cancel the person's membership.

Note: Subclause 8(3) of Schedule 5 to the Veterans' Entitlements Act deals with income support supplement for carers.

92M Application for registration is not to be treated as a claim

To avoid doubt, an application for registration as a member of the pension bonus scheme is not to be treated as a claim for the purposes of any law of the Commonwealth.

Subdivision B—Classification of membership of the pension bonus scheme

92N Accruing membership

For the purposes of this Part, a person's membership of the pension bonus scheme at a particular time is ***accruing*** unless the person's membership is non-accruing or post-75 at that time.

92P Non-accruing membership—preclusion periods

Disposal preclusion period

(1) For the purposes of this Part, if a person is subject to a disposal preclusion period at a particular time when the person is a member of the pension bonus scheme, the person's membership of the scheme is ***non-accruing*** at that time.

Note: ***Disposal preclusion period*** is defined by section 93U.

Compensation preclusion period

(2) For the purposes of this Part, if a person is subject to a compensation preclusion period at a particular time when the person is a member of the pension bonus scheme, the person's membership of the scheme is ***non-accruing*** at that time.

Note: ***Compensation preclusion period*** is defined by section 93V.

Carer preclusion period

(3) For the purposes of this Part, if a person is subject to a carer preclusion period at a particular time when the person is a member of the pension bonus scheme, the person's membership of the scheme is ***non-accruing*** at that time.

Note: ***Carer preclusion period*** is defined by section 93W.

92Q Non-accruing membership—Secretary's discretion

(1) The Secretary may, by legislative instrument, declare that, for the purposes of this Part, a specified kind of member of the pension bonus scheme is a ***non-accruing*** member throughout a period ascertained in accordance with the declaration.

(1A) A period ascertained in accordance with a declaration made under subsection (1) may begin before the date on which the declaration is registered under that Act.

(1B) Subsection 12(2) (retrospective application of legislative instruments) of the *Legislation Act 2003* does not apply in relation to a declaration made under subsection (1).

(2) The kinds of members that may be specified under subsection (1) include (but are not limited to):

(a) a member who is a participant in the Community Development Employment Program; and

(b) a member who is in gaol (see subsection 23(5)); and

(c) a member who is undergoing psychiatric confinement (see subsections 23(8) and (9)) because the member has been charged with committing an offence; and

(d) a member who is not a participant in the workforce, but whose partner:

(i) is a participant in the workforce; and

(ii) is not a registered member of the pension bonus scheme or of the corresponding scheme under Part IIIAB of the Veterans' Entitlements Act; and

(iii) intends to become a registered member of the pension bonus scheme or of the corresponding scheme under Part IIIAB of the Veterans' Entitlements Act; and

(e) a member who is on sick leave for a continuous period of at least 4 weeks and not more than 26 weeks.

OFFICIAL: Sensitive // Legal Privilege

92R Continuity of accruing membership is not broken by a period of non-accruing membership

If:

(a) a person has been an accruing member of the pension bonus scheme for a continuous period (the ***first accruing membership period***) (including a period that is applicable because of one or more applications of this section); and

(b) the first accruing membership period is followed by a continuous period of non-accruing membership of the scheme; and

(c) the period of non-accruing membership is followed by a further continuous period of accruing membership of the scheme (the ***second accruing membership period***);

the first accruing membership period and the second accruing membership period are together taken to constitute a continuous period of accruing membership of the scheme.

92S Post-75 membership

A person's membership of the pension bonus scheme is ***post-75*** at all times after the person reaches age 75.

OFFICIAL: Sensitive // Legal Privilege

Division 4—Accrual of bonus periods

92T Accrual of bonus periods

Full-year bonus period

(1) The first ***bonus period*** that accrues to a person is the full-year period of the person's accruing membership of the pension bonus scheme:

(a) that began on whichever of the following dates is applicable:

(i) if the person was an accruing member of the pension bonus scheme on the date the person's registration as a member took effect—the date the registration took effect;

(ii) in any other case—the date on which the person first became an accruing member of the pension bonus scheme; and

(b) for which the person passes the work test.

Note: ***Accruing membership*** is defined by section 92N.

(2) Each succeeding full-year period of the person's accruing membership of the pension bonus scheme:

(a) that is specified in the person's claim for pension bonus; and

(b) for which the person passes the work test;

is a ***bonus period*** that accrues to the person.

Part-year bonus period

(3) A part-year period of the person's accruing membership of the pension bonus scheme is a ***bonus period*** that accrues to the person if:

(a) the person passes the work test for that period; and

(b) the person specifies the period in the person's claim for pension bonus; and

(c) the period begins immediately after the end of a full-year bonus period that accrues to the person; and

OFFICIAL: Sensitive // Legal Privilege

(d) the period is the last bonus period that accrues to the person.

Note: ***Accruing membership*** is defined by section 92N.

Bonus periods must be consecutive

(4) A person cannot accrue more than one bonus period unless:

(a) the bonus periods are consecutive; or

(b) the bonus periods are separated only by a period of non-accruing membership.

OFFICIAL: Sensitive // Legal Privilege

Division 5—Passing the work test

Subdivision A—The work test

92U Work test—full-year period

For the purposes of this Part, a person ***passes the work test*** for a full-year period of the person's accruing membership of the pension bonus scheme if:

(a) in any case—the person satisfies the Secretary that the total number of hours gainfully worked by the person during that period was at least 960 and that at least 640 of that total number of hours were worked in Australia; or

(b) if the person had only one partner during that period—the person satisfies the Secretary that the total number of hours gainfully worked by the person's partner during that period while the partner was a partner of the person and was:

(i) an accruing member, or a post-75 member, of the pension bonus scheme; or

(ii) an accruing member, or a post-70/75 member, of the corresponding scheme under Part IIIAB of the Veterans' Entitlements Act;

was at least 960 and that at least 640 of that total number of hours were worked in Australia; or

(c) if the person had 2 or more partners during that period—the person satisfies the Secretary that the total number of hours gainfully worked by those partners during that period while they were partners of the person and were:

(i) accruing members, or post-75 members, of the pension bonus scheme; or

(ii) accruing members, or post-70/75 members, of the corresponding scheme under Part IIIAB of the Veterans' Entitlements Act;

was at least 960 and that at least 640 of that total number of hours were worked in Australia;

and either:

(d) the person satisfies the Secretary that the applicable record-keeping requirements (see section 93C) have been complied with in relation to that period; or

(e) the Secretary decides to waive compliance with the applicable record-keeping requirements in relation to that period.

92V Work test—part-year period

(1) For the purposes of this Part, a person ***passes the work test*** for a part-year period of the person's accruing membership of the pension bonus scheme if:

(a) in any case—the person satisfies the Secretary that the total number of hours gainfully worked by the person during that period was at least the pro-rated number of hours (see subsection (2)) and that at least two-thirds of that total number of hours were worked in Australia; or

(b) if the person had only one partner during that period—the person satisfies the Secretary that the total number of hours gainfully worked by the person's partner during that period while the partner was a partner of the person and was:

(i) an accruing member, or a post-75 member, of the pension bonus scheme; or

(ii) an accruing member, or a post-70/75 member, of the corresponding scheme under Part IIIAB of the Veterans' Entitlements Act;

was at least the pro-rated number of hours (see subsection (2)) and that at least two-thirds of that total number of hours were worked in Australia; or

(c) if the person had 2 or more partners during that period—the person satisfies the Secretary that the total number of hours gainfully worked by those partners during that period while they were partners of the person and were:

(i) accruing members, or post-75 members, of the pension bonus scheme; or

(ii) accruing members, or post-70/75 members, of the corresponding scheme under Part IIIAB of the Veterans' Entitlements Act;

was at least the pro-rated number of hours (see subsection (2)) and that at least two-thirds of that total number of hours were worked in Australia;

and either:

(d) the person satisfies the Secretary that the applicable record-keeping requirements (see section 93C) have been complied with in relation to that period; or

(e) the Secretary decides to waive compliance with the applicable record-keeping requirements in relation to that period.

(2) For the purposes of this section, the ***pro-rated number of hours*** applicable to a period is worked out using the formula:

$$960 \times \frac{\text{Number of days in the period}}{365}$$

92W Secretary's discretion to treat gainful work outside Australia as gainful work in Australia

(1) If a person satisfies the Secretary that:

(a) the person, or the person's partner, has carried on gainful work outside Australia; and

(b) because of special circumstances, the gainful work should be treated as gainful work carried on in Australia;

the Secretary may determine that this Part has effect as if the gainful work were carried on in Australia.

(2) The determination has effect accordingly.

Subdivision B—Gainful work

92X Gainful work—basic rule

(1) For the purposes of this Part, ***gainful work*** is work for financial gain or reward, whether as an employee, a self-employed person or otherwise, where:

(a) the work involves a substantial degree of personal exertion on the part of the person concerned; and

(b) the work is carried on within or outside Australia.

(2) Subsection (1) is to be ignored in determining the meaning of an expression used in a provision of this Act other than this Part.

92Y Secretary's discretion to treat activity as gainful work

(1) If a person satisfies the Secretary that:

(a) the person, or the person's partner, has engaged in a particular activity; and

(b) the activity involves a substantial degree of personal exertion on the part of the person or the person's partner, as the case may be; and

(c) the activity does not consist of voluntary work for a charitable, welfare or community organisation; and

(d) because of special circumstances, the activity should be treated as gainful work;

the Secretary may determine that this Part has effect as if the activity were ***gainful work***.

(2) The determination has effect accordingly.

92Z Irregular, infrequent and minor absences from a workplace count as gainful work

For the purposes of this Part, if a person is engaged in gainful work, the total hours gainfully worked by the person during a period are to be determined as if the person had been engaged in

gainful work during any absences from the workplace that are irregular, infrequent and minor.

93 Management of family financial investments does not count as gainful work

(1) Unless the Secretary otherwise determines, work undertaken by a person is taken not to be ***gainful work*** for the purposes of this Part to the extent to which the work consists of the management or administration of one or more financial investments in which any of the following has a legal or equitable interest:

(a) a member of the person's family group (see subsection (2));

(b) a company that is a family company in relation to the person (see subsection (2));

(c) the trustee or trustees of a trust that is a family trust in relation to the person (see subsection (2)).

Note: ***Financial investment*** is defined by section 9.

(2) In this section:

family company, in relation to a person, means a company where:

(a) the company is, or its directors are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of any or all of the members of the person's family group; or

(b) any or all of the members of the person's family group are in a position to cast, or control the casting of, more than 50% of the maximum number of votes that may be cast at a general meeting of the company; or

(c) both:

(i) the company has one or more shareholders; and

(ii) each shareholder is a member of the person's family group.

family group, in relation to a person, means the group consisting of the person and the family members of the person. If the person has

no family members, the person is taken to be a family group in his or her own right.

Note: ***Family member*** is defined by subsection 23(1).

family trust, in relation to a person, means a trust where a member of the person's family group benefits, or is capable (whether by the exercise of a power of appointment or otherwise) of benefiting, under the trust.

93A Domestic duties in relation to a person's place of residence do not count as gainful work

(1) Unless the Secretary otherwise determines, work undertaken by a person is taken not to be ***gainful work*** for the purposes of this Part if the work consists of carrying out:

(a) domestic tasks; or

(b) household maintenance tasks; or

(c) gardening tasks; or

(d) similar tasks;

in relation to:

(e) the person's place of residence; or

(f) if the person has 2 or more places of residence—any of those places of residence.

(2) For the purposes of this section, a ***place of residence*** includes:

(a) if the place is a dwelling-house—any land or building that is adjacent to the dwelling-house and that is used primarily for private or domestic purposes in association with that dwelling-house; or

(b) if the place is a flat or home unit—a garage or storeroom that is used for private or domestic purposes in association with the flat or home unit.

93B Evidentiary certificate

Hours worked during full-year period

(1) The Secretary may, if requested to do so by a member of the pension bonus scheme, issue a written certificate stating that:

(a) the member was an accruing member of the scheme throughout a specified full-year period; and

(b) the total number of hours gainfully worked by the member during that period was at least a specified number of hours; and

(c) the total number of hours gainfully worked in Australia by the member during that period was at least a specified number of hours.

(2) The Secretary may, if requested to do so by a member of the pension bonus scheme, issue a written certificate stating that:

(a) the member was an accruing member of the scheme throughout a specified full-year period; and

(b) the total number of hours gainfully worked by a specified person during that period while the person was the partner of the member and was:

(i) an accruing member, or a post-75 member, of the pension bonus scheme; or

(ii) an accruing member, or a post-70/75 member, of the corresponding scheme under Part IIIAB of the Veterans' Entitlements Act;

was at least a specified number of hours; and

(c) the total number of hours gainfully worked in Australia by a specified person during that period while the person was the partner of the member and was:

(i) an accruing member, or a post-75 member, of the pension bonus scheme; or

(ii) an accruing member, or a post-70/75 member, of the corresponding scheme under Part IIIAB of the Veterans' Entitlements Act;

was at least a specified number of hours.

Hours worked during part-year period

(3) The Secretary may, if requested to do so by a member of the pension bonus scheme, issue a written certificate stating:

(a) that the member was an accruing member of the scheme throughout a specified part-year period; and

(b) the total number of hours gainfully worked by the member during that period; and

(c) the total number of hours gainfully worked in Australia by the member during that period.

(4) The Secretary may, if requested to do so by a member of the pension bonus scheme, issue a written certificate stating:

(a) that the member was an accruing member of the scheme throughout a specified part-year period; and

(b) the total number of hours gainfully worked by a specified person during that period while the person was the partner of the member and was:

(i) an accruing member, or a post-75 member, of the pension bonus scheme; or

(ii) an accruing member, or a post-70/75 member, of the corresponding scheme under Part IIIAB of the Veterans' Entitlements Act; and

(c) the total number of hours gainfully worked in Australia by a specified person during that period while the person was the partner of the member and was:

(i) an accruing member, or a post-75 member, of the pension bonus scheme; or

(ii) an accruing member, or a post-70/75 member, of the corresponding scheme under Part IIIAB of the Veterans' Entitlements Act.

Record-keeping requirements

(5) If:

(a) a person makes a request for a certificate under subsection (1), (2), (3) or (4) relating to a particular period; and

(b) the applicable record-keeping requirements have not been complied with in relation to that period (see section 93C);

the Secretary may refuse to issue the certificate.

Non-accruing membership

(6) The Secretary may, if requested to do so by a member of the pension bonus scheme, issue a written certificate stating that the member was a non-accruing member of the scheme throughout a specified period.

Evidence

(7) In any proceedings relating to this Part, a certificate under this section is prima facie evidence of the matters in the certificate.

Subdivision C—Record-keeping requirements

93C Record-keeping requirements

Record-keeping requirements for person

(1) For the purposes of the application of paragraph 92U(a) or 92V(1)(a) or subsection 93B(1) or (3) to a person, the applicable record-keeping requirements have been complied with in relation to a period of the person's accruing membership of the pension bonus scheme if:

(a) in a case where the person has:

(i) been given a group certificate or payment summary (within the meaning of section 16-170 in Schedule 1 to the *Taxation Administration Act 1953*) in respect of any gainful work carried on by the person during that period; or

(ii) lodged an income tax return that relates to any gainful work carried on by the person during that period;

OFFICIAL: Sensitive // Legal Privilege

the person would be in a position to produce a copy of the certificate or of the return, as the case may be, to the Secretary if the Secretary were to require the person to produce that copy; and

(b) both:

(i) the person has kept a recognised work record (see subsection (3)) in relation to gainful work carried on by the person during that period; and

(ii) the person would be in a position to produce that record to the Secretary if the Secretary were to require the person to produce that record.

Record-keeping requirements for partner of person

(2) For the purposes of the application of paragraph 92U(b) or (c) or 92V(1)(b) or (c) or subsection 93B(2) or (4) to a partner of a person, the applicable record-keeping requirements have been complied with in relation to a period of the person's accruing membership of the pension bonus scheme if:

(a) in a case where the partner has been given a group certificate or payment summary (within the meaning of section 16-170 in Schedule 1 to the *Taxation Administration Act 1953*) in respect of any gainful work carried on by the partner during that period while the partner was a partner of the person and was:

(i) an accruing member, or a post-75 member, of the pension bonus scheme; or

(ii) an accruing member, or a post-70/75 member, of the corresponding scheme under Part IIIAB of the Veterans' Entitlements Act;

the person would be in a position to produce a copy of the certificate to the Secretary if the Secretary were to require the person to produce that copy; and

(b) in a case where the partner has lodged an income tax return that relates to any gainful work carried on by the partner during that period while the partner was a partner of the person and was:

(i) an accruing member, or a post-75 member, of the pension bonus scheme; or

(ii) an accruing member, or a post-70/75 member, of the corresponding scheme under Part IIIAB of the Veterans' Entitlements Act;

the person would be in a position to produce a copy of the return to the Secretary if the Secretary were to require the person to produce that copy; and

(c) in any case—the partner has kept a recognised work record (see subsection (3)) in relation to any gainful work carried on by the partner during that period while the partner was a partner of the person and was:

(i) an accruing member, or a post-75 member, of the pension bonus scheme; or

(ii) an accruing member, or a post-70/75 member, of the corresponding scheme under Part IIIAB of the Veterans' Entitlements Act;

and the person would be in a position to produce that record to the Secretary if the Secretary were to require the person to produce that record.

Recognised work record

(3) For the purposes of this section, a ***recognised work record***, in relation to a person, is a written statement signed by the person that sets out, in relation to gainful work carried on by the person during a particular period:

(a) the nature of the gainful work; and

(b) the dates on which the gainful work was carried on; and

(c) the total number of hours gainfully worked; and

(d) the total number of hours gainfully worked in Australia; and

(e) in a case where any of the gainful work was carried on in the capacity of employee—the name or names of the employer or employers concerned; and

(f) such other particulars as the Secretary requires.

Division 6—Amount of pension bonus

93D How to calculate the amount of pension bonus

(1) To calculate the amount of a person's pension bonus:

(a) work out which of the person's bonus periods count as qualifying bonus periods (see section 93E);

(b) work out the person's overall qualifying period (see section 93F);

(c) work out the person's pension multiple (see section 93G);

(d) work out the person's annual pension rate (see section 93H);

(e) apply the appropriate formula in section 93J.

Note: ***Bonus period*** is defined by section 92T.

(2) For the purposes of this Division, a number of years is to be calculated to 3 decimal places. However, if a number worked out in accordance with this subsection would, if it were calculated to 4 decimal places, end in a digit that is greater than 4, the number is to be increased by 0.001.

93E Qualifying bonus periods

(1) For the purposes of this Division, if a person has accrued only one bonus period, that bonus period is the person's ***qualifying bonus period***.

(2) For the purposes of this Division, if a person has accrued only 2 bonus periods, each of those bonus periods is a ***qualifying bonus period***.

(3) For the purposes of this Division, if a person has accrued only 3 bonus periods, each of those bonus periods is a ***qualifying bonus period***.

(4) For the purposes of this Division, if a person has accrued only 4 bonus periods, each of those bonus periods is a ***qualifying bonus period***.

(5) For the purposes of this Division, if a person has accrued only 5 bonus periods, each of those bonus periods is a ***qualifying bonus period***.

(6) For the purposes of this Division, if:
  (a) a person has accrued more than 5 bonus periods; and
  (b) the last bonus period is a full-year period;
each of the 5 most recent bonus periods are ***qualifying bonus periods***.

(7) For the purposes of this Division, if:
  (a) a person has accrued more than 5 bonus periods; and
  (b) the last bonus period is a part-year period;
each of the 5 most recent full-year bonus periods are ***qualifying bonus periods***.

93F Overall qualifying period

(1) For the purposes of this Division, if a person has only one qualifying bonus period, that period is the person's ***overall qualifying period***.

(2) For the purposes of this Division, if a person has 2 or more qualifying bonus periods, the person's ***overall qualifying period*** is the period:
  (a) beginning at the start of the first qualifying bonus period; and
  (b) ending at the end of the last qualifying bonus period.
However, any period of non-accruing membership of the pension bonus scheme is taken not to form part of the person's overall qualifying period.

93G Pension multiple

For the purposes of this Division, a person's ***pension multiple*** is worked out using the formula:

$$0.094 \times \text{No. of years in the person's overall qualifying period}$$

93H Annual pension rate

Application

(1) This section sets a person's annual pension rate for the purposes of this Division if the start day for the age pension is on or after 20 September 2009.

Note: See clause 144 of Schedule 1A if the start day is before 20 September 2009.

If person is not permanently blind

(2) If the person is not permanently blind, the person's ***annual pension rate*** is the rate that would be the person's provisional annual payment rate under step 11 of the method statement in point 1064-A1, worked out as at the start day for the age pension, if the maximum payment rate under step 4 of the method statement were the total of:

(a) the person's maximum basic rate under point 1064-B1; and

(b) the amount worked out for the person using the table in subsection (4).

(2A) The annual pension rate is to be worked out under subsection (2) by disregarding the amendments made by Part 1 of Schedule 1 to the *Social Services and Other Legislation Amendment (Simplifying Income Reporting and Other Measures) Act 2020*.

If person is permanently blind

(3) If the person is permanently blind, the person's ***annual pension rate*** is the sum of the following, worked out as at the start day for the age pension:

(a) the person's maximum basic rate in the table in point 1065-B1;

(b) the amount worked out for the person using the table in subsection (4).

Amount for paragraphs (2)(b) and (3)(b)

(4) For the purposes of paragraphs (2)(b) and (3)(b), the table is as follows:

Amount for paragraphs (2)(b) and (3)(b)		
Column 1 **Item**	**Column 2** **Person's family situation**	**Column 3** **Amount**
1	Not member of a couple	$507.00
2	Partnered	$423.80
3	Member of illness separated couple	$507.00
4	Member of respite care couple	$507.00
5	Partnered (partner in gaol)	$507.00

Note 1: For ***member of a couple***, ***partnered***, ***illness separated couple***, ***respite care couple*** and ***partnered (partner in gaol)*** see section 4.

Note 2: The amounts are indexed 6 monthly in line with CPI increases (see sections 1191 to 1194).

93J Amount of pension bonus

No change in couple status during overall qualifying period

(1) If:

(a) a person was a member of a couple throughout the person's overall qualifying period; or

(b) a person was not a member of a couple at any time during the person's overall qualifying period;

the amount of the person's pension bonus is worked out using the following formula (for rounding up, see subsection (7)):

$$\text{Annual pension rate} \times \text{Pension multiple} \times \frac{\text{No. of years in the person's overall qualifying period}}{}$$

Change in couple status during overall qualifying period

(2) If subsection (1) does not apply to a person, the amount of the person's pension bonus is worked out using the following formula (for rounding up, see subsection (7)):

$$\left[\text{Annual notional single pension rate} \times \text{Pension multiple} \times \text{No. of single years during overall qualifying period}\right] + \left[\text{Annual notional partnered pension rate} \times \text{Pension multiple} \times \text{No. of partnered years during overall qualifying period}\right]$$

(3) For the purposes of this section, a person's ***annual notional single pension rate*** is equal to:

(a) if the person is not permanently blind—the adjusted percentage of the sum of:

(i) the person's maximum basic rate under Table B in point 1064-B1; and

(ii) the amount worked out for the person using the table in subsection 93H(4);

calculated in each case as at the start day for the age pension and assuming that the person was not a member of a couple at that day; or

(b) if the person is permanently blind—the sum of:

(i) the person's maximum basic rate under Table B in point 1065-B1; and

(ii) the amount worked out for the person using the table in subsection 93H(4);

calculated in each case as at the start day for the age pension and assuming that the person was not a member of a couple at that day.

(4) For the purposes of this section, a person's ***annual notional partnered pension rate*** is equal to:

(a) if the person is not permanently blind—the adjusted percentage of the sum of:

(i) the person's maximum basic rate under Table B in point 1064-B1; and

(ii) the amount worked out for the person using the table in subsection 93H(4);

calculated in each case as at the start day for the age pension and assuming that the person was a member of a couple at that day; or

(b) if the person is permanently blind—the sum of:

(i) the person's maximum basic rate under Table B in point 1065-B1; and

(ii) the amount worked out for the person using the table in subsection 93H(4);

calculated in each case as at the start day for the age pension and assuming that the person was a member of a couple at that day.

(5) For the purposes of this section, a person's ***adjusted percentage*** is the percentage worked out using the following formula (for rounding up, see subsection (8)):

$$\frac{\text{Annual pension rate}}{\text{Maximum basic rate}} \times 100$$

where:

maximum basic rate is the sum of the person's maximum basic rate worked out using Module B of Pension Rate Calculator A in section 1064 and the amount worked out for the person using the table in subsection 93H(4).

(6) For the purposes of this section:

(a) the number of ***single years*** during the overall qualifying period is the number of years during the overall qualifying period when the person was not a member of a couple; and

(b) the number of ***partnered years*** during the overall qualifying period is the number of years during the overall qualifying period when the person was a member of a couple.

Rounding up

(7) An amount calculated under subsection (1) or (2) is to be rounded to the nearest 10 cents (with 5 cents being rounded up).

(8) A percentage worked out under subsection (5) is to be calculated to 3 decimal places. However, if a percentage worked out under subsection (5) would, if it were calculated to 4 decimal places, end in a digit that is greater than 4, the percentage is to be increased by 0.001.

93K Top up of pension bonus for increased rate of age pension

(1) The Secretary may determine (a ***top up determination***) that a person's pension bonus is to be increased if:

(a) the Secretary makes a determination (a ***rate determination***) increasing the person's rate of age pension; and

(b) the rate determination takes effect on a day that is not more than 13 weeks after the start day for the person's pension bonus; and

(c) the rate determination is made because of a reduction since the start day in either or both of the following:

(i) the value of the person's assets;

(ii) the person's ordinary income.

Note: Any reduction in the value of a person's assets or the person's income will be determined by applying the assets test and the ordinary income test in Pension Rate Calculator A in Part 3.2 (including because of the operation of Pension Rate Calculator B in Part 3.3).

(2) The person's pension bonus is increased by the difference between:

(a) the person's amount of pension bonus on the 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 highest rate at which age pension was payable to the person during the 13 weeks after the start day.

(3) A top up determination takes effect on the day on which the determination is made or on any earlier or later day specified in the determination.

(4) A top up determination is not a legislative instrument.

93L Top up of pension bonus in specified circumstances

(1) The Secretary may determine (a ***top up determination***) that a person's pension bonus is to be increased if:

(a) the Secretary makes a determination (a ***rate determination***) increasing the person's rate of age pension; and

(b) the rate of age pension is increased in circumstances specified in an instrument made under subsection (6).

(2) The person's pension bonus is increased by the amount specified by the Secretary in the top up determination.

(3) The Secretary must not specify an increase that would be greater than the difference between:

(a) the person's amount of pension bonus on the start day for the bonus; 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.

(4) A top up determination takes effect on the day on which the determination is made or on any earlier or later day specified in the determination.

(5) A top up determination is not a legislative instrument.

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

OFFICIAL: Sensitive // Legal Privilege

Division 11—Preclusion periods

93U Disposal preclusion period—disposals before 1 July 2002

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

(1) For the purposes of this Part, if:

(a) either:

(i) a person has, during a designated year of the person, disposed of an asset of the person; or

(ii) the partner of a person has, during a designated year of the person, disposed of an asset of the partner; and

(b) the amount of that disposition, or the sum of that amount and of the amounts (if any) of other dispositions of assets previously made by the person and/or the person's partner during that designated year, exceeds $10,000;

the person is subject to a ***disposal preclusion period*** throughout the period of 5 years that starts on the day on which the disposition referred to in paragraph (a) took place.

Note: ***Designated year*** is defined by subsection (3).

(2) For the purposes of this Part, if:

(a) a person ceases to be a member of a couple (whether because of the death of the person's partner or for any other reason); and

(b) immediately before the cessation, the person was subject to a particular disposal preclusion period that arose wholly because the person's partner disposed of a particular asset; and

(c) if that disposition had been disregarded, the person would not have been subject to that disposal preclusion period;

then, despite subsection (1), that disposal preclusion period ends at the cessation.

(3) For the purposes of this section, a ***designated year*** of a person is:

(a) the 12-month period ending on the day the person qualified for age pension; and
(b) each preceding 12-month period; and
(c) each succeeding 12-month period.

(4) This section applies to a disposal even if the disposal took place before the commencement of this section.

93UA Disposal preclusion period—disposals on or after 1 July 2002

A person is subject to a ***disposal preclusion period*** throughout any period for which an amount is included in the value of the person's assets under section 1126AA, 1126AB, 1126AC, 1126AD or 1126E (so far as section 1126E relates to section 1126AA, 1126AB, 1126AC or 1126AD).

93V Compensation preclusion period

(1) For the purposes of this Part, if a person receives a lump sum compensation payment, the person is subject to a ***compensation preclusion period*** throughout the lump sum preclusion period.

(2) For the purposes of this Part, if a person receives a series of periodic compensation payments, the person is subject to a ***compensation preclusion period*** throughout the periodic payments period.

(3) This section applies to a payment even if it was received before the commencement of this section.

93W Carer preclusion period

(1) For the purposes of this Part, if a person receives:
(a) a carer payment; or
(b) a carer service pension; or
(c) an income support supplement that is payable as a result of the operation of subclause 8(3) of Schedule 5 to the Veterans' Entitlements Act;

during a particular period, the person is subject to a ***carer preclusion period*** throughout that period.

Note: Subclause 8(3) of Schedule 5 to the Veterans' Entitlements Act deals with income support supplement for carers.

(2) This section applies to a carer payment, a carer service pension or an income support supplement even if it was received before the commencement of this section.

Division 12—Pension bonus bereavement payment

93WA Qualification for pension bonus bereavement payment

A person is qualified for a pension bonus bereavement payment if:

(a) the person stopped being 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 pension bonus scheme; and

(c) the partner had not made a claim for age pension or pension bonus before the partner died.

93WB Amount of pension bonus bereavement payment

(1) The amount of a person's pension bonus bereavement payment is worked out:

(a) by working out the amount of pension bonus that would have been payable to the legal personal representative of the partner had the partner made claims for age pension and pension bonus just before the partner died (see subsections 59(3) and (4) of the Administration Act); and

(b) by disregarding, in working out the amount referred to in paragraph (a):

(i) any PBBP employment income of the person (see section 93WC); and

(ii) any income of a kind specified in an instrument made under subsection (2).

(2) The Secretary may, by legislative instrument, specify kinds of income for the purposes of subparagraph (1)(b)(ii).

93WC Definition of *PBBP employment income*

(1) ***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, or is taken to be, earned, derived or received by the person or the person's partner:

(i) salary, wages, commissions and employment-related fringe benefits;

(ii) leave payments;

(iii) payments to the person or the person's partner by a former employer of the person or partner in relation to the termination of the person's or partner's employment.

(2) For the purposes of subparagraph (1)(b)(ii), a ***leave payment***:

(a) includes a payment in respect of sick leave, personal leave, carer's leave, annual leave, maternity leave, long service leave or special leave; and

(aa) includes an instalment of parental leave pay; and

(ab) includes dad and partner pay; and

(b) may be made as a lump sum payment, a series of regular payments or otherwise; and

(c) is taken to be made to a person if it is made to another person:

(i) at the direction of the person or of a court; or

(ii) on behalf of the person; or

(iii) for the benefit of the person; or

(iv) if the person waives or assigns his or her right to the payment.

OFFICIAL: Sensitive // Legal Privilege

Part 2.3—Disability support pension

Division 1—Qualification for and payability of disability support pension

Subdivision A—Qualification

94 Qualification for disability support pension

(1) A person is qualified for disability support pension if:

(a) the person has a physical, intellectual or psychiatric impairment; and

(b) the person's impairment is of 20 points or more under the Impairment Tables; and

(c) one of the following applies:

(i) the person has a continuing inability to work;

(ii) the Secretary is satisfied that the person is participating in the program administered by the Commonwealth known as the supported wage system; and

(d) the person has turned 16; and

(da) in a case where the following apply:

(i) the person is under 35 years of age or is a reviewed 2008-2011 DSP starter;

(ii) the Secretary is satisfied that the person is able to do work that is for at least 8 hours per week on wages at or above the relevant minimum wage and that exists in Australia, even if not within the person's locally accessible labour market;

(iii) if the person has one or more dependent children—the youngest dependent child is 6 years of age or over;

the person meets any participation requirements that apply to the person under section 94A; and

(e) the person either:

(i) is an Australian resident at the time when the person first satisfies paragraph (c); or

(ii) has 10 years qualifying Australian residence, or has a qualifying residence exemption for a disability support pension; or

(iii) is born outside Australia and, at the time when the person first satisfies paragraph (c) the person:

(A) is not an Australian resident; and

(B) is a dependent child of an Australian resident;

and the person becomes an Australian resident while a dependent child of an Australian resident; and

(ea) one of the following applies:

(i) the person is an Australian resident;

(ia) the person is absent from Australia and the Secretary has made a determination in relation to the person under subsection 1218AAA(1);

(ii) the person is absent from Australia and all the circumstances described in paragraphs 1218AA(1)(a), (b), (c), (d) and (e) exist in relation to the person.

Note 1: For ***Australian resident***, ***qualifying Australian residence*** and ***qualifying residence exemption*** see section 7.

Note 2: For ***Impairment Tables*** see subsection 23(1) and sections 26 and 27.

Continuing inability to work

(2) A person has a ***continuing inability to work*** because of an impairment if the Secretary is satisfied that:

(aa) in a case where the person's impairment is not a severe impairment within the meaning of subsection (3B) or the person is a reviewed 2008-2011 DSP starter who has had an opportunity to participate in a program of support—the person has actively participated in a program of support within the meaning of subsection (3C), and the program of support was wholly or partly funded by the Commonwealth; and

(a) in all cases—the impairment is of itself sufficient to prevent the person from doing any work independently of a program of support within the next 2 years; and

(b) in all cases—either:

(i) the impairment is of itself sufficient to prevent the person from undertaking a training activity during the next 2 years; or

(ii) if the impairment does not prevent the person from undertaking a training activity—such activity is unlikely (because of the impairment) to enable the person to do any work independently of a program of support within the next 2 years.

Note: For ***work*** see subsection (5).

(3) In deciding whether or not a person has a ***continuing inability to work*** because of an impairment, the Secretary is not to have regard to:

(a) the availability to the person of a training activity; or

(b) the availability to the person of work in the person's locally accessible labour market.

(3A) If:

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

(b) the Secretary gives the person a notice under subsection 63(2) or (4) of the Administration Act in relation to assessing the person's qualification for that pension; and

(c) the person is not a reviewed 2008-2011 DSP starter;

then paragraph (2)(aa) of this section does not apply in relation to that assessment.

Severe impairment

(3B) A person's impairment is a ***severe impairment*** if the person's impairment is of 20 points or more under the Impairment Tables, of which 20 points or more are under a single Impairment Table.

Example 1: A person's impairment is of 30 points under the Impairment Tables, made up of 20 points under one Impairment Table and 10 points under another Impairment Table. The person has a severe impairment.

Example 2: A person's impairment is of 40 points under the Impairment Tables, made up of 20 points under one Impairment Table and 20 points under another Impairment Table. The person has a severe impairment.

Example 3: A person's impairment is of 20 points under the Impairment Tables, made up of 10 points each under 2 separate Impairment Tables. The person does not have a severe impairment.

Active participation in a program of support

(3C) A person has ***actively participated*** in a program of support if the person has satisfied the requirements specified in a legislative instrument made by the Minister for the purposes of this subsection.

(3D) The Secretary must comply with any guidelines in force under subsection (3E) in deciding whether the Secretary is satisfied as mentioned in paragraph (2)(aa).

(3E) The Minister may, by legislative instrument, make guidelines for the purposes of subsection (3D).

Doing work independently of a program of support

(4) A person is treated as doing work ***independently of a program of support*** if the Secretary is satisfied that to do the work the person:

(a) is unlikely to need a program of support; or

(b) is likely to need a program of support provided occasionally; or

(c) is likely to need a program of support that is not ongoing.

Other definitions

(5) In this section:

program of support means a program that:

(a) is designed to assist persons to prepare for, find or maintain work; and

(b) either:

(i) is funded (wholly or partly) by the Commonwealth; or

(ii) is of a type that the Secretary considers is similar to a program that is designed to assist persons to prepare for,

find or maintain work and that is funded (wholly or partly) by the Commonwealth.

reviewed 2008-2011 DSP starter means a person for whom all the following conditions are met:

(a) the person made (or is taken to have made) a claim for disability support pension before 3 September 2011;

(b) a determination granting the claim took effect after 2007;

(c) on or after 1 July 2014 the person was given a notice under subsection 63(2) or (4) of the Administration Act in relation to assessing the person's qualification for that pension;

(d) when the notice was given, the person was under 35 years of age;

(e) before the notice was given, either:

(i) there was a record that the Secretary was satisfied that the person was able to do work that was for at least 8 hours per week on wages at or above the relevant minimum wage and that existed in Australia, even if not within the person's locally accessible labour market; or

(ii) there was no record that the Secretary had considered whether the person was able to do work described in subparagraph (i);

(f) after the notice was given, the Secretary decided not to determine under section 80 of the Administration Act that the disability support pension for the person is to be cancelled;

(g) as a result of the assessment involving the notice, the Secretary is satisfied that the person:

(i) does not have a severe impairment within the meaning of subsection (3B); and

(ii) is able to do work that is for at least 8 hours per week on wages at or above the relevant minimum wage and that exists in Australia, even if not within the person's locally accessible labour market;

(h) the person does not have a dependent child under 6 years of age.

Note 1: Section 63 of the Administration Act lets the Secretary notify a person that the person must give information to the Secretary or undergo a medical, psychiatric or psychological examination and give the Secretary a report on the examination.

Note 2: Section 80 of the Administration Act lets the Secretary determine that disability support pension paid to a person is to be cancelled if the person is not or was not qualified for the pension, or if the pension is not or was not payable to the person (which may apply because the person did not comply with the notice under section 63 of that Act).

training activity means one or more of the following activities, whether or not the activity is designed specifically for people with physical, intellectual or psychiatric impairments:

(a) education;
(b) pre-vocational training;
(c) vocational training;
(d) vocational rehabilitation;
(e) work-related training (including on-the-job training).

work means work:

(a) that is for at least 15 hours per week on wages that are at or above the relevant minimum wage; and
(b) that exists in Australia, even if not within the person's locally accessible labour market.

~~*Person not qualified in certain circumstances*~~

~~(6) A person is not qualified for a disability support pension on the basis of a continuing inability to work if the person brought about the inability with a view to obtaining a disability support pension or with a view to obtaining an exemption, because of the person's incapacity, from the requirement to satisfy the activity test for the purposes of job search allowance, jobseeker payment, youth training allowance, youth allowance or austudy payment.~~

Person not qualified in certain circumstances

(6) A person is not qualified for a disability support pension on the basis of a continuing inability to work if the person brought about

the inability with a view to obtaining a disability support pension or with a view to obtaining an exemption, because of the person's incapacity, from:

(a) the requirement to satisfy the activity test for the purposes of austudy payment; or

(b) undertaking full-time study (see section 541B); or

(c) the requirement to satisfy the employment pathway plan requirements for the purposes of jobseeker payment or youth allowance.

94A Participation requirements

(1) The participation requirements are as follows:

(a) the person must enter into a participation plan when the person is required by the Secretary under section 94B to do so;

(b) if a participation plan is in force in relation to the person—the person must enter into another participation plan (instead of the existing one) if required by the Secretary under section 94B to do so;

(c) while a participation plan is in force in relation to the person, the person must comply with the requirements in the plan.

(2) However, this section does not apply to the person during a period when the person is covered by a participation exemption under section 94C, 94D, 94E or 94F.

94B Participation plans

(1) If a participation plan is not in force in relation to the person, the Secretary may require the person to enter into a participation plan under this section.

(2) If a participation plan is in force in relation to the person, the Secretary may require the person to enter into another participation plan instead of the existing one.

OFFICIAL: Sensitive // Legal Privilege

Notice of requirement

(3) The Secretary is to give the person notice of:
  (a) the requirement; and
  (b) the place and time at which the participation plan is to be entered into.

Suitable requirements

(4) A participation plan that is in force in relation to a person must contain one or more terms (the ***requirements***) that:
  (a) the person is required to comply with; and
  (b) the Secretary regards as suitable for the person.

Approval of requirements

(5) The requirements in a plan are to be approved by the Secretary.

Optional terms

(6) A participation plan may also contain one or more terms that the person may, but is not required to, comply with.

Form of plan

(7) A participation plan must be in a form approved by the Secretary.

94C Illness or accident

(1) A person is covered by a participation exemption if the Secretary is satisfied that the person is temporarily unable to meet the participation requirements because of illness or an accident.

(1A) Subsection (1) does not apply to illness, or an accident, wholly or predominantly attributable to the person's dependence on alcohol or another drug, unless the person is a declared program participant.

(2) The person is covered by the participation exemption for a period determined by the Secretary.

(3) In deciding whether he or she is satisfied as mentioned in subsection (1), the Secretary may request the person to give the Secretary a certificate from a medical practitioner.

(4) Subsection (3) does not limit subsection (1).

(5) A determination under subsection (2) is not a legislative instrument.

94D Pre-natal and post-natal relief

(1) A pregnant woman is covered by a participation exemption for the period that starts 6 weeks before the woman's expected date of confinement and ends on the day on which the woman gives birth to the child (whether or not the child is born alive).

(2) If a woman gives birth to a child (whether or not the child is born alive), the woman is covered by a participation exemption for the period that starts on the day on which she gives birth to the child and ends 6 weeks after that day.

94E Supported employment

(1) A person is covered by a participation exemption for a period if:
  (a) the person is employed throughout the period; and
  (b) the work undertaken by the person in the course of that employment is for wages set in accordance with the program administered by the Commonwealth known as the supported wage system.

(2) A person is covered by a participation exemption for a period if the person is, throughout the period, in employment that is supported by supported employment services within the meaning of section 7 of the *Disability Services Act 1986*.

94F Special circumstances

(1) A person is covered by a participation exemption for a period determined by the Secretary if:

(a) the Secretary is satisfied that special circumstances, beyond the person's control, exist; and

(b) the Secretary is satisfied that in those circumstances it would be unreasonable to expect the person to meet the participation requirements for that period.

(1A) Subsection (1) does not apply to circumstances wholly or predominantly attributable to the person's misuse of alcohol or another drug, unless the person is a declared program participant.

(2) The period determined under subsection (1) must not exceed 13 weeks.

(3) A determination under subsection (1) is not a legislative instrument.

95 Qualification for disability support pension—permanent blindness

(1) A person is qualified for a disability support pension if:

(a) the person is permanently blind; and

(b) the person has turned 16; and

(c) the person:

(i) is an Australian resident at the time when the person first satisfies paragraph (a); or

(ii) has 10 years qualifying Australian residence; or

(iia) has a qualifying residence exemption for a disability support pension; or

(iii) is born outside Australia and, at the time when the person first satisfies paragraph (a), the person:

(A) is not an Australian resident; and

(B) is a dependent child of an Australian resident;

and the person becomes an Australian resident while a dependent child of an Australian resident; and

(d) one of the following applies:

(i) the person is an Australian resident;

(ia) the person is absent from Australia and the Secretary has made a determination in relation to the person under subsection 1218AAA(1);

(ii) the person is absent from Australia and all the circumstances described in paragraphs 1218AA(1)(a), (b), (c), (d) and (e) exist in relation to the person.

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

~~*Person not qualified in certain circumstances*~~

~~(2) A person is not qualified for a disability support pension on the basis of blindness if the person brought about the blindness with a view to obtaining a disability support pension or with a view to obtaining an exemption, because of the person's blindness, from the requirement to satisfy the activity test for the purposes of job search allowance, jobseeker payment, youth training allowance, youth allowance or austudy payment.~~

Person not qualified in certain circumstances

(2) A person is not qualified for a disability support pension on the basis of blindness if the person brought about the blindness with a view to obtaining a disability support pension or with a view to obtaining an exemption, because of the person's blindness, from:

(a) the requirement to satisfy the activity test for the purposes of austudy payment; or

(b) undertaking full-time study (see section 541B); or

(c) the requirement to satisfy the employment pathway plan requirements for the purposes of jobseeker payment or youth allowance.

96 Continuation of disability support pension

(1) This section applies to a person if:

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

OFFICIAL: Sensitive // Legal Privilege

(b) the person would, apart from this section, cease to be qualified for disability support pension because the person obtains paid work that is for:

(i) at least 15 hours per week; but

(ii) less than 30 hours per week.

(2) A person to whom this section applies continues to be qualified for disability support pension.

(3) However, subsection (2) does not apply if, apart from that subsection, the person would cease to be qualified for disability support pension for the reason described in paragraph (1)(b) in the period:

(a) starting when the person becomes a reviewed 2008-2011 DSP starter as defined in subsection 94(5); and

(b) ending at the first time, after the person becomes a reviewed 2008-2011 DSP starter, at which the Secretary reviews the determination granting disability support pension to the person.

Subdivision B—Payability

98 Disability support pension not payable if pension rate nil

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

(2) Subsection (1) does not apply to a person if the person's rate would be nil merely because an election by the person under subsection 915A(1) (about quarterly energy supplement) or 1061VA(1) (about quarterly pension supplement) is in force.

103 Multiple entitlement exclusion

(1) A disability support pension is not payable to a person if the person is already receiving a service pension or a veteran payment.

(2) If:

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

(b) another social security pension, a social security benefit, a service pension or a veteran payment becomes payable to the person;

the disability support pension is not payable to the person.

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

Note 2: ***Social security benefit*** includes jobseeker payment.

(3) A disability support pension is not payable to a person who:

(a) is an armed services widow or an armed services widower; and

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

(c) is receiving income support supplement under Part IIIA of that Act or would be eligible for income support supplement under that Part if he or she made a claim under section 45I of that Act.

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

(a) the person:

(i) was on 20 March 1995 receiving; and

(ii) has from that day continuously received; and

(iii) is receiving;

the disability support pension; and

(b) the person elected under subsection 45E(2) of the Veterans' Entitlements Act, or is taken under subsection 45E(3) of that Act to have elected, to continue to receive the disability support pension.

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

(a) before 20 March 1995, the person had made a claim for disability support pension; and

OFFICIAL: Sensitive // Legal Privilege

(b) the person elected under subsection 45F(2) of the Veterans' Entitlements Act, or is taken under subsection 45F(3) of that Act to have elected, to receive the pension in the event that it were granted to him or her; and

(c) on or after 20 March 1995, the person was granted disability support pension; and

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

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

(a) before 20 March 1995:

(i) the person had made a claim for disability support pension; and

(ii) the claim had been rejected; and

(iii) the person had applied, under Chapter 6, for a review of the decision to reject the claim; and

(b) the person elected under subsection 45G(2) of the Veterans' Entitlements Act, or is taken under subsection 45G(3) of that Act to have elected, to receive the pension in the event that it were granted to him or her after review of the decision; and

(c) on or after 20 March 1995, the decision to reject the claim was set aside and the person was granted disability support pension; and

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

(7) A disability support pension is not payable to a person who:

(a) is an armed services widow or an armed services widower; and

(b) is receiving the weekly amount mentioned in paragraph 234(1)(b) of the MRCA (including a reduced weekly amount because of a choice under section 236 of the MRCA) or has received a lump sum mentioned in subsection 236(5) of the MRCA; and

(c) is receiving income support supplement or would be eligible for income support supplement if he or she made a claim under section 45I of the VEA.

OFFICIAL: Sensitive // Legal Privilege

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

Note 2: For ***MRCA*** and ***VEA*** see subsection 23(1).

103A Exclusion of certain participants in ABSTUDY Scheme

(1) If:

(a) a payment is made in respect of a person under the ABSTUDY Scheme; and

(b) the payment is made on the basis that the person is a full-time student; and

(c) in the calculation of the payment, an amount identified as living allowance (the ***basic payment***) is included; and

(d) the payment relates to a period;

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

(2) If:

(a) a person is qualified for a payment under the ABSTUDY Scheme; and

(b) the payment for which the person is qualified is a payment that:

(i) is made on the basis that the person is a full-time student; and

(ii) is calculated on the basis that an amount identified as living allowance (the ***basic payment***) is included; and

(iii) relates to a period;

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

(3) If:

(a) a person may enrol in a full-time course of education; and

(b) a payment referred to in subsection (2) may be made in respect of the person;

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

OFFICIAL: Sensitive // Legal Privilege

104 Seasonal workers—preclusion period

(1) This section applies if:

(a) a person has lodged a claim for disability support pension; and

(b) the person qualifies, under section 94, for disability support pension; and

(c) at any time during the 6 months immediately before the day on which the person lodged the claim, the person, or the person's partner, has been engaged in seasonal work.

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

(2) Disability support pension is not payable to the person:

(a) if the person is subject to a seasonal work preclusion period (whether in relation to the claim referred to in subsection (1) or any other claim under this Act) and the Secretary has not made a determination under subsection (3) in relation to the person—for the person's seasonal work preclusion period; or

(b) if the Secretary has made a determination under subsection (3) in relation to the person—for that part (if any) of the person's seasonal work preclusion period to which the person is subject as a result of the determination.

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

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

(a) the Secretary may determine that the person is not subject to the whole, or any part, of the preclusion period; and

(b) the determination has effect accordingly.

Note 1: For ***in severe financial hardship*** see subsection 19C(2) (person who is not a member of a couple) or subsection 19C(3) (person who is a member of a couple).

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

OFFICIAL: Sensitive // Legal Privilege

Division 5—Rate of disability support pension

117 How to work out a person's disability support pension rate

A person's disability support pension rate is worked out:

(a) if the person is not permanently blind and paragraph (b) does not apply to the person—using Pension Rate Calculator A at the end of section 1064 (see Part 3.2); or

(b) if the person is not permanently blind, has not turned 21 and does not have any dependent children—using Pension Rate Calculator D at the end of section 1066A (see Part 3.4A); or

(c) if the person is permanently blind and paragraph (d) does not apply to the person—using Pension Rate Calculator B at the end of section 1065 (see Part 3.3); or

(d) if the person is permanently blind, has not turned 21 and does not have any dependent children—using Pension Rate Calculator E at the end of section 1066B (see Part 3.4B).

Note: For ***dependent child*** see section 5.

118 Approved program of work supplement

If a person:

(a) is receiving a disability support pension; and

(b) is participating in an approved program of work for income support payment;

the rate of the person's disability support pension is increased by an amount of $20.80, to be known as the approved program of work supplement, for each fortnight during which the person participates in the program.

119 Approved program of work supplement not payable in certain circumstances

An approved program of work supplement is not payable to a person in respect of a fortnight if pensioner education supplement under Part 2.24A or under ABSTUDY is payable to the person in respect of a day in the fortnight.

OFFICIAL: Sensitive // Legal Privilege

120 Effect of participation in an approved program of work for income support payment

A person is not taken to be:

(a) a worker carrying out work in any capacity for the Commonwealth, or an employee of the Commonwealth, for the purposes of the *Work Health and Safety Act 2011*; or

(b) an employee within the meaning of section 5 of the *Safety, Rehabilitation and Compensation Act 1988*; or

(c) an employee for the purposes of the *Superannuation Guarantee (Administration) Act 1992*; or

(d) an employee for the purposes of the *Fair Work Act 2009*;

merely by participating in an approved program of work for income support payment in accordance with the terms of an agreement with the Secretary for the purposes of this Part.

OFFICIAL: Sensitive // Legal Privilege

Division 10—Bereavement payments

Subdivision A—Death of partner

146F Qualification for payments under this Subdivision

(1) If:

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

(b) the person is a member of a couple; and

(c) the person's partner dies; and

(d) immediately before the partner died, the partner:

(i) was receiving a social security pension; or

(ii) was receiving a service pension, income support supplement or a veteran payment; or

(iii) was a long-term social security recipient; and

(e) on the person's payday immediately before the first available bereavement adjustment payday, the amount that would be payable to the person if the person were not qualified for payments under this Subdivision is less than the sum of:

(i) the amount that would otherwise be payable to the person under section 146J (person's continued rate) on that payday; and

(ii) the amount that would otherwise be payable to the person under section 146G (continued payment of partner's pension or benefit) on the partner's payday immediately before the first available bereavement adjustment payday;

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

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

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

(1A) If:

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

(b) immediately before starting to receive the disability support pension the person was receiving partner bereavement payments; and

(c) the bereavement rate continuation period in relation to the death of the person's partner has not ended;

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

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

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

(3) An election under subsection (2):

(a) must be made by written notice to the Secretary; and

(b) may be made after the person has been paid an amount or amounts under this Subdivision; and

(c) cannot be withdrawn after the Department has taken all the action required to give effect to that election.

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

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

(a) the person is receiving a social security benefit; and

(b) in respect of the previous 12 months, the person:

(i) was receiving a social security pension; or

(ii) was receiving a social security benefit; or

(iia) was receiving a youth training allowance; or

(iii) was receiving a service pension, income support supplement or a veteran payment.

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

(a) the person was receiving one or a combination of the payments referred to in that paragraph for a continuous period of 12 months; or

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

146G Continued payment of deceased partner's previous entitlement

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

(a) where the partner was receiving a social security pension or social security benefit—the amount that would have been payable to the partner on the payday if the partner had not died; or

(b) where the partner was receiving a service pension, income support supplement or a veteran payment—the amount that would have been payable to the partner under Part III, IIIA or IIIAA of the Veterans' Entitlements Act on the service payday that:

(i) where the first Thursday after the partner's death was a service payday—precedes the partner's payday; or

(ii) in any other case—follows the partner's payday;

if the partner had not died.

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

146H Lump sum payable in some circumstances

If:

(a) a person is qualified for payments under this Subdivision in relation to the death of the person's partner; and

(b) the first available bereavement adjustment payday occurs before the end of the bereavement period;

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

LUMP SUM CALCULATOR

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

Method statement

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

(a) the person's partner had not died; and

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

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

(a) the partner had not died; and

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

Step 3.	Add the results of Step 1 and Step 2: the result is called the ***combined rate***.
Step 4.	Work out the amount that, but for section 146J, would have been payable to the person on the person's payday immediately before the first available bereavement adjustment payday: the result is called the ***person's individual rate***.
Step 5.	Take the person's individual rate away from the combined rate: the result is called the ***partner's instalment component***.
Step 6.	Work out the number of paydays of the partner in the bereavement lump sum period.
Step 7.	Multiply the partner's instalment component by the number obtained in Step 6: the result is the amount of the lump sum payable to the person under this section.

146J Adjustment of person's disability support pension rate

If:

(a) a person is qualified for payments under this Subdivision; and

(b) the person does not elect under subsection 146F(2) not to receive payments under this Subdivision;

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

(c) during the bereavement rate continuation period, the rate of disability support pension payable to the person is the rate at which the pension would have been payable to the person if:

(i) the person's partner had not died; and

(ii) where immediately before the partner's death the couple were an illness separated couple or a respite care couple—they were not such a couple;

(d) during the bereavement lump sum period (if any), the rate at which disability support pension is payable to the person is the rate at which the disability support pension would be payable to the person apart from this Subdivision.

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

If:

(a) a person is qualified for payments under this Subdivision in relation to the death of the person's partner; and

(b) the person dies within the bereavement period; and

(c) the Secretary does not become aware of the death of the person's partner before the person dies;

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

LUMP SUM CALCULATOR

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

Method statement

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

(a) neither the person nor the person's partner had died; and

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

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

(a) neither the person nor the partner had died; and

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

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

Step 4. Work out the amount that, but for section 97 of the Administration Act, would have been payable to the person on the person's payday immediately after the day on which the person died if the person had not died: the result is called the ***person's individual rate***.

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

Step 6. Work out the number of paydays of the partner in the period that commences on the day on which the person dies and ends on the day on which the bereavement period ends.

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

146L Matters affecting payment of benefits under this Subdivision

(1) If:

(a) a person is qualified for payments under this Subdivision in relation to the death of the person's partner; and

(b) after the person's partner died, an amount to which the partner would have been entitled if the partner had not died has been paid under this Act or under Part III or IIIA of the Veterans' Entitlements Act; and

OFFICIAL: Sensitive // Legal Privilege

(c) the Secretary is not satisfied that the person has not had the benefit of that amount;

the following provisions have effect:

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

(e) the amount payable to the person under this Subdivision is to be reduced by the amount referred to in paragraph (b).

(2) If:

(a) a person is qualified for payments under this Subdivision in relation to the death of the person's partner; and

(b) an amount to which the person's partner would have been entitled if the person's partner had not died has been paid under this Act or under Part III or IIIA of the Veterans' Entitlements Act, within the bereavement period, into an account with a bank; and

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

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

Subdivision C—Death of recipient

146Q Death of recipient

(1) If:

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

(b) either:

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

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

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

(C) is not receiving a service pension, income support supplement or a veteran payment; and

(c) the person dies;

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

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

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

OFFICIAL: Sensitive // Legal Privilege

Part 2.5—Carer payment

Division 1A—Interpretation

197 Definitions

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

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

care includes attention and supervision.

care child means:
(a) a sole care child; or
(b) a combined care child; or
(c) a multiple care child.

care receiver has the meaning given by subsection 197B(1), 197C(1), 197D(1), 197E(1), 197G(1), 197H(1) or 198(2).

combined care child has the meaning given by subsection (4).

Disability Care Load Assessment (Child) Determination has the meaning given by subsection 38E(1).

disabled adult means a person aged 16 or more who:
(a) has a physical, intellectual or psychiatric disability; and
(b) is likely to suffer from that disability permanently or for an extended period.

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

lower ADAT score adult means a disabled adult who is a care receiver because subparagraph 197D(1)(a)(i), or paragraph 198(2)(d) applies.

multiple care child has the meaning given by subsection (5).

parent of:

(a) a child with a severe disability or severe medical condition; or

(b) a child with a disability or medical condition; or

(c) a child who has a terminal condition;

includes a person who has been granted guardianship of the child under a law of the Commonwealth, a State or a Territory.

sole care child has the meaning given by subsections (2) and (3).

treating health professional means a person who is determined under section 38F to be a treating health professional.

Sole care child

(2) Subject to subsections (6) and (7), a person with a severe disability or severe medical condition is a ***sole care child*** if the provisions listed in one of the following paragraphs apply in relation to him or her as a care receiver:

(a) paragraphs 197B(1)(a), (b) and (c);

(b) subparagraph 197G(1)(a)(i) and paragraphs 197G(1)(b) and (c);

(c) paragraphs 197H(1)(a) and (b).

(3) Subject to subsection (7), a person who has a terminal condition is a ***sole care child*** if paragraphs 197E(1)(a) and (b) apply in relation to the person as a care receiver. For the purposes of this subsection, assume that paragraph 197E(1)(a) continues to apply in relation to the person if:

(a) the person has turned 16; and

(b) subsection 197E(2) applies in relation to him or her as a care receiver.

Combined care child

(4) Subject to subsections (6) and (7), a person with a disability or medical condition is a ***combined care child*** if the provisions listed

OFFICIAL: Sensitive // Legal Privilege

in one of the following paragraphs apply in relation to him or her as a care receiver or as one of 2 or more care receivers:

(a) paragraphs 197C(1)(a), (b) and (c);

(b) subparagraph 197G(1)(a)(ii) and paragraphs 197G(1)(b) and (c);

(c) paragraphs 197H(1)(a) and (b).

Multiple care child

(5) Subject to subsections (6) and (7), a person with a disability or medical condition is a ***multiple care child*** if the provisions listed in one of the following paragraphs apply in relation to him or her as a care receiver or as one of 2 or more care receivers:

(a) subparagraph 197D(1)(a)(ii) and paragraphs 197D(1)(b) and (c);

(b) subparagraph 197G(1)(a)(ii) and paragraphs 197G(1)(b) and (c);

(c) paragraphs 197H(1)(a) and (b).

Person may be over 16

(6) For the purposes of subsections (2), (4) and (5), assume that paragraph 197B(1)(a) or 197C(1)(a), subparagraph 197D(1)(a)(ii) or paragraph 197G(1)(b) or 197H(1)(b) (as the case requires) continues to apply in relation to the person if:

(a) the person has turned 16; and

(b) the person has not been assessed and rated and given a score under the Adult Disability Assessment Tool.

Constant care

(7) If section 197F applies in relation to the person as a care receiver or as one of 2 or more care receivers, it does not matter that the care provided for the person is not constant care.

OFFICIAL: Sensitive // Legal Privilege

Division 1—Qualification for and payability of carer payment

Subdivision A—Qualification

197A Overview—circumstances in which person is qualified for carer payment

(1) The following sections set out the circumstances in which a person is qualified for a carer payment:

(a) section 197B (child with a severe disability or severe medical condition);

(b) section 197C (2 or more children each with a disability or medical condition);

(c) section 197D (disabled adult and one or more children each with a disability or medical condition);

(d) section 197E (child who has a terminal condition);

(e) section 197F (exchanged care of children);

(f) section 197G (short term or episodic care of children);

(g) section 197H (extension of short term or episodic care of children);

(h) section 198 (disabled adult, or disabled adult and dependent child);

(i) section 198AA (hospitalisation);

(j) section 198AD (wife pension and carer allowance recipient).

(2) In addition, sections 198AB and 198AC allow a person to continue to qualify for a carer payment in certain short-term circumstances.

197B Qualification—child with a severe disability or severe medical condition

Child with a severe disability or severe medical condition

(1) A person is qualified for a carer payment if:

(a) the person personally provides constant care for a person (the ***care receiver***) aged under 16 with a severe disability or severe medical condition; and

(b) the person has been given a qualifying rating of intense under the Disability Care Load Assessment (Child) Determination for caring for the care receiver; and

(c) a treating health professional has certified in writing that, because of that disability or condition:

(i) the care receiver will need personal care for 6 months or more; and

(ii) the personal care is required to be provided by a specified number of persons; and

(d) the provision of constant care by the person severely restricts the person's capacity to undertake paid employment; and

(e) the requirements of subsections (2), (3) and (4) are met.

Constant care in home

(2) The constant care must be provided in a private residence that is the home of the care receiver.

Person must be Australian resident

(3) The person must be an Australian resident.

Note: For ***Australian resident*** see section 7.

Care receiver: residence and income and assets tests etc.

(4) The care receiver must:

(a) require constant care; and

(b) be an Australian resident; and

(c) pass the income test under section 198A; and

(d) either:

(i) pass the assets test under section 198D; or

(ii) be the subject of a decision in force under subsection 198N(2), (3) or (4) that subparagraph (i)

does not disqualify the person providing the constant care from carer payment.

197C Qualification—2 or more children each with a disability or medical condition

Children each with a disability or medical condition

(1) A person is qualified for a carer payment if:
  (a) the person personally provides constant care for 2 or more persons (the ***care receivers***) aged under 16 each with a disability or medical condition; and
  (b) the person has been given a qualifying rating of intense under the Disability Care Load Assessment (Child) Determination for caring for the care receivers; and
  (c) in relation to each care receiver—a treating health professional has certified in writing that, because of that disability or condition:
    (i) the care receiver will need personal care for 6 months or more; and
    (ii) the personal care is required to be provided by a specified number of persons; and
  (d) the provision of constant care by the person severely restricts the person's capacity to undertake paid employment; and
  (e) the requirements of subsections (2), (3) and (4) are met.

Constant care in home

(2) The constant care must be provided in a private residence that is the home of the care receivers.

Person must be Australian resident

(3) The person must be an Australian resident.

Note: For ***Australian resident*** see section 7.

Care receivers: residence and income and assets tests etc.

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

197D Qualification—disabled adult and one or more children each with a disability or medical condition

Disabled adult and one or more children each with a disability or medical condition

(1) A person is qualified for a carer payment if:
  (a) the person personally provides constant care for both or all of the following persons (the ***care receivers***):
    (i) a disabled adult who has been assessed and rated under the Adult Disability Assessment Tool and given a score under that assessment tool of at least 20, being a score calculated on the basis of a total professional questionnaire score of at least 8;
    (ii) one or more persons aged under 16 each with a disability or medical condition; and
  (b) the person has been given a qualifying rating of intense under the Disability Care Load Assessment (Child) Determination for caring for the care receivers; and
  (c) in relation to each care receiver who is aged under 16—a treating health professional has certified in writing that, because of that disability or condition:

(i) the care receiver will need personal care for 6 months or more; and

(ii) the personal care is required to be provided by a specified number of persons; and

(d) the provision of constant care by the person severely restricts the person's capacity to undertake paid employment; and

(e) the person is not qualified for a carer payment under section 198 because of paragraph 198(2)(a) for caring for the care receiver who is the disabled adult; and

(f) the requirements of subsections (2), (3) and (4) are met.

Constant care in home

(2) The constant care must be provided in a private residence that is the home of the care receivers.

Person must be Australian resident

(3) The person must be an Australian resident.

Note: For ***Australian resident*** see section 7.

Care receivers: residence and income and assets tests etc.

(4) The care receivers must:

(a) require constant care; and

(b) be Australian residents; and

(c) pass the income test under section 198A; and

(d) either:

(i) pass the assets test under section 198D; or

(ii) be the subject of a decision in force under subsection 198N(2), (3) or (4) that subparagraph (i) does not disqualify the person providing the constant care from carer payment.

197E Qualification—child who has a terminal condition

(1) A person is qualified for a carer payment if:

OFFICIAL: Sensitive // Legal Privilege

(a) the person personally provides constant care for a person (the ***care receiver***) aged under 16; and

(b) a medical practitioner certifies in relation to the care receiver that:

(i) the care receiver has a terminal condition; and

(ii) the average life expectancy for a child with the same or a similar condition is not substantially longer than 24 months; and

(iii) because of the condition the care receiver will need personal care for the remainder of his or her life; and

(iv) the personal care is required to be provided by a specified number of persons; and

(c) the provision of constant care by the person severely restricts the person's capacity to undertake paid employment; and

(d) the requirements of subsections (3), (4) and (5) are met.

(2) Despite paragraph (1)(a), the person remains qualified for a carer payment under this section after the care receiver turns 16 until the earlier of the following:

(a) the person no longer otherwise qualifies for a carer payment under this section for caring for the care receiver;

(b) the care receiver turns 18.

Constant care in home

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

Person must be Australian resident

(4) The person must be an Australian resident.

Note: For ***Australian resident*** see section 7.

Care receiver: residence and income and assets tests etc.

(5) The care receiver must:

(a) require constant care; and

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

197F Qualification—exchanged care of children

Purpose of section

(1) The purpose of this section is to allow a person to qualify under section 197B, 197C, 197D, 197E, 197G or 197H, or a combination of them, for a carer payment for caring for persons who are or include 2 or more persons aged under 16 despite the fact that the person is not personally providing constant care for the same persons.

When section applies

(2) This section applies if:
(a) the person is a parent of 2 or more persons aged under 16; and
(b) the person (the ***carer***) is personally providing care for at least 2 of those persons (the ***care receivers***); and
(c) the care receivers would qualify the carer for a carer payment under section 197B, 197C, 197D, 197E, 197G or 197H, apart from:
(i) the fact that the carer is not personally providing constant care for the care receivers; and
(ii) the fact that each care receiver has or may have more than one home; and
(d) the circumstances in subsection (3) apply in relation to each of the care receivers.

OFFICIAL: Sensitive // Legal Privilege

Circumstances—family law arrangements

(3) The circumstances are:

(a) under one or more registered parenting plans, parenting plans or parenting orders that are in force, the care receiver is to live with, or spend time with the carer and the care receiver's other parent (whether or not the care receiver is to live with, or spend time with, someone else); and

(b) the length or percentage of time (however described) that the care receiver is to live with, or spend time with, the carer and the other parent is specified in, or worked out in accordance with, the plans or orders; and

(c) the carer personally provides constant care for the care receiver when the care receiver is living with, or spending time with, the carer; and

(d) the carer does not personally provide constant care for the care receiver only because the terms of the plans or orders require the care receiver to live with, or spend time with, the other parent or someone else; and

(e) when the carer is not personally providing care for the care receiver, the carer is personally providing care for one or more other care receivers in relation to whom this subsection also applies.

Qualification for a carer payment

(4) If this section applies, the carer is taken to be qualified for a carer payment under section 197B, 197C, 197D, 197E, 197G or 197H, or a combination of them, for caring for the care receivers or for persons who include the care receivers, as the case requires.

Example: The parents of 3 children each with a disability or medical condition are divorced. Under a registered parenting plan covering all 3 children, one parent (the ***first parent)*** personally provides care in week 1 to:

(a) one of the children covered by the plan; and

(b) another child who is similarly disabled but who is not covered by the plan.

The other parent personally provides care for the other 2 children covered by the plan. In week 2, the parents swap care arrangements for the children covered by the plan.

The first parent would not qualify for a carer payment under section 197C because he or she is not providing constant care for the same children. However, this section allows the first parent to qualify for a carer payment for providing care for different children.

Application of income and assets tests

(5) In applying the income and assets tests under section 198A or 198D in working out whether a parent qualifies under section 197B, 197C, 197D, 197E, 197G or 197H because of this section, disregard the other parent for the purposes of the following:

(a) subsections 198B(1B) and 198D(1A), (1C) and (1DA);

(b) subparagraph 198N(5)(aa)(ii);

(c) paragraphs (b), (d) and (e) of the definition of ***FPC*** in subsection 198N(6).

197G Qualification—short term or episodic care of children

Secretary's determination

(1) The Secretary may determine that a person is qualified for a carer payment for a period if:

(a) the person is personally providing constant care for one or more persons (the ***care receiver*** or ***care receivers***) each with:

(i) a severe disability or severe medical condition; or

(ii) a disability or medical condition; and

(b) each care receiver is aged under 16 at the start of the period; and

(c) in relation to each care receiver—a treating health professional has certified in writing that, because of the severe disability or severe medical condition, or because of the disability or medical condition:

(i) the care receiver will need personal care for at least 3 months but less than 6 months; and

OFFICIAL: Sensitive // Legal Privilege

(ii) the care is required to be provided by a specified number of persons; and

(d) apart from the fact that the care receiver, or care receivers, will need personal care for less than 6 months, the person would qualify for a carer payment:

(i) under section 197B or 197C (whether or not because of section 197F) for caring for the care receiver or care receivers; or

(ii) under section 197D (whether or not because of section 197F) for caring for the care receiver and another person.

Limits on period determined

(2) The period determined by the Secretary:

(a) must be 3 months or more and less than 6 months; and

(b) must not begin before the person's start day.

Person may remain qualified until end of period even if care receiver turns 16

(3) A person does not cease to be qualified for a carer payment under this section only because the care receiver (or any of them) turns 16 before the end of the period determined by the Secretary.

197H Qualification—extension of short term or episodic care

Extension of qualification under section 197G

(1) This section applies if:

(a) a person is qualified for a carer payment for caring for one or more persons (the ***care receiver*** or ***care receivers***) aged under 16 for a period (the ***preceding period***):

(i) under section 197G; or

(ii) if this section has previously applied to the person and the care receiver or care receivers—under the most recent application of this section; and

(b) in relation to each care receiver—before the end of the preceding period, and before the care receiver (or any of them) turns 16, the person gives the Secretary a certificate from a treating health professional certifying that:

(i) because of a severe disability or severe medical condition, or a disability or medical condition, the care receiver will need personal care for a further period of less than 3 months starting immediately after the end of the preceding period; and

(ii) the severe disability or severe medical condition, or disability or medical condition, is the same as, or related to, the severe disability or severe medical condition, or disability or medical condition, that necessitated the care for the preceding period; and

(iii) the care is required to be provided by a specified number of persons.

Person qualified for further period determined by Secretary

(2) The person is qualified for a carer payment for a further period if:

(a) apart from the fact that the care receiver or care receivers will need personal care for less than 6 months, the person would qualify for a carer payment:

(i) under section 197B or 197C (whether or not because of section 197F) for caring for the care receiver or care receivers; or

(ii) under section 197D (whether or not because of section 197F) for caring for the care receiver and another person; and

(b) the Secretary determines that a carer payment should be granted to the person for the period.

(3) The period determined must end not later than 6 months after the first day on which the person started to receive a carer payment under section 197G.

Person may remain qualified until end of period even if care receiver turns 16

(4) A person does not cease to be qualified for a carer payment under this section only because the care receiver (or any of them) turns 16 before the end of the period determined by the Secretary.

197J Qualification following qualification for short term or episodic care

Purpose of section

(1) The purpose of this section is to treat a person as qualified for a carer payment under section 197B, 197C or 197D, or because of 197F, for caring for:

(a) one or more persons aged under 16; or

(b) persons who include one or more persons aged under 16;

if, immediately beforehand, the carer was qualified for a carer payment under section 197G or 197H (whether or not because of section 197F) for caring for the person or persons aged under 16.

Person taken to be qualified

(2) If:

(a) a person is qualified for a carer payment for caring for one or more care receivers aged under 16 for a period (the ***preceding period***):

(i) under section 197G; or

(ii) if section 197H has applied to the person and the care receiver or care receivers—under the most recent application of that section; and

(b) before the end of the preceding period, and before the care receiver (or any of them) turns 16, the person gives the Secretary a certificate in relation to each of them as required by whichever of subsection (3) or (4) applies; and

(c) apart from paragraph 197B(1)(c), 197C(1)(c) or 197D(1)(c), the person would be qualified (whether or not because of

section 197F) for a carer payment for caring for the care receiver or care receivers or for persons who include at least one of them;

the person is taken to qualify under section 197B, 197C or 197D (as the case requires) for caring for the care receiver or care receivers or for persons who include at least one of them.

Note: Paragraphs 197B(1)(c), 197C(1)(c) and 197D(1)(c) require that a treating health professional has certified that the care receiver, or each of them, will need personal care for 6 months or more.

(3) If the person was qualified for a carer payment under section 197G or 197H for caring for a care receiver with a severe disability or severe medical condition, there must be a certificate from a treating health professional certifying that:

(a) because of a severe disability or severe medical condition the duration of the personal care needed by the care receiver is 6 months or more; and

(b) the severe disability or severe medical condition is the same as, or related to, the severe disability or severe medical condition that necessitated the care for the preceding period; and

(c) the care is required to be provided by a specified number of persons.

(4) If the person was qualified for a carer payment under section 197G or 197H for caring for one or more care receivers aged under 16 each with a disability or medical condition, there must be a certificate in relation to each care receiver from a treating health professional certifying that:

(a) because of a disability or medical condition, the duration of the personal care needed by the care receiver is 6 months or more; and

(b) the disability or condition is the same as, or related to, the disability or condition that necessitated the care for the preceding period; and

(c) the care is required to be provided by a specified number of persons.

OFFICIAL: Sensitive // Legal Privilege

(5) For the purposes of paragraphs (3)(a) and (4)(a):
  (a) the 6 months includes any preceding periods under section 197G or under an application of section 197H; and
  (b) it does not matter if the treating health professional who certified under those sections is the same treating health professional referred to in subsection (3) or (4) or not.

197K Remaining qualified for up to 3 months after child turns 16

(1) This section applies if:
  (a) a person is qualified for a carer payment for caring for a care receiver aged under 16 under one of the following provisions:
    (i) section 197B, 197C or 197D (whether or not because of section 197F);
    (ii) paragraph 198(2)(d); and
  (b) the care receiver turns 16; and
  (c) the care receiver has not been assessed and rated and given a score under the Adult Disability Assessment Tool.

(2) If, apart from the care receiver turning 16, the person would remain qualified for a carer payment under that provision, the person remains qualified under that provision for 3 months after the care receiver turns 16.

198 Qualification—disabled adult or disabled adult and dependent child

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

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

Constant care for disabled adult or disabled adult and a dependent child

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

(a) either:

(i) if the person is the only person providing the constant care—a disabled adult (the ***care receiver***) who has been assessed and rated under the Adult Disability Assessment Tool and given a score under that assessment tool of at least 25, being a score calculated on the basis of a total professional questionnaire score of at least 10; or

(ii) if not—a disabled adult (the ***care receiver***) who has been assessed and rated under the Adult Disability Assessment Tool and given a score under that assessment tool of at least 80, being a score calculated on the basis of a total professional questionnaire score of at least 32; or

(d) a disabled adult and a dependent child of the adult (the ***care receivers***), where:

(i) the disabled adult has been assessed and rated under the Adult Disability Assessment Tool and given a score under that assessment tool of at least 20, being a score calculated on the basis of a total professional questionnaire score of at least 8; and

(ii) the child is aged under 16; and

(iii) if the child is aged 6 or more—carer allowance is payable for the child; and

(iv) section 197D does not apply in respect of the care receivers.

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

Care in home

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

OFFICIAL: Sensitive // Legal Privilege

Carer in Australia

(4) The person must be an Australian resident, unless:
  (a) the person is in a country in which carer payment may be granted to the person under a scheduled international social security agreement; and
  (b) the scheduled international social security agreement entered into force on or before 24 December 1992.

Income and assets tests etc.

(5) The care receiver or care receivers must:
  (b) subject to subsection (6), be Australian residents; and

    Note: For ***Australian resident*** see section 7.

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

Alternative to Australian residence test for higher ADAT score adults

(6) Paragraph (5)(b) does not apply if:
  (a) the care receiver is the higher ADAT score adult mentioned in paragraph (2)(a); and
  (b) the adult is receiving a social security pension; and
  (c) carer payment may be granted to another person for the adult under a scheduled international social security agreement.

Alternative to income/assets test for higher ADAT score adults

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

(a) is receiving a social security pension or benefit, a service pension, income support supplement or a veteran payment; or

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

Deemed personal care of disabled adult and dependent child

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

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

(1) This section applies if:

(a) carer payment is payable:

(i) to a person who has ordinarily been providing constant care for a care receiver or care receivers; or

(ii) because of section 197F, to a person who has ordinarily been providing care for a care receiver or care receivers; and

(b) the person would, apart from this section, cease to be qualified for the payment because he or she ceases to provide constant care (or, if section 197F applies to the person, care) for the care receiver or any of the care receivers as a result of the care receiver being admitted permanently to an institution where care is provided for the care receiver.

OFFICIAL: Sensitive // Legal Privilege

(2) The person remains qualified for the carer payment during the 14 weeks after the care receiver is admitted permanently to an institution.

198AA Qualification for carer payment—hospitalisation

Participating in care of person in hospital (not qualified under section 197G or 197H)

(1) A person (the ***carer***) is qualified for a carer payment if:
  (a) the carer is participating in the care, in hospital, of one of the following persons (the ***hospitalised person***):
    (i) a disabled adult;
    (ii) a child with a severe disability or medical condition;
    (iii) a child with a disability or medical condition;
    (iv) a child who has a terminal condition;
    (v) a dependent child of a disabled adult; and
  (b) it is reasonable to assume that, if the hospitalised person were not in hospital, the carer would qualify, except under section 197G or 197H (whether or not because of section 197F), for a carer payment for:
    (i) the hospitalised person; or
    (ii) the hospitalised person and another person or persons; and
  (c) a requirement in subsection (2) is met.

(2) For the purposes of paragraph (1)(c), the requirements are that either:
  (a) the hospitalised person is terminally ill; or
  (b) it is reasonable to expect that, upon leaving hospital, the hospitalised person:
    (i) will reside in a private residence that is the home of the hospitalised person; or
    (ii) if the carer would qualify for a carer payment because of section 197F for the hospitalised person—will reside

in a private residence that is a home of the hospitalised person.

Limit on qualification under subsection (1)

(3) However, the period, or the sum of the periods, for which the carer can be qualified under subsection (1) for a hospitalised person who is a disabled adult is 63 days in any calendar year.

Note: There is no limit under subsection (1) for a hospitalised person who is a child.

Short term or episodic care of child (qualified under section 197G or 197H)

(4) A person (the ***carer***) qualifies for a carer payment if:

(a) the carer is participating in the care, in hospital, of one of the following persons (the ***hospitalised person***):

(i) a child with a severe disability or medical condition;

(ii) a child with a disability or medical condition; and

(b) the Secretary determines in writing that, if the hospitalised person were not in hospital, the carer would qualify under section 197G or 197H (whether or not because of section 197F) for a carer payment for a period or periods for:

(i) the hospitalised person; or

(ii) the hospitalised person and another person or persons; and

(c) it is reasonable to expect that, upon leaving hospital, the hospitalised person:

(i) will reside in a private residence that is the home of the hospitalised person; or

(ii) if the carer would qualify for a carer payment because of section 197F for the hospitalised person—will reside in a private residence that is a home of the hospitalised person.

However, the period, or the sum of the periods, for which the carer can be qualified under this subsection for the hospitalised person

OFFICIAL: Sensitive // Legal Privilege

must not exceed the period, or the sum of the periods, determined under paragraph (b).

(5) A person (the ***carer***) qualifies for a carer payment if:

(a) the carer is participating in the care, in hospital, of one of the following persons (the ***hospitalised person***):

(i) a child with a severe disability or medical condition;

(ii) a child with a disability or medical condition; and

(b) immediately before the carer began participating in that care, the carer was qualified under section 197G or 197H (whether or not because of section 197F) for a carer payment for a period for:

(i) the hospitalised person; or

(ii) the hospitalised person and another person or persons; and

(c) the person would cease to be qualified under section 197G or 197H for a carer payment for the balance of the period only because the person is participating in the care of the hospitalised person in hospital; and

(d) it is reasonable to expect that, upon leaving hospital, the hospitalised person:

(i) will reside in a private residence that is the home of the hospitalised person; or

(ii) if the carer would qualify for a carer payment because of section 197F for the hospitalised person—will reside in a private residence that is a home of the hospitalised person.

However, the period, or the sum of the periods, for which the carer can be qualified under this subsection for the hospitalised person must not exceed the balance of the period referred to in paragraph (c).

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

(1) This section applies if a person:

(a) is qualified for a carer payment; and
(b) is absent from Australia for a period:
(i) throughout which Division 2 of Part 4.2 applies to the person; and
(ii) that is before the end of the person's portability period for carer payment (within the meaning of that Division).

(2) The person does not cease to be qualified for a carer payment:
(a) merely because the constant care for the care receiver or care receivers is not provided in a private residence that is the home of the care receiver or care receivers; or
(b) if the person is qualified because of section 197F—merely because the care for the care receiver or care receivers is not provided in a private residence that is a home of the care receiver or care receivers.

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

Continuation of payment where temporary cessation of care

(1) Subject to subsection (3), if:
(a) a person is qualified (except under section 197G or 197H) for a carer payment:
(i) because the person is personally providing constant care for a care receiver or care receivers; or
(ii) if the person is qualified because of section 197F—because the person is personally providing care for care receivers; and
(b) the person temporarily ceases to provide that care for the care receiver or care receivers;
the person does not cease to be qualified for the carer payment merely because of that cessation.

(1A) Subject to subsections (3) and (3A), if:
(a) a person is qualified for a carer payment:

OFFICIAL: Sensitive // Legal Privilege

(i) under section 197G or 197H because the person is personally providing constant care for a care receiver or care receivers; or

(ii) under section 197G or 197H because of section 197F because the person is personally providing care for care receivers; and

(b) the person temporarily ceases to provide that care for the care receiver or care receivers;

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

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

(2) Subject to subsections (3) and (3A), if:

(a) a person is qualified for a carer payment under section 198AA because the person is participating in the care of an adult or child in hospital; and

(b) apart from this subsection, the person would later cease to be qualified for carer payment under that section; and

(c) either:

(i) the person would not cease to be qualified for a carer payment if the person were providing constant care for the adult or child, or the adult or child and another person; or

(ii) if the person qualified under section 198AA because of section 197F—the person would not cease to be qualified for a carer payment if the person were providing care for the adult or child, or the adult or child and another person;

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

Limit on subsections (1) and (2)

(3) Subject to subsection (3B), the period, or the sum of the periods, for which subsection (1) or (2), or a combination of those subsections, can apply is:

(a) 63 days in any calendar year; or

(b) another period that the Secretary, for any special reason in the particular case, decides to be appropriate.

(3A) The period (or the sum of the periods) for which subsection (1A) or (2) (or a combination of those subsections) can apply to the person in a calendar year is the number of whole days worked out in accordance with the formula:

$$\frac{\text{Carer payment period}}{\text{Number of days in calendar year}} \times \text{Limit}$$

where:

carer payment period, in relation to a calendar year, means:

(a) if only 197G applied to the person to any extent in the calendar year—the number of days in the period determined under that section that fall in the calendar year; or

(b) if sections 197G and 197H applied to the person to any extent in the calendar year—the number of days worked out by adding the days in each period determined under those sections to the extent that those days fall in the calendar year.

It does not matter whether section 197G or 197H (or both of them) apply because of section 197F or not.

limit, in relation to a calendar year, means:

(a) 63 days; or

(b) another number of days in the calendar year that the Secretary, for any special reason in the particular case, decides to be appropriate.

(3B) If:

(a) because of subsection (1A), the person does not cease to be qualified in a calendar year for a carer payment under

OFFICIAL: Sensitive // Legal Privilege

section 197G or 197H for a care receiver or care receivers; and

(b) the number of days (the ***qualifying days***) for which the person does not cease to be qualified (whether under subsection (1A) or (2), or a combination of them) in the calendar year is not more than the number of days worked out under subsection (3A) in relation to the person; and

(c) subsequently in the calendar year, the person begins to qualify for a carer payment because of section 197J for the care receiver or care receivers;

subsection (3) applies as if the periods referred to in whichever of paragraphs (a) and (b) of that subsection apply were reduced by the number of qualifying days.

Cessation of constant personal care in order to undertake training etc.

(4) If:

(a) a person is qualified for carer payment because the person is personally providing constant care for a care receiver or care receivers; and

(b) the person temporarily ceases to provide that care in order to undertake training, education, unpaid voluntary work or paid employment; and

(c) the cessation does not exceed 25 hours per week;

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

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

(5) If:

(a) a person is qualified for carer payment because the person is participating in the care of another person in hospital; and

(b) the person temporarily ceases to participate in the care in order to undertake training, education, unpaid voluntary work or paid employment; and

(c) the cessation does not exceed 25 hours per week;

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

198AD Qualification—wife pension and carer allowance recipient

A woman is qualified for a carer payment if:

(a) immediately before 20 March 2020, the woman was receiving a wife pension under Part 2.4; and

(b) immediately before 20 March 2020, the woman was receiving carer allowance under Part 2.19; and

(c) on and after 20 March 2020, the woman continuously receives carer allowance under Part 2.19; and

(d) the woman is not otherwise qualified for a carer payment.

Note: The effect of paragraph (c) is that once the woman stops receiving carer allowance, the woman will not be able to again qualify for a carer payment under this section.

198A Income test

Passing the income test

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

Income test failed where no taxable income for appropriate tax year

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

OFFICIAL: Sensitive // Legal Privilege

198B Taxable income

Rules that apply for the purposes of this Subdivision

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

Taxable income of higher ADAT score adult

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

Taxable income of sole care child, combined care child or multiple care child

(1B) If a care receiver is a sole care child, combined care child or multiple care child who lives with his or her parent, the taxable income of the care receiver includes the taxable income of the following people:

(a) the parent;

(b) if the parent is a member of a couple—the parent's partner;

(c) if the parent or the partner has one or more FTB children—the FTB children (other than any who are care receivers).

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

Note: See also subsection 197F(5).

Taxable income of lower ADAT score adult

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

(a) if the adult is a member of a couple—the adult's partner and any FTB child (except the other care receiver or other care receivers) of the adult or of the partner;

(b) in any other case—any FTB child (except the other care receiver) of the adult.

Taxable income

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

(a) the person's assessed taxable income for the tax year; or

(b) if the Commissioner of Taxation has not made an assessment of the person's taxable income for the tax year—the person's accepted estimated taxable income for the tax year.

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

Assessed taxable income

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

(a) an assessment of the person's taxable income for the tax year made by the Commissioner of Taxation;

(b) an amended assessment of the person's taxable income for the tax year made by the Commissioner of Taxation;

(c) an amendment made by a tribunal of an assessment or amended assessment of the person's taxable income for the tax year made by the Commissioner of Taxation;

(d) an amendment made by a court of:

(i) an assessment or amended assessment of the person's taxable income for the tax year made by the Commissioner of Taxation; or

(ii) an amended assessment of the person's taxable income for the tax year made by a tribunal.

Estimating taxable income

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

(3A) If the care receivers are a lower ADAT score adult and one or more multiple care children, the lower ADAT score adult may give the Secretary a written estimate of each child's taxable income for a tax year.

Accepting estimate of taxable income

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

Accepted estimated taxable income

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

Nil amounts of taxable income

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

198C Appropriate tax year

Appropriate tax year in ordinary cases

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

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

(2) If:

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

(b) the Secretary is given a written request to treat the care receiver or care receivers as if the tax year in which the request is given were the appropriate tax year; and

(c) the request is given to the Secretary by the person, any care receiver who is 16 or over or a parent of any care receiver who is under 16; and

(d) the taxable income of the care receiver, or the sum of the taxable incomes of the care receivers, for the tax year in which the request is made is likely to be less than the income ceiling;

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

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

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

Current tax year to be retained for consecutive calendar years in certain circumstances

(3) If:

(a) an instalment of carer payment (the ***first payment***) is paid to a person on a day in one calendar year; and

(b) the next instalment of carer payment (the ***second payment***) is paid to a person on a day in the next calendar year; and

(c) the instalment period to which the second payment relates:

(i) commences immediately after the end of the instalment period to which the first payment related; and

(ii) includes the first day of the calendar year referred to in paragraph (b); and

OFFICIAL: Sensitive // Legal Privilege

(d) the person's carer payment is payable in relation to the period referred to in subparagraph (c)(i) because, as a result of a request under paragraph (2)(b), the appropriate tax year is the tax year in which that period occurs (the ***current tax year***); and

(e) the care receiver's taxable income, or the sum of the taxable incomes of the care receivers, for the current tax year is less than the care receiver's taxable income, or the sum of the taxable incomes of the care receivers, for the base tax year;

the care recipient's appropriate tax year, as from the beginning of the later calendar year, is the current tax year and not the base tax year unless the care recipient's taxable income for the base tax year is less than the income ceiling.

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

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

Change to appropriate tax year because of notifiable event

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

(a) a notifiable event occurs in relation to a care receiver or any of 2 or more care receivers; and

(b) the care receiver's taxable income, or the sum of the taxable incomes of the care receivers, for the tax year in which the notifiable event occurs exceeds the income ceiling;

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

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

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

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

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

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

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

(a) a notifiable event occurs in relation to a care receiver or any of 2 or more care receivers; and

(b) the care receiver's taxable income, or the sum of the taxable incomes of the care receivers, for the tax year in which the notifiable event occurs (the ***event tax year***) does not exceed the income ceiling; and

(c) the care receiver's taxable income, or the sum of the taxable incomes of the care receivers, for the tax year that follows the event tax year is likely to exceed the income ceiling;

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

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

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

Definitions

(6) For the purposes of this section:

(a) the ***base tax year*** for a day is the tax year that ended on 30 June in the calendar year immediately before the calendar year in which the day falls; and

(b) a ***notifiable event*** is an event or change of circumstances that:

(i) is specified in a notice under section 70 of the Administration Act; and

(ii) is described by the notice as a notifiable event.

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

198D Assets test

Higher ADAT score adult passing the assets test

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

(a) the care receiver's assets;

(b) if the care receiver has a partner—any assets of the partner;

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

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

Sole care child passing the assets test

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

(a) the child's assets;

(b) if the child lives with his or her parent:

(i) the assets of the parent;

(ii) if the parent is a member of a couple—the assets of the parent's partner;

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

Note: See also subsection 197F(5).

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

Combined care children passing the assets test

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

(a) the assets of all of the children;

(b) if any of the children lives with his or her parent:

(i) the assets of the parent;
(ii) if the parent is a member of a couple—the assets of the parent's partner;
(iii) if the parent or the partner has one or more FTB children—the assets of those FTB children.

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

Note: See also subsection 197F(5).

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

Lower ADAT score adult and multiple care child or children passing the assets test

(1DA) Care receivers who are a lower ADAT score adult and one or more multiple care children pass the assets test if the total value of the assets of the following people is less than $571,500:
(a) the adult;
(b) each child;
(c) if any of the children lives with his or her parent:
(i) the parent; and
(ii) if the parent is a member of a couple—the parent's partner; and
(iii) if the parent or the partner has one or more FTB children—those FTB children;
(d) if the adult is a member of a couple—the adult's partner;
(e) if the adult or the partner has one or more FTB children—the FTB children.

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

(1DB) For the purposes of this Division (other than subsection (1DA)), if any of the multiple care children lives with his or her parent, the

child's assets are taken to include the assets listed in paragraph (1DA)(c) in relation to the child. However, assets of the same person are not to be included in the assets of more than one child.

Lower ADAT score adult and dependent child passing the assets test

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

(a) the adult;

(b) the dependent child;

(c) if the adult is a member of a couple—the adult's partner;

(d) if the adult or the partner has one or more FTB children—the FTB children.

198E Working out the value of assets

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

(a) Part 3.12, except Divisions 2, 3 and 4 of that Part; and

(b) sections 198F to 198MA (inclusive); and

(c) Part 3.18, except Division 9.

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

198F Disposal of assets—care receiver assets test

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

(a) the person engages in a course of conduct that directly or indirectly:

(i) destroys all or some of the person's assets; or

(ii) disposes of all or some of the person's assets; or

(iii) diminishes the value of all or some of the person's assets; and

(b) one of the following subparagraphs is satisfied:

(i) the person receives no consideration in money or money's worth for the destruction, disposal or diminution;

(ii) the person receives inadequate consideration in money or money's worth for the destruction, disposal or diminution;

(iii) the Secretary is satisfied that the person's purpose, or dominant purpose, in engaging in that course of conduct was to enable another person who provides care for the person to obtain a carer payment.

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

(a) the person engages in a course of conduct that directly or indirectly:

(i) destroys all or some of the child's assets; or

(ii) disposes of all or some of the child's assets; or

(iii) diminishes the value of all or some of the child's assets; and

(b) one of the following paragraphs is satisfied:

(i) the person receives no consideration in money or money's worth for the destruction, disposal or diminution;

(ii) the person receives inadequate consideration in money or money's worth for the destruction, disposal or diminution;

(iii) the Secretary is satisfied that the person's purpose, or dominant purpose, in engaging in that course of conduct was to enable the person who provides care for the child to obtain a carer payment.

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

OFFICIAL: Sensitive // Legal Privilege

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

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

198G Amount of disposition—care receiver assets test

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

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

(b) if the person receives consideration for the destruction, disposal or diminution—an amount equal to:
  (i) the value of the assets that are destroyed; or
  (ii) the value of the assets that are disposed of; or
  (iii) the amount of the diminution in the value of the assets whose value is diminished;

  less the amount of the consideration received by the person in respect of the destruction, disposal or diminution.

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

(1) This section applies in determining whether a person (the ***carer***) qualifies for a carer payment when claiming it for caring for a care receiver who:
  (a) is a higher ADAT score adult; and
  (b) is not a member of a couple when the claim is made.

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

(2) If:

(a) the care receiver has disposed of an asset of the care receiver during a pre-pension year of the carer; and

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

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

(c) the amount of the first-mentioned disposition;

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

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

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

(3) In this section:

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

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

(b) any preceding period of 12 months.

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

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

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

(2) If:

(a) a person has disposed of one or more of the child's assets during a pre-pension year of the carer; and

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

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

(c) the amount of the first-mentioned disposition;

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

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

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

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

(3) In this section:

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

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

(b) any preceding period of 12 months.

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

Application

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

Disposals before 1 July 2002

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

Increase in value of assets of lower ADAT score adult

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

(a) there has been a disposal, during a pre-pension year of the carer, of an asset of any of the following persons (a ***qualifying person***):

(i) the lower ADAT score adult;

(ii) the dependent child;

(iii) if the adult is a member of a couple—the adult's partner and any FTB child of the adult or of the partner;

(iv) if the adult is not a member of a couple—any FTB child of the adult; and

(b) the amount of that disposition, or the sum of that amount and the amounts (if any) of other dispositions of assets of any of the qualifying persons during the pre-pension year, exceeds $10,000;

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

(c) the amount of the first-mentioned disposition;

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

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

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

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

(3) If:

OFFICIAL: Sensitive // Legal Privilege

(a) an amount is included under subsection (2) in the value of the assets of the lower ADAT score adult because of the disposition of an asset of any of the qualifying persons; and

(b) if the lower ADAT score adult is a member of a couple—either:

(i) the adult ceases to be a member of that couple (either because his or her partner dies or for another reason); or

(ii) any of the FTB children dies; and

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

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

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

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

Pre-pension year

(4) In this section:

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

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

(b) any preceding period of 12 months.

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

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

(a) is a higher ADAT score adult; and

(b) is not a member of a couple;

continues to qualify for the pension.

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

(2) If:

(a) the care receiver has disposed of an asset of the care receiver during a pension year of the carer; and

(b) the amount of that disposition, or the sum of that amount and of the amounts (if any) of other dispositions of assets previously made by the care receiver during that pension year, exceeds $10,000;

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

(c) the amount of the first-mentioned disposition;

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

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

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

(3) In this section:

pension year, in relation to a carer, means:

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

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

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

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

OFFICIAL: Sensitive // Legal Privilege

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

(2) If:

(a) a person has disposed of one or more of the child's assets during a pension year of the carer; and

(b) the amount of that disposition, or the sum of that amount and of the amounts (if any) of other dispositions of the child's assets previously made during that pension year, exceeds $10,000;

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

(c) the amount of the first-mentioned disposition;

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

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

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

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

(3) In this section:

pension year, in relation to a carer, means:

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

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

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

Application

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

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

Increase in value of assets of lower ADAT score adult

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

(a) there has been a disposal, during a pension year of the carer, of an asset of any of the following persons (a ***qualifying person***):

(i) the lower ADAT score adult;

(ii) the dependent child;

(iii) if the adult is a member of a couple—the adult's partner and any FTB child of the adult or of the partner;

(iv) if the adult is not a member of a couple—any FTB child of the adult; and

(b) the amount of that disposition, or the sum of that amount and the amounts (if any) of other dispositions of assets of any of the qualifying persons during the pension year exceeds $10,000;

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

(c) the amount of the first-mentioned disposition;

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

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

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

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

(3) If:

(a) an amount is included under subsection (2) in the value of the assets of the lower ADAT score adult because of the disposition of an asset of any of the qualifying persons; and

(b) if the lower ADAT score adult is a member of a couple—either:

(i) the adult ceases to be a member of that couple (either because his or her partner dies or for another reason); or

(ii) any of the FTB children dies; and

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

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

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

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

Pension year

(4) In this section:

pension year, in relation to a carer, means:

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

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

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

Application

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

(a) is a higher ADAT score adult; and

(b) is not a member of a couple;

continues to qualify for the payment.

Disposals to which section applies

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

Increase in value of assets of higher ADAT score adult

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

(a) the amount of the relevant disposal;

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

OFFICIAL: Sensitive // Legal Privilege

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

Application

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

(a) is a higher ADAT score adult; and

(b) is not a member of a couple;

continues to qualify for the payment.

Disposals to which section applies

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

Increase in value of assets of higher ADAT score adult

(3) If:

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

less

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

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

Rolling period

(4) For the purposes of this section, the ***rolling period*** is the period comprising the income year in which the relevant disposal took

place and such (if any) of the 4 previous income years as occurred after 30 June 2002.

198JE Disposal of assets in income year—sole care children

Application

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

Disposals to which section applies

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

Increase in value of child's assets

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

198JF Disposal of assets in 5 year period—sole care child

Application

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

Disposals to which section applies

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

Increase in value of child's assets

(3) If:

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

less

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

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

Rolling period

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

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

Application

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

Disposals to which section applies

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

(a) the lower ADAT score adult;

(b) each multiple care child or dependent child;

(c) if the adult is a member of a couple—the adult's partner and any FTB child of the adult or of the partner;

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

Increase in value of assets of lower ADAT score adult

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

(a) the amount of the relevant disposal;

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

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

(4) If:

(a) an amount is included under subsection (3) in the value of the assets of the lower ADAT score adult because of the relevant disposal; and

(b) if the lower ADAT score adult is a member of a couple—either:

(i) the adult ceases to be a member of that couple (either because his or her partner dies or for another reason); or

(ii) any of the FTB children dies; and

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

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

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

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

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

Application

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

Disposals to which section applies

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

(a) the lower ADAT score adult;

(b) each multiple care child or dependent child;

(c) if the adult is a member of a couple—the adult's partner and any FTB child of the adult or of the partner;

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

Increase in value of assets of lower ADAT score adult

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

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

less

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

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

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

(4) If:

(a) an amount is included under subsection (3) in the value of the assets of the lower ADAT score adult because of the relevant disposal; and

(b) if the lower ADAT score adult is a member of a couple—either:

(i) the adult ceases to be a member of that couple (either because his or her partner dies or for another reason); or

(ii) any of the FTB children dies; and

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

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

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

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

Rolling period

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

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

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

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

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

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

(a) the care receiver or the care receiver's partner has disposed of an asset during a pre-pension year of the carer; and

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

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

(c) 50% of the amount of the first-mentioned disposition;

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

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

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

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

(3) If:

(a) an amount is included under subsection (2) in the value of both the assets of the care receiver and the assets of the care receiver's partner because of a disposition of an asset by the care receiver; and

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

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

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

(4) If:

(a) an amount is included under subsection (2) in the value of both the assets of the care receiver and the assets of the care receiver's partner because of a disposition of an asset by the partner; and

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

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

Pre-pension year

(5) In this section:

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

OFFICIAL: Sensitive // Legal Privilege

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

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

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

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

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

(2) Subject to subsections (3) and (4), if:
(a) the care receiver or the care receiver's partner disposed of an asset during a pension year of the carer; and
(b) the amount of that disposition, or the sum of that amount and the amounts (if any) of other dispositions of assets previously made by the care receiver or the care receiver's partner during that pension year, exceeds $10,000;

the lesser of the following amounts is to be included in the value of both the assets of the care receiver and the assets of the partner, for the period of 5 years that starts on the day on which the disposition took place:
(c) 50% of the amount of the first-mentioned disposition;
(d) 50% of the amount by which the sum of the amount of the first-mentioned disposition and of the amounts (if any) of other dispositions of assets previously made by the care receiver or the care receiver's partner during that pre-pension year exceeds $10,000.

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

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

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

(3) If:

(a) an amount is included under subsection (2) in the value of both the assets of the care receiver and the assets of the care receiver's partner because of a disposition of an asset by the care receiver; and

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

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

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

(4) If:

(a) an amount is included under subsection (2) in the value of both the assets of the care receiver and the assets of the care receiver's partner because of a disposition of an asset by the partner; and

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

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

Pension year

(5) In this section:

pension year, in relation to a carer, means:

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

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

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

Application

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

Disposals to which section applies

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

Increase in value of assets

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

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

(4) If:

(a) the relevant disposal is the disposal of an asset by the care receiver; and

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

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

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

(5) If:

(a) the relevant disposal is the disposal of an asset by the care receiver's partner; and

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

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

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

Application

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

Disposals to which section applies

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

Increase in value of assets

(3) If:

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

less

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

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

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

(4) If:

(a) the relevant disposal is a disposal of an asset by the care receiver; and

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

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

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

(5) If:

(a) the relevant disposal is a disposal of an asset by the care receiver's partner; and

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

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

Rolling period

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

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

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

(a) more than 5 years before the time when another person (the ***carer***) became qualified for a carer payment:

(i) because the carer was providing care for the disposer and the disposer was a care receiver or one of 2 or more care receivers; or

(ii) because the carer was providing care for the person who was the disposer's partner at the time of the disposition and that person was a care receiver or one of 2 or more care receivers; or

(b) less than 5 years before the time referred to in paragraph (a) but before the time when the disposer could, in the Secretary's opinion, reasonably have expected that the carer

would become qualified for carer payment for a reason described in paragraph (a); or

(c) before 9 May 1995.

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

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

(a) more than 5 years before the carer became qualified for a carer payment because the carer was providing care for the child and the child was a care receiver or one of 2 or more care receivers; and

(b) less than 5 years before the time referred to in paragraph (a) but before the time when the disposer could, in the Secretary's opinion, reasonably have expected that the carer would become qualified for carer payment because the carer was providing care for the child.

Note: Subsections 198D(1B), (1D) and (1DB) provide that if a sole care child, a combined care child or a multiple care child lives with a parent, the assets listed in subsection 198D(1A) and paragraphs 198D(1C)(b) and (1DA)(c) are taken to be the assets of the child.

198N Exemption from care receiver assets test

Application by parent or carer of sole care child

(1AA) Subsections (2), (3), (4), (5) and (6) have effect if:

(a) subparagraph 197B(4)(d)(i) or 197E(5)(d)(i) would disqualify from carer payment a person caring for a care receiver who is a sole care child; and

(b) the parent or the carer of the care receiver lodges with the Department, in a form approved by the Secretary, a request that the carer not be disqualified by that subparagraph; and

(c) the request includes a written estimate of the taxable income of the care receiver for the current financial year under subsection 198B(3); and

(d) the Secretary accepts the estimate under subsection 198B(4).

Application by parent or carer of combined care children

(1AB) Subsections (2), (3), (4), (5) and (6) have effect if:

(a) subparagraph 197C(4)(d)(i) would disqualify from carer payment a person caring for 2 or more care receivers each of whom is a combined care child; and

(b) the parent or the carer of any of the care receivers lodges with the Department, in a form approved by the Secretary, a request that the carer not be disqualified by that subparagraph; and

(c) the request includes written estimates of the taxable incomes of the care receivers for the current financial year under subsection 198B(3); and

(d) the Secretary accepts the estimate under subsection 198B(4).

Application by lower ADAT score adult (multiple care child or children)

(1AC) Subsections (2), (3), (4), (5) and (6) have effect if:

(a) subparagraph 197D(4)(d)(i) would disqualify from carer payment a person caring for care receivers who are a lower ADAT score adult and one or more multiple care children; and

(b) the lower ADAT score adult lodges with the Department, in a form approved by the Secretary, a request that the carer not be disqualified by that subparagraph; and

(c) the request includes written estimates of the taxable incomes of the lower ADAT score adult and each child under subsection 198B(3A); and

(d) the Secretary accepts the estimate under subsection 198B(4).

Application by higher ADAT score adult

(1) If:

(a) subparagraph 198(5)(d)(i) would disqualify for carer payment a person caring for a care receiver who is a higher ADAT score adult; and

(b) the higher ADAT score adult lodges with the Department, in a form approved by the Secretary, a request that the adult not be disqualified by that subparagraph; and

(c) the request includes a written estimate of the higher ADAT score adult's taxable income for the current financial year under subsection 198B(3); and

(d) the Secretary accepts the estimate under subsection 198B(4);

subsections (2), (3), (4), (5) and (6) have effect.

Application by lower ADAT score adult

(1B) If:

(a) subparagraph 198(5)(d)(i) would disqualify from carer payment a person caring for care receivers who are a lower ADAT score adult and a dependent child; and

(b) the lower ADAT score adult lodges with the Department, in a form approved by the Secretary, a request that the carer not be disqualified by that subparagraph; and

(c) the request includes written estimates of the taxable incomes of the lower ADAT score adult and the dependent child under subsection 198B(3); and

(d) the Secretary accepts the estimate under subsection 198B(4);

subsections (2), (3), (4), (5) and (6) have effect.

Failing assets test but passing special income test

(2) The Secretary may decide that subparagraph 197B(4)(d)(i), 197C(4)(d)(i), 197D(4)(d)(i), 197E(5)(d)(i) or 198(5)(d)(i) does not disqualify the person from carer payment if:

(a) the value of the assets of the care receiver or the sum of the values of the assets of the care receivers is more than $410,000 but not more than $608,500; and

(b) the value of the liquid assets of the care receiver, or the sum of the values of the liquid assets of the care receivers, is less than the liquid assets limit; and

(c) the amount of the accepted estimated taxable income of the care receiver, or the sum of the amounts of the accepted estimated taxable incomes of the care receivers, for the current financial year is less than the threshold amount worked out under subsection (6).

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

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

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

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

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

Failing assets and special income tests

(3) The Secretary may decide that subparagraph 197B(4)(d)(i), 197C(4)(d)(i), 197D(4)(d)(i), 197E(5)(d)(i) or 198(5)(d)(i) does not disqualify the person from carer payment if the value of the assets of the care receiver, or the sum of the values of the assets of the care receivers, is more than $410,000 and not more than $608,500 and:

(a) the value of the liquid assets of the care receiver, or the sum of the values of the liquid assets of the care receivers, is equal to or greater than the liquid assets limit; or

(b) the amount of the accepted estimated taxable income of the care receiver, or the sum of the amounts of the accepted estimated taxable incomes of the care receivers, for the current financial year is equal to or more than the threshold amount worked out under subsection (6).

OFFICIAL: Sensitive // Legal Privilege

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

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

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

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

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

Failing assets test by large margin but passing special income test

(4) The Secretary may decide that subparagraph 197B(4)(d)(i), 197C(4)(d)(i), 197D(4)(d)(i), 197E(5)(d)(i) or 198(5)(d)(i) does not disqualify the person from carer payment if:

(a) the value of the assets of the care receiver, or the sum of the values of the assets of the care receivers, is more than $608,500; and

(b) the value of the liquid assets of the care receiver, or the sum of the values of the liquid assets of the care receivers, is less than the liquid assets limit; and

(c) the amount of the accepted estimated taxable income of the care receiver, or the sum of the amounts of the accepted estimated taxable incomes of the care receivers, for the current financial year is less than the threshold amount worked out under subsection (6).

Note 1: The amount specified in paragraph (4)(a) is indexed each year on 1 January (see sections 1190 and 1191).

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

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

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

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

Definitions—assets and income

(5) For the purposes of this section:

(a) the value of the assets or liquid assets of a care receiver who is a higher ADAT score adult is the sum of the values of the assets or liquid assets (as the case requires) of the following people:
  (i) the care receiver;
  (ii) if the care receiver has a partner—the partner;
  (iii) if the care receiver or the care receiver's partner has one or more FTB children—those FTB children; and

(aa) the value of the liquid assets of a care receiver who is a sole care child, combined care child or multiple care child is the sum of the values of the liquid assets of the following people:
  (i) the care receiver;
  (ii) if the care receiver lives with his or her parent—the parent;
  (iii) if the parent with whom the care receiver lives is a member of a couple—the parent's partner;
  (iv) if the parent with whom the care receiver lives or the parent's partner has one or more FTB children—those FTB children.

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

(ab) the value of the liquid assets of a care receiver who is a lower ADAT score adult is the sum of the values of the liquid assets of the following people:
  (i) the care receiver;
  (ii) if the care receiver is a member of a couple—the care receiver's partner and any FTB child (except the child who is the other care receiver or the children who are the other care receivers) of the care receiver or the care receiver's partner;
  (iii) if the care receiver is not a member of a couple—any FTB child (except the child who is the other care

receiver or the children who are the other care receivers).

However, liquid assets of the same person are not to be taken into account in respect of any of the other care receivers; and

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

(b) the ***liquid assets limit*** is $10,000 if the care receiver or any of the care receivers is a member of a couple, or $6,000 if not; and

(c) the ***taxable income*** of a care receiver or of any of 2 or more care receivers for a particular financial year is the taxable income of the care receiver for that year as worked out under section 198B.

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

Note 2: Subsections 198D(1B), (1D) and (1DB) provide that if a sole care child, a combined care child or a multiple care child lives with a parent, the assets listed in subsection 198D(1A) and paragraphs 198D(1C)(b) and (1DA)(c) are taken to be assets of the child.

Note 3: For subparagraph (5)(aa)(ii), see also subsection 197F(5).

Working out the threshold amount

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

$$(\text{MBR} \times 2) + (\$639.60 \times \text{FPC})$$

where:

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

FPC is:

(a) in the case of a care receiver who is a higher ADAT score adult—the number of FTB children of the care receiver or the care receiver's partner (if the care receiver has a partner); or

(b) in the case of a care receiver who is a sole care child who lives with his or her parent—the number of FTB children of the parent or the parent's partner (if the parent has a partner); or

(c) in the case of a care receiver who is a sole care child who does not live with his or her parent—0; or

(d) in the case of care receivers who are 2 or more combined care children:

(i) if any of the children lives with his or her parent—the sum of the number of FTB children of each such parent or of the partner (if the parent has a partner) of each such parent; or

(ii) in any other case—0; or

(e) in the case of care receivers who are a lower ADAT score adult and one or more multiple care children, or a lower ADAT score adult and a dependent child—the number of FTB children of the care receiver or the care receiver's partner (if the care receiver has a partner).

Note 1: For the maximum basic rate of age pension see point 1064-B1 of Pension Rate Calculator A in section 1064.

Note 2: For paragraphs (b), (d) and (e) of the definition of ***FPC***, see also subsection 197F(5).

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

Date of effect

(1) If the Secretary decides under subsection 198N(2), (3) or (4) that subparagraph 197B(4)(d)(i), 197C(4)(d)(i), 197D(4)(d)(i), 197E(5)(d)(i) or 198(5)(d)(i) does not disqualify a person from carer payment, the day on which the decision takes effect is worked out under this section.

Basic rule

(2) Subject to subsections (3), (4) and (5), the decision takes effect on the day on which the decision was made or on such later or earlier

OFFICIAL: Sensitive // Legal Privilege

day (not being a day more than 3 months before the decision was made) as is specified in the decision.

Notified decision—review sought within 3 months

(3) If:

(a) a decision (the ***previous decision***) is made under subsection 198N(2), (3) or (4) about a care receiver or care receivers; and

(b) notice of the making of the previous decision is given:

(i) in the case of a care receiver who is a higher ADAT score adult—to the adult or the person caring for the adult; or

(ii) in the case of a care receiver who is a sole care child—to his or her parent or carer; or

(iii) in the case of care receivers who are 2 or more combined care children—to the carer of the children or to the parent of any of the children; or

(iiia) in the case of care receivers who are a lower ADAT score adult and one or more multiple care children—to the lower ADAT score adult or the person caring for that adult; or

(iv) in the case of care receivers who are a lower ADAT score adult and a dependent child—to the lower ADAT score adult or the person caring for that adult; and

(c) within 3 months after the notice is given, a person applies to the Secretary under section 129 of the Administration Act for review of the previous decision; and

(d) a decision favourable to the person caring for the care receiver or care receivers (the ***favourable decision***) is made as a result of the application for review;

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

Notified decision—review sought after 3 months

(4) If:

(a) a decision (the ***previous decision***) is made under subsection 198N(2), (3) or (4) about a care receiver or care receivers; and

(b) notice of the making of the previous decision is given:

(i) in the case of a care receiver who is a higher ADAT score adult—to the adult or the person caring for the adult; or

(ii) in the case of a care receiver who is a sole care child—to his or her parent or carer; or

(iii) in the case of care receivers who are 2 or more combined care children—to the carer of the children or to the parent of any of the children; or

(iiia) in the case of care receivers who are a lower ADAT score adult and one or more multiple care children—to the lower ADAT score adult or the person caring for that adult; or

(iv) in the case of care receivers who are a lower ADAT score adult and one or more multiple care children, or a lower ADAT score adult and a dependent child—to the lower ADAT score adult or the person caring for that adult; and

(c) more than 3 months after the notice is given, a person applies to the Secretary under section 129 of the Administration Act for review of the previous decision; and

(d) a decision favourable to the person caring for the care receiver or care receivers (the ***favourable decision***) is made as a result of the application for review;

the favourable decision takes effect on the day on which the person sought the review.

Decision not notified

(5) If:

(a) a decision (the ***previous decision***) is made under subsection 198N(2), (3) or (4) about a care receiver or care receivers; and

(b) notice of the making of the previous decision is not given to a person specified in paragraph (4)(b) as a person to whom notice is to be given; and

(c) a person applies to the Secretary under section 129 of the Administration Act for review of the previous decision; and

(d) a decision favourable to the person caring for the care receiver or care receivers (the ***favourable decision***) is made as a result of the application for review;

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

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

If the Secretary decides under subsection 198N(2), (3) or (4) that subparagraph 197B(4)(d)(i), 197C(4)(d)(i), 197D(4)(d)(i), 197E(5)(d)(i) or 198(5)(d)(i) disqualifies a person from carer payment, the decision takes effect:

(a) on the day on which the request under section 198N in respect of the care receiver or care receivers was lodged with the Department; or

(b) if the request was lodged after the Secretary rejected a claim for carer payment by a person caring for the care receiver or care receivers—on the day on which the decision to reject the claim took effect.

Subdivision B—Payability

199 Carer payment not payable if payment rate nil

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

(2) Subsection (1) does not apply to a person if the person's rate would be nil merely because an election by the person under subsection 915A(1) (about quarterly energy supplement) or 1061VA(1) (about quarterly pension supplement) is in force.

201AA Newly arrived resident's waiting period

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

(a) has entered Australia; and

(b) has not been an Australian resident and in Australia for a period of, or periods totalling, 104 weeks.

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

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

Note: For ***qualifying residence exemption*** in relation to carer payment, see paragraph 7(6AA)(f).

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

(a) the holder of a subclass 104 visa—Preferential family; and

(b) either a carer or a special need relative.

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

(a) the holder of a subclass 806 visa—Family; and

(b) either a carer or a special need relative.

(5) Subsection (1) does not apply to a person if, at the time the person made the claim for a carer payment, the person holds a visa that is in a class of visas determined in an instrument under subsection (5B).

OFFICIAL: Sensitive // Legal Privilege

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

(a) the person is a refugee, or a former refugee, at the time the person made the claim for a carer payment; or

(b) the following apply:

(i) before the person made the claim for a carer payment, the person was a family member of another person at the time the other person became a refugee;

(ii) the person is a family member of that other person at the time the person made the claim for a carer payment or, if that other person has died, the person was a family member of that other person immediately before that other person died; or

(c) the person is an Australian citizen at the time the person made the claim for a carer payment.

(5B) The Minister may, by legislative instrument, determine a class of visas for the purposes of subsection (5). The class must not be a class covered by paragraph 7(6AA)(f).

(6) In this section:

carer has the same meaning as in the Migration Regulations.

family member has the meaning given by subsection 7(6D).

former refugee has the meaning given by subsection 7(1).

refugee has the meaning given by subsection 7(6B).

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

201AB Duration of newly arrived resident's waiting period

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

(a) starts on the day the person first became an Australian resident; and

(b) ends when the person has been an Australian resident and in Australia for a period of, or periods totalling, 104 weeks.

202 Multiple entitlement exclusion

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

(2) If:

(a) a person is receiving a carer payment; and

(b) another social security pension, a social security benefit, a service pension or a veteran payment becomes payable to the person;

the carer payment is not payable to the person.

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

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

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

(a) is an armed services widow or an armed services widower; and

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

(c) is receiving income support supplement under Part IIIA of that Act or would be eligible for income support supplement under that Part if he or she made a claim under section 45I of that Act.

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

(a) the person:

(i) was on 20 March 1995 receiving; and

(ii) has from that day continuously received; and

(iii) is receiving;

the carer payment; and

(b) the person elected under subsection 45E(2) of the Veterans' Entitlements Act, or is taken under subsection 45E(3) of that Act to have elected, to continue to receive the carer payment.

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

(a) before 20 March 1995, the person had made a claim for carer payment; and

(b) the person elected under subsection 45F(2) of the Veterans' Entitlements Act, or is taken under subsection 45F(3) of that Act to have elected, to receive the pension in the event that it were granted to him or her; and

(c) on or after 20 March 1995, the person was granted carer payment; and

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

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

(a) is an armed services widow or an armed services widower; and

(b) is receiving the weekly amount mentioned in paragraph 234(1)(b) of the MRCA (including a reduced weekly amount because of a choice under section 236 of the MRCA) or has received a lump sum mentioned in subsection 236(5) of the MRCA; and

(c) is receiving income support supplement or would be eligible for income support supplement if he or she made a claim under section 45I of the VEA.

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

Note 2: For ***MRCA*** and ***VEA*** see subsection 23(1).

202A Exclusion of certain participants in ABSTUDY Scheme

(1) If:

(a) a payment is made in respect of a person under the ABSTUDY Scheme; and

(b) the payment is made on the basis that the person is a full-time student; and

(c) in the calculation of the payment, an amount identified as living allowance (the ***basic payment***) is included; and

(d) the payment relates to a period;

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

(2) If:

(a) a person is qualified for a payment under the ABSTUDY Scheme; and

(b) the payment for which the person is qualified is a payment that:

(i) is made on the basis that the person is a full-time student; and

(ii) is calculated on the basis that an amount identified as living allowance (the ***basic payment***) is included; and

(iii) relates to a period;

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

(3) If:

(a) a person may enrol in a full-time course of education; and

(b) a payment referred to in subsection (2) may be made in respect of the person;

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

203 Seasonal workers—preclusion period

(1) This section applies if:

(a) a person has lodged a claim for carer payment; and

(b) at any time during the 6 months immediately before the day on which the person lodged the claim, the person, or the person's partner, has been engaged in seasonal work.

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

(2) Carer payment is not payable to the person:

(a) if the person is subject to a seasonal work preclusion period (whether in relation to the claim referred to in subsection (1) or any other claim under this Act) and the Secretary has not made a determination under subsection (3) in relation to the person—for the person's seasonal work preclusion period; or

(b) if the Secretary has made a determination under subsection (3) in relation to the person—for that part (if any) of the person's seasonal work preclusion period to which the person is subject as a result of the determination.

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

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

(a) the Secretary may determine that the person is not subject to the whole, or any part, of the preclusion period; and

(b) the determination has effect accordingly.

Note 1: For ***in severe financial hardship*** see subsection 19C(2) (person who is not a member of a couple) or subsection 19C(3) (person who is a member of a couple).

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

OFFICIAL: Sensitive // Legal Privilege

Division 4—Rate of carer payment

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

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

OFFICIAL: Sensitive // Legal Privilege

Division 9—Bereavement payments

Subdivision A—Continuation of carer payment

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

(1) If:

(a) a person is receiving carer payment because he or she ordinarily cares for a care receiver or care receivers; and

(b) the person is caring for the care receiver or care receivers or has temporarily ceased to care for the care receiver or care receivers; and

(c) the care receiver or any of the care receivers dies; and

(d) the care receiver who dies is not the person's partner; and

(e) because of the death, the person would, apart from this subsection, cease to be qualified for the carer payment;

the person remains qualified for the carer payment during the bereavement period as if the death had not occurred.

(1A) If:

(a) a person (the ***carer***) is receiving a carer payment only because section 198AA or subsection 198AC(2) applies; and

(b) the death occurs of:

(i) the person or any of the persons for whom the person would qualify for carer payment as mentioned in paragraph 198AA(1)(b); or

(ia) the person or any of the persons for whom the carer would qualify for carer payment as mentioned in subsection 198AA(4) or (5); or

(ii) the person or any of the persons for whom the care mentioned in paragraph 198AC(2)(c) is assumed to be provided; and

(c) the person who dies is not the carer's partner;

the carer remains qualified for carer payment during the bereavement period as if the death had not occurred.

OFFICIAL: Sensitive // Legal Privilege

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

(4) If a person makes an election under subsection (3):
  (a) this Act, or Part III or IIIA of the Veterans' Entitlements Act, has effect accordingly; and
  (b) the person may not withdraw the election after the Department has taken all the action required to give effect to the election.

236 Continued carer payment rate

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

236A Lump sum payable in some circumstances

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

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

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

(3) The amount under this subsection is:

$$\frac{(\text{Partnered MBR} + \text{Pension supplement})}{26} \times 7$$

where:

partnered MBR is the maximum basic rate applicable, on the day that the person dies, to a person covered by item 2 of the Maximum Basic Rate Table in point 1064-B1 of Pension Rate Calculator A in section 1064.

pension supplement is the person's pension supplement worked out under Module BA of Pension Rate Calculator A.

(4) The amount under this subsection is:

carer's current instalment × 7

where:

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

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

If:

(a) either:
  (i) a lower ADAT score adult and one or more multiple care children die at the same time; or
  (ii) a lower ADAT score adult and a dependent child of the adult die at the same time; and

(b) apart from this subsection and section 243, because of those deaths, a person would continue to qualify for carer payment under section 235 and would be qualified for payments under Subdivision B; and

(c) the sum of the carer payments for which the person would continue to qualify under section 235 and any lump sum payable to the person under section 236A is less than the sum of the amounts payable to the person under Subdivision B;

OFFICIAL: Sensitive // Legal Privilege

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

Subdivision B—Death of partner

237 Qualification for payments under this Subdivision

(1) If:

(a) a person is receiving a carer payment; and

(b) the person is a member of a couple; and

(c) the person's partner dies; and

(d) immediately before the partner died, the partner:

(i) was receiving a social security pension; or

(ii) was receiving a service pension, income support supplement or a veteran payment; or

(iii) was a long-term social security recipient; and

(e) on the person's payday immediately before the first available bereavement adjustment payday, the amount that would be payable to the person if the person were not qualified for payments under this Subdivision is less than the sum of:

(i) the amount that would otherwise be payable to the person under section 238 (continued payment of partner's pension or allowance); and

(ii) the amount that would otherwise be payable to the person under section 240 (person's continued rate);

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

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

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

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

(1A) If:

(a) a person is receiving a carer payment; and

(b) immediately before starting to receive the carer payment the person was receiving partner bereavement payments; and

(c) the bereavement rate continuation period in relation to the death of the person's partner has not ended;

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

(1AB) Subsection (1) or (1A) does not apply in relation to care receivers who are a lower ADAT score adult and one or more multiple care children if:

(a) the person is receiving carer payment under section 235 because of the death of the child or children; and

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

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

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

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

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

(3) An election under subsection (2):

(a) must be made by written notice to the Secretary; and

(b) may be made after the person has been paid an amount or amounts under this Subdivision; and

(c) cannot be withdrawn after the Department has taken all the action required to give effect to that election.

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

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

(a) the person is receiving a social security benefit; and

(b) in respect of the previous 12 months, the person:

(i) was receiving a social security pension; or

(ii) was receiving a social security benefit; or

(iii) was receiving a youth training allowance; or

(iv) was receiving a service pension, income support supplement or a veteran payment.

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

(a) the person was receiving one or a combination of the payments referred to in that paragraph for a continuous period of 12 months; or

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

238 Continued payment of deceased partner's previous entitlement

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

(a) where the partner was receiving a social security pension or social security benefit—the amount that would have been payable to the partner on the payday if the partner had not died; or

(b) where the partner was receiving a service pension, income support supplement or a veteran payment—the amount that would have been payable to the partner under Part III, IIIA or

OFFICIAL: Sensitive // Legal Privilege

IIIAA (as the case may be) of the Veterans' Entitlements Act on the service payday that:

(i) where the first Thursday after the partner's death was a service payday—precedes the pension payday; or

(ii) in any other case—follows the pension payday;

if the partner had not died.

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

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

239 Lump sum payable in some circumstances

If:

(a) a person is qualified for payments under this Subdivision in relation to the death of the person's partner; and

(b) the first available bereavement adjustment payday occurs before the end of the bereavement period;

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

LUMP SUM CALCULATOR

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

Method statement

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

(a) the person's partner had not died; and

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

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

(a) the partner had not died; and

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

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

Step 4. Work out the amount that, but for section 240, would have been payable to the person on the person's payday immediately before the first available bereavement adjustment payday: the result is called the ***person's individual rate***.

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

Step 6. Work out the number of the partner's paydays in the bereavement lump sum period.

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

OFFICIAL: Sensitive // Legal Privilege

240 Adjustment of person's carer payment rate

If:

(a) a person is qualified for payments under this Subdivision; and

(b) the person does not elect under subsection 237(2) not to receive payments under this Subdivision;

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

(c) during the bereavement rate continuation period, the rate of carer payment payable to the person is the rate at which the pension would have been payable to the person if:

(i) the person's partner had not died; and

(ii) where immediately before the partner's death the couple were an illness separated couple or a respite care couple—they were not such a couple;

(d) during the bereavement lump sum period (if any), the rate at which carer payment is payable to the person is the rate at which the carer payment would be payable to the person apart from this Subdivision.

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

If:

(a) a person is qualified for payments under this Subdivision in relation to the death of the person's partner; and

(b) the person dies within the bereavement period; and

(c) the Secretary does not become aware of the death of the person's partner before the person dies;

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

LUMP SUM CALCULATOR

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

Method statement

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

(a) neither the person nor the person's partner had died; and

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

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

(a) neither the person nor the partner had died; and

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

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

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

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

242 Benefits under this Subdivision

(1) If:

(a) a person is qualified for payments under this Subdivision in relation to the death of the person's partner; and

(b) after the person's partner died, an amount to which the partner would have been entitled if the partner had not died has been paid under this Act or under Part III or IIIA of the Veterans' Entitlements Act; and

(c) the Secretary is not satisfied that the person has not had the benefit of that amount;

the following provisions have effect:

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

(e) the amount payable to the person under this Subdivision is to be reduced by the amount referred to in paragraph (b).

(2) If:

(a) a person is qualified for payments under this Subdivision in relation to the death of the person's partner; and

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

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

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

243 Subdivision not to apply in certain cases involving simultaneous death

If:

(a) either:

(i) a lower ADAT score adult and one or more multiple care children die at the same time; or

(ii) a lower ADAT score adult and a dependent child of the adult die at the same time; and

(b) apart from this subsection and section 236B, because of those deaths a person would be qualified for payments under this Subdivision and would continue to qualify for carer payment under section 235; and

(c) the sum of the amounts payable to the person under this Subdivision is less than or equal to the sum of the carer payments for which the person would continue to qualify under section 235 and any lump sum payable to the person under section 236A;

no amounts are payable to the person under this Subdivision.

OFFICIAL: Sensitive // Legal Privilege

Subdivision D—Death of recipient

246 Death of recipient

(1) If:

(a) a person is receiving carer payment; and

(b) either:

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

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

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

(C) is not receiving a service pension, income support supplement or a veteran payment; and

(c) the person dies;

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

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

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

OFFICIAL: Sensitive // Legal Privilege

Part 2.5A—One-off payments to carers eligible for carer payment

Division 1—One-off payment to carers eligible for carer payment

247 One-off payment to carers (carer payment related)

A person (the ***qualified person***) is qualified for a one-off payment to carers (carer payment related) if the person has been paid an instalment of carer payment in respect of a period that includes 11 May 2004.

Note: The person may also be qualified for a one-off payment to carers (carer allowance related) under Division 1 of Part 2.19A.

248 What is the amount of the payment?

The amount of the one-off payment to the qualified person is $1000.

Note: The amount is $1000, regardless of the number of people for whom the qualified person provides care.

OFFICIAL: Sensitive // Legal Privilege

Division 2—2005 one-off payment to carers eligible for carer payment

249 2005 one-off payment to carers (carer payment related)

A person (the ***qualified person***) is qualified for a 2005 one-off payment to carers (carer payment related) if the person has been paid an instalment of carer payment in respect of a period that includes 10 May 2005.

Note: The person may also be qualified for a 2005 one-off payment to carers (carer allowance related) under Division 2 of Part 2.19A.

250 What is the amount of the payment?

The amount of the one-off payment to the qualified person is $1000.

Note: The amount is $1000, regardless of the number of people for whom the qualified person provides care.

OFFICIAL: Sensitive // Legal Privilege

Division 3—2005 one-off payment to carers eligible for carer service pension

251 2005 one-off payment to carers (carer service pension related)

A person (the ***qualified person***) is qualified for a 2005 one-off payment to carers (carer service pension related) if the person has been paid an instalment of carer service pension as a result of the operation of subclause 8(2) or (4) of Schedule 5 to the *Veterans' Entitlements Act 1986* in respect of a period that includes 10 May 2005.

252 What is the amount of the payment?

The amount of the one-off payment to the qualified person is $1000.

Note: The amount is $1000, regardless of the number of people for whom the qualified person provides care.

OFFICIAL: Sensitive // Legal Privilege

Division 4—2006 one-off payment to carers eligible for carer payment

253 2006 one-off payment to carers (carer payment related)

A person (the ***qualified person***) is qualified for a 2006 one-off payment to carers (carer payment related) if:

(a) the person has been paid an instalment of carer payment in respect of a period that includes 9 May 2006; and

(b) the person was paid that instalment because of a claim the person made on or before 9 May 2006.

254 Amount of the one-off payment

The amount of the one-off payment to the qualified person is $1000.

Note: The amount is $1000, regardless of the number of people for whom the qualified person provides care.

Division 5—2006 one-off payment to carers eligible for wife pension

255 2006 one-off payment to carers (wife pension related)

A person (the ***qualified person***) is qualified for a 2006 one-off payment to carers (wife pension related) if:

(a) the person:

(i) has been paid an instalment of wife pension in respect of a period that includes 9 May 2006; and

(ii) was paid that instalment because of a claim the person made on or before 9 May 2006; and

(b) the following conditions are satisfied in relation to one or more instalments of carer allowance that have been paid to the person:

(i) the instalment was in respect of a period that includes 9 May 2006;

(ii) the reason why that instalment covered 9 May 2006 was not only because of clause 16 or 17 of Schedule 2 to the Administration Act;

(iii) the person was paid that instalment because of a claim the person made on or before 9 May 2006.

256 Amount of the one-off payment

The amount of the one-off payment to the qualified person is $1000.

Note: The amount is $1000, regardless of the number of people for whom the qualified person provides care.

OFFICIAL: Sensitive // Legal Privilege

Division 6—2006 one-off payment to carers eligible for partner service pension

257 2006 one-off payment to carers (partner service pension related)

A person (the ***qualified person***) is qualified for a 2006 one-off payment to carers (partner service pension related) if:

(a) the person:

(i) has been paid an instalment of partner service pension under Part III of the Veterans' Entitlements Act in respect of a period that includes 9 May 2006; and

(ii) was paid that instalment because of a claim the person made on or before 9 May 2006; and

(b) the following conditions are satisfied in relation to one or more instalments of carer allowance that have been paid to the person:

(i) the instalment was in respect of a period that includes 9 May 2006;

(ii) the reason why that instalment covered 9 May 2006 was not only because of clause 16 or 17 of Schedule 2 to the Administration Act;

(iii) the person was paid that instalment because of a claim the person made on or before 9 May 2006.

258 Amount of the one-off payment

The amount of the one-off payment to the qualified person is $1000.

Note: The amount is $1000, regardless of the number of people for whom the qualified person provides care.

OFFICIAL: Sensitive // Legal Privilege

Division 7—2006 one-off payment to carers eligible for carer service pension

259 2006 one-off payment to carers (carer service pension related)

A person (the ***qualified person***) is qualified for a 2006 one-off payment to carers (carer service pension related) if:

(a) the person has been paid an instalment of carer service pension as a result of the operation of subclause 8(2) or (4) of Schedule 5 to the Veterans' Entitlements Act in respect of a period that includes 9 May 2006; and

(b) the person was paid that instalment because of a claim the person made on or before 9 May 2006.

260 Amount of the one-off payment

The amount of the one-off payment to the qualified person is $1000.

Note: The amount is $1000, regardless of the number of people for whom the qualified person provides care.

OFFICIAL: Sensitive // Legal Privilege

Division 8—2007 one-off payment to carers eligible for carer payment

261 2007 one-off payment to carers (carer payment related)

A person (the ***qualified person***) is qualified for a 2007 one-off payment to carers (carer payment related) if:

(a) the person has been paid an instalment of carer payment in respect of a period that includes 8 May 2007; and

(b) the person was paid that instalment because of a claim the person made on or before 8 May 2007.

262 Amount of the one-off payment

The amount of the one-off payment to the qualified person is $1000.

Note: The amount is $1000, regardless of the number of people for whom the qualified person provides care.

OFFICIAL: Sensitive // Legal Privilege

Division 9—2007 one-off payment to carers eligible for wife pension

263 2007 one-off payment to carers (wife pension related)

A person (the ***qualified person***) is qualified for a 2007 one-off payment to carers (wife pension related) if:

(a) the person:

(i) has been paid an instalment of wife pension in respect of a period that includes 8 May 2007; and

(ii) was paid that instalment because of a claim the person made on or before 8 May 2007; and

(b) the following conditions are satisfied in relation to one or more instalments of carer allowance that have been paid to the person:

(i) the instalment was in respect of a period that includes 8 May 2007;

(ii) the reason why that instalment covered 8 May 2007 was not only because of clause 16 or 17 of Schedule 2 to the Administration Act;

(iii) the person was paid that instalment because of a claim the person made on or before 8 May 2007.

264 Amount of the one-off payment

The amount of the one-off payment to the qualified person is $1000.

Note: The amount is $1000, regardless of the number of people for whom the qualified person provides care.

OFFICIAL: Sensitive // Legal Privilege

Division 10—2007 one-off payment to carers eligible for partner service pension

265 2007 one-off payment to carers (partner service pension related)

A person (the ***qualified person***) is qualified for a 2007 one-off payment to carers (partner service pension related) if:

(a) the person:

(i) has been paid an instalment of partner service pension under Part III of the Veterans' Entitlements Act in respect of a period that includes 8 May 2007; and

(ii) was paid that instalment because of a claim the person made on or before 8 May 2007; and

(b) the following conditions are satisfied in relation to one or more instalments of carer allowance that have been paid to the person:

(i) the instalment was in respect of a period that includes 8 May 2007;

(ii) the reason why that instalment covered 8 May 2007 was not only because of clause 16 or 17 of Schedule 2 to the Administration Act;

(iii) the person was paid that instalment because of a claim the person made on or before 8 May 2007.

266 Amount of the one-off payment

The amount of the one-off payment to the qualified person is $1000.

Note: The amount is $1000, regardless of the number of people for whom the qualified person provides care.

OFFICIAL: Sensitive // Legal Privilege

Division 11—2007 one-off payment to carers eligible for carer service pension

267 2007 one-off payment to carers (carer service pension related)

A person (the ***qualified person***) is qualified for a 2007 one-off payment to carers (carer service pension related) if:

(a) the person has been paid an instalment of carer service pension as a result of the operation of subclause 8(2) or (4) of Schedule 5 to the Veterans' Entitlements Act in respect of a period that includes 8 May 2007; and

(b) the person was paid that instalment because of a claim the person made on or before 8 May 2007.

268 Amount of the one-off payment

The amount of the one-off payment to the qualified person is $1000.

Note: The amount is $1000, regardless of the number of people for whom the qualified person provides care.

OFFICIAL: Sensitive // Legal Privilege

Division 12—2008 one-off payment to carers eligible for carer payment

269 2008 one-off payment to carers (carer payment related)

A person (the ***qualified person***) is qualified for a 2008 one-off payment to carers (carer payment related) if:

(a) the person has been paid an instalment of carer payment in respect of a period that includes 13 May 2008; and

(b) the person was paid that instalment because of a claim the person made on or before 13 May 2008.

270 Amount of the one-off payment

The amount of the one-off payment to the qualified person is $1000.

Note: The amount is $1000, regardless of the number of people for whom the qualified person provides care.

OFFICIAL: Sensitive // Legal Privilege

Division 13—2008 one-off payment to carers eligible for wife pension

271 2008 one-off payment to carers (wife pension related)

A person (the ***qualified person***) is qualified for a 2008 one-off payment to carers (wife pension related) if:

(a) the person:

(i) has been paid an instalment of wife pension in respect of a period that includes 13 May 2008; and

(ii) was paid that instalment because of a claim the person made on or before 13 May 2008; and

(b) the following conditions are satisfied in relation to one or more instalments of carer allowance that have been paid to the person:

(i) the instalment was in respect of a period that includes 13 May 2008;

(ii) the reason why that instalment covered 13 May 2008 was not only because of clause 16 or 17 of Schedule 2 to the Administration Act;

(iii) the person was paid that instalment because of a claim the person made on or before 13 May 2008.

272 Amount of the one-off payment

The amount of the one-off payment to the qualified person is $1000.

Note: The amount is $1000, regardless of the number of people for whom the qualified person provides care.

OFFICIAL: Sensitive // Legal Privilege

Division 14—2008 one-off payment to carers eligible for partner service pension

273 2008 one-off payment to carers (partner service pension related)

A person (the ***qualified person***) is qualified for a 2008 one-off payment to carers (partner service pension related) if:

(a) the person:
  (i) has been paid an instalment of partner service pension under Part III of the Veterans' Entitlements Act in respect of a period that includes 13 May 2008; and
  (ii) was paid that instalment because of a claim the person made on or before 13 May 2008; and

(b) the following conditions are satisfied in relation to one or more instalments of carer allowance that have been paid to the person:
  (i) the instalment was in respect of a period that includes 13 May 2008;
  (ii) the reason why that instalment covered 13 May 2008 was not only because of clause 16 or 17 of Schedule 2 to the Administration Act;
  (iii) the person was paid that instalment because of a claim the person made on or before 13 May 2008.

274 Amount of the one-off payment

The amount of the one-off payment to the qualified person is $1000.

Note: The amount is $1000, regardless of the number of people for whom the qualified person provides care.

OFFICIAL: Sensitive // Legal Privilege

Division 15—2008 one-off payment to carers eligible for carer service pension

275 2008 one-off payment to carers (carer service pension related)

A person (the ***qualified person***) is qualified for a 2008 one-off payment to carers (carer service pension related) if:

(a) the person has been paid an instalment of carer service pension as a result of the operation of subclause 8(2) or (4) of Schedule 5 to the Veterans' Entitlements Act in respect of a period that includes 13 May 2008; and

(b) the person was paid that instalment because of a claim the person made on or before 13 May 2008.

276 Amount of the one-off payment

The amount of the one-off payment to the qualified person is $1000.

Note: The amount is $1000, regardless of the number of people for whom the qualified person provides care.

Part 2.6—One-off energy assistance payment

300 One-off energy assistance payment

(1) A person is qualified for a one-off energy assistance payment if:
  (a) age pension, disability support pension or pension PP (single) is payable to the person on 20 June 2017; and
  (b) that pension is so payable because of a claim the person made on or before 20 June 2017; and
  (c) the person is residing in Australia on 20 June 2017.

More than one entitlement under this section

(2) A person may receive one payment only under this section, regardless of how many times the person qualifies under this section.

More than one entitlement under this section and the Veterans' Entitlements Act

(3) If a payment under Part IIIF of the Veterans' Entitlements Act is paid to a person, no payment under this section can be paid to the person.

301 Amount of one-off energy assistance payment

The amount of a person's one-off energy assistance payment under section 300 is worked out using the following table, having regard to the person's situation on 20 June 2017:

Energy assistance payment

Item	Person's situation on 20 June 2017	Amount of one-off energy assistance payment
1	Not a member of a couple	$75
2	Partnered	$62.50

Energy assistance payment		
Item	**Person's situation on 20 June 2017**	**Amount of one-off energy assistance payment**
3	Member of an illness separated couple	$75
4	Member of a respite care couple	$75
5	Partnered (partner in gaol)	$75

Note: For ***member of a couple***, ***partnered***, ***illness separated couple***, ***respite care couple*** and ***partnered (partner in gaol)*** see section 4.

Part 2.6A—2019 one-off energy assistance payment

302 One-off energy assistance payment

(1) A person is qualified for a one-off energy assistance payment if:
  (a) a benefit mentioned in subsection (2) is payable to the person on 2 April 2019; and
  (b) that benefit is so payable because of a claim the person made on or before 2 April 2019; and
  (c) the person is residing in Australia on 2 April 2019.

(2) For the purposes of paragraph (1)(a), the benefits are the following:
  (a) age pension;
  (b) disability support pension;
  (c) wife pension;
  (d) carer payment;
  (e) widow B pension;
  (f) widow allowance;
  (g) parenting payment;
  (h) youth allowance;
  (i) AUSTUDY payment;
  (j) newstart allowance;
  (k) sickness allowance;
  (l) special benefit;
  (m) partner allowance;
  (n) double orphan pension;
  (o) farm household allowance under the *Farm Household Support Act 2014*.

More than one entitlement under this section

(3) A person may receive one payment only under this section, regardless of how many times the person qualifies under this section.

More than one entitlement under this section and the Veterans' Entitlements Act

(4) If a payment under Part IIIG of the Veterans' Entitlements Act is paid to a person, no payment under this section can be paid to the person.

303 Amount of one-off energy assistance payment

The amount of a person's one-off energy assistance payment under section 302 is worked out using the following table, having regard to the person's situation on 2 April 2019.

Energy assistance payment		
Item	**Person's situation on 2 April 2019**	**Amount of one-off energy assistance payment**
1	Not a member of a couple	$75
2	Partnered	$62.50
3	Member of an illness separated couple	$75
4	Member of a respite care couple	$75
5	Partnered (partner in gaol)	$75

Note: For ***member of a couple***, ***partnered***, ***illness separated couple***, ***respite care couple*** and ***partnered (partner in gaol)***, see section 4.

OFFICIAL: Sensitive // Legal Privilege

Part 2.6B—2020 economic support payments

Division 1—First 2020 economic support payment

304 First 2020 economic support payment

Qualification for payment

(1) A person is qualified for a first 2020 economic support payment if subsection 308(2), (3) or (4) applies to the person on a day in the period:
  (a) starting on 12 March 2020; and
  (b) ending on 13 April 2020.

More than one entitlement

(2) A person may receive one payment only under this Division, regardless of how many times the person qualifies under this section.

(3) If:
  (a) a first 2020 economic support payment under the ABSTUDY Scheme; or
  (b) a first 2020 economic support payment under Division 1 of Part 9 of the Family Assistance Act; or
  (c) a first 2020 economic support payment under Division 1 of Part IIIH of the Veterans' Entitlements Act;

is paid to a person, no payment under this section can be paid to the person.

305 Amount of first 2020 economic support payment

The amount of a person's first 2020 economic support payment under this Division is $750.

OFFICIAL: Sensitive // Legal Privilege

Division 2—Second 2020 economic support payment

306 Second 2020 economic support payment

Qualification for payment

(1) A person is qualified for a second 2020 economic support payment if:

(a) subsection 308(2), (3) or (4) applies to the person on 10 July 2020; and

(b) the person does not receive COVID-19 supplement in respect of 10 July 2020.

More than one entitlement

(2) A person may receive one payment only under this Division, regardless of how many times the person qualifies under this section.

(3) If:

(a) a second 2020 economic support payment under the ABSTUDY Scheme; or

(b) a second 2020 economic support payment under Division 2 of Part 9 of the Family Assistance Act; or

(c) a second 2020 economic support payment under Division 2 of Part IIIH of the Veterans' Entitlements Act;

is paid to a person, no payment under this Division can be paid to the person.

307 Amount of second 2020 economic support payment

The amount of a person's second 2020 economic support payment under this Division is $750.

OFFICIAL: Sensitive // Legal Privilege

Division 3—Eligibility

308 Eligibility

(1) This section applies for the purposes of subsection 304(1) and paragraph 306(1)(a).

Receipt of certain benefits

(2) Subject to subsection (5) of this section, this subsection applies to a person on a day if the person receives one of the following benefits in respect of that day:

(a) age pension;
(b) disability support pension;
(c) wife pension;
(d) carer payment;
(e) bereavement allowance;
(f) widow B pension;
(g) widow allowance;
(h) parenting payment;
(i) youth allowance;
(j) austudy payment;
(k) newstart allowance;
(l) jobseeker payment;
(m) sickness allowance;
(n) special benefit;
(o) partner allowance;
(p) carer allowance;
(q) double orphan pension.

Note: References to youth allowance, newstart allowance and jobseeker payment include references to farm household allowance: see section 93 of the *Farm Household Support Act 2014*.

OFFICIAL: Sensitive // Legal Privilege

Qualified for seniors health card

(3) Subject to subsection (5) of this section, this subsection applies to a person on a day if:

(a) the person makes a claim for a seniors health card under Division 1 of Part 3 of the Administration Act on or before that day; and

(b) the person does not withdraw that claim on or before that day; and

(c) the person is qualified for the card on that day.

Qualified for pensioner concession card

(4) Subject to subsection (5) of this section, this subsection applies to a person on a day if the person is qualified for a pensioner concession card on that day.

Residence requirement

(5) Subsection (2), (3) or (4) does not apply to a person on a day if the person does not reside in Australia on that day.

OFFICIAL: Sensitive // Legal Privilege

Part 2.6C—Additional economic support payments

Division 1—Additional economic support payment 2020

309 Additional economic support payment 2020

Qualification for payment

(1) A person is qualified for an additional economic support payment 2020 if:

(a) subsection 313(2), (3) or (4) applies to the person on 27 November 2020; and

(b) the person is residing in Australia on 27 November 2020.

More than one entitlement

(2) A person may receive one payment only under this Division, regardless of how many times the person qualifies under this section.

(3) If:

(a) an additional economic support payment 2020 under Division 1 of Part 10 of the Family Assistance Act; or

(b) an additional economic support payment 2020 under Division 1 of Part IIIJ of the Veterans' Entitlements Act;

is paid to a person, no payment under this Division can be paid to the person.

310 Amount of additional economic support payment 2020

The amount of a person's additional economic support payment 2020 under this Division is $250.

OFFICIAL: Sensitive // Legal Privilege

Division 2—Additional economic support payment 2021

311 Additional economic support payment 2021

Qualification for payment

(1) A person is qualified for an additional economic support payment 2021 if:

(a) subsection 313(2), (3) or (4) applies to the person on 26 February 2021; and

(b) the person is residing in Australia on 26 February 2021.

More than one entitlement

(2) A person may receive one payment only under this Division, regardless of how many times the person qualifies under this section.

(3) If:

(a) an additional economic support payment 2021 under Division 2 of Part 10 of the Family Assistance Act; or

(b) an additional economic support payment 2021 under Division 2 of Part IIIJ of the Veterans' Entitlements Act;

is paid to a person, no payment under this Division can be paid to the person.

312 Amount of additional economic support payment 2021

The amount of a person's additional economic support payment 2021 under this Division is $250.

OFFICIAL: Sensitive // Legal Privilege

Division 3—Eligibility

313 Eligibility

(1) This section applies for the purposes of paragraphs 309(1)(a) and 311(1)(a).

Social security payments

(2) This subsection applies to a person on a day if:
  (a) the following apply:
    (i) the person receives age pension, disability support pension or carer payment in respect of that day;
    (ii) the person does not receive a payment under a prescribed educational scheme in respect of that day; or
  (b) the following apply:
    (i) the person receives carer allowance in respect of that day;
    (ii) the person does not receive an income support payment in respect of that day;
    (iii) the person does not receive a payment under a prescribed educational scheme in respect of that day; or
  (c) the following apply:
    (i) person receives double orphan pension in respect of that day;
    (ii) the person does not receive an income support payment in respect of that day;
    (iii) the person does not receive a payment under a prescribed educational scheme in respect of that day.

Seniors health card

(3) This subsection applies to a person on a day if:
  (a) the following apply:
    (i) the person is the holder of a seniors health card on that day;

(ii) the person does not receive a payment under a prescribed educational scheme in respect of that day; or

(b) the following apply:

(i) the person makes a claim for a seniors health card under Division 1 of Part 3 of the Administration Act on or before that day;

(ii) the claim is pending on that day;

(iii) the person is qualified for the card on that day;

(iv) the person does not receive a payment under a prescribed educational scheme in respect of that day.

Pensioner concession card

(4) This subsection applies to a person on a day if:

(a) the person is qualified for a pensioner concession card on that day; and

(b) the person does not receive an income support payment in respect of that day; and

(c) the person does not receive a payment under a prescribed educational scheme in respect of that day.

OFFICIAL: Sensitive // Legal Privilege

Part 2.8A—Widow allowance

Division 1—Time limit on grants of widow allowance

408AA Time limit on grants

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

(2) Despite anything else in this Part, widow allowance must not be granted to a woman unless:

(a) the woman's claim for the allowance is made before the commencement of this subsection; and

(b) the woman is qualified for the allowance before the commencement of this subsection.

Note: A woman's claim for widow allowance may be taken to have been made before the commencement of this subsection in accordance with section 12 or 15 of the Administration Act.

(3) This section does not apply in relation to a determination by the Secretary under section 85 of the Administration Act.

OFFICIAL: Sensitive // Legal Privilege

Division 2—Qualification for and payability of widow allowance

Subdivision A—Qualification

408BA Qualification for widow allowance

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

(a) she has turned 50; and

(b) she was a member of a couple and since turning 40:

(i) her partner died; or

(ii) she separated from her partner; or

(iii) she divorced from her husband; and

(c) she satisfies the Secretary that she has no recent workforce experience on the day when she makes her claim for the allowance; and

(d) at least one of the following is satisfied:

(ib) the woman has been an Australian resident and in Australia for a period of, or periods totalling, 104 weeks before the day she lodged the claim for the allowance; or

(ii) she has 10 years qualifying Australian residence; or

(iii) she has a qualifying residence exemption for widow allowance; or

(iv) both the woman and her partner were Australian residents at the time when the qualifying event under paragraph (b) occurred; and

(e) throughout the period, she:

(i) is not a member of a couple; and

(ii) is an Australian resident.

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

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

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

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

408BB Assurance of support

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

(a) an assurance of support is in force in respect of the woman for that period; and

(b) throughout the period the person who gave the assurance of support is likely to be willing and able to provide an adequate level of support to the woman; and

(c) throughout the period it would be reasonable for the woman to accept that support.

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

Subdivision B—Payability

408CA Widow allowance not payable if allowance rate nil

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

(2) Subsection (1) does not apply to a person if the person's rate would be nil merely because:

(a) an election by the person under subsection 915A(1) (about quarterly energy supplement) or 1061VA(1) (about quarterly pension supplement) is in force; or

(b) the person has been paid an advance pharmaceutical allowance under the social security law.

408CE Assets test—allowance not payable if assets value limit exceeded

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

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

Assets value limit table

Column 1 Item	Column 2 Woman's situation	Column 3 Assets value limit
1	Woman is a homeowner	$250,000
2	Woman is not a homeowner	$450,000

Note 1: For ***homeowner*** see section 11.

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

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

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

408CF Multiple entitlement exclusion

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

(2) If:

(a) a woman is receiving widow allowance; and

(b) a social security pension, another social security benefit, a service pension, income support supplement or a veteran payment becomes payable to her;

widow allowance is not payable to her.

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

OFFICIAL: Sensitive // Legal Privilege

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

(a) she is an armed services widow; and

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

unless:

(c) she has been receiving a payment referred to in paragraph (b) continuously since before 1 November 1986; and

(d) before 1 November 1986 she was also receiving a social security benefit.

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

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

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

(a) a prescribed educational scheme other than the ABSTUDY Scheme to the extent that it applies to part-time students; or

(b) the scheme to provide an allowance known as the Maintenance Allowance for Refugees.

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

(5) If:

(a) a woman enrols in a full-time course of education; and

(b) a payment under a scheme referred to in subsection (4) may be made in respect of her;

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

(6) If:

(a) a woman enrols in a full-time course of education; and

(b) the course is to last for 6 months or more; and

(c) an application is made for a payment in respect of her under:

(ii) the ABSTUDY Schools Scheme; or

(iii) the ABSTUDY Tertiary Scheme; and

(d) she was receiving widow allowance immediately before the start of the course;

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

(e) the application is determined; or

(f) the end of 3 weeks commencing on the day on which the course starts;

whichever happens first.

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

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

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

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

408CH Seasonal workers

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

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

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

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

(b) if the Secretary has made a determination under subsection (3) in relation to her—for that part (if any) of her

OFFICIAL: Sensitive // Legal Privilege

seasonal work preclusion period to which she is subject as a result of the determination.

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

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

(a) the Secretary may determine that she is not subject to the whole, or any part, of the preclusion period; and

(b) the determination has effect accordingly.

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

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

Division 5—Rate of widow allowance

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

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

408GI CDEP Scheme participant may accumulate widow allowance

(1) A person who is a CDEP Scheme participant in respect of the whole or a part of a quarter may, by written notice given to the Secretary, choose to accumulate the amounts of any widow allowance that become payable to the person in respect of that quarter, or any later quarter in respect of the whole or a part of which the person is a CDEP Scheme participant, and have not already been paid.

(2) If a person to whom subsection (1) applies makes a choice under that subsection, the sum of the accumulated amounts payable to the person in respect of a quarter is to be paid on, or as soon as practicable after, the first payday after:

(a) unless paragraph (b) applies, the last day of the quarter; or

(b) if the person ceases to be a CDEP Scheme participant before the end of the quarter—the day on which the person so ceases.

(3) In this section:

quarter means a CDEP Scheme quarter.

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

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

OFFICIAL: Sensitive // Legal Privilege

Part 2.10—Parenting payment

Division 1—Qualification for and payability of parenting payment

Subdivision A—Qualification

500 Qualification for parenting payment

(1) A person is qualified for parenting payment if:

(a) the person has at least one PP child (see section 500D); and

(b) the person is an Australian resident; and

~~(c) in a case where the person is not a member of a couple and does not have at least one PP child who has not turned 6—the person meets any participation requirements that apply to the person under section 500A; and~~

~~(ca) in a case where the person is in a class of persons specified by legislative instrument under subsection (2)—the person meets any participation requirements that apply to the person under section 500A; and~~

(c) in a case where the person is not a member of a couple and does not have at least one PP child who has not turned 6—the person satisfies subsection (2A); and

(ca) in a case where the person is in a class of persons specified by legislative instrument under subsection (2)—the person satisfies subsection (2B); and

(d) at least one of the following conditions is satisfied:

(i) the person is not a member of a couple and the person was not a lone parent at the start of the person's current period as an Australian resident;

(ii) the person has, at any time, been in Australia for a period of, or periods adding up to, at least 104 weeks during a continuous period throughout which the person was an Australian resident;

(iii) the person has a qualifying residence exemption for parenting payment;

(iv) the person satisfies subsection (3).

Note 1: For ***Australian resident***, see section 7. For ***qualifying residence exemption*** in relation to parenting payment, see subsection 7(6) and paragraph 7(6AA)(f).

Note 2: If a person is claiming parenting payment under a scheduled international social security agreement, the requirements of this subsection could be modified by section 10 of the *Social Security (International Agreements) Act 1999*.

Note 3: For ***lone parent*** and ***current period as an Australian resident*** see subsection 23(1).

(2) For the purposes of paragraph (1)(ca), the Minister may, by legislative instrument, specify a class of persons.

(2A) A person satisfies this subsection if:

(a) the following apply:

(i) the person satisfies the employment pathway plan requirements;

(ii) the person satisfies the Employment Secretary that the person is willing to actively seek and to accept and undertake paid work in Australia, except particular paid work that is unsuitable to be done by the person; or

(b) the following apply:

(i) the person is, under Subdivision C of Division 2A of Part 3 of the Administration Act, not required to satisfy the employment pathway plan requirements;

(ii) the person satisfies the Employment Secretary that the person would otherwise be willing to actively seek and to accept and undertake paid work in Australia, except particular paid work that is unsuitable to be done by the person.

Note 1: For ***satisfies the employment pathway plan requirements***, see subsection 23(1).

Note 2: See Division 2B of Part 3 of the Administration Act for the circumstances in which paid work is unsuitable to be done by a person.

(2B) A person satisfies this subsection if:

OFFICIAL: Sensitive // Legal Privilege

(a) the following apply:

(i) the person satisfies the employment pathway plan requirements;

(ii) if required by the Employment Secretary, the person satisfies the Employment Secretary that the person is willing to actively seek and to accept and undertake paid work in Australia, except particular paid work that is unsuitable to be done by the person; or

(b) the following apply:

(i) the person is, under Subdivision C of Division 2A of Part 3 of the Administration Act, not required to satisfy the employment pathway plan requirements;

(ii) if required by the Employment Secretary, the person satisfies the Employment Secretary that the person would otherwise be willing to actively seek and to accept and undertake paid work in Australia, except particular paid work that is unsuitable to be done by the person.

Note 1: For ***satisfies the employment pathway plan requirements***, see subsection 23(1).

Note 2: See Division 2B of Part 3 of the Administration Act for the circumstances in which paid work is unsuitable to be done by a person.

(3) A person satisfies this subsection if the following apply:

(a) before the person made the claim for parenting payment, the person was a family member of another person at the time the other person became a refugee;

(b) the person is a family member of that other person at the time the person made the claim for parenting payment or, if that other person has died, the person was a family member of that other person immediately before that other person died.

(4) For the purposes of subsection (3):

(a) ***family member*** has the meaning given by subsection 7(6D); and

(b) ***refugee*** has the meaning given by subsection 7(6B).

~~**500A Participation requirements**~~

~~The participation requirements are as follows:~~

~~(a) the person must enter into a Parenting Payment Employment Pathway Plan when the person is required by the Secretary under section 501 to do so;~~

~~(b) while the plan is in force, the person must comply with the requirements in the plan;~~

~~(c) at any time while the plan is in force the person must be prepared to enter into another such plan, instead of the existing plan, if required to do so by the Secretary under section 501;~~

~~(d) the person must comply with any requirements that the Secretary notifies to the person under subsection 502(1).~~

500B Qualification—assurance of support

A person is not qualified for parenting payment if the Secretary is satisfied that:

(a) an assurance of support is in force in respect of the person (the ***assuree***); and

(b) the person who gave the assurance of support is willing and able to provide an adequate level of support to the assuree; and

(c) it would be reasonable for the assuree to accept that support.

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

500C Qualification affecting member of couple—unemployment due to industrial action

(1) If:

(a) a person (***claimant***) who is a member of a couple has claimed but has not yet received parenting payment; and

(b) when the claim was lodged, the claimant was unemployed;

the claimant is not qualified for parenting payment unless the Secretary is satisfied that the claimant's unemployment is not due

to the fact that the claimant is, or has been, engaged in industrial action or a series of industrial actions.

(2) For the purposes of subsection (1) and without limiting that subsection, a claimant is taken not to be, or not to have been, engaged in industrial action or a series of industrial actions if the Secretary is satisfied that the claimant's unemployment is due to the fact that other persons are, or have been, engaged in industrial action or in a series of industrial actions, and that:

(a) if industrial action is still being engaged in:

(i) those persons, or some of those persons, are members of a trade union that is involved in the industrial action, or have been such members at any time since industrial action started; and

(ii) the claimant has not been a member of that trade union at any time since industrial action started; or

(b) if industrial action has stopped:

(i) at any time while industrial action was being engaged in, those persons, or some of those persons, were members of a trade union that was involved in the industrial action; and

(ii) the claimant was not a member of that trade union at any time while industrial action was being engaged in.

(3) Subsection (1) does not prevent a person from being qualified for parenting payment after the relevant industrial action or series of industrial actions has stopped.

Note: For ***industrial action***, ***trade union*** and ***unemployment*** see section 16.

500D PP child

(1) A child is a ***PP child*** of a person if:

(a) the child is a child of the person; and

(b) the person is a member of a couple; and

(c) the child has not turned 6; and

(d) the person is the principal carer of the child.

(2) A child is a ***PP child*** of a person if:
  (a) the child is a child of the person; and
  (b) the person is not a member of a couple; and
  (c) the child has not turned 8; and
  (d) the person is the principal carer of the child.

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

500E Prospective determinations for some recipients

(1) A person is qualified for parenting payment for a period determined by the Secretary if:
  (a) the person is receiving parenting payment; and
  (b) the Secretary considers at the start of the period that:
    (i) the person may reasonably be expected to satisfy the qualification requirements for parenting payment (see sections 500 to 500C) during the period; and
    (ii) it is reasonable to expect that parenting payment will be payable to the person for the period; and
    (iii) the person will comply with the Act during the period; and
  (c) except where the person is a CDEP Scheme participant in respect of the period, the person is not indebted at the start of the period to the Commonwealth under or as a result of this Act; and
  (d) the Secretary is satisfied that the person should be qualified under this section for a parenting payment for the period.

(2) The Minister:
  (a) must determine, by legislative instrument, guidelines for making decisions under paragraph (1)(b); and
  (b) may revoke or vary the determination.

If the Minister revokes a determination, the Minister must determine, by legislative instrument, guidelines that commence immediately after the revocation.

Subdivision B—General principles relating to payability

500I Parenting payment not payable if payment rate nil

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

(2) Subsection (1) does not apply to a person if the person's rate would be nil merely because:

(a) an election by the person under subsection 915A(1) (about quarterly energy supplement) or 1061VA(1) (about quarterly pension supplement) is in force; or

(b) the person has been paid an advance pharmaceutical allowance under the social security law.

500J Situations where payment not payable for failure to comply with certain requirements

Parenting payment is not payable to a person if the person refuses or fails, without reasonable excuse, to comply with a requirement made of the person under section 67, 68 or 192 of the Administration Act.

500Q Assets test—payment not payable if assets value limit exceeded

(1) Parenting payment is not payable to a person if the value of the person's assets exceeds the person's assets value limit.

(2) The assets value limit of a person who is not a member of a couple is worked out using the following table:

Table—Assets value limits for person who is not a member of a couple

Column 1 Item	Column 2 Person's situation	Column 3 Assets value limit
1	Person is a homeowner	$250,000

2	Person is not a homeowner	$450,000

Note 1: For ***homeowner*** see section 11.

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

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

Note 4: If parenting payment is not payable to a person because of the value of the person's assets, the person may be able to take advantage of provisions dealing with financial hardship (see sections 1130B and 1130C).

(3) The assets value limit of a person who is a member of a couple is worked out using the following table:

Table—Assets value limits for person who is a member of a couple

Column 1	**Column 2**	**Column 3**	
Item	**Person's situation**	**Assets value limit**	
		Column 3A	**Column 3B**
		Either person or partner homeowner	**Neither person nor partner homeowner**
1	Person is partnered (partner getting neither pension nor benefit)	$375,000	$575,000
2	Person is partnered (partner getting pension or benefit)	$187,500	$287,500

Note 1: For ***partnered (partner getting neither pension nor benefit)*** and ***partnered (partner getting pension or benefit)*** see subsection 4(11).

Note 2: For ***homeowner*** see subsection 11(4).

Note 3: If item 1 applies to a person, the value of all the assets of the person's partner are to be taken as being included in the value of the person's assets (see subsection (4)). If item 2 applies to a person, the value of the person's assets is only half the combined value of the person's assets and the assets of the person's partner (see subsection (5)).

Note 4: If benefit PP (partnered) is not payable to a person because of the value of the person's assets, the person may be able to take advantage of provisions dealing with financial hardship (see sections 1131 and 1132).

Note 5: The assets value limits of item 2 are indexed annually in line with CPI increases (see sections 1191 to 1194).

Note 6: The item 1 assets value limits are adjusted annually so that they are twice the corresponding item 2 limits (see subsections 1204(2) and (3)).

(4) For the purposes of subsection (3), if the person is partnered (partner getting neither pension nor benefit):

(a) the value of the person's assets includes the value of the partner's assets; and

(b) the value of assets of a particular kind of the person includes the assets of that kind of the partner.

Note: For ***partnered (partner getting neither pension nor benefit)*** see subsection 4(11).

(5) For the purposes of subsection (3), if the person is partnered (partner getting pension or benefit):

(a) the value of the person's assets is taken to be 50% of the sum of the value of the assets of the person and the value of the assets of the person's partner; and

(b) the value of the person's assets of a particular kind are taken to be 50% of the sum of the value of the assets of that kind of the person and the value of the assets of that kind of the person's partner.

Note: For ***partnered (partner getting pension or benefit)*** see subsection 4(11).

500S Multiple entitlement exclusion

(1) Parenting payment is not payable to a person if the person is already receiving a service pension or a veteran payment.

(2) If:

(a) a person is receiving parenting payment; and

(b) a social security pension other than a pension PP (single) or a social security benefit other than a benefit PP (partnered) or a service pension or a veteran payment becomes payable to the person;

parenting payment is not payable to the person.

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

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

(3) Parenting payment is not payable to a woman if:

(a) the woman is an armed services widow; and

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

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

(4) Parenting payment is not payable to a man if:

(a) the man is an armed services widower; and

(b) the man is receiving a pension under Part II or IV of the Veterans' Entitlements Act at a rate determined under or by reference to subsection 30(1) of that Act.

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

(5) Parenting payment is not payable to a person if:

(a) the person is an armed services widow or an armed services widower; and

(b) the person is receiving the weekly amount mentioned in paragraph 234(1)(b) of the MRCA (including a reduced weekly amount because of a choice under section 236 of the

MRCA) or has received a lump sum mentioned in subsection 236(5) of the MRCA.

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

Note 2: For ***MRCA*** see subsection 23(1).

500V Educational schemes exclusion—person member of a couple

(1) This section applies to a person who is a member of a couple.

(2) Parenting payment is not payable to the person if the person is receiving:

(b) payments under the ABSTUDY Scheme (other than payments under the ABSTUDY Scheme as a part-time student); or

(c) payments under a Student Financial Supplement Scheme.

500VA Exclusion of certain participants in ABSTUDY Scheme

(1) If:

(a) a payment is made in respect of a person under the ABSTUDY Scheme; and

(b) the payment is made on the basis that the person is a full-time student; and

(c) in the calculation of the payment, an amount identified as living allowance (the ***basic payment***) is included; and

(d) the payment relates to a period;

pension PP (single) is not payable to the person in respect of any part of the period.

(2) If:

(a) a person is qualified for a payment under the ABSTUDY Scheme; and

(b) the payment for which the person is qualified is a payment that:

(i) is made on the basis that the person is a full-time student; and

(ii) is calculated on the basis that an amount identified as living allowance (the ***basic payment***) is included; and

(iii) relates to a period;

pension PP (single) is not payable to the person in respect of any part of the period.

(3) If:

(a) a person may enrol in a full-time course of education; and

(b) a payment referred to in subsection (2) may be made in respect of the person;

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

500W Maximum basic rate and remote area allowance not payable to CDEP Scheme participant who is a member of a couple

The maximum basic rate, and the remote area allowance, of a parenting payment for a period is not payable to a person who is a member of a couple and is a CDEP Scheme participant in respect of the whole or a part of the period.

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

Note 2: For ***remote area allowance*** see Module G of Benefit PP (partnered) Rate Calculator.

500WA Ordinary waiting period

(1) Subject to subsections (2) and (4), a person is subject to an ordinary waiting period unless:

(a) at some time in the 13 weeks immediately before the person's start day (worked out disregarding clause 5 of Schedule 2 to the Administration Act), the person received an income support payment; or

(b) the Secretary is satisfied that the person is experiencing a personal financial crisis.

Note 1: For ***income support payment*** see subsection 23(1).

Note 2: For ***experiencing a personal financial crisis*** see section 19DA.

(2) Subsection (1) does not apply to a person who:
  (a) is undertaking an activity specified in an instrument made under subsection (3); and
  (b) has been exempted from the application of subsection (1) by the Secretary.

(3) The Secretary may, by legislative instrument, specify activities for the purpose of paragraph (2)(a).

(4) If a person makes a claim for parenting payment during the period beginning on 1 April 2021 and ending at the end of 30 June 2021, then, despite subsection (1), the person is not subject to the whole of the ordinary waiting period.

500WB Duration of ordinary waiting period

(1) Subject to subsections (2) and (4), if a person is subject to an ordinary waiting period, the ordinary waiting period is the period of 7 days that starts on the person's start day (worked out disregarding clause 5 of Schedule 2 to the Administration Act).

(2) Subject to subsection (4), if:
  (a) a person is subject to an ordinary waiting period; and
  (b) apart from this subsection, the ordinary waiting period would be the period of 7 days that starts on the person's start day (worked out disregarding clause 5 of Schedule 2 to the Administration Act); and
  (c) that start day falls within one or more of the following periods (each of which is an ***exclusion period***) that the person is subject to:
    (i) a seasonal work preclusion period;
    (ii) a lump sum preclusion period under Part 3.14;
    (iii) an income maintenance period, where the person's rate of parenting payment on that start day would be nil;

then the ordinary waiting period is the period of 7 days that starts on the first day after all the exclusion periods have ended.

(3) If:

(a) subparagraph (2)(c)(iii) applies to a person; and

(b) on a day in that income maintenance period, the person's rate of parenting payment would be greater than nil if parenting payment were payable to the person on that day;

then, for the purposes of subsection (2), that income maintenance period is taken to have ended at the end of the day before that day.

(4) If:

(a) a person qualifies for a social security payment (other than parenting payment); and

(b) because the person is subject to an ordinary waiting period relating to that payment, that payment is not payable to the person for a period starting on a particular day (the ***initial day***); and

(c) during that period the person:

(i) ceases to be qualified for that payment; and

(ii) claims parenting payment;

the person's ordinary waiting period relating to parenting payment is the period of 7 days that starts on the initial day.

Note: Ordinary waiting periods apply to parenting payment, youth allowance and jobseeker payment.

500X Newly arrived resident's waiting period

(1) Subject to this section, a person who:

(a) has entered Australia; and

(b) has not been an Australian resident and in Australia for a period of, or periods totalling, 208 weeks;

is subject to a newly arrived resident's waiting period.

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

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

Note: For ***qualifying residence exemption*** in relation to parenting payment see subsection 7(6) and paragraph 7(6AA)(f).

(3) Subsection (1) does not apply to a person if the person:
  (a) is the principal carer of one or more children; and
  (b) is not a member of a couple; and
  (c) was not a lone parent at the start of the person's current period as an Australian resident.

Note 1: For ***principal carer*** see subsections 5(15) to (24).

Note 2: For ***lone parent*** and ***current period as an Australian resident*** see subsection 23(1).

(4) Subsection (1) does not apply to a person if:
  (a) the person is a refugee, or a former refugee, at the time the person made the claim for parenting payment; or
  (b) the following apply:
    (i) before the person made the claim for parenting payment, the person was a family member of another person at the time the other person became a refugee;
    (ii) the person is a family member of that other person at the time the person made the claim for parenting payment or, if that other person has died, the person was a family member of that other person immediately before that other person died; or
  (c) the person is an Australian citizen at the time the person made the claim for parenting payment.

(5) For the purposes of subsection (4):
  (a) ***family member*** has the meaning given by subsection 7(6D); and
  (b) ***former refugee*** has the meaning given by subsection 7(1); and
  (c) ***refugee*** has the meaning given by subsection 7(6B).

500Y Duration of newly arrived resident's waiting period

(1) If a person is subject to a newly arrived resident's waiting period, the period starts on the day the person first became an Australian resident.

(2) The newly arrived resident's waiting period ends when the person has been an Australian resident and in Australia for a period of, or periods totalling, 208 weeks.

500Z Seasonal workers—preclusion period

(1) This section applies if:

(a) a person has lodged a claim for parenting payment; and

(b) at any time during the 6 months immediately before the day on which the person lodged the claim, the person, or the person's partner, has been engaged in seasonal work.

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

(2) Parenting payment is not payable to the person:

(a) if the person is subject to a seasonal work preclusion period (whether in relation to the claim referred to in subsection (1) or any other claim under this Act) and the Secretary has not made a determination under subsection (3) in relation to the person—for the person's seasonal work preclusion period; or

(b) if the Secretary has made a determination under subsection (3) in relation to the person—for that part (if any) of the person's seasonal work preclusion period to which the person is subject as a result of the determination.

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

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

(a) the Secretary may determine that the person is not subject to the whole, or any part, of the preclusion period; and

(b) the determination has effect accordingly.

Note 1: For ***in severe financial hardship*** see subsection 19C(3) (person who is a member of a couple).

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

Division 2—Parenting Payment Employment Pathway Plans

501 Parenting Payment Employment Pathway Plans

(1) The Secretary may require a person who is subject to participation requirements to enter into a Parenting Payment Employment Pathway Plan under this section.

Note: For when a person is ***subject to participation requirements*** see subsection 23(1).

(2) If a Parenting Payment Employment Pathway Plan is in force in relation to a person, the Secretary may require the person to enter into another plan instead of the existing one.

(3) Subject to subsection (4), subsections (1) and (2) do not apply to a person at any time during which the person is covered by a participation exemption under Division 3A.

(4) If a person is covered by a participation exemption under Division 3A only because of the application of section 502H, subsections (1) and (2) apply to the person only if subsection 502J(1) applies to the person.

(5) The Secretary is to give a person who is required to enter into a Parenting Payment Employment Pathway Plan notice of:

(a) the requirement; and

(b) the places and times at which the plan is to be negotiated.

(6) A Parenting Payment Employment Pathway Plan must be in a form approved by the Secretary.

501A Parenting Payment Employment Pathway Plan—terms

Suitable requirements

(1) Subject to subsections (2) and (3) and sections 501B to 501E, a Parenting Payment Employment Pathway Plan that is in force in

relation to a person is to contain one or more terms (the ***requirements***) that:

(a) the person is required to comply with; and

(b) the Secretary regards as suitable for the person.

(1A) Without limiting the requirements that a Parenting Payment Employment Pathway Plan may contain, a plan relating to a person to whom paragraph 500(1)(ca) applies may contain requirements relating to one or more of the following:

(a) the person's education;

(b) the health of a PP child of the person;

(c) the education of a PP child of the person.

(2) If a Parenting Payment Employment Pathway Plan requires a person, during a period, to engage for at least 30 hours per fortnight in paid work that the Secretary regards as suitable, the plan must not require the person to undertake any other activities.

(3) A plan must not contain a requirement of a kind that the Secretary determines under subsection (4).

(4) The Secretary must determine, by legislative instrument, kinds of requirements that plans must not contain.

(4A) To avoid doubt, a determination under subsection (4) does not limit the Secretary's discretion to exclude other kinds of requirements from a particular plan under subsection (1).

Optional terms

(4B) A plan may also contain one or more terms that the person may, but is not required to, comply with.

Approval of requirements

(5) The requirements in a plan are to be approved by the Secretary.

(6) In considering whether to approve the requirements in a plan that will be in force in relation to a person, the Secretary is to have regard to:

~~(a) the person's capacity to comply with the requirements; and~~

~~(b) the person's needs.~~

~~(7) In having regard to a person's capacity to comply with the requirements in a plan, the Secretary is to take into account, but is not limited to, the following matters:~~

~~(a) the person's education, experience, skills and age;~~

~~(b) the impact of any disability, illness, mental condition or physical condition of the person on the person's ability to work, to look for work or to participate in training activities;~~

~~(c) the state of the local labour market and the transport options available to the person in accessing that market;~~

~~(d) the participation opportunities available to the person;~~

~~(e) the family and caring responsibilities of the person;~~

~~(f) the length of travel time required to comply with the requirements;~~

~~(g) the financial costs (such as travel costs) of complying with the requirements, and the person's capacity to pay for such costs;~~

~~(h) any other matters that the Secretary or the person considers relevant in the circumstances.~~

~~*Variation, suspension, cancellation and review*~~

~~(8) A plan that is in force in relation to a person:~~

~~(a) may be varied (in negotiation with the person) or suspended by the Secretary; and~~

~~(b) must be cancelled by the Secretary if the person enters into another Parenting Payment Employment Pathway Plan; and~~

~~(c) may be reviewed from time to time by the Secretary at the request of the Secretary or the person; and~~

~~(d) may be cancelled by the Secretary after a review under paragraph (c).~~

Circumstances preventing or affecting compliance

(9) If a plan is in force in relation to a person, the person must notify the Secretary of any circumstances preventing or affecting the person's capacity to comply with the requirements in the plan.

501B Parenting Payment Employment Pathway Plans—requirement to look for work of appropriate number of hours per week

(1) A Parenting Payment Employment Pathway Plan that requires a person to undertake, as an activity, looking for part-time paid work that the Secretary regards as suitable must require the person to undertake looking for such part-time paid work of at least the appropriate number of hours per week.

(2) The appropriate number of hours per week is:

(a) 15; or

(b) such other number as the Secretary determines to be appropriate having regard to the person's circumstances.

501C Parenting Payment Employment Pathway Plans—people with partial capacity to work

(1) A Parenting Payment Employment Pathway Plan that:

(a) is in force in relation to a person who has a partial capacity to work; and

(b) requires the person to undertake, as an activity, looking for part-time paid work that the Secretary regards as suitable;

must require the person to undertake looking for such part-time paid work of at least the appropriate number of hours per week.

Note: For ***partial capacity to work*** see section 16B.

(2) The appropriate number of hours per week is:

(a) 15; or

(b) such other number as the Secretary determines to be appropriate having regard to the person's circumstances.

501D Parenting Payment Employment Pathway Plans—requirement to participate in an approved program of work

(1) A Parenting Payment Employment Pathway Plan that is in force in relation to a person must not require the person to participate in an approved program of work for income support payment if:

(a) either:

(i) if the person's rate of parenting payment is worked out under the Pension PP (Single) Rate Calculator in section 1068A—because of the application of Module E of that rate calculator, the person is receiving a parenting payment at a rate that has been reduced; or

(ii) if the person's rate of parenting payment is worked out under the Benefit PP (Partnered) Rate Calculator in section 1068B—because of the application of Module D of that rate calculator, the person is receiving a parenting payment at a rate that has been reduced; or

(b) in the Secretary's opinion:

(i) it has been established that there is medical evidence that the person has an illness, disability or injury that would be aggravated by the conditions in which the work would be performed; or

(ii) performing the work in the conditions in which the work would be performed would constitute a risk to health or safety or would contravene a law of the Commonwealth, a State or a Territory relating to occupational health and safety; or

(c) the person is at least 50 years of age and is not a person to whom subsection 28(4) applies.

(2) If a Parenting Payment Employment Pathway Plan that is in force in relation to a person requires the person to participate in an approved program of work for income support payment, the Secretary may, by notice given to the person, revoke the requirement to participate in the program if the Secretary:

(a) is satisfied that:

(i) if the person's rate of parenting payment is worked out under the Pension PP (Single) Rate Calculator in section 1068A—because of the application of Module E of that rate calculator, the person is receiving a parenting payment at a rate that has been reduced; or

(ii) if the person's rate of parenting payment is worked out under the Benefit PP (Partnered) Rate Calculator in section 1068B—because of the application of Module D of that rate calculator, the person is receiving a parenting payment at a rate that has been reduced; or

(b) forms the opinion that:

(i) it has been established that there is medical evidence that the person has an illness, disability or injury that would be aggravated by the conditions in which the work would be performed; or

(ii) performing the work in the conditions in which the work would be performed would constitute a risk to health or safety or would contravene a law of the Commonwealth, a State or a Territory relating to occupational health and safety; or

(c) is satisfied that the person is at least 50 years of age and is not a person to whom subsection 28(4) applies.

(3) Upon the Secretary so notifying the person, the requirement is taken to have been revoked with effect from the day specified in the notice.

(4) A person is not to be taken to be one of the following merely because the person participates in an approved program of work for income support payment, or undertakes an activity (other than suitable paid work), in accordance with a term (including an optional term) of a Parenting Payment Employment Pathway Plan under this section:

(a) a worker carrying out work in any capacity for the Commonwealth, or an employee of the Commonwealth, for the purposes of the *Work Health and Safety Act 2011*;

(b) an employee within the meaning of section 5 of the *Safety, Rehabilitation and Compensation Act 1988*;

(c) an employee for the purposes of the *Superannuation Guarantee (Administration) Act 1992*;

(d) an employee for the purposes of the *Fair Work Act 2009*.

501E Parenting Payment Employment Pathway Plans—suspension of plans

A Parenting Payment Employment Pathway Plan that is in force in relation to a person is taken to be suspended during any period during which the person is covered by a participation exemption under Division 3A because of section 502BA, 502C or 502D.

Division 3—Additional participation requirements

502 Secretary may impose additional participation requirements

(1) Subject to sections 502A and 502B, if the Secretary is of the opinion that, throughout a period, a person who:

(a) is subject to participation requirements; and

(b) is not covered by a participation exemption under Division 3A;

should undertake particular paid work, other than paid work that is unsuitable to be done by the person, the Secretary may notify the person that the person is required to act in accordance with the opinion.

Note 1: For when a person is ***subject to participation requirements*** see subsection 23(1).

Note 2: See subsection (4) on what paid work is unsuitable.

(2) To avoid doubt, the work that the person is required to undertake under subsection (1) may involve a number of hours per week that differs from the number of hours of work per week that the person is required to seek to comply with a Parenting Payment Employment Pathway Plan that is in force in relation to the person.

(3) The person can be taken not to have complied with requirements notified to the person under subsection (1) whether or not the person has complied with:

(a) any requirement to enter into a Parenting Payment Employment Pathway Plan; and

(b) the requirements in the plan.

(4) Subject to subsections (7) and (8), for the purposes of this section, particular paid work is unsuitable for a person if and only if, in the Secretary's opinion:

(a) the person lacks the particular skills, experience or qualifications that are needed to perform the work and no training will be provided by the employer; or

~~(b) it has been established that there is medical evidence that the person has an illness, disability or injury that would be aggravated by the conditions in which the work would be performed; or~~

~~(c) the person does not have access to appropriate care and supervision, for the one or more children for whom the person is the principal carer, at the times when the person would be required to undertake the work; or~~

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

~~(d) performing the work in the conditions in which the work would be performed would constitute a risk to health or safety and would contravene a law of the Commonwealth, a State or a Territory relating to occupational health and safety; or~~

~~(e) the terms and conditions for the work would be less generous than the applicable statutory conditions; or~~

~~(g) commuting between the person's home and the place of work would be unreasonably difficult; or~~

~~(h) the work would require enlistment in the Defence Force or the Reserves; or~~

~~(i) the work requires the person to move from a home in one place to a home in another place; or~~

~~(j) for any other reason, the work is unsuitable for the person.~~

~~(4A) The Secretary must, by legislative instrument, determine matters that the Secretary must take into account in deciding whether, for the purposes of paragraph (4)(j), particular paid work is unsuitable for a person.~~

~~(4B) To avoid doubt, a determination under subsection (4A) does not limit the matters that the Secretary may take into account in deciding whether, for the purposes of paragraph (4)(j), particular paid work is unsuitable for a person.~~

~~(5) A person has, for the purposes of paragraph (4)(c), access to appropriate care and supervision for a child at a particular time if, at that time:~~

(a) the child could be provided with care by an approved child care service (within the meaning of the Family Assistance Administration Act), and provision of that care would, in the Secretary's opinion, be appropriate in the circumstances; or

(b) the child could be provided with other care that the person considers to be suitable; or

(c) the child could be attending school, and attendance at that school would, in the Secretary's opinion, be appropriate in the circumstances.

(6) For the purposes of paragraph (4)(c), a time when the person would be required to undertake the work includes reasonable amounts of time that would be needed for the person to travel from the person's home to the place of work and from the place of work to the person's home.

(7) If:

(a) a person seeks work in an area (the ***new area***) that is outside the area (the ***old area***) in which the person's home is situated; and

(b) the person is offered permanent work (whether or not work of the kind sought) in the new area;

the work offered is not unsuitable for the person because of paragraph (4)(g) or (i) unless:

(c) the person is under the age of 18; or

(d) the person or the person's partner is pregnant; or

(e) the person or the person's partner has a severe medical condition and the condition makes it unreasonable for the person to accept the offer; or

(f) the acceptance of the offer would jeopardise the current employment, or the employment prospects, of the person's partner; or

(g) the person or the person's partner has a child under the age of 16 years who is living with them or is living somewhere else in the old area; or

(h) the person or the person's partner has significant caring responsibilities in the old area; or

(i) the educational, cultural or religious background of the person makes it unreasonable for the person to accept the offer; or

(j) it is more appropriate for the person to participate in education or training than to accept the offer; or

(k) the person would suffer severe financial hardship if the person were to accept the offer.

(8) Without affecting what would otherwise constitute a person seeking work outside the area in which the person's home is situated, if a person, when seeking employment through an employment service provider, represents to the provider that the person is willing to undertake work outside the area in which the person's home is situated, the person is taken for the purposes of subsection (7) to seek work outside the area at the time when the representation is made.

502A People 55 and over who are engaged in work

(1) Subject to subsection (2), the Secretary must not notify under subsection 502(1) a person in respect of a period (the ***relevant period***) if the person has reached 55 years and:

(a) is engaged in approved unpaid voluntary work for an approved organisation for at least 30 hours in the period; or

(b) is engaged, for at least 30 hours in the period in a combination of:

(i) approved unpaid voluntary work for an approved organisation; and

(ii) paid work that the Secretary regards as suitable; or

(c) is engaged for at least 30 hours in the period in paid work that the Secretary regards as suitable.

(2) This section does not apply to a person in respect of a day in a relevant period if, in respect of the person, having regard to the opportunities, or possible opportunities, for employment that become available to the person on or before the day, the Secretary considers that this section is not to apply to the person in respect of that day.

(3) For the purposes of this section:

(a) approved voluntary unpaid work is work that has been approved by the Secretary for the purposes of this section; and

(b) an approved organisation is an organisation that has been approved by the Secretary for the purposes of this section.

502B Persons engaged in suitable paid work for at least 30 hours per fortnight

The Secretary must not notify under subsection 502(1) a person who is engaged for at least 30 hours per fortnight in paid work that the Secretary regards as suitable.

OFFICIAL: Sensitive // Legal Privilege

Division 3A—Participation exemptions

502BA Death of person's partner

Claimants

(1) If:

(a) a person makes a claim for parenting payment on or after the commencement of this section; and

(b) the person makes the claim after the death of the person's partner on or after the commencement of this section; and

(c) if the person is a man or a woman who was not pregnant when her partner died—the person makes the claim in the period of 14 weeks starting on the day of the death of the partner; and

(d) if the person is a woman who was pregnant when her partner died—the person makes the claim:

(i) in the period of 14 weeks starting on the day of the death of the partner; or

(ii) in the period starting on the day of the death of the partner and ending when the child is born or the woman otherwise stops being pregnant;

whichever ends later;

then the person is covered by a participation exemption under this Division in respect of the period applicable under paragraph (c) or (d).

Recipients

(2) If:

(a) a person is receiving parenting payment on or after the commencement of this section; and

(b) while the person is receiving parenting payment, the person's partner dies on or after the commencement of this section; and

(c) if the person is a man or a woman who was not pregnant when her partner died—the person notifies the Secretary of

the person's partner's death in the period of 14 weeks starting on the day of the death of the partner; and

(d) if the person is a woman who was pregnant when her partner died—the person notifies the Secretary of the person's partner's death:

(i) in the period of 14 weeks starting on the day of the death of the partner; or

(ii) in the period starting on the day of the death of the partner and ending when the child is born or the woman otherwise stops being pregnant;

whichever ends later; and

(e) the person is receiving parenting payment on the day of the notification;

then the person is covered by a participation exemption under this Division in respect of the period applicable under paragraph (c) or (d).

502C Domestic violence etc.

(1) A person is covered by a participation exemption under this Division in respect of a period that the Secretary determines under this section in relation to the person.

(2) The Secretary may make a determination under this section in relation to the person if the Secretary is satisfied that:

(a) the person was subjected to domestic violence in the 26 weeks before the making of the determination; or

(b) there are special circumstances relating to the person's family that make it appropriate to make the determination.

(2A) The Secretary must, by legislative instrument, specify matters that the Secretary must take into account in deciding whether there are special circumstances relating to a person's family that make it appropriate to make a determination under this section.

(2B) To avoid doubt, an instrument made under subsection (2A) does not limit the matters that the Secretary may take into account in making a determination under subsection (2).

~~(3) The period that the Secretary determines under this section must be the lesser of:~~

~~(a) the period that the Secretary considers to be appropriate; or~~

~~(b) 16 weeks.~~

~~(4) Any such period may be followed by one or more other periods (not exceeding 16 weeks) determined under this section in relation to the person.~~

~~(5) The period that the Secretary determines under this section must, despite subsection (3), be 16 weeks if the determination:~~

~~(a) is made on grounds referred to in paragraph (2)(a) (or on grounds that include those grounds); and~~

~~(b) is the first determination made on those grounds (or on grounds that include those grounds) in relation to the person on or after 1 July 2010.~~

~~(6) The Secretary may revoke a determination under this section in relation to a person if the Secretary is satisfied that the grounds on which the determination was made no longer exist.~~

~~(7) Subsection (6) does not affect any operation that subsection 33(3) of the *Acts Interpretation Act 1901* has in relation to a determination under this section.~~

~~502D People with disabled children and other circumstances~~

~~(1) A person is covered by a participation exemption under this Division in respect of a period that the Secretary determines under this section in relation to the person.~~

~~(2) The Secretary may make a determination under this section in relation to the person if the Secretary is satisfied that the person is the principal carer of one or more children:~~

~~(a) who suffer from a physical, intellectual or psychiatric disability or illness; and~~

~~(b) whose care needs are such that the person should, for the period specified in the determination, not be required to meet participation requirements.~~

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

(3) The Secretary must make a determination under this section in relation to the person if the Secretary is satisfied that the person is the principal carer of one or more children, and that:

(a) the person is a registered and active foster carer; or

(b) the person is a home educator of that child, or one or more of those children; or

(c) the person is a distance educator of that child, or one or more of those children; or

(d) under a family law order that the person is complying with, a child, of whom the person is a relative (other than a parent), is to live with the person.

Note 1: For ***principal carer*** see subsections 5(15) to (24).

Note 2: For ***registered and active foster carer*** see section 5B.

Note 3: For ***home educator*** see section 5C.

Note 4: For ***distance educator*** see section 5D.

Note 5: For ***family law order*** see subsection 23(1).

Note 6: For ***relative (other than a parent)*** see section 5E.

(3A) The Secretary must make a determination under this section in relation to the person if the Secretary is satisfied that:

(a) the person is the principal carer of a child; and

(b) the person is one or both of the following:

(i) the principal carer of one or more other children;

(ii) the main supporter of one or more secondary pupil children; and

(c) there are 4 or more of the children of whom the person is the principal carer or main supporter.

Note 1: For ***principal carer*** see subsections 5(15) to (24).

Note 2: For ***main supporter*** see section 5G.

Note 3: For ***secondary pupil child*** see section 5F.

(3B) The Secretary must make a determination under this section in relation to the person if the Secretary is satisfied that:

~~(a) the person is the main supporter of one or more secondary pupil children; and~~

~~(b) the person is a home educator or distance educator of one or more of those children.~~

~~Note 1: For ***main supporter*** see section 5G.~~

~~Note 2: For ***secondary pupil child*** see section 5F.~~

~~Note 3: For ***home educator*** see section 5C.~~

~~Note 4: For ***distance educator*** see section 5D.~~

~~(3C) The Secretary must make a determination under this section in relation to the person if the Secretary is satisfied that:~~

~~(a) the person is the principal carer of one or more children; and~~

~~(b) the person is a relative (other than a parent) of a child (the ***kin child***); and~~

~~(c) there is a document that:~~

~~(i) provides for the kin child to live with the person for the care and wellbeing of the kin child; and~~

~~(ii) is prepared or accepted by an authority of a State or Territory that has responsibility for the wellbeing of children; and~~

~~(d) the person is acting in accordance with the document.~~

~~Note 1: For ***principal carer*** see subsections 5(15) to (24).~~

~~Note 2: For ***relative (other than a parent)*** see section 5E.~~

~~(4) The Secretary may make a determination under this section in relation to the person if the Secretary is satisfied that:~~

~~(a) the person is a person included in a class of persons specified under subsection (5); and~~

~~(b) the person's circumstances are such that the person should not be required to meet any of the participation requirements.~~

~~(5) The Secretary may, by legislative instrument, specify classes of persons in respect of whom determinations under this section may be made.~~

(6) The period that the Secretary determines under this section must be the lesser of:

(a) the period that the Secretary considers to be appropriate; or

(b) 12 months.

(7) Any such period may be followed by one or more other periods (not exceeding 12 months) determined under this section in relation to the person.

(8) The Secretary may revoke a determination under this section in relation to a person if the Secretary is satisfied that the grounds on which the determination was made no longer exist.

(9) Subsection (8) does not affect any operation that subsection 33(3) of the *Acts Interpretation Act 1901* has in relation to a determination under this section.

502E Training camps

A person is covered by a participation exemption under this Division in respect of a period when the person is attending a training camp as a member of:

(a) the Naval Reserve; or

(b) the Army Reserve; or

(c) the Air Force Reserve.

502F Special circumstances

(1) A person is covered by a participation exemption under this Division in respect of a period if:

(a) the Secretary is satisfied that special circumstances, beyond the person's control, exist; and

(b) the Secretary is satisfied that in those circumstances it would be unreasonable to expect the person to meet participation requirements for that period.

(1A) Subsection (1) does not apply to circumstances wholly or predominantly attributable to the person's misuse of alcohol or another drug, unless the person is a declared program participant.

(2) The period referred to in subsection (1) is not to exceed 13 weeks.

(3) If:

(a) the Secretary makes a number of determinations under any one or more of the following provisions:

(i) subsection 525AA(3) of this Act as previously in force;

(ii) subsection 542H(1) of this Act;

(iii) subsection 603A(1) of this Act;

(iv) subsection 731E(1) of this Act;

(v) subsection (1) of this section; and

(b) the periods to which the determinations relate form a continuous period;

the continuous period is not to exceed 13 weeks, unless the Secretary determines otherwise, having regard to the continued existence, or likely continued existence, of the special circumstances on which the last preceding determination was based.

502G Pre-natal and post-natal relief

(1) A pregnant woman is covered by a participation exemption under this Division for the period that starts 6 weeks before the woman's expected date of confinement and ends on the day on which the woman gives birth to the child (whether or not the child is born alive).

(2) If a woman gives birth to a child (whether or not the child is born alive), the woman is covered by a participation exemption under this Division for the period that starts on the day on which she gives birth to the child and ends 6 weeks after that day.

502H Temporary incapacity

(1) Subject to sections 502J and 502K, a person is covered by a participation exemption under this Division in respect of a period if:

(a) throughout the period the person is incapacitated for work because of sickness or an accident; and

(b) the incapacity is caused wholly, or virtually wholly, by a medical condition arising from the sickness or accident; and

(c) the incapacity is, or is likely to be, of a temporary nature; and

(d) the person has, whether before or after the commencement of this section, given the Secretary a certificate of a medical practitioner, in a form approved by the Secretary, stating:

(i) the medical practitioner's diagnosis; and

(ii) the medical practitioner's prognosis; and

(iii) that the person is incapacitated for work; and

(iv) the period for which the person is incapacitated for work; and

(e) the Secretary is satisfied that the incapacity has not been brought about with a view to obtaining an exemption from meeting the participation requirements.

(1AA) Subsection (1) does not apply to sickness, or an accident, wholly or predominantly attributable to the person's dependence on alcohol or another drug, unless the person is a declared program participant.

(1A) The Secretary must comply with the guidelines (if any) determined and in force under subsection (1B) in deciding the following:

(a) whether paragraph (1)(a), (b) or (c) applies to a person in respect of a period;

(b) whether, for the purposes of paragraph (a) of the definition of ***work*** in subsection (2), work is of a kind that a person could be reasonably expected to do.

(1B) The Minister may, by legislative instrument, determine guidelines to be complied with by the Secretary in making a decision referred to in subsection (1A).

(2) In this section:

work, in relation to a person, means work (whether full-time, part-time, permanent or casual) that:

(a) is of a kind that the person could, in the Secretary's opinion, be reasonably expected to do; and

(b) is for at least 8 hours per week on wages that are at or above the relevant minimum wage.

502J Time limit for temporary incapacity exemption—Secretary satisfied person can undertake activity

(1) Section 502H ceases to apply to a person if the Secretary is satisfied that, although the person meets the requirements of that section, the person should undertake one or more activities that the Secretary regards as suitable for the person.

(2) The cessation occurs:

(a) if the person has failed to comply with a requirement to enter into a Parenting Payment Employment Pathway Plan—when the person so failed; or

(b) in any other case—when the person has entered into such a plan.

(3) This section does not prevent section 502H ceasing to apply to a person under section 502K.

502K Time limit for temporary incapacity exemption—end of person's maximum exemption period

(1) Section 502H ceases to apply to a person if the person's maximum exemption period ends.

(2) Subject to this section, a person's maximum exemption period is:

(a) if the person has, whether before or after the commencement of this section, given the Secretary a medical certificate for the purpose of enabling the Secretary to decide whether section 502H applies to the person—the lesser of the following periods:

(i) the period stated in the certificate as the period for which the person would be incapacitated for work;

(ii) the period of 13 weeks that started or starts on the first day of the period so stated in the certificate; or

(b) otherwise—the period of 4 weeks that started or starts on the day determined by the Secretary to have been the day on which the person's incapacity for work began.

(3) If:

(a) section 502H applies to a person; and

(b) the person has, whether before or after the commencement of this section, given the Secretary a certificate of a medical practitioner that states the matters listed in paragraph 502H(1)(d) and is in accordance with the form approved under that paragraph; and

(c) the Secretary is satisfied that the person's incapacity for work will continue after the end of the person's maximum exemption period;

the Secretary may extend the person's maximum exemption period by a period that is not more than the lesser of the following periods:

(d) a period equal to the period stated in the certificate as the period for which the person would be incapacitated for work;

(e) 13 weeks.

(4) If:

(a) section 502H applied to a person; and

(b) within 14 days after the end of the person's maximum exemption period the person gives the Secretary a certificate of a medical practitioner that states the matters listed in

paragraph 502H(1)(d) and is in accordance with a form approved under that paragraph; and

(c) the Secretary is satisfied that the person's incapacity for work has continued after the end of the person's maximum exemption period and that the incapacity will continue;

the Secretary may extend the maximum exemption period by a period that is not more than the lesser of the following periods:

(d) a period equal to the period stated in the certificate as the period for which the person would be incapacitated for work;

(e) 13 weeks.

(5) If:

(a) section 502H applies to a person; and

(b) the person gives the Secretary written evidence (other than a certificate referred to in paragraph (3)(b)) that the person's incapacity for work will continue after the end of the person's maximum exemption period; and

(c) the Secretary is satisfied that:

(i) the person's circumstances make it unreasonable to expect the person to obtain a certificate referred to in paragraph (3)(b) before the end of the maximum exemption period; and

(ii) the person's incapacity for work will continue after the end of the person's maximum exemption period;

the Secretary may extend the person's maximum exemption period by not more than 4 weeks.

(6) If:

(a) section 502H applied to a person; and

(b) within 14 days after the end of the person's maximum exemption period the person gives the Secretary written evidence (other than a certificate referred to in paragraph (4)(b)) that the person's incapacity for work will continue after the end of the person's maximum exemption period; and

~~(c) the Secretary is satisfied that:~~

~~(i) the person's circumstances make it unreasonable to expect the person to obtain a certificate referred to in paragraph (4)(b); and~~

~~(ii) the person's incapacity for work has continued after the end of the person's maximum exemption period and that the incapacity will continue;~~

~~the Secretary may extend the maximum exemption period by a period of not more than 4 weeks from the end of the previous maximum exemption period.~~

~~(7) If:~~

~~(a) section 502H applies to a person; and~~

~~(b) the person has, whether before or after the commencement of this section, given the Secretary a certificate referred to in paragraph (3)(b) before the end of the person's maximum exemption period; and~~

~~(c) before the end of the person's maximum exemption period, the Secretary does not satisfy himself or herself that the person's incapacity for work will continue after the end of that period; and~~

~~(d) the sole or dominant cause of the Secretary failing so to satisfy himself or herself is an act or omission of an officer of the Department;~~

~~the Secretary may extend the person's maximum exemption period by not more than 4 weeks.~~

~~(8) This section does not prevent section 502H ceasing to apply to a person under section 502J.~~

OFFICIAL: Sensitive // Legal Privilege

Division 4—Rate of parenting payment

Subdivision A—Rate of parenting payment

503 How to work out a person's parenting payment rate

A person's parenting payment rate is worked out using:

(a) if the person is not a member of a couple—the Pension PP (Single) Rate Calculator at the end of section 1068A (see Part 3.6A); or

(b) if the person is a member of a couple—the Benefit PP (Partnered) Rate Calculator at the end of section 1068B (see Part 3.6A).

503A Approved program of work supplement

If a person:

(a) is receiving a parenting payment; and

(b) is participating in an approved program of work for income support payment;

the rate of the person's parenting payment is increased by an amount of $20.80, to be known as the approved program of work supplement, for each fortnight during which the person participates in the program.

503AA Approved program of work supplement not payable in certain circumstances

~~(1)~~ An approved program of work supplement is not payable to a person in respect of a fortnight if pensioner education supplement under Part 2.24A or under ABSTUDY is payable to the person in respect of a day in the fortnight.

~~(2) An approved program of work supplement under section 503A is not payable to a person in respect of a fortnight if a training supplement is payable to the person in respect of the fortnight.~~

503B Training supplement

(1) This section applies if a person:

(a) is receiving a parenting payment; and

(b) is subject to participation requirements; and

(c) is participating in an approved training course for training supplement for the person; and

(d) started participating in the course during the period beginning on the day on which this section commenced and ending on 30 June 2011.

Note: For when a person is ***subject to participation requirements***, see subsection 23(1).

(2) The rate of the person's parenting payment is increased by an amount of $41.60 (to be known as a training supplement) for each fortnight during which the person participates in the course.

(3) However, a training supplement is not payable for a fortnight during which the person participates in the course if:

(a) a Parenting Payment Employment Pathway Plan is in force in relation to the person; and

(b) during the fortnight, the person ceases to participate in the course in circumstances that constitute a failure to comply with the plan.

503C National Green Jobs Corps supplement

(1) This section applies if a person:

(a) is receiving a parenting payment; and

(b) has reached 17, but is under 25, years of age; and

(c) is participating in the National Green Jobs Corps program; and

(d) started participating in that program before 2012.

(2) The rate of the person's parenting payment is increased by an amount of $41.60 (to be known as a National Green Jobs Corps

~~supplement) for each fortnight during which the person participates in the National Green Jobs Corps program.~~

~~(3) However, a National Green Jobs Corps supplement is not payable for a fortnight during which the person participates in the National Green Jobs Corps program if:~~

~~(a) both:~~

~~(i) a Parenting Payment Employment Pathway Plan is in force in relation to the person; and~~

~~(ii) during the fortnight, the person ceases to participate in that program in circumstances that constitute a failure to comply with the plan; or~~

~~(b) the rate of the person's parenting payment is increased by training supplement for the fortnight.~~

Subdivision C—Accumulation of parenting payments by CDEP Scheme participants

504N CDEP Scheme participant may accumulate parenting payment

(1) A person who is a member of a couple, and is a CDEP Scheme participant in respect of the whole or a part of a quarter, may, by written notice given to the Secretary, choose to accumulate the amounts of any parenting payment that become payable to the person in respect of that quarter, or any later quarter in respect of the whole or a part of which the person is a CDEP Scheme participant, and have not already been paid.

(2) If a person to whom subsection (1) applies makes a choice under that subsection, the sum of the accumulated amounts payable to the person in respect of a quarter is to be paid on, or as soon as practicable after, the first payday after:

(a) unless paragraph (b) applies, the last day of the quarter; or

(b) if the person ceases to be a CDEP Scheme participant before the end of the quarter—the day on which the person so ceases.

(3) In this section:

quarter means a CDEP Scheme quarter.

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

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

OFFICIAL: Sensitive // Legal Privilege

Division 9—Bereavement payments

Subdivision A—Continuation of parenting payment after death of child

512 Death of PP child—continuation of qualification for 14 weeks

(1) If:

(a) a person is receiving parenting payment for a dependent child; and

(b) the child dies; and

(c) following the child's death, there is no other dependent child of the person who is a PP child;

the person is qualified for parenting payment in respect of the child, for the period of 14 weeks that starts on the day of the child's death.

(2) If a person is qualified under subsection (1), the person's parenting payment rate during the 14 weeks is to be worked out as if the child had not died.

Subdivision B—Death of recipient

513 Death of recipient—recipient not member of a couple

(1) If:

(a) a person is receiving parenting payment; and

(b) the person is not a member of a couple; and

(c) the person dies;

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

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

OFFICIAL: Sensitive // Legal Privilege

Note: For death of a person qualified for bereavement payments under Subdivision C see section 514E.

513A Death of recipient—recipient member of a couple

If:

(a) a person is receiving parenting payment; and

(b) the person is a member of a couple; and

(c) the person dies; and

(d) the person:

(i) was qualified at the time of the person's death for payments under Subdivision A in relation to the death of a PP child; or

(ii) would have been qualified if the person had not died; and

(e) the person's partner claims the payments referred to in paragraph (d) within 13 weeks after the death of the child;

there is payable to the partner of the person an amount equal to the amount of parenting payment that would have been payable to the person under Subdivision A if the person had not died.

Subdivision C—Death of partner

514 Surviving partner and deceased partner

If:

(a) a person is receiving parenting payment; and

(b) the person's partner dies;

then, for the purposes of this Division:

(c) the person is the ***surviving partner***; and

(d) the person's partner is the ***deceased partner***.

514A Qualification for payments under this Subdivision

(1) If:

(a) a person is receiving a benefit PP (partnered); and

(b) the person's partner dies; and

(c) immediately before the deceased partner died, he or she:

(i) was a long-term social security recipient; or

(ii) was receiving a social security pension, a service pension, income support supplement or a veteran payment; and

(d) immediately before the deceased partner died, the surviving partner was a long-term social security recipient;

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

Note 1: For ***benefit PP (partnered)*** see section 18 and for ***long-term social security recipient*** see subsection 23(1).

Note 2: Section 514B provides for the payment to the surviving partner, up to the first available bereavement adjustment payday, of amounts equal to the instalments that would have been paid to the deceased partner during that period if the partner had not died.

Note 3: Section 514C provides for payment to the surviving partner of a lump sum that represents the instalments that would have been paid to the deceased partner, between the first available bereavement adjustment payday and the end of the bereavement period, if the deceased partner had not died.

Note 4: For ***bereavement period*** see section 21.

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

(3) An election under subsection (2):

(a) must be made by written notice to the Secretary; and

(b) may be made after the surviving partner has been paid an amount or amounts under this Subdivision; and

(c) cannot be withdrawn after the Department has taken all the action required to give effect to that election.

514B Continued payment of deceased partner's previous entitlement

If a surviving partner is qualified for payments under this Subdivision in relation to the death of the deceased partner, there is

payable to the surviving partner, on each of the deceased partner's paydays in the bereavement rate continuation period, an amount equal to the amount that would have been payable to the deceased partner on that payday if he or she had not died.

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

514C Lump sum payable in some circumstances

If:

(a) a surviving partner is qualified for payments under this Subdivision in relation to the death of the deceased partner; and

(b) the first available bereavement adjustment payday occurs before the end of the bereavement period;

there is payable to the surviving partner as a lump sum an amount worked out using the following Lump Sum Calculator:

Lump Sum Calculator

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

Method statement

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

(a) the deceased partner had not died; and

(b) if, immediately before the partner's death, the couple were an illness separated couple or a respite care couple—they were not such a couple.

Note: For ***illness separated couple*** and ***respite care couple*** see subsections 4(7) and (8).

Step 2.	Work out the amount that would have been payable to the deceased partner on the deceased partner's payday immediately before the first available bereavement adjustment payday if: (a) the deceased partner had not died; and (b) if, immediately before the partner's death, the couple were an illness separated couple or a respite care couple—they were not such a couple. Note: For ***illness separated couple*** and ***respite care couple*** see subsections 4(7) and (8).
Step 3.	Add the results of Step 1 and Step 2: the result is called the ***combined rate***.
Step 4.	Work out the amount of pension PP (single) that would, if section 514D did not apply, have been payable to the surviving partner on the surviving partner's payday immediately before the first available bereavement adjustment payday: the result is called the ***surviving partner's individual rate***.
Step 5.	Take the surviving partner's individual rate away from the combined rate: the result is called the ***deceased partner's instalment component***.
Step 6.	Work out the number of the deceased partner's paydays in the bereavement lump sum period.
Step 7.	Multiply the deceased partner's instalment component by the number obtained in Step 6: the result is the amount of the lump sum payable to the surviving partner under this section.

514D Adjustment of person's parenting payment rate

(1) This section applies if a surviving partner:

(a) is qualified for payments under this Subdivision; and
(b) does not elect under subsection 514A(2) not to receive payments under this Subdivision.

(2) The surviving partner's parenting payment rate during the bereavement rate continuation period is the benefit PP (partnered) rate that would have been payable to the surviving partner if:
(a) the deceased partner had not died; and
(b) if the couple had been an illness separated couple or a respite care couple—they had not been such a couple.

(3) The surviving partner's parenting payment rate during the bereavement lump sum period (if any) is the pension PP (single) rate.

Note 1: For ***bereavement period***, ***bereavement rate continuation period***, ***bereavement lump sum period*** and ***first available bereavement adjustment payday*** see section 21.

Note 2: For ***illness separated couple*** and ***respite care couple*** see subsections 4(7) and (8) respectively.

Note 3: For ***pension PP (single)*** and ***benefit PP (partnered)*** see section 18.

514E Effect of death of surviving partner

If:
(a) a surviving partner is qualified for payments under this Subdivision in relation to the death of the deceased partner; and
(b) the surviving partner dies within the bereavement period; and
(c) the Secretary does not become aware of the death of the deceased partner before the surviving partner dies;

there is payable, as a lump sum, to any person that the Secretary thinks appropriate, an amount worked out using the following Lump Sum Calculator:

Lump Sum Calculator

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

Method statement

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

(a) neither the surviving partner nor the deceased partner had died; and

(b) if, immediately before the deceased partner's death, the couple were an illness separated couple or a respite care couple—they were not such a couple.

Note: For ***illness separated couple*** and ***respite care couple*** see subsections 4(7) and (8).

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

(a) neither the surviving partner nor the deceased partner had died; and

(b) if, immediately before the deceased partner's death, the couple were an illness separated couple or a respite care couple—they were not such a couple.

Note: For ***illness separated couple*** and ***respite care couple*** see subsections 4(7) and (8).

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

Step 4.	Work out the amount of pension PP (single) that would, if section 514D did not apply, have been payable to the surviving partner on the surviving partner's payday immediately after the day on which the surviving partner died if the surviving partner had not died: the result is called the ***surviving partner's individual rate***.
Step 5.	Take the surviving partner's individual rate away from the combined rate: the result is called the ***deceased partner's instalment component***.
Step 6.	Work out the number of the deceased partner's paydays in the period that commences on the day on which the surviving partner dies and ends on the day on which the bereavement period ends.
Step 7.	Multiply the deceased partner's instalment component by the number obtained in Step 6: the result is the amount of the lump sum payable under this section.

Note: For ***bereavement period*** and ***first available bereavement adjustment payday*** see section 21.

514F Matters affecting payments under this Subdivision

(1) If:

(a) the surviving partner is qualified for payments under this Subdivision; and

(b) after the deceased partner died, an amount to which the deceased partner would have been entitled if he or she had not died has been paid under this Act or under Part III or IIIA of the Veterans' Entitlements Act; and

(c) the Secretary is not satisfied that the surviving partner has not had the benefit of that amount;

the following provisions have effect:

(d) the amount referred to in paragraph (b) is not recoverable from the surviving partner or from the personal

representative of the deceased partner, except to the extent (if any) that the amount exceeds the amount payable to the surviving partner under this Subdivision;

(e) the amount payable to the surviving partner under this Subdivision is to be reduced by the amount referred to in paragraph (b).

(2) If:

(a) the surviving partner is qualified for payments under this Subdivision; and

(b) an amount to which the deceased partner would have been entitled if the deceased partner had not died has been paid under this Act or under Part III or IIIA of the Veterans' Entitlements Act, within the bereavement period, into an account with a bank; and

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

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

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

Subdivision D—Bereavement payment in respect of a person who was a CDEP Scheme participant

514FA Calculation of bereavement payment in respect of former CDEP Scheme participant

If a benefit becomes payable under this Division in respect of a person who was a CDEP Scheme participant in respect of the day on which the benefit becomes payable, the amount of the benefit is to be the amount that would have been the amount of the benefit if section 500W had not been enacted.

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

Part 2.11—Youth allowance

Division 1—Qualification for youth allowance

Subdivision A—Basic qualifications

540 Qualification for youth allowance—general rule

(1) Subject to this Subdivision, a person is qualified for a youth allowance in respect of a period if:

(a) ~~either of the following applies~~throughout the period:

~~(i) throughout the period the person satisfies the activity test (see Subdivision B) or is not required to satisfy the activity test (see Subdivision C);~~

(i) the person is undertaking full-time study (see section 541B); or

(ia) the person is exempt from undertaking full-time study (see Subdivision C) but the person satisfies the Secretary that the person would otherwise be undertaking full-time study (see section 541B); or

(ib) the person satisfies subsection (2); or

(ii) the person is a CDEP Scheme participant (see section 1188B) ~~in respect of the period~~; and

(b) throughout the period the person is of youth allowance age (see Subdivision D); and

~~(c) throughout the period the person satisfies any requirements relating to Youth Allowance Employment Pathway Plans that apply to the person under Subdivision E; and~~

(d) throughout the period, the person:

(i) is an Australian resident; or

(ii) is exempt from the residence requirement within the meaning of subsection 7(7).

Note 1: Subdivision G provides for prospective qualification for youth allowance.

OFFICIAL: Sensitive // Legal Privilege

Note 2: Division 2 sets out situations in which youth allowance is not payable even if the person qualifies for it.

(2) A person satisfies this subsection if:

(a) the following apply:

(i) the person satisfies the employment pathway plan requirements;

(ii) the person satisfies the Employment Secretary that the person is willing to actively seek and to accept and undertake paid work in Australia, except particular paid work that is unsuitable to be done by the person;

(iii) the person is not undertaking full-time paid work for at least 35 hours per week; or

(b) the following apply:

(i) the person is, under Subdivision C of Division 2A of Part 3 of the Administration Act, not required to satisfy the employment pathway plan requirements;

(ii) the person satisfies the Employment Secretary that the person would otherwise be willing to actively seek and to accept and undertake paid work in Australia, except particular paid work that is unsuitable to be done by the person;

(iii) the person is not undertaking full-time paid work for at least 35 hours per week.

Note 1: For ***satisfies the employment pathway plan requirements***, see subsection 23(1).

Note 2: See Division 2B of Part 3 of the Administration Act for the circumstances in which paid work is unsuitable to be done by a person.

540A Qualification for youth allowance—claimants for disability support pension

General rule

(1) Subject to this Subdivision, a person is qualified for a youth allowance in respect of a period if:

(b) throughout the period, the person is of youth allowance age (see Subdivision D); and

(c) the person made a claim for disability support pension at or before the start of the period and the claim was not determined before the end of the period; and

(d) the Secretary is satisfied that, throughout the period, the person suffers from a medical condition that had a significant adverse effect on the person's ability to work or study; and

(e) throughout the period, the person satisfies the residency requirements that apply to the person under Subdivision F; and

(f) the person satisfies any one of the conditions in subsection (2).

Conditions for qualification

(2) The conditions referred to in paragraph (1)(f) are:

(a) a condition that the person was an Australian resident when the significant adverse effect of the medical condition on the person's ability to work or study first occurred; and

(b) a condition that at the start of the period the person had 10 years qualifying Australian residence or had a qualifying residence exemption for a social security benefit or youth training allowance; and

(c) a condition that:

(i) the person was born outside Australia; and

(ii) when the significant adverse effect of the medical condition first occurred the person was not an Australian resident but was a dependent child of an Australian resident; and

(iii) the person became an Australian resident while a dependent child of an Australian resident.

Note 1: Subdivision G provides for prospective qualification for youth allowance.

Note 2: Division 2 sets out situations in which youth allowance is not payable even if the person qualifies for it.

540AA Qualification for youth allowance—new apprentices

Subject to this Subdivision, a person is qualified for a youth allowance in respect of a period if, throughout the period:

(a) the person is a new apprentice; and

(b) the person is of youth allowance age (see Subdivision D); and

(c) the person:

(i) is an Australian resident; or

(ii) is exempt from the residence requirement within the meaning of subsection 7(7).

Note 1: Subdivision G provides for prospective qualification for youth allowance.

Note 2: Division 2 sets out situations in which youth allowance is not payable even if the person qualifies for it.

540AB Qualification for youth allowance—claimants with medical conditions affecting their capacity to work

General rule

(1) Subject to this Subdivision, a person is qualified for a youth allowance in respect of the period starting in accordance with subsection (2) and ending in accordance with subsection (3) if:

(a) the person satisfies the Secretary that throughout the period the person is unemployed; and

(b) throughout the period, the person is of youth allowance age (see Subdivision D); and

(c) the person has made a claim, or is taken to have made a claim, for youth allowance; and

(d) the person satisfies the Secretary that it is likely that the person has a permanent medical condition that would prevent the person from undertaking full-time work; and

(e) the person satisfies the Secretary that it would be unreasonable to expect the person to ~~satisfy the activity test~~enter into an employment pathway plan until an

assessment of the person's capacity to work has been undertaken; and

(f) throughout the period, the person:

(i) is an Australian resident; or

(ii) is exempt from the residence requirement within the meaning of subsection 7(7).

Note 1: Subdivision G provides for prospective qualification for youth allowance.

Note 2: Division 2 sets out situations in which youth allowance is not payable even if the person qualifies for it.

Period for which person is qualified

(2) The period for which the person is qualified for a youth allowance under this section starts:

(a) if the person is already receiving youth allowance when the Secretary becomes aware of the medical condition referred to in paragraph (1)(d)—when the Secretary becomes aware of the medical condition; or

(b) otherwise—when the person made, or is taken to have made, the claim for youth allowance.

(3) The period for which the person is qualified for a youth allowance under this section ends:

(a) if the person has failed to comply with a requirement to enter into a Youth Allowance Employment Pathway Plan—on the day on which the person so failed; or

(b) in any other case—when the person enters into a Youth Allowance Employment Pathway Plan.

Extending the meaning of who is unemployed

(4) The Secretary may, for the purposes of this section, treat a person as being unemployed throughout a period if:

(a) during the period, the person undertakes:

(i) paid work that, in the Secretary's opinion, is suitable for the person to undertake; or

OFFICIAL: Sensitive // Legal Privilege

(ii) any other activity;

as a result of which he or she would, but for this subsection, not be taken to be unemployed; and

(b) the Secretary is of the opinion that, taking into account:

(i) the nature of the work or other activity; and

(ii) the duration of the work or other activity; and

(iii) any remuneration received for the work or other activity; and

(iv) any other matters relating to the work or other activity, or to the person's circumstances, that the Secretary considers relevant;

the activity should be disregarded.

(5) However, the activity must not be or include an activity of a kind that the Secretary determines under subsection (6).

(6) The Secretary may determine, by legislative instrument, kinds of activities that are not to be taken into account for the purposes of subsection (4).

540B Qualification for youth allowance—transferee from social security pension

If:

(a) a person was receiving a social security pension; and

(b) the person claims a youth allowance within 14 days after the day on which the last instalment of the person's pension was paid; and

(c) the person becomes qualified for a youth allowance at some time during the 14 day period but after the first day of that period;

the person is taken to be qualified for a youth allowance for the whole of the 14 day period.

OFFICIAL: Sensitive // Legal Privilege

540BA Qualification for youth allowance—coronavirus

A person is qualified for a youth allowance in respect of a period that occurs between 1 April 2021 and 30 June 2021 if:

(a) the Secretary is satisfied that the person is in quarantine or self-isolation as a result of advice from, or a requirement made by, the Commonwealth, a State or a Territory or a health professional regarding the coronavirus known as COVID-19, or is caring for an immediate family member or a member of the person's household who is in such quarantine or self-isolation, throughout the period; and

(b) the Secretary is satisfied that, as a result of the circumstance in paragraph (a), the person's working hours were reduced (including to zero); and

(c) throughout the period the person satisfies the activity test (see Subdivision B) or is not required to satisfy the activity test (see Subdivision C); and

(d) the Secretary is satisfied that:

(i) the person is not entitled to receive a leave payment in respect of the period; or

(ii) the person has taken reasonable steps to access any leave payment to which the person may be entitled in respect of the period; or

(iii) the person is receiving a leave payment in respect of the period but, as a result of the adverse economic effects of the coronavirus known as COVID-19, the payment is less than it would otherwise have been; or

(iv) the person is receiving a leave payment in respect of the period, but the total amount of the leave payment in the period is less than the amount of youth allowance that would be payable to the person in the period if the person's claim were granted; and

(e) throughout the period the person is of youth allowance age (see Subdivision D); and

(f) throughout the period the person:

(i) is an Australian resident; or

(ii) is exempt from the residence requirement within the meaning of subsection 7(7).

540C Qualification for youth allowance may continue to end of payment period

If:

(a) a person is receiving a youth allowance; and

(b) apart from this section, the person would cease on a particular day to be qualified for the allowance because the person has attained the maximum age for youth allowance; and

(c) the day falls in, but is not the last day of, a period for which an instalment of youth allowance is payable to the person;

the person continues to be qualified for the allowance until the end of that period.

~~**Subdivision B—Activity test**~~

Subdivision B—Undertaking full-time study

~~**541 Activity test**~~

~~*General*~~

~~(1) Subject to section 541A and subsection (3) of this section, a person satisfies the activity test in respect of a period if:~~

~~(a) the person satisfies the Secretary that, throughout the period, the person is undertaking full-time study (see section 541B); or~~

~~(b) subject to subsection (4), the person (not being an early school leaver) satisfies the Secretary that, throughout the period, the person is actively seeking, and willing to undertake, paid work in Australia (other than paid work that is unsuitable for the person).~~

~~Note: See section 541D on paid work that is unsuitable.~~

Persons who comply with Employment Pathway Plan

(1AA) Subject to section 541A and subsection (3) of this section, a person also satisfies the activity test in respect of a period if:

(a) throughout the period, the person complies with the terms of a Youth Allowance Employment Pathway Plan that is in force in relation to the person; and

(b) any of the following subparagraphs applies in relation to the person:

(ia) the person is an early school leaver;

(i) the person is included in a class of persons specified in an instrument made under subsection (1AB);

(ii) the Secretary determines that the person should be taken to satisfy the activity test in respect of that period.

(1AB) The Secretary may, by legislative instrument, specify classes of persons for the purposes of subparagraph (1AA)(b)(i).

Certain principal carers and people with partial capacity to work

(1B) A person who:

(a) is the principal carer of at least one child; or

(b) has a partial capacity to work;

is taken to satisfy the activity test in respect of a period if, during the period, the person is engaged for at least 30 hours per fortnight in paid work that the Secretary regards as suitable.

Note 1: For ***principal carer*** see subsections 5(15) to (24).

Note 2: For ***partial capacity to work*** see section 16B.

Participation in the National Green Jobs Corps program

(1C) A person also satisfies the activity test in respect of a period if, throughout the period, the person is participating in the National Green Jobs Corps program.

Requirement to undertake paid work

(2) A person also satisfies the activity test in respect of a period if:

(aa) the person is not an early school leaver; and

(a) the Secretary is of the opinion that, throughout the period, the person should undertake particular paid work, other than paid work that is unsuitable to be done by the person; and

Note: See section 541D on paid work that is unsuitable.

(b) the Secretary notifies the person that the person is required to act in accordance with the opinion; and

(c) the person complies, throughout the period, with the Secretary's requirement.

(2A) To avoid doubt, the work that the person is required to undertake under subsection (2) may involve a number of hours per week that differs from the number of hours of work per week that the person is required to seek to comply with a Youth Allowance Employment Pathway Plan that is in force in relation to the person.

(2B) A person cannot be taken to satisfy the activity test throughout a period if the person fails to comply with a requirement under subsection (2):

(a) whether or not the person complies with subsection (1) or (1AA); and

(b) whether or not another provision of this Act under which the activity test is satisfied, or taken to be satisfied, applies (or would apart from this section apply) to the person.

Full-time employees etc.

(3) A person cannot be taken to satisfy the activity test if:

(a) the person is a new apprentice; or

(b) except in the case of a person who is undertaking full-time study—the person is employed in full-time paid work for at least:

(i) 35 hours per week; or

(ii) such lesser period per week as is, in the Secretary's opinion, the normal number of hours per week that constitutes full-time work in the industry in which the person is employed; or

(c) except in the case of a person who is undertaking full-time study—the person is, in the Secretary's opinion, involved to a substantial degree in the operation of a family business and, in the Secretary's opinion, should not be taken to satisfy the activity test.

People who cease undertaking full-time study

(4) For the purposes of paragraph (1)(b), a person who has:

(a) ceased undertaking full-time study; and

(b) been given a notice under section 68 of the Administration Act that has the effect of requiring the person to inform the Department of that cessation; and

(c) refused or failed to comply with the notice in respect of that cessation;

cannot satisfy the Secretary that, at a particular time after the refusal or failure, the person is actively seeking, and willing to undertake, paid work in Australia unless, before that time, the person has informed the Department of that cessation or the Department has become aware of that cessation.

Note: For ***undertaking full-time study*** see section 541B.

541A Failure to satisfy the activity test

(1) A person cannot be taken to satisfy the activity test in respect of a period if:

(a) the person fails to comply, throughout the period, with a requirement of the Secretary under subsection 541(2); or

(b) the person fails, throughout the period, to comply with the requirements in a Youth Allowance Employment Pathway Plan applying to the person; or

(c) the person (not being an early school leaver) refuses or fails, without reasonable excuse, to attend a job interview; or

(d) the person voluntarily ceases, without reasonable excuse, to take part in, or is dismissed for misconduct from, a labour market program; or

OFFICIAL: Sensitive // Legal Privilege

~~(e) the person refuses or fails to commence, or to complete, an approved program of work for income support payment that the person is required to undertake; or~~

~~(f) the person refuses or fails to comply with the conditions of such a program.~~

~~(2) Paragraphs (1)(d) to (f) apply in relation to a person who is an early school leaver only if:~~

~~(a) a Youth Allowance Employment Pathway Plan is in force in relation to the person; and~~

~~(b) the plan requires the person to take part in a labour market program or, as the case may be, to undertake an approved program of work for income support payment.~~

541B Undertaking full-time study

General

(1) For the purposes of this Act, a person is undertaking full-time study if:

(a) the person:

(i) is enrolled in a course of education at an educational institution; or

(ii) was enrolled in the course and satisfies the Secretary that he or she intends, and has (since no longer being enrolled) always intended, to re-enrol in the course when re-enrolments in the course are next accepted; or

(iii) was enrolled in the course and satisfies the Secretary that he or she intends, and has (since no longer being enrolled) always intended, to enrol in another course of education (at the same or a different educational institution) when enrolments in the other course are next accepted; and

(b) the person:

(i) is undertaking in the particular study period (such as, for example, a semester) for which he or she is enrolled for the course; or

(ii) intends to undertake in the next study period for which he or she intends to enrol for the course;

either:

(iii) in a case to which subsection (1A) does not apply—at least three-quarters of the normal amount of full-time study in respect of the course for that period (see subsections (2) to (4)); or

(iv) in a case to which subsection (1A) applies—at least two-thirds of the normal amount of full-time study in respect of the course for that period (see subsections (2) to (4)); and

(c) the course in question is an approved course of education or study (see subsection (5)); and

(d) in the Secretary's opinion, the person is making satisfactory progress towards completing the course.

Note: Only one course of education can be considered in deciding if a person satisfies the undertaking full-time study requirement: see section 541C.

When two-thirds study load applies

(1A) This subsection applies for the purposes of subparagraph (1)(b)(iv) if the person cannot undertake the normal amount of full-time study in respect of the course for that period:

(a) because of the usual requirements of the institution in question in respect of the course; or

(b) because of a specific direction in writing to the student from the academic registrar, or an equivalent officer, of the institution in question; or

(c) because the academic registrar, or an equivalent officer, of the institution in question recommends in writing that the person undertake the amount of study mentioned in subparagraph (1)(b)(iv) in respect of the course for specified academic or vocational reasons.

Paragraph (c) applies for no longer than half of the academic year.

OFFICIAL: Sensitive // Legal Privilege

Meaning of normal amount of full-time study

(2) For the purposes of paragraph (1)(b), the normal amount of full-time study in respect of a course is:

(a) if:

(i) the course is a course of study within the meaning of the *Higher Education Support Act 2003*; and

(ii) there are Commonwealth supported students (within the meaning of that Act) enrolled in the course;

the full-time student load for the course; or

(b) if the course is not such a course and the institution defines an amount of full-time study that a full-time student should typically undertake in respect of the course—the amount so defined; or

(c) otherwise—an amount of full-time study equivalent to the average amount of full-time study that a person would have to undertake for the duration of the course in order to complete the course in the minimum amount of time needed to complete it.

Alternative meaning of normal amount of full-time study

(3) For the purposes of paragraph (1)(b), and without limiting subsection (2), the normal amount of full-time study in respect of a course is an average, taken over the duration of the period for which the person in question is enrolled in the course, of 20 contact hours per week.

Meaning of satisfactory progress

(3A) In forming an opinion about whether a person is making satisfactory progress for the purpose of paragraph (1)(d), the Secretary is to have regard to the guidelines.

(3B) The Minister, by legislative instrument:

(a) is to set guidelines for the exercise of the Secretary's discretion under subsection (3A); and

(b) may revoke or vary those guidelines.

First fortnight of classes

(4) For the purposes of paragraph (1)(b), a person is taken to be undertaking full-time study in respect of a course during the period (the ***relevant period***):

(a) starting on the first day of classes in a study period; and

(b) ending on the Friday of the second week of classes in the study period;

if the person is enrolled in the course and undertakes study in respect of the course on at least one day in the relevant period.

Meaning of approved course of education or study

(5) For the purposes of paragraph (1)(c), the course is an approved course of education or study if it is a course determined, under section 5D of the *Student Assistance Act 1973*, to be a secondary course or a tertiary course for the purposes of that Act.

541C One course of education

(1) Whether subparagraph 541B(1)(a)(i) or (ii) and paragraphs 541B(1)(b), (c) and (d) are satisfied in relation to a person is to be determined in relation to only one course of education.

(2) Whether a person satisfies the Secretary of the person's intention mentioned in subparagraph 541B(1)(a)(iii) and whether paragraphs 541B(1)(b), (c) and (d) are satisfied in relation to the person is to be determined in relation to only one course of education.

Note 1: The effect of this section is that 2 or more courses of education for a person cannot be aggregated to satisfy the undertaking full-time study requirement.

Note 2: The one course of education may be a combined course: see the legislative instrument made under section 5D of the *Student Assistance Act 1973*.

541D Unsuitable paid work

What is unsuitable paid work

(1) Subject to subsections (1A) and (1B), for the purposes of section 541, particular paid work is unsuitable for a person if, and only if, in the Secretary's opinion:

(a) the person lacks the particular skills, experience or qualifications that are needed to perform the work and no training will be provided by the employer; or

(b) it has been established that there is medical evidence that the person has an illness, disability or injury that would be aggravated by the conditions in which the work would be performed; or

(ba) the person is the principal carer for one or more children, and does not have access to appropriate care and supervision for the children at the times when the person would be required to undertake the work; or

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

(c) performing the work in the conditions in which the work would be performed would constitute a risk to health or safety and would contravene a law of the Commonwealth, a State or a Territory relating to occupational health and safety; or

(e) the terms and conditions for the work would be less generous than the applicable statutory conditions; or

(g) commuting between the person's home and the place of work would be unreasonably difficult; or

(ga) the place of work is not accessible by public transport services and the person does not have access to alternative transport facilities and could not reasonably be expected to travel to the place of work; or

(h) the work would require enlistment in the Defence Force or the Reserves; or

(ha) the work requires the person to move from a home in one place to a home in another place; or

(i) for any other reason, the work is unsuitable for the person.

(1AA) A person has, for the purposes of paragraph (1)(ba), access to appropriate care and supervision for a child at a particular time if, at that time:

(a) the child could be provided with care by an approved child care service (within the meaning of the Family Assistance Administration Act), and provision of that care would, in the Secretary's opinion, be appropriate in the circumstances; or

(b) the child could be provided with other care that the person considers to be suitable; or

(c) the child could be attending school, and attendance at that school would, in the Secretary's opinion, be appropriate in the circumstances.

(1AB) For the purposes of paragraph (1)(ba), a time when the person would be required to undertake the work includes reasonable amounts of time that would be needed for the person to travel from the person's home to the place of work and from the place of work to the person's home.

(1AC) The Secretary must, by legislative instrument, determine matters that the Secretary must take into account in deciding whether, for the purposes of paragraph (1)(i), particular paid work is unsuitable for a person.

(1AD) To avoid doubt, a determination under subsection (1AC) does not limit the matters that the Secretary may take into account in deciding whether, for the purposes of paragraph (1)(i), particular paid work is unsuitable for a person.

(1A) If:

(a) a person seeks work in an area (the ***new area***) that is outside the area (the ***old area***) in which the person's home is situated; and

(b) the person is offered permanent full-time work (whether or not work of the kind sought) in the new area;

the work offered is not unsuitable for the person because of paragraph (1)(g), (ga) or (ha) unless:

~~(c) the person is under the age of 18; or~~

~~(d) the person or the person's partner is pregnant; or~~

~~(e) the person or the person's partner has a severe medical condition and the condition makes it unreasonable for the person to accept the offer; or~~

~~(f) the acceptance of the offer would jeopardise the current employment, or the employment prospects, of the person's partner; or~~

~~(g) the person or the person's partner has a child under the age of 16 years who is living with them or is living somewhere else in the old area; or~~

~~(h) the person or the person's partner has significant caring responsibilities in the old area; or~~

~~(i) the educational, cultural or religious background of the person makes it unreasonable for the person to accept the offer; or~~

~~(j) it is more appropriate for the person to participate in education or training than to accept the offer; or~~

~~(k) the person would suffer severe financial hardship if the person were to accept the offer.~~

~~(1B) Without affecting what would otherwise constitute a person seeking work outside the area in which the person's home is situated, if a person, when seeking employment through an employment service provider, represents to the provider that the person is willing to undertake work outside the area in which the person's home is situated, the person is taken for the purposes of subsection (1A) to seek work outside the area at the time when the representation is made.~~

~~**Subdivision C—Exemptions from the activity test**~~

Subdivision C—Exemptions from undertaking full-time study

~~**542 Situations in which a person is not required to satisfy the activity test**~~

542 Situations in which a person is exempt from undertaking full-time study

For the purposes of this Part, a person is ~~not required to satisfy the activity test~~exempt from undertaking full-time study in respect of a period if, throughout the period:

(a) the person has a temporary incapacity exemption under section 542A; or

(b) the person has a pre-natal exemption or a post-natal exemption under section 542D; or

~~(c) the person has a remote area exemption under section 542E; or~~

(ca) the person has a death of partner exemption under section 542EA; or

(d) the person has a domestic violence or other special family circumstances exemption under section 542F; or

(da) the person has a disabled children or other family circumstances exemption under section 542FA; or

~~(db) the person has a new claimants exemption under section 542FB; or~~

(e) the person has a training camp exemption under section 542G; or

(f) the person has a special circumstances exemption under section 542H.

OFFICIAL: Sensitive // Legal Privilege

542A Temporary incapacity exemption

General

(1) Subject to subsection (2) of this section and sections 542B and 542C, a person has a temporary incapacity exemption if:

~~(a) throughout the period the person:~~

(a) throughout the period the person does not have the capacity to undertake the course of education in respect of which the person is undertaking full-time study because of sickness or an accident; and

(i) if the person is undertaking full-time study—does not have the capacity to undertake the course of education in respect of which he or she is undertaking full-time study; or

(ia) if the person is an early school leaver and a Youth Allowance Employment Pathway Plan is in force in relation to the person—does not have the capacity to undertake the required activities; or

(ii) in any other case—is incapacitated for work;

because of sickness or an accident; and

(b) the incapacity is caused wholly, or virtually wholly, by a medical condition arising from the sickness or accident; and

(c) the incapacity is, or is likely to be, of a temporary nature; and

(d) the person has, whether before or after the commencement of this section, given the Secretary a certificate of a medical practitioner, in a form approved by the Secretary, stating:

(i) the medical practitioner's diagnosis; and

(ii) the medical practitioner's prognosis; and

(iii) that the person is incapacitated for study~~, the required activities or work (as the case requires)~~; and

(iv) the period for which the person is incapacitated for study~~, the required activities or work (as the case requires)~~; and

(e) the Secretary is satisfied that the incapacity has not been brought about with a view to obtaining an exemption from ~~the activity test~~undertaking full-time study.

(1AA) Subsection (1) does not apply to sickness, or an accident, wholly or predominantly attributable to the person's dependence on alcohol or another drug, unless the person is a declared program participant, a new apprentice or undertaking full-time study.

~~(1A) The Secretary must comply with the guidelines (if any) determined and in force under subsection (1B) in deciding the following:~~

~~(a) whether subparagraph (1)(a)(ii) or paragraph (1)(b) or (c) applies to a person in respect of a period;~~

~~(b) whether, for the purposes of paragraph (b) of the definition of ***work*** in subsection (3), work is of a kind that a person is reasonably capable of performing.~~

(1A) The Secretary must comply with the guidelines (if any) determined and in force under subsection (1B) in deciding whether paragraph (1)(b) or (c) applies to a person in respect of a period.

(1B) The Minister may, by legislative instrument, determine guidelines to be complied with by the Secretary in making a decision referred to in subsection (1A).

Claimants for disability support pension

(2) This section does not apply to a person who is qualified for a youth allowance under section 540A.

~~*Definitions*~~

~~(3) In this section:~~

~~***required activities***, in relation to an early school leaver in relation to whom a Youth Allowance Employment Plan is in force, means the activities required to be undertaken by the plan.~~

~~***work***, in relation to a person, means work (whether full-time, part-time, permanent or casual) that:~~

OFFICIAL: Sensitive // Legal Privilege

~~(a) if the person was employed at the time the sickness or accident in question occurred—the person has contracted to perform under a contract of employment that:~~

~~(i) the person had immediately before the person becomes incapacitated; and~~

~~(ii) continues after the person becomes incapacitated; and~~

~~(b) if the person was not employed at that time—the person is reasonably capable of performing;~~

~~being work that is for at least 8 hours per week on wages that are at or above the relevant minimum wage.~~

542B Failure to attend interview etc. may result in cessation of temporary incapacity exemption

General

(1) A person ceases to have a temporary incapacity exemption if:

(a) the Secretary is of the opinion that the person should:

(i) contact a particular officer of the Department; or

(ii) attend an interview at a particular place; or

(iii) complete a questionnaire; or

(iv) attend a medical, psychiatric or psychological examination; and

(b) the Secretary gives the person a written notice stating that the person is required, within a period stated in the notice, being a period of not less than 14 days, to:

(i) contact the officer; or

(ii) attend the interview; or

(iii) complete the questionnaire; or

(iv) attend the examination; or

(v) if the person has undergone an examination—give the Secretary a report on the examination in the approved form; and

(c) the Secretary is satisfied that it is reasonable for this section to apply to the person; and

(d) the person does not comply with the requirement.

Contents of notice

(2) A notice under paragraph (1)(b) must inform the person to whom it is given of the effect of failure by the person to comply with the requirement set out in the notice.

~~542BA Time limit for temporary incapacity exemptions—capacity to undertake activity~~

~~General~~

~~(1) A person ceases to have a temporary incapacity exemption if the Secretary is satisfied that, although the person meets the requirements of section 542A, the person should undertake one or more activities that the Secretary regards as suitable for the person.~~

~~When cessation occurs~~

~~(2) The cessation occurs:~~

~~(a) if the person has been required to enter into a Youth Allowance Employment Pathway Plan but has failed to enter that plan—when the person so failed; or~~

~~(b) in any other case—when the person has entered into such a plan.~~

~~Section 542C unaffected by this section~~

~~(3) This section does not prevent a person ceasing to have a temporary incapacity exemption under section 542C.~~

542C Time limit for temporary incapacity exemptions—maximum exemption period

General

(1) A person ceases to have a temporary incapacity exemption if the person's maximum exemption period ends.

Maximum exemption period

(2) Subject to this section, a person's maximum exemption period is:

(a) if the person has, whether before or after the commencement of this section, given the Secretary a medical certificate for the purpose of enabling the Secretary to decide whether the person was ~~required to satisfy the activity test~~exempt from undertaking full-time study—the lesser of the following periods:

(i) the period stated in the certificate as the period for which the person would be incapacitated for study~~, the required activities or work (as the case may be)~~;

(ii) the period of 13 weeks that started or starts on the first day of the period so stated in the certificate; or

(b) otherwise—the period of 4 weeks that started or starts on the day determined by the Secretary to have been the day on which the person's incapacity for study~~, the required activities or work (as the case may be)~~ began.

Extension where paragraph 542A(1)(d) certificate given

(3) If:

(a) a person has a temporary incapacity exemption; and

(b) the person has, whether before or after the commencement of this section, given the Secretary a certificate of a medical practitioner that states the matters listed in paragraph 542A(1)(d) and is in accordance with the form approved under that paragraph; and

(c) the Secretary is satisfied that the person's incapacity for study~~, the required activities or work (as the case may be)~~ will continue after the end of the person's maximum exemption period;

the Secretary may extend the person's maximum exemption period by a period that is not more than the lesser of the following periods:

(d) a period equal to the period stated in the certificate as the period for which the person would be incapacitated for study~~, the required activities or work (as the case may be)~~;

(e) 13 weeks.

Extension where paragraph 542A(1)(d) certificate given after end of maximum exemption period

(4) If:

(a) a person had a temporary incapacity exemption; and

(b) within 14 days after the end of the person's maximum exemption period, the person gives the Secretary a certificate of a medical practitioner that states the matters listed in paragraph 542A(1)(d) and is in accordance with the form approved under that paragraph; and

(c) the Secretary is satisfied that the person's incapacity for study~~, the required activities or work (as the case may be)~~ has continued after the end of the person's maximum exemption period and that the incapacity will continue;

the Secretary may extend the maximum exemption period by a period of not more than the lesser of the following periods:

(d) a period equal to the period stated in the certificate as the period for which the person would be incapacitated for study~~, the required activities or work (as the case may be)~~;

(e) 13 weeks.

Extension where other written evidence given

(5) If:

(a) a person has a temporary incapacity exemption; and

(b) the person gives the Secretary written evidence (other than a certificate referred to in paragraph (3)(b)) that the person's incapacity for study~~, the required activities or work (as the~~

~~case may be)~~ will continue after the end of the person's maximum exemption period; and

(c) the Secretary is satisfied that:

(i) the person's circumstances make it unreasonable to expect the person to obtain a certificate referred to in paragraph (3)(b) before the end of the maximum exemption period; and

(ii) the person's incapacity for study~~, the required activities or work (as the case may be)~~ will continue after the end of the person's maximum exemption period;

the Secretary may extend the person's maximum exemption period by not more than 4 weeks.

Extension where other written evidence given after end of maximum exemption period

(6) If:

(a) a person had a temporary incapacity exemption; and

(b) within 14 days after the end of the person's maximum exemption period, the person gives the Secretary written evidence (other than a certificate referred to in paragraph (4)(b)) that the person's incapacity for study~~, the required activities or work (as the case may be)~~ will continue after the end of the person's maximum exemption period; and

(c) the Secretary is satisfied that:

(i) the person's circumstances make it unreasonable to expect the person to obtain a certificate referred to in paragraph (4)(b); and

(ii) the person's incapacity for study~~, the required activities or work (as the case may be)~~ has continued after the end of the person's maximum exemption period and that the incapacity will continue;

the Secretary may extend the maximum exemption period by a period of not more than 4 weeks from the end of the previous maximum exemption period.

Extension where paragraph 542A(1)(d) certificate not considered in a timely manner

(7) If:

(a) a person has a temporary incapacity exemption; and

(b) the person has, whether before or after the commencement of this section, given the Secretary a certificate referred to in paragraph (3)(b) before the end of the person's maximum exemption period; and

(c) before the end of the person's maximum exemption period, the Secretary does not satisfy himself or herself that the person's incapacity for study~~, the required activities or work (as the case may be)~~ will continue after the end of that period; and

(d) the sole or dominant cause of the Secretary failing so to satisfy himself or herself is an act or omission of an officer of the Department;

the Secretary may extend the person's maximum exemption period by not more than 4 weeks.

~~*Section 542BA unaffected by this section*~~

~~(8) This section does not prevent a person ceasing to have a temporary incapacity exemption under section 542BA.~~

~~*Definition*~~

~~(9) In this section:~~

~~***required activities*** has the meaning given by subsection 542A(3).~~

542D Pre-natal and post-natal exemptions

Pre-natal exemption

(1) A pregnant woman has a pre-natal exemption for the period that starts 6 weeks before the woman's expected date of confinement and ends on the day on which the woman gives birth to the child (whether or not the child is born alive).

OFFICIAL: Sensitive // Legal Privilege

Post-natal exemption

(2) If a woman gives birth to a child (whether or not the child is born alive), the woman has a post-natal exemption for the period that starts on the day on which she gives birth to the child and ends 6 weeks after that day.

542E Remote area exemption

General

(1) Subject to subsection (2), a person has a remote area exemption in respect of a period if the Secretary considers that:

(a) it would be reasonable to assume that, at the end of a period, a person is present in an area where:

(i) there is no locally accessible labour market; and

(ii) there is no locally accessible vocational training course or labour market program; and

(iii) in a case where the person is an early school leaver — there is no locally accessible approved course of training or education within the meaning given by subsection 544DA(6) (including any such course available by distance education); and

(b) it would also be reasonable to assume that the person is throughout the period:

(i) unemployed; and

(ii) capable of undertaking paid work that in the Secretary's opinion is suitable to be undertaken by the person; and

(iii) willing to undertake paid work that in the Secretary's opinion is suitable to be undertaken by the person; and

(c) having regard to all the relevant factors, including:

(i) the location of offices of the Department; and

(ii) difficulties with transport and communication; and

(iii) the educational and cultural background of the person;

~~it would be unreasonable to expect the person to satisfy the activity test in order to be qualified for youth allowance for the period.~~

~~Note: The activity test is dealt with in Subdivision B.~~

~~*Effect of subsection 541(2) notices*~~

~~(2) This section does not apply if the person has been notified of a requirement under subsection 541(2) in relation to the period.~~

~~542EA Relief from activity test—death of person's partner~~

542EA Exemption from undertaking full-time study—death of person's partner

Claimants

(1) If:

(a) a person makes a claim for youth allowance on or after the commencement of this section; and

(b) the person makes the claim after the death of the person's partner on or after the commencement of this section; and

(c) if the person is a man or a woman who was not pregnant when her partner died—the person makes the claim in the period of 14 weeks starting on the day of the death of the partner; and

(d) if the person is a woman who was pregnant when her partner died—the person makes the claim:

(i) in the period of 14 weeks starting on the day of the death of the partner; or

(ii) in the period starting on the day of the death of the partner and ending when the child is born or the woman otherwise stops being pregnant;

whichever ends later;

then the person has a death of partner exemption in respect of the period applicable under paragraph (c) or (d).

OFFICIAL: Sensitive // Legal Privilege

Recipients

(2) If:

(a) a person is receiving youth allowance on or after the commencement of this section; and

(b) while the person is receiving youth allowance, the person's partner dies on or after the commencement of this section; and

(c) if the person is a man or a woman who was not pregnant when her partner died—the person notifies the Secretary of the person's partner's death in the period of 14 weeks starting on the day of the death of the partner; and

(d) if the person is a woman who was pregnant when her partner died—the person notifies the Secretary of the person's partner's death:

(i) in the period of 14 weeks starting on the day of the death of the partner; or

(ii) in the period starting on the day of the death of the partner and ending when the child is born or the woman otherwise stops being pregnant;

whichever ends later; and

(e) the person is receiving youth allowance on the day of the notification;

then the person has a death of partner exemption in respect of the period applicable under paragraph (c) or (d).

542F Domestic violence or other special family circumstances exemption

General

(1) A person has a domestic violence or other special family circumstances exemption in respect of a period that the Secretary determines under this section in relation to the person.

Circumstances in which a determination may be made

(2) The Secretary may make a determination under this section in relation to the person if the Secretary is satisfied that:

(a) the person:

(i) is the principal carer of one or more children; and

(ii) was subjected to domestic violence in the 26 weeks before the making of the determination; or

(b) the person is the principal carer of one or more children, and there are special circumstances relating to the person's family that make it appropriate to make the determination.

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

(2A) The Secretary must, by legislative instrument, specify matters that the Secretary must take into account in deciding whether there are special circumstances relating to a person's family that make it appropriate to make a determination under this section.

(2B) To avoid doubt, an instrument made under subsection (2A) does not limit the matters that the Secretary may take into account in making a determination under subsection (2).

Duration of period

(3) The period that the Secretary determines under this section must be the lesser of:

(a) the period that the Secretary considers to be appropriate; or

(b) 16 weeks.

(4) Any such period may be followed by one or more other periods (not exceeding 16 weeks) determined under this section in relation to the person.

(5) The period that the Secretary determines under this section must, despite subsection (3), be 16 weeks if the determination:

(a) is made on grounds referred to in paragraph (2)(a) (or on grounds that include those grounds); and

(b) is the first determination made on those grounds (or on grounds that include those grounds) in relation to the person on or after 1 July 2010.

Revocation of determination

(6) The Secretary may revoke a determination under this section in relation to a person if the Secretary is satisfied that the grounds on which the determination was made no longer exist.

(7) Subsection (6) does not affect any operation that subsection 33(3) of the *Acts Interpretation Act 1901* has in relation to a determination under this section.

542FA Disabled children or other family circumstances exemption

General

(1) A person has a disabled children or other family circumstances exemption in respect of a period that the Secretary determines under this section in relation to the person.

Circumstances in which a determination may be made

(2) The Secretary may make a determination under this section in relation to the person if the Secretary is satisfied that the person is the principal carer of one or more children:

(a) who suffer from a physical, intellectual or psychiatric disability or illness; and

(b) whose care needs are such that the person should, for the period specified in the determination, ~~not be required to~~

~~satisfy the activity test~~be exempt from undertaking full-time study.

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

(3) The Secretary must make a determination under this section in relation to the person if the Secretary is satisfied that the person is the principal carer of one or more children, and that:

(a) the person is a registered and active foster carer; or

(b) the person is a home educator of that child, or one or more of those children; or

(c) the person is a distance educator of that child, or one or more of those children; or

(d) under a family law order that the person is complying with, a child, of whom the person is a relative (other than a parent), is to live with the person.

Note 1: For ***principal carer*** see subsections 5(15) to (24).

Note 2: For ***registered and active foster carer*** see section 5B.

Note 3: For ***home educator*** see section 5C.

Note 4: For ***distance educator*** see section 5D.

Note 5: For ***family law order*** see subsection 23(1).

Note 6: For ***relative (other than a parent)*** see section 5E.

(3A) The Secretary must make a determination under this section in relation to the person if the Secretary is satisfied that:

(a) the person is the principal carer of a child; and

(b) the person is one or both of the following:

(i) the principal carer of one or more other children;

(ii) the main supporter of one or more secondary pupil children; and

(c) there are 4 or more of the children of whom the person is the principal carer or main supporter.

Note 1: For ***principal carer*** see subsections 5(15) to (24).

Note 2: For ***main supporter*** see section 5G.

Note 3: For ***secondary pupil child*** see section 5F.

(3B) The Secretary must make a determination under this section in relation to the person if the Secretary is satisfied that the person:

(a) is not the principal carer of one or more children; and

(b) is a registered and active foster carer; and

(c) is providing foster care to a child temporarily in an emergency or to give respite to another person from caring for the child.

Note 1: For ***principal carer*** see subsections 5(15) to (24).

Note 2: For ***registered and active foster carer*** see section 5B.

(3C) The Secretary must make a determination under this section in relation to the person if the Secretary is satisfied that the person:

(a) is the main supporter of one or more secondary pupil children; and

(b) is a home educator or distance educator of one or more of those children.

Note 1: For ***main supporter*** see section 5G.

Note 2: For ***secondary pupil child*** see section 5F.

Note 3: For ***home educator*** see section 5C.

Note 4: For ***distance educator*** see section 5D.

(3D) The Secretary must make a determination under this section in relation to the person if the Secretary is satisfied that:

(a) the person is the principal carer of one or more children; and

(b) the person is a relative (other than a parent) of a child (the ***kin child***); and

(c) there is a document that:

(i) provides for the kin child to live with the person for the care and wellbeing of the kin child; and

(ii) is prepared or accepted by an authority of a State or Territory that has responsibility for the wellbeing of children; and

(d) the person is acting in accordance with the document.

Note 1: For ***principal carer*** see subsections 5(15) to (24).

Note 2: For ***relative (other than a parent)*** see section 5E.

(4) The Secretary may make a determination under this section in relation to the person if the Secretary is satisfied that:

(a) the person is a person included in a class of persons specified under subsection (5); and

(b) the person's circumstances are such that the person should ~~not be required to satisfy the activity test~~be exempt from undertaking full-time study for the period.

(5) The Secretary may, by legislative instrument, specify classes of persons in respect of whom determinations under this section may be made.

Duration of period

(6) The period that the Secretary determines under this section, except subsection (3B), must be the lesser of:

(a) the period that the Secretary considers to be appropriate; or

(b) 12 months.

(6A) The period that the Secretary determines under subsection (3B) in relation to the person must be the lesser of:

(a) the period:

(i) starting when the person starts to provide foster care to the child; and

(ii) ending 12 weeks, or a shorter period determined by the Secretary, after the person ceases to provide foster care to the child; and

(b) 12 months.

(7) A period determined by the Secretary under this section in relation to the person may be followed by one or more other periods (not exceeding 12 months) determined under this section in relation to the person.

Revocation of determination

(8) The Secretary may revoke a determination under this section in relation to a person if the Secretary is satisfied that the grounds on which the determination was made no longer exist.

(9) Subsection (8) does not affect any operation that subsection 33(3) of the *Acts Interpretation Act 1901* has in relation to a determination under this section.

542FB New claimants exemption

General

(1) A person has a new claimants exemption in respect of the period to which subsection (4) applies if:

(a) during the period, the person undertakes:

(i) paid work that, in the Secretary's opinion, is suitable for the person to undertake; or

(ii) any other activity; and

(b) the Secretary is of the opinion that, taking into account:

(i) the nature of the work or other activity; and

(ii) the duration of the work or other activity; and

(iii) any remuneration received for the work or other activity; and

(iv) any other matters relating to the work or other activity, or to the person's circumstances, that the Secretary considers relevant;

it would be unreasonable to expect the person to satisfy the activity test for the period.

Work or other activities that are not to be taken into account

(2) However, the work or other activity must not be or include any work or other activity of a kind that the Secretary determines under subsection (3).

~~(3) The Secretary may determine, by legislative instrument, kinds of work or other activity that are not to be taken into account for the purposes of subsection (1).~~

~~*Duration of period*~~

~~(4) This subsection applies to the period:~~
~~(a) starting:~~
~~(i) when the person made a claim, or is taken to have made a claim, for youth allowance; or~~
~~(ii) when the person started to undertake the work or other activity;~~
~~whichever happens later; and~~
~~(b) ending:~~
~~(i) if the person has been required to enter into a Youth Allowance Employment Pathway Plan but has failed to enter that plan—when the person so failed; or~~
~~(ii) in any other case—when the person has entered into such a plan.~~

542G Training camp exemption

A person has a ***training camp exemption*** if the person is attending a training camp as a member of:

(a) the Naval Reserve; or
(b) the Army Reserve; or
(c) the Air Force Reserve.

542H Special circumstances exemption

General

(1) Subject to subsections (2) and (3), a person has a special circumstances exemption in respect of a period if:
(a) the Secretary is satisfied that special circumstances, beyond the person's control, exist; and

(b) the Secretary is satisfied that in those circumstances it would be unreasonable to expect the person to ~~satisfy the activity test~~undertake full-time study for that period.

(1AA) Subsection (1) does not apply to circumstances wholly or predominantly attributable to the person's misuse of alcohol or another drug, unless the person is a declared program participant, a new apprentice or undertaking full-time study.

Meaning of special circumstances

(1A) In making a decision under subsection (1), the Secretary is to have regard to the guidelines.

(1B) The Minister, by legislative instrument:

(a) is to set guidelines for the exercise of the Secretary's discretion under subsection (1A); and

(b) may revoke or vary those guidelines.

Duration of period

(2) The period referred to in subsection (1) is not to be more than 13 weeks.

Duration where a number of determinations made

(3) If:

(a) the Secretary makes more than one decision under subsection (1) or under subsection 731E(1); and

(b) the periods to which the decisions relate form a continuous period;

the continuous period is not to be more than 13 weeks, unless the Secretary decides otherwise, having regard to the continued existence, or likely continued existence, of the special circumstances on which the last preceding decision was based.

Subdivision D—Youth allowance age

543 Youth allowance age

For the purposes of this Part, a person is of youth allowance age if the person:

(a) has attained the minimum age for youth allowance (see section 543A); and

(b) has not yet attained the maximum age for youth allowance (see section 543B).

543A Minimum age for youth allowance

General

(1) Subject to this section, the person has attained the minimum age for youth allowance if the person:

(a) is at least 16 years old; or

(b) is 15 years old and is independent.

Note: For ***independent*** see section 1067A.

(2) Subject to subsections (2AA), (2A) and (2B), a person who satisfies paragraph (1)(a) or (b) but is not yet 18 years old is not taken under subsection (1) to have attained the minimum age for youth allowance unless the person:

(a) has completed the final year of secondary school, or an equivalent level of education; or

(b) is undertaking full-time study; or

~~(c) the person has entered into or agreed to enter into a Youth Allowance Employment Pathway Plan; or~~

(c) has entered into or agreed to enter into an employment pathway plan; or

(d) is a new apprentice.

(2AA) Paragraph (2)(b) does not apply to a person who is aged 16 or 17 and who is undertaking full-time study in respect of a secondary

OFFICIAL: Sensitive // Legal Privilege

course at a secondary school (within the meaning of the *Student Assistance Act 1973*) or at a TAFE institution unless:

(a) the person is independent (see section 1067A); or

(b) the person is taken by section 1067D to be required to live away from home; or

(c) the person was receiving youth allowance immediately before starting that course; or

(d) the Secretary determines that the person is not benefiting from family tax benefit that is being paid to the person's parents.

(2AB) For the purposes of subsection (2AA), a ***secondary course*** is a course that is determined, under section 5D of the *Student Assistance Act 1973*, to be a secondary course for the purposes of that Act.

(2A) Subject to subsection (2B), subsection (2) does not apply to the person if the Secretary considers that the person does not have the capacity to undertake full-time study or training because he or she:

(a) is ill or has had an accident and the incapacity is, or is likely to be, of a temporary nature; or

(b) has a physical, psychiatric or intellectual disability, or a learning difficulty such as attention deficit disorder; or

(c) is pregnant and the expected date of confinement is within 6 weeks; or

(d) has given birth within the previous 6 weeks; or

(f) has been refused enrolment and no other education or training place is available within a reasonable distance; or

(g) is required to provide full-time care for a family member who is incapacitated due to illness or accident and the incapacity is, or is likely to be, of a temporary nature; or

(h) has suffered a personal crisis such as the death of an immediate family member, a marriage breakup, family dislocation or physical, emotional or sexual abuse; or

(i) is homeless and unable to obtain stable accommodation; or

(j) has suffered a major disruption of their home such as fire damage, flooding, earthquake damage, vandalism or burglary; or

(k) suffers from alcohol or drug abuse sufficient to cause intermittent or temporary absences from full-time study or training; or

(l) is engaged in part-time work, education, training or a combination of these for not less than 25 hours per week; or

(m) is a refugee whose capacity to undertake full-time education is reduced because:

(i) the person has suffered torture, imprisonment or other traumatic circumstances; or

(ii) lacks sufficient English skills; or

(iii) is recently arrived and lacks stable accommodation; or

(n) is the subject of a community service or juvenile justice order which reduces the person's capacity to engage in full-time education; or

(p) is receiving Commonwealth funded intensive assistance for jobseekers or State, Territory or community provided case management approved by the Secretary or, where no intensive assistance or case management place is available to the person, is suitable for and agrees to undertake intensive assistance or case management; or

(q) is in other circumstances which, in the opinion of the Secretary, make it unreasonable for the person to be in full-time education or training.

(2B) If the following circumstances exist in relation to the person in respect of a period (the ***qualifying period***):

(a) except for paragraph ~~540(b)~~540(1)(b), the person would be qualified for a youth allowance in respect of the qualifying period;

(b) the person is taken to have attained the minimum age for youth allowance in respect of the qualifying period only because one or more of the grounds (the ***precluding grounds***) referred to in subsection (2A) preclude subsection (2) from applying to the person;

OFFICIAL: Sensitive // Legal Privilege

the person is qualified for youth allowance under section 540 only in respect of so much of the qualifying period as does not exceed:

(c) if the only precluding ground is the ground referred to in paragraph (2A)(c) or (d)—6 weeks; or

(d) if the only precluding ground is the ground referred to in paragraph (2A)(h) or (j)—2 weeks; or

(e) if the only precluding ground is the ground referred to in paragraph (2A)(l)—the period for which the work, education or training lasts; or

(f) if the only precluding grounds are 2 or more of the grounds referred to in paragraphs (2A)(c), (d), (h), (j) and (l)—the longer or longest period prescribed by paragraphs (c), (d) and (e) of this subsection in relation to those precluding grounds; or

(g) otherwise—13 weeks or such longer period as the Secretary approves.

Independent persons

(3) For the purposes of this section, the person cannot be taken to be independent unless the person:

(a) has reached the minimum school leaving age for the State or Territory in which the person is living; or

(b) is the subject of a formal exemption from attending school granted by the education authority of that State or Territory.

543B Maximum age for youth allowance

General

(1) Subject to subsection (2), the person has attained the maximum age for youth allowance if:

(a) the person is not undertaking full-time study and is at least 22 years old; or

(b) the person:

(i) is undertaking full-time study in respect of a course of education that is to last for less than 12 months; and

(ii) was, immediately before starting the course of education, receiving jobseeker payment; and

(iii) is at least 22 years old; or

(c) the person is undertaking full-time study and is at least 25 years old; or

(d) the person is not a new apprentice and is at least 22 years old; or

(e) the person is a new apprentice and is at least 25 years old.

Continuance of full-time study after turning 25

(2) If the person is at least 25 years old, the person is taken not to have attained the maximum age for youth allowance if the person:

(a) was receiving youth allowance immediately before turning 25; and

(b) is either:

(i) undertaking full-time study in respect of a course of education that the person had commenced before turning 25; or

(ii) a new apprentice and became a new apprentice before turning 25.

~~**Subdivision E—Youth Allowance Employment Pathway Plans**~~

~~**544 Requirements relating to Youth Allowance Employment Pathway Plans**~~

~~(1) The requirements that apply to a person relating to Youth Allowance Employment Pathway Plans in respect of a period are as follows:~~

~~(a) the person must enter into a Youth Allowance Employment Pathway Plan in relation to the period when the person is required by the Secretary under section 544A to do so; and~~

~~(b) while the plan is in force, the person must comply with the requirements in the plan; and~~

(c) at all times when the plan is in force, the person must be prepared to enter into another such plan instead of the existing plan, if required to do so by the Secretary.

(3) For the purposes of this Part, if:

(a) a person starts to receive youth allowance on a particular day; and

(b) immediately before that day a Special Benefit Employment Pathway Plan was in force in relation to the person; and

(c) the period covered by the plan ends after that day;

the plan has effect on or after that day as if it were a Youth Allowance Employment Pathway Plan.

(4) For the purposes of this Part, if:

(a) a person starts to receive youth allowance on a particular day; and

(b) immediately before that day, a Parenting Payment Employment Pathway Plan was in force in relation to the person; and

(c) the period covered by the plan ends after that day;

the plan has effect on and after that day as if it were a Youth Allowance Employment Pathway Plan.

544A Youth Allowance Employment Pathway Plans—requirement

Requirement to enter into plan

(1) If a Youth Allowance Employment Pathway Plan is not in force in relation to a person, the Secretary may require the person to enter into such a plan if:

(a) the person is receiving, or has made a claim for, a youth allowance; or

(b) the Department is contacted by or on behalf of the person in relation to a claim for a youth allowance.

Persons who have certain exemptions etc. are not to be required to enter plans

(2) A person who:

(b) has a pre-natal exemption or a post-natal exemption under section 542D; or

(baa) has a death of partner exemption under section 542EA; or

(ba) has a domestic violence or other special family circumstances exemption under section 542F; or

(bb) has a disabled children or other family circumstances exemption under section 542FA; or

(c) is qualified for a youth allowance under section 540A;

is not to be required to enter into a Youth Allowance Employment Pathway Plan.

Persons who have a temporary incapacity exemption

(2A) A person who has a temporary incapacity exemption under section 542A is not to be required to enter into a Youth Allowance Employment Pathway Plan unless subsection 542BA(1) applies to the person.

Requirement to enter another plan

(3) If a Youth Allowance Employment Pathway Plan is in force in relation to a person, the Secretary may require the person to enter into another plan instead of the existing one.

Notice of requirement

(4) The Secretary is to give a person who is required to enter into a Youth Allowance Employment Pathway Plan notice of:

(a) the requirement; and

(b) the places and times, being places and times which are reasonable in all the circumstances, at which the plan is to be negotiated; and

(c) the effect of failure by the person to comply with the requirement.

Form of plan

(5) A Youth Allowance Employment Pathway Plan must be in a form approved by the Secretary.

544B Youth Allowance Employment Pathway Plans—terms

Suitable requirements

(1) Subject to sections 544C, 544D and 544DA, a Youth Allowance Employment Pathway Plan that is in force in relation to a person is to contain one or more terms (the ***requirements***) that:

(a) the person is required to comply with; and

(b) the Secretary regards as suitable for the person.

(1A) A plan must not contain a requirement of a kind that the Secretary determines under subsection (1B).

(1B) The Secretary must determine, by legislative instrument, kinds of requirements that plans must not contain.

(1C) To avoid doubt, a determination under subsection (1B) does not limit the Secretary's discretion to exclude other kinds of requirements from a particular plan under subsection (1).

Optional terms

(1D) A plan may also contain one or more terms that the person may, but is not required to, comply with.

Approval of requirements

(2) The requirements in a plan are to be approved by the Secretary.

(3) In considering whether to approve the requirements in a plan that will be in force in relation to a person, the Secretary is to have regard to:

(a) the person's capacity to comply with the requirements; and

(b) the person's needs.

(4) In having regard to a person's capacity to comply with the requirements in a plan, the Secretary is to take into account, but is not limited to the following matters:

(a) the person's education, experience, skills and age;

(aa) the impact of any disability, illness, mental condition or physical condition of the person on the person's ability to work, to look for work or to participate in training activities;

(b) the state of the local labour market and the transport options available to the person in accessing that market; and

(c) the participation opportunities available to the person; and

(d) the family and caring responsibilities of the person; and

(e) the length of travel time required to comply with the requirements; and

(f) the financial costs (such as travel costs) of complying with the requirements, and the person's capacity to pay for such costs; and

(g) any other matters that the Secretary or the person considers relevant in the circumstances.

Variation, suspension, cancellation and review

(5) A plan that is in force in relation to a person:

(a) may be varied (in negotiation with the person) or suspended by the Secretary; and

(b) must be cancelled by the Secretary if the person enters into another Youth Allowance Employment Pathway Plan; and

(c) may be reviewed from time to time by the Secretary at the request of the Secretary or the person; and

(d) may be cancelled by the Secretary after a review under paragraph (c).

Circumstances preventing or affecting compliance

(6) If a plan is in force in relation to a person, the person must notify the Secretary of any circumstances preventing or affecting the person's capacity to comply with the requirements in the plan.

OFFICIAL: Sensitive // Legal Privilege

Situations in which participation in an approved program of work for income support payment cannot be required

(7) A Youth Allowance Employment Pathway Plan that is in force in relation to a person must not require the person to participate in an approved program of work for income support payment if:

(a) the person is under 18 years of age; or

(b) the person is undertaking full-time study; or

(c) because of the application of one or more Modules of the Youth Allowance Rate Calculator in section 1067G, the person would receive or is receiving a youth allowance at a rate that has been reduced; or

(d) in the Secretary's opinion:

(i) it has been established that there is medical evidence that the person has an illness, disability or injury that would be aggravated by the conditions in which the work would be performed; or

(ii) performing the work in the conditions in which the work would be performed would constitute a risk to health or safety or would contravene a law of the Commonwealth, a State or a Territory relating to occupational health and safety; or

(e) the program of work requires the person to move from a home in one place to a home in another place.

Revocation of requirement to participate in an approved program of work

(7A) If a Youth Allowance Employment Pathway Plan that is in force in relation to a person requires the person to participate in an approved program of work for income support payment, the Secretary may, by notice given to the person, revoke the requirement to participate in the program if the Secretary:

(a) is satisfied that the person is undertaking full-time study; or

(b) is satisfied that the person is a person to whom paragraph (7)(c) applies; or

(c) forms the opinion that subparagraph (7)(d)(i) or (ii) applies in relation to the performance of that work by the person.

Activities that do not give rise to employment under certain industrial relations legislation

(8) A person is not to be taken to be one of the following merely because the person participates in an approved program of work for income support payment, or undertakes an activity (other than suitable paid work), in accordance with a term (including an optional term) of a Youth Allowance Employment Pathway Plan under this section:

(a) a worker carrying out work in any capacity for the Commonwealth, or an employee of the Commonwealth, for the purposes of the *Work Health and Safety Act 2011*;

(b) an employee within the meaning of section 5 of the *Safety, Rehabilitation and Compensation Act 1988*;

(c) an employee for the purposes of the *Superannuation Guarantee (Administration) Act 1992*;

(d) an employee for the purposes of the *Fair Work Act 2009*.

544C Youth Allowance Employment Pathway Plans—principal carers

(1) A Youth Allowance Employment Pathway Plan that:

(a) is in force in relation to a person who is the principal carer of at least one child; and

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

(b) requires the person to undertake, as an activity, looking for part-time paid work that the Secretary regards as suitable;

must require the person to undertake looking for such part-time work of at least the appropriate number of hours per week.

(2) The appropriate number of hours per week is:

(a) 15; or

(b) such other number as the Secretary determines to be appropriate having regard to the person's circumstances.

544D Youth Allowance Employment Pathway Plans—people with partial capacity to work

(1) A Youth Allowance Employment Pathway Plan that:

(a) is in force in relation to a person who has a partial capacity to work; and

Note: For ***partial capacity to work*** see section 16B.

(b) requires the person to undertake, as an activity, looking for part-time paid work that the Secretary regards as suitable;

must require the person to undertake looking for part-time work of at least the appropriate number of hours per week.

(2) The appropriate number of hours per week is:

(a) 15; or

(b) such other number as the Secretary determines to be appropriate having regard to the person's circumstances.

544DA Youth Allowance Employment Pathway Plans—early school leavers

(1) This section applies in relation to a Youth Allowance Employment Pathway Plan that is in force in relation to a person who is an early school leaver.

(2) Unless subsection (5) applies in relation to the person, the plan must require the person to undertake for at least the appropriate number of hours per week:

(a) one or more approved courses of training or education; or

(b) a combination of:

(i) one or more approved courses of training or education; and

(ii) one or more other activities that the Secretary considers suitable for the person.

(3) If subsection (5) applies in relation to the person, the plan must require the person to undertake, for at least the appropriate number of hours per week, one or more activities (other than an approved

course of training or education) that the Secretary considers suitable for the person.

(4) The appropriate number of hours per week is:

(a) 25; or

(b) such other number as the Secretary determines to be appropriate having regard to the person's circumstances.

(5) This subsection applies in relation to a person if:

(a) there is no locally accessible approved course of training or education (including any such course available by distance education); or

(b) where there is such a course:

(i) there is no place available on the course for the person; or

(ii) the person is not qualified to undertake the course; or

(iii) the person lacks capacity to undertake the course because he or she has a physical, psychiatric or intellectual disability or a learning disability such as attention deficit disorder; or

(c) in the Secretary's opinion, special circumstances exist that make it unreasonable to require the person to undertake an approved course of training or education.

(6) For the purposes of this section, a course is an ***approved course of training or education*** for a person if it:

(a) is a course of study or instruction determined under section 5D of the *Student Assistance Act 1973* as a secondary course or a tertiary course for the purposes of that Act; and

(b) would, in the Secretary's opinion, assist or allow the person to complete the final year of secondary school or an equivalent level of education.

(7) The Secretary may, by legislative instrument, set guidelines for the exercise of the Secretary's discretion under (either or both):

(a) paragraph (5)(c); and

(b) paragraph (6)(b).

OFFICIAL: Sensitive // Legal Privilege

~~(8) In forming an opinion for the purposes of paragraph (5)(c) or (6)(b), the Secretary must have regard to the guidelines.~~

~~544E Youth Allowance Employment Pathway Plans—suspension of plans for people with certain exemptions~~

~~A Youth Allowance Employment Pathway Plan that is in force in relation to a person is taken to be suspended during any period in respect of which the person:~~

~~(aa) has a death of partner exemption under section 542EA; or~~

~~(a) has a domestic violence or other special family circumstances exemption under section 542F; or~~

~~(b) has a disabled children or other family circumstances exemption under section 542FA.~~

Subdivision G—Miscellaneous

546 Prospective determinations for some allowance recipients

Recipients may qualify in advance in some cases

(1) A person is qualified for youth allowance for a period determined by the Secretary if:

(a) the person is receiving youth allowance; and

(b) the Secretary considers at the start of the period that:

(i) the person may reasonably be expected to satisfy the qualification requirements for youth allowance (see Subdivision A) during the period; and

(ii) it is reasonable to expect that youth allowance will be payable to the person for the period; and

(iii) the person will comply with this Act during the period; and

(c) except where the person is a CDEP Scheme participant in respect of the period, the person is not indebted at the start of the period to the Commonwealth under or as a result of:

(i) this Act; or

OFFICIAL: Sensitive // Legal Privilege

(ii) the *Student Assistance Act 1973* as in force immediately before the commencement of this section; and

(d) the Secretary is satisfied that the person should be qualified under this section for youth allowance for the period.

(2) The Minister, by legislative instrument:

(a) must determine guidelines for making decisions under paragraph (1)(b); and

(b) may revoke or vary the determination.

If the Minister revokes a determination, the Minister must determine guidelines that commence immediately after the revocation.

OFFICIAL: Sensitive // Legal Privilege

Division 2—Situations in which youth allowance is not payable

Subdivision A—Situations in which allowance not payable (general)

547 Youth allowance not payable if allowance rate nil

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

(2) Subsection (1) does not apply to a person if the person's rate would be nil merely because:

(a) an election by the person under subsection 915A(1) (about quarterly energy supplement) is in force; or

(b) an advance pharmaceutical allowance has been paid to the person under the social security law.

~~547AA Youth allowance not payable if person fails to attend interview etc. in certain circumstances~~

~~*General*~~

~~(1) A youth allowance is not payable to a person if:~~

~~(a) before or after the person made a claim for a youth allowance, the Department is contacted by or on behalf of the person in relation to a claim for a youth allowance; and~~

~~(b) as a result of the contact, the Department required the person to do one or both of the following:~~

~~(i) attend an interview with a specified person or organisation at a time and place specified in the requirement;~~

~~(ii) enter into a Youth Allowance Employment Pathway Plan; and~~

~~(c) the person fails to comply with that requirement, or those requirements; and~~

(d) the person is not undertaking full-time study and is not a new apprentice.

Note 1: For ***undertaking full-time study*** see section 541B.

Note 2: For ***new apprentice*** see subsection 23(1).

Secretary may decide that this section does not apply

(2) This section does not apply to a person if the Secretary is satisfied, in accordance with any guidelines under subsection (3), that it should not apply to the person.

(3) The Secretary may, by legislative instrument, make guidelines to be complied with in deciding under subsection (2) whether this section applies to a person.

When this section ceases to apply

(4) This section ceases to apply:

(a) when the person complies with:

(i) that requirement, or those requirements; or

(ii) any requirements that the Secretary has required the person to undertake in place of that requirement, or those requirements; or

(b) at such earlier time as the Secretary determines, in accordance with any guidelines under subsection (5).

(5) The Secretary may, by legislative instrument, make guidelines to be complied with in making determinations under paragraph (4)(b).

This section is unaffected by date of claim

(6) To avoid doubt, the fact that a person is taken, because of section 13 of the Administration Act, to have made a claim for a youth allowance on the day on which the Department was contacted by or on behalf of the person in relation to the claim does not affect the operation of this section.

547AB Situations where allowance not payable for failure to comply with certain requirements

A youth allowance is not payable to a person if the person refuses or fails, without reasonable excuse, to comply with a requirement made of the person under section 67, 68 or 192 of the Administration Act.

Subdivision AB—Assets test

547A Allowance not payable if assets value limit exceeded

A youth allowance is not payable to a person if:

(a) the person is not excluded from the application of the youth allowance assets test; and

(b) the value of the person's assets is more than the person's assets value limit.

Note 1: For persons excluded from application of test see section 547B.

Note 2: For ***assets value limit*** see section 547C.

547B Who is excluded from application of assets test?

A person is excluded from the application of the youth allowance assets test if the person is not independent.

547C Assets value limit

A person's ***assets value limit*** is:

(b) $250,000 if the person:

(ii) is not a member of a couple (see section 4); and

(iii) is a homeowner; or

(c) $450,000 if the person:

(ii) is not a member of a couple; and

(iii) is not a homeowner; or

(d) $375,000 if the person:

(ii) is a member of a couple; and
(iii) is a homeowner; or

(e) $575,000 if the person:
(ii) is a member of a couple; and
(iii) is not a homeowner.

Note 1: For ***homeowner*** see subsection 11(4).

Note 2: The amounts in paragraphs (b), (c), (d) and (e) are indexed annually on 1 July (see sections 1191 to 1194).

547D Value of person's assets to include value of assets of partner in certain circumstances

The value of a person's assets is the sum of the following values:
(a) the value of the person's assets (disregarding paragraph (b));
(b) if the person is a member of a couple (see section 4)—the value of the assets of the person's partner.

Subdivision C—Waiting periods

549 Waiting periods

(1) A youth allowance is not payable to a person who is qualified for youth allowance while the person is subject to a waiting period.

(2) For the purposes of this Part, a person may be subject to the following waiting periods:
(a) a liquid assets test waiting period (see sections 549A, 549B and 549C);
(aa) an ordinary waiting period (see sections 549CA and 549CB);
(b) a newly-arrived resident's waiting period (see sections 549D and 549E).

549A Liquid assets test waiting period

When person subject to liquid assets test waiting period—general

(1) Subject to this section, if:

OFFICIAL: Sensitive // Legal Privilege

(a) the value of a person's liquid assets is more than the person's maximum reserve on:

(i) the day on which the person becomes qualified for youth allowance; or

(ii) the day on which the person claims a youth allowance; and

(b) the person is not a transferee to a youth allowance;

the person is subject to a liquid assets test waiting period.

Note: For ***liquid assets*** and ***maximum reserve*** see section 14A.

Exception—person already subject to liquid assets test waiting period in previous 12 months

(2) Subsection (1) does not apply to a person if, at any time during the 12 months before:

(a) the day on which the person becomes qualified for youth allowance; or

(b) the day on which the person claims youth allowance;

the person:

(c) was subject to a liquid assets test waiting period under this Part and that period has ended; or

(d) has served a liquid assets test waiting period under another Part of this Act;

that started during that 12 months.

Exception—waiver for hardship

(3) If the Secretary is satisfied that a person is in severe financial hardship because the person has incurred unavoidable or reasonable expenditure while serving a liquid assets test waiting period, the Secretary may determine that the person does not have to serve the whole, or any part, of the waiting period.

Note 1: For ***in severe financial hardship*** see subsections 19C(2) (person who is not a member of a couple) and 19C(3) (person who is a member of a couple).

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

Exception—certain transferees to youth allowance

(4) Subsection (1) does not apply to a person if:
  (a) the person is a transferee to a youth allowance; and
  (b) the person claims the youth allowance within 14 days of the transfer day.

Exemption—person undertaking specified activity

(5) Subsection (1) does not apply to a person who:
  (a) is undertaking an activity specified in an instrument made under subsection (6); and
  (b) has been exempted from the application of subsection (1) by the Secretary.

(6) The Secretary may, by legislative instrument, specify activities for the purpose of paragraph (5)(a).

Exception—death of person's partner

(7) Subsection (1) does not apply to a person if:
  (a) the person makes a claim for youth allowance on or after the commencement of this subsection; and
  (b) the person makes the claim after the death of the person's partner on or after the commencement of this subsection; and
  (c) if the person is a man or a woman who was not pregnant when her partner died—the person makes the claim in the period of 14 weeks starting on the day of the death of the partner; and
  (d) if the person is a woman who was pregnant when her partner died—the person makes the claim:
    (i) in the period of 14 weeks starting on the day of the death of the partner; or
    (ii) in the period starting on the day of the death of the partner and ending when the child is born or the woman otherwise stops being pregnant;

  whichever ends later.

OFFICIAL: Sensitive // Legal Privilege

549B Start of liquid assets test waiting period

General

(1) The liquid assets test waiting period of a person who does not have a temporary incapacity exemption starts on the day on which the person became qualified for youth allowance.

Person has temporary incapacity exemption

(2) If a person has a temporary incapacity exemption, the person's liquid assets test waiting period starts on the day on which the person became incapacitated.

549C Length of liquid assets test waiting period

Number of weeks

(1) A person's liquid assets test waiting period is:
  (a) if the result obtained under subsection (2) is 13 or more whole weeks—13 weeks; or
  (b) if the result obtained under subsection (2) is fewer than 13 whole weeks—the number of whole weeks obtained under that subsection.

Working out number of weeks

(2) Subject to subsection (3), the number of weeks is worked out by using the following formula:

$$\frac{\text{Liquid assets} - \text{Maximum reserve amount}}{\text{Divisor}}$$

where:

divisor, in relation to the person, means:
  (a) if the person is not a member of a couple and does not have a dependent child—$500; or
  (b) otherwise—$1,000.

liquid assets means the person's liquid assets on the day referred to in subparagraph 549A(1)(a)(i) or (ii) (as the case requires).

maximum reserve amount means the maximum reserve in relation to the person under subsection 14A(1).

Weeks etc. to be disregarded

(3) For the purposes of subsection (2), disregard:
  (a) any weeks after the person claimed youth allowance during which the person was not qualified for youth allowance; and
  (b) any fractions of a week.

549CA Ordinary waiting period

(1) This section applies if a person is qualified for a youth allowance, where ~~neither section 540AA (about new apprentices) nor paragraph 541(1)(a) (about full-time study) applies~~neither subparagraph 540(1)(a)(i) (about full-time study) nor section 540AA (about new apprentices) applies.

(2) Subject to subsections (3), (5) and (6), the person is subject to an ordinary waiting period unless:
  (a) at some time in the 13 weeks immediately before the person's start day (worked out disregarding clauses 4A, 4B and 5 of Schedule 2 to the Administration Act), the person received an income support payment; or
  (b) the Secretary is satisfied that the person is experiencing a personal financial crisis; or
  (c) on the day before the day the person qualified for the youth allowance mentioned in subsection (1), the person was qualified for a youth allowance where ~~section 540AA or paragraph 541(1)(a) applied~~subparagraph 540(1)(a)(i) or section 540AA applied.

Note 1: For ***income support payment*** see subsection 23(1).

Note 2: For ***experiencing a personal financial crisis*** see section 19DA.

(3) Subsection (2) does not apply to a person who:

OFFICIAL: Sensitive // Legal Privilege

(a) is undertaking an activity specified in an instrument made under subsection (4); and

(b) has been exempted from the application of subsection (2) by the Secretary.

(4) The Secretary may, by legislative instrument, specify activities for the purpose of paragraph (3)(a).

(5) Subsection (2) does not apply to a person if:

(a) the person makes a claim for youth allowance on or after the commencement of this subsection; and

(b) the person makes the claim after the death of the person's partner on or after the commencement of this subsection; and

(c) if the person is a man or a woman who was not pregnant when her partner died—the person makes the claim in the period of 14 weeks starting on the day of the death of the partner; and

(d) if the person is a woman who was pregnant when her partner died—the person makes the claim:

(i) in the period of 14 weeks starting on the day of the death of the partner; or

(ii) in the period starting on the day of the death of the partner and ending when the child is born or the woman otherwise stops being pregnant;

whichever ends later.

(6) If a person makes a claim for youth allowance during the period beginning on 1 April 2021 and ending at the end of 30 June 2021, then, despite subsection (2), the person is not subject to the whole of the ordinary waiting period.

549CB Duration of ordinary waiting period

(1) Subject to subsections (2) and (4), if a person is subject to an ordinary waiting period, the ordinary waiting period is the period of 7 days that starts on the person's start day (worked out disregarding clauses 4A, 4B and 5 of Schedule 2 to the Administration Act).

(2) Subject to subsection (4), if:

(a) a person is subject to an ordinary waiting period; and

(b) apart from this subsection, the ordinary waiting period would be the period of 7 days that starts on the person's start day (worked out disregarding clauses 4A, 4B and 5 of Schedule 2 to the Administration Act); and

(c) that start day falls within one or more of the following periods (each of which is an ***exclusion period***) that the person is subject to:

(i) a liquid assets test waiting period;

(ii) a newly arrived resident's waiting period;

(iii) a seasonal work preclusion period;

(iv) a lump sum preclusion period under Part 3.14;

(v) an income maintenance period, where the person's rate of youth allowance on that start day would be nil;

then the ordinary waiting period is the period of 7 days that starts on the first day after all the exclusion periods have ended.

(3) If:

(a) subparagraph (2)(c)(v) applies to a person; and

(b) on a day in that income maintenance period, the person's rate of youth allowance would be greater than nil if youth allowance were payable to the person on that day;

then, for the purposes of subsection (2), that income maintenance period is taken to have ended at the end of the day before that day.

(4) If:

(a) a person qualifies for a social security payment (other than youth allowance); and

(b) because the person is subject to an ordinary waiting period relating to that payment, that payment is not payable to the person for a period starting on a particular day (the ***initial day***); and

(c) during that period the person:

(i) ceases to be qualified for that payment; and

(ii) claims youth allowance and is qualified for youth allowance, where ~~neither section 540AA (about new apprentices) nor paragraph 541(1)(a) (about full-time study) applies~~neither subparagraph 540(1)(a)(i) (about full-time study) nor section 540AA (about new apprentices) applies;

the person's ordinary waiting period relating to that youth allowance is the period of 7 days that starts on the initial day.

Note: Ordinary waiting periods apply to parenting payment, youth allowance and jobseeker payment.

549D Newly arrived resident's waiting period

Basic rule

(1) Subject to this section, a person is subject to a newly arrived resident's waiting period if the person:

(a) has entered Australia; and

(b) has not been an Australian resident in Australia for a period of, or periods totalling, 208 weeks.

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

Exception—qualifying residence exemption

(2) Subsection (1) does not apply to a person who has a qualifying residence exemption for a youth allowance.

Note: For ***qualifying residence exemption*** in relation to youth allowance, see paragraph 7(6AA)(f).

Exception—lone parent

(6) Subsection (1) does not apply to a person if the person:

(a) is the principal carer of one or more children; and

(b) is not a member of a couple; and

(c) is not undertaking full-time study; and

(d) is not a new apprentice; and

(e) was not a lone parent at the start of the person's current period as an Australian resident.

Note 1: For ***principal carer*** see subsections 5(15) to (24).

Note 2: For ***undertaking full-time study*** see section 541B.

Note 3: For ***new apprentice*** see subsection 23(1).

Note 4: For ***lone parent*** and ***current period as an Australian resident*** see subsection 23(1).

Exception—other

(7) Subsection (1) does not apply to a person if:

(a) the person is a refugee, or a former refugee, at the time the person made the claim for a youth allowance; or

(b) the following apply:

(i) before the person made the claim for a youth allowance, the person was a family member of another person at the time the other person became a refugee;

(ii) the person is a family member of that other person at the time the person made the claim for a youth allowance or, if that other person has died, the person was a family member of that other person immediately before that other person died; or

(c) the person is an Australian citizen at the time the person made the claim for a youth allowance.

(8) For the purposes of subsection (7):

(a) ***family member*** has the meaning given by subsection 7(6D); and

(b) ***former refugee*** has the meaning given by subsection 7(1); and

(c) ***refugee*** has the meaning given by subsection 7(6B).

549E Length of newly arrived resident's waiting period

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

OFFICIAL: Sensitive // Legal Privilege

(a) starts on the day the person first became an Australian resident; and

(b) ends when the person has been an Australian resident in Australia for a period of, or periods totalling, 208 weeks after that day.

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

549F Effect of being subject to multiple waiting periods

For the avoidance of doubt, if a person is subject to 2 or more waiting periods under this Subdivision, a youth allowance is not payable to the person until all of those waiting periods have ended.

Subdivision D—Situations where allowance not payable because of youth allowance participation failure

549G Application of Subdivision

This Subdivision applies to a person only if the person is undertaking full-time study (see section 541B).

Note: If the person is not undertaking full-time study, Division 3AA or 3A of Part 3 of the Administration Act might apply.

550 Youth allowance participation failures

Meaning of youth participation failure

(1) A person commits a ***youth allowance participation failure*** if the person:

(a) fails to comply with a requirement:

(i) that was notified to the person under subsection 63(2) or (4) of the Administration Act; and

(ii) that was reasonable; and

(iii) the notification of which included a statement to the effect that a failure to comply with the requirement could constitute a youth allowance participation failure; or

~~(b) fails to satisfy the activity test; or~~

(b) ceases to undertake full-time study and is not exempt from undertaking full-time study (see Subdivision C of Division 1); or

(k) fails to comply with a requirement to undertake another activity referred to in paragraph 550B(1)(b).

Reasonable excuse

(2) Despite subsection (1), a failure of a kind referred to in that subsection is not a youth allowance participation failure if the person satisfies the Secretary that the person had a reasonable excuse for the failure.

(2A) The Secretary must, by legislative instrument, determine matters that the Secretary must take into account in deciding whether, for the purposes of subsection (2), a person had a reasonable excuse for committing a youth allowance participation failure.

(2B) To avoid doubt, a determination under subsection (2A) does not limit the matters that the Secretary may take into account in deciding whether, for the purposes of subsection (2), a person had a reasonable excuse for committing the youth allowance participation failure referred to in subsection (1).

Subsequent failures in the same instalment period

(3) Despite subsection (1), if a failure of a kind referred to in that subsection occurs in an instalment period of the person in which the person has already committed a youth allowance participation failure, the failure is not a youth allowance participation failure if:

(a) the instalment period is the person's first instalment period for youth allowance; or

(b) the instalment period is not the person's first instalment period for youth allowance, and:

(i) the person did not commit a youth allowance participation failure in the immediately preceding instalment period of the person; or

OFFICIAL: Sensitive // Legal Privilege

(ii) in respect of each youth allowance participation failure that the person committed in the immediately preceding instalment period of the person, the person acted in accordance with a requirement of the Secretary notified in respect of that failure.

~~*Failures covered by section 547AA*~~

~~(4) Despite subsection (1), a failure of a kind referred to in that subsection is not a youth allowance participation failure if it results in youth allowance not being payable to the person under section 547AA.~~

New apprentices

(6) Subsection (1) does not apply to a failure if the person is a new apprentice.

Note: For ***new apprentice*** see subsection 23(1).

550B Allowance not payable because of youth allowance participation failure

General

(1) A youth allowance is not payable to a person, for the period starting in accordance with section 550C and ending in accordance with section 550D, if:

(a) the person commits a youth allowance participation failure; and

(b) the Secretary requires the person:

(i) to comply with the requirement, or undertake the activity, to which the youth allowance participation failure relates; or

(ii) to comply with a particular requirement, or undertake a particular activity, in place of the requirement or activity to which the failure relates;

during the participation failure instalment period for the failure, or at a particular time during that period; and

(c) the person fails to comply with the requirement.

Reasonable excuse etc.

(2) This section does not apply in relation to the failure if:
(a) the Secretary is satisfied that the person had a reasonable excuse for the failure referred to paragraph (1)(c); or
(b) the Secretary is for any other reason satisfied that subsection (1) should not apply to the failure.

(2A) The Secretary must, by legislative instrument, determine matters that the Secretary must take into account in deciding whether, for the purposes of paragraph (2)(a), a person had a reasonable excuse for a failure of a kind referred to in paragraph (1)(c).

(2B) To avoid doubt, a determination under subsection (2A) does not limit the matters that the Secretary may take into account in deciding whether, for the purposes of paragraph (2)(a), a person had a reasonable excuse for the failure referred to in paragraph (1)(c).

*Meaning of **participation failure instalment period***

(3) The ***participation failure instalment period*** for the youth allowance participation failure is the next instalment period of the person to start after the day on which the Secretary first became aware that the person committed the failure.

Failures covered by section 551

(4) This section does not apply to a youth allowance participation failure if section 551 applies to the failure.

550C When the period of non-payment starts

The period for which youth allowance is not payable to the person because of section 550B is taken to have started at the start of the participation failure instalment period for the youth allowance participation failure.

OFFICIAL: Sensitive // Legal Privilege

550D When the period of non-payment ends

The period for which youth allowance is not payable to the person because of section 550B ends when:

(a) in accordance with a requirement of the Secretary that the person comply with the requirement, or undertake the activity, to which the youth allowance participation failure related, the person has complied with the requirement or undertaken the activity; or

(b) in accordance with a requirement of the Secretary that the person undertake another activity in place of the requirement or activity to which the youth allowance participation failure related, the person has undertaken the other activity; or

(c) in accordance with a requirement of the Secretary that the person comply with another requirement in place of the requirement or activity to which the youth allowance participation failure related, the person has complied with the other requirement.

Subdivision E—Situations where allowance not payable because of repeated failure

550E Application of Subdivision

This Subdivision applies to a person only if the person is undertaking full-time study (see section 541B).

Note: If the person is not undertaking full-time study, Division 3AA or 3A of Part 3 of the Administration Act might apply.

551 Allowance not payable because of repeated failure

General

(1) A youth allowance is not payable to a person, for the period of 8 weeks starting in accordance with section 551A, if the person commits a youth allowance participation failure (the ***repeated failure***), having committed youth allowance participation failures

OFFICIAL: Sensitive // Legal Privilege

(the ***earlier failures***) on 2 or more other occasions during the period of 12 months preceding that failure.

Reasonable excuse etc.

(2) Disregard any earlier failure that is a failure to which subsection 550B(1) does not apply because of subsection 550B(2).

(3) Subsection (1) does not apply in relation to the repeated failure if the Secretary is for any other reason satisfied that subsection (1) should not apply to the failure.

551A When the period of non-payment starts

The period for which youth allowance is not payable to the person because of subsection 551(1) is taken to start, or to have started:

(a) if the repeated failure occurs during a participation failure instalment period for an earlier failure—at the start of the participation failure instalment period for the earlier failure; or

(b) otherwise—at the start of the next instalment period of the person to start after the day on which the Secretary first became aware that the person committed the failure.

Note: For ***participation failure instalment period*** see subsection 550B(3).

Subdivision F—Multiple entitlement exclusions

552 Multiple entitlement exclusions

(1) Youth allowance is not payable to a person who is qualified for youth allowance while the person is subject to a multiple entitlement exclusion.

(2) For the purposes of this Division, a person is subject to a multiple entitlement exclusion if:

(a) the person is receiving a youth allowance and another social security benefit, a social security pension, a service pension,

income support supplement or a veteran payment becomes payable to the person; or

(b) a payment under a scheme referred to in section 552A has been or may be made to the person or to someone else in respect of the person; or

(c) an assurance of support applies to the person.

(3) Youth allowance is not payable to a person if:

(a) the person is an armed services widow or an armed services widower; and

(b) the person is receiving the weekly amount mentioned in paragraph 234(1)(b) of the MRCA (including a reduced weekly amount because of a choice under section 236 of the MRCA) or has received a lump sum mentioned in subsection 236(5) of the MRCA.

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

Note 2: For ***MRCA*** see subsection 23(1).

552A Person receiving payment under certain schemes

General

(1) Subject to subsection (2), the schemes for the purposes of paragraph 552(2)(b) are:

(a) a prescribed educational scheme other than the ABSTUDY Scheme to the extent that it applies to part-time students; and

(aa) the Assistance for Isolated Children Scheme; and

(b) the scheme to provide an allowance known as the Maintenance Allowance for Refugees; and

(c) the scheme to provide an allowance known as the Adult Migrant Education Program Living Allowance; and

(d) the scheme to provide an allowance known as the English as a Second Language Allowance to the extent that the scheme applies to full-time students; and

(e) the scheme known as the Ready Reserve Education Assistance Scheme; and

(f) the scheme to provide an allowance known as the Living Away from Home Allowance.

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

Application made under ABSTUDY Scheme

(2) If:

(a) a person is undertaking full-time study in respect of a course of education that is to last for 6 months or more; and

(b) an application is made for a payment in respect of the person under the ABSTUDY Scheme; and

(c) the person was receiving youth allowance immediately before the start of the course;

the Secretary may decide that the person is not subject to a multiple entitlement exclusion, because of subsection (1), before:

(d) the application is determined; or

(e) the end of the period of 3 weeks beginning on the day on which the course starts;

whichever happens first.

552B Assurance of support

An assurance of support applies to a person if:

(a) an assurance of support is in force in respect of the person (***assuree***); and

(b) the person who gave the assurance was willing and able to provide an adequate level of support to the assuree; and

(c) it was reasonable for the assuree to accept that support.

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

552C Maximum basic rate and remote area allowance not payable to CDEP Scheme participant

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

Note 1: For ***remote area allowance*** see Module K of the Youth Allowance Rate Calculator.

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

Subdivision G—Employment-related exclusions

553 Employment-related exclusions

(1) Youth allowance is not payable to a person who is qualified for youth allowance while the person is subject to an employment-related exclusion.

(2) For the purposes of this Division, a person is subject to an employment-related exclusion:

(a) if the person is not undertaking full-time study and is not a new apprentice—while one or more of sections 553A to 553C apply to the person; or

(b) if the person is undertaking full-time study or is a new apprentice—while section 553C applies to the person.

Note 1: For ***undertaking full-time study*** see section 541B.

Note 2: For ***new apprentice*** see subsection 23(1).

553A Unemployment due to industrial action

Engaged in industrial action

(1) Subject to subsection (2), a person who is unemployed is subject to an employment-related exclusion unless the person satisfies the Secretary that the person's unemployment was not due to the person being, or having been, engaged in industrial action or in a series of industrial actions.

Other people engaged in industrial action

(2) If:

(a) a person's unemployment was due to other people being, or having been, engaged in industrial action or in a series of industrial actions; and

(b) the people, or some of the people, were members of a trade union that was involved in the industrial action;

the person is subject to an employment-related exclusion unless the person satisfies the Secretary that the person was not a member of the trade union during the person's period of unemployment.

Length of employment-related exclusion

(3) Subject to subsection (4), the employment-related exclusion to which a person is subject under subsection (1) or (2) ends when the industrial action or series of industrial actions stop.

Industrial action etc. in breach of order, direction or injunction

(4) Where the industrial action or series of industrial actions concerned is in breach of an order, direction or injunction issued by:

(a) a prescribed State industrial authority within the meaning of the *Fair Work Act 2009*; or

(b) the Fair Work Commission or the Australian Industrial Relations Commission; or

(c) the Federal Court of Australia; or

(d) the Federal Circuit Court of Australia;

the person's employment-related exclusion under subsection (1) or (2) of this section ends 6 weeks after the day on which the industrial action or series of industrial actions stop.

Note: For ***industrial action***, ***trade union*** and ***unemployment*** see section 16.

553B Move to area of lower employment prospects

(1) Subject to subsection (1B), if the Secretary considers that a person has reduced his or her employment prospects by moving to a new

OFFICIAL: Sensitive // Legal Privilege

place of residence without sufficient reason, the person is subject to an employment-related exclusion for a period of 26 weeks.

(1A) Subsection (1) extends to a person who makes a claim for youth allowance on or after the day on which the person moved to the new place of residence and before the end of the period referred to in that subsection.

(1B) If a person who is subject to an employment-related exclusion under subsection (1) (including that subsection as it applies by subsection (1A)) does either of the following during the period of the exclusion:

(a) moves back to the place of residence (the ***original place of residence***) the movement from which made him or her subject to the exclusion;

(b) moves to another place of residence a movement to which from the original place of residence would not have made him or her subject to the exclusion;

the period of the exclusion ends at the time of the movement back to the original place of residence or the movement to the other place of residence, as the case may be.

Exemption for person undertaking specified activity

(2) Subsection (1) does not apply to a person who:

(a) is undertaking an activity specified in an instrument made under subsection (2A); and

(b) has been exempted from the application of subsection (1) by the Secretary.

(2A) The Secretary may, by legislative instrument, specify activities for the purpose of paragraph (2)(a).

Sufficient reason for moving

(3) For the purposes of subsection (1), a person has a sufficient reason for moving to a new place of residence if, and only if, the person:

(a) moves to live with a family member who has already established his or her residence in that place of residence; or

(b) moves to live near a family member who has already established residence in the same area; or

(c) is receiving youth allowance at the rate that applies to a person who:

(i) is not independent; and

(ii) lives at home;

and moves to accompany his or her parents who wish to establish, or have established, a place of residence; or

(d) satisfies the Secretary that the move is necessary for the purposes of treating or alleviating a disease or illness suffered by the person or by a family member; or

(e) satisfies the Secretary that the person has moved from his or her original place of residence because of an extreme circumstance which made it reasonable for the person to move to the new place of residence (for example, the person had been subjected to domestic or family violence in the original place of residence).

Note 1: For ***independent*** see section 1067A.

Note 2: For parent see subsection 5(1), paragraph (b) of the definition of ***parent***.

Note 3: For ***family member*** see subsection 23(1).

Secretary may determine when period begins

(4) The Secretary may determine in writing the day on which the period referred to in subsection (1) begins. The day may be before the day of the determination.

Living away from home

(5) A person lives away from home for the purposes of this section if he or she lives away from home for the purposes of Part 3.5.

OFFICIAL: Sensitive // Legal Privilege

553C Seasonal workers

Application

(1) This section applies if, at any time during the 6 months immediately before the day on which a person lodges a claim for youth allowance, the person, or, if the person is a member of a couple, the person or the person's partner, has been engaged in seasonal work.

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

Exclusion during seasonal work preclusion period

(2) The person is subject to an employment-related exclusion:

(a) if the person is subject to a seasonal work preclusion period (whether in relation to the claim referred to in subsection (1) or any other claim under this Act) and the Secretary has not made a determination under subsection (3) in relation to the person—for the person's seasonal work preclusion period; or

(b) if the Secretary has made a determination under subsection (3) in relation to the person—for that part (if any) of the person's seasonal work preclusion period to which the person is subject as a result of the determination.

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

Exemption in cases of severe financial hardship

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

(a) the Secretary may determine that the person is not subject to the whole, or any part, of the preclusion period; and

(b) the determination has effect accordingly.

Note 1: For ***in severe financial hardship*** see subsection 19C(2) (person who is not a member of a couple) and subsection 19C(3) (person who is a member of a couple).

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

Exemption for person undertaking specified activity

(4) Subsection (2) does not apply to a person who:
  (a) is undertaking an activity specified in an instrument made under subsection (5); and
  (b) has been exempted from the application of subsection (2) by the Secretary.

(5) The Secretary may, by legislative instrument, specify activities for the purpose of paragraph (4)(a).

Exemption for death of person's partner

(6) Subsection (2) does not apply to a person if:
  (a) the person makes a claim for youth allowance on or after the commencement of this subsection; and
  (b) the person makes the claim after the death of the person's partner on or after the commencement of this subsection; and
  (c) if the person is a man or a woman who was not pregnant when her partner died—the person makes the claim in the period of 14 weeks starting on the day of the death of the partner; and
  (d) if the person is a woman who was pregnant when her partner died—the person makes the claim:
    (i) in the period of 14 weeks starting on the day of the death of the partner; or
    (ii) in the period starting on the day of the death of the partner and ending when the child is born or the woman otherwise stops being pregnant;

  whichever ends later.

OFFICIAL: Sensitive // Legal Privilege

Division 5—Rate of youth allowance

556 How to work out a person's youth allowance rate

Subject to this section, the rate of a person's youth allowance is to be worked out in accordance with the Youth Allowance Rate Calculator in section 1067G.

~~**556A Approved program of work supplement**~~

~~If a person:~~

~~(a) is receiving youth allowance; and~~

~~(b) is participating in an approved program of work for income support payment;~~

~~the rate of the person's youth allowance is increased by an amount of $20.80, to be known as the approved program of work supplement, for each fortnight during which the person participates in the program unless, during that fortnight, the person ceases to participate in the program in circumstances that constitute:~~

~~(c) a failure of the activity test to which the person is subject; or~~

~~(d) a failure to comply with a requirement in a Youth Allowance Employment Pathway Plan that is in force in relation to the person.~~

556A Approved program of work supplement

If a person:

(a) is receiving youth allowance; and

(b) is participating in an approved program of work for income support payment;

the rate of the person's youth allowance is increased by an amount of $20.80, to be known as the approved program of work supplement, for each fortnight during which the person participates in the program.

~~**556B National Green Jobs Corps supplement**~~

~~(1) This section applies if a person:~~

~~(a) is receiving youth allowance; and~~

~~(b) is only qualified for youth allowance under section 540; and~~

~~(c) satisfies the Secretary that the person is not undertaking full-time study (see section 541B); and~~

~~(d) has reached 17 years of age; and~~

~~(e) is participating in the National Green Jobs Corps program; and~~

~~(f) started participating in that program before 2012.~~

~~(2) The rate of the person's youth allowance is increased by an amount of $41.60 (to be known as a National Green Jobs Corps supplement) for each fortnight during which the person participates in the National Green Jobs Corps program.~~

~~(3) However, a National Green Jobs Corps supplement is not payable for a fortnight during which the person participates in the National Green Jobs Corps program if:~~

~~(a) a Youth Allowance Employment Pathway Plan is in force in relation to the person; and~~

~~(b) during the fortnight, the person ceases to participate in that program in circumstances that constitute a failure to comply with the plan.~~

559J CDEP Scheme participant may accumulate youth allowance

(1) A person who is a CDEP Scheme participant in respect of the whole or a part of a quarter may, by written notice given to the Secretary, choose to accumulate the amounts of any youth allowance that become payable to the person in respect of that quarter, or any later quarter in respect of the whole or a part of which the person is a CDEP Scheme participant, and have not already been paid.

(2) If a person to whom subsection (1) applies makes a choice under that subsection, the sum of the accumulated amounts payable to the

person in respect of a quarter is to be paid on, or as soon as practicable after, the first payday after:

(a) unless paragraph (b) applies, the last day of the quarter; or

(b) if the person ceases to be a CDEP Scheme participant before the end of the quarter—the day on which the person so ceases.

(3) In this section:

quarter means a CDEP Scheme quarter.

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

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

OFFICIAL: Sensitive // Legal Privilege

Division 10—Bereavement payments

Subdivision A—Ongoing payments for death of partner

567 Qualification for payments under this Subdivision

Qualification for payment

(1) If:

(a) a person is receiving youth allowance; and

(b) the person is a long-term social security recipient; and

(c) the person is a member of a couple; and

(d) the person's partner dies; and

(e) immediately before the partner died, the partner:

(i) was receiving a social security pension; or

(ii) was receiving a service pension, income support supplement or a veteran payment; or

(iii) was a long-term social security recipient; and

(f) on the person's payday immediately before the first available bereavement adjustment payday, the amount that would be payable to the person if the person were not qualified for payments under this Subdivision is less than the sum of:

(i) the amount that would otherwise be payable to the person under section 567C (person's continued rate) on that payday; and

(ii) the amount (if any) that would otherwise be payable to the person under section 567A (continued payment of partner's pension or benefit) on the partner's payday immediately before the first available bereavement adjustment payday;

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

Note 1: Section 567A provides for the payment to the person, up to the first available bereavement adjustment payday, of amounts equal to the instalments that would have been paid to the person's partner during that period if the partner had not died.

OFFICIAL: Sensitive // Legal Privilege

Note 2: Section 567B provides for a lump sum that represents the instalments that would have been paid to the person's partner, between the first available bereavement adjustment payday and the end of the bereavement period, if the partner had not died.

Note 3: For ***first available bereavement adjustment payday*** and ***bereavement period*** see section 21.

Choice not to receive payments

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

Note: By making such a choice, the person may qualify for a payment under Subdivision AA.

Form of choice

(3) A choice under subsection (2):
(a) must be made by written notice to the Secretary; and
(b) may be made after the person has been paid an amount or amounts under this Subdivision; and
(c) cannot be withdrawn after the Department has taken all the action required to give effect to that choice.

Rate during bereavement period

(4) If a person is qualified for payments under this Subdivision in relation to the partner's death, the rate at which youth allowance is payable to the person during the bereavement period is, unless the person has made a choice under subsection (2), governed by section 567C.

567A Continued payment of partner's pension or benefit

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

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

567B Lump sum payable in some circumstances

If:

(a) a person is qualified for payments under this Subdivision in relation to the death of the person's partner; and

(b) the first available bereavement adjustment payday occurs before the end of the bereavement period;

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

Lump sum calculator

Method statement

Step 1. Add up:

(a) the amount that, if the person's partner had not died, would have been payable to the person on the person's payday immediately before the first available bereavement adjustment payday; and

(b) the amount (if any) that, if the partner had not died, would have been payable to the partner on the partner's payday immediately before the first available bereavement adjustment payday;

the result is the ***combined rate***.

Step 2. Work out the amount that, apart from section 567C, would have been payable to the person on the person's payday immediately before the first available bereavement adjustment payday: the result is the ***person's individual rate***.

Step 3.	Take the person's individual rate away from the combined rate: the result is the ***partner's instalment component***.
Step 4.	Work out the number of the partner's paydays in the ***bereavement lump sum period***.
Step 5.	Multiply the partner's instalment component by the number obtained in Step 4: the result is the amount of the lump sum payable to the person under this section.

567C Adjustment of person's youth allowance rate

If:

(a) a person is qualified for payments under this Subdivision; and

(b) the person does not elect under subsection 567(2) not to receive payments under this Subdivision;

the rate of the person's youth allowance during the bereavement period is worked out as follows:

(c) during the bereavement rate continuation period, the rate of youth allowance payable to the person is the rate at which the allowance would have been payable to the person if the person's partner had not died;

(d) during the bereavement lump sum period (if any), the rate at which youth allowance is payable to the person is the rate at which the allowance would be payable to the person apart from this Subdivision.

567D Effect of death of person entitled to payments under this Subdivision

If:

(a) a person is qualified for payments under this Subdivision in relation to the death of the person's partner; and

(b) the person dies within the bereavement period; and

(c) the Secretary does not become aware of the death of the person's partner before the person dies;

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

Lump sum calculator

Method statement

Step 1. Add up:

(a) the amount that, if neither the person nor the person's partner had died, would have been payable to the person on the person's payday immediately after the day on which the person dies; and

(b) the amount (if any) that, if neither the person nor the person's partner had died, would have been payable to the person's partner on the partner's payday immediately after the day on which the person died;

the result is the ***combined rate***.

Step 2. Work out the amount that, apart from section 567C, would have been payable to the person on the person's payday immediately after the day on which the person died if the person had not died: the result is the ***person's individual rate***.

Step 3. Take the person's individual rate away from the combined rate: the result is the ***partner's instalment component***.

Step 4.	Work out the number of paydays of the partner in the period that begins on the day on which the person dies and ends on the day on which the bereavement period ends.
Step 5.	Multiply the partner's instalment component by the number obtained in Step 4: the result is the amount of the lump sum payable under this section.

567E Matters affecting payments under this Subdivision

Recovery/reduction of amount payable

(1) If:

(a) a person is qualified for payments under this Subdivision in relation to the death of the person's partner; and

(b) after the person's partner died, an amount to which the partner would have been entitled if the partner had not died has been paid under this Act or under Part III or IIIA of the Veterans' Entitlements Act; and

(c) the Secretary is not satisfied that the person has not had the benefit of that amount;

the following provisions have effect:

(d) the amount referred to in paragraph (b) is not recoverable from the person or from the personal representative of the person's partner, except to the extent (if any) that the amount is more than the amount payable to the person under this Subdivision;

(e) the amount payable to the person under this Subdivision is to be reduced by the amount referred to in paragraph (b).

Bank not liable

(2) If:

(a) a person is qualified for payments under this Subdivision in relation to the death of the person's partner; and

(b) the amount to which the person's partner would have been entitled if the person's partner had not died has been paid under this Act or under Part III or IIIA of the Veterans' Entitlements Act, within the bereavement period, into an account with a bank; and

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

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

567F Calculation of bereavement payment in respect of former CDEP Scheme participant

If a benefit becomes payable under this Subdivision in respect of a person who was a CDEP Scheme participant in respect of the day on which the benefit becomes payable, the amount of the benefit is to be the amount that would have been the amount of the benefit if section 552C had not been enacted.

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

Subdivision AA—One-off payment for death of partner

567FA Qualification for payment under this Subdivision

A person is qualified for a lump sum payment under this Subdivision if:

(a) the person is qualified for youth allowance on a day (the ***relevant day***); and

(b) youth allowance is payable to the person on the relevant day; and

(c) on or before the relevant day but after the commencement of this section, the person was a member of a couple and stopped being a member of a couple because the person's partner died; and

(d) the person is not a member of a couple on the relevant day; and

(e) when the person's partner died, both the person and the person's partner were Australian residents; and

(f) if the person is a man or a woman who was not pregnant when her partner died—the relevant day occurs in the period of 14 weeks starting on the day of the death of the partner; and

(g) if the person is a woman who was pregnant when her partner died—the relevant day occurs:

(i) in the period of 14 weeks starting on the day of the death of the partner; or

(ii) in the period (the ***relevant period***) starting on the day of the death of the partner and ending when the child is born or the woman otherwise stops being pregnant;

whichever ends later; and

(h) the relevant day is the day that the person first notifies the Secretary of the person's partner's death; and

(i) if the person is qualified for payments under section 567 in respect of the person's partner's death—the person has made a choice under subsection 567(2).

567FB Amount of payment

(1) The amount of the person's payment is worked out using the following formula (except if paragraph 567FA(g) applies in relation to the person):

$$\text{Daily rate of person's youth allowance on the relevant day} \times 14 \times 7$$

(2) If subparagraph 567FA(g)(i) applies in relation to the person, the amount of the person's payment is worked out using the following formula:

$$\left[\text{Daily rate of person's youth allowance on the relevant day} \times 14 \times 3\right] + \$2{,}000$$

(3) If subparagraph 567FA(g)(ii) applies in relation to the person, the amount of the person's payment is worked out using the following formula:

$$\left[\text{Daily rate of person's youth allowance on the relevant day} \times 14 \times 3\right] + \text{Additional amount}$$

where:

additional amount means the amount worked out in accordance with the following table:

Additional amount

Item	If the relevant period is:	the additional amount is:
1	More than 14 weeks but not more than 16 weeks	$2,250
2	More than 16 weeks but not more than 18 weeks	$2,700
3	More than 18 weeks but not more than 20 weeks	$3,150
4	More than 20 weeks but not more than 22 weeks	$3,550
5	More than 22 weeks but not more than 24 weeks	$4,000
6	More than 24 weeks but not more than 26 weeks	$4,450
7	More than 26 weeks but not more than 28 weeks	$4,900
8	More than 28 weeks but not more than 30 weeks	$5,350
9	More than 30 weeks but not more than 32 weeks	$5,800
10	More than 32 weeks	$6,250

Subdivision B—Continuation of youth allowance rate after death of child

567G Death of child—continuation of youth allowance rate for 14 weeks

If:

(a) a person is receiving youth allowance; and

(b) the person is the principal carer of a child who dies; and

(c) the person is not undertaking full-time study and is not a new apprentice; and

(d) apart from this section, the person's rate of youth allowance would be reduced because the person is no longer the child's principal carer;

the person's rate of youth allowance, during the period of 14 weeks that starts on the day of the child's death, is to be worked out as if the child had not died.

Note 1: For ***principal carer*** see subsections 5(15) to (24).

Note 2: For ***undertaking full-time study*** see section 541B.

Note 3: For ***new apprentice*** see subsection 23(1).

OFFICIAL: Sensitive // Legal Privilege

Part 2.11A—Austudy payment

Division 1—Qualification for austudy payment

Subdivision A—Basic qualifications

568 Qualification for austudy payment—general rule

Subject to this Subdivision, a person is qualified for an austudy payment in respect of a period if, throughout the period:

(a) the person satisfies the activity test (see Subdivision B); and

(b) the person is of austudy age (see Subdivision C); and

(c) the person is an Australian resident.

Note: Division 2 sets out situations in which an austudy payment is not payable even if the person qualifies for it.

568AA Qualification for austudy payment—new apprentices

Subject to this Subdivision, a person is qualified for an austudy payment in respect of a period if, throughout the period:

(a) the person is a new apprentice; and

(b) the person is of austudy age (see Subdivision C); and

(c) the person is an Australian resident.

Note: Division 2 sets out situations in which an austudy payment is not payable even if the person qualifies for it.

568A Qualification for austudy payment—transferee from social security pension

If:

(a) a person was receiving a social security pension; and

(b) the person claims an austudy payment within 14 days after the day on which the last instalment of the person's pension was paid; and

OFFICIAL: Sensitive // Legal Privilege

(c) the person becomes qualified for an austudy payment at some time during the 14 day period but after the first day of that period;

the person is taken to be qualified for an austudy payment for the whole of the 14 day period.

Subdivision B—Activity test

569 Activity test

General

(1) Subject to subsection (2), a person satisfies the activity test in respect of a period if the person satisfies the Secretary that, throughout the period, the person is undertaking qualifying study (see section 569A).

Persons who do not satisfy the activity test

(2) A person cannot be taken to satisfy the activity test if the person:
(a) is a new apprentice; or
(b) has completed a course for:
(i) a degree of Doctor at an educational institution; or
(ii) a qualification at a foreign institution that is, in the Secretary's opinion, of the same standing as a degree of Doctor at an educational institution.

Note: For ***educational institution*** see subsection 23(1).

569A Undertaking qualifying study

For the purposes of this Part, a person is ***undertaking qualifying study*** if:
(a) the person:
(i) is enrolled in a course of education at an educational institution; or
(ii) was enrolled in the course and satisfies the Secretary that he or she intends, and has (since no longer being

enrolled) always intended, to re-enrol in the course when re-enrolments in the course are next accepted; or

(iii) was enrolled in the course and satisfies the Secretary that he or she intends, and has (since no longer being enrolled) always intended, to enrol in another course of education (at the same or a different educational institution) when enrolments in the other course are next accepted; and

(b) the course in which the person is enrolled, or intends to enrol, is an approved course of education or study (see section 569B); and

(c) the person is a full-time student or a concessional study-load student in respect of that course (see sections 569C and 569D); and

(d) the person satisfies the progress rules (see sections 569G and 569H).

Note: Only one course of education can be considered in deciding if a person satisfies the undertaking qualifying study requirement: see section 569AA.

569AA One course of education

(1) Whether subparagraph 569A(a)(i) or (ii) and paragraphs 569A(b), (c) and (d) are satisfied in relation to a person is to be determined in relation to only one course of education.

(2) Whether a person satisfies the Secretary of the person's intention mentioned in subparagraph 569A(a)(iii) and whether paragraphs 569A(b), (c) and (d) are satisfied in relation to the person is to be determined in relation to only one course of education.

Note 1: The effect of this section is that 2 or more courses of education for a person cannot be aggregated to satisfy the undertaking qualifying study requirement.

Note 2: The one course of education may be a combined course: see the legislative instrument made under section 5D of the *Student Assistance Act 1973*.

569B Approved course of education or study

For the purposes of paragraph 569A(b), a course is an approved course of education or study if it is a course determined, under section 5D of the *Student Assistance Act 1973*, to be a secondary course or a tertiary course for the purposes of that Act.

569C Full-time students

For the purposes of this Subdivision, a person is a ***full-time student*** in respect of a course if:

(a) in the case of a person who is enrolled in the course for a particular study period (such as, for example, a semester)—the person is undertaking at least three quarters of the normal amount of full-time study in respect of the course for that period; or

(b) in the case of a person who intends to enrol in the course for a particular study period—the person intends to undertake at least three quarters of the normal amount of full-time study in respect of the course for that period.

Note: For ***normal amount of full-time study*** see section 569E.

569D Concessional study-load students

(1) For the purposes of this Subdivision, there are 2 classes of concessional study-load students, namely:

(a) 25% concessional study-load students; and

(b) 66% concessional study-load students.

(2) For the purposes of this Subdivision, a person is a ***25% concessional study-load student*** in respect of a course if this subsection applies to the person and:

(a) in the case of a person who is enrolled in the course for a particular study period (such as, for example, a semester)—the person is undertaking at least one quarter, but less than three quarters, of the normal amount of full-time study in respect of the course for that period; or

(b) in the case of a person who intends to enrol in the course for a particular study period—the person intends to undertake at least one quarter, but less than three quarters, of the normal amount of full-time study in respect of the course for that period.

(3) For the purposes of this Subdivision, a person is a ***66% concessional study-load student*** in respect of a course if this subsection applies to the person and:

(a) in the case of a person who is enrolled in the course for a particular study period (such as, for example, a semester)—the person is undertaking at least two thirds, but less than three quarters, of the normal amount of full-time study in respect of the course for that period; or

(b) in the case of a person who intends to enrol in the course for a particular study period—the person intends to undertake at least two thirds, but less than three quarters, of the normal amount of full-time study in respect of the course for that period.

Note: For ***normal amount of full-time study*** see section 569E.

(4) Subsection (2) applies to a person if:

(a) an officer in the Commonwealth Rehabilitation Service or an appropriate medical practitioner who has a detailed knowledge of the person's physical condition has stated in writing that:

(i) the person has a substantial physical disability; and

(ii) the person cannot successfully undertake the normal amount of full-time study in respect of the course because of the disability; or

(b) a medical practitioner specialising in psychiatry has stated in writing that:

(i) the person has a substantial psychiatric disability; and

(ii) the person cannot successfully undertake the normal amount of full-time study in respect of the course because of the disability; or

OFFICIAL: Sensitive // Legal Privilege

(c) a psychologist who is registered with the Board established under the law of a State or Territory that registers psychologists has stated in writing that the person:

(i) is intellectually disabled; and

(ii) cannot successfully undertake the normal amount of full-time study in respect of the course because of the disability.

(5) Subsection (3) applies to a person if:

(a) the person cannot undertake the course as a full-time student because of:

(i) the relevant educational institution's usual requirements for the course; or

(ii) a specific direction in writing to the person from the academic registrar or an equivalent officer; or

(b) the academic registrar (or an equivalent officer) of the relevant educational institution recommends in writing that the person undertake less than the normal amount of full-time study in respect of the course for specified academic or vocational reasons for a period not exceeding half an academic year.

569E Normal amount of full-time study

(1) For the purposes of this Subdivision, the ***normal amount of full-time study*** in respect of a course is:

(a) if:

(i) the course is a course of study within the meaning of the *Higher Education Support Act 2003*; and

(ii) there are Commonwealth supported students (within the meaning of that Act) enrolled in the course;

the full-time student load for the course; or

(b) if the course is not such a course and the institution defines an amount of full-time study that a full-time student should typically undertake in respect of the course—the amount so defined; or

(c) otherwise—an amount of full-time study equivalent to the average amount of full-time study that a person would have to undertake for the duration of the course in order to complete the course in the minimum amount of time needed to complete it.

(2) Without limiting subsection (1), the ***normal amount of full-time study*** in respect of a course is an average, taken over the duration of the period for which the person in question is enrolled in the course, of 20 contact hours per week.

569F First fortnight of classes

A person is taken to be undertaking full-time study or a concessional study-load (as the case may be) in respect of a course during the period (the ***relevant period***):

(a) starting on the first day of classes in a study period; and

(b) ending on the Friday of the second week of classes in the study period;

if the person is enrolled in the course and undertakes study in respect of the course on at least one day in the relevant period.

569G Progress rules—secondary students

General rule

(1) Subject to subsection (2), a person enrolled in, or intending to enrol in, a secondary course satisfies the progress rules for the purposes of paragraph 569A(d) if, in the Secretary's opinion, the person is making satisfactory progress towards completing the course.

Students repeating year 12

(2) A person does not satisfy the progress rules if:

(a) the person is enrolled in a secondary course that is at year 12 level, or the overall level of which is at year 12 level (see subsections (3) and (4)); and

OFFICIAL: Sensitive // Legal Privilege

(b) the person has been a full-time student in respect of a course at that level (a ***previous course***) in each of 2 previous years; and

(c) none of the following circumstances apply:

(i) the person failed a previous course because of an illness that had not been diagnosed when the person began that course;

(ii) the person failed a previous course because of other circumstances beyond the person's control that were not apparent when the person began that course;

(iii) the person failed a previous course because English is not the person's native language;

(iv) the person completed or discontinued a previous course within 6 months after the relevant academic year started;

(v) each of the previous courses was undertaken more than 10 years before the present study.

Course at year 12 level

(3) A secondary course is at year 12 level if the institution in which the course is undertaken regards it as being at year 12 level.

Overall level of course at year 12 level

(4) The overall level of a secondary course is at year 12 level if the institution in which the course is undertaken regards at least 50% of the course as being at year 12 level.

*Meaning of **secondary course***

(5) For the purposes of this section, a course is a secondary course if it is a course determined, under section 5D of the *Student Assistance Act 1973*, to be a secondary course for the purposes of that Act.

OFFICIAL: Sensitive // Legal Privilege

569H Progress rules—tertiary students

Full-time students

(1) A person who is a full-time student in respect of a tertiary course satisfies the progress rules if:

(a) in the case of a person who is enrolled in the course—on the day on which the person enrolled in the course; or

(b) in the case of a person who is not yet enrolled in the course but intends to enrol in the course—on the day on which enrolments in the course are next accepted;

the time already spent by the student on the course, or on one or more other tertiary courses at the same level as that course, does not exceed the allowable study time for that course.

Note: For allowable study time for a course see subsection (3).

Concessional study-load students

(2) A person who is a concessional study-load student in respect of a tertiary course satisfies the progress rules if:

(a) in the case of a person who is enrolled in the course—on the day on which the person enrolled in the course; or

(b) in the case of a person who is not yet enrolled in the course but intends to enrol in the course—on the day on which enrolments in the course are next accepted;

the time already spent by the person on the course, or on one or more other tertiary courses at the same level as that course, does not exceed the allowable study time for the course.

Note: For allowable study time for a course see subsections (3) and (4).

Allowable study time—full-time students and 66% concessional study-load students

(3) The allowable study time for a course undertaken by a full-time student or a 66% concessional study-load student is:

OFFICIAL: Sensitive // Legal Privilege

(a) if the minimum amount of time needed to complete the course as a full-time student is one year or less—that minimum amount of time; or

(b) if the minimum amount of time needed to complete the course as a full-time student is more than 1 year and:

(i) the student is enrolled, or intends to enrol, in a year-long subject; or

(ii) the student's further progress in the course depends on passing a whole year's work in the course;

the minimum amount of time plus 1 year; or

(c) in any other case—the minimum amount of time needed to complete the course as a full-time student plus half an academic year.

Allowable study time—25% concessional study-load students

(4) The allowable study time for a course undertaken by a 25% concessional study-load student is twice the minimum period in which it is possible to complete the course as a full-time student but the Secretary may approve, in particular cases, an allowable study time of up to four times the minimum period in which it is possible to complete the course as a full-time student.

Time spent by person studying part-time

(5) If a student has studied part-time for a course over a certain period, the time spent by the student on that course is taken to be the proportion of that period calculated by using the formula:

$$\frac{\text{Study undertaken}}{\text{Normal full-time study}}$$

where:

normal full-time study means the normal amount of full-time study for the course.

study undertaken means the amount of study undertaken part-time by the student for the course.

Current full-time students who have previously undertaken courses as concessional study-load students

(6) If:

(a) a person is undertaking a course as a full-time student; and

(b) the person has previously undertaken:

(i) part of the course; or

(ii) one or more than one other course at the same level as that course;

as a concessional study-load student; and

(c) the time spent by the person undertaking the part of the course referred to in subparagraph (b)(i), or the course or courses referred to in subparagraph (b)(ii), (the ***previous study***) is not to be disregarded under subsection (7);

the time spent by the person undertaking the previous study is taken to be equal to the minimum amount of time that a full-time student would have taken to complete the previous study.

Current 25% concessional study-load students who have previously undertaken courses on a different basis

(6A) If:

(a) a person is undertaking a course as a 25% concessional study-load student; and

(b) the person has previously undertaken:

(i) part of that course; or

(ii) one or more than one other course at the same level as that course;

in any of the following ways:

(iii) as a full-time student;

(iv) as a 66% concessional study-load student;

(v) on a part-time basis; and

(c) the time spent by the person undertaking the part of the course referred to in subparagraph (b)(i), or the course or courses referred to in subparagraph (b)(ii), (the ***previous study***) is not to be disregarded under subsection (7);

the time spent by the person undertaking the previous study is taken to be:

(d) twice the time that the person took to complete the previous study; or

(e) if the Secretary has approved, under subsection (4), a longer allowable study time in relation to the person for the course—the time taken by the person to complete the previous study multiplied by the factor used by the Secretary for the purposes of the approval under that subsection.

Matters to be disregarded in determining whether someone has exceeded the allowable study time

(7) In determining whether a person has exceeded the allowable study time (for a full-time student or a concessional study-load student), disregard the following:

(a) if the person has completed a course (a pre-requisite course) the completion of which is the normal requirement for admission to the course in which the person is enrolled or intends to enrol—time spent undertaking the pre-requisite course;

(b) a failed year of study, or a failed part of a year of study, if the failure is because of:

(i) the person's illness; or

(ii) other circumstances beyond the person's control;

(c) time spent undertaking a course that has been permanently discontinued because of:

(i) the person's illness; or

(ii) other circumstances beyond the person's control;

(d) time spent undertaking a course that has been completed but which, because of the person's illness, the person cannot use in any of the trades or profession to which the course is appropriate;

(e) time spent undertaking a TAFE course or a course provided by a VET provider if the normal length of the course for a full-time student is one year or less;

(f) time spent undertaking a course more than 10 years ago, unless the course has since been completed;

(g) time spent undertaking a course after 1973 if the course was not:

(i) approved for the Tertiary Education Assistance Scheme; or

(ii) approved for the AUSTUDY scheme; or

(iii) an approved course for the purposes of paragraph 541B(1)(c), 569A(b) or 1061PB(1)(b) of this Act;

(h) time spent undertaking a course at a foreign institution;

(i) time spent undertaking a subject from which the student withdrew, if the educational institution in which the subject was undertaken did not record the withdrawal from the subject as a failure;

(j) any time spent undertaking a course during which the person was ineligible to receive:

(i) AUSTUDY; or

(ii) a benefit under the Tertiary Education Assistance Scheme; or

(iii) youth allowance; or

(iv) austudy payment;

because of the application of rules in respect of academic progress.

Levels of tertiary courses

(8) There are 5 levels of tertiary courses: levels M, A, B, C and D.

Level M courses

(8A) A course for a degree of Master (or equivalent) is a Level M course.

Level A courses

(9) The following are Level A courses:

OFFICIAL: Sensitive // Legal Privilege

(a) a postgraduate bachelor degree course, with or without honours;
(b) a graduate or postgraduate diploma course;
(c) a course of practical legal training at a higher education institution;
(d) a course of advanced education regarded by an accrediting authority as being at PG1 level;
(e) a graduate certificate course.

Level B courses

(10) The following are Level B courses:
(a) a bachelor degree course (other than a postgraduate course), with or without honours;
(b) the bachelor level component of a masters degree course with concurrent bachelor and masters level study;
(c) a diploma course other than:
(i) a graduate or postgraduate diploma course; or
(ii) a course for which an entry requirement is successful completion of year 10 of secondary studies; or
(iii) a TAFE course or a course provided by a VET provider;
(d) a Master's qualifying course;
(e) the Barristers or Solicitors Admission Board's course;
(f) a course of advanced education regarded by an accrediting authority as being at UG1 or UG2 level.

Level C courses

(11) The following are Level C courses:
(a) an associate degree course;
(b) an associate diploma course;
(c) a diploma course at a TAFE institution or provided by a VET provider for which an entry requirement is successful completion of year 12 of secondary studies;
(d) a 2-year undergraduate diploma course.

OFFICIAL: Sensitive // Legal Privilege

Level D courses

(12) The following are Level D courses:
  (a) a TAFE course at a higher education institution;
  (b) a TAFE course or a course provided by a VET provider, unless the course is in Level M, A, B or C.

*Meaning of **tertiary course***

(13) For the purposes of this section, a course is a tertiary course if it is a course determined, under section 5D of the *Student Assistance Act 1973*, to be a tertiary course for the purposes of that Act.

Subdivision C—Austudy age

570 Austudy age

General

(1) Subject to subsection (2), a person is of austudy age for the purposes of this Part if the person is at least 25 years old.

Study begun before turning 25

(2) Even if the person is at least 25 years old, the person is taken not to be of austudy age if the person:
  (a) was receiving youth allowance immediately before turning 25; and
  (b) has not yet attained the maximum age for youth allowance (see subsection 543B(2)).

OFFICIAL: Sensitive // Legal Privilege

Division 2—Situations in which austudy payment is not payable

Subdivision A—Situation in which austudy payment not payable (general)

572 Austudy payment not payable if payment rate nil

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

(2) Subsection (1) does not apply to a person if the person's rate would be nil merely because:

(a) an election by the person under subsection 915A(1) (about quarterly energy supplement) or 1061VA(1) (about quarterly pension supplement) is in force; or

(b) the person has been paid an advance pharmaceutical allowance under the social security law.

572A Situations where austudy payment not payable for failure to comply with certain requirements

Austudy payment is not payable to a person if the person refuses or fails, without reasonable excuse, to comply with a requirement made of the person under section 67, 68 or 192 of the Administration Act.

Subdivision B—Assets test

573 Austudy payment not payable if assets value limit exceeded

An austudy payment is not payable to a person if the value of the person's assets is more than the person's assets value limit.

Note: For ***assets value limit*** see section 573B.

573B Assets value limit

A person's ***assets value limit*** is:

(a) $250,000 if the person:
  (i) is not a member of a couple (see section 4); and
  (ii) is a homeowner; or

(b) $450,000 if the person:
  (i) is not a member of a couple; and
  (ii) is not a homeowner; or

(c) $375,000 if the person:
  (i) is a member of a couple; and
  (ii) is a homeowner; or

(d) $575,000 if the person:
  (i) is a member of a couple; and
  (ii) is not a homeowner.

Note 1: For ***homeowner*** see subsection 11(4).

Note 2: The amounts in this section are indexed annually on 1 July (see sections 1191 to 1194).

573C Value of person's assets to include value of assets of partner

The value of a person's assets is the sum of the following values:

(a) the value of the person's assets (disregarding paragraph (b));

(b) if the person is a member of a couple (see section 4)—the value of the assets of the person's partner.

Subdivision D—Waiting periods

575 Waiting periods

(1) An austudy payment is not payable to a person who is qualified for an austudy payment while the person is subject to a waiting period.

(2) For the purposes of this Part, a person may be subject to the following waiting periods:

OFFICIAL: Sensitive // Legal Privilege

(a) a liquid assets test waiting period (see sections 575A, 575B and 575C);
(b) a newly arrived resident's waiting period (see sections 575D and 575E).

575A Liquid assets test waiting period

When person subject to liquid assets test waiting period—general

(1) Subject to this section, if:
(a) the value of a person's liquid assets is more than the person's maximum reserve on:
(i) the day on which the person becomes qualified for austudy payment; or
(ii) the day on which the person claims austudy payment; and
(b) the person is not a transferee to austudy payment;
the person is subject to a liquid assets test waiting period.

Note: For ***liquid assets*** and ***maximum reserve*** see section 14A.

Exception—person already subject to liquid assets test waiting period in previous 12 months

(2) Subsection (1) does not apply to a person if, at any time during the 12 months before:
(a) the day on which the person becomes qualified for austudy payment; or
(b) the day on which the person claims austudy payment;
the person:
(c) was subject to a liquid assets test waiting period under this Part and that period has ended; or
(d) has served a liquid assets test waiting period under another Part of this Act; or
(e) has served a liquid assets test waiting period under the *Student Assistance Act 1973* as previously in force.

Exception—waiver for hardship

(3) If the Secretary is satisfied that a person is in severe financial hardship because the person has incurred unavoidable or reasonable expenditure while serving a liquid assets test waiting period, the Secretary may determine that the person does not have to serve the whole, or any part, of the waiting period.

Note 1: For ***in severe financial hardship*** see subsections 19C(2) (person who is not a member of a couple) and 19C(3) (person who is a member of a couple).

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

Exception—certain transferees to austudy payment

(4) Subsection (1) does not apply to a person if:
(a) the person is a transferee to austudy payment; and
(b) the person claims austudy payment within 14 days of the transfer day.

575B Start of liquid assets test waiting period

The liquid assets test waiting period of a person starts on the day on which the person became qualified for austudy payment.

575C Length of liquid assets test waiting period

Number of weeks

(1) A person's liquid assets test waiting period is:
(a) if the result obtained under subsection (2) is 13 or more whole weeks—13 weeks; or
(b) if the result obtained under subsection (2) is fewer than 13 whole weeks—the number of whole weeks obtained under that subsection.

Working out number of weeks

(2) Subject to subsection (3), the number of weeks is worked out by using the following formula:

$$\frac{\text{Liquid assets} - \text{Maximum reserve amount}}{\text{Divisor}}$$

where:

divisor, in relation to the person, means:

(a) if the person is not a member of a couple and does not have a dependent child—$500; or

(b) otherwise—$1,000.

liquid assets means the person's liquid assets on the day referred to in subparagraph 575A(1)(a)(i) or (ii) (as the case requires).

maximum reserve amount means the maximum reserve in relation to the person under subsection 14A(1).

Weeks etc. to be disregarded

(3) For the purposes of subsection (2), disregard:

(a) any weeks after the person claimed austudy payment during which the person was not qualified for austudy payment; and

(b) any fractions of a week.

575D Newly arrived resident's waiting period

Basic rule

(1) Subject to this section, a person is subject to a newly arrived resident's waiting period if the person:

(a) has entered Australia; and

(b) has not been an Australian resident in Australia for a period of, or periods totalling, 208 weeks.

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

Exception—qualifying residence exemption

(2) Subsection (1) does not apply to a person who has a qualifying residence exemption for an austudy payment.

Note: For ***qualifying residence exemption*** in relation to austudy payment, see paragraph 7(6AA)(f).

Exception—other

(3) Subsection (1) does not apply to a person if:

(a) the person is a refugee, or a former refugee, at the time the person made the claim for an austudy payment; or

(b) the following apply:

(i) before the person made the claim for an austudy payment, the person was a family member of another person at the time the other person became a refugee;

(ii) the person is a family member of that other person at the time the person made the claim for an austudy payment or, if that other person has died, the person was a family member of that other person immediately before that other person died; or

(c) the person is an Australian citizen at the time the person made the claim for an austudy payment.

(4) For the purposes of subsection (3):

(a) ***family member*** has the meaning given by subsection 7(6D); and

(b) ***former refugee*** has the meaning given by subsection 7(1); and

(c) ***refugee*** has the meaning given by subsection 7(6B).

575E Length of newly arrived resident's waiting period

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

(a) starts on the day the person first became an Australian resident; and

(b) ends when the person has been an Australian resident in Australia for a period of, or periods totalling, 208 weeks after that day.

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

575EA Seasonal workers—preclusion period

Application

(1) This section applies if:
(a) a person has lodged a claim for austudy payment; and
(b) at any time during the 6 months immediately before the day on which the person lodged the claim, the person, or the person's partner, has been engaged in seasonal work.

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

Exclusion during seasonal work preclusion period

(2) Austudy payment is not payable to the person:
(a) if the person is subject to a seasonal work preclusion period (whether in relation to the claim referred to in subsection (1) or any other claim under this Act) and the Secretary has not made a determination under subsection (3) in relation to the person—for the person's seasonal work preclusion period; or
(b) if the Secretary has made a determination under subsection (3) in relation to the person—for that part (if any) of the person's seasonal work preclusion period to which the person is subject as a result of the determination.

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

Exemption in cases of severe financial hardship

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

(a) the Secretary may determine that the person is not subject to the whole, or any part, of the preclusion period; and

(b) the determination has effect accordingly.

Note 1: For ***in severe financial hardship*** see subsection 19C(2) (person who is not a member of a couple) or subsection 19C(3) (person who is a member of a couple).

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

575F Effect of being subject to 2 waiting periods

For the avoidance of doubt, if a person is subject to 2 waiting periods under this Subdivision, an austudy payment is not payable to the person until both of those waiting periods have ended.

Subdivision E—Situations where austudy payment not payable because of austudy participation failure

576 Austudy participation failures

Meaning of austudy participation failure

(1) A person commits an ***austudy participation failure*** if the person:

(a) fails to comply with a requirement:

(i) that was notified to the person under subsection 63(2) or (4) of the Administration Act; and

(ii) that was reasonable; and

(iii) the notification of which included a statement to the effect that a failure to comply with the requirement could constitute an austudy participation failure; or

(b) fails to satisfy the activity test; or

(c) fails to comply with a requirement to undertake another activity referred to in paragraph 576A(1)(b).

Reasonable excuse

(2) Despite subsection (1), a failure of a kind referred to in that subsection is not an austudy participation failure if the person

OFFICIAL: Sensitive // Legal Privilege

satisfies the Secretary that the person had a reasonable excuse for the failure.

(2A) The Secretary must, by legislative instrument, determine matters that the Secretary must take into account in deciding whether, for the purposes of subsection (2), a person had a reasonable excuse for committing an austudy participation failure.

(2B) To avoid doubt, a determination under subsection (2A) does not limit the matters that the Secretary may take into account in deciding whether, for the purposes of subsection (2), a person had a reasonable excuse for committing the austudy participation failure referred to in subsection (1).

Subsequent failures in the same instalment period

(3) Despite subsection (1), if a failure of a kind referred to in that subsection occurs in an instalment period of the person in which the person has already committed an austudy participation failure, the failure is not an austudy participation failure if:

(a) the instalment period is the person's first instalment period for austudy payment; or

(b) the instalment period is not the person's first instalment period for austudy payment, and:

(i) the person did not commit an austudy participation failure in the immediately preceding instalment period of the person; or

(ii) in respect of each austudy participation failure that the person committed in the immediately preceding instalment period of the person, the person acted in accordance with a requirement of the Secretary that was notified in respect of that failure.

OFFICIAL: Sensitive // Legal Privilege

576A Allowance not payable because of austudy participation failure

General

(1) Austudy payment is not payable to a person, for the period starting in accordance with section 576B and ending in accordance with section 576C, if:

(a) the person commits an austudy participation failure; and

(b) the Secretary requires the person:

(i) to comply with the requirement, or undertake the activity, to which the austudy participation failure relates; or

(ii) to comply with a particular requirement, or undertake a particular activity, in place of the requirement or activity to which the failure relates;

during the participation failure instalment period for the failure, or at a particular time during that period; and

(c) the person fails to comply with the requirement.

Reasonable excuse etc.

(2) This section does not apply in relation to the failure if:

(a) the Secretary is satisfied that the person had a reasonable excuse for the failure referred to paragraph (1)(c); or

(b) the Secretary is for any other reason satisfied that subsection (1) should not apply to the failure.

(2A) The Secretary must, by legislative instrument, determine matters that the Secretary must take into account in deciding whether, for the purposes of paragraph (2)(a), a person had a reasonable excuse for a failure of a kind mentioned in paragraph (1)(c).

(2B) To avoid doubt, a determination under subsection (2A) does not limit the matters that the Secretary may take into account in deciding whether, for the purposes of paragraph (2)(a), a person had a reasonable excuse for the failure referred to in paragraph (1)(c).

Meaning of participation failure instalment period

(3) The ***participation failure instalment period*** for the austudy participation failure is the next instalment period of the person to start after the day on which the Secretary first became aware that the person committed the failure.

Failures covered by section 577

(4) This section does not apply to an austudy participation failure if section 577 applies to the failure.

576B When the period of non-payment starts

The period for which austudy payment is not payable to the person because of section 576A is taken to have started at the start of the participation failure instalment period for the austudy participation failure.

576C When the period of non-payment ends

The period for which austudy payment is not payable to the person because of section 576A ends when:

(a) in accordance with a requirement of the Secretary that the person comply with the requirement, or undertake the activity, to which the austudy participation failure related, the person has complied with the requirement or undertaken the activity; or

(b) in accordance with a requirement of the Secretary that the person undertake another activity in place of the requirement or activity to which the austudy participation failure related, the person has undertaken the other activity; or

(c) in accordance with a requirement of the Secretary that the person comply with another requirement in place of the requirement or activity to which the austudy participation failure related, the person has complied with the other requirement.

OFFICIAL: Sensitive // Legal Privilege

Subdivision F—Situations where payment not payable because of repeated failure

577 Payment not payable because of repeated failure

General

(1) Austudy payment is not payable to a person, for the period of 8 weeks starting in accordance with section 577A, if the person commits an austudy participation failure (the ***repeated failure***), having committed austudy participation failures (the ***earlier failures***) on 2 or more other occasions during the period of 12 months preceding that failure.

Reasonable excuse etc.

(2) Disregard any earlier failure that is a failure to which subsection 576A(1) does not apply because of subsection 576A(2).

(3) Subsection (1) does not apply in relation to the repeated failure if the Secretary is for any other reason satisfied that subsection (1) should not apply to the failure.

577A When the period of non-payment starts

The period for which austudy payment is not payable to the person is taken to start, or to have started:

(a) if the repeated failure occurs during a participation failure instalment period for an earlier failure—at the start of the participation failure instalment period for the earlier failure; or

(b) otherwise—at the start of the next instalment period of the person to start after the day on which the Secretary first became aware that the person committed the failure.

Note: For ***participation failure instalment period*** see subsection 576A(3).

OFFICIAL: Sensitive // Legal Privilege

Subdivision G—Multiple entitlement exclusions

578 Multiple entitlement exclusions

(1) An austudy payment is not payable to a person who is qualified for an austudy payment while the person is subject to a multiple entitlement exclusion.

(2) For the purposes of this Division, a person is subject to a multiple entitlement exclusion if:

(a) the person is receiving an austudy payment and another social security benefit, a social security pension, a service pension, income support supplement or a veteran payment becomes payable to the person; or

(b) a payment under a scheme referred to in section 578A has been, or may be, made to the person; or

(c) an assurance of support applies to the person.

(3) An austudy payment is not payable to a person in respect of a period if the person is a CDEP Scheme participant in respect of the whole or any part of the period.

(4) An austudy payment is not payable to a person if:

(a) the person is an armed services widow or an armed services widower; and

(b) the person is receiving the weekly amount mentioned in paragraph 234(1)(b) of the MRCA (including a reduced weekly amount because of a choice under section 236 of the MRCA) or has received a lump sum mentioned in subsection 236(5) of the MRCA.

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

Note 2: For ***MRCA*** see subsection 23(1).

OFFICIAL: Sensitive // Legal Privilege

578A Person receiving payment under certain schemes

General

(1) Subject to subsection (2), the schemes for the purposes of paragraph 578(2)(b) are:

(a) a prescribed educational scheme other than the ABSTUDY Scheme to the extent that it applies to part-time students; and

(b) the scheme to provide an allowance known as the Maintenance Allowance for Refugees; and

(c) the scheme to provide an allowance known as the Adult Migrant Education Program Living Allowance; and

(d) the scheme to provide an allowance known as the English as a Second Language Allowance to the extent that the scheme applies to full-time students; and

(e) the scheme known as the Ready Reserve Education Assistance Scheme; and

(f) the scheme to provide an allowance known as the Living Away from Home Allowance.

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

Application made under ABSTUDY Scheme

(2) If:

(a) a person is undertaking qualifying study in respect of a course of education that is to last for 6 months or more; and

(b) an application is made for a payment in respect of the person under the ABSTUDY Scheme; and

(c) the person was receiving an austudy payment immediately before the start of the course;

the Secretary may decide that the person is not subject to a multiple entitlement exclusion, because of subsection (1), before:

(d) the application is determined; or

(e) the end of the period of 3 weeks beginning on the day on which the course starts;

whichever happens first.

OFFICIAL: Sensitive // Legal Privilege

578B Assurance of support

An assurance of support applies to a person if:

(a) an assurance of support is in force in respect of the person (***assuree***); and

(b) the person who gave the assurance was willing and able to provide an adequate level of support to the assuree; and

(c) it was reasonable for the assuree to accept that support.

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

OFFICIAL: Sensitive // Legal Privilege

Division 5—Rate of austudy payment

581 How to work out a person's austudy payment rate

Subject to this section, the rate of a person's austudy payment is to be worked out in accordance with the Austudy Payment Rate Calculator in section 1067L.

OFFICIAL: Sensitive // Legal Privilege

Division 10—Bereavement payments on death of partner

592 Qualification for payments under this Division

Qualification for payment

(1) If:

(a) a person is receiving an austudy payment; and

(b) the person is a long-term social security recipient; and

(c) the person is a member of a couple; and

(d) the person's partner dies; and

(e) immediately before the partner died, the partner:

(i) was receiving a social security pension; or

(ii) was receiving a service pension, income support supplement or a veteran payment; or

(iii) was a long-term social security recipient; and

(f) on the person's payday immediately before the first available bereavement adjustment payday, the amount that would be payable to the person if the person were not qualified for payments under this Division is less than the sum of:

(i) the amount that would otherwise be payable to the person under section 592C (person's continued rate) on that payday; and

(ii) the amount (if any) that would otherwise be payable to the person under section 592A (continued payment of partner's pension or benefit) on the partner's payday immediately before the first available bereavement adjustment payday;

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

Note 1: Section 592A provides for the payment to the person, up to the first available bereavement adjustment payday, of amounts equal to the instalments that would have been paid to the person's partner during that period if the partner had not died.

Note 2: Section 592B provides for a lump sum that represents the instalments that would have been paid to the person's partner, between the first

available bereavement adjustment payday and the end of the bereavement period, if the partner had not died.

Note 3: For ***first available bereavement adjustment payday*** and ***bereavement period*** see section 21.

Choice not to receive payments

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

Form of choice

(3) A choice under subsection (2):
  (a) must be made by written notice to the Secretary; and
  (b) may be made after the person has been paid an amount or amounts under this Division; and
  (c) cannot be withdrawn after the Department has taken all the action required to give effect to that choice.

Rate during bereavement period

(4) If a person is qualified for payments under this Division in relation to the partner's death, the rate at which austudy payment is payable to the person during the bereavement period is, unless the person has made a choice under subsection (2), governed by section 592C.

592A Continued payment of partner's pension or benefit

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

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

OFFICIAL: Sensitive // Legal Privilege

592B Lump sum payable in some circumstances

If:

(a) a person is qualified for payments under this Division in relation to the death of the person's partner; and

(b) the first available bereavement adjustment payday occurs before the end of the bereavement period;

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

Lump sum calculator

Method statement

Step 1. Add up:

(a) the amount that, if the person's partner had not died, would have been payable to the person on the person's payday immediately before the first available bereavement adjustment payday; and

(b) the amount (if any) that, if the partner had not died, would have been payable to the partner on the partner's payday immediately before the first available bereavement adjustment payday;

the result is the ***combined rate***.

Step 2. Work out the amount that, apart from section 592C, would have been payable to the person on the person's payday immediately before the first available bereavement adjustment payday: the result is the ***person's individual rate***.

Step 3. Take the person's individual rate away from the combined rate: the result is the ***partner's instalment component***.

Step 4.	Work out the number of the partner's paydays in the ***bereavement lump sum period***.
Step 5.	Multiply the partner's instalment component by the number obtained in Step 4: the result is the amount of the lump sum payable to the person under this section.

592C Adjustment of person's austudy payment rate

If:

(a) a person is qualified for payments under this Division; and

(b) the person does not elect under subsection 592(2) not to receive payments under this Division;

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

(c) during the bereavement rate continuation period, the rate of austudy payment payable to the person is the rate at which the austudy payment would have been payable to the person if the person's partner had not died;

(d) during the bereavement lump sum period (if any), the rate at which austudy payment is payable to the person is the rate at which austudy payment would be payable to the person apart from this Division.

592D Effect of death of person entitled to payments under this Division

If:

(a) a person is qualified for payments under this Division in relation to the death of the person's partner; and

(b) the person dies within the bereavement period; and

(c) the Secretary does not become aware of the death of the person's partner before the person dies;

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

OFFICIAL: Sensitive // Legal Privilege

Lump sum calculator

Method statement

Step 1. Add up:

(a) the amount that, if neither the person nor the person's partner had died, would have been payable to the person on the person's payday immediately after the day on which the person dies; and

(b) the amount (if any) that, if neither the person nor the person's partner had died, would have been payable to the person's partner on the partner's payday immediately after the day on which the person died;

the result is the ***combined rate***.

Step 2. Work out the amount that, apart from section 592C, would have been payable to the person on the person's payday immediately after the day on which the person died if the person had not died: the result is the ***person's individual rate***.

Step 3. Take the person's individual rate away from the combined rate: the result is the ***partner's instalment component***.

Step 4. Work out the number of paydays of the partner in the period that begins on the day on which the person dies and ends on the day on which the bereavement period ends.

Step 5. Multiply the partner's instalment component by the number obtained in Step 4: the result is the amount of the lump sum payable under this section.

592E Matters affecting payments under this Division

Recovery/reduction of amount payable

(1) If:

(a) a person is qualified for payments under this Division in relation to the death of the person's partner; and

(b) after the person's partner died, an amount to which the partner would have been entitled if the partner had not died has been paid under this Act or under Part III or IIIA of the Veterans' Entitlements Act; and

(c) the Secretary is not satisfied that the person has not had the benefit of that amount;

the following provisions have effect:

(d) the amount referred to in paragraph (b) is not recoverable from the person or from the personal representative of the person's partner, except to the extent (if any) that the amount is more than the amount payable to the person under this Division;

(e) the amount payable to the person under this Division is to be reduced by the amount referred to in paragraph (b).

Bank not liable

(2) If:

(a) a person is qualified for payments under this Division in relation to the death of the person's partner; and

(b) the amount to which the person's partner would have been entitled if the person's partner had not died has been paid under this Act or under Part III or IIIA of the Veterans' Entitlements Act, within the bereavement period, into an account with a bank; and

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

the bank is, despite anything in any other law, not liable to any action, claim or demand by the Commonwealth, the personal

OFFICIAL: Sensitive // Legal Privilege

representative of the person's partner or anyone else in respect of the payment of that money to the person.

OFFICIAL: Sensitive // Legal Privilege

Part 2.11B—Scholarship payments for students

Division 2—Relocation scholarship payment

592J Qualification for relocation scholarship payment

A person is qualified for a relocation scholarship payment at a time (the ***qualification time***) if:

(a) at the qualification time, the person is qualified for youth allowance and youth allowance is payable to the person; and

(b) at the qualification time, the person is receiving youth allowance and would be receiving youth allowance if steps 2 and 3 of the method statement in point 1067G-A1 of the Youth Allowance Rate Calculator were disregarded for the purposes of working out the person's rate of that allowance; and

(c) the person:

(i) is independent because of subsection 1067A(3), (5), (6), (7), (8), (9) or (11); or

(ii) is not independent (see section 1067A) but is required to live away from home (see section 1067D); and

(d) the person is receiving youth allowance because the person is undertaking full-time study in an approved scholarship course; and

(e) the Secretary is satisfied that in the period of 35 days starting immediately after the qualification time, the person proposes to start to undertake the course or to continue to undertake the course; and

(f) the Secretary is satisfied that the person is not likely to receive the amount or value of a disqualifying accommodation scholarship in the period of 12 months starting immediately after the qualification time.

Note: For ***approved scholarship course***, see section 592M.

OFFICIAL: Sensitive // Legal Privilege

592K Circumstances in which person is not qualified for relocation scholarship payment

Previous qualification for, or receipt of, same or similar payment

(1) Despite section 592J, a person is not qualified for a relocation scholarship payment if 1 or more of the circumstances listed in subsection (2) apply to the person in the period of 12 months (or shorter period determined under subsection (3)) ending immediately before the person's qualification time.

(2) The circumstances are:

(a) the person has qualified for a relocation scholarship payment; or

(b) the person has qualified for a payment under the ABSTUDY Scheme known as an ABSTUDY relocation scholarship payment; or

(c) the person has qualified for a payment known as a relocation scholarship payment under the scheme referred to in section 117 of the Veterans' Entitlements Act; or

(d) the person has qualified for a payment known as a relocation scholarship payment under the scheme referred to in section 258 of the Military Rehabilitation and Compensation Act; or

(e) the person has received the amount or value of a disqualifying accommodation scholarship; or

(f) the person was entitled to the amount or value of a disqualifying accommodation scholarship but has not received the full entitlement only because the scholarship was suspended.

(3) For the purposes of subsection (1), the Secretary may determine a period in relation to a person that is at least 3 months but less than 12 months if the Secretary considers that the determination would enable the person to qualify for a relocation scholarship payment on or near 1 January in a year.

(4) However, the Secretary must not make a determination under subsection (3) if the effect of the determination would be to enable the person to receive more than 2 relocation scholarship payments in a period of 2 successive calendar years.

Independent but did not receive same or similar payment

(5) Despite section 592J, a person is not qualified for a relocation scholarship payment if:

(a) at the person's qualification time, the person has attained the age at which the person is independent (see subsection 1067A(4)); and

(b) before the qualification time, the person has not received any of the following:

(i) a relocation scholarship payment;

(ii) a payment under the ABSTUDY Scheme known as an ABSTUDY relocation scholarship;

(iii) a payment known as a relocation scholarship payment under the scheme referred to in section 117 of the Veterans' Entitlements Act;

(iv) a payment known as a relocation scholarship payment under the scheme referred to in section 258 of the Military Rehabilitation and Compensation Act;

(v) the amount or value of a disqualifying accommodation scholarship.

Person's place of study is in a major city location

(6) Despite section 592J, a person is not qualified for a relocation scholarship payment if:

(a) at the person's qualification time, the person is not independent (see section 1067A); and

(b) at the person's qualification time, the person is required to live away from home (see section 1067D); and

(c) on the day the person started to undertake the course referred to in paragraph 592J(d), the home of each parent of the person was in a major city location; and

(d) at the person's qualification time, the person's place of study, worked out in accordance with an instrument in force under subsection (8), is in a major city location.

Note: For ***parent*** see subsection 5(1) and for ***major city location*** see subsection (9).

(7) Despite section 592J, a person is not qualified for a relocation scholarship payment if:

(a) at the person's qualification time, the person is independent because of subsection 1067A(3), (5), (6), (7), (8), (9) or (11); and

(b) on the day 6 months before the person started to undertake the course referred to in paragraph 592J(d), the person's usual place of residence was in a major city location; and

(c) at the person's qualification time, the person's place of study, worked out in accordance with an instrument in force under subsection (8), is in a major city location.

Note: For ***major city location*** see subsection (9).

(8) The Secretary may, by legislative instrument, make principles that must be complied with when working out a person's place of study at a particular time.

(9) In this section:

major city location means a location categorised as one of the Major Cities of Australia, under the Remoteness Structure as defined in subsection 1067A(10F).

592L Amount of relocation scholarship payment

(1) The amount of a relocation scholarship payment to a person is $4,000 if the person has not received a student relocation payment (see subsection (7)) before.

Note: The amount of a relocation scholarship payment for which a person is qualified on or after 1 January 2013 is indexed annually in line with CPI increases (see sections 1190 to 1194).

(2) Subsection (1) does not apply if:

(a) the person has, at any time before the calendar year containing the qualification time, undertaken full-time study in a course that, had the person undertaken it at the qualification time, would have been an approved scholarship course at that time; and

(b) at a time that was both while the person was undertaking that study and more than 6 months before the qualification time, the person was either:

(i) independent because of subsection 1067A(3), (5), (6), (7), (8), (9) or (11); or

(ii) required to live away from home (see section 1067D).

(3) The amount of a relocation scholarship payment to a person is $1,000 if neither subsection (1) nor subsection (4) applies.

Note: The amount of a relocation scholarship payment for which a person is qualified on or after 1 January 2013 is indexed annually in line with CPI increases (see sections 1190 to 1194).

(4) The amount of a relocation scholarship payment to a person is $2,000 if:

(a) in 1 or more calendar years (the ***prior years***) that precede the calendar year containing the qualification time, the person undertook full-time study in a course that, had the person undertaken it at the qualification time, would have been an approved scholarship course at that time; and

(b) in 1 or 2 (but no more) of the prior years:

(i) the person was, while undertaking such study, either independent because of subsection 1067A(3), (5), (6), (7), (8), (9) or (11) or required to live away from home (see section 1067D); or

(ii) the person received a student relocation payment (see subsection (7)); and

(c) subsection (5) or (6) applies to the person.

Note: The amount of a relocation scholarship payment for which a person is qualified on or after 1 January 2013 is indexed annually in line with CPI increases (see sections 1190 to 1194).

(5) This subsection applies to a person if, at the qualification time:

(a) the person is not independent (see section 1067A); and
(b) the person is required to live away from home (see section 1067D); and
(c) the home of a parent of the person is in a regional or remote location (see subsection (7)).

Note: For ***parent*** see subsection 5(1).

(6) This subsection applies to a person if:
(a) at the qualification time, the person is independent because of subsection 1067A(3), (5), (6), (7), (8), (9) or (11); and
(b) at the time 6 months before the person first undertook study described in paragraph (4)(a) of this section, the person's usual place of residence was in a location that at the qualification time is a regional or remote location (see subsection (7)).

Definitions

(7) In this section:

regional or remote location means:
(a) a location categorised as Inner Regional Australia, Outer Regional Australia, Remote Australia or Very Remote Australia, under the Remoteness Structure as defined in subsection 1067A(10F); or
(b) Norfolk Island.

student relocation payment means any of the following:
(a) a relocation scholarship payment;
(b) a payment under the ABSTUDY Scheme known as an ABSTUDY relocation scholarship payment;
(c) a payment known as a relocation scholarship payment under the scheme referred to in section 117 of the Veterans' Entitlements Act;
(d) a payment known as a relocation scholarship payment under the scheme referred to in section 258 of the Military Rehabilitation and Compensation Act;

(e) the amount or value of a disqualifying accommodation scholarship.

OFFICIAL: Sensitive // Legal Privilege

Division 3—Approved scholarship course

592M Definition

In this Act:

approved scholarship course means:

(a) a course of study or instruction approved by the Minister under a determination made for the purposes of section 592N; or

(b) if no determination is in force—a course determined to be a tertiary course under section 5D of the *Student Assistance Act 1973* for the purposes of that Act.

592N Approved scholarship course

(1) The Minister may, by legislative instrument, determine that a course of study or instruction is an ***approved scholarship course*** for the purposes of this Act.

(2) Despite subsection 14(2) of the *Legislation Act 2003*, a determination made for the purposes of subsection (1) may make provision for, or in relation to, a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing:

(a) as in force or existing at a particular time; or

(b) as in force or existing from time to time.

OFFICIAL: Sensitive // Legal Privilege

Part 2.12—Jobseeker payment

Division 1—Qualification for and payability of jobseeker payment

Subdivision A—Basic qualifications

593 Qualification for jobseeker payment

(1) Subject to sections 596, 596A, 597 and 598, a person is qualified for a jobseeker payment in respect of a period if:

(a) the person satisfies the Secretary that:

(i) throughout the period the person is unemployed; or

(ii) the person is a CDEP Scheme participant in respect of the period; or

(iii) subsection (1A) applies in relation to the person for the period; and

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

~~(b) in the case of a person to whom subparagraph (a)(i) or (iii) applies—throughout the period, or for each period within the period, the person:~~

~~(i) satisfies the activity test; or~~

~~(ii) is not required to satisfy the activity test; and~~

~~(c) if subsection 605(1) applies to the person, at all times (if any) during the period when a Jobseeker Employment Pathway Plan is not in force in relation to the person, the person is prepared to enter into such a plan; and~~

~~(d) if subsection 605(1) or (2) applies to the person, at all times during the period when a Jobseeker Employment Pathway Plan is in force in relation to the person, the person is prepared to enter into another such plan instead of the existing plan; and~~

~~(e) if the person is required by the Secretary to enter into a Jobseeker Employment Pathway Plan in relation to the period, the person enters into that plan; and~~

~~(f) while the plan is in force, the person satisfies the Secretary that the person is complying with the requirements in the plan; and~~

(b) throughout the period the person satisfies subsection (1AC); and

(g) throughout the period the person:

(i) is at least 22 years of age and has not reached the pension age; and

(ii) is an Australian resident or is exempt from the residence requirement within the meaning of subsection 7(7); and

(i) the person was not in receipt of a youth allowance during the period.

Note 1: A person may be treated as unemployed (see section 595).

Note 2: The activity test is set out in section 601.

Note 3: For Jobseeker Employment Pathway Plan see sections 605 and 606.

Note 5: For ***pension age*** see section 23.

Note 6: For ***Australian resident*** see section 7.

Note 8: A person may not be qualified if the person's unemployment is due to industrial action (see section 596).

Note 9: A person may not be qualified if the person has reduced the person's employment prospects by moving to an area of lower employment prospects (see section 597).

Note 12: A person could be in receipt of a youth allowance during a period for which the person would qualify for a jobseeker payment, if paragraph (i) was disregarded, because of section 540C (extension of youth allowance to end of payment period).

Note 13: A jobseeker payment is not payable in certain situations even if the person is qualified (see Subdivisions ~~C,~~ D, E and F and Part 4.2).

(1A) This subsection applies in relation to a person for a period if:

(a) the person is incapacitated for work or study throughout the period because of sickness or an accident; and

(b) the incapacity is caused wholly or virtually wholly by a medical condition arising from the sickness or accident; and

(c) the incapacity is, or is likely to be, of a temporary nature; and

(d) one of the following applies:

(i) immediately before the incapacity occurred the person was in employment (whether the person was self-employed, or was employed by another person, on a full-time, part-time, casual or temporary basis) and the Secretary is satisfied that, when the incapacity ends, the employment will be again available to the person (whether or not the same kind of work will be available);

(ii) immediately before the incapacity occurred the person was in full-time education and was receiving payments under the ABSTUDY scheme and the Secretary is satisfied that the person is committed to resuming full-time study under that scheme when the incapacity ends;

(iii) immediately before the incapacity occurred the person was undertaking qualifying study and receiving austudy payment, and the Secretary is satisfied that the person is committed to resuming qualifying study when the incapacity ends.

(1AA) Subsection (1A) does not apply in relation to a person if the Secretary is satisfied that the incapacity is brought about with a view to obtaining jobseeker payment, youth allowance, austudy payment or disability support pension.

(1AB) In subsection (1A):

work, in relation to a person, means work that the person has contracted to perform under a contract of employment that:

(a) the person had immediately before the person becomes incapacitated; and

(b) continues after the person becomes incapacitated.

(1AC) A person satisfies this subsection if:

(a) the following apply:

(i) the person satisfies the employment pathway plan requirements;

(ii) the person satisfies the Employment Secretary that the person is willing to actively seek and to accept and undertake paid work in Australia, except particular paid work that is unsuitable to be done by the person; or

(b) the following apply:

(i) the person is, under Subdivision C of Division 2A of Part 3 of the Administration Act, not required to satisfy the employment pathway plan requirements;

(ii) the person satisfies the Employment Secretary that the person would otherwise be willing to actively seek and to accept and undertake paid work in Australia, except particular paid work that is unsuitable to be done by the person.

Note 1: For ***satisfies the employment pathway plan requirements***, see subsection 23(1).

Note 2: See Division 2B of Part 3 of the Administration Act for the circumstances in which paid work is unsuitable to be done by a person.

(1B) Subject to sections 596, 596A, 597 and 598, a person is qualified for a jobseeker payment in respect of a period if:

(a) the person satisfies the Secretary that throughout the period the person is unemployed; and

(b) throughout the period the person:

(i) has reached the age of 22 years and has not reached the pension age; and

(ii) is an Australian resident; and

(c) the person was not in receipt of a youth allowance during the period; and

(d) the person made a claim for disability support pension at or before the start of the period and the claim was not determined before the end of the period; and

(e) the Secretary is satisfied that throughout the period the person suffered from a medical condition that had a significant adverse effect on the person's ability to work; and

(f) the person satisfies any one of the conditions in subsection (1C).

OFFICIAL: Sensitive // Legal Privilege

(1C) The conditions referred to in paragraph (1B)(f) are:

(a) a condition that the person was an Australian resident when the significant adverse effect of the medical condition on the person's ability to work first occurred; and

(b) a condition that at the start of the period the person had 10 years qualifying Australian residence or had a qualifying residence exemption for jobseeker payment; and

(c) a condition that:

(i) the person was born outside Australia; and

(ii) when the significant adverse effect of the medical condition first occurred the person was not an Australian resident but was a dependent child of an Australian resident; and

(iii) the person became an Australian resident while a dependent child of an Australian resident.

(1D) Subject to sections 596, 596A and 598, a person is qualified for a jobseeker payment, in respect of the period starting in accordance with subsection (1E) and ending in accordance with subsection (1F), if:

(a) the person satisfies the Secretary that throughout the period the person is unemployed; and

(b) throughout the period the person:

(i) has reached the age of 22 years and has not reached the pension age; and

(ii) is an Australian resident or is exempt from the residence requirement within the meaning of subsection 7(7); and

(c) the person was not in receipt of a youth allowance during the period; and

(d) the person has made, or is taken to have made, a claim for jobseeker payment; and

(e) the person satisfies the Secretary that it is likely that the person has a permanent medical condition that would prevent the person from undertaking full-time work; and

(f) the person satisfies the Secretary that it would be unreasonable to expect the person to ~~satisfy the activity~~

~~test~~enter into an employment pathway plan until an assessment of the person's capacity to work has been undertaken.

(1E) The period for which the person is qualified for a jobseeker payment under subsection (1D) starts:

(a) if the person is already receiving jobseeker payment when the Secretary becomes aware of the medical condition referred to in paragraph (1D)(e)—when the Secretary becomes aware of the medical condition; or

(b) otherwise—when the person made, or is taken to have made, the claim for jobseeker payment.

(1F) The period for which the person is qualified for a jobseeker payment under subsection (1D) ends:

(a) if the person has failed to comply with a requirement to enter into a Jobseeker Employment Pathway Plan—on the day on which the person so failed; or

(b) in any other case—when the person enters into a Jobseeker Employment Pathway Plan.

(4) If:

(a) a person was receiving a social security pension, a service pension, income support supplement or a veteran payment; and

(b) the person claims a jobseeker payment within 14 days of the day on which the last instalment of the person's social security pension, service pension, income support supplement or veteran payment was paid; and

(c) the person becomes qualified for a jobseeker payment at some time during the 14 day period but after the first day of that period;

the person is taken to be qualified for a jobseeker payment for the whole of the 14 day period.

Note: Subsection (4) operates when a person transfers from a social security pension, a service pension, income support supplement or a veteran payment to a jobseeker payment and the person is not qualified for a jobseeker payment immediately after the day on which the person's

last instalment of social security pension, service pension, income support supplement or veteran payment is paid. The subsection deems the person to be so qualified. As a result, the person may be paid a jobseeker payment for the period beginning on the day after the day on which the person's last instalment of social security pension, service pension, income support supplement or veteran payment was paid. The subsection aims to ensure that there is minimal disruption to a person's payments when a person transfers from a social security pension, a service pension, income support supplement or a veteran payment to a jobseeker payment.

Coronavirus

(5) A person is qualified for a jobseeker payment in respect of a period that occurs between 1 April 2021 and 30 June 2021 if:

(a) the Secretary is satisfied that the person is in quarantine or self-isolation as a result of advice from, or a requirement made by, the Commonwealth, a State or a Territory or a health professional regarding the coronavirus known as COVID-19, or is caring for an immediate family member or a member of the person's household who is in such quarantine or self-isolation, throughout the period; and

(b) the Secretary is satisfied that, as a result of the circumstance in paragraph (a), the person's working hours were reduced (including to zero); and

(c) throughout the period the person satisfies the activity test or is not required to satisfy the activity test; and

(d) the Secretary is satisfied that:

(i) the person is not entitled to receive a leave payment in respect of the period; or

(ii) the person has taken reasonable steps to access any leave payment to which the person may be entitled in respect of the period; or

(iii) the person is receiving a leave payment in respect of the period but, as a result of the adverse economic effects of the coronavirus known as COVID-19, the payment is less than it would otherwise have been; or

(iv) the person is receiving a leave payment in respect of the period, but the total amount of the leave payment in the

OFFICIAL: Sensitive // Legal Privilege

period is less than the amount of jobseeker payment that would be payable to the person in the period if the person's claim were granted; and

(e) throughout the period the person:

(i) is at least 22 years of age and has not reached the pension age; and

(ii) is an Australian resident or is exempt from the residence requirement within the meaning of subsection 7(7); and

(f) the person was not in receipt of a youth allowance during the period.

595 Persons may be treated as unemployed

(1) The Secretary may treat a person as being unemployed throughout a period if:

(a) during the period, the person undertakes:

(i) paid work that, in the Secretary's opinion, is suitable for the person to undertake; or

(ii) any other activity;

as a result of which he or she would, but for this subsection, not be taken to be unemployed; and

(b) the Secretary is of the opinion that, taking into account:

(i) the nature of the work or other activity; and

(ii) the duration of the work or other activity; and

(iii) any remuneration received for the work or other activity; and

(iv) any other matters relating to the work or other activity, or to the person's circumstances, that the Secretary considers relevant;

the activity should be disregarded.

~~Note: The person may, under subsection 603(3), also be treated as satisfying the activity test.~~

(1A) However, the work or other activity must not be or include any work or other activity of a kind that the Secretary determines under subsection (1B).

(1B) The Secretary may determine, by legislative instrument, kinds of work or other activity that are not to be taken into account for the purposes of subsection (1).

(2) A person complying with ~~a Jobseeker Employment Pathway Plan, or with a requirement under subsection 601(1A),~~an employment pathway plan may be treated by the Secretary as being unemployed.

(3) In deciding whether to treat a person as being unemployed, the Secretary is to take into account:

(a) the nature of the activity undertaken by the person so as to comply with ~~a requirement under subsection 601(1A) (activity test) or a requirement in a Jobseeker Employment Pathway Plan~~a requirement in an employment pathway plan; and

(b) the duration of the activity; and

(c) any other matters relating to the activity that the Secretary considers relevant.

596 Unemployment due to industrial action

(1) A person is not qualified for a jobseeker payment in respect of a period unless the person satisfies the Secretary that the person's unemployment during the period was not due to the person being, or having been, engaged in industrial action or in a series of industrial actions.

(2) A person is not qualified for a jobseeker payment in respect of a period unless the Secretary is satisfied:

(a) that the person's unemployment during the period was due to other people being, or having been, engaged in industrial action or in a series of industrial actions; and

(b) the people, or some of the people, were members of a trade union which was involved in the industrial action; and

(c) the person was not a member of the trade union during the period.

(3) Subject to subsection (4), subsections (1) and (2) do not prevent a person from being qualified for a jobseeker payment in respect of a period that occurs after the relevant industrial action or series of industrial actions has stopped.

Note: For ***industrial action***, ***trade union*** and ***unemployment*** see section 16.

(4) Where the relevant industrial action or series of industrial actions is in breach of an order, direction or injunction issued by:

(a) a prescribed State industrial authority within the meaning of the *Fair Work Act 2009*; or

(b) the Fair Work Commission or the Australian Industrial Relations Commission; or

(c) the Federal Court of Australia; or

(d) the Federal Circuit Court of Australia;

a person is not qualified for a jobseeker payment in respect of a period unless that period occurs 6 weeks or more after the relevant industrial action or series of industrial actions has stopped.

596A Assurance of support

A person is not qualified for jobseeker payment in respect of a period if the Secretary is satisfied that throughout the period:

(a) an assurance of support was in force in respect of the person (in this section called the ***assuree***); and

(b) the person who gave the assurance of support was willing and able to provide an adequate level of support to the assuree; and

(c) it was reasonable for the assuree to accept that support.

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

598 Liquid assets test waiting period

(1) Subject to subsections (4A), (5), (6), (7), (8) and (8B), if:

(a) the value of a person's liquid assets exceeds the person's maximum reserve on:

(i) if subparagraph 593(1)(a)(iii) does not apply in relation to the person—the day following the day on which the person ceased work or ceased to be enrolled in a full time course of education or of vocational training; or

(ia) if subparagraph 593(1)(a)(iii) applies in relation to the person—the day on which the person becomes incapacitated for work or study; or

(ii) in any case—the day on which the person claims a jobseeker payment; and

(b) the person is not a transferee to a jobseeker payment;

the person is not qualified for a jobseeker payment for a period unless the person has served the liquid assets test waiting period in relation to the claim before the beginning of that period.

Note 1: For ***liquid assets*** see section 14A.

Note 2: For ***maximum reserve*** see section 14A.

Note 3: For ***served the waiting period*** in relation to a liquid assets test waiting period, see subsection 23(10A).

(2) The liquid assets test waiting period in relation to the claim is to be worked out under subsections (2A), (2B) and (2C).

(2A) Work out the number of formula weeks (disregarding any fractions of a week) in relation to the claim using the formula:

$$\frac{\text{Liquid assets} - \text{Maximum reserve amount}}{\text{Divisor}}$$

where:

liquid assets means the person's liquid assets.

maximum reserve amount means the maximum reserve in relation to the person under subsection 14A(1).

divisor means, in relation to a person:

(a) if the person is not a member of a couple and does not have a dependent child—$500; or

(b) otherwise—$1,000.

(2B) If the number of formula weeks is equal to or greater than 13 weeks, the liquid assets test waiting period in relation to the claim is 13 weeks.

(2C) If subsection (2B) does not apply, the liquid assets test waiting period in relation to the claim is the number of weeks equal to the number of formula weeks.

(3) If the person is not a member of a couple, the liquid assets test waiting period in relation to the claim starts on:

(a) if subparagraph 593(1)(a)(iii) does not apply in relation to the person—subject to subsection (3AA), the day following the day on which the person ceased work or ceased to be enrolled in a full time course of education or of vocational training; or

(b) if subparagraph 593(1)(a)(iii) applies in relation to the person—subject to subsection (4), the day on which the person became incapacitated for work or study.

(3AA) If subparagraph 593(1)(a)(iii) does not apply in relation to the person and the person:

(a) is not a member of a couple; and

~~(b) is, under Subdivision BA, not required to satisfy the activity test;~~

(b) is not required to satisfy the employment pathway plan requirements because of a determination that is in effect under section 40L of the Administration Act and that has been made because of the circumstance referred to in paragraph 40L(5)(a) of that Act;

the liquid assets test waiting period in relation to the claim starts on the day on which the person became incapacitated.

(3A) If the person is a member of a couple, the liquid assets test waiting period in relation to the claim starts on the last occurring of the following days:

(a) either:

(i) if subparagraph 593(1)(a)(iii) does not apply in relation to the person—subject to subsection (3B), the day following the day on which the person ceased work or

ceased to be enrolled in a full time course of education or of vocational training; or

(ii) if subparagraph 593(1)(a)(iii) applies in relation to the person—subject to subsection (4), the day on which the person became incapacitated for work or study;

(b) if, when the claim is made, the person's partner has ceased work—the day following the day on which the person's partner ceased work;

(ba) if, when the claim is made, the person's partner has ceased to be enrolled in a full time course of education or of vocational training—the day following the day on which the person's partner so ceased;

(c) if, when the claim is made, the person's partner is incapacitated for work—the day on which the person's partner became incapacitated for work.

(3B) If subparagraph 593(1)(a)(iii) does not apply in relation to the person and the person:

(a) is a member of a couple; and

~~(b) is, under Subdivision BA, not required to satisfy the activity test;~~

(b) is not required to satisfy the employment pathway plan requirements because of a determination that is in effect under section 40L of the Administration Act and that has been made because of the circumstance referred to in paragraph 40L(5)(a) of that Act;

the liquid assets test waiting period in relation to the claim starts on the last occurring of the following days:

(c) the day on which the person became incapacitated for work;

(d) if, when the claim is made, the person's partner has ceased work—the day following the day on which the person's partner ceased work;

(da) if, when the claim is made, the person's partner has ceased to be enrolled in a full time course of education or of vocational training—the day following the day on which the person's partner so ceased;

OFFICIAL: Sensitive // Legal Privilege

(e) if, when the claim is made, the person's partner is incapacitated for work—the day on which the person's partner became incapacitated for work.

(4) If:

(a) a person becomes qualified for austudy payment; and

(b) because of paragraph 575(2)(a), austudy payment is not payable to the person while the person is subject to a liquid assets test waiting period; and

(c) within the liquid assets test waiting period referred to in paragraph (b):

(i) the person becomes incapacitated for study; and

(ii) the person claims jobseeker payment; and

(d) subparagraph 593(1)(a)(iii) applies in relation to the person;

the liquid assets test waiting period in relation to the claim for jobseeker payment starts on the day on which the person becomes qualified for austudy payment.

(4A) Subsection (1) does not apply to a person if, at any time during the 12 months preceding:

(a) if subparagraph 593(1)(a)(iii) does not apply in relation to the person—the day following the day on which the person ceased work or ceased to be enrolled in a full time course of education or of vocational training; or

(aa) if subparagraph 593(1)(a)(iii) applies in relation to the person—the day on which the person becomes incapacitated for work or study; or

(b) in any case—the day on which the person claims a jobseeker payment;

the person or their partner was serving a liquid assets test waiting period that started during that 12 months.

(5) If the Secretary is satisfied that a person is in severe financial hardship because the person has incurred unavoidable or reasonable expenditure while serving a liquid assets test waiting period, the Secretary may determine that the person does not have to serve the whole, or any part, of the waiting period.

Note 1: For ***in severe financial hardship*** see subsection 19C(2) (person who is not a member of a couple) and 19C(3) (person who is a member of a couple).

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

(6) Subsection (1) does not apply to a person who becomes qualified for jobseeker payment at the end of a continuous period in respect of which the person received income support payments (whether or not the kind of payment received has changed over the period and whether the period or any part of it occurred before or after the commencement of this subsection).

Note 1: For ***income support payment*** see subsection 23(1).

Note 2: For the determination of the continuous period in respect of which a person received income support payments see section 38B.

(8) Subsection (1) does not apply to a person who:

(a) is undertaking an activity specified in an instrument made under subsection (8A); and

(b) has been exempted from the application of subsection (1) by the Secretary.

(8A) The Secretary may, by legislative instrument, specify activities for the purpose of paragraph (8)(a).

(8B) Subsection (1) does not apply to a person if:

(a) the person makes a claim for jobseeker payment on or after the commencement of this subsection; and

(b) the person makes the claim after the death of the person's partner on or after the commencement of this subsection; and

(c) if the person is a man or a woman who was not pregnant when her partner died—the person makes the claim in the period of 14 weeks starting on the day of the death of the partner; and

(d) if the person is a woman who was pregnant when her partner died—the person makes the claim:

(i) in the period of 14 weeks starting on the day of the death of the partner; or

OFFICIAL: Sensitive // Legal Privilege

(ii) in the period starting on the day of the death of the partner and ending when the child is born or the woman otherwise stops being pregnant;

whichever ends later.

(9) A reference in this section to the day on which a person ceased work (whether the person ceases work permanently, temporarily or by reason of being on unpaid leave) is a reference:

(a) except where the person is on paid leave immediately after last performing work—to the day on which the person last performed work before so ceasing; and

(b) if the person is on paid leave—to the last day on which the person is on that paid leave.

600 Prospective determinations for some jobseeker payment recipients

(1) A person is qualified for jobseeker payment for a period determined by the Secretary if:

(a) the person is receiving jobseeker payment; and

(b) the Secretary considers at the start of the period that:

(i) the person may reasonably be expected to satisfy the qualification requirements for jobseeker payment (sections 593 to 598) during the period; and

(ii) it is reasonable to expect that jobseeker payment will be payable to the person for the period; and

(iii) the person will comply with the Act during the period; and

(c) except where the person is a CDEP Scheme participant in respect of the period, the person is not indebted at the start of the period to the Commonwealth under or as a result of this Act; and

(d) the Secretary is satisfied that the person should be qualified under this section for a jobseeker payment for the period.

(2) The Minister, by legislative instrument:

(a) must determine guidelines for making decisions under paragraph (1)(b); and

(b) may revoke or vary the determination.

If the Minister revokes a determination, the Minister must determine guidelines that commence immediately after the revocation.

~~Subdivision B—Activity test~~

~~601 Activity test~~

~~(1) Subject to subsections (1A) and (5), a person satisfies the activity test in respect of a period if the person satisfies the Secretary that, throughout the period, the person is:~~

~~(a) actively seeking; and~~

~~(b) willing to undertake;~~

~~paid work in Australia, other than paid work that is unsuitable to be undertaken by the person.~~

~~Note 1: See subsections (2A) and (2B) on what paid work is unsuitable.~~

~~Note 2: This Subdivision and Subdivision BA set out situations in which a person is taken to satisfy, or is not required to satisfy, the activity test.~~

~~(1A) A person also satisfies the activity test in respect of a period if:~~

~~(a) the Secretary is of the opinion that, throughout the period, the person should undertake particular paid work, other than paid work that is unsuitable to be done by the person; and~~

~~Note: See subsection (2A) on what paid work is unsuitable.~~

~~(b) the Secretary notifies the person that the person is required to act in accordance with that opinion; and~~

~~(c) the person complies, throughout the period, with the Secretary's requirement.~~

~~(1B) To avoid doubt, the work that the person is required to undertake under subsection (1A) may involve a number of hours per week that differs from the number of hours of work per week that the person is required to seek to comply with a Jobseeker Employment Pathway Plan that is in force in relation to the person.~~

Section 601

~~(2) A person cannot be taken to satisfy the activity test throughout a period if the person fails to comply with a requirement under subsection (1A):~~

~~(a) whether or not the person complies with subsection (1) or (4); and~~

~~(b) whether or not another provision of this Act under which the activity test is satisfied, or taken to be satisfied, applies (or would apart from this section apply) to the person.~~

~~(2A) Subject to subsections (2AA) and (2AB), for the purposes of subsection (1) and paragraph (1A)(a), particular paid work is unsuitable for a person if and only if, in the Secretary's opinion:~~

~~(a) the person lacks the particular skills, experience or qualifications that are needed to perform the work and no training will be provided by the employer; or~~

~~(b) it has been established that there is medical evidence that the person has an illness, disability or injury that would be aggravated by the conditions in which the work would be performed; or~~

~~(ba) the person is the principal carer for one or more children, and does not have access to appropriate care and supervision for the children at the times when the person would be required to undertake the work; or~~

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

~~(c) performing the work in the conditions in which the work would be performed would constitute a risk to health or safety and would contravene a law of the Commonwealth, a State or a Territory relating to occupational health and safety; or~~

~~(e) the terms and conditions for the work would be less generous than the applicable statutory conditions; or~~

~~(g) commuting between the person's home and the place of work would be unreasonably difficult; or~~

~~(h) the work would require enlistment in the Defence Force or the Reserves; or~~

(i) the work requires the person to move from a home in a place to a home in another place; or

(j) for any other reason, the work is unsuitable for the person.

(2AAA) A person has, for the purposes of paragraph (2A)(ba), access to appropriate care and supervision for a child at a particular time if, at that time:

(a) the child could be provided with care by an approved child care service (within the meaning of the Family Assistance Administration Act), and provision of that care would, in the Secretary's opinion, be appropriate in the circumstances; or

(b) the child could be provided with other care that the person considers to be suitable; or

(c) the child could be attending school, and attendance at that school would, in the Secretary's opinion, be appropriate in the circumstances.

(2AAB) For the purposes of paragraph (2A)(ba), a time when the person would be required to undertake the work includes reasonable amounts of time that would be needed for the person to travel from the person's home to the place of work and from the place of work to the person's home.

(2AA) If:

(a) a person seeks work in an area (the ***new area***) that is outside the area (the ***old area***) in which the person's home is situated; and

(b) the person is offered permanent full-time work (whether or not work of the kind sought) in the new area;

the work offered is not unsuitable for the person because of paragraph (2A)(g) or (i) unless:

(c) the person is under the age of 18; or

(d) the person or the person's partner is pregnant; or

(e) the person or the person's partner has a severe medical condition and the condition makes it unreasonable for the person to accept the offer; or

(f) the acceptance of the offer would jeopardise the current employment, or the employment prospects, of the person's partner; or

(g) the person or the person's partner has a child under the age of 16 years who is living with them or is living somewhere else in the old area; or

(h) the person or the person's partner has significant caring responsibilities in the old area; or

(i) the educational, cultural or religious background of the person makes it unreasonable for the person to accept the offer; or

(j) it is more appropriate for the person to participate in education or training than to accept the offer; or

(k) the person would suffer severe financial hardship if the person were to accept the offer.

(2AB) Without affecting what would otherwise constitute a person seeking work outside the area in which the person's home is situated, if a person, when seeking employment through an employment service provider, represents to the provider that the person is willing to undertake work outside the area in which the person's home is situated, the person is taken for the purposes of subsection (2AA) to seek work outside the area at the time when the representation is made.

(2AC) The Secretary must, by legislative instrument, determine matters that the Secretary must take into account in deciding whether, for the purposes of paragraph (2A)(j), particular paid work is unsuitable for a person.

(2AD) To avoid doubt, a determination under subsection (2AC) does not limit the matters that the Secretary may take into account in deciding whether, for the purposes of paragraph (2A)(j), particular paid work is unsuitable for a person.

(4) A person also satisfies the activity test in respect of a period if:

~~(a) throughout the period, the person complies with the terms of a Jobseeker Employment Pathway Plan that is in force in relation to the person; and~~

~~(b) either:~~

~~(i) the person is included in a class of persons specified in an instrument made under subsection (4A); or~~

~~(ii) the Secretary determines that the person should be taken to satisfy the activity test in respect of that period.~~

~~(4A) The Secretary may, by legislative instrument, specify classes of persons for the purposes of subparagraph (4)(b)(i).~~

~~(4B) A person also satisfies the activity test in respect of a period if, throughout the period, the person:~~

~~(a) is participating in an approved training course for training supplement; and~~

~~(b) is, in the Secretary's opinion, making satisfactory progress towards completing the course.~~

~~(4C) In forming an opinion about whether a person is making satisfactory progress for the purpose of paragraph (4B)(b), the Secretary must have regard to guidelines set under subsection 541B(3B).~~

~~(4D) A person also satisfies the activity test in respect of a period if, throughout the period, the person is participating in the National Green Jobs Corps program.~~

~~(5) If a person fails to comply, throughout a period, with a requirement in a Jobseeker Employment Pathway Plan that is in force in relation to the person, the person cannot be taken to satisfy the activity test in respect of the period in spite of any compliance of the person with subsection (1), (4B) or (4D).~~

602A Relief from activity test—persons to whom subsection 614(6) applies

If:

(a) jobseeker payment is payable to a person because of subsection 614(6); and

(b) the person has commenced the full-time course of education referred to in paragraph 614(6)(a);

the person is taken to satisfy the activity test in respect of the period during which the payment is payable to the person because of that subsection.

602AA Relief from activity test—death of person's partner

Claimants

(1) If:

(a) a person makes a claim for jobseeker payment on or after the commencement of this section; and

(b) the person makes the claim after the death of the person's partner on or after the commencement of this section; and

(c) if the person is a man or a woman who was not pregnant when her partner died—the person makes the claim in the period of 14 weeks starting on the day of the death of the partner; and

(d) if the person is a woman who was pregnant when her partner died—the person makes the claim:

(i) in the period of 14 weeks starting on the day of the death of the partner; or

(ii) in the period starting on the day of the death of the partner and ending when the child is born or the woman otherwise stops being pregnant;

whichever ends later;

then the person is not required to satisfy the activity test in respect of the period applicable under paragraph (c) or (d).

~~*Recipients*~~

~~(2) If:~~

~~(a) a person is receiving jobseeker payment on or after the commencement of this section; and~~

~~(b) while the person is receiving jobseeker payment, the person's partner dies on or after the commencement of this section; and~~

~~(c) if the person is a man or a woman who was not pregnant when her partner died—the person notifies the Secretary of the person's partner's death in the period of 14 weeks starting on the day of the death of the partner; and~~

~~(d) if the person is a woman who was pregnant when her partner died—the person notifies the Secretary of the person's partner's death:~~

~~(i) in the period of 14 weeks starting on the day of the death of the partner; or~~

~~(ii) in the period starting on the day of the death of the partner and ending when the child is born or the woman otherwise stops being pregnant;~~

~~whichever ends later; and~~

~~(e) the person is receiving jobseeker payment on the day of the notification;~~

~~then the person is not required to satisfy the activity test in respect of the period applicable under paragraph (c) or (d).~~

~~602B Relief from activity test—domestic violence etc.~~

~~(1) A person is not required to satisfy the activity test in respect of a period that the Secretary determines under this section in relation to the person.~~

~~(2) The Secretary may make a determination under this section in relation to the person if the Secretary is satisfied that:~~

~~(a) the person:~~

~~(i) is the principal carer of one or more children; and~~

(ii) was subjected to domestic violence in the 26 weeks before the making of the determination; or

(b) the person is the principal carer of one or more children, and there are special circumstances relating to the person's family that make it appropriate to make the determination.

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

(2A) The Secretary must, by legislative instrument, specify matters that the Secretary must take into account in deciding whether there are special circumstances relating to a person's family that make it appropriate to make a determination under this section.

(2B) To avoid doubt, an instrument made under subsection (2A) does not limit the matters that the Secretary may take into account in making a determination under subsection (2).

(3) The period that the Secretary determines under this section must be the lesser of:

(a) the period that the Secretary considers to be appropriate; or

(b) 16 weeks.

(4) Any such period may be followed by one or more other periods (not exceeding 16 weeks) determined under this section in relation to the person.

(5) The period that the Secretary determines under this section must, despite subsection (3), be 16 weeks if the determination:

(a) is made on grounds referred to in paragraph (2)(a) (or on grounds that include those grounds); and

(b) is the first determination made on those grounds (or on grounds that include those grounds) in relation to the person on or after 1 July 2010.

(6) The Secretary may revoke a determination under this section in relation to a person if the Secretary is satisfied that the grounds on which the determination was made no longer exist.

(7) Subsection (6) does not affect any operation that subsection 33(3) of the *Acts Interpretation Act 1901* has in relation to a determination under this section.

602C Relief from activity test—people with disabled children and other circumstances

(1) A person is not required to satisfy the activity test in respect of a period that the Secretary determines under this section in relation to the person.

(2) The Secretary may make a determination under this section in relation to the person if the Secretary is satisfied that the person is the principal carer of one or more children:

(a) who suffer from a physical, intellectual or psychiatric disability or illness; and

(b) whose care needs are such that the person should, for the period specified in the determination, not be required to satisfy the activity test.

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

(3) The Secretary must make a determination under this section in relation to the person if the Secretary is satisfied that the person is the principal carer of one or more children, and that:

(a) the person is a registered and active foster carer; or

(b) the person is a home educator of that child, or one or more of those children; or

(c) the person is a distance educator of that child, or one or more of those children; or

(d) under a family law order that the person is complying with, a child, of whom the person is a relative (other than a parent), is to live with the person.

Note 1: For ***principal carer*** see subsections 5(15) to (24).

Note 2: For ***registered and active foster carer*** see section 5B.

Note 3: For ***home educator*** see section 5C.

Note 4: For ***distance educator*** see section 5D.

Note 5: For ***family law order*** see subsection 23(1).

Note 6: For ***relative (other than a parent)*** see section 5E.

(3A) The Secretary must make a determination under this section in relation to the person if the Secretary is satisfied that:

(a) the person is the principal carer of a child; and

(b) the person is one or both of the following:

(i) the principal carer of one or more other children;

(ii) the main supporter of one or more secondary pupil children; and

(c) there are 4 or more of the children of whom the person is the principal carer or main supporter.

Note 1: For ***principal carer*** see subsections 5(15) to (24).

Note 2: For ***main supporter*** see section 5G.

Note 3: For ***secondary pupil child*** see section 5F.

(3B) The Secretary must make a determination under this section in relation to the person if the Secretary is satisfied that the person:

(a) is not the principal carer of one or more children; and

(b) is a registered and active foster carer; and

(c) is providing foster care to a child temporarily in an emergency or to give respite to another person from caring for the child.

Note 1: For ***principal carer*** see subsections 5(15) to (24).

Note 2: For ***registered and active foster carer*** see section 5B.

(3C) The Secretary must make a determination under this section in relation to the person if the Secretary is satisfied that the person:

(a) is the main supporter of one or more secondary pupil children; and

(b) is a home educator or distance educator of one or more of those children.

Note 1: For ***main supporter*** see section 5G.

Note 2: For ***secondary pupil child*** see section 5F.

Note 3: For ***home educator*** see section 5C.

Note 4: For ***distance educator*** see section 5D.

(3D) The Secretary must make a determination under this section in relation to the person if the Secretary is satisfied that:

(a) the person is the principal carer of one or more children; and

(b) the person is a relative (other than a parent) of a child (the ***kin child***); and

(c) there is a document that:

(i) provides for the kin child to live with the person for the care and wellbeing of the kin child; and

(ii) is prepared or accepted by an authority of a State or Territory that has responsibility for the wellbeing of children; and

(d) the person is acting in accordance with the document.

Note 1: For ***principal carer*** see subsections 5(15) to (24).

Note 2: For ***relative (other than a parent)*** see section 5E.

(4) The Secretary may make a determination under this section in relation to the person if the Secretary is satisfied that:

(a) the person is a person included in a class of persons specified under subsection (5); and

(b) the person's circumstances are such that the person should not be required to satisfy the activity test for the period.

(5) The Secretary may, by legislative instrument, specify classes of persons in respect of whom determinations under this section may be made.

(6) The period that the Secretary determines under this section, except subsection (3B), must be the lesser of:

(a) the period that the Secretary considers to be appropriate; or

(b) 12 months.

(6A) The period that the Secretary determines under subsection (3B) in relation to the person must be the lesser of:

(a) the period:

(i) starting when the person starts to provide foster care to the child; and

(ii) ending 12 weeks, or a shorter period determined by the Secretary, after the person ceases to provide foster care to the child; and

(b) 12 months.

(7) A period determined by the Secretary under this section in relation to the person may be followed by one or more other periods (not exceeding 12 months) determined under this section in relation to the person.

(8) The Secretary may revoke a determination under this section in relation to a person if the Secretary is satisfied that the grounds on which the determination was made no longer exist.

(9) Subsection (8) does not affect any operation that subsection 33(3) of the *Acts Interpretation Act 1901* has in relation to a determination under this section.

602D Relief from activity test—rehabilitation program

If:

(a) subparagraph 593(1)(a)(iii) applies in relation to a person; and

(b) the person is undertaking a rehabilitation program; and

(c) the program is intended to enhance the person's ability to work; and

(d) the length of the person's participation in the program is, or is likely to be, at least 6 weeks; and

(e) the person's participation in the program is, or is likely to, end within the period of 208 weeks after the jobseeker payment commenced to be payable to the person;

the person is not required to satisfy the activity test for the duration of the period the person is undertaking the rehabilitation program or for such shorter or longer period determined by the Secretary.

603 Relief from activity test—general

(1) A person is taken to satisfy the activity test in respect of a period when the person is attending a training camp as a member of:

(a) the Naval Reserve; or

(b) the Army Reserve; or

(c) the Air Force Reserve.

(2) Where the Secretary considers that:

(a) it would be reasonable to assume that, at the end of a period, a person is present in an area where:

(i) there is no locally accessible labour market; and

(ii) there is no locally accessible vocational training course or labour market program; and

(aa) it would be reasonable to assume that, throughout the period, the person is unemployed and is capable of undertaking, and is willing to undertake, paid work that, in the Secretary's opinion, is suitable for the person to undertake; and

(b) having regard to all the relevant factors, including:

(i) the location of offices of the Department; and

(ii) difficulties with transport and communication; and

(iii) the educational and cultural background of the person;

it would be unreasonable to expect the person to comply with the activity test in order to be qualified for jobseeker payment for that period;

then, unless the person has been notified of a requirement under subsection 601(1A) in relation to the period, the person is taken to satisfy the activity test during that period.

Note 1: For ***activity test*** see section 601.

Note 2: For ***remote area*** see section 14.

(3) If:

(a) a person is treated as being unemployed because of subsection 595(1); and

(b) the Secretary is satisfied that it is appropriate for this subsection to apply;

the person is taken to satisfy the activity test during the period starting when the person made a claim, or is to be taken to have made a claim, for jobseeker payment and ending:

(c) if the person has been required to enter into a Jobseeker Employment Pathway Plan but has failed to enter that plan—when the person so failed; or

(d) in any other case—when the person has entered into such a plan.

(4) Subsection (3) does not apply if, at the time of becoming a person who is treated as being unemployed because of subsection 595(1), the person had already been required to enter into a Jobseeker Employment Pathway Plan.

603A Relief from activity test—special circumstances

(1) Subject to subsections (2) and (3), a person is not required to satisfy the activity test for a period if:

(a) the Secretary is satisfied that special circumstances, beyond the person's control, exist; and

(b) the Secretary is satisfied that in those circumstances it would be unreasonable to expect the person to comply with the activity test for that period.

(1A) Subsection (1) does not apply to circumstances wholly or predominantly attributable to the person's misuse of alcohol or another drug, unless the person is a declared program participant.

(2) The period referred to in subsection (1) is not to exceed 13 weeks.

(3) If:

(a) the Secretary makes a number of determinations under any one or more of the following provisions:

(i) subsection 525AA(3) of this Act as previously in force;

(ii) subsection 542H(1) of this Act;

(iia) subsection 731E(1) of this Act;

(iii) subsection (1) of this section; and

(b) the periods to which the determinations relate form a continuous period;

the continuous period is not to exceed 13 weeks, unless the Secretary determines otherwise, having regard to the continued existence, or likely continued existence, of the special circumstances on which the last preceding determination was based.

603AAA Pre-natal and post-natal relief from activity test

(1) A pregnant woman is not required to satisfy the activity test for the period that starts 6 weeks before the woman's expected date of confinement and ends on the day on which the woman gives birth to the child (whether or not the child is born alive).

(2) If a woman gives birth to a child (whether or not the child is born alive), the woman is not required to satisfy the activity test for the period that starts on the day on which she gives birth to the child and ends 6 weeks after that day.

603AA Relief from activity test—people 55 and over who are engaged in work

(1) Subject to subsections (2) and (3), a person who has reached 55 years is taken to satisfy the activity test in respect of a period of 2 weeks (the ***relevant period***) if the person:

(a) is engaged in approved unpaid voluntary work for an approved organisation for at least 30 hours in the relevant period; or

(b) is engaged, for at least 30 hours in the relevant period, in a combination of:

(i) approved unpaid voluntary work for an approved organisation; and

(ii) paid work that the Secretary regards as suitable; or

(c) is engaged for at least 30 hours in the relevant period in paid work that the Secretary regards as suitable.

(2) Subsection (1) does not apply in relation to a person who has reached 55, but is under 60, years of age and to a period of 2 weeks (the ***relevant period***) if that period begins before the end of 12 months starting on the day the person starts to receive jobseeker payment. Instead the person is taken to satisfy the activity test in respect of the relevant period if the person:

(a) is engaged, for at least 30 hours in the relevant period, in a combination of:

(i) approved unpaid voluntary work for an approved organisation; and

(ii) paid work that the Secretary regards as suitable and that is at least 15 hours in the relevant period; or

(b) is engaged for at least 30 hours in the relevant period in paid work that the Secretary regards as suitable.

Note: Because of the definition of ***receive*** in section 23, this subsection applies separately in relation to each occasion the person starts to receive jobseeker payment.

(2A) If jobseeker payment ceases to be payable to a person for a period of less than 3 months (except because the jobseeker payment was cancelled), then, for the purposes of subsection (2), the person is taken to be receiving jobseeker payment during that period.

(3) This section does not apply to a person in respect of a day in a relevant period if, in respect of the person, having regard to the opportunities, or possible opportunities, for employment that become available to the person on or before the day, the Secretary considers that this section is not to apply to the person in respect of that day.

(4) For the purposes of this section:

(a) approved unpaid voluntary work, either full-time or otherwise, is work that has been approved by the Secretary for the purposes of this section; and

(b) an approved organisation is an organisation that has been approved by the Secretary for the purposes of this section.

603AB Relief from activity test—certain principal carers and people with partial capacity to work

A person who:

(a) is the principal carer of at least one child; or

(b) has a partial capacity to work;

is taken to satisfy the activity test in respect of a period if, during the period, the person is engaged for at least 30 hours per fortnight in paid work that the Secretary regards as suitable.

Note 1: For ***principal carer*** see subsections 5(15) to (24).

Note 2: For ***partial capacity to work*** see section 16B.

603AC Relief from activity test—cessation of claims for widow allowance

(1) A woman is not required to satisfy the activity test for a period (the ***relevant period***) if the following apply:

(a) she made the claim for jobseeker payment on or after the commencement of this section;

(b) she was born on or before 1 July 1955;

(c) she ceased to be a member of a couple after turning 40;

(d) she satisfies the Secretary that she has no recent workforce experience on the day she made the claim for jobseeker payment;

(e) the woman is not a member of a couple throughout the relevant period.

(2) For the purposes of paragraph (1)(d), ***recent workforce experience*** is employment of 20 hours or more a week for a total of 13 weeks or more at any time during the 12 months immediately before the day the woman made the claim for jobseeker payment.

Subdivision BA—Exemption from activity test—people temporarily incapacitated for work

603BA Subdivision not to apply to a person with a pending claim for disability support pension

This Subdivision does not apply to a person who is qualified for jobseeker payment under subsection 593(1B).

603B Interpretation

A reference in this Subdivision to a person being exempt from the activity test, or ceasing to be exempt from the activity test, under, or under a provision of, this Subdivision is a reference to a person not being required to satisfy the activity test, or becoming required to satisfy the activity test, as the case may be, because of the operation of, or the operation of that provision of, this Subdivision.

603C Incapacitated person not required to satisfy activity test

(1) Subject to this Subdivision, a person is not required to satisfy the activity test in respect of a period if:

(a) throughout the period the person is incapacitated for work because of sickness or an accident; and

(b) the incapacity is caused wholly, or virtually wholly, by a medical condition arising from the sickness or accident; and

(c) the incapacity is, or is likely to be, of a temporary nature; and

(d) if this Subdivision had not been enacted and paragraphs 593(1)(b), (c), (d) and (e) were disregarded, the person would qualify for jobseeker payment; and

(e) the person has, whether before or after the commencement of this section, given the Secretary a certificate of a medical practitioner, in a form approved by the Secretary, stating:

(i) the medical practitioner's diagnosis; and

(ii) the medical practitioner's prognosis; and

(iii) that the person is incapacitated for work; and

(iv) the period for which the person is incapacitated for work; and

(f) the Secretary is satisfied that the incapacity has not been brought about with a view to obtaining an exemption from the activity test.

(1AA) Subsection (1) does not apply to sickness, or an accident, wholly or predominantly attributable to the person's dependence on alcohol or another drug, unless the person is a declared program participant.

(1A) The Secretary must comply with the guidelines (if any) determined and in force under subsection (1B) in deciding the following:

(a) whether paragraph (1)(a), (b) or (c) applies to a person in respect of a period;

(b) whether, for the purposes of paragraph (a) of the definition of ***work*** in subsection (2), work is of a kind that a person could be reasonably expected to do.

(1B) The Minister may, by legislative instrument, determine guidelines to be complied with by the Secretary in making a decision referred to in subsection (1A).

(2) In this section:

work, in relation to a person, means work (whether full-time, part-time, permanent or casual) that:

(a) is of a kind that the person could, in the Secretary's opinion, be reasonably expected to do; and

(b) is for at least 8 hours per week on wages that are at or above the relevant minimum wage.

603D Time limit for exemption—Secretary satisfied person can undertake activity

(1) A person ceases to be exempt, under this Subdivision, from the activity test if the Secretary is satisfied that, although the person meets the requirements of section 603C, the person should

undertake one or more activities that the Secretary regards as suitable for the person.

(2) The cessation occurs:

(a) if the person has failed to comply with a requirement to enter into a Jobseeker Employment Pathway Plan—when the person so failed; or

(b) in any other case—when the person has entered into such a plan.

(3) This section does not prevent a person ceasing to be exempt under section 603F.

603F Time limit for exemption—end of person's maximum exemption period

(1) A person ceases to be exempt, under this Subdivision, from the activity test if the person's maximum exemption period ends.

(2) Subject to this section, a person's maximum exemption period is:

(a) if the person has, whether before or after the commencement of this section, given the Secretary a medical certificate for the purpose of enabling the Secretary to decide whether the person was required to satisfy the activity test—the lesser of the following periods:

(i) the period stated in the certificate as the period for which the person would be incapacitated for work;

(ii) the period of 13 weeks that started or starts on the first day of the period so stated in the certificate; or

(b) otherwise—the period of 4 weeks that started or starts on the day determined by the Secretary to have been the day on which the person's incapacity for work began.

(4) If:

(a) a person is exempt, under this Subdivision, from the activity test; and

(b) the person has, whether before or after the commencement of this section, given the Secretary a certificate of a medical

practitioner that states the matters listed in paragraph 603C(1)(e) and is in accordance with the form approved under that paragraph; and

(c) the Secretary is satisfied that the person's incapacity for work will continue after the end of the person's maximum exemption period;

the Secretary may extend the person's maximum exemption period by a period that is not more than the lesser of the following periods:

(d) a period equal to the period stated in the certificate as the period for which the person would be incapacitated for work;

(e) 13 weeks.

(4A) If:

(a) a person was exempt, under this Subdivision, from the activity test; and

(b) within 14 days after the end of the person's maximum exemption period the person gives the Secretary a certificate of a medical practitioner that states the matters listed in paragraph 603C(1)(e) and is in accordance with a form approved under that paragraph; and

(c) the Secretary is satisfied that the person's incapacity for work has continued after the end of the person's maximum exemption period and that the incapacity will continue;

the Secretary may extend the maximum exemption period by a period that is not more than the lesser of the following periods:

(d) a period equal to the period stated in the certificate as the period for which the person would be incapacitated for work;

(e) 13 weeks.

(5) If:

(a) a person is exempt, under this Subdivision, from the activity test; and

(b) the person gives the Secretary written evidence (other than a certificate referred to in paragraph (4)(b)) that the person's incapacity for work will continue after the end of the person's maximum exemption period; and

~~(c) the Secretary is satisfied that:~~

~~(i) the person's circumstances make it unreasonable to expect the person to obtain a certificate referred to in paragraph (4)(b) before the end of the maximum exemption period; and~~

~~(ii) the person's incapacity for work will continue after the end of the person's maximum exemption period;~~

~~the Secretary may extend the person's maximum exemption period by not more than 4 weeks.~~

~~(5A) If:~~

~~(a) a person was exempt, under this Subdivision, from the activity test; and~~

~~(b) within 14 days after the end of the person's maximum exemption period the person gives the Secretary written evidence (other than a certificate referred to in paragraph (4A)(b)) that the person's incapacity for work will continue after the end of the person's maximum exemption period; and~~

~~(c) the Secretary is satisfied that:~~

~~(i) the person's circumstances make it unreasonable to expect the person to obtain a certificate referred to in paragraph (4A)(b); and~~

~~(ii) the person's incapacity for work has continued after the end of the person's maximum exemption period and that the incapacity will continue;~~

~~the Secretary may extend the maximum exemption period by a period of not more than 4 weeks from the end of the previous maximum exemption period.~~

~~(6) If:~~

~~(a) a person is exempt, under this Subdivision, from the activity test; and~~

~~(b) the person has, whether before or after the commencement of this section, given the Secretary a certificate referred to in paragraph (4)(b) before the end of the person's maximum exemption period; and~~

(c) before the end of the person's maximum exemption period, the Secretary does not satisfy himself or herself that the person's incapacity for work will continue after the end of that period; and

(d) the sole or dominant cause of the Secretary failing so to satisfy himself or herself is an act or omission of an officer of the Department;

the Secretary may extend the person's maximum exemption period by not more than 4 weeks.

(7) This section does not prevent a person ceasing to be exempt under section 603D.

Subdivision C—Jobseeker Employment Pathway Plans

605 Jobseeker Employment Pathway Plans—requirement

(1) If a Jobseeker Employment Pathway Plan is not in force in relation to a person, the Secretary may require the person to enter into such a plan if:

(a) the person is receiving, or has made a claim for, a jobseeker payment; or

(b) the Department is contacted by or on behalf of the person in relation to a claim for a jobseeker payment.

(2) If a Jobseeker Employment Pathway Plan is in force in relation to a person, the Secretary may require the person to enter into another plan instead of the existing one.

(2A) If, under Subdivision BA, a person is not required to satisfy the activity test, subsections (1) and (2) apply to the person only if subsection 603D(1) applies to the person.

(2B) Subsections (1) and (2) do not apply to a person who is qualified for a jobseeker payment only under subsection 593(1B).

(2C) Subsections (1) and (2) do not apply to a person at a time during which, under section 602AA, 602B, 602C, 602D or 603AC, the person is not required to satisfy the activity test.

Section 605

~~(3) The Secretary is to give a person who is required to enter into a Jobseeker Employment Pathway Plan notice of:~~

~~(a) the requirement; and~~

~~(b) the places and times at which the plan is to be negotiated.~~

~~(4) A Jobseeker Employment Pathway Plan must be in a form approved by the Secretary.~~

~~(5) For the purposes of this Part, if:~~

~~(a) a person starts to receive jobseeker payment on a particular day; and~~

~~(b) immediately before that day, a Parenting Payment Employment Pathway Plan was in force in relation to the person; and~~

~~(c) the period covered by the plan ends after that day;~~

~~the plan has effect on and after that day as if it were a Jobseeker Employment Pathway Plan.~~

~~(6) For the purposes of this Part, if:~~

~~(a) a person starts to receive jobseeker payment on a particular day; and~~

~~(b) immediately before that day, a Youth Allowance Employment Pathway Plan was in force in relation to the person; and~~

~~(c) the period covered by the plan ends after that day;~~

~~the plan has effect on and after that day as if it were a Jobseeker Employment Pathway Plan.~~

~~(7) For the purposes of this Part, if:~~

~~(a) a person starts to receive jobseeker payment on a particular day; and~~

~~(b) immediately before that day a Special Benefit Employment Pathway Plan was in force in relation to the person; and~~

~~(c) the period covered by the plan ends after that day;~~

~~the plan has effect on and after that day as if it were a Jobseeker Employment Pathway Plan.~~

606 Jobseeker Employment Pathway Plans—terms

Suitable requirements

(1) Subject to sections 607 to 607B, a Jobseeker Employment Pathway Plan that is in force in relation to a person is to contain one or more terms (the ***requirements***) that:

(a) the person is required to comply with; and

(b) the Secretary regards as suitable for the person.

(1A) However, a plan must not contain a requirement of a kind that the Secretary determines under subsection (1B).

(1B) The Secretary must determine, by legislative instrument, the kinds of requirements that plans must not contain.

(1C) To avoid doubt, a determination under subsection (1B) does not limit the Secretary's discretion to exclude other kinds of requirements from a particular plan under subsection (1).

Optional terms

(1D) A plan may also contain one or more terms that the person may, but is not required to, comply with.

Approval of requirements

(2) The requirements in a plan are to be approved by the Secretary.

(3) In considering whether to approve the requirements in a plan that will be in force in relation to a person, the Secretary is to have regard to:

(a) the person's capacity to comply with the requirements; and

(b) the person's needs.

(4) In having regard to a person's capacity to comply with the requirements in a plan, the Secretary is to take into account, but is not limited to the following matters:

(a) the person's education, experience, skills and age; and

(aa) the impact of any disability, illness, mental condition or physical condition of the person on the person's ability to work, to look for work or to participate in training activities; and

(b) the state of the local labour market and the transport options available to the person in accessing that market; and

(c) the participation opportunities available to the person; and

(d) the family and caring responsibilities of the person; and

(e) the length of travel time required to comply with the requirements; and

(f) the financial costs (such as travel costs) of complying with the requirements, and the person's capacity to pay for such costs; and

(g) any other matters that the Secretary or the person considers relevant in the circumstances.

Variation, suspension, cancellation and review

(5) A plan that is in force in relation to a person:

(a) may be varied (in negotiation with the person) or suspended by the Secretary; and

(b) must be cancelled by the Secretary if the person enters into another Jobseeker Employment Pathway Plan; and

(c) may be reviewed from time to time by the Secretary at the request of the Secretary or the person; and

(d) may be cancelled by the Secretary after a review under paragraph (c).

Circumstances preventing or affecting compliance

(6) If a plan is in force in relation to a person, the person must notify the Secretary of any circumstances preventing or affecting the person's capacity to comply with the requirements in the plan.

607 Jobseeker Employment Pathway Plans—principal carers

(1) A Jobseeker Employment Pathway Plan that:

(a) is in force in relation to a person who is the principal carer of at least one child; and

(b) requires the person to undertake, as an activity, looking for part-time paid work that the Secretary regards as suitable;

must require the person to undertake looking for such part-time paid work of at least the appropriate number of hours per week.

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

(2) The appropriate number of hours per week is:

(a) 15; or

(b) such other number as the Secretary determines to be appropriate having regard to the person's circumstances.

607A Jobseeker Employment Pathway Plans—people with partial capacity to work

(1) A Jobseeker Employment Pathway Plan that:

(a) is in force in relation to a person who has a partial capacity to work; and

(b) requires the person to undertake, as an activity, looking for part-time paid work that the Secretary regards as suitable;

must require the person to undertake looking for such part-time paid work of at least the appropriate number of hours per week.

Note: For ***partial capacity to work*** see section 16B.

(2) The appropriate number of hours per week is:

(a) 15; or

(b) such other number as the Secretary determines to be appropriate having regard to the person's circumstances.

~~607B Jobseeker Employment Pathway Plans—requirement to participate in an approved program of work~~

~~(1) A Jobseeker Employment Pathway Plan that is in force in relation to a person must not require the person to participate in an approved program of work for income support payment if:~~

~~(a) because of the application of Module G of Payment Rate Calculator B in section 1068, the person is receiving a jobseeker payment at a rate that has been reduced; or~~

~~(b) in the Secretary's opinion:~~

~~(i) it has been established that there is medical evidence that the person has an illness, disability or injury that would be aggravated by the conditions in which the work would be performed; or~~

~~(ii) performing the work in the conditions in which the work would be performed would constitute a risk to health or safety or would contravene a law of the Commonwealth, a State or a Territory relating to occupational health and safety; or~~

~~(c) the person is at least 50 years of age and is not a person to whom subsection 28(4) applies.~~

~~(2) If a Jobseeker Employment Pathway Plan that is in force in relation to a person requires the person to participate in an approved program of work for income support payment, the Secretary may, by notice given to the person, revoke the requirement to participate in the program if the Secretary:~~

~~(a) is satisfied that, because of the application of Module G of Payment Rate Calculator B in section 1068, the person is receiving a jobseeker payment at a rate that has been reduced; or~~

~~(b) forms the opinion that:~~

~~(i) it has been established that there is medical evidence that the person has an illness, disability or injury that would be aggravated by the conditions in which the work would be performed; or~~

~~(ii) performing the work in the conditions in which the work would be performed would constitute a risk to health or safety or would contravene a law of the Commonwealth, a State or a Territory relating to occupational health and safety; or~~

~~(c) is satisfied that the person is at least 50 years of age and is not a person to whom subsection 28(4) applies.~~

~~(3) Upon the Secretary so notifying the person, the requirement is taken to have been revoked with effect from the day specified in the notice.~~

~~607C Jobseeker Employment Pathway Plans—suspension of plans~~

~~A Jobseeker Employment Pathway Plan that is in force in relation to a person is taken to be suspended during any period during which the person is not required to satisfy the activity test because of section 602AA, 602B or 602C.~~

Subdivision D—Situations where jobseeker payment not payable (general)

608 Jobseeker payment not payable if payment rate nil

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

(2) Subsection (1) does not apply to a person if the person's rate would be nil merely because:

(a) an election by the person under subsection 915A(1) (about quarterly energy supplement) or 1061VA(1) (about quarterly pension supplement) is in force; or

(b) the person has been paid an advance pharmaceutical allowance under the social security law.

OFFICIAL: Sensitive // Legal Privilege

611 Assets test—jobseeker payment not payable if assets value limit exceeded

(1) Subject to section 654, a jobseeker payment is not payable to a person if the value of the person's assets is more than the person's assets value limit.

(2) A person's assets value limit is worked out using the following table: work out which family situation applies to the person; the assets value limit is the corresponding amount in the ***assets value limit*** column.

Assets value limit table

Column 1	Column 2	Column 3	
		Assets value limit	
Item	Person's family situation	Column 3A Either person or partner homeowner	Column 3B Neither person nor partner homeowner
1.	Not member of a couple	$250,000	$450,000
2.	Partnered (partner getting neither pension nor benefit)	$375,000	$575,000
3.	Partnered (partner getting pension or benefit)	$187,500	$287,500

Note 1: For ***member of a couple***, ***partnered (partner getting neither pension nor benefit)*** and ***partnered (partner getting pension or benefit)*** see section 4.

Note 2: For ***homeowner*** see section 11.

Note 3: If item 2 applies to a person, the value of *all* the assets of the person's partner are to be taken as being included in the value of the person's assets (see subsection 612(1))—this is why the assets value limit is so high. If, on the other hand, item 3 applies to a person, the value of the

person's assets is only *half* the combined value of the person's assets and the assets of the person's partner (see subsection 612(2)).

Note 4: If a jobseeker payment is not payable to a person because of the value of the person's assets, the person may be able to take advantage of provisions dealing with financial hardship (see sections 1131 and 1132).

Note 5: The assets value limits of items 1 and 3 in column 3A and item 3 in column 3B are indexed annually in line with CPI increases (see sections 1191 to 1194).

Note 6: The assets value limit of item 1 in column 3B is adjusted annually (see subsection 1204(1)).

Note 7: The item 2 assets value limits are adjusted annually so that they are twice the corresponding item 3 limits (see subsections 1204(2) and (3)).

612 Value of assets of members of couples

(1) If:

(a) a person is a member of a couple; and

(b) the person's partner:

(i) is not in receipt of a social security or service pension, income support supplement or a veteran payment; and

(ii) is not in receipt of a social security benefit;

the value of the person's assets, or of assets of a particular kind of the person, includes the value of the partner's assets or of assets of that kind of the partner.

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

(2) If:

(a) a person is a member of a couple; and

(b) the person's partner is in receipt of:

(i) a social security or service pension, income support supplement or a veteran payment; or

(ii) a social security benefit;

the value of:

(c) the person's assets is taken to be 50% of the sum of the value of the assets of the person and the value of the assets of the person's partner; and

(d) the person's assets of a particular kind are taken to be 50% of the sum of the value of the assets of that kind of the person and the value of the assets of that kind of the person's partner.

613 Full-time students

(1) Subject to subsection (2), a jobseeker payment is not payable to a person who is enrolled in a full-time course of education or of vocational training for the period that:

(a) starts when the person starts the course; and

(b) finishes when the person:

(i) completes the course; or

(ii) abandons the course; or

(iii) gives notice to the provider of the course that the person:

(A) wishes to withdraw from the course; or

(B) wishes to withdraw from such number of subjects that the person's course will no longer be a full-time course; and

(c) includes periods of vacation.

(2) Subsection (1) does not prevent a jobseeker payment from being payable for any period during which:

(b) the person is engaged in a course undertaken under ~~a Jobseeker Employment Pathway Plan~~an employment pathway plan; or

(c) the person has deferred a course of education.

~~Note: For Jobseeker Employment Pathway Plan see sections 605 and 606.~~

OFFICIAL: Sensitive // Legal Privilege

614 Multiple entitlement exclusion

(1) A jobseeker payment is not payable to a person if the person is already receiving a service pension, income support supplement or a veteran payment.

(2) If:

(a) a person is receiving a jobseeker payment; and

(b) a social security pension, another social security benefit, a service pension, income support supplement or a veteran payment becomes payable to the person;

a jobseeker payment is not payable to the person.

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

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

Note 3: For the day on which the jobseeker payment ceases to be payable see section 660.

(3) A jobseeker payment is not payable to a woman if:

(a) the woman is an armed services widow; and

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

unless:

(c) the woman has been receiving a payment referred to in paragraph (b) continuously since before 1 November 1986; and

(d) before 1 November 1986 the woman was also receiving a social security benefit.

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

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

(3A) A jobseeker payment is not payable to a man if:

(a) the man is an armed services widower; and

(b) the man is receiving a pension under Part II or IV of the Veterans' Entitlements Act at a rate determined under or by reference to subsection 30(1) of that Act.

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

(3B) A jobseeker payment is not payable to a person if:

(a) the person is an armed services widow or armed services widower; and

(b) the person is receiving the weekly amount mentioned in paragraph 234(1)(b) of the MRCA (including a reduced weekly amount because of a choice under section 236 of the MRCA) or has received a lump sum mentioned in subsection 236(5) of the MRCA.

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

Note 2: For ***MRCA*** see subsection 23(1).

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

(a) a prescribed educational scheme other than the ABSTUDY Scheme to the extent that it applies to part-time students; or

(b) the scheme to provide an allowance known as the Maintenance Allowance for Refugees; or

(ba) the scheme to provide an allowance known as the Adult Migrant Education Program Living Allowance; or

(bb) the scheme to provide an allowance known as the English as a Second Language Allowance to the extent that the scheme applies to full-time students.

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

(5) If:

(a) a person may enrol in a full-time course of education; and

(b) a payment under a scheme referred to in subsection (4) may be made in respect of the person;

the Secretary may decide that, in spite of subsection (4), jobseeker payment is payable to the person for a period before the person starts the course.

(6) If:

(a) a person enrols in a full-time course of education; and

(c) an application is made for a payment in respect of the person under the ABSTUDY Scheme; and

(d) the person was receiving jobseeker payment immediately before the start of the course;

the Secretary may decide that, in spite of subsection (4), jobseeker payment is payable to the person for the period of 3 weeks commencing on the day on which the course starts.

614A Maximum basic rate and remote area allowance not payable to CDEP Scheme participant

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

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

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

~~615 Jobseeker payment not payable if person fails to attend interview etc. in certain circumstances~~

~~(1) A jobseeker payment is not payable to a person if:~~

~~(a) before or after the person made a claim for a jobseeker payment, the Department is contacted by or on behalf of the person in relation to a claim for a jobseeker payment; and~~

~~(b) as a result of the contact, the Department required the person to do one or both of the following:~~

OFFICIAL: Sensitive // Legal Privilege

(i) attend an interview with a specified person or organisation at a time and place specified in the requirement;

(ii) enter into a Jobseeker Employment Pathway Plan; and

(c) the person fails to comply with that requirement, or those requirements.

(2) This section does not apply to a person if the Secretary is satisfied, in accordance with any guidelines under subsection (3), that it should not apply to the person.

(3) The Secretary may, by legislative instrument, make guidelines to be complied with in deciding under subsection (2) whether this section applies to a person.

(4) This section ceases to apply:

(a) when the person complies with:

(i) that requirement, or those requirements; or

(ii) any requirements that the Secretary has required the person to undertake in place of that requirement, or those requirements; or

(b) at such earlier time as the Secretary determines, in accordance with any guidelines under subsection (5).

(5) The Secretary may, by legislative instrument, make guidelines to be complied with in making determinations under paragraph (4)(b).

(6) To avoid doubt, the fact that a person is taken, because of section 13 of the Administration Act, to have made a claim for a newstart allowance on the day on which the Department was contacted by or on behalf of the person in relation to the claim does not affect the operation of this section.

OFFICIAL: Sensitive // Legal Privilege

Subdivision E—Situations where jobseeker payment not payable (waiting periods)

620 Ordinary waiting period

(1) Subject to subsections (2), (4) and (5), a person is subject to an ordinary waiting period unless:

(a) at some time in the 13 weeks immediately before the person's start day (worked out disregarding clauses 4A, 4B and 5 of Schedule 2 to the Administration Act), the person received an income support payment; or

(fa) the following conditions apply:

(i) the person is a member of a couple;

(ii) the person's partner dies;

(iii) immediately before the partner's death, the person was receiving a partner allowance;

(iv) within the period of 4 weeks that starts on the day after the day on which the partner dies, the person claims a jobseeker payment; or

(g) the Secretary is satisfied that the person is experiencing a personal financial crisis.

Note 1: For ***income support payment*** see subsection 23(1).

Note 2: For ***experiencing a personal financial crisis*** see section 19DA.

(2) Subsection (1) does not apply to a person who:

(a) is undertaking an activity specified in an instrument made under subsection (3); and

(b) has been exempted from the application of subsection (1) by the Secretary.

(3) The Secretary may, by legislative instrument, specify activities for the purpose of paragraph (2)(a).

(4) Subsection (1) does not apply to a person if:

(a) the person makes a claim for jobseeker payment on or after the commencement of this subsection; and

OFFICIAL: Sensitive // Legal Privilege

(b) the person makes the claim after the death of the person's partner on or after the commencement of this subsection; and

(c) if the person is a man or a woman who was not pregnant when her partner died—the person makes the claim in the period of 14 weeks starting on the day of the death of the partner; and

(d) if the person is a woman who was pregnant when her partner died—the person makes the claim:

(i) in the period of 14 weeks starting on the day of the death of the partner; or

(ii) in the period starting on the day of the death of the partner and ending when the child is born or the woman otherwise stops being pregnant;

whichever ends later.

(5) If a person makes a claim for jobseeker payment during the period beginning on 1 April 2021 and ending at the end of 30 June 2021, then, despite subsection (1), the person is not subject to the whole of the ordinary waiting period.

621 Duration of ordinary waiting period

(1) Subject to subsections (3) and (5), if a person:

(a) is subject to an ordinary waiting period; and

(b) is not disqualified for jobseeker payment under section 598 (liquid assets test);

the ordinary waiting period is the period of 7 days that starts on the person's start day (worked out disregarding clauses 4A, 4B and 5 of Schedule 2 to the Administration Act).

(2) Subject to subsections (3) and (5), if a person:

(a) is subject to an ordinary waiting period; and

(b) is disqualified for jobseeker payment under section 598 (liquid assets test);

the ordinary waiting period is the period of 7 days that starts on the day after the end of the liquid assets test waiting period referred to in subsection 598(2).

(3) Subject to subsection (5), if:

(a) a person is subject to an ordinary waiting period; and

(b) apart from this subsection, the ordinary waiting period would be the period of 7 days that starts on the person's start day (worked out disregarding clauses 4A, 4B and 5 of Schedule 2 to the Administration Act); and

(c) that start day falls within one or more of the following periods (each of which is an ***exclusion period***) that the person is subject to:

(i) a newly arrived resident's waiting period;

(ii) a seasonal work preclusion period;

(iii) a lump sum preclusion period under Part 3.14;

(iv) an income maintenance period, where the person's rate of jobseeker payment on that start day would be nil;

then the ordinary waiting period is the period of 7 days that starts on the first day after all the exclusion periods have ended.

(4) If:

(a) subparagraph (3)(c)(iv) applies to a person; and

(b) on a day in that income maintenance period, the person's rate of jobseeker payment would be greater than nil if jobseeker payment were payable to the person on that day;

then, for the purposes of subsection (3), that income maintenance period is taken to have ended at the end of the day before that day.

(5) If:

(a) a person qualifies for a social security payment (other than jobseeker payment); and

(b) because the person is subject to an ordinary waiting period relating to that social security payment, that social security payment is not payable to the person for a period starting on a particular day (the ***initial day***); and

(c) during that period the person:

(i) ceases to be qualified for that social security payment; and

(ii) claims jobseeker payment;

OFFICIAL: Sensitive // Legal Privilege

the person's ordinary waiting period relating to jobseeker payment is the period of 7 days that starts on the initial day.

Note: Ordinary waiting periods apply to parenting payment, youth allowance and jobseeker payment.

623A Newly arrived resident's waiting period

(1) Subject to this section, a person who:
  (a) has entered Australia; and
  (b) has not been an Australian resident and in Australia for a period of, or periods totalling, 208 weeks;
is subject to a newly arrived resident's waiting period.

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

Note: For ***qualifying residence exemption*** in relation to jobseeker payment, see paragraph 7(6AA)(f).

(7) Subsection (1) does not apply to a person if the person:
  (a) is the principal carer of one or more children; and
  (b) is not a member of a couple; and
  (c) was not a lone parent at the start of the person's current period as an Australian resident.

Note 1: For ***principal carer*** see subsections 5(15) to (24).

Note 2: For ***lone parent*** and ***current period as an Australian resident*** see subsection 23(1).

(8) Subsection (1) does not apply to a person if:
  (a) the person is a refugee, or a former refugee, at the time the person made the claim for a jobseeker payment; or
  (b) the following apply:
    (i) before the person made the claim for a jobseeker payment, the person was a family member of another person at the time the other person became a refugee;
    (ii) the person is a family member of that other person at the time the person made the claim for a jobseeker payment or, if that other person has died, the person was a family

member of that other person immediately before that other person died; or

(c) the person is an Australian citizen at the time the person made the claim for a jobseeker payment.

(9) For the purposes of subsection (8):

(a) ***family member*** has the meaning given by subsection 7(6D); and

(b) ***former refugee*** has the meaning given by subsection 7(1); and

(c) ***refugee*** has the meaning given by subsection 7(6B).

623B Duration of newly arrived resident's waiting period

(1) If a person is subject to a newly arrived resident's waiting period, the period starts on the day the person first became an Australian resident.

(3) The newly arrived resident's waiting period ends when the person has been an Australian resident and in Australia for a period of, or periods totalling, 208 weeks.

Subdivision G—Situations where jobseeker payment not payable (administrative breaches)

631 Situations where jobseeker payment not payable for failure to comply with certain requirements

A jobseeker payment is not payable to a person if the person refuses or fails, without reasonable excuse, to comply with a requirement made of the person under section 67, 68 or 192 of the Administration Act.

OFFICIAL: Sensitive // Legal Privilege

~~**Subdivision GA—Activities that do not give rise to employment under certain industrial relations legislation**~~

~~**631C Activities that do not give rise to employment under certain industrial relations legislation**~~

~~A person is not to be taken to be one of the following merely because the person participates in an approved program of work for income support payment, or undertakes an activity (other than suitable paid work), in accordance with a term (including an optional term) of a Jobseeker Employment Pathway Plan under section 606:~~

~~(a) a worker carrying out work in any capacity for the Commonwealth, or an employee of the Commonwealth, for the purposes of the *Work Health and Safety Act 2011*;~~

~~(b) an employee within the meaning of section 5 of the *Safety, Rehabilitation and Compensation Act 1988*;~~

~~(c) an employee for the purposes of the *Superannuation Guarantee (Administration) Act 1992*;~~

~~(d) an employee for the purposes of the *Fair Work Act 2009*.~~

Subdivision H—Other situations where jobseeker payment not payable

633 Seasonal workers

(1) This section applies if, at any time during the 6 months immediately before the day on which a person lodges a claim for jobseeker payment, the person, or, if the person is a member of a couple, the person or the person's partner, has been engaged in seasonal work.

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

(2) Jobseeker payment is not payable to the person:

(a) if the person is subject to a seasonal work preclusion period (whether in relation to the claim referred to in subsection (1) or any other claim under this Act) and the Secretary has not

made a determination under subsection (3) in relation to the person—for the person's seasonal work preclusion period; or

(b) if the Secretary has made a determination under subsection (3) in relation to the person—for that part (if any) of the person's seasonal work preclusion period to which the person is subject as a result of the determination.

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

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

(a) the Secretary may determine that the person is not subject to the whole, or any part, of the preclusion period; and

(b) the determination has effect accordingly.

Note 1: For ***in severe financial hardship*** see subsection 19C(2) (person who is not a member of a couple) and subsection 19C(3) (person who is a member of a couple).

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

(4) Subsection (2) does not apply to a person who:

(a) is undertaking an activity specified in an instrument made under subsection (5); and

(b) has been exempted from the application of subsection (2) by the Secretary.

(5) The Secretary may, by legislative instrument, specify activities for the purpose of paragraph (4)(a).

(6) Subsection (2) does not apply to a person if:

(a) the person makes a claim for jobseeker payment on or after the commencement of this subsection; and

(b) the person makes the claim after the death of the person's partner on or after the commencement of this subsection; and

(c) if the person is a man or a woman who was not pregnant when her partner died—the person makes the claim in the

OFFICIAL: Sensitive // Legal Privilege

period of 14 weeks starting on the day of the death of the partner; and

(d) if the person is a woman who was pregnant when her partner died—the person makes the claim:

(i) in the period of 14 weeks starting on the day of the death of the partner; or

(ii) in the period starting on the day of the death of the partner and ending when the child is born or the woman otherwise stops being pregnant;

whichever ends later.

634 Move to area of lower employment prospects

(1) Subject to subsections (1B) and (2), if, in the opinion of the Secretary, a person has reduced his or her employment prospects by moving to a new place of residence without sufficient reason, a jobseeker payment is not payable to the person for 26 weeks.

(1A) Subsection (1) extends to a person who makes a claim for jobseeker payment on or after the day on which the person moved to the new place of residence and before the end of the period referred to in that subsection.

(1B) If a person to whom a jobseeker payment is not payable under subsection (1) for a period of 26 weeks (including that subsection as it applies by subsection (1A)) does either of the following during that period:

(a) moves back to the place of residence (the ***original place of residence***) the movement from which resulted in jobseeker payment not being payable to him or her;

(b) moves to another place of residence a movement to which from the original place of residence would not have resulted in jobseeker payment not being payable to him or her;

the period of 26 weeks ends at the time of the movement back to the original place of residence or the movement to the other place of residence, as the case may be.

(2) Subsection (1) does not apply to a person who:

(a) is undertaking an activity specified in an instrument made under subsection (2A); and

(b) has been exempted from the application of subsection (1) by the Secretary.

(2A) The Secretary may, by legislative instrument, specify activities for the purpose of paragraph (2)(a).

(3) For the purposes of subsection (1), a person has a sufficient reason for moving to a new place of residence if and only if the person:

(a) moves to live with a family member who has already established his or her residence in that place of residence; or

(b) moves to live near a family member who has already established residence in the same area; or

(c) satisfies the Secretary that the move is necessary for the purposes of treating or alleviating a physical disease or illness suffered by the person or by a family member; or

(d) satisfies the Secretary that the person has moved from his or her original place of residence because of an extreme circumstance which made it reasonable for the person to move to the new place of residence (for example, the person had been subjected to domestic or family violence in the original place of residence).

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

(4) The Secretary may determine in writing the day on which the period of non-payment imposed by subsection (1) commences and that day may be before the day of the determination.

OFFICIAL: Sensitive // Legal Privilege

Division 4—Rate of jobseeker payment

643 How to work out a person's jobseeker payment rate

Subject to this Division, a person's jobseeker payment rate is to be worked out using Benefit Rate Calculator B at the end of section 1068.

~~**644AAA Approved program of work supplement**~~

~~If a person:~~

~~(a) is receiving jobseeker payment; and~~

~~(b) is participating in an approved program of work for income support payment;~~

~~the rate of the person's jobseeker payment is increased by an amount of $20.80, to be known as the approved program of work supplement, for each fortnight during which the person participates in the program unless, during that fortnight, the person subsequently ceases to participate in the program in circumstances that constitute:~~

~~(c) a failure of the activity test to which the person is subject; or~~

~~(d) a failure to comply with a requirement in a Jobseeker Employment Pathway Plan that is in force in relation to the person.~~

644AAA Approved program of work supplement

If a person:

(a) is receiving jobseeker payment; and

(b) is participating in an approved program of work for income support payment;

the rate of the person's jobseeker payment is increased by an amount of $20.80, to be known as the approved program of work supplement, for each fortnight during which the person participates in the program.

644AAB Approved program of work supplement not payable in certain circumstances

An approved program of work supplement under section 644AAA is not payable to a person in respect of a fortnight if a training supplement is payable to the person in respect of the fortnight.

644AAC Training supplement

(1) This section applies if a person:

(a) is receiving newstart allowance; and

(b) is participating in an approved training course for training supplement for the person; and

(c) started participating in the course during the period beginning on the day on which this section commenced and ending on 30 June 2011.

(2) The rate of the person's newstart allowance is increased by an amount of $41.60 (to be known as a training supplement) for each fortnight during which the person participates in the course.

(3) However, a training supplement is not payable for a fortnight during which the person participates in the course if, during the fortnight, the person ceases to participate in the course in circumstances that constitute:

(a) a failure of the activity test to which the person is subject; or

(b) if a Newstart Employment Pathway Plan is in force in relation to the person—a failure to comply with a requirement in the plan.

645 National Green Jobs Corps supplement

(1) This section applies if a person:

(a) is receiving newstart allowance; and

(b) is under 25 years of age; and

(c) is participating in the National Green Jobs Corps program; and

OFFICIAL: Sensitive // Legal Privilege

~~(d) started participating in that program before 2012.~~

~~(2) The rate of the person's newstart allowance is increased by an amount of $41.60 (to be known as a National Green Jobs Corps supplement) for each fortnight during which the person participates in the National Green Jobs Corps program.~~

~~(3) However, a National Green Jobs Corps supplement is not payable for a fortnight during which the person participates in the National Green Jobs Corps program if:~~

~~(a) both:~~

~~(i) a Newstart Employment Pathway Plan is in force in relation to the person; and~~

~~(ii) during the fortnight, the person ceases to participate in that program in circumstances that constitute a failure to comply with the plan; or~~

~~(b) the rate of the person's newstart allowance is increased by training supplement for the fortnight.~~

653A CDEP Scheme participant may accumulate newstart allowance

(1) A person who is a CDEP Scheme participant in respect of the whole or a part of a quarter may, by written notice given to the Secretary, choose to accumulate the amounts of any newstart allowance that become payable to the person in respect of that quarter, or any later quarter in respect of the whole or a part of which the person is a CDEP Scheme participant, and have not already been paid.

(2) If a person to whom subsection (1) applies makes a choice under that subsection, the sum of the accumulated amounts payable to the person in respect of a quarter is to be paid on, or as soon as practicable after, the first payday after:

(a) unless paragraph (b) applies, the last day of the quarter; or

(b) if the person ceases to be a CDEP Scheme participant before the end of the quarter—the day on which the person so ceases.

(3) In this section:

quarter means a CDEP Scheme quarter.

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

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

654 Rate of jobseeker payment for former recipients of wife pension

(1) This section applies if:

(a) a woman was receiving wife pension under Part 2.4 immediately before 20 March 2020; and

(b) the Secretary makes a determination under section 12 of the Administration Act that the woman is taken to have made a claim for jobseeker payment because the woman became qualified for that payment immediately after ceasing to receive wife pension.

(2) The Secretary must, in determining the claim, disregard section 611.

(3) Subject to this section, if:

(a) the Secretary determines that the claim is to be granted; and

(b) as a result of that determination and disregarding section 611, jobseeker payment is payable to the woman on a day (a ***transition day***) on or after 20 March 2020;

the woman's jobseeker payment rate on the transition day is worked out in accordance with the following method statement:

Method statement

Step 1. Work out the woman's jobseeker payment rate on the transition day in accordance with sections 643 and 644AAA.

Step 2. Work out the woman's wife pension transition rate on the transition day.

Note: See subsection (4) for the wife pension transition rate.

Step 3.	If the rate at step 2 exceeds the rate at step 1, the woman's jobseeker payment rate on the transition day is the rate at step 2.
Step 4.	If the rate at step 2 does not exceed the rate at step 1, the woman's jobseeker payment rate on the transition day is the rate at step 1.

(4) The woman's wife pension transition rate on a transition day is the rate worked out in accordance with section 655 or 656.

(5) If, for a period of 42 consecutive days, the following apply:

(a) the woman's jobseeker payment rate is the rate at step 1 of the method statement in subsection (3);

(b) if section 611 had applied in relation to the woman throughout that period, the value of the woman's assets throughout that period is less than or equal to the woman's asset value limit under that section;

then for any day after the end of that period:

(c) section 611 applies in relation to the woman; and

(d) the woman's jobseeker payment rate is to be worked out in accordance with sections 643 and 644AAA (and not under this section).

(6) If, on a day (the ***cessation day***) on or after 20 March 2020, the woman would not have qualified for a wife pension if Part 2.4 (as in force immediately before 20 March 2020) were still in force on the cessation day, then on and after the cessation day:

(a) section 611 applies in relation to the woman; and

(b) the woman's jobseeker payment rate is to be worked out in accordance with sections 643 and 644AAA (and not under this section).

655 Wife pension transition rate—method 1

(1) A woman's wife pension transition rate on a day is worked out in accordance with this section if:

(a) on 19 March 2020, there was no reduction under step 5 of the method statement in point 1064-A1, and there was no reduction under step 9 of that method statement, in relation to the woman's rate of wife pension on that day; and

(b) assuming the woman were receiving newstart allowance on each day in the period starting on 6 February 2020 and ending at the end of 19 March 2020, there would have been no reduction under step 5 of the method statement in point 1068-A1 on any day in that period.

(2) The woman's wife pension transition rate on a day is the rate that would have been the woman's rate of wife pension on that day under Module A of the Pension Rate Calculator A in section 1064 if the woman had been receiving wife pension on that day.

(3) However, subsection (2) applies with the following modifications:

(a) in working out the amount at step 1 of the method statement in point 1064-A1, assume each amount in the table in point 1064-B1 were that amount as at 19 March 2020;

(b) in working out the amount at step 1A of the method statement in point 1064-A1:

(i) assume the combined couple rate of pension supplement were that amount as at 19 March 2020; and

(ii) assume the combined couple rate of minimum pension supplement were that amount as at 19 March 2020;

(c) assume the amount at step 5 of the method statement in point 1064-A1 were the amount worked out at step 5 of the method statement in point 1068-A1, multiplied by 26;

(d) in working out the amount at step 9 of the method statement in point 1064-A1, assume each amount in the table in point 1064-G3 were that amount as at 19 March 2020.

656 Wife pension transition rate—method 2

(1) A woman's wife pension transition rate on a day is worked out in accordance with this section if:

OFFICIAL: Sensitive // Legal Privilege

(a) on 19 March 2020, there was a reduction under either or both of steps 5 and 9 of the method statement in point 1064-A1 in relation to the woman's rate of wife pension on that day; or

(b) assuming the woman were receiving newstart allowance on each day in the period starting on 6 February 2020 and ending at the end of 19 March 2020, there would have been a reduction under step 5 of the method statement in point 1068-A1 on at least one day in that period.

(2) The woman's wife pension transition rate on a day is the rate that would have been the woman's rate of wife pension on that day under Module A of the Pension Rate Calculator A in section 1064 if the woman had been receiving wife pension on that day.

(3) However, subsection (2) applies with the following modifications:

(a) in working out the amount at step 1 of the method statement in point 1064-A1, assume each amount in the table in point 1064-B1 were that amount as at 19 March 2020;

(b) in working out the amount at step 1A of the method statement in point 1064-A1:

(i) assume the combined couple rate of pension supplement were that amount as at 19 March 2020; and

(ii) assume the combined couple rate of minimum pension supplement were that amount as at 19 March 2020;

(c) in working out the amount at step 5 of the method statement in point 1064-A1, assume each amount in the table in point 1064-E4 were that amount as at 19 March 2020;

(d) in working out the amount at step 9 of the method statement in point 1064-A1, assume each amount in the table in point 1064-G3 were that amount as at 19 March 2020.

(4) For the purposes of this section, take into account clause 146 of Schedule 1A as in force immediately before 20 March 2020. However, in taking that clause into account, assume each amount referred to in subparagraph 146(4)(a)(i) of Schedule 1A were that amount as at 19 March 2020.

OFFICIAL: Sensitive // Legal Privilege

Division 9—Bereavement payments

Subdivision AA—Ongoing payments for death of partner

660LA Qualification for payments under this Subdivision

(1) If:

(a) a person is receiving a jobseeker payment; and

(b) the person is a long-term social security recipient; and

(c) the person is a member of a couple; and

(d) the person's partner dies; and

(e) immediately before the partner died, the partner:

(i) was receiving a social security pension; or

(ii) was receiving a service pension or a veteran payment; or

(iii) was a long-term social security recipient; and

(f) on the person's payday immediately before the first available bereavement adjustment payday, the amount that would be payable to the person if the person were not qualified for payments under this Subdivision is less than the sum of:

(i) the amount that would otherwise be payable to the person under section 660LD (person's continued rate) on that payday; and

(ii) the amount (if any) that would otherwise be payable to the person, under section 660LB (continued payment of partner's pension or allowance) on the partner's payday immediately before the first available bereavement adjustment payday;

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

Note 1: Section 660LB provides for the payment to the person, up to the first available bereavement adjustment payday, of amounts equal to the instalments that would have been paid to the person's partner during that period if the partner had not died.

Note 2: Section 660LC provides for a lump sum that represents the instalments that would have been paid to the person's partner,

between the first available bereavement adjustment payday and the end of the bereavement period, if the partner had not died.

Note 3: For ***long-term social security recipient*** see subsection 23(1).

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

Note: By making such an election, the person may qualify for a payment under Subdivision A.

(3) An election under subsection (2):

(a) must be made by written notice to the Secretary; and

(b) may be made after the person has been paid an amount or amounts under this Subdivision; and

(c) cannot be withdrawn after the Department has taken all the action required to give effect to that election.

(4) If a person is qualified for payments under this Subdivision in relation to the partner's death, the rate at which jobseeker payment is payable to the person during the bereavement period is, unless the person has made an election under subsection (2), governed by section 660LD.

660LB Continued payment of partner's pension or benefit

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

660LC Lump sum payable in some circumstances

If:

(a) a person is qualified for payments under this Subdivision in relation to the death of the person's partner; and

(b) the first available bereavement adjustment payday occurs before the end of the bereavement period;

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

LUMP SUM CALCULATOR

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

Method statement

Step 1. Add up:

(a) the amount that, if the person's partner had not died, would have been payable to the person on the person's payday immediately before the first available bereavement adjustment payday; and

(b) the amount (if any) that, if the partner had not died, would have been payable to the partner on the partner's payday immediately before the first available bereavement adjustment payday;

the result is called the ***combined rate***.

Step 2. Work out the amount that, but for section 660LD, would have been payable to the person on the person's payday immediately before the first available bereavement adjustment payday: the result is called the ***person's individual rate***.

Step 3. Take the person's individual rate away from the combined rate: the result is called the ***partner's instalment component***.

Step 4. Work out the number of the partner's paydays in the bereavement lump sum period.

OFFICIAL: Sensitive // Legal Privilege

Step 5.	Multiply the partner's instalment component by the number obtained in Step 4: the result is the amount of the lump sum payable to the person under this section.

660LD Adjustment of a person's jobseeker payment rate

If:

(a) a person is qualified for payments under this Subdivision; and

(b) the person does not elect under subsection 660LA(2) not to receive payments under this Subdivision;

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

(c) during the bereavement rate continuation period, the rate of jobseeker payment payable to the person is the rate at which the payment would have been payable to the person if the person's partner had not died;

(d) during the bereavement lump sum period (if any), the rate at which jobseeker payment is payable to the person is the rate at which the payment would be payable to the person apart from this Subdivision.

660LE Effect of death of person entitled to payments under this Subdivision

If:

(a) a person is qualified for payments under this Subdivision in relation to the death of the person's partner; and

(b) the person dies within the bereavement period; and

(c) the Secretary does not become aware of the death of the person's partner before the person dies;

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

LUMP SUM CALCULATOR

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

Method statement

Step 1. Add up:

(a) the amount that, if neither the person nor the person's partner had died, would have been payable to the person on the person's payday immediately after the day on which the person dies; and

(b) the amount (if any) that, if neither the person nor the person's partner had died, would have been payable to the person's partner on the partner's payday immediately after the day on which the person died;

the result is called the ***combined rate***.

Step 2. Work out the amount that, but for section 660LD, would have been payable to the person on the person's payday immediately after the day on which the person died if the person had not died: the result is called the ***person's individual rate***.

Step 3. Take the person's individual rate away from the combined pensioner couple rate: the result is called the ***partner's instalment component***.

Step 4. Work out the number of paydays of the partner in the period that commences on the day on which the person dies and ends on the day on which the bereavement period ends.

Step 5.	Multiply the partner's instalment component by the number obtained in Step 4: the result is the amount of the lump sum payable under this section.

660LF Matters affecting payments under this Subdivision

(1) If:

(a) a person is qualified for payments under this Subdivision in relation to the death of the person's partner; and

(b) after the person's partner died, an amount to which the partner would have been entitled if the partner had not died has been paid under this Act or under Part III or IIIA of the Veterans' Entitlements Act; and

(c) the Secretary is not satisfied that the person has not had the benefit of that amount;

the following provisions have effect:

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

(e) the amount payable to the person under this Subdivision is to be reduced by the amount referred to in paragraph (b).

(2) If:

(a) a person is qualified for payments under this Subdivision in relation to the death of the person's partner; and

(b) the amount to which the person's partner would have been entitled if the person's partner had not died has been paid under this Act or under Part III or IIIA of the Veterans' Entitlements Act, within the bereavement period, into an account with a bank; and

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

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

660LG Calculation of bereavement payment in respect of former CDEP Scheme participant

If a benefit becomes payable under this Subdivision in respect of a person who was a CDEP Scheme participant in respect of the day on which the benefit becomes payable, the amount of the benefit is to be the amount that would have been the amount of the benefit if section 614A had not been enacted.

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

Subdivision A—One-off payment for death of partner

660LH Qualification for payment under this Subdivision

A person is qualified for a lump sum payment under this Subdivision if:

(a) the person is qualified for jobseeker payment on a day (the ***relevant day***); and

(b) jobseeker payment is payable to the person on the relevant day; and

(c) on or before the relevant day but after the commencement of this section, the person was a member of a couple and stopped being a member of a couple because the person's partner died; and

(d) the person is not a member of a couple on the relevant day; and

(e) when the person's partner died, both the person and the person's partner were Australian residents; and

(f) if the person is a man or a woman who was not pregnant when her partner died—the relevant day occurs in the period of 14 weeks starting on the day of the death of the partner; and

(g) if the person is a woman who was pregnant when her partner died—the relevant day occurs:

(i) in the period of 14 weeks starting on the day of the death of the partner; or

(ii) in the period (the ***relevant period***) starting on the day of the death of the partner and ending when the child is born or the woman otherwise stops being pregnant;

whichever ends later; and

(h) the relevant day is the day that the person first notifies the Secretary of the person's partner's death; and

(i) if the person is qualified for payments under section 660LA in respect of the person's partner's death—the person has made an election under subsection 660LA(2).

660LI Amount of payment

(1) The amount of the person's payment is worked out using the following formula (except if paragraph 660LH(g) applies in relation to the person):

$$\text{Daily rate of person's jobseeker payment on the relevant day} \times 14 \times 4.5$$

(2) If subparagraph 660LH(g)(i) applies in relation to the person, the amount of the person's payment is worked out using the following formula:

$$\left[\text{Daily rate of person's jobseeker payment on the relevant day} \times 14 \times 3\right] + \$1{,}000$$

(3) If subparagraph 660LH(g)(ii) applies in relation to the person, the amount of the person's payment is worked out using the following formula:

$$\left[\text{Daily rate of person's jobseeker payment on the relevant day} \times 14 \times 3\right] + \text{Additional amount}$$

where:

additional amount means the amount worked out in accordance with the following table:

Additional amount

Item	If the relevant period is:	the additional amount is:
1	More than 14 weeks but not more than 16 weeks	$1,150
2	More than 16 weeks but not more than 18 weeks	$1,500
3	More than 18 weeks but not more than 20 weeks	$1,850
4	More than 20 weeks but not more than 22 weeks	$2,150
5	More than 22 weeks but not more than 24 weeks	$2,500
6	More than 24 weeks but not more than 26 weeks	$2,850
7	More than 26 weeks but not more than 28 weeks	$3,200
8	More than 28 weeks but not more than 30 weeks	$3,550
9	More than 30 weeks but not more than 32 weeks	$3,900
10	More than 32 weeks	$4,250

Subdivision B—Continuation of jobseeker payment rate after death of child

660M Death of child—continuation of jobseeker payment rate for 14 weeks

If:

(a) a person is receiving jobseeker payment; and

(b) the person is the principal carer of a child who dies; and

(c) apart from this section, the person's rate of jobseeker payment would be reduced because the person is no longer the child's principal carer;

the person's rate of jobseeker payment, during the period of 14 weeks that starts on the day of the child's death, is to be worked out as if the child had not died.

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

Social Security Act 1991

No. 46, 1991

This future law compilation was prepared on 8 June 2021 taking into account amendments made by the Social Security Legislation Amendment (Streamlined Participation Requirements and Other Measures) Bill 2021.

The date of commencement for the incorporated amendments was unknown at the time of preparation.

Volume 1:	sections 1–660M
Volume 2:	**sections 665A–1067L**
Volume 3:	sections 1068–1263 Schedule 1A
Volume 4:	Endnotes 1–4
Volume 5:	Endnote 5

Each volume has its own contents

Prepared by the Office of Parliamentary Counsel, Canberra

About this compilation

This compilation

This is a future compilation of the *Social Security Act 1991* that shows the expected text of the law as amended by the Social Security Legislation Amendment (Streamlined Participation Requirements and Other Measures) Bill 2021.

The notes at the end of this compilation (the ***endnotes***) include information about amending laws and the amendment history of provisions of the future compilation.

Future amendments

The details of expected future amendments incorporated into the text, that have not yet commenced are underlined in the endnotes.

Any future amendments that are included in the endnotes are underlined.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

Contents

Chapter 2—Pensions, benefits and allowances 1

Part 2.13A—Education entry payment 1

Division 1—Recipients of pension PP (single) 1

665A Payment to recipient of pension PP (single) 1
665B Amount of section 665A payment 1
665C Need for claim 1

Division 2—Recipients of disability support pension 2

665E Payment to a disability support pensioner 2
665F Amount of section 665E payment 2
665G Need for claim 2

Division 4—Special benefit recipients 3

665M Payment to a special benefit recipient 3
665N Amount of section 665M payment 3
665P Need for claim 3

Division 6—Jobseeker payment recipients 4

665U Payment to recipient 4
665V Amount of section 665U payment 5
665W Need for claim 5

Division 8—Widow allowance recipients 6

665ZC Payment to a widow allowance recipient 6
665ZD Amount of section 665ZC payment 7
665ZE Need for claim 7

Division 8A—Carer payment recipients 8

665ZFA Payment to a carer payment recipient 8
665ZFB Amount of section 665ZFA payment 8
665ZFC Need for claim 8

Division 11—Partner allowance recipients 9

665ZQ Payment to a partner allowance recipient 9
665ZR Amount of section 665ZQ payment 10
665ZS Need for claim 10

Division 12—Recipients of PP (partnered) 11

665ZU Payment to recipient of PP (partnered) 11
665ZV Amount of section 665ZU payment 12

665ZW Need for claim 12
Division 12A—Recipients of youth allowance (other) 13
665ZX Payment to recipient of youth allowance (other).13
665ZXA Amount of section 665ZX payment....14
665ZXB Need for claim 14
665ZXC Cessation of Division....14
Division 13—Protection of education entry payment 15
665ZY Education entry payment to be absolutely inalienable....15
665ZZ Effect of garnishee or attachment order....15
Division 14—Education entry payment supplement 17
665ZZA Qualification for education entry payment supplement....17
665ZZB Amount of education entry payment supplement 17
665ZZC Separate claim not needed 17
665ZZD Education entry payment supplement taken to be part of education entry payment for purposes of social security law....17
665ZZE Cessation of Division....18
Part 2.15—Special benefit 19
Division 1—Qualification for and payability of special benefit 19
Subdivision A—Qualification 19
729 Qualification for special benefit 19
729A Time limit on qualification for certain recipients of special benefit 25
729AA Effect of industrial action on qualification conditions of certain claimants for special benefit 26
729B Certain recipients of special benefit cease to be qualified for special benefit after 52 weeks....28
729C Consequence of subsection 729B(2) determination 28
730 Determination of period....29
Subdivision AA—Activity test for certain nominated visa holders 29
731 Application of Subdivision 29
731A Activity test....29

731B	Meaning of unsuitable work for the purposes of the activity test 31
731D	Persons in certain areas can be taken to comply with activity test....33
731DAA	Relief from activity test—death of person's partner 34
731DA	Relief from activity test—domestic violence etc.36
731DB	Relief from activity test—people with disabled children and other circumstances....37
731DC	Persons may be treated as actively seeking etc. paid work 40
731E	Relief from activity test—special circumstances.41
731F	Relief from activity test—pre-natal and post-natal 42
731G	Relief from activity test—people 55 and over who are engaged in work....43
731GA	Relief from activity test—certain principal carers and people with partial capacity to work....44
731H	Relief from activity test—dependent child....44
731HA	Relief from activity test—persons who would be qualified for carer payment under section 197B, 197C, 197D or 197E 45
731HB	Relief from activity test—persons who would be qualified for carer payment under section 197G or 197H....47
731J	Relief from activity test—persons who would be qualified for carer payment under section 198 or for carer allowance....50
731JA	Relief from activity test—grant of temporary protection, humanitarian or safe haven visa 53
731K	Temporarily incapacitated person not required to satisfy activity test 53
731KA	Time limit for exemption—Secretary satisfied person can undertake activity 54

Subdivision AB—Special Benefit Employment Pathway Plans for persons who are nominated visa holders 55

731L	Special Benefit Employment Pathway Plans—requirement to enter....55
731M	Special Benefit Employment Pathway Plans—terms....56
731N	Special Benefit Employment Pathway Plans—principal carers....58

731P Special Benefit Employment Pathway Plans—people with partial capacity to work....58
731Q Special Benefit Employment Pathway Plans—revocation of requirement to participate in approved program of work....59
731R Special Benefit Employment Pathway Plans—suspension of plans....60
Subdivision B—Payability 60
732 Special benefit not payable if benefit rate nil....60
733 Assets test—benefit not payable if assets value limit exceeded....60
734 Value of assets of members of couples....62
735 Multiple entitlement exclusion....63
736 Secretary may require certain persons to attend courses or undertake work....64
737 Full-time students....65
738 Payments under certain education schemes....66
739 SPB homeless person....67
739A Newly arrived resident's waiting period....67
739B Secretary to act in accordance with guidelines....70
739C Guidelines for exercise of Secretary's powers under subsection 739A(7)....70
Subdivision D—Situations where special benefit not payable to persons who are nominated visa holders (administrative breaches) 70
745H Situations where special benefit not payable for failure to comply with certain requirements....70
Subdivision E—Activities that do not give rise to employment under certain industrial relations legislation 71
745L Activities that do not give rise to employment under certain industrial relations legislation....71
Subdivision F—Other situations where special benefit not payable to persons who are nominated visa holders 71
745M Seasonal workers....71
745N Move to area of lower employment prospects....72
Division 4—Rate of special benefit 74
746 Rate of special benefit....74
747 Approved program of work supplement for persons who are nominated visa holders....74

OFFICIAL: Sensitive // Legal Privilege

759 Effect of industrial action on rate of special benefit payable to persons who are nominated visa holders 75

Division 9—Bereavement payments 77

Subdivision AA—Death of partner 77

768A Qualification for payments under this Subdivision 77

768B Continued payment of partner's pension or benefit 78

768C Lump sum payable in some circumstances....78

768D Adjustment of a person's special benefit rate....80

768E Effect of death of person entitled to payments under this Subdivision 80

768F Matters affecting payments under this Subdivision 82

Part 2.15A—Partner allowance 84

Division 1A—Application of Part 84

771 Time limits on claims for partner allowance 84

Division 1—Qualification for and payability of partner allowance 85

Subdivision A—Qualification for partner allowance 85

771HA Qualification for partner allowance 85

771HB Unemployment due to industrial action....87

Subdivision B—Payability of partner allowance 88

771HC Partner allowance not payable if allowance rate nil 88

771HF Assets test—allowance not payable if assets value limit exceeded....88

771HI Multiple entitlement exclusion 89

771HJ Educational schemes exclusion 90

771HK Maximum basic rate and remote area allowance not payable to CDEP Scheme participant....90

771HNA Newly arrived resident's waiting period....90

771HNB Duration of newly arrived resident's waiting period 91

771HNC Seasonal workers 91

OFFICIAL: Sensitive // Legal Privilege

Division 4—Rate of partner allowance 93

771KA Rate of partner allowance if partner is not receiving special benefit 93

771KE Rate of partner allowance if partner receiving special benefit 93

771KN CDEP Scheme participant may accumulate partner allowance 93

Division 9—Bereavement payments 95

Subdivision A—Surviving partner and deceased partner defined 95

771NT Surviving partner and deceased partner....95

Subdivision B—Person to continue to receive partner allowance where person's partner dies 95

771NU Continuation of partner allowance for bereavement period 95

Subdivision C—Bereavement payments for person receiving partner allowance following death of the person's partner 97

771NV Qualification for payments under this Subdivision 97

771NW Continued payment of deceased partner's benefit 98

771NX Lump sum payable in some circumstances....98

771NY Effect of death of surviving partner....101

771NZ Matters affecting payments under this Subdivision 103

Subdivision D—Bereavement payment in respect of former CDEP Scheme participant 104

771NZAA Calculation of bereavement payment in respect of former CDEP Scheme participant....104

Part 2.16—Special needs pensions 105

Division 1A—Time limit on grant of special needs wife pension 105

771P Special needs wife pension not to be granted after 30 June 1995 105

Division 1B—Time limit on grant of other special needs pensions 106

771PA Special needs pensions not to be granted after 20 September 2000 106

OFFICIAL: Sensitive // Legal Privilege

Division 1—Qualifications for and payability of special needs pensions 107

Subdivision A—Qualification 107

772 Qualification for special needs age pension 107

773 Qualification for special needs disability support pension 108

774 Qualification for special needs wife pension.....108

Subdivision B—Payability 108

779 Special needs pension not payable if pension rate nil 108

783 Second special needs pension generally not payable after cancellation of initial pension 109

787 Multiple entitlement exclusion 109

Division 5—Rate of special needs pension 111

796 How to work out a person's special needs pension rate 111

Special Needs Proportional Rate Calculator 112

Module A—Overall rate calculation process 112

Module B—Australian working life residence 113

Module C—Residence factor 115

Division 10—Bereavement payments 116

Subdivision A—Death of partner 116

822 Qualification for payments under this Subdivision 116

823 Continued payment of deceased partner's previous entitlement 118

824 Lump sum payable in some circumstances.....119

825 Adjustment of rate of person's special needs pension 120

826 Effect of death of person entitled to payments under this Subdivision 121

827 Matters affecting payment of benefits under this Subdivision 122

Subdivision C—Death of recipient 123

830 Death of recipient.....123

OFFICIAL: Sensitive // Legal Privilege

Part 2.17—Economic security strategy payment 125
900 Qualification for economic security strategy payment....125
901 Amount of economic security strategy payment—general....126
902 Amount of economic security strategy payment—person receiving carer allowance....127

Part 2.18—Training and learning bonus 129
910 Qualification for training and learning bonus....129
911 Amount of training and learning bonus....130

Part 2.18A—Clean energy payments 132

Division 1—Clean energy advances 132

Subdivision A—Qualifying for clean energy advances 132
914 Recipients of certain social security payments....132
914A Recipients of austudy, youth allowance, some disability support pensions and some special benefits....133
914B Disregard nil rate in certain circumstances....135
914C Limits on qualifying for multiple advances....135

Subdivision B—Amount of a clean energy advance 136
914D Amount of a clean energy advance....136
914E *Clean energy advance daily rate*....136
914F *Number of advance days*....141

Subdivision C—Top-up payments of clean energy advance 141
914G Top-up payments of clean energy advance....141

Division 2—Quarterly energy supplement 143
915 When quarterly energy supplement is payable....143
915A Electing to receive quarterly energy supplement....143
915B Rate of quarterly energy supplement....144

Division 4—Essential medical equipment payment 145
917A Definitions....145
917B Qualification for essential medical equipment payment....145
917C The medical needs requirement....147
917D The concession card requirement....148
917E The energy account requirement....148

OFFICIAL: Sensitive // Legal Privilege

917F Availability of payments....149
917G Amount of payment....150
917H Non-receipt of social security payment....150
Division 5—Multiple qualification exclusions 151
918 Multiple qualification exclusions....151
Part 2.19—Carer allowance 152
Division 1—Interpretation 152
952 Carer allowance definitions....152
Division 2—Qualification for and payability of carer allowance 153
Subdivision A—Qualification 153
953 Qualification for carer allowance—caring for either 1 or 2 disabled children....153
953A Remaining qualified for carer allowance up to 3 months after child turns 16....155
954 Qualification for carer allowance—caring for a disabled adult in a private home of both the adult and the carer....156
954A Qualification for carer allowance—caring for a disabled adult in a private home not shared by the adult and carer....157
954B Qualification for carer allowance—receiving carer payment for caring for child or children....159
955 Qualification for carer allowance—hospitalisation....159
956 Absence from Australia....160
957 Effect of cessation of care etc. on carer allowance....160
957A Carer allowance income test....162
957B Adjusted taxable income....164
957C Accepted estimates....167
957D Income from long-term financial assets....167
Subdivision B—Limitations on payability 169
958 Carer allowance not payable if allowance rate nil....169
964 Carer allowance not payable to 2 people for the same care receiver or care receivers unless declaration made....169

965 Carer allowance not payable to more than one member of a couple....170
966 Newly arrived resident's waiting period....171
967 Duration of newly arrived resident's waiting period....172

Division 5—Rate of carer allowance 173
974 Rate of carer allowance....173

Division 6—Multiple qualification for carer allowance for same care receiver or receivers 175
981 Secretary may make declaration where 2 people are qualified for carer allowance for the same care receiver or care receivers....175

Division 10—Bereavement payments (death of disabled child or adult) 176

Subdivision A—Death of disabled child 176
992J Continued carer allowance during bereavement rate continuation period where disabled child dies....176
992K Lump sum payable in some circumstances....176

Subdivision B—Death of disabled child (special short-term assistance) 177
992L Continuation of qualification for carer allowance for 4 weeks in some cases where recipient's disabled child dies....177

Subdivision BA—Death of disabled adult 178
992LA Continued carer allowance during bereavement rate continuation period where disabled adult dies....178
992LB Lump sum payable in some circumstances....179

Subdivision C—Death of recipient 180
992M Death of recipient....180

Part 2.19AA—Child disability assistance 182
992MA Child disability assistance definitions....182
992MB Qualification for child disability assistance....182
992MC Eligible care receivers....183
992MD Amount of child disability assistance....183

Part 2.19A—One-off payments to carers eligible for carer allowance 184

Division 1—One-off payment to carers eligible for carer allowance 184

992N One-off payment to carers (carer allowance related) 184
992O In respect of what care receivers is the payment payable? 184
992P What is the amount of the payment? 185

Division 2—2005 one-off payment to carers eligible for carer allowance 186

992Q 2005 one-off payment to carers (carer allowance related) 186
992R In respect of what care receivers is the payment payable? 186
992S What is the amount of the payment? 187

Division 3—2006 one-off payment to carers eligible for carer allowance 188

992T 2006 one-off payment to carers (carer allowance related) 188
992U In respect of which care receivers is the payment payable? 188
992V Amount of the one-off payment....189

Division 4—2007 one-off payment to carers eligible for carer allowance 190

992WA 2007 one-off payment to carers (carer allowance related) 190
992WB Eligible care receivers....190
992WC Amount of the one-off payment....191

Division 5—2008 one-off payment to carers eligible for carer allowance 192

992WD 2008 one-off payment to carers (carer allowance related) 192
992WE Eligible care receivers....192
992WF Amount of the one-off payment....193

Part 2.19B—Carer supplement 194

992X Carer supplement 194

OFFICIAL: Sensitive // Legal Privilege

Part 2.20—Double orphan pension 198

Division 1—DOP child status 198

993 Double orphan—not refugee 198
994 Double orphan—refugee....199
995 Refugee child 200
996 Long-term prisoner 200
997 Patient on a long-term basis....201
998 Person uncontactable 201

Division 2—Qualification for and payability of double orphan pension 202

Subdivision A—Qualification 202

999 Qualification for double orphan pension 202

Subdivision B—Payability 203

1003 Double orphan pension not payable for child receiving a pension under the Veterans' Entitlements Act 203

Division 5—Rate of double orphan pension 204

1010 Rate of double orphan pension 204

Division 10—Bereavement payments (death of DOP child) 207

Subdivision A—Death of DOP child (General) 207

1033 Continued double orphan pension during bereavement rate continuation period where DOP child dies 207
1034 Lump sum payable in some circumstances....207

Subdivision AA—Death of dependent child (special short-term assistance) 208

1034AA Continuation of qualification for double orphan pension for 4 weeks in some cases where recipient's DOP child dies 208

Subdivision B—Death of recipient 209

1034A Death of recipient....209

Part 2.21—Mobility allowance 211

Division 1—Qualification for and payability of mobility allowance 211

Subdivision A—Qualification 211

OFFICIAL: Sensitive // Legal Privilege

1035 Qualification for mobility allowance (rate specified in subsection 1044(1)) 211
1035A Qualification for mobility allowance (rate specified in subsection 1044(1A)) 215

Subdivision B—Payability 221
1036 Mobility allowance not payable at 2 rates 221
1037 Mobility allowance not payable where person receiving motor vehicle assistance 221
1038 Mobility allowance not payable when person is NDIS participant 221
1039AA Newly arrived resident's waiting period 222
1039AB Duration of newly arrived resident's waiting period 223

Division 2—Rate of mobility allowance 224
1044 Rate of mobility allowance 224
1044A Reduction of the advance payment period 224

Division 3—Mobility allowance advance 226
1045 Qualification for mobility advance 226

Division 4—Continuation 227
1046 Continuation of mobility allowance when person ceases to be qualified 227

Part 2.21A—Language, literacy and numeracy supplement 231

Division 1—Preliminary 231
1047 Definition 231

Division 2—Qualification for language, literacy and numeracy supplement 232
1048 General statement of qualification 232

Division 3—Circumstances where language, literacy and numeracy supplement not payable 233
1049 Language, literacy and numeracy supplement not payable in certain circumstances 233

Division 4—Rate increase relating to language, literacy and numeracy supplement 234
1050 Rate increase attributable to language, literacy and numeracy supplement 234

Part 2.22—Advance payments of social security entitlements 235

Division 1—Qualification for advance payment 235

1061A Qualification for advance payment....235

Division 2—Applying for advance payment 238

1061B Application....238
1061C Form of application....238
1061D Lodgment of application....238
1061E Application may be withdrawn....238

Division 3—Determination of application and payment of advance payment 239

1061EA Secretary to determine application 239
1061EB Payment of advance payment 239

Division 4—Amount of advance payment 240

1061ECA Amount of advance payment—age and disability support pensions and carer payment....240
1061ED Amount of advance payment—pension PP (single) 241
1061EE Amount of advance payment—certain other social security payments 243

Division 5—Payment of advance payment 246

1061EI Advance payment to be paid to person or nominee 246
1061EJ Payment into bank account etc. 246

Division 6—Protection of advance payment 248

1061EK Advance payment to be absolutely inalienable..248

Division 7—Repayment of advance payment 249

1061EL Repayment of advance payment....249

Part 2.22A—Special employment advances 250

Division 1—Qualification for special employment advance 250

1061EM Qualification for special employment advance .250
1061EN Meaning of *in severe financial hardship* 252
1061EO Person not qualified in certain circumstances....252

Division 4—Amount of special employment advance 254

1061EW Where claim based on effect of unreceived income on special employment advance qualifying entitlement 254

OFFICIAL: Sensitive // Legal Privilege

1061EX Where claim based on claimant's need for financial assistance to take up offered employment 254

Division 7—Repayment of special employment advance 257

1061EZC Repayment of special employment advance....257

Part 2.23—Advance pharmaceutical allowance 258

Division 1—Qualification for and payability of advance pharmaceutical allowance 258

1061F Qualification for advance pharmaceutical allowance 258

1061G Advance pharmaceutical allowance not payable in some circumstances 258

Division 3—Amount of advance pharmaceutical allowance 260

1061JC Amount of advance pharmaceutical allowance .260

1061JD Annual limit 260

Part 2.23A—Crisis payment 261

Division 1—Qualification for crisis payment 261

1061JG Qualification—release from gaol or psychiatric confinement 261

1061JH Qualification—extreme circumstances forcing departure from home....262

1061JHA Qualification—remaining in home after removal of family member due to domestic or family violence....263

1061JI Qualification—humanitarian entrant to Australia 264

1061JIA Qualification—national health emergency 264

1061JJ Crisis payment not payable in addition to disaster relief payment 265

1061JK Crisis payment not payable if assurance of support in force 265

1061JL Person not qualified for crisis payment if qualified for crisis payment under ABSTUDY scheme....265

Division 4—Amount of crisis payment 267

1061JU Amount of payment 267

OFFICIAL: Sensitive // Legal Privilege

Part 2.23B—Disaster Recovery Allowance 269

Division 1—Qualification for Disaster Recovery Allowance 269

1061KA Qualification for Disaster Recovery Allowance 269

1061KB Disaster Recovery Allowance not payable if assurance of support in force 271

Division 2—Rate of Disaster Recovery Allowance 272

1061KC Rate of Disaster Recovery Allowance 272

Division 3—Other matters 273

1061KD Period that Disaster Recovery Allowance is payable 273

1061KE Non-receipt of social security payment 273

Part 2.24—Australian Government Disaster Recovery Payment 274

Division 1—Qualification for Australian Government Disaster Recovery Payment 274

1061K Qualification for Australian Government Disaster Recovery Payment 274

1061L Meaning of *adversely affected* 275

Division 2—Amount of Australian Government Disaster Recovery Payment 276

1061M Amount of payment for disasters in Australia 276

1061N Amount of payment for disasters outside Australia 277

1061P Determinations of rates 277

Division 3—Recoverable payments etc. 279

1061PAAA Recoverable payments 279

1061PAAB Recoverable death payments 279

1061PAAC Reports about recoverable payments and recoverable death payments 280

1061PAAD Review of decisions 283

1061PAAE Department official 283

OFFICIAL: Sensitive // Legal Privilege

Part 2.24AA—Australian Victim of Terrorism Overseas Payment 284

Division 1—Qualification for Australian Victim of Terrorism Overseas Payment 284

1061PAA Qualification for Australian Victim of Terrorism Overseas Payment....284

1061PAB Whether a person can be qualified for more than one AVTOP in relation to the same terrorist act 285

Division 2—Payability of Australian Victim of Terrorism Overseas Payment to secondary victims 287

1061PAC When AVTOP for secondary victims is not payable....287

Division 3—Amount of Australian Victim of Terrorism Overseas Payment 288

1061PAD Amount of AVTOP for a primary victim 288

1061PAE Amount of AVTOP for a secondary victim....288

1061PAF AVTOP Principles....289

Division 4—Other 291

1061PAG Consultation on the AVTOP Principles....291

1061PAH AVTOP is not compensation or damages....291

Part 2.24A—Pensioner education supplement 292

Division 1—Qualification for pensioner education supplement 292

Subdivision A—The basic rules 292

1061PA Qualification for pensioner education supplement 292

Subdivision B—Undertaking qualifying study 292

1061PB Undertaking qualifying study 292

1061PC Approved course of education or study 295

1061PD Full-time students 295

1061PE Concessional study-load students 296

1061PF Normal amount of full-time study 299

1061PG First fortnight of classes....299

1061PH Progress rules—secondary students....300

1061PI Progress rules—tertiary students 301

OFFICIAL: Sensitive // Legal Privilege

Subdivision C—Payments attracting pensioner education supplement 306

1061PJ Payments attracting pensioner education supplement 306

Subdivision D—Pensioner education supplement age 311

1061PK Pensioner education supplement age 311

1061PL When a person is regarded as independent 312

Subdivision E—Residency 314

1061PM Residency requirements 314

1061PN Absence of persons overseas 314

Division 2—Situations in which pensioner education supplement is not payable 316

Subdivision C—Newly arrived resident's waiting period 316

1061PT Pensioner education supplement not payable during newly arrived resident's waiting period .316

1061PU Newly arrived resident's waiting period....316

1061PV Length of newly arrived resident's waiting period 317

Subdivision D—Multiple entitlement exclusion 318

1061PW Meaning of multiple entitlement exclusion 318

1061PX Multiple entitlement exclusion 318

Division 5—Rate of pensioner education supplement 319

1061PZG Rate of pensioner education supplement 319

Part 2.25—Telephone allowance 321

Division 1—Qualification for and payability of telephone allowance 321

1061Q Qualification for telephone allowance....321

1061R Telephone allowance not payable in some circumstances....328

Division 2—Rate of telephone allowance 330

1061S Standard rate of telephone allowance 330

1061SA Increased rate of telephone allowance....332

1061SB Increased rate of telephone allowance for home internet 334

OFFICIAL: Sensitive // Legal Privilege

Part 2.25A—Utilities allowance 336

Division 1—Qualification for and payability of utilities allowance 336

1061T Qualification for utilities allowance 336
1061TA When utilities allowance is payable....336

Division 2—Rate of utilities allowance 338

1061TB Rate of utilities allowance....338

Part 2.25B—Energy supplement 339

Division 1—Qualification and payability 339

1061U Qualification for energy supplement 339
1061UA When energy supplement is payable 341

Division 2—Rate of energy supplement 343

1061UB Rate of energy supplement 343

Part 2.25C—Quarterly pension supplement 344

1061V When this Part applies 344
1061VA Quarterly pension supplement 344
1061VB Rate of quarterly pension supplement 345

Part 2.26—Fares allowance 346

Division 1—Qualification for fares allowance 346

1061ZAAA Qualification for fares allowance....346
1061ZAAB Journey by person who is not an external student 348
1061ZAAC Journey by person who is an external student ...348

Division 3—Amount of fares allowance 350

1061ZAAJ Fares allowance for public transport....350
1061ZAAK Fares allowance for private transport....350

Part 2.27—Northern Territory CDEP transition payment 353

Division 1—Qualification for and payability of Northern Territory CDEP transition payment 353

Subdivision A—Qualification for Northern Territory CDEP transition payment 353

1061ZAAL Qualification for Northern Territory CDEP transition payment....353
1061ZAAM Northern Territory CDEP transition day 354

OFFICIAL: Sensitive // Legal Privilege

Subdivision B—Payability of Northern Territory CDEP transition payment 354

1061ZAAN Northern Territory CDEP transition payment only payable if certain claim criteria met 354

1061ZAAO Northern Territory CDEP transition payment not payable while CDEP Scheme payments being received....355

1061ZAAP Northern Territory CDEP transition payment not payable if rate too low 355

1061ZAAQ Northern Territory CDEP transition payment not payable if compliance penalty period applies....355

1061ZAAR Northern Territory CDEP transition payment not payable from 1 July 2008....356

Division 2—Rate of Northern Territory CDEP transition payment 357

1061ZAAS Rate of Northern Territory CDEP transition payment....357

1061ZAAT Pre-transition fortnightly income....357

1061ZAAU Post-transition fortnightly income 358

1061ZAAV Maximum rate of Northern Territory CDEP transition payment....359

Division 3—Miscellaneous 360

1061ZAAW Northern Territory CDEP transition payment rules 360

Chapter 2A—Benefits and concessions other than payments 361

Part 2A.1—Concession cards 361

Division 1—Qualification for, and issue of, pensioner concession card 361

1061ZA General qualification rules....361

1061ZC Extended qualification rule: long-term recipient of social security benefits....364

1061ZD Extended qualification rule: former recipient of disability support pension 367

1061ZDA Extended qualification rule: former recipient of pension PP (single) 369

1061ZEA Further extended qualification rule: loss of payment because of employment income....370

OFFICIAL: Sensitive // Legal Privilege

1061ZEB Extended qualification rule: persons with a partial capacity to work....373
1061ZEC Effect of compliance penalty periods....374
1061ZF Issue of pensioner concession card....375

Division 2—Qualification for seniors health card 376

1061ZG Qualification rules....376
1061ZH Newly arrived resident's waiting period....377
1061ZI Duration of newly arrived resident's waiting period....378
1061ZJ Giving of copy of assessment of taxable income to Secretary....378
1061ZJA Modifications if person's rate of social security pension is nil on 1 January 2017....378
1061ZJB Other modifications because of Veterans' Entitlements Act....379

Division 3—Qualification for health care card 380

Subdivision A—Qualification for automatic issue health care card 380

1061ZK Qualification: general rules....380
1061ZM Qualification for health care card: employment-affected person....382
1061ZMA Further extended qualification rule: loss of payment because of employment income....385
1061ZN Residence requirement....386
1061ZNA Effect of compliance penalty periods....387

Subdivision B—Qualification for health care card in other circumstances 388

1061ZO Qualification....388
1061ZP Person subject to newly arrived resident's waiting period....390
1061ZQ Newly arrived resident's waiting period....390
1061ZR Duration of newly arrived resident's waiting period....391

Subdivision C—Miscellaneous provisions relating to health care cards 392

1061ZS Issue of health care cards....392
1061ZT Certain dependants not qualified for health care card....392

OFFICIAL: Sensitive // Legal Privilege

Division 4—Non-cancellation of concession cards for temporary overseas absences 393
1061ZUA Persons to whom Division applies....393
1061ZUB Non-cancellation of concession cards for temporary overseas absences....393
1061ZUC Extension cards....394

Chapter 2AA—Student start-up loans 396

Part 2AA.1—Introduction 396
1061ZVAA Simplified outline of this Chapter....396

Part 2AA.2—Qualification for and amount of student start-up loan 397
1061ZVBA Simplified outline of this Part....397
1061ZVBB Qualification for student start-up loan....397
1061ZVBC Circumstances in which person is not qualified for student start-up loan....399
1061ZVBD Amount of student start-up loan....400

Part 2AA.3—Indebtedness 401

Division 1—Introduction 401
1061ZVCA Simplified outline of this Part....401

Division 2—Incurring SSL debts 402
1061ZVDA SSL debts....402
1061ZVDB SSL debt discharged by death....403
1061ZVDC Notice to Commissioner....403

Division 3—Working out accumulated SSL debts 404
1061ZVEA Simplified outline of this Division....404
1061ZVEB Stage 1—working out a former accumulated SSL debt....404
1061ZVEC Stage 2—working out an accumulated SSL debt....406
1061ZVED Rounding of amounts....407
1061ZVEE Accumulated SSL debt discharges earlier debts 407
1061ZVEF Accumulated SSL debt discharged by death....407

Part 2AA.4—Discharge of indebtedness 408

Division 1—Introduction 408
1061ZVFA Simplified outline of this Part....408

OFFICIAL: Sensitive // Legal Privilege

1061ZVFB Debts under this Chapter....408
Division 2—Voluntary discharge of indebtedness 409
1061ZVGA Voluntary SSL repayments in respect of debts..409
1061ZVGB Application of voluntary SSL repayments....409
1061ZVGC Refunding of payments....409
Division 3—Compulsory discharge of indebtedness 411
Subdivision A—Liability to repay amounts 411
1061ZVHA Liability to repay amounts....411
1061ZVHB Repayable SSL debt for an income year....412
Subdivision B—Assessments 413
1061ZVHC Commissioner may make assessments....413
1061ZVHD Notification of notices of assessment of tax....413
1061ZVHE Commissioner may defer making assessments..413
1061ZVHF Commissioner may amend assessments....414
Part 2AA.5—Tax administration matters 416
1061ZVJA Simplified outline of this Part....416
1061ZVJB Verification of tax file numbers....416
1061ZVJC When person with tax file number incorrectly notifies number....416
1061ZVJD When person without tax file number incorrectly notifies number....417
1061ZVJE When tax file numbers are altered....417
1061ZVJF When tax file numbers are cancelled....418
1061ZVJG Returns, assessments, collection and recovery..418
1061ZVJH Charges and civil penalties for failing to meet obligations....418
1061ZVJJ Pay as you go (PAYG) withholding....419
1061ZVJK Pay as you go (PAYG) instalments....419
1061ZVJL Administration of this Chapter....419
Chapter 2B—Student Financial Supplement Scheme 420
Part 2B.1—Establishment of scheme 420
Division 1—Preliminary 420
1061ZW Object of this Chapter....420
1061ZX Outline of the scheme....420

Division 2—Eligibility to obtain financial supplement 422
1061ZY Eligibility to obtain financial supplement.....422
1061ZZ Category 1 student.....422
1061ZZA Category 2 student.....423
1061ZZAA Failure by person to comply with request to provide person's tax file number.....424
1061ZZAB Failure by person to comply with request to provide the tax file number of a parent of the person.....425
Division 3—Decision and notice about eligibility to obtain financial supplement 427
1061ZZAC Secretary's decision.....427
1061ZZAD Revocation or variation of decision after review.....428
1061ZZAE Transitional.....428
Division 4—Agreements between Commonwealth and financial corporations 430
1061ZZAF Applications for financial supplement.....430
1061ZZAG Agreements.....430
Division 5—Application for financial supplement 432
1061ZZAH When to apply.....432
1061ZZAI How to apply.....432
1061ZZAJ Changing an application.....432
Division 6—Amount of financial supplement 433
Subdivision A—Category 1 students 433
1061ZZAK Maximum amount of financial supplement.....433
Subdivision B—Category 2 students 435
1061ZZAL Change in eligibility period.....435
1061ZZAM Eligibility period (short course).....435
1061ZZAN Eligibility period (no short course).....436
1061ZZAO Maximum amount of financial supplement.....437
Subdivision C—Provisions applying to both category 1 students and category 2 students 438
1061ZZAP Minimum amount of financial supplement.....438
1061ZZAQ Person doing more than one course.....438

OFFICIAL: Sensitive // Legal Privilege

Division 7—Trading in youth allowance, austudy payment or pensioner education supplement for financial supplement 439

1061ZZAR Purpose of Division 439

1061ZZAS Reduction of youth allowance, austudy payment or pensioner education supplement for financial supplement 439

Division 8—Obtaining or increasing financial supplement by trading back youth allowance, austudy payment or pensioner education supplement 440

Subdivision A—Purpose of Division 440

1061ZZAT Purpose of Division 440

Subdivision B—When a person may repay youth allowance, austudy payment or pensioner education supplement to obtain or increase financial supplement 440

1061ZZAU Election to repay youth allowance, austudy payment or pensioner education supplement....440

1061ZZAV Timing of repayment 441

Subdivision C—Repayment 442

1061ZZAW Effect of repayment 442

Division 9—Financial supplement contracts 443

Subdivision A—Making a contract for payment of financial supplement 443

1061ZZAX Making a contract between person and participating corporation....443

1061ZZAY Existing contracts....444

1061ZZAZ Liability for money paid under a financial supplement contract....444

1061ZZBA Validity of financial supplement contract....444

Subdivision B—When a financial supplement contract can be cancelled 445

1061ZZBB Person has right to cancel financial supplement contract....445

1061ZZBC How to cancel financial supplement contract....445

1061ZZBD When to cancel financial supplement contract ..445

1061ZZBE Payments made during cooling off period....445

1061ZZBF Person may waive right to cancel contract 446

1061ZZBG How to waive right to cancel contract 446
1061ZZBH When to waive right to cancel contract 446

Subdivision C—Financial supplement contract exempt from certain laws and taxes 446

1061ZZBI Financial supplement contract exempt from certain laws and taxes 446

Division 10—Payment of financial supplement 448

1061ZZBJ Payment by instalments 448
1061ZZBK Rounding off 448
1061ZZBL To whom instalments must be paid 448
1061ZZBM Payment into bank account 449

Division 11—Protection of financial supplement 450

1061ZZBN Financial supplement to be absolutely inalienable 450
1061ZZBO Effect of garnishee or attachment order 450

Division 12—Obligations of category 2 students 451

Subdivision A—Statements about tax file numbers 451

1061ZZBP Secretary may request person obtaining financial supplement to give statement of person's tax file number 451
1061ZZBQ Secretary may request person obtaining financial supplement to give statement of parent's tax file number 451

Subdivision B—Notice of events or changes in circumstances 452

1061ZZBR Secretary may give notice requiring information 452
1061ZZBS Event or change relevant to payment 453
1061ZZBT Formalities related to notice 453
1061ZZBU Validity of notice 453
1061ZZBV Period within which information to be given 453
1061ZZBW Refusal or failure to comply with notice 454
1061ZZBX Application overseas 455

Subdivision C—Notice about a matter relevant to payment of financial supplement 455

1061ZZBY Secretary may give notice requiring statement on matter 455
1061ZZBZ Formalities related to notice 455
1061ZZCA Validity of notice 456

OFFICIAL: Sensitive // Legal Privilege

1061ZZCB Period within which statement to be given 456
1061ZZCC Statement must be in approved form 456
1061ZZCD Refusal or failure to comply with notice 456
1061ZZCE Application overseas 457

Division 13—Early repayments of financial supplement 458

Subdivision A—Calculation and notification of amount outstanding under financial supplement contract 458

1061ZZCF Application of Subdivision 458
1061ZZCG Calculation of amount outstanding under financial supplement contract before 1 June in the year after the year in which the contract was made 458
1061ZZCH Calculation of amount outstanding under financial supplement contract at a later time 458
1061ZZCI Notification of amount outstanding 460

Subdivision B—Person's rights to make repayments during contract period 461

1061ZZCJ Person not required to, but may, make repayments during contract period 461
1061ZZCK What happens if person makes an excess repayment 461
1061ZZCL Amount repaid not to include certain amounts .461
1061ZZCM How to work out discount 462
1061ZZCN Effect of making a repayment during contract period 462
1061ZZCO Rights and liabilities of participating corporation if repayment made 465

Subdivision C—What happens at the end of the contract period 465

1061ZZCP Corporation's rights at end of contract period ...465
1061ZZCQ Termination notice 465
1061ZZCR Secretary may give notice correcting information in previous notice 466
1061ZZCS Person may request notice to be corrected 466
1061ZZCT Effect of notices and requests 467

Part 2B.2—Payments of financial supplement under scheme to stop in certain circumstances 468

Division 1—Payments to stop at request of recipient 468

1061ZZCU Person may ask for payment to stop 468

OFFICIAL: Sensitive // Legal Privilege

1061ZZCV Effect of notice....468

Division 2—Payments to stop if the maximum amount of financial supplement is reduced to the amount already paid or a lesser amount 469

Subdivision A—Notice that payments are to stop 469

1061ZZCW Secretary must give notice to person and corporation....469

1061ZZCX Effect of notice....470

1061ZZCY This Subdivision is subject to sections 1061ZZFS and 1061ZZFT....470

Subdivision B—Original amount paid because person failed to notify change of circumstances 470

1061ZZCZ Secretary may give notice to person and corporation....470

1061ZZDA Effect of notice....472

1061ZZDB Transfer of corporation's rights to Commonwealth....472

1061ZZDC Apportionment of financial supplement....473

1061ZZDD Liability of Commonwealth to corporation....473

1061ZZDE Liability of person to Commonwealth....473

1061ZZDF This Subdivision not to affect Subdivision A....474

Subdivision C—Original amount paid because of false or misleading information 474

1061ZZDG Secretary may give notice to person and corporation....474

1061ZZDH Effect of notice....475

1061ZZDI Transfer of corporation's rights to Commonwealth....475

1061ZZDJ Apportionment of financial supplement....475

1061ZZDK Liability of Commonwealth to corporation....476

1061ZZDL Liability of person to Commonwealth....476

1061ZZDM This Subdivision not to affect Subdivision A....476

Division 3—Payments to stop if person ceases to be eligible to obtain financial supplement 477

Subdivision A—Notice that payments are to stop 477

1061ZZDN Secretary must give notice to person and corporation....477

1061ZZDO Effect of notice....477

OFFICIAL: Sensitive // Legal Privilege

1061ZZDP This Subdivision is subject to sections 1061ZZFS and 1061ZZFT 478

Subdivision B—Financial supplement paid because person failed to notify change of circumstances 478

1061ZZDQ Secretary may give notice to person and corporation 478
1061ZZDR Effect of notice....479
1061ZZDS Transfer of corporation's rights to Commonwealth 480
1061ZZDT Apportionment of financial supplement 480
1061ZZDU Liability of Commonwealth to corporation 481
1061ZZDV Liability of person to Commonwealth 481
1061ZZDW This Subdivision not to affect Subdivision A 481

Division 4—Payments to stop if person is found never to have been eligible to obtain financial supplement 482

Subdivision A—Notice that payments are to stop 482

1061ZZDX Secretary must give notice to person and corporation 482
1061ZZDY Effect of notice....482
1061ZZDZ This Subdivision is subject to sections 1061ZZFS and 1061ZZFT 483

Subdivision B—Financial supplement paid because of false or misleading information 483

1061ZZEA Secretary may give notice to person and corporation 483
1061ZZEB Effect of notice....483
1061ZZEC Transfer of corporation's rights to Commonwealth 484
1061ZZED Liability of Commonwealth to corporation 484
1061ZZEE Liability of person....484
1061ZZEF Definitions 485
1061ZZEG This Subdivision not to affect Subdivision A 485

Division 5—Payments to stop if person dies 486

1061ZZEH Secretary may give notice to corporation if other party to contract dies....486
1061ZZEI Effect of notice....486
1061ZZEJ Discharge of corporation's liability 486
1061ZZEK Transfer of corporation's rights to Commonwealth 486

1061ZZEL Liability of Commonwealth to corporation 487
1061ZZEM Discharge of person's liability 487

Part 2B.3—Repayment of financial supplement through taxation system after termination date 488

Division 1—Purpose and application of Part 488
1061ZZEN Purpose and application of Part 488
1061ZZENA Extent of Commissioner of Taxation's general administration of this Part 488

Division 2—FS debt and accumulated FS debt 489
1061ZZEO FS debt owed by person 489
1061ZZEP How to work out FS debt 489
1061ZZEQ Accumulated FS debt incurred by person 489
1061ZZER How to work out accumulated FS debt 490
1061ZZES Adjusted accumulated FS debt 490
1061ZZET Indexation factor 492
1061ZZEU Accumulated FS debt discharges earlier debts ..493

Division 3—Information to be given to Commissioner of Taxation 494
1061ZZEV Secretary to give notice to Commissioner of Taxation 494
1061ZZEW Secretary to give further notice to Commissioner of Taxation 494
1061ZZEX Secretary to give certificate to Commissioner of Taxation 495

Division 4—Voluntary repayments of FS debts 496
1061ZZEY Voluntary repayments of FS debts 496
1061ZZEYA Refunding of payments 496

Division 5—Compulsory repayments in respect of accumulated FS debt 497
1061ZZEZ Compulsory payments in respect of accumulated FS debt 497
1061ZZFA Repayment income 497
1061ZZFB Minimum repayment income 498
1061ZZFC Repayable debt for an income year 498
1061ZZFD Amounts payable to the Commonwealth 499

Division 6—Application of tax legislation 501
1061ZZFG Application of tax legislation 501

OFFICIAL: Sensitive // Legal Privilege

1061ZZFGA Charges and administrative penalties for failing to meet obligations....501
1061ZZFGB Pay as you go (PAYG) withholding....501
1061ZZFGD Pay as you go (PAYG) instalments....502

Division 7—Assessments 503
1061ZZFH Commissioner of Taxation may make assessment....503
1061ZZFI Notice of assessment may be served....503

Division 8—Commissioner of Taxation may delay assessment 504
1061ZZFJ Commissioner of Taxation may delay assessment....504
1061ZZFK Commissioner of Taxation may amend assessment....504
1061ZZFL When Commissioner of Taxation must make decision to delay or amend assessment....505

Division 9—Review of Commissioner of Taxation's decision 506
1061ZZFM Application to Administrative Appeals Tribunal....506

Division 10—Treatment of payments under financial supplement scheme 507
1061ZZFN Payments not subject to taxation....507
1061ZZFO Application of payments....507
1061ZZFP Debt discharged by death....507

Part 2B.4—Miscellaneous 508

Division 1—Application of the Bankruptcy Act 1966 508
1061ZZFQ Application of Division....508
1061ZZFR Treatment of debt....508

Division 2—Review of decisions 510
1061ZZFS What happens if a decision of the Secretary is set aside....510
1061ZZFT What happens if a decision of the Secretary is varied....510

Division 3—Transfer of rights under this Chapter 511
1061ZZFU Notices of transfer....511
1061ZZFV Transfers not subject to State or Territory taxes 511

Chapter 2C—Assurances of support 512

Part 2C.1—Giving assurances 512

1061ZZGA What is an assurance of support?.....512
1061ZZGB Who may give an assurance of support? 512
1061ZZGC How to give an assurance of support.....513

Part 2C.2—Acceptance of assurances 515

1061ZZGD Accepting or rejecting an assurance of support.515
1061ZZGE Notices relating to an assurance of support 516

Part 2C.3—Effect of accepted assurances 518

1061ZZGEA Assurance cannot be withdrawn once visa issued 518
1061ZZGF When an accepted assurance is in force.....518
1061ZZGG Liability to pay for social security payments.....519

Part 2C.4—Determinations 520

1061ZZGH Determinations.....520

Part 2C.5—Assurances by unincorporated bodies 522

1061ZZGI Application of social security law to unincorporated bodies.....522

Chapter 3—General provisions relating to payability and rates 524

Part 3.1—Rate Calculators (General) 524

1062 Steps in rate calculation 524
1063 Standard categories of family situations.....524

Part 3.2—Pension Rate Calculator A 525

1064 Rate of age and disability support pensions and carer payment (people who are not blind) 525

OFFICIAL: Sensitive // Legal Privilege

Pension Rate Calculator A 528
Module A—Overall rate calculation process 528
Module B—Maximum basic rate 530
Module BA—Pension supplement 531
Module C—Energy supplement 532
Module E—Ordinary income test 533
Module F—Ordinary income for the purposes of disability support pension 536
Module G—Assets test 541
Module H—Remote area allowance 544
Part 3.3—Pension Rate Calculator B 548
1065 Rate of age and disability support pension (blind people) 548
Pension Rate Calculator B 550
Module A—Overall rate calculation process 550
Module B—Maximum basic rate 552
Module BA—Pension supplement 552
Module C—Energy supplement 554
Module E—Remote area allowance 555
Part 3.4A—Pension Rate Calculator D 558
1066A Rate of disability support pension (people under 21 who are not blind) 558

Pension Rate Calculator D 559
Module A—Overall rate calculation process 559
Module B—Maximum basic rate 561
Module BA—Energy supplement 564
Module C—Youth disability supplement 564
Module D—Pharmaceutical allowance 565
Module F—Ordinary income test 568
Module G—Payments taken to be ordinary income 571
Module H—Assets test 576
Module I—Remote area allowance 579
Part 3.4B—Pension Rate Calculator E 582
1066B Rate of disability support pension (people under 21 who are blind) 582
Pension Rate Calculator E 583
Module A—Overall rate calculation process 583
Module B—Maximum basic rate 584
Module BA—Energy supplement 587
Module C—Youth disability supplement 588
Module D—Pharmaceutical allowance 588
Module F—Remote area allowance 591
Part 3.5—Youth Allowance Rate Calculator 594
1067 Definitions 594
1067A When a person is regarded as independent 595
1067B Accommodated independent person 604
1067C Member of a YA couple 605
1067D Person required to live away from home 608
1067E Person living at home 609
1067F Long term income support student 609
1067G Rate of youth allowance 610

OFFICIAL: Sensitive // Legal Privilege

Youth Allowance Rate Calculator 611
Module A—Overall rate calculation process 611
Module B—Maximum basic rate 613
Module BA—Energy supplement 618
Module C—Pharmaceutical allowance 621
Module D—Youth disability supplement 623
Module E—Person's reduction for parental income 624
Module F—Parental income test 625
Submodule 1—Parental income test result 625
Submodule 2—Exemption from parental income test 626
Submodule 3—Appropriate tax year 627
Submodule 4—Combined parental income 629
Submodule 5—Parental income free area 632
Submodule 6—If person's combined parental income exceeds parental income free area 633
Module GA—Maintenance income test 636
Submodule 1—Maintenance income test result 636
Submodule 2—Exemption from maintenance income test 637
Submodule 3—Annualised amount of maintenance income for parent of a person 637
Submodule 4—Maintenance income free area 638
Module H—Income test 639
Module J—Student income bank 654
Module K—Remote area allowance 661
Module L—Table of pensions, benefits, allowances and compensation 664
Part 3.5A—Austudy Payment Rate Calculator 666
1067H Definitions 666
1067J Person living at home 666
1067K Long term income support student 666
1067L Rate of austudy payment 667

Austudy Payment Rate Calculator 668
Module A—Overall rate calculation process 668
Module B—Maximum basic rate 669
Module BA—Pension supplement 671
Module BB—Energy supplement 672
Module C—Pharmaceutical allowance 674
Module D—Income test 676
Module E—Student income bank 687
Module F—Remote area allowance 692

OFFICIAL: Sensitive // Legal Privilege

Chapter 2—Pensions, benefits and allowances

Part 2.13A—Education entry payment

Division 1—Recipients of pension PP (single)

665A Payment to recipient of pension PP (single)

A person is qualified for an education entry payment under this section if:

(a) the person is receiving a pension PP (single); and

(b) a pensioner education supplement is payable to the person; and

Note: Pensioner education supplement is payable to a person even if a person's whole payment has been traded in, or traded back, under the Student Financial Supplement Scheme established under Chapter 2B.

(c) the person has not received a payment under this Part for which he or she made a claim in the current calendar year.

665B Amount of section 665A payment

The amount of an education entry payment under section 665A is $208.

665C Need for claim

A person is not qualified for an education entry payment under section 665A unless the person has made a claim for the payment.

OFFICIAL: Sensitive // Legal Privilege

Division 2—Recipients of disability support pension

665E Payment to a disability support pensioner

A person is qualified for an education entry payment under this section if:

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

(b) a pensioner education supplement is payable to the person; and

Note: Pensioner education supplement is payable to a person even if a person's whole payment has been traded in, or traded back, under the Student Financial Supplement Scheme established under Chapter 2B.

(d) the person has not received a payment under this Part for which he or she made a claim in the current calendar year.

665F Amount of section 665E payment

The amount of an education entry payment under section 665E is $208.

665G Need for claim

A person is not qualified for an education entry payment under section 665E unless the person has made a claim for the payment.

Division 4—Special benefit recipients

665M Payment to a special benefit recipient

A person is qualified for an education entry payment under this section if:

(a) the person would be qualified for a pension PP (single) apart from paragraphs 500(1)(b) and (d) (Australian residency requirements); and

(b) the person is receiving special benefit; and

(c) a pensioner education supplement is payable to the person; and

Note: Pensioner education supplement is payable to a person even if a person's whole payment has been traded in, or traded back, under the Student Financial Supplement Scheme established under Chapter 2B.

(e) the person has not received a payment under this Part for which he or she made a claim in the current calendar year.

665N Amount of section 665M payment

The amount of an education entry payment under section 665M is $208.

665P Need for claim

A person is not qualified for an education entry payment under section 665M unless the person has made a claim for the payment.

Division 6—Jobseeker payment recipients

665U Payment to recipient

(1) A person is qualified for an education entry payment under this section if:

(a) either:

(i) the Secretary is satisfied that the person intends to enrol in a full-time course of education that is an approved course under the ABSTUDY scheme or an approved course of education or study for the purposes of paragraph 541B(1)(c) or 569A(b); or

(ii) the person is enrolled in such a course; and

(b) immediately before starting the course of education:

(i) the person is receiving a jobseeker payment; and

(ii) the person had been receiving income support payments in respect of a continuous period of at least 12 months (whether or not the kind of payment received has changed over the period and whether the period or any part of it occurred before or after the commencement of this section); and

Note 1: For ***income support payment*** see subsection 23(1).

Note 2: For the determination of whether a person received income support payments in respect of a continuous period of at least 12 months see section 38B.

(c) the person:

(i) ceases to be qualified for jobseeker payment because the person takes part in the course of education; or

(ii) is not qualified for youth allowance as a full-time student, austudy payment or payments under the ABSTUDY scheme because the person takes part in the course ~~to satisfy the activity test under section 601 or to comply with a requirement in a Jobseeker Employment Pathway Plan~~to comply with a requirement in an employment pathway plan; and

(d) the person has not, within the last 12 months, received a payment under this Part.

(2) A person is also taken to be qualified for an education entry payment under this section if:

(a) immediately before 20 September 1996, the person:

(i) was qualified for an education entry payment under section 665Q of this Act, or under this section, as in force immediately before that date; or

(ii) would have been so qualified if the person had, before that date, duly made a claim for the payment; and

(b) the person has not received the payment.

Reduction of qualification period during designated period

(3) Subsection (1) has effect during the designated period as if the reference in subparagraph (b)(ii) to 12 months were a reference to 4 weeks.

(4) For the purposes of subsection (3), the ***designated period*** is the period beginning on 1 January 2009 and ending at the end of:

(a) 30 June 2010; or

(b) if a later date is determined by the Minister by legislative instrument—that later date.

665V Amount of section 665U payment

The amount of an education entry payment under section 665U is $208.

665W Need for claim

A person is not qualified for an education entry payment under section 665U unless the person has made a claim for the payment.

Division 8—Widow allowance recipients

665ZC Payment to a widow allowance recipient

(1) A woman is qualified for an education entry payment under this section if:

(a) either:

(i) the Secretary is satisfied that she intends to enrol in a full-time or part-time course of education that is an approved course under the ABSTUDY scheme; or

(ii) she is enrolled in such a course; and

(b) immediately before she commences the course of education, she:

(i) is receiving widow allowance; and

(ii) is a long-term social security recipient; and

(c) she has not, within the last 12 months, received a payment under this Part.

Note 1: For ***long-term social security recipient*** see subsection 23(1).

Note 2: Transitional provisions apply to this section for 9 months after 1 January 1995 (see section 11 of the *Social Security (Parenting Allowance and Other Measures) Legislation Amendment Act 1994*).

Reduction of qualification period during designated period

(2) Subsection (1) has effect during the designated period as if it were modified as follows:

(a) by omitting subparagraph (b)(ii) and substituting the following subparagraph:

(ii) had been receiving income support payments in respect of a continuous period of at least 4 weeks (whether or not the kind of payment received has changed over the period and whether the period or any part of it occurred before or after 1 January 2009); and

(b) by omitting Note 1 and substituting the following notes:

Note 1: For ***income support payment*** see subsection 23(1).

OFFICIAL: Sensitive // Legal Privilege

Note 1A: For the determination of whether a person received income support payments in respect of a continuous period of at least 4 weeks see section 38B.

(3) For the purposes of subsection (2), the ***designated period*** is the period beginning on 1 January 2009 and ending at the end of:

(a) 30 June 2010; or

(b) if a later date is determined by the Minister by legislative instrument—that later date.

665ZD Amount of section 665ZC payment

The amount of an education entry payment under section 665ZC is $208.

665ZE Need for claim

A person is not qualified for an education entry payment under section 665ZC unless the person has made a claim for the payment.

Division 8A—Carer payment recipients

665ZFA Payment to a carer payment recipient

A person is qualified for an education entry payment under this section if:

(a) the person is receiving a carer payment; and

(b) a pensioner education supplement is payable to the person; and

Note: Pensioner education supplement is payable to a person even if a person's whole payment has been traded in, or traded back, under the Student Financial Supplement Scheme established under Chapter 2B.

(d) the person has not received a payment under this Part for which he or she made a claim in the current calendar year.

665ZFB Amount of section 665ZFA payment

The amount of an education entry payment under section 665ZFA is $208.

665ZFC Need for claim

A person is not qualified for an education entry payment under section 665ZFA unless the person has made a claim for the payment.

Division 11—Partner allowance recipients

665ZQ Payment to a partner allowance recipient

(1) A person is qualified for an education entry payment under this section if:

(a) either:

(i) the Secretary is satisfied that the person intends to enrol in a full-time course of education that is an approved course under the ABSTUDY scheme; or

(ii) the person is enrolled in such a course; and

(b) immediately before the person commences the course of education, the person:

(i) is receiving partner allowance; and

(ii) is a long-term social security recipient; and

(c) the person has not, within the last 12 months, received a payment under this Part.

Note 1: For ***long-term social security recipient*** see subsection 23(1).

Note 2: Transitional provisions apply to this section for 3 months after 1 July 1995 (see section 12 of the *Social Security (Parenting Allowance and Other Measures) Legislation Amendment Act 1994*).

Reduction of qualification period during designated period

(2) Subsection (1) has effect during the designated period as if it were modified as follows:

(a) by omitting subparagraph (b)(ii) and substituting the following subparagraph:

(ii) had been receiving income support payments in respect of a continuous period of at least 4 weeks (whether or not the kind of payment received has changed over the period and whether the period or any part of it occurred before or after 1 January 2009); and

(b) by omitting Note 1 and substituting the following notes:

Note 1: For ***income support payment*** see subsection 23(1).

OFFICIAL: Sensitive // Legal Privilege

Note 1A: For the determination of whether a person received income support payments in respect of a continuous period of at least 4 weeks see section 38B.

(3) For the purposes of subsection (2), the ***designated period*** is the period beginning on 1 January 2009 and ending at the end of:

(a) 30 June 2010; or

(b) if a later date is determined by the Minister by legislative instrument—that later date.

665ZR Amount of section 665ZQ payment

The amount of an education entry payment under section 665ZQ is $208.

665ZS Need for claim

A person is not qualified for an education entry payment under section 665ZQ unless the person has made a claim for the payment.

Division 12—Recipients of PP (partnered)

665ZU Payment to recipient of PP (partnered)

(1) A person is qualified for an education entry payment under this section if:

(a) either:

(i) the Secretary is satisfied that the person intends to enrol in a full-time or part-time course of education that is an approved course under the AUSTUDY scheme or ABSTUDY scheme; or

(ii) the person is enrolled in such a course; and

(b) immediately before the person commences the course of education, the person:

(i) is receiving benefit PP (partnered); and

(ii) is a long-term social security recipient; and

(c) the person has not, within the last 12 months, received a payment under this Part.

Note 1: For ***long-term social security recipient*** see subsection 23(1).

Note 2: For ***benefit PP (partnered)*** see section 18.

Note 3: Transitional provisions apply to this section for 3 months after 1 July 1995 (see section 12 of the *Social Security (Parenting Allowance and Other Measures) Legislation Amendment Act 1994*).

Reduction of qualification period during designated period

(2) Subsection (1) has effect during the designated period as if it were modified as follows:

(a) by omitting subparagraph (b)(ii) and substituting the following subparagraph:

(ii) had been receiving income support payments in respect of a continuous period of at least 4 weeks (whether or not the kind of payment received has changed over the period and whether the period or any part of it occurred before or after 1 January 2009); and

(b) by omitting Note 1 and substituting the following notes:

Note 1: For ***income support payment*** see subsection 23(1).

Note 1A: For the determination of whether a person received income support payments in respect of a continuous period of at least 4 weeks see section 38B.

(3) For the purposes of subsection (2), the ***designated period*** is the period beginning on 1 January 2009 and ending at the end of:

(a) 30 June 2010; or

(b) if a later date is determined by the Minister by legislative instrument—that later date.

665ZV Amount of section 665ZU payment

The amount of an education entry payment under section 665ZU is $208.

665ZW Need for claim

A person is not qualified for an education entry payment under section 665ZU unless the person has made a claim for the payment.

Division 12A—Recipients of youth allowance (other)

665ZX Payment to recipient of youth allowance (other)

(1) A person is qualified for an education entry payment under this section if:

(a) either:

(i) the Secretary is satisfied that the person intends to enrol in a qualifying course; or

(ii) the person is enrolled in such a course; and

(b) immediately before the person commences the course, the person:

(i) is receiving youth allowance; and

(ii) is not undertaking full-time study and is not a new apprentice; and

(iii) had been receiving income support payments in respect of a continuous period of at least 4 weeks (whether or not the kind of payment received has changed over the period and whether the period or any part of it occurred before or after 1 January 2009); and

(c) the person has not, within the last 12 months, received a payment under this Part.

Note 1: For ***undertaking full-time study*** see section 541B.

Note 2: For ***income support payment*** see subsection 23(1).

Note 3: For the determination of whether a person received income support payments in respect of a continuous period of at least 4 weeks see section 38B.

(2) For the purposes of subparagraph (1)(a)(i), a ***qualifying course***, in relation to a person, is:

(a) a full-time course of education that is an approved course under the ABSTUDY scheme or an approved course of education or study (within the meaning of subsection 541B(5)); or

(b) a course that is provided for by a term (whether the term is required to be complied with or not) of the person's Youth Allowance Employment Pathway Plan.

665ZXA Amount of section 665ZX payment

The amount of an education entry payment under section 665ZX is $208.

665ZXB Need for claim

A person is not qualified for an education entry payment under section 665ZX unless the person has made a claim for the payment.

665ZXC Cessation of Division

This Division ceases to have effect at the end of:

(a) 30 June 2010; or

(b) if a later date is determined by the Minister by legislative instrument—that later date.

OFFICIAL: Sensitive // Legal Privilege

Division 13—Protection of education entry payment

665ZY Education entry payment to be absolutely inalienable

(1) Subject to subsections (2) and (3) and section 238 of the Administration Act, an education entry payment is absolutely inalienable, whether by way of, or in consequence of, sale, assignment, charge, execution, bankruptcy or otherwise.

(2) The Secretary may make a deduction from an education entry payment payable to a person if the person asks the Secretary:
  (a) to make the deduction; and
  (b) to pay the amount to be deducted to the Commissioner of Taxation.

(3) The Secretary may make a deduction from a person's education entry payment if the person consents under section 1234A to the Secretary making that deduction.

Note: Section 1234A enables the Secretary to recover a debt from a person other than the debtor if the person is receiving a social security payment.

665ZZ Effect of garnishee or attachment order

(1) If:
  (a) a person has an account with a financial institution; and
  (b) a court order in the nature of a garnishee order comes into force in respect of the account; and
  (c) an education entry payment payable to the person (whether on the person's own behalf or not) has been paid to the credit of the account during the 4-week period immediately before the court order came into force;

the court order does not apply to the saved amount (if any) in the account.

(2) The saved amount is worked out as follows:

Method statement	
Step 1.	Work out the amount of education entry payment paid to the credit of the account as mentioned in paragraph (1)(c).
Step 2.	Subtract from that amount the total amount withdrawn from the account during the 4-week period referred to in paragraph (1)(c): the result is the ***saved amount***.

(3) This section applies to an account whether it is maintained by a person:

(a) alone; or

(b) jointly with another person; or

(c) in common with another person.

Note: A person affected by a garnishee order may have other saved amounts.

OFFICIAL: Sensitive // Legal Privilege

Division 14—Education entry payment supplement

665ZZA Qualification for education entry payment supplement

A person is qualified for an education entry payment supplement under this section if the person:

(a) is qualified for an education entry payment under this Part on or after 1 January 2009; or

(b) is eligible for an education entry payment under Part VIIAA of the *Veterans' Entitlements Act 1986* on or after 1 January 2009.

665ZZB Amount of education entry payment supplement

The amount of an education entry payment supplement under section 665ZZA is $950.

665ZZC Separate claim not needed

A person is taken to have made a claim for an education entry payment supplement under section 665ZZA if the person has made a claim for an education entry payment as required by this Part or Part VIIAA of the *Veterans' Entitlements Act 1986*.

665ZZD Education entry payment supplement taken to be part of education entry payment for purposes of social security law

(1) For the purposes of the social security law, an education entry payment supplement payable to a person who is qualified for the supplement because of paragraph 665ZZA(a) is taken to be part of the education entry payment payable to the person.

(2) Subsection (1) has effect except so far as any provision in the social security law expressly provides for or in relation to education entry payment supplement.

OFFICIAL: Sensitive // Legal Privilege

665ZZE Cessation of Division

This Division ceases to have effect at the end of:

(a) 30 June 2010; or

(b) if a later date is determined by the Minister by legislative instrument—that later date.

OFFICIAL: Sensitive // Legal Privilege

Part 2.15—Special benefit

Division 1—Qualification for and payability of special benefit

Subdivision A—Qualification

729 Qualification for special benefit

(1) A person is qualified for a special benefit for a period if the Secretary determines, in accordance with subsection (2), that a special benefit should be granted to the person for the period.

Note: Special benefit is a discretionary benefit and is available only to a person who is not able to get any other income support payment (see paragraphs (2)(a) and (b) below).

(2) The Secretary may, in his or her discretion, determine that a special benefit should be granted to a person for a period if:

(a) no social security pension is payable to the person during the period; and

(b) no other social security benefit is payable to the person for the period; and

(bb) the person is not disqualified for a benefit PP (partnered) for the period solely because of the operation of section 500C (unemployment due to industrial action); and

(bc) the person is not disqualified from parenting payment for the period solely because of a failure to meet the requirement of paragraph 500(1)(c) or (1)(ca) (participation requirements); and

(bd) if the person is qualified for parenting payment but the payment is not payable because of the operation of any of the following provisions of the Administration Act:

(i) subsection 42AL(1) (payment suspension periods—persons other than declared program participants);

Section 729

(ii) subsection 42AO(1) (unemployment preclusion periods—persons other than declared program participants);

(iii) subsection 42AP(5) (post-cancellation non-payment periods—persons other than declared program participants);

(iv) subsection 42P(1) (serious failures—declared program participants);

(v) subsection 42S(1) (unemployment non-payment periods—declared program participants); and

(c) the person is not disqualified for a jobseeker payment for the period because of the operation of section 596; and

(d) if the person is qualified for a jobseeker payment but the payment is not payable to the person for the period—that result is not produced because of the operation of one or more of the following:

(i) subsection 42AL(1) of the Administration Act (payment suspension periods—persons other than declared program participants);

(ii) subsection 42AO(1) of that Act (unemployment preclusion periods—persons other than declared program participants);

(iia) subsection 42AP(5) of that Act (post-cancellation non-payment periods—persons other than declared program participants);

(iib) subsection 42P(1) of that Act (serious failures—declared program participants);

(iic) subsection 42S(1) of that Act (unemployment non-payment periods—declared program participants);

(iii) section 631 of this Act (person failing to comply with notification requirement);

(iv) section 633 of this Act (seasonal workers);

(v) section 634 of this Act (move to area of lower employment prospects); and

~~(da) the person is not disqualified for a youth allowance for the period because of the operation of:~~

~~(i) section 541A (failure to satisfy the activity test); or~~

~~(ii) section 544 (requirements relating to Youth Allowance Employment Pathway Plans); and~~

(da) the person is not disqualified for a youth allowance for the period because the person fails to satisfy the employment pathway plan requirements; and

(db) the person is not disqualified for an austudy payment for the period because the person fails to satisfy the activity test within the meaning of section 569; and

(dc) youth allowance is not payable to the person for the period and that result is not because of the operation of:

(i) section 550B (youth allowance participation failure); or

(ia) section 551 (repeated failure); or

(ii) section 553B (move to an area of lower employment prospects); or

(iii) subsection 42AL(1) of the Administration Act (payment suspension periods—persons other than declared program participants); or

(iv) subsection 42AO(1) of that Act (unemployment preclusion periods—persons other than declared program participants); or

(v) subsection 42AP(5) of that Act (post-cancellation non-payment periods—persons other than declared program participants); or

(vi) subsection 42P(1) of that Act (serious failures—declared program participants); or

(vii) subsection 42S(1) of that Act (unemployment non-payment periods—declared program participants); or

(viii) section 81 of that Act; and

(dd) austudy payment is not payable to the person for the period and that result is not because of the operation of:

(i) section 576A (austudy participation failure); or

(ia) section 577 (repeated failure); or

(ii) section 81 of the Administration Act; and

(e) the Secretary is satisfied that the person is unable to earn a sufficient livelihood for the person and the person's dependants (if any) because of age, physical or mental disability or domestic circumstances or for any other reason; and

(f) the person:

(i) is an Australian resident; or

(v) is the holder of a visa that is in a class of visas determined by the Minister for the purposes of this subparagraph; and

(g) if the person is:

(i) the holder of a visa included in a class of visas that is issued for temporary protection, humanitarian, or safe haven purposes and that is determined by the Minister to be a class of visas to which this subparagraph applies; and

(ii) a person to whom subsection (2A) applies;

the person meets the additional criteria set out in ~~paragraph (2B)~~subsection (2B); and

(h) an assurance of support does not apply to the person at any time during the period (see subsection (2C)).

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

(2A) For the purposes of paragraph (2)(g), the holder of a visa included in a class of visas that is issued for temporary protection, humanitarian, or safe haven purposes and that is determined by the Minister to be a class of visas to which subparagraph (2)(g)(i) applies is a person to whom that first-mentioned paragraph applies only if:

(a) the person would not qualify for disability support pension under section 94 or 95 if the person were an Australian resident; and

(b) the person has attained the minimum age for youth allowance as determined in accordance with subsection 543A(1) but has not attained pension age; and

(c) the person:

(i) claims, or has claimed, special benefit on or after 1 January 2003 that is not continuous with any previous grant of special benefit; or

(ii) if the person had not attained the minimum age for youth allowance as defined by subsection 543A(1) before 1 January 2003—is receiving special benefit granted before, or continuous with special benefit granted before, that date.

~~(2B) A person referred to in paragraph (2)(g) is qualified for special benefit in respect of a period only if, in addition to meeting any relevant requirement in paragraphs (2)(a) to (f):~~

~~(a) throughout the period, and for each period within the period, the person either:~~

~~(i) satisfies the activity test set out in section 731A; or~~

~~(ii) is not required to satisfy the activity test; and~~

~~(b) at all times (if any) during the period when a Special Benefit Employment Pathway Plan is not in force in relation to the person, the person is prepared to enter into such a plan; and~~

~~(c) at all times during the period when a Special Benefit Employment Pathway Plan is in force in relation to the person, the person is prepared to enter into another such plan instead of the existing plan; and~~

~~(d) if the person is required by the Secretary to enter into a Special Benefit Employment Pathway Plan in relation to the period or a part of the period, the person enters into that plan; and~~

~~(e) while a Special Benefit Employment Pathway Plan is in force in relation to the person, the person satisfies the Secretary that the person is complying with the requirements in the plan.~~

(2B) A person referred to in paragraph (2)(g) is qualified for special benefit in respect of a period only if, in addition to meeting any relevant requirement in paragraphs (2)(a) to (f), throughout the period:

(a) the following apply:

(i) the person satisfies the employment pathway plan requirements;

(ii) the person satisfies the Employment Secretary that the person is willing to actively seek and to accept and undertake paid work in Australia, except particular paid work that is unsuitable to be done by the person; or

(b) the following apply:

(i) the person is, under Subdivision C of Division 2A of Part 3 of the Administration Act, not required to satisfy the employment pathway plan requirements;

(ii) the person satisfies the Employment Secretary that the person would otherwise be willing to actively seek and to accept and undertake paid work in Australia, except particular paid work that is unsuitable to be done by the person.

Note 1: For ***satisfies the employment pathway plan requirements***, see subsection 23(1).

Note 2: See Division 2B of Part 3 of the Administration Act for the circumstances in which paid work is unsuitable to be done by a person.

(2C) For the purposes of paragraph (2)(h), an assurance of support applies to a person at a particular time if:

(a) an assurance of support is in force in respect of the person (the ***assuree***) at that time; and

(b) the person who gave the assurance was willing and able to provide an adequate level of support to the assuree; and

(c) it was reasonable for the assuree to accept that support.

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

(2D) For the avoidance of doubt, if, at any time during the period for which special benefit is granted to a person, the person's circumstances change such that, if the person were to be making a claim for special benefit on the basis of the changed circumstances, the person would not be qualified for special benefit, special benefit ceases to be payable.

OFFICIAL: Sensitive // Legal Privilege

(3) The Secretary is not to determine that a special benefit should be granted to a person for a period if the Secretary is satisfied that the benefit is not payable to the person for that period.

(4) For the purposes of paragraph (2)(d), a jobseeker payment is to be taken to be not payable to a person for a period because of the operation of a provision if:

(a) the person has claimed the payment for the period and the payment is not payable to the person because of the operation of the provision; or

(b) were the person to claim the payment for the period the payment would not be payable to the person because of the operation of the provision.

(4A) For the purposes of paragraph (2)(dc) a youth allowance is taken to be not payable to a person for a period because of the operation of a provision if:

(a) the person has claimed the allowance for the period and the allowance is not payable to the person because of the operation of the provision; or

(b) were the person to claim the allowance for the period the allowance would not be payable to the person because of the operation of the provision.

(4B) For the purposes of paragraph (2)(dd), an austudy payment is taken not to be payable to a person for a period because of the operation of a provision if:

(a) the person has claimed the payment for the period and the payment is not payable to the person because of the operation of the provision; or

(b) were the person to claim the payment for the period, the payment would not be payable to the person because of the operation of the provision.

(6) If:

(a) a person was receiving a social security pension, a service pension, income support supplement or a veteran payment; and

(b) the person claims a special benefit within 14 days of the day on which the last instalment of the person's social security pension, service pension, income support supplement or veteran payment was paid; and

(c) the person becomes qualified for a special benefit at some time during the 14 day period but after the first day of that period;

the person is taken to be qualified for a special benefit for the whole of the 14 day period.

Note: Subsection (6) operates when a person transfers from a social security pension, a service pension, income support supplement or a veteran payment to a special benefit and the person is not qualified for a special benefit immediately after the day on which the person's last instalment of social security pension, service pension, income support supplement or veteran payment is paid. The subsection deems the person to be so qualified. As a result, the person may be paid a special benefit for the period beginning on the day after the day on which the person's last instalment of social security pension, service pension, income support supplement or veteran payment was paid. The subsection aims to ensure that there is minimal disruption to a person's payments when a person transfers from a social security pension, a service pension, income support supplement or a veteran payment to a special benefit.

729A Time limit on qualification for certain recipients of special benefit

(1) This section applies to a person who is receiving special benefit if:

(a) the person's maximum benefit period is 13 weeks or less; and

(b) the Secretary determines that this section should apply to the person.

(2) The ***maximum benefit period*** for a person is the period specified in the determination granting the person's claim for special benefit as the maximum period for which the special benefit is payable to the person.

(3) If:

(a) the section applies to a person; and

(b) the Secretary is satisfied that the person's qualification for special benefit will continue after the end of the person's maximum benefit period; and

(c) the Secretary determines that this subsection should apply to the person;

the Secretary may determine that special benefit should be granted to the person for a period of not more than 13 weeks.

(4) Subject to section 729B, if:

(a) the Secretary has determined that special benefit should be granted to the person for a period of not more than 13 weeks under subsection (3) or this subsection; and

(b) the Secretary is satisfied that the person's qualification for special benefit will continue after the end of that period; and

(c) the Secretary determines that this subsection should apply to the person;

the Secretary may determine that special benefit should be granted to the person for a further period of not more than 13 weeks.

729AA Effect of industrial action on qualification conditions of certain claimants for special benefit

(1) A person who:

(a) has claimed special benefit; and

(b) is:

(i) the holder of a visa included in a class of visas that is issued for temporary protection, humanitarian, or safe haven purposes and that is determined by the Minister to be a class of visas to which subparagraph 729(2)(g)(i) applies; and

(ii) a person to whom subsection 729(2A) applies;

is not, for the purposes of paragraph 729(2)(e), taken to be unable to earn a sufficient livelihood for the person and the person's dependants (if any) if:

OFFICIAL: Sensitive // Legal Privilege

(c) that inability arises because the person has ceased to be employed, or to be employed at a particular level of income; and

(d) that cessation is attributable to the person's being, or having been, engaged in industrial action, or in a series of industrial actions.

(2) Subsection (1) does not apply in relation to a person if the Secretary is satisfied that:

(a) the person's unemployment or the effect on the person's level of income was due to other people being, or having been, engaged in industrial action or in a series of industrial actions; and

(b) the people or some of the people were members of a trade union that was involved in the industrial action; and

(c) the person was not a member of the trade union during the period of the industrial action.

(3) Subject to subsection (4), subsections (1) and (2) do not prevent a person from being qualified for special benefit in respect of a period that occurs after the relevant industrial action or series of industrial actions has stopped.

(4) If the relevant industrial action or series of industrial actions is in breach of an order, direction or injunction issued by:

(a) a prescribed State industrial authority within the meaning of the *Fair Work Act 2009*; or

(b) the Fair Work Commission or the Australian Industrial Relations Commission; or

(c) the Federal Court of Australia; or

(d) the Federal Circuit Court of Australia;

a person is not qualified for special benefit in respect of a period unless that period occurs 6 weeks or more after the relevant industrial action or series of industrial actions has stopped.

729B Certain recipients of special benefit cease to be qualified for special benefit after 52 weeks

(1) A person to whom subsection 729A(4) applies ceases to be qualified for special benefit if the person has received special benefit in respect of the immediately preceding period of 52 weeks.

(2) The Secretary may make a written determination that subsection (1) does not apply to a person if the Secretary is satisfied:

(a) that the person's qualification for special benefit will end during the next 13 weeks; or

(b) that the person's qualification for special benefit will continue after the end of the period of 65 weeks commencing on the person's start day.

729C Consequence of subsection 729B(2) determination

(1) If the Secretary:

(a) is satisfied of the matter mentioned in paragraph 729B(2)(a); and

(b) makes a determination under subsection 729B(2) in relation to a person;

then the person ceases to be qualified for special benefit if:

(c) the person has received special benefit in respect of the immediately preceding 65 weeks; and

(d) the Secretary is satisfied that this subsection should apply to the person.

(2) If the Secretary:

(a) is satisfied of the matter mentioned in paragraph 729B(2)(b); and

(b) makes a determination under subsection 729B(2) in relation to a person;

the Secretary may determine that special benefit should be granted to the person for a period.

730 Determination of period

The period determined by the Secretary under subsection 729(2) is not to begin before the person's start day.

~~Subdivision AA—Activity test for certain nominated visa holders~~

~~731 Application of Subdivision~~

~~This Subdivision applies to a person who is:~~

~~(a) the holder of a visa that is included in a class of visas that is issued for temporary protection, humanitarian, or safe haven purposes and that is determined by the Minister to be a class of visas to which subparagraph 729(2)(g)(i) applies; and~~

~~(b) a person to whom subsection 729(2A) applies.~~

~~731A Activity test~~

~~(1) Subject to subsection (2), a person to whom this Subdivision applies satisfies the activity test in respect of a period, whether it is the period of the grant of special benefit or a period within that period, if the person satisfies the Secretary that, throughout the period, the person is:~~

~~(a) actively seeking; and~~

~~(b) willing to undertake;~~

~~paid work in Australia other than unsuitable paid work within the meaning of section 731B.~~

~~(7) A person to whom this Subdivision applies also satisfies the activity test in respect of a period if:~~

~~(a) the Secretary is of the opinion that, throughout the period, the person should undertake particular paid work, other than unsuitable paid work within the meaning of section 731B; and~~

~~(b) the Secretary notifies the person that the person is required to act in accordance with the opinion; and~~

~~(c) the person complies, throughout the period, with the Secretary's requirement.~~

~~(8) To avoid doubt, the work that the person is required to undertake under subsection (7) may involve a number of hours per week that differs from the number of hours of work per week that the person is required to seek to comply with a Special Benefit Employment Pathway Plan that is in force in relation to the person.~~

~~(9) A person cannot be taken to satisfy the activity test throughout a period if the person fails to comply with a requirement under subsection (7):~~

~~(a) whether or not the person complies with subsection (1) or (11); and~~

~~(b) whether or not another provision of this Act under which the activity test is satisfied, or taken to be satisfied, applies (or would apart from this section apply) to the person.~~

~~(11) A person to whom this Subdivision applies also satisfies the activity test in respect of a period if:~~

~~(a) throughout the period, the person complies with the terms of a Special Benefit Employment Pathway Plan that is in force in relation to the person; and~~

~~(b) either:~~

~~(i) the person is included in a class of persons specified in an instrument made under subsection (11A); or~~

~~(ii) the Secretary determines that the person should be taken to satisfy the activity test in respect of that period.~~

~~(11A) The Secretary may, by legislative instrument, specify classes of persons for the purposes of subparagraph (11)(b)(i).~~

~~(12) If a person to whom this Subdivision applies fails to comply, throughout a period, with a requirement in a Special Benefit Employment Pathway Plan that is in force in relation to the person, the person cannot be taken to satisfy the activity test in respect of the period in spite of any compliance of the person with subsection (1).~~

731B Meaning of unsuitable work for the purposes of the activity test

(1) For the purposes of subsection 731A(1) and paragraph 731A(7)(a), particular paid work is unsuitable paid work in respect of a person if and only if, in the Secretary's opinion:

(a) the person lacks the particular skills, experience or qualifications that are needed to perform the work and no training will be provided by the employer; or

(b) it has been established that there is medical evidence that the person has an illness, disability or injury that would be aggravated by the conditions in which the work would be performed; or

(ba) the person is the principal carer for one or more children, and does not have access to appropriate care and supervision for the children at the times when the person would be required to undertake the work; or

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

(c) performing the work in the conditions in which the work would be performed would constitute a risk to health or safety and would contravene a law of the Commonwealth, a State or a Territory relating to occupational health and safety; or

(e) the terms and conditions for the work would be less generous than the applicable statutory conditions; or

(g) commuting between the person's home and the place of work would be unreasonably difficult; or

(h) the work requires the person to move from a home in a place to a home in another place; or

(i) for any other reason, the work is unsuitable for the person.

(1A) A person has, for the purposes of paragraph (1)(ba), access to appropriate care and supervision for a child at a particular time if, at that time:

(a) the child could be provided with care by an approved child care service (within the meaning of the Family Assistance

~~Administration Act), and provision of that care would, in the Secretary's opinion, be appropriate in the circumstances; or~~

~~(b) the child could be provided with other care that the person considers to be suitable; or~~

~~(c) the child could be attending school, and attendance at that school would, in the Secretary's opinion, be appropriate in the circumstances.~~

~~(1B) For the purposes of paragraph (1)(ba), a time when the person would be required to undertake the work includes reasonable amounts of time that would be needed for the person to travel from the person's home to the place of work and from the place of work to the person's home.~~

~~(1C) The Secretary must, by legislative instrument, determine matters that the Secretary must take into account in deciding whether, for the purposes of paragraph (1)(i), particular paid work is unsuitable for a person.~~

~~(1D) To avoid doubt, a determination under subsection (1C) does not limit the matters that the Secretary may take into account in deciding whether, for the purposes of paragraph (1)(i), particular paid work is unsuitable for a person.~~

~~(2) If:~~

~~(a) a person seeks work in an area (the ***new area***) that is outside the area (the ***old area***) in which the person's home is situated; and~~

~~(b) the person is offered permanent full-time work (whether or not work of the kind sought) in the new area;~~

~~the work offered is not unsuitable work in respect of the person because of paragraph (1)(g) or (h) unless:~~

~~(c) the person is under the age of 18; or~~

~~(d) the person or the person's partner is pregnant; or~~

~~(e) the person or the person's partner has a severe medical condition and the condition makes it unreasonable for the person to accept the offer; or~~

(f) the acceptance of the offer would jeopardise the current employment, or the employment prospects, of the person's partner; or

(g) the person or the person's partner has a child under the age of 16 years who is living with them or is living somewhere else in the old area; or

(h) the person or the person's partner has significant caring responsibilities in the old area; or

(i) the educational, cultural or religious background of the person makes it unreasonable for the person to accept the offer; or

(j) it is more appropriate for the person to participate in education or training than to accept the offer; or

(k) the person would suffer severe financial hardship if the person were to accept the offer.

(3) A person who, when seeking employment through an employment service provider, represents to the provider that he or she is willing to undertake work outside the area in which the person's home is situated is taken, for the purposes of subsection (2), to seek work outside the area at the time when the representation is made.

(4) Subsection (3) does not affect what would otherwise constitute a circumstance of a person seeking work outside the area in which the person's home is situated.

731D Persons in certain areas can be taken to comply with activity test

If the Secretary considers that:

(a) it would be reasonable to assume that, at the end of a period, a person is present in an area where:

(i) there is no locally accessible labour market; and

(ii) there is no locally accessible vocational training course; and

(aa) it would be reasonable to assume that, throughout the period, the person is capable of undertaking, and willing to

undertake, paid work that in the Secretary's opinion is suitable to be undertaken by the person; and

(b) having regard to all the relevant factors, including:

(i) the location of offices of the Department; and

(ii) difficulties with transport and communication; and

(iii) the educational and cultural background of the person;

it would be unreasonable to expect the person to comply with the activity test in order to be qualified for special benefit for that period;

then, unless the person has been notified of a requirement under subsection 731A(7) in relation to the period, the person is taken to satisfy the activity test during that period.

731DAA Relief from activity test—death of person's partner

Claimants

(1) If:

(a) a person makes a claim for special benefit on or after the commencement of this section; and

(b) the person makes the claim after the death of the person's partner on or after the commencement of this section; and

(c) if the person is a man or a woman who was not pregnant when her partner died—the person makes the claim in the period of 14 weeks starting on the day of the death of the partner; and

(d) if the person is a woman who was pregnant when her partner died—the person makes the claim:

(i) in the period of 14 weeks starting on the day of the death of the partner; or

(ii) in the period starting on the day of the death of the partner and ending when the child is born or the woman otherwise stops being pregnant;

whichever ends later;

then the person is not required to satisfy the activity test in respect of the period applicable under paragraph (c) or (d).

Recipients

(2) If:

(a) a person is receiving special benefit on or after the commencement of this section; and

(b) while the person is receiving special benefit, the person's partner dies on or after the commencement of this section; and

(c) if the person is a man or a woman who was not pregnant when her partner died—the person notifies the Secretary of the person's partner's death in the period of 14 weeks starting on the day of the death of the partner; and

(d) if the person is a woman who was pregnant when her partner died—the person notifies the Secretary of the person's partner's death:

(i) in the period of 14 weeks starting on the day of the death of the partner; or

(ii) in the period starting on the day of the death of the partner and ending when the child is born or the woman otherwise stops being pregnant;

whichever ends later; and

(e) the person is receiving special benefit on the day of the notification;

then the person is not required to satisfy the activity test in respect of the period applicable under paragraph (c) or (d).

731DA Relief from activity test—domestic violence etc.

(1) A person is not required to satisfy the activity test in respect of a period that the Secretary determines under this section in relation to the person.

(2) The Secretary may make a determination under this section in relation to the person if the Secretary is satisfied that:

(a) the person:

(i) is the principal carer of one or more children; and

OFFICIAL: Sensitive // Legal Privilege

(ii) was subjected to domestic violence in the 26 weeks before the making of the determination; or

(b) the person is the principal carer of one or more children, and there are special circumstances relating to the person's family that make it appropriate to make the determination.

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

(2A) The Secretary must, by legislative instrument, specify matters that the Secretary must take into account in deciding whether there are special circumstances relating to a person's family that make it appropriate to make a determination under this section.

(2B) To avoid doubt, a determination under subsection (2A) does not limit the matters that the Secretary may take into account in making a determination under subsection (2).

(3) The period that the Secretary determines under this section must be the lesser of:

(a) the period that the Secretary considers to be appropriate; or

(b) 16 weeks.

(4) Any such period may be followed by one or more other periods (not exceeding 16 weeks) determined under this section in relation to the person.

(5) The period that the Secretary determines under this section must, despite subsection (3), be 16 weeks if the determination:

(a) is made on grounds referred to in paragraph (2)(a) (or on grounds that include those grounds); and

(b) is the first determination made on those grounds (or on grounds that include those grounds) in relation to the person on or after 1 July 2010.

(6) The Secretary may revoke a determination under this section in relation to a person if the Secretary is satisfied that the grounds on which the determination was made no longer exist.

(7) Subsection (6) does not affect any operation that subsection 33(3) of the *Acts Interpretation Act 1901* has in relation to a determination under this section.

731DB Relief from activity test—people with disabled children and other circumstances

(1) A person is not required to satisfy the activity test in respect of a period that the Secretary determines under this section in relation to the person.

(2) The Secretary may make a determination under this section in relation to the person if the Secretary is satisfied that the person is the principal carer of one or more children:

(a) who suffer from a physical, intellectual or psychiatric disability or illness; and

(b) whose care needs are such that the person should, for the period specified in the determination, not be required to satisfy the activity test.

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

(3) The Secretary must make a determination under this section in relation to the person if the Secretary is satisfied that the person is the principal carer of one or more children, and that:

(a) the person is a registered and active foster carer; or

(b) the person is a home educator of that child, or one or more of those children; or

(c) the person is a distance educator of that child, or one or more of those children; or

(d) under a family law order that the person is complying with, a child, of whom the person is a relative (other than a parent), is to live with the person.

Note 1: For ***principal carer*** see subsections 5(15) to (24).

Note 2: For ***registered and active foster carer*** see section 5B.

Note 3: For ***home educator*** see section 5C.

Note 4: For ***distance educator*** see section 5D.

Note 5: For ***family law order*** see subsection 23(1).

Note 6: For ***relative (other than a parent)*** see section 5E.

(3A) The Secretary must make a determination under this section in relation to the person if the Secretary is satisfied that:

(a) the person is the principal carer of a child; and

(b) the person is one or both of the following:

(i) the principal carer of one or more other children;

(ii) the main supporter of one or more secondary pupil children; and

(c) there are 4 or more of the children of whom the person is the principal carer or main supporter.

Note 1: For ***principal carer*** see subsections 5(15) to (24).

Note 2: For ***main supporter*** see section 5G.

Note 3: For ***secondary pupil child*** see section 5F.

(3B) The Secretary must make a determination under this section in relation to the person if the Secretary is satisfied that the person:

(a) is not the principal carer of one or more children; and

(b) is a registered and active foster carer; and

(c) is providing foster care to a child temporarily in an emergency or to give respite to another person from caring for the child.

Note 1: For ***principal carer*** see subsections 5(15) to (24).

Note 2: For ***registered and active foster carer*** see section 5B.

(3C) The Secretary must make a determination under this section in relation to the person if the Secretary is satisfied that the person:

(a) is the main supporter of one or more secondary pupil children; and

(b) is a home educator or distance educator of one or more of those children.

Note 1: For ***main supporter*** see section 5G.

Note 2: For ***secondary pupil child*** see section 5F.

Note 3: For ***home educator*** see section 5C.

Note 4: For ***distance educator*** see section 5D.

(3D) The Secretary must make a determination under this section in relation to the person if the Secretary is satisfied that:

(a) the person is the principal carer of one or more children; and

(b) the person is a relative (other than a parent) of a child (the ***kin child***); and

(c) there is a document that:

(i) provides for the kin child to live with the person for the care and wellbeing of the kin child; and

(ii) is prepared or accepted by an authority of a State or Territory that has responsibility for the wellbeing of children; and

(d) the person is acting in accordance with the document.

Note 1: For ***principal carer*** see subsections 5(15) to (24).

Note 2: For ***relative (other than a parent)*** see section 5E.

(4) The Secretary may make a determination under this section in relation to the person if the Secretary is satisfied that:

(a) the person is a person included in a class of persons specified under subsection (5); and

(b) the person's circumstances are such that the person should not be required to satisfy the activity test for the period.

(5) The Secretary may, by legislative instrument, specify classes of persons in respect of whom determinations under this section may be made.

(6) The period that the Secretary determines under this section, except subsection (3B), must be the lesser of:

(a) the period that the Secretary considers to be appropriate; or

(b) 12 months.

(6A) The period that the Secretary determines under subsection (3B) in relation to the person must be the lesser of:

(a) the period:

(i) starting when the person starts to provide foster care to the child; and

(ii) ending 12 weeks, or a shorter period determined by the Secretary, after the person ceases to provide foster care to the child; and

(b) 12 months.

(7) A period determined by the Secretary under this section in relation to the person may be followed by one or more other periods (not exceeding 12 months) determined under this section in relation to the person.

(8) The Secretary may revoke a determination under this section in relation to a person if the Secretary is satisfied that the grounds on which the determination was made no longer exist.

(9) Subsection (8) does not affect any operation that subsection 33(3) of the *Acts Interpretation Act 1901* has in relation to a determination under this section.

731DC Persons may be treated as actively seeking etc. paid work

(1) A person is not required to satisfy the activity test in respect of the period to which subsection (4) applies if:

(a) during the period, the person undertakes:

(i) paid work that, in the Secretary's opinion, is suitable for the person to undertake; or

(ii) any other activity; and

(b) the Secretary is of the opinion that, taking into account:

(i) the nature of the work or other activity; and

(ii) the duration of the work or other activity; and

(iii) any remuneration received for the work or other activity; and

(iv) any other matters relating to the work or other activity, or to the person's circumstances, that the Secretary considers relevant;

it would be unreasonable to expect the person to satisfy the activity test for the period.

(2) However, the work or other activity must not be or include any work or other activity of a kind that the Secretary determines under subsection (3).

(3) The Secretary may determine, by legislative instrument, kinds of work or other activity that are not to be taken into account for the purposes of subsection (1).

(4) This subsection applies to the period:

(a) starting:

(i) when the person made a claim, or is taken to have made a claim, for special benefit; or

(ii) when the person started to undertake the work or other activity;

whichever happens later; and

(b) ending:

(i) if the person has been required to enter into a Special Benefit Employment Pathway Plan but has failed to enter that plan—when the person so failed; or

(ii) in any other case—when the person has entered into such a plan.

731E Relief from activity test—special circumstances

(1) Subject to subsections (2) and (3), a person to whom this Subdivision applies is not required to satisfy the activity test for a period if:

(a) the Secretary is satisfied that special circumstances, beyond the person's control, exist; and

(b) the Secretary is satisfied that in those circumstances it would be unreasonable to expect the person to comply with the activity test for that period.

(1A) Subsection (1) does not apply to circumstances wholly or predominantly attributable to the person's misuse of alcohol or another drug, unless the person is a declared program participant.

(2) The period referred to in subsection (1) is not to exceed 13 weeks.

(3) If:

(a) the Secretary makes a number of determinations under subsection (1); and

(b) the periods to which the determinations relate form a continuous period;

the continuous period is not to exceed 13 weeks unless the Secretary determines otherwise, having regard to the continued existence, or likely continued existence, of the special circumstances on which the last preceding determination was based.

731F Relief from activity test—pre-natal and post-natal

(1) A pregnant woman is not required to satisfy the activity test for the period that starts 6 weeks before the woman's expected date of confinement and ends on the day on which the woman gives birth to the child (whether or not the child is born alive).

(2) If a woman gives birth to a child (whether or not the child is born alive), the woman is not required to satisfy the activity test for the period that starts on the day on which she gives birth to the child and ends 6 weeks after that day.

731G Relief from activity test—people 55 and over who are engaged in work

(1) Subject to subsections (2) and (3), a person to whom this Subdivision applies who has reached 55 years is taken to satisfy the activity test in respect of each period of 2 weeks while the person is receiving special benefit (the ***relevant period***) if the person:

Section 731G

(a) is engaged in approved unpaid voluntary work for an approved organisation for at least 30 hours in the relevant period; or

(b) is engaged, for at least 30 hours in the relevant period, in a combination of:

(i) approved unpaid voluntary work for an approved organisation; and

(ii) paid work that the Secretary regards as suitable; or

(c) is engaged for at least 30 hours in the relevant period in paid work that the Secretary regards as suitable.

(2) Subsection (1) does not apply in relation to a person who has reached 55, but is under 60, years of age and to a period of 2 weeks (the ***relevant period***) if that period begins before the end of 12 months starting on the day the person starts to receive special benefit. Instead the person is taken to satisfy the activity test in respect of the relevant period if the person:

(a) is engaged, for at least 30 hours in the relevant period, in a combination of:

(i) approved unpaid voluntary work for an approved organisation; and

(ii) paid work that the Secretary regards as suitable and that is at least 15 hours in the relevant period; or

(b) is engaged for at least 30 hours in the relevant period in paid work that the Secretary regards as suitable.

Note: Because of the definition of ***receive*** in section 23, this subsection applies separately in relation to each occasion the person starts to receive special benefit.

(2A) If special benefit ceases to be payable to a person for a period of less than 3 months (except because the special benefit was cancelled), then, for the purposes of subsection (2), the person is taken to be receiving special benefit during that period.

(3) This section does not apply to a person in respect of a day in a relevant period if, having regard to the opportunities, or possible opportunities, for employment that become available to the person

on or before the day, the Secretary considers that this section is not to apply to the person in respect of that day.

(4) In this section:

approved organisation is an organisation that has been approved by the Secretary for the purposes of this section.

approved unpaid voluntary work, either full-time or otherwise, is work that has been approved by the Secretary for the purposes of this section.

731GA Relief from activity test—certain principal carers and people with partial capacity to work

A person who:

(a) is the principal carer of at least one child; or

(b) has a partial capacity to work;

is taken to satisfy the activity test in respect of a period if, during the period, the person is engaged for at least 30 hours per fortnight in paid work that the Secretary regards as suitable.

731H Relief from activity test—dependent child

(1) A person is taken to satisfy the activity test in respect of a period when the person has at least one child who:

(a) is a dependent child of the person within the meaning of subsection 5(2) as qualified by subsections 5(3) and (6); and

(b) has not turned 6; and

(c) is in Australia.

(2) For the purposes of subsection (1), a child can be a dependent child of only one person at a time.

(3) If the Secretary is satisfied that, but for subsection (2), a child would be a dependent child of 2 or more persons (***adults***), the Secretary must determine in relation to which of those adults the child is a dependent child.

731HA Relief from activity test—persons who would be qualified for carer payment under section 197B, 197C, 197D or 197E

Person taken to satisfy the activity test

(1) A person to whom this Subdivision applies is taken to satisfy the activity test during any period during which:

(a) subsection (2) (personally providing care to another person) applies to the person; or

(b) subsection (3) (participating in the care in hospital of another person) applies to the person.

If subsection (3) applies to the person, subsection (4) sets out a limit on the period during which the person is taken to satisfy the activity test for participating in the care of a disabled adult in hospital.

Personally providing care

(2) This subsection applies to the person if:

(a) if the provisions referred to in subsection (5) were disregarded, the person would qualify for a carer payment under section 197B, 197C, 197D or 197E (whether or not because of section 197F) for caring for one or more of the following or for persons who include the following:

(i) a child with a severe disability or severe medical condition;

(ii) a child who has a terminal condition;

(iii) a child with a disability or medical condition;

(iv) a lower ADAT score adult; and

(b) either:

(i) the care is provided in a private residence that is the home of the person or persons for whom care is provided; or

(ii) if a section referred to in paragraph (a) applies to the person because of section 197F—the care is provided in a private residence that is a home of the person or persons for whom care is provided.

Participating in care of person in hospital

(3) This subsection applies to the person if:

(a) the person is participating in the care in hospital of another person (the ***hospitalised person***); and

(b) it is reasonable to assume that, if the hospitalised person were not in hospital and the provisions referred to in subsection (5) were disregarded, the person would qualify under section 197B, 197C, 197D or 197E (whether or not because of section 197F) for a carer payment for caring for the hospitalised person, or for the hospitalised person and one or more other persons; and

(c) one of the following applies:

(i) the hospitalised person is terminally ill;

(ii) it is reasonable to expect that, upon leaving hospital, the hospitalised person will reside in a private residence that is the home of the hospitalised person.

(4) The period, or the sum of the periods, for which a person to whom this Subdivision applies is taken to satisfy the activity test because of subsection (3) for participating in the care in hospital of a disabled adult must not exceed:

(a) 63 days in any calendar year; or

(b) another period that the Secretary, for any special reason in a particular case, decides to be appropriate.

Note: There is no limit for a hospitalised person who is a child.

Disregard certain provisions of sections 197B, 197C, 197D and 197E

(5) For the purposes of paragraphs (2)(a) and (3)(b), disregard the following:

(a) subsection 197B(3) and paragraphs 197B(4)(b), (c) and (d);

(b) subsection 197C(3) and paragraphs 197C(4)(b), (c) and (d);

(c) subsection 197D(3) and paragraphs 197D(4)(b), (c) and (d);

(d) subsection 197E(4) and paragraphs 197E(5)(b), (c) and (d).

Meaning of expressions in this section

(6) An expression used in this section that is defined for the purposes of Part 2.5 has the same meaning in this section as it has in that Part.

731HB Relief from activity test—persons who would be qualified for carer payment under section 197G or 197H

Person taken to satisfy the activity test

(1) A person to whom this Subdivision applies is taken to satisfy the activity test during any period during which subsection (2) (personally providing care to another person) applies to the person.

Personally providing care during period determined

(2) This subsection applies to the person if:

(a) if the provisions referred to in subsection (7) were disregarded, the person would qualify for a carer payment under section 197G or 197H for a period for caring for one or more of the following or for persons who include the following:

(i) a child with a severe disability or severe medical condition;

(ii) a child with a disability or medical condition;

(iii) a lower ADAT score adult; and

(b) either:

(i) the care is provided in a private residence that is the home of the person or persons for whom care is provided; or

(ii) if the person would qualify for a carer payment because of section 197F—the care is provided in a private residence that is a home of the person or persons for whom care is provided.

~~*Relief from activity test during all of period determined (caring for person in hospital)*~~

~~(3) A person to whom this Subdivision and subsection (4) apply is taken to satisfy the activity test during any period that does not exceed the period, or the sum of the periods, (as the case requires) determined under paragraph (4)(b).~~

~~(4) This subsection applies to a person if:~~

~~(a) the person is participating in the care, in hospital, of one of the following persons (the ***hospitalised person***):~~

~~(i) a child with a severe disability or severe medical condition;~~

~~(ii) a child with a disability or medical condition;~~

~~(iii) a lower ADAT score adult; and~~

~~(b) the Secretary determines in writing that, if the hospitalised person were not in hospital and the provisions referred to in subsection (7) were disregarded, the person would qualify under section 197G or 197H for a carer payment for a period or periods for:~~

~~(i) the hospitalised person; or~~

~~(ii) the hospitalised person and one or more other persons; and~~

~~(c) it is reasonable to expect that, upon leaving hospital, the hospitalised person:~~

~~(i) will reside in a private residence that is the home of the hospitalised person; or~~

~~(ii) if the carer would qualify for a carer payment because of section 197F for the hospitalised person—will reside in a private residence that is a home of the hospitalised person.~~

Relief from activity test during balance of period determined (caring for person in hospital)

(5) A person to whom this Subdivision and subsection (6) apply is taken to satisfy the activity test during any period that does not exceed the balance of the period referred to in paragraph (6)(b).

(6) This subsection applies to a person if:

(a) subsection (2) applies to the person for a period for caring for one or more of the following or for persons who include the following:

(i) a child with a severe disability or medical condition;

(ii) a child with a disability or medical condition;

(iii) a lower ADAT score adult; and

(b) if the provisions referred to in subsection (7) were disregarded, the person would cease to qualify under section 197G or 197H for a carer payment for the balance of the period only because the person is participating in the care, in hospital, of:

(i) a child referred to in paragraph (a) of this subsection (the ***hospitalised person***); or

(ii) the hospitalised person and one or more other persons; and

(c) it is reasonable to expect that, upon leaving hospital, the hospitalised person:

(i) will reside in a private residence that is the home of the hospitalised person; or

(ii) if the carer would qualify for a carer payment because of section 197F for the hospitalised person—will reside in a private residence that is a home of the hospitalised person.

Disregard certain provisions of sections 197B, 197C and 197D

(7) For the purposes of paragraphs (2)(a), (4)(b) and (6)(b), disregard the following:

(a) subsection 197B(3) and paragraphs 197B(4)(b), (c) and (d);

(b) subsection 197C(3) and paragraphs 197C(4)(b), (c) and (d);
(c) subsection 197D(3) and paragraphs 197D(4)(b), (c) and (d).

Meaning of expressions

(8) An expression used in this section that is defined for the purposes of Part 2.5 has the same meaning in this section as it has in that Part.

731J Relief from activity test—persons who would be qualified for carer payment under section 198 or for carer allowance

Qualification conditions for carer payment under section 198

(1) A person to whom this Subdivision applies is taken to satisfy the activity test during any period during which:
(a) the person meets the qualification conditions for a carer payment set out in subsections 198(2), (3) and (9); or
(b) the following apply:
(i) the person is participating in the care in hospital of another person (the ***hospitalised person***) who is a disabled adult or a dependent child of a disabled adult;
(ii) it is reasonable to assume that, if the hospitalised person were not in hospital, the carer would meet the qualification conditions for a carer payment set out in subsections 198(2), (3) and (9) for the hospitalised person or for the hospitalised person and one or more other persons;
(iii) either the hospitalised person is terminally ill or it is reasonable to expect that the hospitalised person will reside in the private home of the carer and the hospitalised person upon leaving hospital.

(2) However, the period, or the sum of the periods, for which a person to whom this Subdivision applies is taken to satisfy the activity test by virtue of the operation of paragraph (1)(b) for participating in the care in hospital of a disabled adult must not exceed:
(a) 63 days in any calendar year; or

(b) another period that the Secretary, for any special reason in a particular case, decides to be appropriate.

Note: There is no limit for a hospitalised person who is a dependent child.

(3) If subsection (1) (including any subsection of section 198 that is applied under that subsection) uses a term that is defined for the purposes of section 198, it has the same meaning in subsection (1) as it has for the purposes of that section.

Carer allowance

(4) A person to whom this Subdivision applies is taken to satisfy the activity test during any period during which:

(a) the person meets the qualification conditions for carer allowance set out in section 953 as modified by subsection (5); or

(b) the person meets the qualification conditions for carer allowance set out in section 954 as modified by subsection (5); or

(ba) the person meets the qualification conditions for carer allowance set out in section 954A as modified by subsection (5); or

(c) the person is participating in the care in hospital of another person (the ***hospitalised person***), whether that other person is a disabled child or a disabled adult, and:

(i) it is reasonable to assume that, if the hospitalised person were not in hospital, the carer would meet the qualification conditions for carer allowance set out in section 953 or 954 as so modified, whichever is appropriate, for the hospitalised person, or set out in both of sections 953 and 954 as so modified, for the hospitalised person and another person or persons; and

(ii) either the hospitalised person is terminally ill or it is reasonable to expect that the hospitalised person will reside in the private home of the carer and the hospitalised person upon leaving hospital.

~~(5) In this section:~~

~~(a) a reference to section 953 as modified by this subsection is a reference to section 953, subject to:~~

~~(i) the substitution of a requirement that care receivers be in Australia for the requirement in paragraphs 953(1)(b) and (2)(b); and~~

~~(ii) the omission of paragraphs 953(1)(f) and (2)(f); and~~

~~(b) a reference to section 954 as modified by this subsection is a reference to section 954, subject to:~~

~~(i) the substitution of a requirement that the care receiver be in Australia for the requirement in paragraph 954(1)(a); and~~

~~(ii) the omission of paragraph 954(1)(f); and~~

~~(c) a reference to section 954A as modified by this subsection is a reference to section 954A, subject to:~~

~~(i) the substitution of a requirement that the care receiver be in Australia for the requirement in paragraph 954A(1)(a); and~~

~~(ii) the omission of paragraph 954A(1)(e).~~

~~(6) However, the period, or the sum of the periods, for which a person to whom this Subdivision applies is taken to satisfy the activity test by virtue of the operation of paragraph (4)(c) for participating in the care in hospital of a disabled adult must not exceed:~~

~~(a) 63 days in any calendar year; or~~

~~(b) another period that the Secretary, for any special reason in a particular case, decides to be appropriate.~~

~~Note: There is no limit for a hospitalised person who is a child.~~

~~(7) If subsection (4) (including one or more of sections 953, 954 and 954A as modified by subsection (5) and applied under subsection (4)) uses a term that is defined for the purposes of one or more of sections 953, 954 and 954A, that term has the same meaning in subsection (4) as it has for the purposes of one or more of those sections.~~

731JA Relief from activity test—grant of temporary protection, humanitarian or safe haven visa

A person to whom this Subdivision applies is not required to satisfy the activity test in respect of the period of 13 weeks commencing the day after the day on which the person is granted a visa included in a class of visas that is issued for temporary protection, humanitarian or safe haven purposes and that is determined by the Minister to be a class of visas to which subparagraph 729(2)(g)(i) applies.

731K Temporarily incapacitated person not required to satisfy activity test

(1) A person to whom this Subdivision applies is not required to satisfy the activity test in respect of a period if:

(a) throughout the period the person is incapacitated for work because of sickness or an accident; and

(b) the incapacity is caused wholly, or virtually wholly, by a medical condition arising from the sickness or accident; and

(c) the incapacity is, or is likely to be, of a temporary nature; and

(d) the person has, whether before or after the commencement of this section, given the Secretary a certificate of a medical practitioner, in a form approved by the Secretary, stating:

(i) the medical practitioner's diagnosis; and

(ii) the medical practitioner's prognosis; and

(iii) that the person is incapacitated for work; and

(iv) the period for which the person is incapacitated for work; and

(e) the Secretary is satisfied that the incapacity has not been brought about with a view to avoiding any requirement to satisfy the activity test.

(1AA) Subsection (1) does not apply to sickness, or an accident, wholly or predominantly attributable to the person's dependence on alcohol or another drug, unless the person is a declared program participant.

(1A) The Secretary must comply with the guidelines (if any) determined and in force under subsection (1B) in deciding the following:

(a) whether paragraph (1)(a), (b) or (c) applies to a person in respect of a period;

(b) whether, for the purposes of paragraph (a) of the definition of ***work*** in subsection (2), work is of a kind that a person could be reasonably expected to do.

(1B) The Minister may, by legislative instrument, determine guidelines to be complied with by the Secretary in making a decision referred to in subsection (1A).

(2) In this section:

work, in relation to a person, means work (whether full-time, part-time, permanent or casual) that:

(a) is of a kind that the person could, in the Secretary's opinion, be reasonably expected to do; and

(b) is for at least 8 hours per week on wages that are at or above the relevant minimum wage.

731KA Time limit for exemption—Secretary satisfied person can undertake activity

(1) A person ceases to be exempt, under this Subdivision, from the activity test if the Secretary is satisfied that, although the person meets the requirements of section 731K, the person should undertake one or more activities that the Secretary regards as suitable for the person.

(2) The cessation occurs:

(a) if the person has been required to enter into a Special Benefit Employment Pathway Plan but has failed to enter that plan—when the person so failed; or

(b) in any other case—when the person has entered into such a plan.

~~Subdivision AB—Special Benefit Employment Pathway Plans for persons who are nominated visa holders~~

~~731L Special Benefit Employment Pathway Plans—requirement to enter~~

~~(1) Subject to this section, if a person who is a nominated visa holder:~~

~~(a) has made a claim for special benefit; or~~

~~(b) is in receipt of special benefit;~~

~~the Secretary may require the person to enter into a Special Benefit Employment Pathway Plan.~~

~~(2) If a Special Benefit Employment Pathway Plan is in force in relation to a person, the Secretary may require the person to enter into another plan instead of the existing one.~~

~~(3) Subsections (1) and (2) do not apply to a person who, under section 731DAA, 731DA, 731DB, 731E, 731F or 731JA, is not required to satisfy the activity test.~~

~~(3A) If, under section 731K, a person is not required to satisfy the activity test, subsections (1) and (2) apply to the person only if subsection 731KA(1) applies to the person.~~

~~(4) The Secretary is to give a person who is required to enter into a Special Benefit Employment Pathway Plan notice of:~~

~~(a) the requirement; and~~

~~(b) the places and times at which the plan is to be negotiated.~~

~~(5) A Special Benefit Employment Pathway Plan must be in a form approved by the Secretary.~~

731M Special Benefit Employment Pathway Plans—terms

Suitable requirements

(1) Subject to subsection (2) and to sections 731N to 731Q, a Special Benefit Employment Pathway Plan that is in force in relation to a person is to contain one or more terms (the ***requirements***) that:

(a) the person is required to comply with; and

(b) the Secretary regards as suitable for the person.

(1A) A plan must not contain a requirement of a kind that the Secretary determines under subsection (1B).

(1B) The Secretary must determine, by legislative instrument, kinds of requirements that plans must not contain.

(1C) To avoid doubt, a determination under subsection (1B) does not limit the Secretary's discretion to exclude other kinds of requirements from a particular plan under subsection (1).

(2) A plan must not require the person concerned to participate in an approved program of work for income support payment if:

(a) the person has not turned 18; or

(b) the person or the person's partner has income; or

(c) in the Secretary's opinion:

(i) it has been established that there is medical evidence that the person has an illness, disability or injury that would be aggravated by the conditions in which the work would be performed; or

(ii) performing the work in the conditions in which the work would be performed would constitute a risk to health or safety or would contravene a law of the Commonwealth, a State or a Territory relating to occupational health and safety; or

(d) the person is at least 50 years of age and is not a person to whom subsection 28(4) applies.

Note: Section 731Q provides for revocation of such requirements.

~~*Optional terms*~~

~~(2A) A plan may also contain one or more terms that the person may, but is not required to, comply with.~~

~~*Approval of requirements*~~

~~(3) The requirements in a plan are to be approved by the Secretary.~~

~~(4) In considering whether to approve the requirements in a plan that will be in force in relation to a person, the Secretary is to have regard to:~~

~~(a) the person's capacity to comply with the requirements; and~~

~~(b) the person's needs.~~

~~(5) In having regard to a person's capacity to comply with the requirements in a plan, the Secretary is to take into account, but is not limited to, the following matters:~~

~~(a) the person's education, experience, skills and age;~~

~~(aa) the impact of any disability, illness, mental condition or physical condition of the person on the person's ability to work, to look for work or to participate in training activities;~~

~~(b) the state of the local labour market and the transport options available to the person in accessing that market;~~

~~(c) the participation opportunities available to the person;~~

~~(d) the family and caring responsibilities of the person;~~

~~(e) the length of travel time required to comply with the requirements;~~

~~(f) the financial costs (such as travel costs) of complying with the requirements, and the person's capacity to pay for such costs;~~

~~(g) any other matters that the Secretary or the person considers relevant in the circumstances.~~

~~*Variation, suspension, cancellation and review*~~

~~(6) A plan that is in force in relation to a person:~~

(a) may be varied (in negotiation with the person) or suspended by the Secretary; and

(b) must be cancelled by the Secretary if the person enters into another Special Benefit Employment Pathway Plan; and

(c) may be reviewed from time to time by the Secretary at the request of the Secretary or the person; and

(d) may be cancelled by the Secretary after a review under paragraph (c).

Circumstances preventing or affecting compliance

(7) If a plan is in force in relation to a person, the person must notify the Secretary of any circumstances preventing or affecting the person's capacity to comply with the requirements in the plan.

731N Special Benefit Employment Pathway Plans—principal carers

(1) A Special Benefit Employment Pathway Plan that:

(a) is in force in relation to a person who is the principal carer of at least one child; and

(b) requires the person to undertake, as an activity, looking for part-time work that the Secretary regards as suitable;

must require the person to undertake looking for such part-time work of at least the appropriate number of hours per week.

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

(2) The appropriate number of hours per week is:

(a) 15; or

(b) such other number as the Secretary determines to be appropriate having regard to the person's circumstances.

731P Special Benefit Employment Pathway Plans—people with partial capacity to work

(1) A Special Benefit Employment Pathway Plan that:

(a) is in force in relation to a person who has a partial capacity to work; and

(b) requires the person to undertake, as an activity, looking for part-time work that the Secretary regards as suitable;

must require the person to undertake looking for such part-time work of at least the appropriate number of hours per week.

Note: For ***partial capacity to work*** see section 16B.

(2) The appropriate number of hours per week is:

(a) 15; or

(b) such other number as the Secretary determines to be appropriate having regard to the person's circumstances.

731Q Special Benefit Employment Pathway Plans—revocation of requirement to participate in approved program of work

(1) If a Special Benefit Employment Pathway Plan that is in force in relation to a person requires the person to participate in an approved program of work for income support payment, the Secretary may, by notice given to the person, revoke the requirement to participate in the program if the Secretary:

(a) is satisfied that the person or the person's partner has income; or

(b) forms the opinion that:

(i) it has been established that there is medical evidence that the person has an illness, disability or injury that would be aggravated by the conditions in which the work would be performed; or

(ii) performing the work in the conditions in which the work would be performed would constitute a risk to health or safety or would contravene a law of the Commonwealth, a State or a Territory relating to occupational health and safety; or

(c) is satisfied that the person is at least 50 years of age and is not a person to whom subsection 28(4) applies.

(2) Upon the Secretary so notifying the person, the requirement is taken to have been revoked with effect from the day specified in the notice.

OFFICIAL: Sensitive // Legal Privilege

~~**731R Special Benefit Employment Pathway Plans—suspension of plans**~~

~~A Special Benefit Employment Pathway Plan that is in force in relation to a person is taken to be suspended during any period during which the person is not required to satisfy the activity test because of section 731DAA, 731DA or 731DB.~~

Subdivision B—Payability

732 Special benefit not payable if benefit rate nil

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

(2) Subsection (1) does not apply to a person if the person's rate would be nil merely because:

(a) an election by the person under subsection 915A(1) (about quarterly energy supplement) or 1061VA(1) (about quarterly pension supplement) is in force; or

(b) the person has been paid an advance pharmaceutical allowance under the social security law.

733 Assets test—benefit not payable if assets value limit exceeded

(1) A special benefit is not payable to a person if:

(a) the person is not excluded from the special benefit assets test; and

(b) the value of the person's assets exceeds the person's assets value limit.

(2) A person is excluded from the special benefit assets test if the person:

(a) has not turned 18; and

(b) is not independent within the meaning of section 1067A.

(3) A person's assets value limit is worked out using the following table: work out which family situation applies to the person; the

assets value limit is the corresponding amount in the ***assets value limit*** column.

Assets value limit table

Column 1	Column 2	Column 3	
		Assets value limit	
Item	Person's family situation	Column 3A Either person or partner homeowner	Column 3B Neither person nor partner homeowner
1.	Not member of a couple	$250,000	$450,000
2.	Partnered (partner getting neither pension nor benefit)	$375,000	$575,000
3.	Partnered (partner getting pension or benefit)	$187,500	$287,500

Note 1: For ***member of a couple***, ***partnered (partner getting neither pension nor benefit)*** and ***partnered (partner getting pension or benefit)*** see section 4.

Note 2: For ***homeowner*** see section 11.

Note 3: If item 2 applies to a person, the value of *all* the assets of the person's partner is to be taken as being included in the value of the person's assets (see subsection 734(1)—this is why the assets value limit is so high. If, on the other hand, item 3 applies to a person, the value of the person's assets is only *half* the combined value of the person's assets and the assets of the person's partner (see subsection 734(2)).

Note 4: If a special benefit is not payable to a person because of the value of the person's assets, the person may be able to take advantage of provisions dealing with financial hardship (see sections 1131 and 1132).

Note 5: The assets value limits of items 1 and 3 in column 3A and item 3 in column 3B are indexed annually in line with CPI increases (see sections 1191 to 1194).

OFFICIAL: Sensitive // Legal Privilege

Note 6: The assets value limit of item 1 in column 3B is adjusted annually (see subsection 1204(1)).

Note 7: The item 2 assets value limits are adjusted annually so that they are twice the corresponding item 3 limits (see subsections 1204(2) and (3)).

734 Value of assets of members of couples

(1) If:

(a) the person is a member of a couple; and

(b) the person's partner:

(i) is not in receipt of a social security pension, a service pension, income support supplement or a veteran payment; and

(ii) is not in receipt of a social security benefit;

the value of the person's assets, or of assets of a particular kind of the person, includes the value of the partner's assets or of assets of that kind of the partner.

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

(2) If:

(a) the person is a member of a couple; and

(b) the person's partner is in receipt of:

(i) a social security pension, a service pension, income support supplement or a veteran payment; or

(ii) a social security benefit;

the following provisions have effect:

(c) the value of the person's assets is taken to be 50% of the sum of the value of the assets of the person and the value of the assets of the person's partner; and

(d) the value of the person's assets of a particular kind is taken to be 50% of the sum of the value of the assets of that kind of the person and the value of assets of that kind of the person's partner.

OFFICIAL: Sensitive // Legal Privilege

735 Multiple entitlement exclusion

(1) Special benefit is not payable to a person if the person is already receiving a service pension, income support supplement or a veteran payment.

(2) If:

(a) a person is receiving special benefit; and

(b) a social security pension, another social security benefit, a service pension, income support supplement or a veteran payment becomes payable to the person;

the special benefit is not payable to the person.

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

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

(3) Special benefit is not payable to a woman if:

(a) the woman is an armed services widow; and

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

unless:

(c) the woman has been receiving a payment referred to in paragraph (b) continuously since before 1 November 1986; and

(d) before 1 November 1986 the woman was also receiving a social security benefit.

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

(4) Special benefit is not payable to a man if:

(a) the man is an armed services widower; and

(b) the man is receiving a pension under Part II or IV of the Veterans' Entitlements Act at a rate determined under or by reference to subsection 30(1) of that Act.

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

OFFICIAL: Sensitive // Legal Privilege

(5) Special benefit is not payable to a person if:

(a) the person is an armed services widow or an armed services widower; and

(b) the person is receiving the weekly amount mentioned in paragraph 234(1)(b) of the MRCA (including a reduced weekly amount because of a choice under section 236 of the MRCA) or has received a lump sum mentioned in subsection 236(5) of the MRCA.

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

Note 2: For ***MRCA*** see subsection 23(1).

736 Secretary may require certain persons to attend courses or undertake work

(1) If:

(a) a person, other than a person who is a nominated visa holder, is receiving, or has lodged a claim for, special benefit; and

(b) the Secretary is of the opinion that the person should:

(i) undertake a course of vocational training; or

(ii) undertake a course:

(A) which the person could reasonably undertake; and

(B) to which the person has been referred by the Secretary; or

(iii) do any work suitable to be done by the person; and

(c) the Secretary notifies the person that the person is required to:

(i) undertake that course; or

(ii) do that work; and

(d) the person does not comply with the Secretary's requirements;

special benefit is not payable to the person for a period determined by the Secretary.

OFFICIAL: Sensitive // Legal Privilege

(2) The Secretary may determine that special benefit is payable for a period for which he or she had previously determined that it was not payable under subsection (1) if, within a reasonable period, the person complies with the Secretary's requirements.

737 Full-time students

(1) Subject to subsection (3), a special benefit is not payable to a person:

(a) who has turned 18; or

(b) who satisfies both of the following:

(i) the person has not turned 16; and

(ii) the person is not a SPB homeless person;

if the person is enrolled in a full-time course of education or of vocational training.

Note: For ***SPB homeless person*** see section 739.

Period for which benefit not payable

(2) The period for which a special benefit is not payable under subsection (1) is the period that:

(a) starts when the person starts the course; and

(b) finishes when the person:

(i) completes the course; or

(ii) abandons the course; or

(iii) gives notice to the provider of the course that the person:

(A) wishes to withdraw from the course; or

(B) wishes to withdraw from such number of subjects that the person's course will no longer be a full-time course; and

(c) includes periods of vacation.

OFFICIAL: Sensitive // Legal Privilege

Subsection (1) does not apply in certain cases

(3) Subsection (1) does not prevent a special benefit from being payable for any period during which:

(a) a person is enrolled in a course of study that the Secretary has required the person to undertake under section 736; or

(b) the person is engaged in a course undertaken under ~~a Special Benefit Employment Pathway Plan~~an employment pathway plan; or

(c) the person has deferred a course of education.

738 Payments under certain education schemes

(1) Subject to subsections (2) and (3), a special benefit is not payable to a person:

(a) who has turned 18; or

(b) who satisfies both of the following:

(i) the person has not turned 16;

(ii) the person is not a SPB homeless person;

if a payment has been made or may be made in respect of the person for the same period under:

(c) a prescribed educational scheme other than the ABSTUDY scheme to the extent that it applies to part-time students; or

(d) the scheme to provide an allowance known as the Adult Migrant Education Program Living Allowance; or

(e) the scheme to provide an allowance known as the Maintenance Allowance for Refugees; or

(f) the scheme to provide an allowance known as the English as a Second Language Allowance to the extent that the scheme applies to full-time students.

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

Note 2: For ***SPB homeless person*** see section 739.

(2) If:

(a) a person may start a course of education on a full-time basis; and

(b) a payment under a scheme referred to in subsection (1) may be made in respect of the person;

the Secretary may decide that, in spite of subsection (1), a special benefit is payable to the person for a period before the person starts the course.

(3) If:

(a) a person enrols in a full-time course of education; and

(b) an application is made for a payment in respect of the person under:

(ii) the ABSTUDY Schooling scheme; or

(iii) the ABSTUDY Tertiary scheme; and

(c) the person was receiving special benefit immediately before the start of the course;

the Secretary may decide that, in spite of subsection (1), special benefit is payable to the person for the period of 3 weeks commencing on the day on which the course starts.

739 SPB homeless person

For the purposes of subparagraphs 737(1)(b)(ii) and 738(1)(b)(ii), a person is an ***SPB homeless person*** if:

(a) the person is not a member of a couple; and

(b) the person does not have a dependent child; and

(c) the person meets the conditions in subsection 1067A(9) (which is about being independent).

739A Newly arrived resident's waiting period

(1) Subject to this section, a person who, on or after the commencement of this subsection:

(a) enters Australia; or

(b) becomes the holder of a permanent visa; or

(e) becomes the holder of a visa that is in a class of visas determined by the Minister, by legislative instrument, for the purposes of this paragraph;

OFFICIAL: Sensitive // Legal Privilege

is subject to a newly arrived resident's waiting period.

(2) Subject to this section, if, immediately before the commencement of this subsection, a person was the holder of a visa that is in a class of visas determined by the Minister for the purposes of this subsection, the person is subject to a newly arrived resident's waiting period.

(3) If:

(a) a person is subject to a newly arrived resident's waiting period; and

(b) before, on or after the commencement of this subsection, the person applies for a visa that is in a class of visas determined by the Minister, by legislative instrument, for the purposes of this paragraph;

the waiting period:

(c) starts on the day on which the person applied for that visa; and

(d) ends when the person has been in Australia for a period of, or periods totalling, 208 weeks after that day.

(4) If:

(a) a person is subject to a newly arrived resident's waiting period; and

(b) before, on or after the commencement of this subsection, the person was the holder of a visa that is in a class of visas determined by the Minister, by legislative instrument, for the purposes of this paragraph;

the period:

(c) starts on the day on which the person applied for that visa; and

(d) ends when the person has been in Australia for a period of, or periods totalling, 208 weeks after that day.

(5) If:

(a) a person is subject to a newly arrived resident's waiting period; and

(b) neither subsection (3) nor (4) apply to the person;

the waiting period starts on the day on which the person:

(c) first entered Australia; or

(d) becomes the holder of a permanent visa;

whichever occurs last, and ends on the day after the person has been in Australia for a period of, or periods totalling, 208 weeks after that day.

(6) Neither subsection (1) nor (2) applies to a person if the person holds, or was the former holder of, a visa in a class of visas determined by the Minister, by legislative instrument, for the purposes of this subsection.

(7) Neither subsection (1) nor (2) apply to a person if the person, in the Secretary's opinion, has suffered a substantial change in circumstances beyond the person's control after the person first entered Australia.

Note: For ***permanent visa*** see subsection 7(1).

(8) Neither subsection (1) nor (2) applies to a person if:

(a) the person is a refugee, or a former refugee, at the time the person made the claim for a special benefit; or

(b) the following apply:

(i) before the person made the claim for a special benefit, the person was a family member of another person at the time the other person became a refugee;

(ii) the person is a family member of that other person at the time the person made the claim for a special benefit or, if that other person has died, the person was a family member of that other person immediately before that other person died; or

(c) the person is an Australian citizen at the time the person made the claim for a special benefit.

(9) For the purposes of subsection (8):

(a) ***family member*** has the meaning given by subsection 7(6D); and

OFFICIAL: Sensitive // Legal Privilege

(b) ***former refugee*** has the meaning given by subsection 7(1); and

(c) ***refugee*** has the meaning given by subsection 7(6B).

739B Secretary to act in accordance with guidelines

The Secretary must exercise the powers under subsection 739A(7), in accordance with guidelines from time to time in force under section 739C.

739C Guidelines for exercise of Secretary's powers under subsection 739A(7)

The Minister, by legislative instrument:

(a) is to set guidelines for the exercise of the Secretary's powers under subsection 739A(7); and

(b) may revoke or vary those guidelines.

Subdivision D—Situations where special benefit not payable to persons who are nominated visa holders (administrative breaches)

745H Situations where special benefit not payable for failure to comply with certain requirements

Special benefit is not payable to a person who is a nominated visa holder if the person refuses or fails, without reasonable excuse, to comply with a requirement made of the person under section 67, 68 or 192 of the Administration Act.

~~**Subdivision E—Activities that do not give rise to employment under certain industrial relations legislation**~~

~~**745L Activities that do not give rise to employment under certain industrial relations legislation**~~

~~A person who is a nominated visa holder is not to be taken to be one of the following merely because the person participates in an approved program of work for income support payment, or undertakes an activity (other than suitable paid work), in accordance with a term (including an optional term) of a Special Benefit Employment Pathway Plan under section 731M:~~

~~(a) a worker carrying out work in any capacity for the Commonwealth, or an employee of the Commonwealth, for the purposes of the *Work Health and Safety Act 2011*;~~

~~(b) an employee within the meaning of section 5 of the *Safety, Rehabilitation and Compensation Act 1988*;~~

~~(c) an employee for the purposes of the *Superannuation Guarantee (Administration) Act 1992*;~~

~~(d) an employee for the purposes of the *Fair Work Act 2009*.~~

Subdivision F—Other situations where special benefit not payable to persons who are nominated visa holders

745M Seasonal workers

(1) This section applies if, at any time during the 6 months immediately before the day on which a person who is a nominated visa holder lodges a claim for special benefit, the person or, if the person is a member of a couple, the person or the person's partner, has been engaged in seasonal work within the meaning of subsection 16A(1).

(2) Special benefit is not payable to the person:

(a) if the person is subject to a seasonal work preclusion period within the meaning of subsection 16A(1) (whether in relation to the claim referred to in subsection (1) or any other claim

OFFICIAL: Sensitive // Legal Privilege

under this Act) and the Secretary has not made a determination under subsection (3) in relation to the person—for the person's seasonal work preclusion period; or

(b) if the Secretary has made a determination under subsection (3) in relation to the person—for that part (if any) of the person's seasonal work preclusion period to which the person is subject as a result of the determination.

(3) If the Secretary is satisfied that a person is in severe financial hardship within the meaning of subsection 19C(2) or (3), whichever is appropriate, because the person has incurred unavoidable or reasonable expenditure within the meaning of subsection 19C(4) while the person is subject to a seasonal work preclusion period (whether in relation to the claim referred to in subsection (1) or any other claim under this Act):

(a) the Secretary may determine that the person is not subject to the whole, or any part, of the preclusion period; and

(b) the determination has effect accordingly.

745N Move to area of lower employment prospects

(1) Subject to subsection (3), if, in the opinion of the Secretary, a person who is a nominated visa holder has reduced his or her employment prospects by moving to a new place of residence without sufficient reason, special benefit is not payable to the person for 26 weeks.

(2) Subsection (1) extends to a person who makes a claim for special benefit on or after the day on which the person moved to the new place of residence and before the end of the period referred to in that subsection.

(3) If a person to whom special benefit is not payable under subsection (1) for a period of 26 weeks (including that subsection as it applies by virtue of subsection (2)) does either of the following during that period:

(a) moves back to the place of residence (the ***original place of residence***) the movement from which resulted in special benefit not being payable to him or her;

(b) moves to another place of residence a movement to which from the original place of residence would not have resulted in special benefit not being payable to him or her;

the period of 26 weeks ends at the time of the movement back to the original place of residence or the movement to the other place of residence, as the case may be.

(4) For the purposes of subsection (1), a person has a sufficient reason for moving to a new place of residence if and only if the person:

(a) moves to live with a family member who has already established his or her residence in that place of residence; or

(b) moves to live near a family member who has already established residence in the same area; or

(c) satisfies the Secretary that the move is necessary for the purposes of treating or alleviating a physical disease or illness suffered by the person or by a family member; or

(d) satisfies the Secretary that the person has moved from his or her original place of residence because of an extreme circumstance which made it reasonable for the person to move to the new place of residence (for example, the person had been subjected to domestic or family violence in the original place of residence).

(5) The Secretary may determine in writing the day on which the period of non-payment imposed by subsection (1) commences and that day may be before the day of the determination.

OFFICIAL: Sensitive // Legal Privilege

Division 4—Rate of special benefit

746 Rate of special benefit

(1) The rate of a person's special benefit is the fortnightly rate determined by the Secretary in his or her discretion.

(2) The rate of a person's special benefit is not to exceed the rate at which youth allowance, austudy payment or jobseeker payment would be payable to the person if:

(a) the person were qualified for youth allowance, austudy payment or jobseeker payment; and

(b) youth allowance, austudy payment or jobseeker payment were payable to the person.

(3) In working out, for the purposes of subsection (2), the rate at which youth allowance would be payable to a person, disregard any amount by which the rate would be increased because of point 1067G-B3A or 1067G-D1 of the Youth Allowance Rate Calculator.

(4) In working out, for the purposes of subsection (2), the rate at which jobseeker payment would be payable to a person, disregard any amount by which the rate would be increased because of point 1068-B5 of Benefit Rate Calculator B.

~~**747 Approved program of work supplement for persons who are nominated visa holders**~~

~~If a person who is a nominated visa holder:~~

~~(a) is receiving special benefit; and~~

~~(b) is participating in an approved program of work for income support payment;~~

~~the rate of the person's special benefit is increased by an amount of $20.80, to be known as the approved program of work supplement, for each fortnight during which the person participates in the program unless, during that fortnight, the person subsequently~~

OFFICIAL: Sensitive // Legal Privilege

~~ceases to participate in the program in circumstances that constitute:~~

~~(c) a failure of the activity test to which the person is subject; or~~

~~(d) a failure to comply with a requirement in a Special Benefit Employment Pathway Plan that is in force in relation to the person.~~

747 Approved program of work supplement for persons who are nominated visa holders

If a person who is a nominated visa holder:

(a) is receiving special benefit; and

(b) is participating in an approved program of work for income support payment;

the rate of the person's special benefit is increased by an amount of $20.80, to be known as the approved program of work supplement, for each fortnight during which the person participates in the program.

759 Effect of industrial action on rate of special benefit payable to persons who are nominated visa holders

(1) If:

(a) a person who is a nominated visa holder is receiving special benefit; and

(b) while the person is receiving that benefit the person becomes engaged in industrial action, or in a series of industrial actions, that leads to the person's unemployment or to a decrease in the person's level of income;

the rate of special benefit payable to the person is to be determined as if the person had continued, for the period of that industrial action, to be employed and to receive income at the level at which it would have been received if the person had not engaged in that action.

(2) Subsection (1) does not apply in relation to a person if the Secretary is satisfied:

OFFICIAL: Sensitive // Legal Privilege

(a) that the person's unemployment or the effect on the person's level of income was due to other people being, or having been, engaged in industrial action or in a series of industrial actions; and

(b) the people or some of the people were members of a trade union that was involved in the industrial action; and

(c) the person was not a member of the trade union during the period of the industrial action.

(3) Subject to subsection (4), subsections (1) and (2) do not affect the rate of special benefit payable to a person in respect of a period that occurs after the relevant industrial action or series of industrial actions has stopped.

(4) If the relevant industrial action or series of industrial actions is in breach of an order, direction or injunction issued by:

(a) a prescribed State industrial authority within the meaning of the *Fair Work Act 2009*; or

(b) the Fair Work Commission or the Australian Industrial Relations Commission; or

(c) the Federal Court of Australia; or

(d) the Federal Circuit Court of Australia;

the rate of special benefit payable to a person is to continue to be determined in accordance with subsection (1) but subject to subsection (2) until the end of a period of 6 weeks after the relevant industrial action or series of industrial actions has stopped.

OFFICIAL: Sensitive // Legal Privilege

Division 9—Bereavement payments

Subdivision AA—Death of partner

768A Qualification for payments under this Subdivision

(1) If:

(a) a person is receiving a special benefit; and

(b) the person is a long-term social security recipient; and

(c) the person is a member of a couple; and

(d) the person's partner dies; and

(e) immediately before the partner died, the partner:

(i) was receiving a social security pension; or

(ii) was receiving a service pension, income support supplement or a veteran payment; or

(iii) was a long-term social security recipient; and

(f) on the person's payday immediately before the first available bereavement adjustment payday, the amount that would be payable to the person if the person were not qualified for payments under this Subdivision is less than the sum of:

(i) the amount that would otherwise be payable to the person under section 768D (person's continued rate) on that payday; and

(ii) the amount (if any) that would otherwise be payable to the person, under section 768B (continued payment of partner's pension or benefit) on the partner's payday immediately before the first available bereavement adjustment payday;

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

Note 1: Section 768B provides for the payment to the person, up to the first available bereavement adjustment payday, of amounts equal to the instalments that would have been paid to the person's partner during that period if the partner had not died.

Note 2: Section 768C provides for a lump sum that represents the instalments that would have been paid to the person's partner, between the first

OFFICIAL: Sensitive // Legal Privilege

available bereavement adjustment payday and the end of the bereavement period, if the partner had not died.

Note 3: For ***long-term social security recipient*** see subsection 23(1).

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

(3) An election under subsection (2):
(a) must be made by written notice to the Secretary; and
(b) may be made after the person has been paid an amount or amounts under this Subdivision; and
(c) cannot be withdrawn after the Department has taken all the action required to give effect to that election.

(4) If a person is qualified for payments under this Subdivision in relation to the partner's death, the rate at which special benefit is payable to the person during the bereavement period is, unless the person has made an election under subsection (2), governed by section 768D.

768B Continued payment of partner's pension or benefit

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

768C Lump sum payable in some circumstances

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

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

LUMP SUM CALCULATOR

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

Method statement

Step 1. Add up:

(a) the amount that, if the person's partner had not died, would have been payable to the person on the person's payday immediately before the first available bereavement adjustment payday; and

(b) the amount (if any) that, if the partner had not died, would have been payable to the partner on the partner's payday immediately before the first available bereavement adjustment payday;

the result is called the ***combined rate***.

Step 2. Work out the amount that, but for section 768D, would have been payable to the person on the person's payday immediately before the first available bereavement adjustment payday: the result is called the ***person's individual rate***.

Step 3. Take the person's individual rate away from the combined rate: the result is called the ***partner's instalment component***.

Step 4. Work out the number of the partner's paydays in the bereavement lump sum period.

Step 5. Multiply the partner's instalment component by the number obtained in Step 4: the result is the amount of the lump sum payable to the person under this section.

OFFICIAL: Sensitive // Legal Privilege

768D Adjustment of a person's special benefit rate

If:

(a) a person is qualified for payments under this Subdivision; and

(b) the person does not elect under subsection 768A(2) not to receive payments under this Subdivision;

the rate of the person's special benefit during the bereavement period is worked out as follows:

(c) during the bereavement rate continuation period, the rate of special benefit payable to the person is the rate at which the allowance would have been payable to the person if the person's partner had not died;

(d) during the bereavement lump sum period (if any), the rate at which special benefit is payable to the person is the rate at which the allowance would be payable to the person apart from this Subdivision.

768E Effect of death of person entitled to payments under this Subdivision

If:

(a) a person is qualified for payments under this Subdivision in relation to the death of the person's partner; and

(b) the person dies within the bereavement period; and

(c) the Secretary does not become aware of the death of the person's partner before the person dies;

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

LUMP SUM CALCULATOR

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

Method statement

Step 1. Add up:

(a) the amount that, if neither the person nor the person's partner had died, would have been payable to the person on the person's payday immediately after the day on which the person dies; and

(b) the amount (if any) that, if neither the person nor the person's partner had died, would have been payable to the person's partner on the partner's payday immediately after the day on which the person died;

the result is called the ***combined rate***.

Step 2. Work out the amount that, but for section 768D, would have been payable to the person on the person's payday immediately after the day on which the person died if the person had not died: the result is called the ***person's individual rate***.

Step 3. Take the person's individual rate away from the combined pensioner couple rate: the result is called the ***partner's instalment component***.

Step 4. Work out the number of paydays of the partner in the period that commences on the day on which the person dies and ends on the day on which the bereavement period ends.

OFFICIAL: Sensitive // Legal Privilege

Step 5.	Multiply the partner's instalment component by the number obtained in Step 4: the result is the amount of the lump sum payable under this section.

768F Matters affecting payments under this Subdivision

(1) If:

(a) a person is qualified for payments under this Subdivision in relation to the death of the person's partner; and

(b) after the person's partner died, an amount to which the partner would have been entitled if the partner had not died has been paid under this Act or under Part III or IIIA of the Veterans' Entitlements Act; and

(c) the Secretary is not satisfied that the person has not had the benefit of that amount;

the following provisions have effect:

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

(e) the amount payable to the person under this Subdivision is to be reduced by the amount referred to in paragraph (b).

(2) If:

(a) a person is qualified for payments under this Subdivision in relation to the death of the person's partner; and

(b) the amount to which the person's partner would have been entitled if the person's partner had not died has been paid under this Act or under Part III or IIIA of the Veterans' Entitlements Act, within the bereavement period, into an account with a bank; and

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

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

OFFICIAL: Sensitive // Legal Privilege

Part 2.15A—Partner allowance

Division 1A—Application of Part

771 Time limits on claims for partner allowance

(1) In spite of any other provisions of this Act or of the Administration Act, a person is not to be granted a partner allowance under this Part unless:

(a) the person's claim for the allowance:

(i) was lodged before 20 September 2003; or

(ii) is taken, because of the operation of section 13 or 15 of the Administration Act, to have been made before 20 September 2003; and

(b) the person was qualified for the allowance:

(i) in a case to which subparagraph (a)(i) applies—on the date of lodgment of the claim; and

(ii) in a case to which subparagraph (a)(ii) applies—on the date the person is taken to have made the claim.

(2) Subsection (1) does not imply that a person making a claim in the circumstances referred to in subsection 35(1) of the Administration Act before 20 September 2003 will be granted a partner allowance if the date from which the allowance would be payable to that person under subsection 37(7) of that Act would be 20 September 2003 or a later date.

(3) Nothing in this section affects the operation of section 85 of the Administration Act.

Division 1—Qualification for and payability of partner allowance

Subdivision A—Qualification for partner allowance

771HA Qualification for partner allowance

(1) Subject to subsections (1A) and (3), and section 771HB, a person is qualified for a partner allowance in respect of a period if:

(a) throughout the period, the person is a member of a couple; and

(b) throughout the period, the person's partner is at least 21; and

(c) the person's partner is receiving:

(i) youth allowance, austudy payment, jobseeker payment, special benefit, age pension, disability support pension, service pension, income support supplement or veteran payment; or

(ii) assistance under a Student Financial Supplement Scheme or an income tested living allowance under an Aboriginal study assistance scheme; and

(d) throughout the period, the person is an Australian resident; and

(e) the person was born on or before 1 July 1955; and

(f) the person is not qualified for parenting payment at any time during the period; and

(h) the person does not have recent workforce experience.

Note 1: For ***member of a couple*** see section 4.

Note 2: For ***Australian resident*** see section 7.

(1A) If the Secretary determines under section 36 of the Administration Act that a person's claim for partner allowance is to be granted, the person's partner need not satisfy the requirements of paragraph (1)(c) in order for the person to remain qualified for the allowance.

(1B) For the purposes of paragraph (1)(c), the person's partner is taken to be receiving jobseeker payment if the person's partner would be receiving jobseeker payment except for:

(a) the application of a compliance penalty period; or

(b) the application of a period of non-payment under section 634.

Note: For ***compliance penalty period*** see subsection 23(1).

(1BA) For the purposes of paragraph (1)(c), the person's partner is taken to be receiving youth allowance if the person's partner would be receiving youth allowance except for:

(a) the application of a compliance penalty period; or

(b) the application of an employment-related exclusion under section 553A or 553B.

Note: For ***compliance penalty period*** see subsection 23(1).

(1BB) For the purposes of paragraph (1)(c), the person's partner is taken to be receiving austudy payment if the person's partner would be receiving austudy payment except for the application of a compliance penalty period.

Note: For ***compliance penalty period*** see subsection 23(1).

(1C) For the purposes of paragraph (1)(h), ***recent workforce experience*** is employment of 20 hours or more a week for a total of 13 weeks or more at any time during the 12 months immediately before the day the person lodged the claim for the allowance.

Person subject to waiting period or non-payment period

(3) If youth allowance, austudy payment or jobseeker payment is not payable to a person because:

(a) the person is serving a waiting period; or

(b) a compliance penalty period applies to the person; or

(ba) a period of non-payment applies to the person under section 634; or

(c) the person is subject to an employment-related exclusion for a period under section 553B or 553C;

the person is not qualified for a partner allowance throughout the period.

Note 1: For ***waiting period*** see subsection 23(1).

Note 2: For ***compliance penalty period*** see subsection 23(1).

771HB Unemployment due to industrial action

(1) If a person is unemployed during a period, the person is not qualified for a partner allowance in respect of the period unless the Secretary is satisfied that the person's unemployment during the period was not due to the person being, or having been, engaged in industrial action or a series of industrial actions.

(2) For the purposes of subsection (1) and without limiting that subsection, a person is to be taken not to be, or to have been, engaged in industrial action or in a series of industrial actions if the Secretary is satisfied:

(a) the person's unemployment was due to other people being, or having been, engaged in industrial action or in a series of industrial actions; and

(b) the people, or some of the people, were members of a trade union which was involved in the industrial action; and

(c) the person was not a member of the trade union during the period.

(3) Subject to subsection (4), subsection (1) does not prevent a person from being qualified for a partner allowance in respect of a period that occurs after the relevant industrial action or series of industrial actions has stopped.

Note: For ***industrial action***, ***trade union*** and ***unemployment*** see section 16.

(4) Where the relevant industrial action or series of industrial actions is in breach of an order, direction or injunction issued by:

(a) a prescribed State industrial authority within the meaning of the *Fair Work Act 2009*; or

(b) the Fair Work Commission or the Australian Industrial Relations Commission; or

(c) the Federal Court of Australia; or
(d) the Federal Circuit Court of Australia;

a person is not qualified for a partner allowance in respect of a period unless that period occurs 6 weeks or more after the relevant industrial action or series of industrial actions has stopped.

Subdivision B—Payability of partner allowance

771HC Partner allowance not payable if allowance rate nil

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

(2) Subsection (1) does not apply to a person if the person's rate would be nil merely because:
(a) an election by the person under subsection 915A(1) (about quarterly energy supplement) or 1061VA(1) (about quarterly pension supplement) is in force; or
(b) the person has been paid an advance pharmaceutical allowance under the social security law.

771HF Assets test—allowance not payable if assets value limit exceeded

(1) A partner allowance is not payable to a person if the value of the person's assets exceeds the person's assets value limit.

Note: The value of the person's assets is only *half* the combined value of the person's assets and the assets of the person's partner (see subsection (3)).

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

Assets value limit table

Column 1	Column 2	Column 3
Item	**Person's situation**	**Assets value limit**
1.	Person or partner a homeowner	$187,500

Assets value limit table		
Column 1	**Column 2**	**Column 3**
Item	**Person's situation**	**Assets value limit**
2.	Neither person nor partner a homeowner	$287,500

Note 1: For ***homeowner*** see section 11.

Note 2: The assets value limits in column 3 are indexed annually in line with CPI increases (see sections 1191 to 1194).

(3) The value of the person's assets is taken to be 50% of the sum of the value of the assets of the person and the value of the assets of the person's partner.

(4) The amounts in column 3 of the Assets Value Limit Table are to be indexed on 1 July 1994 as if this section and items 79A and 79B of Schedule 2 had commenced on 30 June 1993.

771HI Multiple entitlement exclusion

(1) A partner allowance is not payable to a person if the person is already receiving a service pension or a veteran payment.

(2) If:

(a) a person is receiving a partner allowance; and

(b) a social security pension, another social security benefit, a service pension or a veteran payment becomes payable to the person;

a partner allowance is not payable to the person.

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

(3) A partner allowance is not payable to a person if the person is receiving a pension under Part II or IV of the Veterans' Entitlements Act at a rate determined under or by reference to subsection 30(1) of that Act.

(4) A partner allowance is not payable to a person if the person is receiving the weekly amount mentioned in paragraph 234(1)(b) of the MRCA (including a reduced weekly amount because of a choice under section 236 of the MRCA) or has received a lump sum mentioned in subsection 236(5) of the MRCA.

Note: For ***MRCA*** see subsection 23(1).

771HJ Educational schemes exclusion

A partner allowance is not payable to a person for a period if the person is receiving a payment for that period under:

(b) the ABSTUDY Scheme; or

(c) a Student Financial Supplement Scheme.

771HK Maximum basic rate and remote area allowance not payable to CDEP Scheme participant

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

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

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

771HNA Newly arrived resident's waiting period

(1) Subject to this section, a person who:

(a) has entered Australia; and

(b) has not been an Australian resident and in Australia for a period of, or periods totalling, 104 weeks;

is subject to a newly arrived resident's waiting period.

(2) Subsection (1) does not apply to a person who has a qualifying residence exemption for a partner allowance.

Note: For ***qualifying residence exemption*** in relation to partner allowance, see paragraph 7(6AA)(f).

OFFICIAL: Sensitive // Legal Privilege

(3) Subsection (1) does not apply to a person if:

(a) the person is a refugee, or a former refugee, at the time the person made the claim for a partner allowance; or

(b) the following apply:

(i) before the person made the claim for a partner allowance, the person was a family member of another person at the time the other person became a refugee;

(ii) the person is a family member of that other person at the time the person made the claim for a partner allowance or, if that other person has died, the person was a family member of that other person immediately before that other person died; or

(c) the person is an Australian citizen at the time the person made the claim for a partner allowance.

(4) For the purposes of subsection (3):

(a) ***family member*** has the meaning given by subsection 7(6D); and

(b) ***former refugee*** has the meaning given by subsection 7(1); and

(c) ***refugee*** has the meaning given by subsection 7(6B).

771HNB Duration of newly arrived resident's waiting period

(1) If a person is subject to a newly arrived resident's waiting period, the period starts on the day the person first became an Australian resident.

(3) The newly arrived resident's waiting period ends when the person has been an Australian resident and in Australia for a period of, or periods totalling, 104 weeks.

771HNC Seasonal workers

(1) This section applies if, at any time during the 6 months immediately before the day on which a person lodges a claim for partner allowance, the person, or the person's partner, has been engaged in seasonal work.

OFFICIAL: Sensitive // Legal Privilege

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

(2) Partner allowance is not payable to the person:

(a) if the person is subject to a seasonal work preclusion period (whether in relation to the claim referred to in subsection (1) or any other claim under this Act) and the Secretary has not made a determination under subsection (3) in relation to the person—for the person's seasonal work preclusion period; or

(b) if the Secretary has made a determination under subsection (3) in relation to the person—for that part (if any) of the person's seasonal work preclusion period to which the person is subject as a result of the determination.

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

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

(a) the Secretary may determine that the person is not subject to the whole, or any part, of the preclusion period; and

(b) the determination has effect accordingly.

Note 1: For ***in severe financial hardship*** see subsection 19C(2) (person who is not a member of a couple) and subsection 19C(3) (person who is a member of a couple).

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

OFFICIAL: Sensitive // Legal Privilege

Division 4—Rate of partner allowance

771KA Rate of partner allowance if partner is not receiving special benefit

If section 771KE does not apply to a person, the person's rate of partner allowance is worked out using the Benefit Rate Calculator B at the end of section 1068.

771KE Rate of partner allowance if partner receiving special benefit

(1) If a person's partner is receiving a special benefit, the person's rate of partner allowance is the fortnightly rate determined by the Secretary in his or her discretion.

(2) The rate of a person's partner allowance is not to exceed the rate at which youth allowance, austudy payment or jobseeker payment would be payable to the person if:
  (a) the person were qualified for youth allowance, austudy payment or jobseeker payment; and
  (b) youth allowance, austudy payment or jobseeker payment were payable to the person.

771KN CDEP Scheme participant may accumulate partner allowance

(1) A person who is a CDEP Scheme participant in respect of the whole or a part of a quarter may, by written notice given to the Secretary, choose to accumulate the amounts of any partner allowance that become payable to the person in respect of that quarter, or any later quarter in respect of the whole or a part of which the person is a CDEP Scheme participant, and have not already been paid.

(2) If a person to whom subsection (1) applies makes a choice under that subsection, the sum of the accumulated amounts payable to the person in respect of a quarter is to be paid on, or as soon as practicable after, the first payday after:

OFFICIAL: Sensitive // Legal Privilege

(a) unless paragraph (b) applies, the last day of the quarter; or

(b) if the person ceases to be a CDEP Scheme participant before the end of the quarter—the day on which the person so ceases.

(3) In this section:

quarter means a CDEP Scheme quarter.

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

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

OFFICIAL: Sensitive // Legal Privilege

Division 9—Bereavement payments

Subdivision A—Surviving partner and deceased partner defined

771NT Surviving partner and deceased partner

If:

(a) a person is receiving partner allowance; and

(b) the person's partner dies;

then, for the purposes of this Division:

(c) the person is the surviving partner; and

(d) the person's partner is the deceased partner.

Subdivision B—Person to continue to receive partner allowance where person's partner dies

771NU Continuation of partner allowance for bereavement period

(1) If:

(a) a person is receiving partner allowance; and

(b) the person's partner dies; and

(c) immediately before the deceased partner died:

(i) if the deceased partner was receiving a social security pension, a service pension, income support supplement or a veteran payment—the surviving partner was a long-term social security recipient; or

(ii) if the deceased partner was receiving a social security benefit or a job search allowance—each partner was a long-term social security recipient;

the surviving partner remains qualified for partner allowance during the bereavement period as if:

(d) the deceased partner had not died; and

OFFICIAL: Sensitive // Legal Privilege

(e) the deceased partner had continued to receive jobseeker payment, special benefit, age pension, disability support pension, service pension or income support supplement; and

(f) the surviving partner and the deceased partner had continued to be members of a couple.

Rate of partner allowance during bereavement rate continuation period

(2) The surviving partner's partner allowance rate during the bereavement rate continuation period is the rate of the partner allowance that would have been payable to the surviving partner if:

(a) the deceased partner had not died; and

(b) if the couple had been an illness separated couple or a respite care couple—they had not been such a couple.

Rate of partner allowance during the bereavement lump sum period

(3) The surviving partner's partner allowance rate during the bereavement lump sum period (if any) is worked out as follows:

(aa) if the deceased partner was receiving a youth allowance or an austudy payment immediately before he or she died, the rate of partner allowance is the rate at which a partner allowance would have been payable to the surviving partner if:

(i) the surviving partner had been qualified for youth allowance or austudy payment (as the case may be); and

(ii) the surviving partner was not a member of a couple;

(b) if the deceased partner was receiving jobseeker payment immediately before he or she died, the rate of partner allowance is the rate at which jobseeker payment would have been payable to the surviving partner if:

(i) the surviving partner had been qualified for jobseeker payment; and

(ii) the surviving partner was not a member of a couple;

(d) if the deceased partner was receiving special benefit immediately before he or she died, the rate of partner

allowance is the rate at which special benefit would have been payable to the surviving partner if:

(i) the surviving partner had been qualified for special benefit; and

(ii) the surviving partner was not a member of a couple;

(e) if the deceased partner was receiving age pension or disability support pension immediately before he or she died, the rate of partner allowance is the rate at which jobseeker payment would have been payable to the surviving partner if:

(i) the surviving partner had been qualified for jobseeker payment; and

(ii) the surviving partner was not a member of a couple.

Note 1: For ***long-term social security recipient*** see subsection 23(1).

Note 2: For ***bereavement period***, ***bereavement rate continuation period*** and ***bereavement lump sum period*** see section 21.

Subdivision C—Bereavement payments for person receiving partner allowance following death of the person's partner

771NV Qualification for payments under this Subdivision

(1) If:

(a) a person is receiving partner allowance; and

(b) the person's partner dies; and

(c) immediately before the deceased partner died, the deceased partner was a long term social security recipient;

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

Note 1: Section 771NW provides for the payment to the surviving partner, up to the first available bereavement adjustment payday, of amounts equal to the instalments that would have been paid to the deceased partner during that period if the partner had not died.

Note 2: Section 771NX provides for a lump sum that represents the instalments that would have been paid to the surviving partner,

between the first available bereavement adjustment payday and the end of the bereavement period, if the deceased partner had not died.

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

(3) An election under subsection (2):
  (a) must be made by written notice to the Secretary; and
  (b) may be made after the surviving partner has been paid an amount or amounts under this Subdivision; and
  (c) cannot be withdrawn after the Department has taken all the action required to give effect to that election.

771NW Continued payment of deceased partner's benefit

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

771NX Lump sum payable in some circumstances

(1) If:
  (a) a surviving partner is qualified for payments under this Subdivision in relation to the death of the deceased partner; and
  (b) the first available bereavement adjustment payday occurs before the end of the bereavement period;

there is payable to the surviving partner as a lump sum an amount worked out using the following Lump Sum Calculator:

LUMP SUM CALCULATOR

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

Method statement

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

(a) the deceased partner had not died; and

(b) if immediately before the partner's death the couple were an illness separated couple or a respite care couple—they were not such a couple.

Note: For ***illness separated couple*** and ***respite care couple*** see subsections 4(7) and 4(8) respectively.

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

(a) the deceased partner had not died; and

(b) if immediately before the partner's death the couple were an illness separated couple or a respite care couple—they were not such a couple.

Note: For ***illness separated couple*** and ***respite care couple*** see subsections 4(7) and 4(8) respectively.

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

Step 4. Work out the ***surviving partner's notional rate*** using subsection (2), (2A), (3), (5) or (6) (whichever applies).

Note: The subsection that you use depends on whether the deceased partner was receiving a job search allowance, jobseeker payment, special benefit, age pension or disability support pension before he or she died.

Step 5. Take the surviving partner's notional rate away from the combined rate: the result is called the ***deceased partner's instalment component***.

Step 6. Work out the number of the deceased partner's paydays in the bereavement lump sum period.

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

Deceased partner receiving youth allowance or austudy payment

(2A) If, immediately before the deceased partner died, he or she was receiving youth allowance or austudy payment, the surviving partner's notional rate is the amount of youth allowance or austudy payment that would have been payable to the surviving partner on the surviving partner's pay day immediately before the first available bereavement adjustment pay day if:

(a) a youth allowance or an austudy payment had been payable to the surviving partner on that pay day; and

(b) the surviving partner was not a member of a couple on that pay day.

Deceased partner receiving jobseeker payment

(3) If, immediately before the deceased partner died, he or she was receiving jobseeker payment, the surviving partner's notional rate is the amount of jobseeker payment that would have been payable to the surviving partner on the surviving partner's payday immediately before the first available bereavement adjustment payday if:

(a) a jobseeker payment had been payable to the surviving partner on that payday; and
(b) the surviving partner was not a member of a couple on that payday.

Deceased partner receiving special benefit

(5) If, immediately before the deceased partner died, he or she was receiving special benefit, the surviving partner's notional rate is the amount of special benefit that would have been payable to the surviving partner on the surviving partner's payday immediately before the first available bereavement adjustment payday if:
(a) a special benefit had been payable to the surviving partner on that payday; and
(b) the surviving partner was not a member of a couple on that payday.

Deceased partner receiving other social security payment

(6) If, immediately before the deceased partner died, he or she was receiving age pension or disability support pension, the surviving partner's notional rate is the amount of jobseeker payment that would have been payable to the surviving partner on the surviving partner's payday immediately before the first available bereavement adjustment payday if:
(a) jobseeker payment had been payable to the surviving partner on that payday; and
(b) the surviving partner was not a member of a couple on that payday.

771NY Effect of death of surviving partner

If:
(a) a surviving partner is qualified for payments under this Subdivision in relation to the death of the deceased partner; and
(b) the surviving partner dies within the bereavement period; and

(c) the Secretary does not become aware of the death of the deceased partner before the surviving partner dies;

there is payable as a lump sum, to any person that the Secretary thinks appropriate, an amount worked out using the following Lump Sum Calculator:

LUMP SUM CALCULATOR

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

Method statement

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

(a) neither the surviving partner nor the deceased partner had died; and

(b) if immediately before the deceased partner's death the couple were an illness separated couple or a respite care couple—they were not such a couple.

Note: For ***illness separated couple*** and ***respite care couple*** see subsections 4(7) and 4(8) respectively.

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

(a) neither the surviving partner nor the deceased partner had died; and

(b) if immediately before the deceased partner's death the couple were an illness separated couple or a respite care couple—they were not such a couple.

Note: For ***illness separated couple*** and ***respite care couple*** see subsections 4(7) and 4(8) respectively.

Step 3.	Add the results of Step 1 and Step 2: the result is called the ***combined rate***.
Step 4.	Work out the amount that, but for section 771NU, would have been payable to the surviving partner on the surviving partner's payday immediately after the day on which the surviving partner died if he or she had not died: the result is called the ***surviving partner's individual rate***.
Step 5.	Take the surviving partner's individual rate away from the combined rate: the result is called the ***deceased partner's instalment component***.
Step 6.	Work out the number of the surviving partner's paydays in the period that commences on the day on which the surviving partner dies and ends on the day on which the bereavement period ends.
Step 7.	Multiply the deceased partner's instalment component by the number obtained in Step 6: the result is the amount of the lump sum payable under this section.

771NZ Matters affecting payments under this Subdivision

(1) If:

(a) the surviving partner is qualified for payments under this Subdivision; and

(b) after the deceased partner died, an amount to which the deceased partner would have been entitled if he or she had not died has been paid under this Act or under Part III or IIIA of the Veterans' Entitlements Act; and

(c) the Secretary is not satisfied that the surviving partner had not had the benefit of that amount;

the following provisions have effect:

(d) the amount referred to in paragraph (b) is not recoverable from the surviving partner or from the personal

representative of the deceased partner, except to the extent (if any) that the amount exceeds the amount payable to the surviving partner under this Subdivision;

(e) the amount payable to the surviving partner under this Subdivision is to be reduced by the amount referred to in paragraph (b).

(2) If:

(a) the surviving partner is qualified for payments under this Subdivision; and

(b) an amount to which the deceased partner would have been entitled if the deceased partner had not died has been paid under this Act or under Part III or IIIA of the Veterans' Entitlements Act, within the bereavement period, into an account with a bank; and

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

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

Subdivision D—Bereavement payment in respect of former CDEP Scheme participant

771NZAA Calculation of bereavement payment in respect of former CDEP Scheme participant

If a benefit becomes payable under this Division in respect of a person who was a CDEP Scheme participant in respect of the day on which the benefit becomes payable, the amount of the benefit is to be the amount that would have been the amount of the benefit if section 771HK had not been enacted.

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

OFFICIAL: Sensitive // Legal Privilege

Part 2.16—Special needs pensions

Division 1A—Time limit on grant of special needs wife pension

771P Special needs wife pension not to be granted after 30 June 1995

(1) In spite of any other provision of this Part or any provision of the Administration Act, other than section 85, a woman is not to be granted a special needs wife pension unless:

(a) her claim for the pension is lodged on or before 30 June 1995; and

(b) she qualifies for the pension on or before 30 June 1995.

(2) For the purposes of paragraph (1)(a), if section 15 of the Administration Act applies, the woman is taken to have lodged her claim on the day on which she makes her initial claim.

(3) In subsection (2):

initial claim has the same meaning as in section 15 of the Administration Act.

OFFICIAL: Sensitive // Legal Privilege

Division 1B—Time limit on grant of other special needs pensions

771PA Special needs pensions not to be granted after 20 September 2000

In spite of any other provision of this Part, a person is not to be granted a special needs age pension or special needs disability pension unless:

(a) the person's claim for the pension is lodged, or is taken to have been lodged, on or before 20 September 2000; and

(b) the person qualifies for the pension on or before 20 September 2000.

OFFICIAL: Sensitive // Legal Privilege

Division 1—Qualifications for and payability of special needs pensions

Subdivision A—Qualification

772 Qualification for special needs age pension

A person is qualified for a special needs age pension if:

(a) the person has not resided in Australia at any time after 7 May 1973; and

(b) the person has turned:

(i) if the person is a woman—60; or

(ii) if the person is a man—65; and

(c) the person ceased to reside in Australia after the person had turned:

(i) if the person is a woman—55; or

(ii) if the person is a man—60; and

(d) the person had resided in Australia for a period that was, or for periods that in the aggregate were, not less than 30 years; and

(e) the person would:

(i) if the person had lodged a claim immediately before the person ceased to reside in Australia—have been qualified under section 25 of the 1947 Act to receive an age pension; or

(ii) if the person had not ceased to reside in Australia, were physically present in Australia and lodged a claim for an age pension—be qualified under section 25 of the 1947 Act to receive an age pension; and

(f) the person is, in the opinion of the Secretary, in special need of financial assistance.

773 Qualification for special needs disability support pension

A person is qualified for a special needs disability support pension if:

OFFICIAL: Sensitive // Legal Privilege

(a) the person has not resided in Australia at any time after 7 May 1973; and
(b) the person is severely disabled; and
(c) the person has turned 16; and
(d) at the time when the person first satisfied paragraph (b), the person was in Australia or temporarily absent from Australia; and
(e) the person is, in the opinion of the Secretary, in special need of financial assistance.

Note: A person who is receiving a special needs disability support pension may be automatically transferred to the special needs age pension if the person becomes qualified for the special needs age pension (see subsection 789(3)).

774 Qualification for special needs wife pension

A person is qualified for a special needs wife pension if the person:
(a) is a woman who is a member of a couple; and
(b) has a partner who is receiving a special needs age pension or a special needs disability support pension.

Note 1: For ***member of a couple*** see subsections 4(2), (3) and (6).

Note 2: A person who is receiving a special needs wife pension may be automatically transferred to the special needs age pension if the person becomes qualified for the special needs age pension (see subsection 789(3)).

Subdivision B—Payability

779 Special needs pension not payable if pension rate nil

A special needs pension is not payable to a person if the person's special needs pension rate would be nil.

783 Second special needs pension generally not payable after cancellation of initial pension

If:

(a) a special needs pension is payable to a person; and
(b) the special needs pension is cancelled;

another special needs pension is not payable to the person unless the person is qualified to receive another special needs pension at the time the initial pension is cancelled.

787 Multiple entitlement exclusion

(1) A special needs pension is not payable to a person if the person is already receiving a service pension or a veteran payment.

(2) If:
(a) a person is receiving a special needs pension; and
(b) another social security pension, a social security benefit, a service pension or a veteran payment becomes payable to the person;

the special needs pension is not payable to the person.

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

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

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

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

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

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

(5) A special needs pension is not payable to a person if:

OFFICIAL: Sensitive // Legal Privilege

(a) the person is an armed services widow or an armed services widower; and

(b) the person is receiving the weekly amount mentioned in paragraph 234(1)(b) of the MRCA (including a reduced weekly amount because of a choice under section 236 of the MRCA) or has received a lump sum mentioned in subsection 236(5) of the MRCA.

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

Note 2: For ***MRCA*** see subsection 23(1).

OFFICIAL: Sensitive // Legal Privilege

Division 5—Rate of special needs pension

796 How to work out a person's special needs pension rate

(1) Subject to subsection (2), the rate of a person's special needs pension is:

(a) if the pension is a special needs age pension—the rate at which an age pension would be payable to the person if the person were qualified for an age pension; or

(b) if the pension is a special needs disability support pension—the rate at which a disability support pension would be payable to the person if the person were qualified for a disability support pension; or

(c) if the pension is a special needs wife pension—the rate at which a wife pension would be payable to the person if the person were qualified for a wife pension.

(2) If:

(a) the person was absent from Australia on 1 July 1986; and

(b) the person commences after 1 July 1986 to receive a special needs pension; and

(c) the person is absent from Australia;

the rate of the person's special needs pension is, subject to subsections (3) and (4), the person's special needs proportional rate worked out using the Special Needs Proportional Rate Calculator at the end of this section.

(3) Subsection (2) does not apply to a person's special needs disability support pension if the person became qualified for the pension because the person became permanently incapacitated for work or permanently blind while the person was an Australian resident.

(4) Subsection (2) does not apply to a person's special needs sole parent pension if:

(a) the person became qualified for the pension because of the death of the person's former partner; and

OFFICIAL: Sensitive // Legal Privilege

(b) at the time when the former partner died the former partner was an Australian resident; and

(c) the person would, apart from subsections 249(2) and 362(2) of this Act, and section 46 of the 1947 Act as in force at any time before 1 March 1989, have become so qualified for that pension.

Special Needs Proportional Rate Calculator

Module A—Overall rate calculation process

Overall rate calculation process

796-A1 This is how to work out a person's special needs proportional rate:

Method statement

Step 1. Work out the period of the person's Australian working life residence using Module B: the result is called the ***residence period***.

Step 2. Use the person's residence period to work out the person's ***residence factor*** using Module C below.

Step 3. Work out the rate that would be the person's pension or allowance rate if this Rate Calculator did not apply to the person: the result is called the person's ***notional domestic rate***.

Step 4. Multiply the person's notional domestic rate by the person's residence factor: the result is the person's special needs proportional rate.

Module B—Australian working life residence

Working life

796-B1 For the purposes of this Module, a person's **working life** is the period commencing when the person turns 16 and ending:

(a) if the person is a woman—when she turns 60; or

(b) if the person is a man—when he turns 65.

Australian working life residence (general)

796-B2 Subject to points 796-B3 to 796-B9, a person's ***period of Australian working life residence*** as at a particular time is the number of months in the period, or the aggregate of the periods, during the person's working life during which the person has, up to that time, been an Australian resident.

Calculation of number of months

796-B3 If a person's period of Australian working life residence would, apart from this subsection, be a number of whole months, the period is to be increased by one month.

796-B4 If a person's period of Australian working life residence would, apart from this subsection, be a number of whole months and a day or days, the period is to be increased so that it is equal to the number of months plus one month.

Australian working life residence (special needs age or disability support pensioner couples)

796-B5 If:

(a) a person is receiving a special needs age pension or a special needs disability support pension; and

(b) the person is a member of a couple; and

(c) the person's partner is receiving an age or disability support pension or a special needs age or disability support pension; and

(d) the partner's period of Australian working life residence is longer than the period that would be the person's period of Australian working life residence under point 796-B2;

the person's period of Australian working life residence is to be equal to the partner's period of Australian working life residence.

Australian working life residence (member of former special needs age or disability support pensioner couple)

796-B6 If:

(a) a person is receiving a special needs age pension or a special needs disability support pension; and

(b) the person is a member of a couple; and

(c) the person ceases to be a member of a couple; and

(d) immediately before the person ceases to be a member of a couple:

(i) the person was receiving an age or disability support pension or a special needs age or disability support pension; and

(ii) the partner was receiving an age or disability support pension or a special needs age or disability support pension; and

(e) the partner's period of Australian working life residence (immediately before the person ceases to be a member of a couple) is longer than the period that would be the person's period of Australian working life residence under point 796-B2;

the person's period of Australian working life residence is to be equal to the partner's period of Australian working life residence (immediately before the person ceases to be a member of a couple).

Australian working life residence (special needs wife pensioner)

796-B7 If a person is receiving a special needs wife pension, the person's period of Australian working life residence is equal to the period of Australian working life residence of the person's partner.

Australian working life residence—second special needs pension

796-B9 If:

(a) a special needs pension is payable to a person (in this point called the ***initial pension***); and

(b) the special needs pension is cancelled or ceases to be payable automatically; and

(c) another special needs pension is payable to the person (in this point called the ***second pension***); and

(d) the person's period of Australian working life residence in respect of the second pension is shorter than the period that was the person's period of Australian working life residence for the purposes of calculating the person's initial special needs pension;

the person's period of Australian working life residence for the second pension is to be equal to the period of Australian working life residence used in calculating the person's initial pension.

Module C—Residence factor

Residence factor (period of Australian working life residence 25 years or more)

796-C1 If a person's period of Australian working life residence is 300 months (25 years) or more, the person's residence factor is 1.

Note: If a person's residence factor is 1, the person's overseas pension will be payable overseas at the full domestic rate (less any rent assistance and any and remote area allowance).

Residence factor (period of Australian working life residence under 25 years)

796-C2 If a person's period of Australian working life residence is less than 300 months (25 years), the person's residence factor is:

$$\frac{\text{person's Australian working life residence}}{300}$$

OFFICIAL: Sensitive // Legal Privilege

Division 10—Bereavement payments

Subdivision A—Death of partner

822 Qualification for payments under this Subdivision

(1) If:

(a) a person is receiving a special needs age, disability support or wife pension; and

(b) the person is a member of a couple; and

(c) the person's partner dies; and

(d) immediately before the partner died, the partner:

(i) was receiving a social security pension; or

(ii) was receiving a service pension, income support supplement or a veteran payment; or

(iii) was a long-term social security recipient; and

(e) on the person's payday immediately before the first available bereavement adjustment payday, the amount that would be payable to the person if the person were not qualified for payments under this Subdivision is less than the sum of:

(i) the amount that would otherwise be payable to the person under section 825 (person's continued rate) on that payday; and

(ii) the amount that would otherwise be payable to the person under section 823 (continued payment of partner's pension or benefit) on the partner's payday immediately before the first available bereavement adjustment payday;

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

Note 1: Section 823 provides for the payment to the person, up to the first available bereavement adjustment payday, of amounts equal to the instalments that would have been paid to the person's partner during that period if the partner had not died.

Note 2: Section 824 provides for a lump sum that represents the instalments that would have been paid to the person's partner, between the first

available bereavement adjustment payday and the end of the bereavement period, if the partner had not died.

(1A) If:

(a) a person is receiving a special needs pension; and

(b) immediately before starting to receive the special needs pension the person was receiving partner bereavement payments; and

(c) the bereavement rate continuation period in relation to the death of the person's partner has not ended;

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

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

(3) An election under subsection (2):

(a) must be made by written notice to the Secretary; and

(b) may be made after the person has been paid an amount or amounts under this Subdivision; and

(c) cannot be withdrawn after the Department has taken all the action required to give effect to that election.

(4) If a person is qualified for payments under this Subdivision in relation to the partner's death, the rate at which special needs pension is payable to the person during the bereavement period is, unless the person has made an election under subsection (2), governed by section 825.

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

(a) the person is receiving a social security benefit; and

(b) in respect of the previous 12 months, the person:

(i) was receiving a social security pension; or

(ii) was receiving a social security benefit; or

(iia) was receiving a youth training allowance; or

(iii) was receiving a service pension, income support supplement or a veteran payment.

OFFICIAL: Sensitive // Legal Privilege

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

(a) the person was receiving one or a combination of the payments referred to in that paragraph for a continuous period of 12 months; or

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

823 Continued payment of deceased partner's previous entitlement

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

(a) where the partner was receiving a social security pension or social security benefit—the amount that would have been payable to the partner on the payday if the partner had not died; or

(b) where the partner was receiving a service pension, income support supplement or a veteran payment—the amount that would have been payable to the partner under Part III, IIIA or IIIAA of the Veterans' Entitlements Act on the service payday that:

(i) where the first Thursday after the partner's death was a service payday—precedes the partner's payday; or

(ii) in any other case—follows the partner's payday;

if the partner had not died.

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

824 Lump sum payable in some circumstances

If:

(a) a person is qualified for payments under this Subdivision in relation to the death of the person's partner; and

(b) the first available bereavement adjustment payday occurs before the end of the bereavement period;

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

LUMP SUM CALCULATOR

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

Method statement

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

(a) the person's partner had not died; and

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

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

(a) the partner had not died; and

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

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

OFFICIAL: Sensitive // Legal Privilege

Step 4.	Work out the amount that, but for subsection 825, would have been payable to the person on the person's payday immediately before the first available bereavement adjustment payday: the result is called the ***person's individual rate***.
Step 5.	Take the person's individual rate away from the combined rate: the result is called the ***partner's instalment component***.
Step 6.	Work out the number of paydays of the partner in the bereavement lump sum period.
Step 7.	Multiply the partner's instalment component by the number obtained in Step 6: the result is the amount of the lump sum payable to the person under this section.

825 Adjustment of rate of person's special needs pension

If:

(a) a person is qualified for payments under this Subdivision; and

(b) the person does not elect under subsection 822(2) not to receive payments under this Subdivision;

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

(c) during the bereavement rate continuation period, the rate of special needs pension payable to the person is the rate at which the pension would have been payable to the person if:

(i) the person's partner had not died; and

(ii) where immediately before the partner's death the couple were an illness separated couple or a respite care couple—they were not such a couple;

(d) during the bereavement lump sum period (if any), the rate at which special needs pension is payable to the person is the

OFFICIAL: Sensitive // Legal Privilege

rate at which the special needs pension would be payable to the person apart from this Subdivision.

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

If:

(a) a person is qualified for payments under this Subdivision in relation to the death of the person's partner; and

(b) the person dies within the bereavement period; and

(c) the Secretary does not become aware of the death of the person's partner before the person dies;

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

LUMP SUM CALCULATOR

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

Method statement

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

(a) neither the person nor the person's partner had died; and

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

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

(a) neither the person nor the partner had died; and

	(b) where immediately before the partner's death the couple were an illness separated couple or a respite care couple—they were not such a couple.
Step 3.	Add the results of Step 1 and Step 2: the result is called the ***combined rate***.
Step 4.	Work out the amount that, but for section 825, would have been payable to the person on the person's payday immediately after the day on which the person died if the person had not died: the result is called the ***person's individual rate***.
Step 5.	Take the person's individual rate away from the combined rate: the result is called the ***partner's instalment component***.
Step 6.	Work out the number of paydays of the partner in the period that starts on the day on which the person dies and ends on the day on which the bereavement period ends.
Step 7.	Multiply the partner's instalment component by the number obtained in Step 6: the result is the amount of the lump sum payable under this section.

827 Matters affecting payment of benefits under this Subdivision

(1) If:

(a) a person is qualified for payments under this Subdivision and in relation to the death of the person's partner; and

(b) after the person's partner died, an amount to which the partner would have been entitled if the partner had not died has been paid under this Act or under Part III or IIIA of the Veterans' Entitlements Act; and

(c) the Secretary is not satisfied that the person has not had the benefit of that amount;

the following provisions have effect:

OFFICIAL: Sensitive // Legal Privilege

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

(e) the amount payable to the person under this Subdivision is to be reduced by the amount referred to in paragraph (b).

(2) If:

(a) a person is qualified for payments under this Subdivision in relation to the death of the person's partner; and

(b) an amount to which the person's partner would have been entitled if the person's partner had not died has been paid under this Act or under Part III or IIIA of the Veterans' Entitlements Act, within the bereavement period, into an account with a bank; and

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

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

Subdivision C—Death of recipient

830 Death of recipient

(1) If:

(a) a person is receiving a special needs pension; and

(b) either:

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

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

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

(C) is not receiving a service pension, income support supplement or a veteran payment; and

OFFICIAL: Sensitive // Legal Privilege

(c) the person dies;

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

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

Note: For the death of a person qualified for bereavement payments under Subdivision A, see section 826.

OFFICIAL: Sensitive // Legal Privilege

Part 2.17—Economic security strategy payment

900 Qualification for economic security strategy payment

Qualified if this section applies

(1) A person is qualified for an economic security strategy payment if subsection (2), (3) or (4) applies to the person.

Receipt of certain payments

(2) This subsection applies to a person if:
  (a) the person was receiving one of the following payments in respect of 14 October 2008:
    (i) an age pension;
    (ii) a disability support pension;
    (iii) a wife pension;
    (iv) a carer payment;
    (v) a bereavement allowance;
    (vi) a widow B pension;
    (vii) a widow allowance;
    (viii) partner allowance;
    (ix) carer allowance; and
  (b) except in the case of carer allowance, the person was receiving that payment because of a claim the person made on or before 14 October 2008.

Note: For ***receive*** see subsections 23(2) and (4).

Pension age and receipt of other payments

(3) This subsection applies to a person if:
  (a) the person reached pension age on or before 14 October 2008; and
  (b) the person was receiving one of the following payments in respect of 14 October 2008:

(i) a parenting payment;
(ii) austudy payment;
(iii) special benefit;
(iv) a payment under the ABSTUDY Scheme that includes an amount identified as living allowance; and

(c) the person was receiving that payment because of a claim the person made on or before 14 October 2008.

Note: For ***receive*** see subsections 23(2) and (4).

Qualified for seniors health card

(4) This subsection applies to a person if:
(a) on or before 14 October 2008, the person made a claim for a seniors health card under Division 1 of Part 3 of the Administration Act and had not withdrawn that claim on or before 14 October 2008; and
(b) on 14 October 2008, the person was qualified for the card.

One payment under this section only

(5) A person cannot receive more than one payment under this section, regardless of how many times the person qualifies under this section.

(6) Despite anything else in this section, a person who is eligible for a payment under section 118ZZQ of the Veterans' Entitlements Act is not qualified for a payment under this section unless the person is so qualified because he or she was receiving carer allowance in respect of 14 October 2008.

901 Amount of economic security strategy payment—general

(1) The amount of a person's economic security strategy payment under this Part is the amount, specified in column 3 of the following table, that corresponds to the family situation, specified in column 2 of the table, that applied to the person on 14 October 2008:

Amount of economic security strategy payment		
Item	**Person's family situation on 14 October 2008**	**Amount**
1	Not member of couple	$1,400.00
2	Partnered	$1,050.00
3	Member of illness separated couple	$1,400.00
4	Member of respite care couple	$1,400.00
5	Partnered (partner in gaol)	$1,400.00

Note: For ***member of couple***, ***partnered***, ***illness separated couple***, ***respite care couple*** and ***partnered (partner in gaol)*** see section 4.

(2) However, this section does not apply to a person if he or she is qualified under section 900 for an economic security strategy payment because he or she was receiving carer allowance in respect of 14 October 2008.

902 Amount of economic security strategy payment—person receiving carer allowance

(1) If a person:

(a) is qualified under section 900 for an economic security strategy payment because he or she was receiving carer allowance in respect of 14 October 2008; and

(b) would not be so qualified if he or she had not been receiving carer allowance in respect of 14 October 2008;

the amount of the person's economic security strategy payment under this Part is the amount worked out under subsection (3) for the person's carer allowance.

(2) If a person:

(a) is qualified under section 900 for an economic security strategy payment because he or she was receiving carer allowance in respect of 14 October 2008; and

(b) would be so qualified even if he or she had not been receiving carer allowance in respect of 14 October 2008;

the amount of the person's economic security strategy payment under this Part is the sum of the amount worked out under

OFFICIAL: Sensitive // Legal Privilege

subsection (3) for the person's carer allowance and the amount that would have been worked out under section 901 for the person if subsection 901(2) had not applied.

(3) Subject to subsection (4), the amount for a person's carer allowance is worked out by adding together the amount applicable under this section for each person (***care receiver***) whose care qualified the person for carer allowance in respect of 14 October 2008.

(4) If subsection 953(2) applied in relation to the carer allowance in respect of 14 October 2008, the 2 disabled children whose care qualified the person for carer allowance in respect of 14 October 2008 are to be treated as if they were a single care receiver in relation to the person qualified for the economic security strategy payment.

(5) Subject to subsection (6), the amount applicable for a care receiver is $1,000.

(6) If the rate at which carer allowance in respect of 14 October 2008 was paid took account of a determination under subsection 981(1) of a particular share (being a percentage or proportion) in relation to a care receiver, the amount applicable for the care receiver is that share of $1,000.

Part 2.18—Training and learning bonus

910 Qualification for training and learning bonus

Qualified if this section applies

(1) A person is qualified for a training and learning bonus if subsection (2) or (4) applies to the person.

Receipt of certain payments

(2) This subsection applies to a person if the person was receiving one or more of the following payments in respect of 3 February 2009:
  (a) youth allowance;
  (b) austudy payment;
  (c) special benefit;
  (d) sickness allowance;
  (e) a payment under the ABSTUDY Scheme that included an amount identified as living allowance;
  (f) an education allowance under section 3.2, 3.3, 3.4, 3.5, 3.6 or 3.6A of the Veterans' Children Education Scheme;
  (g) an education allowance under section 3.2, 3.3, 3.4, 3.5 or 3.6 of the Military Rehabilitation and Compensation Act Education and Training Scheme.

(3) However:
  (a) paragraph (2)(a) does not apply to the person unless the person was receiving youth allowance on the basis that, on 3 February 2009:
    (i) the person was undertaking full-time study; or
    (ii) the person was qualified for a youth allowance under section 540AA; and
  (b) paragraph (2)(c) does not apply if the person had reached pension age on or before 14 October 2008.

OFFICIAL: Sensitive // Legal Privilege

Person entitled to family tax benefit Part A

(4) This subsection applies to a person if:

(a) on 3 February 2009 the person was entitled to family tax benefit; and

(b) the rate of family tax benefit payable in relation to that day consisted of or included a Part A rate greater than nil worked out taking into account at least one FTB child who was aged 21 or more and less than 25 on that day; and

(c) the person would have been entitled to a back to school bonus under section 95 of the Family Assistance Act if any such child were aged 4 or more and less than 19 on that day.

One payment under this section only

(5) A person cannot receive more than one payment under this section, regardless of how many times the person qualifies under this section.

No qualification under subsection (2) in certain circumstances

(6) Despite anything else in this section, a person who is:

(a) an FTB child in respect of whom another person is entitled to a back to school bonus under section 95 of the Family Assistance Act; or

(b) entitled to a back to school bonus under section 98 of the Family Assistance Act;

is not qualified for a training and learning bonus under subsection (2) of this section.

911 Amount of training and learning bonus

(1) The amount of a person's training and learning bonus is:

(a) if the person qualifies for a training and learning bonus under subsection 910(2) but not under subsection 910(4)—$950; or

(b) if the person qualifies for a training and learning bonus under subsection 910(4) but not under subsection 910(2)—$950 for each FTB child because of whom the person so qualifies; or

OFFICIAL: Sensitive // Legal Privilege

(c) if the person qualifies for a training and learning bonus under subsection 910(2) and also qualifies under subsection 910(4)—the sum of:

(i) $950; and

(ii) $950 for each FTB child because of whom the person so qualifies.

(2) Despite paragraph (1)(b) and subparagraph (1)(c)(ii) of this section, subsections 97(3), (4) and (5) of the Family Assistance Act apply in relation to the amount of a person's training and learning bonus in relation to an FTB child in the same way as they would apply in relation to the amount of a back to school bonus under that Act.

OFFICIAL: Sensitive // Legal Privilege

Part 2.18A—Clean energy payments

Division 1—Clean energy advances

Subdivision A—Qualifying for clean energy advances

914 Recipients of certain social security payments

Qualification for days 14 May 2012 to 30 June 2012

(1) The Secretary may, on a day during the period starting on 14 May 2012 and ending on 30 June 2012, determine that a person is qualified for a clean energy advance if, on that day:
  (a) the person receives one of the social security payments set out in subsection (4); and
  (b) the person's rate of payment is greater than nil; and
  (ba) the person is residing in Australia; and
  (c) the person is in Australia.

Qualification for days 1 July 2012 to 19 March 2013

(2) The Secretary may determine that a person is qualified for a clean energy advance if, on a day during the period starting on 1 July 2012 and ending on 19 March 2013:
  (a) the person receives one of the social security payments set out in subsection (4); and
  (b) the person's rate of payment is greater than nil; and
  (ba) the person is residing in Australia; and
  (c) the person is in Australia.

(3) A determination under subsection (2) must specify the first day during the period set out in that subsection for which the person:
  (a) satisfies paragraphs (2)(a), (b) and (ba); and
  (b) is in Australia, disregarding any temporary absence from Australia for a continuous period not exceeding 6 weeks.

Clean energy qualifying payments

(4) The social security payments (the ***clean energy qualifying payments***) are as follows:

(a) age pension;
(b) benefit PP (partnered);
(c) bereavement allowance;
(d) carer payment;
(e) disability support pension (other than for a person who is under 21 with no dependent children);
(f) newstart allowance;
(g) pension PP (single);
(h) partner allowance;
(i) seniors supplement;
(j) sickness allowance;
(k) special benefit, whose rate is worked out as if the person were qualified for newstart allowance;
(l) widow allowance;
(m) widow B pension;
(n) wife pension.

914A Recipients of austudy, youth allowance, some disability support pensions and some special benefits

Qualification for days 14 May 2012 to 30 June 2012

(1) The Secretary may, on a day during the period starting on 14 May 2012 and ending on 30 June 2012, determine that a person is qualified for a clean energy advance if, on that day:

(a) the person receives one of the social security payments set out in subsection (5); and
(b) the person's rate of payment is greater than nil; and
(ba) the person is residing in Australia; and
(c) the person is in Australia.

OFFICIAL: Sensitive // Legal Privilege

Qualification for days 1 July 2012 to 30 June 2013

(2) The Secretary may determine that a person is qualified for a clean energy advance if, on a day during the period starting on 1 July 2012 and ending on 30 June 2013:

(a) the person receives one of the social security payments set out in subsection (5); and

(b) the person's rate of payment is greater than nil; and

(ba) the person is residing in Australia; and

(c) the person is in Australia.

Qualification for days 1 July 2013 to 31 December 2013

(3) The Secretary may determine that a person is qualified for a clean energy advance if, on a day during the period starting on 1 July 2013 and ending on 31 December 2013:

(a) the person receives one of the social security payments set out in subsection (5); and

(b) the person's rate of payment is greater than nil; and

(ba) the person is residing in Australia; and

(c) the person is in Australia.

First day of qualification under subsection (2) or (3)

(4) A determination under subsection (2) or (3) must specify the first day during the period set out in that subsection for which the person:

(a) satisfies paragraphs (a), (b) and (ba) of that subsection; and

(b) is in Australia, disregarding any temporary absence from Australia for a continuous period not exceeding 6 weeks.

Clean energy qualifying payments

(5) The social security payments (the ***clean energy qualifying payments***) are as follows:

(a) austudy payment;

OFFICIAL: Sensitive // Legal Privilege

(b) disability support pension for a person who is under 21 with no dependent children;
(c) special benefit, whose rate is worked out as if the person were qualified for austudy payment or youth allowance;
(d) youth allowance.

914B Disregard nil rate in certain circumstances

(1) For the purposes of section 914 or 914A, a person is taken to receive a social security payment at a rate greater than nil even if the person's rate would be nil merely because:
(a) an election by the person under subsection 1061VA(1) is in force; or
(b) the person has been paid an advance pharmaceutical allowance under the social security law.

(2) For the purposes of section 914 or 914A, if a social security payment is payable to a person because of subsection 23(1D), the person is taken to receive that payment at a rate greater than nil.

914C Limits on qualifying for multiple advances

(1) A person cannot qualify for more than one clean energy advance under section 914.

(2) A person can qualify for at most 2 clean energy advances under section 914A:
(a) one under either subsection 914A(1) or (2); and
(b) one under subsection 914A(3).

(3) A person who has qualified for a clean energy advance under subsection 914(1) or 914A(1) cannot qualify for a clean energy advance under the other of those subsections.

Note 1: Further limits may be determined under section 918.

Note 2: Top-up payments of clean energy advance may be payable under Subdivision C if the person's circumstances change during the person's clean energy advance period.

Subdivision B—Amount of a clean energy advance

914D Amount of a clean energy advance

(1) On the day (the ***decision day***) that the Secretary determines that a person (the ***recipient***) is qualified for a clean energy advance, the Secretary must work out the amount of the advance.

Note: The advance will be paid in a lump sum as soon as is reasonably practicable (see section 47D of the Administration Act).

(2) The amount of the advance is the result of the following formula rounded up to the nearest multiple of $10:

Clean energy advance daily rate × Number of advance days

914E *Clean energy advance daily rate*

(1) The recipient's ***clean energy advance daily rate*** is worked out as follows:

Working out the recipient's *clean energy advance daily rate*

	If the recipient's clean energy qualifying payment is:	Use this provision:
1	(a) age pension; or (b) bereavement allowance; or (c) disability support pension to which neither subsection 1066A(1) nor 1066B(1) applies; or (d) wife pension; or (e) carer payment; or (f) seniors supplement; or (g) widow B pension; or (h) another payment, and the recipient reached pension age on or before the decision day	subsection (2)

Section 914E

Working out the recipient's *clean energy advance daily rate*		
	If the recipient's clean energy qualifying payment is:	**Use this provision:**
2	one of the following payments, and the recipient is under pension age on the decision day: (a) newstart allowance, if the recipient's maximum basic rate is worked out under point 1068-B5; (b) pension PP (single); (c) youth allowance, if the recipient's maximum basic rate is worked out under point 1067G-B3A	subsection (3)
3	one of the following payments, and the recipient is under pension age on the decision day: (a) newstart allowance, if the recipient's maximum basic rate is not worked out under point 1068-B5; (b) sickness allowance; (c) partner allowance; (d) widow allowance; (e) benefit PP (partnered); (f) special benefit, whose rate is worked out as if the recipient were qualified for newstart allowance	subsection (4)
4	disability support pension to which subsection 1066A(1) or 1066B(1) applies	subsection (5)
5	one of the following payments, and the recipient is under pension age on the decision day: (a) austudy payment; (b) youth allowance, if: (i) the recipient's maximum basic rate is not worked out under point 1067G-B3A; and (ii) the recipient's rate of youth allowance is not worked out by adding a youth disability supplement; (c) special benefit, whose rate is worked out as if the recipient were qualified for austudy payment or youth allowance	subsection (6)
6	youth allowance, whose rate is worked out by adding a youth disability supplement	subsection (7)

Note: For ***recipient*** and ***decision day***, see subsection 914D(1).

Rate for payments set out in item 1 of the table

(2) The recipient's ***clean energy advance daily rate*** is worked out by:

(a) working out 1.7% of the total of:

(i) double the maximum basic rate under Pension Rate Calculator A, worked out for 1 July 2012 for a person who is partnered; and

(ii) the combined couple rate of pension supplement for 1 July 2012; and

(b) rounding the result of paragraph (a) up or down to the nearest multiple of $5.20 (rounding up if that result is not a multiple of $5.20 but is a multiple of $2.60); and

(c) adding $5.20 to the result of paragraph (b); and

(d) applying the applicable percentage in the following table to the result of paragraph (c); and

(e) rounding the result of paragraph (d) up or down to the nearest multiple of $2.60 (rounding up if that rate is not a multiple of $2.60 but is a multiple of $1.30); and

(f) dividing the result of paragraph (e) by 364.

Percentage to be applied

Item	Recipient's family situation on the advance qualification day	Use this %
1	Not a member of a couple	66.33%
2	Partnered	50%
3	Member of an illness separated couple	66.33%
4	Member of a respite care couple	66.33%
5	Partnered (partner in gaol)	66.33%

Note: This subsection covers payments covered by Pension Rate Calculator A, B or C, seniors supplement, recipients of other payments who have reached pension age and recipients of pensions covered by clause 146 of Schedule 1A.

Rate for payments set out in item 2 of the table

(3) The recipient's ***clean energy advance daily rate*** is worked out by:

(a) working out 1.7% of the total of the maximum basic rate, and the pension supplement basic amount, for the clean energy qualifying payment, worked out:

(i) for 1 July 2012; and

(ii) for a person in circumstances the same as the recipient's on the advance qualification day; and

(b) rounding the result of paragraph (a) up or down to the nearest multiple of $2.60 (rounding up if that result is not a multiple of $2.60 but is a multiple of $1.30); and

(c) adding $5.20 to the result of paragraph (b); and

(d) dividing the result of paragraph (c) by 364.

Rate for payments set out in item 3 of the table

(4) The recipient's ***clean energy advance daily rate*** is worked out by:

(a) working out 1.7% of the maximum basic rate for the clean energy qualifying payment, worked out:

(i) for 1 July 2012; and

(ii) for a person in circumstances the same as the recipient's on the advance qualification day; and

(b) rounding the result of paragraph (a) up or down to the nearest multiple of 10 cents (rounding up if that result is not a multiple of 10 cents but is a multiple of 5 cents); and

(c) adding 20 cents to the result of paragraph (b); and

(d) dividing the result of paragraph (c) by 14.

Rate for payments set out in item 4 of the table

(5) The recipient's ***clean energy advance daily rate*** is worked out by:

(a) working out 1.7% of the total of the maximum basic rate, and the youth disability supplement, for the clean energy qualifying payment, worked out:

(i) for the first day of the recipient's clean energy advance period; and

(ii) for a person in circumstances the same as the recipient's on the advance qualification day; and

(b) rounding the result of paragraph (a) up or down to the nearest multiple of $2.60 (rounding up if that result is not a multiple of $2.60 but is a multiple of $1.30); and

(c) adding $5.20 to the result of paragraph (b); and

(d) dividing the result of paragraph (c) by 364.

Rate for payments set out in item 5 of the table

(6) The recipient's ***clean energy advance daily rate*** is worked out by:

(a) working out 1.7% of the maximum basic rate for the clean energy qualifying payment, worked out:

(i) for the first day of the recipient's clean energy advance period; and

(ii) for a person in circumstances the same as the recipient's on the advance qualification day; and

(b) rounding the result of paragraph (a) up or down to the nearest multiple of 10 cents (rounding up if that result is not a multiple of 10 cents but is a multiple of 5 cents); and

(c) adding 20 cents to the result of paragraph (b); and

(d) dividing the result of paragraph (c) by 14.

Rate for payments set out in item 6 of the table

(7) The recipient's ***clean energy advance daily rate*** is worked out by:

(a) working out 1.7% of the total of the maximum basic rate, and the youth disability supplement, for the clean energy qualifying payment, worked out:

(i) for the first day of the recipient's clean energy advance period; and

(ii) for a person in circumstances the same as the recipient's on the advance qualification day; and

(b) rounding the result of paragraph (a) up or down to the nearest multiple of 10 cents (rounding up if that result is not a multiple of 10 cents but is a multiple of 5 cents); and

(c) adding 20 cents to the result of paragraph (b); and
(d) dividing the result of paragraph (c) by 14.

914F *Number of advance days*

The recipient's ***number of advance days*** is the number of days in the recipient's clean energy advance period that are on or after:
(a) if the recipient qualifies for the clean energy advance before 1 July 2012—1 July 2012; or
(b) otherwise—the advance qualification day.

Subdivision C—Top-up payments of clean energy advance

914G Top-up payments of clean energy advance

(1) The Minister may by legislative instrument determine that persons:
(a) who have been paid the amount (the ***original payment***) of a specified clean energy advance worked out under Subdivision B in relation to a clean energy qualifying payment (the ***original qualifying payment***); and
(b) whose circumstances change, within a period specified in the instrument, in a way that is specified in the instrument and is covered by subsection (2) or (3);

qualify for a further payment, of the amount worked out in accordance with the instrument, of clean energy advance.

(2) This subsection covers a person's circumstances changing in a way such that:
(a) on the day (the ***change day***) the change happens, the person was still receiving the original qualifying payment; and
(b) had the amount of the original payment been worked out by reference to the person's circumstances on the change day (rather than those on the advance qualification day), a greater clean energy advance daily rate would have been used for working out that amount than the rate actually used for working out that amount.

(3) This subsection covers a change in a person's circumstances that, apart from a multiple qualification exclusion, would (if any necessary administrative decisions were made) qualify the person for a clean energy bonus, under an Act or a scheme, relating to a payment other than the original qualifying payment.

(4) For the purposes of subsection (3), a ***multiple qualification exclusion*** is an instrument that:

(a) provides a person is not qualified for a clean energy bonus under an Act or a scheme because of the person's qualification for or receipt of the original payment or the original qualifying payment; and

(b) is made under:

(i) section 918; or

(ii) section 424L of the MRCA; or

(iii) section 65A of the Veterans' Entitlements Act;

or is an instrument establishing qualifications for a clean energy bonus under a scheme.

(5) An instrument under subsection (1) may provide for:

(a) different periods for changes in circumstances depending on different changes in circumstances; and

(b) different ways of working out further amounts of the original payment depending on different changes in circumstances.

OFFICIAL: Sensitive // Legal Privilege

Division 2—Quarterly energy supplement

915 When quarterly energy supplement is payable

Quarterly energy supplement is payable to a person for each day for which an election by the person under subsection 915A(1) or 1061VA(1) is in force in relation to a social security payment the person is receiving.

Note: Section 918 may affect the person's qualification for quarterly energy supplement.

915A Electing to receive quarterly energy supplement

(1) If:

(a) Part 2.25C (about quarterly pension supplement) does not apply to a person in relation to a social security payment the person is receiving; and

(b) energy supplement is used to work out the rate of that social security payment;

the person may, in a manner or way approved by the Secretary, make an election to receive the person's energy supplement under this Division as a separate social security payment.

Note: The person could make an election under subsection 1061VA(1) if Part 2.25C applies to the person in relation to the social security payment. That election would cause quarterly energy supplement to be payable (see section 915).

(2) An election comes into force as soon as practicable after it is made.

(3) An election ceases to be in force if the person ceases to receive a social security payment (a ***main payment***) calculated using a Rate Calculator that has an energy supplement Module.

(4) The person may, in a manner or way approved by the Secretary, revoke an election. A revocation takes effect as soon as practicable after it happens.

OFFICIAL: Sensitive // Legal Privilege

915B Rate of quarterly energy supplement

(1) The person's daily rate of quarterly energy supplement, for a particular day, is:

(a) if the Rate Calculator for the main payment received on that day produces an annual rate—1/364 of the amount that, apart from this Division, would be the person's energy supplement for that day; or

(b) if the Rate Calculator for the main payment received on that day produces a fortnightly rate—1/14 of the amount that, apart from this Division, would be the person's energy supplement for that day.

(2) This section has effect subject to subsection 1210(3A).

OFFICIAL: Sensitive // Legal Privilege

Division 4—Essential medical equipment payment

917A Definitions

In this Division:

EMEP residence has the meaning given by subsection 917C(1).

essential medical equipment payment:

(a) means an essential medical equipment payment under this Division (except in section 917F); and

(b) in section 917F—has the meaning given by that section.

medical equipment, in relation to a person who satisfies the medical needs requirement under paragraph 917C(1)(b), means the heating or cooling system (as the case requires) of the residence described in that paragraph.

person with medical needs has the meaning given by paragraph 917C(2)(b).

917B Qualification for essential medical equipment payment

(1) A person (the ***claimant***) is qualified for an essential medical equipment payment for an income year if:

(a) the Secretary is satisfied that the claimant satisfies each of the following on the EMEP test day:

(i) the medical needs requirement in section 917C;

(ii) the concession card requirement in section 917D;

(iii) the energy account requirement in section 917E; and

(b) a medical practitioner has (subject to subsection (2)) certified that:

(i) the claimant meets the medical needs requirement under subsection 917C(1) on a day; or

(ii) another specified person meets the medical needs requirement under subsection 917C(1) on a day;

(as the case requires); and

(c) the claimant is not prevented from receiving an essential medical equipment payment by section 917F; and

(d) the claimant is not a dependent child of another person on the EMEP test day; and

(e) the claimant is in Australia on the EMEP test day.

(2) Paragraph (1)(b) does not apply if the Secretary is otherwise satisfied that the claimant or another specified person meets the medical needs requirement in section 917C.

*Meaning of **EMEP test day***

(3) For the purposes of subsection (1), the ***EMEP test day*** is either:

(a) the day in the income year referred to in subsection (1) on which the claimant makes the claim for the payment; or

(b) an anniversary (in the income year referred to in subsection (1)) of the day on which the claimant made a claim for the payment if:

(i) the claimant made the claim in a previous income year; and

(ii) since the claimant made the claim, the Secretary has not determined that the claimant has ceased to be qualified for the payment.

Note 1: Under section 11 of the Administration Act, a person is required to make a claim for a social security payment.

Note 2: For additional rules relating to the claim, see section 19 of the Administration Act.

Determining qualification for later income years

(4) In determining whether a person is qualified for an essential medical equipment payment for an income year after the income year in which the claim for the payment is made, the Secretary:

(a) may act on the basis of the documents and information in his or her possession; and

(b) is not required to conduct any inquiries or investigations into the matter or to require (whether under this Act or otherwise)

the giving of any information or the production of any document.

(5) Despite subsection (4), the Secretary may require a further certification for the purposes of paragraph (1)(b), or further information or a further document for the purposes of subsection (2), in an income year after the income year in which the claim is made.

917C The medical needs requirement

Person who has medical needs

(1) A person satisfies the medical needs requirement on a day if:
  (a) the person has a medical condition on that day, and as a result:
    (i) the person requires the use of specified essential medical equipment in a residence (the ***EMEP residence***) that is the person's home and is either a private residence or a specified residence; and
    (ii) the person uses that equipment in that residence; or
  (b) the person has a specified medical condition on that day, and as a result:
    (i) the person is unable to regulate his or her body temperature; and
    (ii) additional heating or cooling is required, in a residence (the ***EMEP residence***) that is the person's home and is either a private residence or a specified residence, to manage the person's condition; and
    (iii) the person uses additional heating or cooling in that residence.

Caring for a person who has medical needs

(2) A person (the ***carer***) also satisfies the medical needs requirement on a day if:
  (a) the carer provides care and attention on a regular and ongoing basis for a person; and

OFFICIAL: Sensitive // Legal Privilege

(b) the person (the ***person with medical needs***) satisfies the medical needs requirement under subsection (1) on the day; and

(c) the person with medical needs is specified in the certification under subparagraph 917B(1)(b)(ii) or is the person specified for the purposes of subsection 917B(2) (as the case requires); and

(d) the carer's home is the EMEP residence that is the home of the person with medical needs.

Legislative instrument

(3) The Minister may, by legislative instrument, specify:

(a) essential medical equipment for the purposes of paragraph (1)(a); and

(b) medical conditions for the purposes of paragraph (1)(b); and

(c) residences for the purposes of paragraphs (1)(a) and (b).

917D The concession card requirement

A person satisfies the concession card requirement on a day if:

(a) the person is a holder of a concession card, or the person's name is included on a concession card, on that day; or

(b) both of the following apply:

(i) the person satisfies the medical needs requirement under subsection 917C(2) (caring for a person) on that day in relation to a person with medical needs;

(ii) the person with medical needs is a holder of a concession card, or the name of the person with medical needs is included on a concession card, on that day.

917E The energy account requirement

(1) A person satisfies the energy account requirement on a day if:

(a) on that day, the energy account for the relevant EMEP residence is in the name of that person; or

(b) on that day, the energy account for the relevant EMEP residence is in the name of that person's partner; or

(c) the person contributes (whether wholly or partly) to paying the energy account for the relevant EMEP residence; or

(d) if the person is not the person with medical needs—the person with medical needs contributes (whether wholly or partly) to paying the energy account for the relevant EMEP residence.

(2) For the purposes of subsection (1), an ***energy account*** for a residence means any account for:

(a) electricity; or

(b) any other specified form of energy;

that is supplied to the residence.

(3) The Minister may, by legislative instrument, specify forms of energy for the purposes of paragraph (2)(b).

917F Availability of payments

(1) No essential medical equipment payment may be made for an income year in relation to medical equipment that is used in an EMEP residence if an essential medical equipment payment has already been made for that income year in relation to the same equipment and the same residence.

(2) No more than 2 essential medical equipment payments may be made in relation to the same medical equipment for an income year (subject to subsection (1)).

(3) Essential medical equipment payments for an income year may not be made, in relation to a person with medical needs, in relation to more than 2 EMEP residences.

Meaning of ***essential medical equipment payment***

(4) In this section, an ***essential medical equipment payment*** means an essential medical equipment payment under this Division or Division 3 of Part IIIE of the Veterans' Entitlements Act.

OFFICIAL: Sensitive // Legal Privilege

917G Amount of payment

The amount of an essential medical equipment payment for an income year is $140.

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

917H Non-receipt of social security payment

(1) This section applies for the purposes of a provision of this or another Act if:

(a) the provision provides a benefit (whether the benefit is a pension, benefit, payment, supplement or any other sort of benefit) if a person meets specified criteria; and

(b) one of the specified criteria is that the person is receiving a social security payment, or is a recipient of a social security payment.

(2) For the purposes of the provision, a person is not taken to be receiving a social security payment, or to be a recipient of a social security payment, merely because the person receives an essential medical equipment payment.

OFFICIAL: Sensitive // Legal Privilege

Division 5—Multiple qualification exclusions

918 Multiple qualification exclusions

(1) The Minister may by legislative instrument determine that persons in circumstances specified in the instrument cannot qualify for a clean energy bonus under this Act that is specified in the instrument.

(2) Those circumstances must relate to persons' qualification for or receipt of one or more of the following:

(a) a clean energy bonus under this Act;

(b) a clean energy bonus under the MRCA;

(c) a clean energy bonus under the Veterans' Entitlements Act;

(d) a clean energy bonus under a scheme (however described), whether or not the scheme is provided for, by or under an Act.

(3) An instrument under subsection (1) has effect according to its terms, despite any other provision of this Act.

OFFICIAL: Sensitive // Legal Privilege

Part 2.19—Carer allowance

Division 1—Interpretation

952 Carer allowance definitions

In this Part, unless the contrary intention appears:

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

care receiver has the meaning given by subsections 953(1) and (2), 954(1) and 954A(1) and section 954B.

Disability Care Load Assessment (Child) Determination has the meaning given by subsection 38E(1).

disabled adult means a person aged 16 or more who:

(a) has a physical, intellectual or psychiatric disability; and

(b) is likely to suffer from that disability permanently or for an extended period.

disabled child means a person aged under 16 who:

(a) has a physical, intellectual or psychiatric disability; and

(b) is likely to suffer from that disability permanently or for an extended period.

OFFICIAL: Sensitive // Legal Privilege

Division 2—Qualification for and payability of carer allowance

Subdivision A—Qualification

953 Qualification for carer allowance—caring for either 1 or 2 disabled children

Single child

(1) A person is qualified for carer allowance for a disabled child (the ***care receiver***) if:

(a) the care receiver is a dependent child (disregarding subsection 5(3)) of the person; and

(b) the care receiver is an Australian resident; and

(d) because of the disability from which the care receiver is suffering, the care receiver receives care and attention on a daily basis from:

(i) if the person is a member of a couple—the person, the person's partner or the person together with another person (whether or not the person's partner); or

(ii) if the person is not a member of a couple—the person or the person together with another person;

in a private home that is the residence of the person and the care receiver; and

(e) either of the following applies:

(i) the disability from which the care receiver is suffering is declared, under subsection 38E(3), to be a recognised disability for the purposes of this section;

(ii) the person has been given a qualifying rating of intense under the Disability Care Load Assessment (Child) Determination for caring for the care receiver; and

(f) the person is an Australian resident; and

(g) the person satisfies the carer allowance income test under section 957A.

OFFICIAL: Sensitive // Legal Privilege

2 children

(2) A person is qualified for carer allowance for 2 disabled children (the ***care receivers***) if:

(a) each care receiver is a dependent child (disregarding subsection 5(3)) of the person; and

(b) each care receiver is an Australian resident; and

(d) because of the disability from which each care receiver is suffering, each care receiver receives care and attention on a daily basis from:

(i) if the person is a member of a couple—the person, the person's partner or the person together with another person (whether or not the person's partner); or

(ii) if the person is not a member of a couple—the person or the person together with another person;

in a private home that is the residence of the person and each care receiver; and

(e) the person has been given a qualifying rating of intense under the Disability Care Load Assessment (Child) Determination for caring for the care receivers; and

(f) the person is an Australian resident; and

(g) the person satisfies the carer allowance income test under section 957A.

Note 1: For ***Australian resident*** see section 7.

Note 2: For qualification for carer allowance in circumstances of hospitalisation, see section 955.

Note 4: For the effect of temporary cessation of care and attention on carer allowance, see section 957.

Note 5: For the effect of 2 people being qualified for carer allowance, see sections 964 and 965.

OFFICIAL: Sensitive // Legal Privilege

953A Remaining qualified for carer allowance up to 3 months after child turns 16

Single child

(1) If:

(a) a person is qualified for carer allowance under subsection 953(1) for a disabled child; and

(b) the child turns 16; and

(c) apart from the child turning 16, the person would remain qualified for carer allowance under that subsection for that child;

then the person remains qualified for carer allowance under that subsection for that child until:

(d) if the child is assessed and rated and given a score under the Adult Disability Assessment Tool before the end of the period of 3 months beginning on the day the child turned 16—the end of the day before the day the child is given that score; or

(e) otherwise—the end of the period of 3 months beginning on the day the child turned 16.

Two children

(2) If:

(a) a person is qualified for carer allowance under subsection 953(2) for 2 disabled children; and

(b) on a particular day (the ***relevant day***), either or both of those children turn 16; and

(c) apart from either or both of those children turning 16, the person would remain qualified for carer allowance under that subsection for those children;

then the person remains qualified for carer allowance under that subsection for those children until:

(d) if either or both of those children are assessed and rated and given a score under the Adult Disability Assessment Tool before the end of the period of 3 months beginning on the

OFFICIAL: Sensitive // Legal Privilege

relevant day—the end of the day before the day the first such score is given to one of those children; or

(e) otherwise—the end of the period of 3 months beginning on the relevant day.

(3) Subsection (2) can apply only once in relation to the same 2 disabled children.

954 Qualification for carer allowance—caring for a disabled adult in a private home of both the adult and the carer

(1) A person is qualified for carer allowance for a disabled adult (the ***care receiver***) if:

(a) the care receiver is an Australian resident; and

(b) the care receiver is a family member of the person or is a person approved in writing by the Secretary for the purposes of this paragraph; and

(c) the care receiver has been assessed and rated under the Adult Disability Assessment Tool and given a score under that assessment tool of at least 30, being a score calculated on the basis of a professional questionnaire score of at least 12; and

(d) because of the disability from which the care receiver is suffering, the care receiver receives care and attention on a daily basis from the person, or the person together with another person, in a private home that is the residence of the person and the care receiver; and

(f) the person is an Australian resident; and

(g) the person satisfies the carer allowance income test under section 957A.

Note 1: For ***family member*** see subsection 23(1). For ***Australian resident*** see section 7.

Note 2: For qualification for carer allowance in circumstances of hospitalisation, see section 955.

Note 4: For the effect of temporary cessation of care and attention on carer allowance, see section 957.

Note 5: For the effect of 2 people being qualified for carer allowance, see sections 964 and 965.

Disabled adult does not qualify for carer allowance for another disabled adult

(2) If a person is qualified for carer allowance for a disabled adult, the disabled adult is not able to qualify for carer allowance for another disabled adult.

Person cannot qualify for more than 2 carer allowances

(3) A person may qualify for carer allowance under this section and/or section 954A for 2, but no more than 2, disabled adults.

954A Qualification for carer allowance—caring for a disabled adult in a private home not shared by the adult and carer

(1) A person is qualified for carer allowance for a disabled adult (the ***care receiver***) if:

(a) the care receiver is an Australian resident; and

(b) the care receiver is a family member of the person or is a person approved in writing by the Secretary for the purposes of this paragraph; and

(c) the care receiver has been assessed and rated under the Adult Disability Assessment Tool and given a score under that assessment tool of at least 30, being a score calculated on the basis of a professional questionnaire score of at least 12; and

(d) the care receiver receives care and attention that meet the requirements in subsection (2); and

(e) the person is an Australian resident; and

(ea) the person satisfies the carer allowance income test under section 957A; and

(f) the person's work in providing the care and attention is not on wages that are at or above the relevant minimum wage; and

(g) neither the person nor anyone else is qualified for carer allowance for the care receiver under section 954.

Note 1: For ***Australian resident*** see section 7. For ***family member*** see subsection 23(1).

OFFICIAL: Sensitive // Legal Privilege

Note 2: For qualification for carer allowance in circumstances of hospitalisation, see section 955.

Note 3: For the effect of temporary cessation of care and attention on carer allowance, see section 957.

Note 4: For the effect of 2 people being qualified for carer allowance, see sections 964 and 965.

(2) The care and attention:

(a) must address special care needs:

(i) that the care receiver is assessed under the Adult Disability Assessment Tool as having; and

(ii) that relate to the care receiver's bodily functions or to sustaining the care receiver's life; and

(b) must be received by the care receiver on a daily basis, for a total of at least 20 hours a week; and

(c) must:

(i) be received by the care receiver from the person alone; or

(ii) be received by the care receiver from the person together with another person whose work in providing the care and attention is not on wages that are at or above the wages mentioned in paragraph (1)(f), whether or not both persons are present every day when the care receiver receives the care and attention; and

(d) must be received in a private home that is the residence of the care receiver, the person or the other person (if any), but not the residence of both the care receiver and the person; and

(e) must not be care and attention of a kind (if any) specified, by legislative instrument, by the Secretary for the purposes of this paragraph.

Disabled adult does not qualify for carer allowance for another disabled adult

(4) If a person is qualified for carer allowance for a disabled adult, the disabled adult is not able to qualify for carer allowance for another disabled adult.

OFFICIAL: Sensitive // Legal Privilege

Person cannot qualify for more than 2 carer allowances

(5) A person may qualify for carer allowance under this section and/or section 954 for 2, but no more than 2, disabled adults.

954B Qualification for carer allowance—receiving carer payment for caring for child or children

While:

(a) a person is receiving a carer payment for caring for one or more persons (the ***care receiver*** or ***care receivers***) other than:

(i) a care receiver referred to in subparagraph 197D(1)(a)(i); or

(ii) a care receiver referred to in paragraph 198(2)(a) or (d); and

(b) the person is not, apart from this section, qualified for carer allowance for the care receiver or care receivers;

the person is qualified for carer allowance for each care receiver.

Note: For the effect of 2 people being qualified for carer allowance for the same care receiver, see sections 964 and 965.

955 Qualification for carer allowance—hospitalisation

Participating in care of person in hospital

(1) If:

(a) a person (the ***carer***) is participating in the care of a disabled child, or a disabled adult, (the ***hospitalised person***) in hospital; and

(b) it is reasonable to assume that, if the hospitalised person were not in hospital, one or more persons would qualify, under section 953, 954 or 954A, for carer allowance for the hospitalised person or for the hospitalised person and another person; and

(c) either the hospitalised person is terminally ill or it is reasonable to expect that, upon the hospitalised person leaving hospital:

OFFICIAL: Sensitive // Legal Privilege

(i) the hospitalised person will reside in the private home of the carer and the hospitalised person; or

(ii) the carer will qualify under section 954A for carer allowance for the hospitalised person;

the one or more persons who would qualify for carer allowance as mentioned in paragraph (b) qualify for carer allowance.

Limit on qualification under subsection (1) for disabled adult

(2) However, the period, or the sum of the periods, for which the one or more persons can be qualified under subsection (1) for a hospitalised person who is a disabled adult is 63 days in any calendar year.

Note: There is no limit for a hospitalised person who is a child.

956 Absence from Australia

During any period of absence from Australia:

(a) throughout which Division 2 of Part 4.2 applies to the person; and

(b) that is before the end of the person's portability period for carer allowance (within the meaning of that Division);

the person does not cease to be qualified, under section 953, 954 or 954A, for carer allowance merely because the care and attention of the care receiver or care receivers is not provided in a private home that is described in whichever one of paragraphs 953(1)(d) and (2)(d), 954(1)(d) and 954A(2)(d) is relevant.

957 Effect of cessation of care etc. on carer allowance

Continuation of allowance where temporary cessation of care

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

(a) a person is qualified, under section 953, 954 or 954A, for carer allowance because a care receiver or care receivers are receiving care and attention on a daily basis; and

(b) the care receiver or care receivers temporarily cease to receive care and attention that would qualify the person for carer allowance;

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

Continuation of allowance after hospitalisation—section 955 ceases to apply

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

(a) a person is qualified for carer allowance under section 955 because the person or another person is participating in the care of a disabled child or disabled adult in hospital; and

(b) apart from this subsection, the person would later cease to be qualified for carer allowance under that section; and

(c) the person would not cease to be qualified for carer allowance if the disabled child or disabled adult were receiving care and attention on a daily basis;

the person does not cease to be qualified for carer allowance merely because of the lack of receipt of that care and attention.

Limit on subsections (1) and (2)

(3) However, the period, or the sum of the periods, for which subsection (1) or (2), or a combination of those subsections, can apply is:

(a) 63 days in any calendar year; or

(b) another period that the Secretary, for any special reason in the particular case, decides to be appropriate.

Cessation of care in order to undertake training etc.

(4) If:

(a) a person is qualified under section 953 for carer allowance for a care receiver who is a disabled child or for care receivers who are 2 disabled children; and

(b) the care receiver or either or both of the care receivers then are, or are likely to be, receiving education, training or treatment (other than treatment in hospital) for a period; and

(c) during the period the care receiver or care receivers are not receiving the care and attention that would qualify the person for carer allowance; and

(d) subsection (1) does not apply to the period;

the person does not cease to be qualified for carer allowance during the period merely because of the lack of receipt of that care and attention.

Note: A person who continues to be qualified for carer allowance because of subsection (4) will receive a reduced rate of carer allowance: see subsection 974(3).

957A Carer allowance income test

(1) This is how to work out whether a person satisfies the carer allowance income test on a day (the ***test day***).

Method statement

Step 1. Work out the amount of the person's adjusted taxable income for the reference tax year.

Note 1: Section 957B deals with how to work out adjusted taxable income.

Note 2: For ***reference tax year*** see subsections (2) and (3).

Step 2. If, on the test day, the person is a member of a couple, work out the amount of the person's partner's adjusted taxable income for the reference tax year applicable under step 1.

Note 1: Section 957B deals with how to work out adjusted taxable income.

Note 2: For ***reference tax year*** see subsections (2) and (3).

Step 3.	If, on the test day, the person is not a member of a couple, the person has reached the minimum age mentioned in section 301-10 of the *Income Tax Assessment Act 1997* and the person has at least one long-term financial asset, work out the person's deemed income amount under subsection 957D(1). Note: For ***long-term financial asset*** see subsection (5).
Step 4.	If, on the test day, the person is a member of a couple and the person, or the person's partner, or both, have reached the minimum age mentioned in section 301-10 of the *Income Tax Assessment Act 1997* and have at least one long-term financial asset, work out the person's deemed income amount under subsection 957D(2). Note: For ***long-term financial asset*** see subsection (5).
Step 5.	Work out the sum of the amounts at steps 1, 2, 3 and 4 (as applicable).
Step 6.	The person satisfies the carer allowance income test if the amount at step 5 is less than $250,000.

Reference tax year

(2) For the purposes of this section, a person's ***reference tax year*** is:

(a) if the person has received a notice of assessment of the person's taxable income for the base tax year—the base tax year; or

(b) otherwise—the tax year immediately preceding the base tax year.

Note: For ***base tax year*** see subsection (4).

(3) However, if the person has informed the Secretary in writing that the person wishes to have the person's qualification for carer allowance determined by reference to the person's adjusted taxable income for the tax year (the ***current tax year***) in which the test day occurred, the person's ***reference tax year*** is the current tax year.

(4) The ***base tax year*** is the tax year immediately preceding the tax year in which the test day occurred.

Note: For ***tax year*** see subsection 23(1).

Long-term financial asset

(5) For the purposes of this Subdivision, a ***long-term financial asset*** is:

(a) a financial investment within the meaning of paragraph (i) of the definition of ***financial investment*** in subsection 9(1), where the asset-tested income stream (long term) arises under a complying superannuation plan (within the meaning of the *Income Tax Assessment Act 1997*) that is not a constitutionally protected fund (within the meaning of that Act); or

(b) a financial investment within the meaning of paragraph (j) of the definition of ***financial investment*** in subsection 9(1).

957B Adjusted taxable income

(1) For the purposes of this Subdivision, a person's ***adjusted taxable income*** for a particular tax year is the sum of the following amounts (each of which is an ***income component***):

(a) the person's taxable income for that year, disregarding the person's assessable FHSS released amount (within the meaning of the *Income Tax Assessment Act 1997*) for that year;

(b) the person's fringe benefits value for that year;

(c) the person's target foreign income for that year;

(d) the person's total net investment loss for that year;

(e) the person's tax free pensions or benefits for that year;

(f) the person's reportable superannuation contributions for that year;

less the amount of the person's deductible child maintenance expenditure (the ***deductible component***) for that year.

Note: For ***tax year*** see subsection 23(1).

OFFICIAL: Sensitive // Legal Privilege

Taxable income

(2) For the purposes of this section, a person's ***taxable income*** for a particular tax year is:

(a) the person's assessed taxable income for that year; or

(b) if the person does not have an assessed taxable income for that year—the person's accepted estimate of taxable income for that year.

Note: For ***accepted estimate*** see section 957C.

(3) For the purposes of this section, a person's ***assessed taxable income*** for a particular tax year at a particular time is the most recent of:

(a) if, at that time, the Commissioner of Taxation has made an assessment or an amended assessment of that taxable income—that taxable income according to the assessment or amended assessment; or

(b) if, at that time, a tribunal has amended an assessment or an amended assessment made by the Commissioner—that taxable income according to the amendment made by the tribunal; or

(c) if, at that time, a court has amended an assessment or an amended assessment made by the Commissioner or an amended assessment made by a tribunal—that taxable income according to the amendment made by the court.

Fringe benefits value

(4) For the purposes of this section, a person's ***fringe benefits value*** for a particular tax year is the person's accepted estimate of the amount by which the total of the assessable fringe benefits received or to be received by the person in the tax year exceeds $1,000.

Note 1: For ***assessable fringe benefit*** see subsection 10A(2) and Part 3.12A.

Note 2: For ***accepted estimate*** see section 957C.

Target foreign income

(5) For the purposes of this section, a person's ***target foreign income*** for a particular tax year is the person's accepted estimate of the amount of the person's target foreign income for that year.

Note 1: For ***target foreign income*** see subsection 10A(2).

Note 2: For ***accepted estimate*** see section 957C.

Total net investment loss

(6) For the purposes of this section, a person's ***total net investment loss*** for a particular tax year is the person's accepted estimate of the amount of the person's total net investment loss (within the meaning of the *Income Tax Assessment Act 1997*) for that year.

Note: For ***accepted estimate*** see section 957C.

Tax free pensions or benefits

(7) For the purposes of this section, a person's ***tax free pensions or benefits*** for a particular tax year is the person's accepted estimate of the total of the person's tax free pensions or benefits (worked out under clause 7 of Schedule 3 to the *A New Tax System (Family Assistance) Act 1999*) for that year.

Note: For ***accepted estimate*** see section 957C.

Reportable superannuation contributions

(8) For the purposes of this section, a person's ***reportable superannuation contributions*** for a particular tax year is the person's accepted estimate of the amount of the person's reportable superannuation contributions (within the meaning of the *Income Tax Assessment Act 1997*) for that year.

Note: For ***accepted estimate*** see section 957C.

Deductible child maintenance expenditure

(9) For the purposes of this section, a person's ***deductible child maintenance expenditure*** for a particular tax year is the person's

accepted estimate of the amount worked out under subclause 8(1) of Schedule 3 to the *A New Tax System (Family Assistance) Act 1999* for the person for that year.

Note: For ***accepted estimate*** see section 957C.

957C Accepted estimates

(1) For the purposes of section 957B, a person's ***accepted estimate*** of an income component, or the deductible component, for a particular tax year is that income component, or deductible component, according to the most recent notice given by the person to the Secretary under subsection (2) and accepted by the Secretary for the purposes of this section.

Note: For ***income component*** and ***deductible component*** see subsection 957B(1).

(2) A person may give the Secretary a notice, in a form approved by the Secretary, setting out the person's estimate of an income component, or the deductible component, of the person for a tax year.

(3) The notice is to contain, or be accompanied by, such information as is required by the form to be contained in it or to accompany it, as the case may be.

(4) The Secretary is to accept a notice only if the Secretary is satisfied that the estimate is reasonable.

957D Income from long-term financial assets

Person is not a member of a couple

(1) This is how to work out the person's deemed income amount under this subsection:

Method statement

Step 1.	Work out the total value of all of the person's long-term financial assets on the test day. Note: For ***long-term financial asset*** see subsection 957A(5).
Step 2.	Work out under section 1076 the amount of ordinary income the person would be taken to receive per year on the financial assets: (a) on the assumption that the only financial assets of the person were the financial assets referred to in step 1; and (b) on the assumption that the total value of the person's financial assets were the amount at step 1.
Step 3.	The result at step 2 is the person's ***deemed income amount***.

Person is a member of a couple

(2) This is how to work out the person's deemed income amount under this subsection:

Method statement

Step 1.	If, on the test day, the person has reached the minimum age mentioned in section 301-10 of the *Income Tax Assessment Act 1997*, work out the total value of all of the person's long-term financial assets on the test day. Note: For ***long-term financial asset*** see subsection 957A(5).
Step 2.	If, on the test day, the person's partner has reached the minimum age mentioned in section 301-10 of the *Income Tax Assessment Act 1997*, work out the total value of all of the person's partner's long-term financial assets on the test day.

Step 3.	Work out under section 1077 the amount of ordinary income the couple would be taken to receive per year on the financial assets: (a) on the assumption that section 1077 applied to the person and the person's partner; and (b) on the assumption that the only financial assets of the person and the person's partner were the financial assets referred to in steps 1 and 2 (as applicable); and (c) on the assumption that the total value of the couple's financial assets were the sum of the amounts at steps 1 and 2 (as applicable).
Step 4.	The result at step 3 is the person's ***deemed income amount***.

Subdivision B—Limitations on payability

958 Carer allowance not payable if allowance rate nil

A carer allowance is not payable to a person if the person's carer allowance rate would be nil.

964 Carer allowance not payable to 2 people for the same care receiver or care receivers unless declaration made

If:

(a) 2 persons who are not members of the same couple are each qualified for carer allowance for the same care receiver or care receivers; and

(b) the Secretary has not made a declaration under subsection 981(1) in respect of carer allowance for the care receiver or care receivers; and

OFFICIAL: Sensitive // Legal Privilege

(c) one of the persons is receiving carer allowance for the care receiver or care receivers;

carer allowance is not payable to the other person for the care receiver or care receivers.

965 Carer allowance not payable to more than one member of a couple

(1) Subject to this section, if one member of a couple is receiving carer allowance for a care receiver or care receivers, carer allowance is not payable to the other member of the couple for the same care receiver or care receivers.

(2) If:

(a) the Secretary is satisfied that each of the members of a couple is qualified for carer allowance for the same care receiver or care receivers; and

(b) both members of the couple are qualified under section 953, 954 or 954A for carer allowance—each of them has made a claim for carer allowance (whether or not one of them is receiving carer allowance); and

(ba) only one of the members of the couple is qualified under section 953, 954 or 954A for carer allowance—that member has made a claim for carer allowance (whether or not one of them is receiving carer allowance);

the Secretary is to make a declaration:

(c) stating that the Secretary is satisfied that each of them is qualified for carer allowance for the care receiver or care receivers; and

(d) naming one of them as the member of the couple to whom carer allowance is payable for the care receiver or care receivers.

(3) If such a declaration is made, carer allowance for the care receiver or care receivers to which the declaration relates is not payable to the member of the couple who is not named in the declaration as mentioned in paragraph (2)(d).

(4) The Secretary is to give notice of the declaration to each of the members of the couple involved.

(5) In making the declaration, the Secretary must have regard to whether one member of the couple is the primary carer for the care receiver or care receivers.

966 Newly arrived resident's waiting period

(1) A person is subject to a newly arrived resident's waiting period if the person:
  (a) has entered Australia; and
  (b) has not been an Australian resident and in Australia for a period of, or periods totalling, 52 weeks.

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

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

  Note: For ***qualifying residence exemption*** in relation to carer allowance see paragraph 7(6AA)(f).

(3) Subsection (1) does not apply to a person if, at the time the person made the claim for carer allowance, the person holds a visa that is in a class of visas determined by the Minister for the purposes of subsection 201AA(5).

(4) Subsection (1) does not apply to a person if:
  (a) the person is receiving a social security pension or a social security benefit; or
  (b) the person is receiving farm household allowance under the *Farm Household Support Act 2014*; or
  (c) parental leave pay, or dad and partner pay, under the *Paid Parental Leave Act 2010* is payable to the person.

(5) Subsection (1) does not apply to a person if:
  (a) the person is a refugee, or a former refugee, at the time the person made the claim for carer allowance; or
  (b) the following apply:

OFFICIAL: Sensitive // Legal Privilege

(i) before the person made the claim for carer allowance, the person was a family member of another person at the time the other person became a refugee;

(ii) the person is a family member of that other person at the time the person made the claim for carer allowance or, if that other person has died, the person was a family member of that other person immediately before that other person died; or

(c) the person is an Australian citizen at the time the person made the claim for carer allowance.

(6) For the purposes of subsection (5):

(a) ***family member*** has the meaning given by subsection 7(6D); and

(b) ***former refugee*** has the meaning given by subsection 7(1); and

(c) ***refugee*** has the meaning given by subsection 7(6B).

967 Duration of newly arrived resident's waiting period

(1) If a person is subject to a newly arrived resident's waiting period, the period starts on the day the person first became an Australian resident.

(2) The newly arrived resident's waiting period ends when the person has been an Australian resident and in Australia for a period of, or periods totalling, 52 weeks.

OFFICIAL: Sensitive // Legal Privilege

Division 5—Rate of carer allowance

974 Rate of carer allowance

Daily rate

(1) A person's rate of carer allowance is a daily rate worked out by dividing the person's fortnightly rate of carer allowance by 14.

Fortnightly rate

(2) Subject to subsections (3) and (4), a person's fortnightly rate of carer allowance for a care receiver or care receivers is $75.60.

Note: The rate of carer allowance is indexed annually (see sections 1190 and 1191).

Reduced fortnightly rate if care receiver undertakes training etc.

(3) If on one or more days (each of which is a ***training day***) in an instalment period in relation to carer allowance a person would have stopped being qualified under section 953, apart from subsection 957(4) (care receiver undertakes training etc.), the person's fortnightly rate of carer allowance for that period is to be reduced by the following amount:

$$\text{Number of training days} \times \text{Daily rate of carer allowance applicable to each training day}$$

Rate where carer allowance shared

(4) If:

(a) 2 people who are not members of the same couple are each qualified for carer allowance for the same care receiver or care receivers; and

(b) the Secretary has made a declaration under subsection 981(1) in respect of carer allowance for the care receiver or care receivers;

the person's rate of carer allowance is the share specified in the declaration under paragraph 981(1)(b) of the carer allowance rate

that would otherwise apply in respect of the care receiver or care receivers.

OFFICIAL: Sensitive // Legal Privilege

Division 6—Multiple qualification for carer allowance for same care receiver or receivers

981 Secretary may make declaration where 2 people are qualified for carer allowance for the same care receiver or care receivers

(1) If the Secretary is satisfied that 2 people who are not members of the same couple are each qualified for carer allowance for the same care receiver or care receivers, the Secretary is to make a declaration:

(a) stating that the Secretary is satisfied that the 2 people are each qualified for carer allowance for the care receiver or care receivers; and

(b) specifying the share of the carer allowance for the care receiver or care receivers that each of the 2 people is to receive.

(2) If the Secretary makes a declaration under subsection (1), the Secretary is to give each of the 2 people involved notice of the declaration.

Note 1: Until the declaration under this section is made, only one of the 2 people involved can receive carer allowance for the care receiver or care receivers—see section 964.

Note 2: For the effect of a declaration under this section on the calculation of carer allowance rates see subsection 974(4).

OFFICIAL: Sensitive // Legal Privilege

Division 10—Bereavement payments (death of disabled child or adult)

Subdivision A—Death of disabled child

992J Continued carer allowance during bereavement rate continuation period where disabled child dies

(1) If:

(a) a person is receiving carer allowance (other than because of this section or section 954B) for a care receiver who is a disabled child or for care receivers who are 2 disabled children; and

(b) the disabled child or one of the disabled children dies; and

(c) immediately before the child's death, the child was an FTB child, or a regular care child, of the person;

the person is to be qualified for carer allowance during the bereavement rate continuation period as if the child had not died and had received the care and attention referred to in paragraph 953(1)(d) or 953(2)(d) (as the case may be).

Note 1: For ***bereavement rate continuation period*** see subsection 21(2).

Note 2: If a person fails to satisfy paragraph (1)(c), the person may still be qualified for carer allowance for 4 weeks after the death of the child under section 992L.

(2) The rate at which the carer allowance is to be paid during the bereavement rate continuation period is the rate at which the allowance was payable to the person immediately before the day on which the child died.

992K Lump sum payable in some circumstances

(1) If:

(a) a person is qualified for carer allowance under section 992J in relation to a disabled child, or one of 2 disabled children, who has died; and

(b) the first available bereavement adjustment payday occurs before the end of the bereavement period; and

(c) immediately before the child's death, the child was an FTB child, or a regular care child, of the person;

a lump sum (worked out using the lump sum calculator at the end of this subsection) is payable to the person.

Lump Sum Calculator

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

Method statement

Step 1. Work out the rate at which carer allowance was payable to the person immediately before the child died.

Step 2. Work out the number of paydays of the person in the bereavement lump sum period.

Step 3. Multiply the rate obtained in Step 1 by the number obtained in Step 2: the result is the amount of the lump sum payable to the person under this section.

Note: For ***first available bereavement adjustment payday***, ***bereavement period*** and ***bereavement lump sum period*** see subsection 21(2).

(2) However, if a person is qualified for carer allowance under section 992J in relation to 2 disabled children both of whom have died at the same time, only one lump sum is payable to the person under this section.

Subdivision B—Death of disabled child (special short-term assistance)

992L Continuation of qualification for carer allowance for 4 weeks in some cases where recipient's disabled child dies

(1) If:

OFFICIAL: Sensitive // Legal Privilege

(a) a person is receiving carer allowance (other than because of this section or section 954B) for a care receiver who is a disabled child or for care receivers who are 2 disabled children; and
(b) the disabled child or one of the disabled children dies; and
(c) the person is not qualified under section 992J for carer allowance for the disabled child or disabled children;

the person is to be qualified for carer allowance for the period of 4 weeks that starts on the day on which the child died as if the child had not died and had received the care and attention referred to in paragraph 953(1)(d) or 953(2)(d) (as the case may be).

(2) The rate at which the carer allowance is to be paid during the 4 week period is the rate at which the allowance was payable to the person immediately before the day on which the child died.

Subdivision BA—Death of disabled adult

992LA Continued carer allowance during bereavement rate continuation period where disabled adult dies

(1) If:
(a) a person is receiving carer allowance (other than because of this section) for a care receiver who is a disabled adult; and
(b) the disabled adult dies; and
(c) the person is receiving an income support payment (other than carer payment) at the time of the death of the disabled adult; and
(d) the person is not qualified for a payment under a provision of this Act (other than this section), or of the Veterans' Entitlements Act, in respect of the death of the disabled adult;

the person is qualified for carer allowance during the bereavement rate continuation period as if the disabled adult had not died and had received the care and attention referred to in paragraph 954(1)(d) or 954A(1)(d) (as the case may be).

Note: For ***bereavement rate continuation period*** see subsection 21(2).

(2) The rate at which the carer allowance is to be paid during the bereavement rate continuation period is the rate at which the allowance was payable to the person immediately before the day on which the disabled adult died.

992LB Lump sum payable in some circumstances

If:

(a) a person is qualified for carer allowance under section 992LA in relation to a disabled adult who has died; and

(b) the first available bereavement adjustment payday occurs before the end of the bereavement period;

a lump sum (worked out using the lump sum calculator at the end of this section) is payable to the person.

Lump Sum Calculator

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

Method statement

Step 1. Work out the rate at which carer allowance was payable to the person immediately before the disabled adult died.

Step 2. Work out the number of paydays of the person in the bereavement lump sum period.

Step 3. Multiply the rate obtained in step 1 by the number obtained in step 2: the result is the amount of the lump sum payable to the person under this section.

Note: For ***first available bereavement adjustment payday***, ***bereavement period*** and ***bereavement lump sum period*** see subsection 21(2).

OFFICIAL: Sensitive // Legal Privilege

Subdivision C—Death of recipient

992M Death of recipient

(1) If:

(a) a person is receiving carer allowance; and

(b) the person is a member of a couple; and

(c) the person dies; and

(d) the person:

(i) was qualified at the time of the person's death for payments under Subdivision A in relation to the death of a disabled child or under Subdivision BA in relation to the death of a disabled adult; or

(ii) would have been so qualified if the person had not died;

there is payable to the partner an amount equal to the sum of the following amounts:

(e) the amount of carer allowance that would have been payable to the person under subsection 992J(2) or 992LA(2), as the case requires, if the person had not died;

(f) any lump sum that would have been payable to the person under section 992K or 992LB, as the case requires, if the person had not died.

(2) If:

(a) a person is receiving carer allowance; and

(b) the person is not a member of a couple; and

(c) the person dies; and

(d) the person:

(i) was qualified at the time of the person's death for payments under Subdivision A in relation to the death of a disabled child or under Subdivision BA in relation to the death of a disabled adult; or

(ii) would have been so qualified if the person had not died;

there is payable, to such person as the Secretary thinks appropriate, an amount equal to the sum of the following amounts:

(e) the amount of carer allowance that would have been payable to the person under subsection 992J(2) or 992LA(2), as the case requires, if the person had not died;

(f) any lump sum that would have been payable to the person under section 992K or 992LB, as the case requires, if the person had not died.

OFFICIAL: Sensitive // Legal Privilege

Part 2.19AA—Child disability assistance

992MA Child disability assistance definitions

In this Part:

care receiver has the same meaning as in Part 2.19.

disabled child has the same meaning as in Part 2.19.

eligible care receiver has the meaning given by section 992MC.

qualified person has the meaning given by subsection 992MB(1).

qualifying instalment has the meaning given by subsection 992MB(2).

992MB Qualification for child disability assistance

(1) A person (the ***qualified person***) is qualified for child disability assistance in respect of a particular 1 July if the following conditions are satisfied in respect of one or more instalments of carer allowance:

(a) the person was paid the instalment in respect of a period that included that 1 July;

(b) either:

(i) the instalment was for a care receiver who was a disabled child or for care receivers who were 2 disabled children; or

(ii) the instalment was for a care receiver referred to in paragraph 954B(a).

(2) Each instalment in respect of which the conditions in subsection (1) are satisfied is a ***qualifying instalment***.

992MC Eligible care receivers

(1) Each person to whose care a qualifying instalment relates is an ***eligible care receiver*** in relation to the qualified person.

(2) However, if subsection 953(2) applied in relation to a qualifying instalment, the 2 disabled children to whom the instalment relates are to be treated as if they were a single ***eligible care receiver*** in relation to the qualified person.

992MD Amount of child disability assistance

(1) The amount of child disability assistance for the qualified person in respect of the 1 July is worked out by adding together the amount applicable under subsection (2) for each eligible care receiver in relation to the qualified person.

(2) The amount applicable under this subsection for an eligible care receiver is:
   (a) $1,000; or
   (b) if the rate at which the qualifying instalment was paid took account of a determination under subsection 981(1) of a particular share (being a percentage or proportion) in relation to an eligible care receiver—that share of $1,000.

OFFICIAL: Sensitive // Legal Privilege

Part 2.19A—One-off payments to carers eligible for carer allowance

Division 1—One-off payment to carers eligible for carer allowance

992N One-off payment to carers (carer allowance related)

(1) A person (the ***qualified person***) is qualified for a one-off payment to carers (carer allowance related) if the following conditions are satisfied in relation to one or more instalments of carer allowance that have been paid to the person:

(a) the instalment was in respect of a period that included 11 May 2004;

(b) the reason why the instalment covered 11 May 2004 was not only because of clause 16 or 17 of Schedule 2 to the *Social Security (Administration) Act 1999*.

(2) For the purposes of this Part, the instalment, or each instalment, in relation to which paragraphs (1)(a) and (b) are satisfied is a ***qualifying instalment***.

Note: The person may also be qualified for a one-off payment to carers (carer payment related) under Division 1 of Part 2.5A.

992O In respect of what care receivers is the payment payable?

(1) Subject to subsection (2), each person to whose care a qualifying instalment relates is an ***eligible care receiver*** in relation to the qualified person.

(2) If subsection 953(2) applied in relation to a qualifying instalment, the 2 disabled children to whom the instalment relates are to be treated as if they were a single ***eligible care receiver*** in relation to the qualified person.

992P What is the amount of the payment?

Add together the amounts applicable under this section for each eligible care receiver

(1) The amount of the one-off payment to the qualified person is worked out by adding together the amounts applicable under this section for each eligible care receiver.

Amount is $600 unless subsection (3) applies

(2) Subject to subsection (3), the amount applicable for an eligible care receiver is $600.

Reduced amount if instalment rate took account of a subsection 981(1) determination

(3) If the rate at which a qualifying instalment was paid took account of a determination under subsection 981(1) of a particular share (being a percentage or proportion) in relation to an eligible care receiver, the amount applicable for the eligible care receiver is that share of $600.

OFFICIAL: Sensitive // Legal Privilege

Division 2—2005 one-off payment to carers eligible for carer allowance

992Q 2005 one-off payment to carers (carer allowance related)

(1) A person (the ***qualified person***) is qualified for a 2005 one-off payment to carers (carer allowance related) if the following conditions are satisfied in relation to one or more instalments of carer allowance that have been paid to the person:

(a) the instalment was in respect of a period that included 10 May 2005;

(b) the reason why the instalment covered 10 May 2005 was not only because of clause 16 or 17 of Schedule 2 to the *Social Security (Administration) Act 1999*.

(2) For the purposes of this Part, the instalment, or each instalment, in relation to which paragraphs (1)(a) and (b) are satisfied is a ***qualifying instalment***.

Note: The person may also be qualified for a 2005 one-off payment to carers (carer payment related) under Division 2 of Part 2.5A.

992R In respect of what care receivers is the payment payable?

(1) Subject to subsection (2), each person to whose care a qualifying instalment relates is an ***eligible care receiver*** in relation to the qualified person.

(2) If subsection 953(2) applied in relation to a qualifying instalment, the 2 disabled children to whom the instalment relates are to be treated as if they were a single ***eligible care receiver*** in relation to the qualified person.

992S What is the amount of the payment?

Add together the amounts applicable under this section for each eligible care receiver

(1) The amount of the one-off payment to the qualified person is worked out by adding together the amounts applicable under this section for each eligible care receiver.

Amount is $600 unless subsection (3) applies

(2) Subject to subsection (3), the amount applicable for an eligible care receiver is $600.

Reduced amount if instalment rate took account of a subsection 981(1) determination

(3) If the rate at which a qualifying instalment was paid took account of a determination under subsection 981(1) of a particular share (being a percentage or proportion) in relation to an eligible care receiver, the amount applicable for the eligible care receiver is that share of $600.

OFFICIAL: Sensitive // Legal Privilege

Division 3—2006 one-off payment to carers eligible for carer allowance

992T 2006 one-off payment to carers (carer allowance related)

(1) A person (the ***qualified person***) is qualified for a 2006 one-off payment to carers (carer allowance related) if the following conditions are satisfied in relation to one or more instalments of carer allowance that have been paid to the person:

(a) the instalment was in respect of a period that includes 9 May 2006;

(b) the reason why that instalment covered 9 May 2006 was not only because of clause 16 or 17 of Schedule 2 to the Administration Act;

(c) the person was paid that instalment because of a claim the person made on or before 9 May 2006.

(2) For the purposes of this Part, the instalment, or each instalment, in relation to which paragraphs (1)(a), (b) and (c) are satisfied is a ***qualifying instalment***.

992U In respect of which care receivers is the payment payable?

(1) Subject to subsection (2), each person to whose care a qualifying instalment relates is an ***eligible care receiver*** in relation to the qualified person.

(2) If subsection 953(2) applied in relation to a qualifying instalment, the 2 disabled children to whom the instalment relates are to be treated as if they were a single ***eligible care receiver*** in relation to the qualified person.

992V Amount of the one-off payment

Add together the amounts applicable under this section for each eligible care receiver

(1) The amount of the one-off payment to the qualified person is worked out by adding together the amounts applicable under this section for each eligible care receiver.

Amount is $600 unless subsection (3) applies

(2) Subject to subsection (3), the amount applicable for an eligible care receiver is $600.

Reduced amount if instalment rate took account of a subsection 981(1) determination

(3) If the rate at which a qualifying instalment was paid took account of a determination under subsection 981(1) of a particular share (being a percentage or proportion) in relation to an eligible care receiver, the amount applicable for the eligible care receiver is that share of $600.

OFFICIAL: Sensitive // Legal Privilege

Division 4—2007 one-off payment to carers eligible for carer allowance

992WA 2007 one-off payment to carers (carer allowance related)

(1) A person (the ***qualified person***) is qualified for a 2007 one-off payment to carers (carer allowance related) if the following conditions are satisfied in relation to one or more instalments of carer allowance that have been paid to the person:

(a) the instalment was in respect of a period that includes 8 May 2007;

(b) the reason why that instalment covered 8 May 2007 was not only because of clause 16 or 17 of Schedule 2 to the Administration Act;

(c) the person was paid that instalment because of a claim the person made on or before 8 May 2007.

(2) For the purposes of this Part, the instalment, or each instalment, in relation to which paragraphs (1)(a), (b) and (c) are satisfied is a ***qualifying instalment***.

992WB Eligible care receivers

(1) Subject to subsection (2), each person to whose care a qualifying instalment relates is an ***eligible care receiver*** in relation to the qualified person.

(2) If subsection 953(2) applied in relation to a qualifying instalment, the 2 disabled children to whom the instalment relates are to be treated as if they were a single ***eligible care receiver*** in relation to the qualified person.

992WC Amount of the one-off payment

Add together the amounts applicable under this section for each eligible care receiver

(1) The amount of the one-off payment to the qualified person is worked out by adding together the amounts applicable under this section for each eligible care receiver.

Amount is $600 unless subsection (3) applies

(2) Subject to subsection (3), the amount applicable for an eligible care receiver is $600.

Reduced amount if instalment rate took account of a subsection 981(1) determination

(3) If the rate at which a qualifying instalment was paid took account of a determination under subsection 981(1) of a particular share (being a percentage or proportion) in relation to an eligible care receiver, the amount applicable for the eligible care receiver is that share of $600.

Division 5—2008 one-off payment to carers eligible for carer allowance

992WD 2008 one-off payment to carers (carer allowance related)

(1) A person (the ***qualified person***) is qualified for a 2008 one-off payment to carers (carer allowance related) if the following conditions are satisfied in relation to one or more instalments of carer allowance that have been paid to the person:

(a) the instalment was in respect of a period that includes 13 May 2008;

(b) the reason why that instalment covered 13 May 2008 was not only because of clause 16 or 17 of Schedule 2 to the Administration Act;

(c) the person was paid that instalment because of a claim the person made on or before 13 May 2008.

(2) For the purposes of this Part, the instalment, or each instalment, in relation to which paragraphs (1)(a), (b) and (c) are satisfied is a ***qualifying instalment***.

992WE Eligible care receivers

(1) Subject to subsection (2), each person to whose care a qualifying instalment relates is an ***eligible care receiver*** in relation to the qualified person.

(2) If subsection 953(2) applied in relation to a qualifying instalment, the 2 disabled children to whom the instalment relates are to be treated as if they were a single ***eligible care receiver*** in relation to the qualified person.

992WF Amount of the one-off payment

Add together the amounts applicable under this section for each eligible care receiver

(1) The amount of the one-off payment to the qualified person is worked out by adding together the amounts applicable under this section for each eligible care receiver.

Amount is $600 unless subsection (3) applies

(2) Subject to subsection (3), the amount applicable for an eligible care receiver is $600.

Reduced amount if instalment rate took account of a subsection 981(1) determination

(3) If the rate at which a qualifying instalment was paid took account of a determination under subsection 981(1) of a particular share (being a percentage or proportion) in relation to an eligible care receiver, the amount applicable for the eligible care receiver is that share of $600.

OFFICIAL: Sensitive // Legal Privilege

Part 2.19B—Carer supplement

992X Carer supplement

Qualifying for carer supplement

(1) A person (the ***qualified person***) is qualified for carer supplement for a year if the person was or is paid an instalment (the ***qualifying instalment***) of carer allowance, carer payment or carer service pension in respect of a period that includes 1 July in the year.

Note: There may be more than one qualifying instalment for carer supplement for a year. For example, if a person is paid both an instalment of carer allowance and an instalment of carer payment in respect of a period including 1 July in the year, both instalments are qualifying instalments for carer supplement for the year for the person.

Amount of carer supplement

(2) The amount of carer supplement for the qualified person for the year is the total worked out in accordance with the table (taking account of every relevant item of the table):

Amount of carer supplement

Item	If:	Include this amount in the total:
1	The qualifying instalment is of carer allowance	The amount worked out under subsection (3) for each eligible care receiver (see subsections (4) and (5))
2	The qualifying instalment is of carer payment	$600
3	The qualifying instalment is of carer service pension	$600
5	Both of the following apply: (a) the qualifying instalment is of carer allowance;	$600

Section 992X

Amount of carer supplement		
Item	**If:**	**Include this amount in the total:**
	(b) the qualified person was or is also paid an instalment of partner service pension under the Veterans' Entitlements Act in respect of a period that includes the day described in subsection (1) for the year	

Amount for eligible care receiver

(3) The amount for an eligible care receiver is:

(a) $600; or

(b) if the rate at which the qualifying instalment was paid takes account of a determination under subsection 981(1) of a particular share (being a percentage or proportion) in relation to the eligible care receiver—that share of $600.

Example 1: Assume that:

(a) the qualified person qualifies for carer supplement for 2010 because he or she is paid a qualifying instalment of carer allowance relating to 3 eligible care receivers; and

(b) the rate of the qualifying instalment takes account of a determination under subsection 981(1) of a half share in relation to one of those eligible care receivers; and

(c) the qualified person is also paid an instalment of partner service pension for a period including 1 July 2010.

The amount of carer supplement for the qualified person for 2010 is $2,100, made up of $600 each for 2 of the eligible care receivers, $300 (which is half of $600) for the eligible care receiver to whom the half-share determination relates and $600 relating to the partner service pension.

Example 2: Assume that the qualified person qualifies for carer supplement for 2011 because he or she is paid a qualifying instalment of carer allowance relating to one eligible care receiver and also because the qualifying person is paid a qualifying instalment of carer payment.

The amount of carer supplement for the qualified person for 2011 is $1,200, made up of $600 relating to carer allowance relating to the eligible care receiver and $600 relating to carer payment.

Effect of nil rates of carer payment, partner service pension and carer service pension

(3A) If:

(a) a person:

(i) is not paid an instalment of carer payment under this Act in respect of a period that includes 1 July in a year because the person's rate of that payment in respect of that period is nil; or

(ii) is not paid an instalment of partner service pension or carer service pension under the Veterans' Entitlements Act in respect of a period that includes 1 July in a year because the person's rate of that pension in respect of that period is nil; and

(b) the person's rate of that payment or pension in respect of that period is worked out having regard to an income test module of a rate calculator in this Act or the Veterans' Entitlements Act; and

(c) either:

(i) if subparagraph (a)(i) applies—the person has employment income (within the meaning of this Act) in respect of that period; or

(ii) if subparagraph (a)(ii) applies—the person has employment income (within the meaning of section 46AB of the Veterans' Entitlements Act) in respect of that period; and

(d) the person would have been paid an instalment of that payment or pension in respect of that period if all of the person's income, and all of the person's partner's income (if any), in respect of that period were disregarded;

the person is taken, for the purposes of this section, to have been paid an instalment of that payment or pension in respect of that period.

*Definition of **eligible care receiver***

(4) Each person to whose care a qualifying instalment of carer allowance relates is an ***eligible care receiver*** in relation to the qualified person.

(5) However, if subsection 953(2) applies in relation to a qualifying instalment, the 2 disabled children to whom the instalment relates are to be treated as if they were a single ***eligible care receiver*** in relation to the qualified person.

*Definition of **carer service pension***

(6) In this section:

carer service pension means carer service pension that is payable because of subclause 8(2) or (4) of Schedule 5 to the Veterans' Entitlements Act.

OFFICIAL: Sensitive // Legal Privilege

Part 2.20—Double orphan pension

Division 1—DOP child status

993 Double orphan—not refugee

(1) A young person is a double orphan if:
  (a) the young person is not a refugee child; and
  (b) each parent of the young person is dead.

Note 1: For ***young person*** and ***parent*** see section 5.

Note 2: For ***refugee child*** see section 995.

Note 3: If the young person does not qualify as a double orphan under this subsection, and the young person is a refugee child, the young person may qualify as a double orphan under section 994.

(2) A young person is a double orphan if:
  (a) the young person is not a refugee child; and
  (b) one parent of the young person is dead; and
  (c) the other parent of the young person is:
    (i) a long-term prisoner; or
    (ii) a mental hospital patient on a long-term basis; or
    (iii) in residential care on a long-term basis; or
    (iv) uncontactable.

Note 1: For ***young person*** and ***parent*** see section 5.

Note 2: For ***refugee child*** see section 995.

Note 3: For ***long-term prisoner*** see section 996.

Note 4: For ***mental hospital patient on a long-term basis***, see subsection 997(1).

Note 4A: For ***in residential care on a long-term basis***, see subsection 997(2).

Note 5: For ***uncontactable*** see section 998.

(3) If a young person (other than an adopted child) is a relationship child of a person because he or she is a child of the person, and of another person, within the meaning of the *Family Law Act 1975*,

OFFICIAL: Sensitive // Legal Privilege

the person and the other person are taken to be the young person's only parents for the purposes of this section.

994 Double orphan—refugee

(1) A young person is a double orphan if:
  (a) the young person is a refugee child; and
  (b) one parent of the young person is:
    (i) dead; or
    (ii) living outside Australia; or
    (iii) uncontactable; and
  (c) the other parent, if any, is:
    (i) dead; or
    (ii) living outside Australia; or
    (iii) uncontactable; or
    (iv) a long-term prisoner; or
    (v) a mental hospital patient on a long-term basis; or
    (vi) in residential care on a long-term basis.

Note 1: For ***young person*** and ***parent*** see section 5.

Note 2: For ***refugee child*** see section 995.

Note 3: For ***uncontactable*** see section 998.

Note 4: For ***long-term prisoner*** see section 996.

Note 5: For ***mental hospital patient on a long-term basis***, see subsection 997(1).

Note 5A: For ***in residential care on a long-term basis***, see subsection 997(2).

(2) If a young person (other than an adopted child) is a relationship child of a person because he or she is a child of the person, and of another person, within the meaning of the *Family Law Act 1975*, the person and the other person are taken to be the young person's only parents for the purposes of this section.

995 Refugee child

(1) A young person is a refugee child if:

(a) the young person is not an adopted child by virtue of an adoption under a law in force in a State or Territory of the Commonwealth; and

(b) the young person has not, at any time, lived in Australia with one or both of his or her parents; and

(c) the young person:

(i) has been granted refugee status by the Australian Government; or

(ii) has, at any time, been admitted into Australia as a refugee by the Australian Government; or

(iii) the young person has been, at any time, admitted into Australia in accordance with the terms of a special humanitarian program of the Australian Government that has been approved by the Minister for the purposes of this definition.

(2) An approval of a special humanitarian program for the purposes of subparagraph (1)(c)(iii) may be expressed to have retrospective effect to the date of the establishment of the program.

(3) If a young person (other than an adopted child) is a relationship child of a person because he or she is a child of the person, and of another person, within the meaning of the *Family Law Act 1975*, the person and the other person are taken to be the young person's only parents for the purposes of this section.

996 Long-term prisoner

(1) For the purposes of this Division, a person is a ***long-term prisoner*** if the person:

(a) has been convicted of an offence; and

(b) has been sentenced to imprisonment:

(i) for life; or

(ii) for a term of at least 10 years; and

(c) is serving the sentence.

OFFICIAL: Sensitive // Legal Privilege

(2) For the purposes of this Division, a person is a long-term prisoner if:
  (a) the person has been charged with an offence punishable by imprisonment for life or for a term of at least 10 years; and
  (b) the person has not been convicted of the offence; and
  (c) the person is in custody; and
  (d) the person is not serving a sentence of imprisonment for life or for a term of 10 years or more imposed as a result of conviction of another offence.

997 Patient on a long-term basis

Mental hospital patient

(1) For the purposes of this Division, a person is a ***mental hospital patient on a long-term basis*** if:
  (a) the person is a mental hospital patient; and
  (b) the Secretary is satisfied that the person will require care and treatment for an indefinite period.

Note: For ***mental hospital patient*** see section 23.

Nursing home patient

(2) For the purposes of this Division, a person is ***in residential care on a long-term basis*** if:
  (a) the person is in residential care; and
  (b) the Secretary is satisfied that the person will be in residential care for an indefinite period.

998 Person uncontactable

For the purposes of this Division, a person is ***uncontactable*** if the person's whereabouts are not known to the person or approved care organisation claiming or receiving the double orphan pension concerned.

OFFICIAL: Sensitive // Legal Privilege

Division 2—Qualification for and payability of double orphan pension

Subdivision A—Qualification

999 Qualification for double orphan pension

Persons other than approved care organisations

(1) A person is qualified for a double orphan pension for a young person if:

(a) the young person is an FTB child of the person, or would be an FTB child of the person except that the young person, or someone on behalf of the young person, is receiving payments under a prescribed educational scheme; and

(b) the person is eligible for family tax benefit, or would be so eligible except that:

(i) the young person is not an FTB child of the person, but only because of the receipt of the payments referred to in paragraph (a); or

(ii) the person's rate of family tax benefit, worked out under Division 1 of Part 4 of the Family Assistance Act, is nil; and

(c) on the day on which the person claims the double orphan pension, the young person is a double orphan; and

(d) either:

(i) the young person continues to be a double orphan; or

(ii) if the young person is no longer a double orphan, the person has not become aware that the young person is no longer a double orphan.

Approved care organisations

(2) An approved care organisation is qualified for a double orphan pension for a young person if:

OFFICIAL: Sensitive // Legal Privilege

(a) the organisation is eligible for family tax benefit for the young person, or would be eligible for family tax benefit for the young person except that the young person, or someone on behalf of the young person, is receiving payments under a prescribed education scheme; or

(b) on the day on which the organisation claims the double orphan pension, the young person is a double orphan; and

(c) either:

(i) the young person continues to be a double orphan; or

(ii) if the young person is no longer a double orphan—the organisation has not become aware that the young person is no longer a double orphan.

Note 1: For ***double orphan*** see sections 993 and 994.

Note 2: For ***approved care organisation*** see sections 6 and 35.

Subdivision B—Payability

1003 Double orphan pension not payable for child receiving a pension under the Veterans' Entitlements Act

(1) A double orphan pension is not payable for a child in relation to an instalment period for family tax benefit if the child is receiving a pension under Part II or IV of the Veterans' Entitlements Act.

(2) In subsection (1):

instalment period for family tax benefit means a period that is an instalment period for the purposes of section 23 of the Family Assistance Administration Act.

OFFICIAL: Sensitive // Legal Privilege

Division 5—Rate of double orphan pension

1010 Rate of double orphan pension

(1) Subject to subsections (1A) to (3A), the rate of double orphan pension is a daily rate calculated by dividing $37.90 by 14.

(1A) If a person who is qualified for double orphan pension for a child has, under section 59 of the Family Assistance Act, a shared care percentage for the child, the rate of double orphan pension under subsection (1) is the person's shared care percentage of the rate of double orphan pension that would otherwise apply under that subsection to the child.

Children who became double orphans before 1 July 2000

(2) If:

(a) a child became a double orphan before 1 July 2000; and

(b) the person who is qualified for double orphan pension for the child does not, under section 59 of the Family Assistance Act, have a shared care percentage for the child; and

(c) the current family tax benefit rate in respect of the child is less than the prior family allowance rate in respect of the child;

then the rate calculated under subsection (1) in relation to the child is increased by an amount equal to the difference between the prior family allowance rate and the current family tax benefit rate.

(2A) If:

(a) a child became a double orphan before 1 July 2000; and

(b) the person who is qualified for double orphan pension for the child has, under section 59 of the Family Assistance Act, a shared care percentage for the child; and

(c) the current family tax benefit rate in respect of the child is less than the shared care percentage of the prior family allowance rate in respect of the child;

then the rate calculated under subsections (1) and (1A) in relation to the child is increased by an amount equal to the difference between:

(d) the person's shared care percentage of the prior family allowance rate; and

(e) the current family tax benefit rate.

Children who become double orphans on or after 1 July 2000

(3) If:

(a) a child becomes a double orphan on or after 1 July 2000; and

(b) the person who is qualified for double orphan pension for the child does not, under section 59 of the Family Assistance Act, have a shared care percentage for the child; and

(c) the current family tax benefit rate in respect of the child is less than the prior family tax benefit rate in respect of the child;

then the rate calculated under subsection (1) in relation to the child is increased by an amount equal to the difference between the prior family tax benefit rate and the current family tax benefit rate.

(3A) If:

(a) a child becomes a double orphan on or after 1 July 2000; and

(b) the person who is qualified for double orphan pension for the child has, under section 59 of the Family Assistance Act, a shared care percentage for the child; and

(c) the current family tax benefit rate in respect of the child is less than the shared care percentage of the prior family tax benefit rate in respect of the child;

then the rate calculated under subsections (1) and (1A) in relation to the child is increased by an amount equal to the difference between:

(d) the person's shared care percentage of the prior family tax benefit rate; and

(e) the current family tax benefit rate.

OFFICIAL: Sensitive // Legal Privilege

(4) Subsections (2) and (3) do not have effect in relation to a child at any time at which double orphan pension in respect of the child is payable to an approved care organisation.

(5) In this section:

current family tax benefit rate, in relation to a child, means the rate represented by so much of an individual's Part A rate of family tax benefit as relates to the child.

prior family allowance rate, in relation to a child, means the rate at which family allowance was payable in respect of the child immediately before the child became a double orphan.

prior family tax benefit rate, in relation to a child, means the rate represented by so much of an individual's Part A rate of family tax benefit as related to the child immediately before the child became a double orphan.

Division 10—Bereavement payments (death of DOP child)

Subdivision A—Death of DOP child (General)

1033 Continued double orphan pension during bereavement rate continuation period where DOP child dies

If:

(a) a person is receiving double orphan pension for a young person; and

(b) the young person dies; and

(c) immediately before the young person died:

(ii) the young person was an FTB child of the person; or

(iii) the person was receiving a service pension or income support supplement whose rate included:

(A) a dependent child add-on for the young person; or

(B) guardian allowance in respect of the young person;

the person is to be qualified for double orphan pension for the young person during the bereavement rate continuation period as if the young person had not died.

1034 Lump sum payable in some circumstances

If:

(a) a person is qualified for double orphan pension under section 1033 in relation to the death of a DOP child; and

(b) the first available bereavement adjustment payday occurs before the end of the bereavement period; and

(c) immediately before the child died, the child was an FTB child;

a lump sum (worked out using the lump sum calculator at the end of this section) is payable to the person.

OFFICIAL: Sensitive // Legal Privilege

LUMP SUM CALCULATOR

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

Method statement

Step 1. Work out the rate at which double orphan pension was payable immediately before the first available bereavement adjustment payday: the result is called the ***continued rate***.

Step 2. Work out the number of the person's paydays in the bereavement lump sum period.

Step 3. Multiply the continued rate by the number obtained in Step 2: the result is the amount of the lump sum payable to the person under this section.

Subdivision AA—Death of dependent child (special short-term assistance)

1034AA Continuation of qualification for double orphan pension for 4 weeks in some cases where recipient's DOP child dies

If:

(a) a person is receiving double orphan pension for a young person; and

(b) the young person dies; and

(c) the person is not qualified for double orphan pension under section 1033 in respect of the young person;

the person is to be qualified for double orphan pension, for the period of 4 weeks that starts on the day after the day on which the young person died, as if the young person had not died.

OFFICIAL: Sensitive // Legal Privilege

Subdivision B—Death of recipient

1034A Death of recipient

(1) If:

(a) a person is receiving a double orphan pension; and

(b) the person is a member of a couple; and

(c) the person dies; and

(d) the person:

(i) was qualified at the time of the person's death for payments under Subdivision A in relation to the death of a DOP child; or

(ii) would have been so qualified if the person had not died; and

(e) the person's partner claims the payments referred to in paragraph (d) within 3 months after the death of the child;

there is payable to the partner an amount equal to the sum of the following amounts:

(f) the amount of double orphan pension that would have been payable to the person under section 1033 if the person had not died;

(g) any lump sum that would have been payable to the person under section 1034 if the person had not died.

(2) If:

(a) a person is receiving a double orphan pension; and

(b) the person is not a member of a couple; and

(c) the person dies; and

(d) the person:

(i) was qualified at the time of the person's death for payments under Subdivision A in relation to the death of a DOP child; or

(ii) would have been so qualified if the person had not died;

there is payable, to such person as the Secretary thinks appropriate, an amount equal to the sum of the following amounts:

OFFICIAL: Sensitive // Legal Privilege

(e) the amount of double orphan pension that would have been payable to the person under section 1033 if the person had not died; and

(f) any lump sum that would have been payable to the person under section 1034 if the person had not died.

OFFICIAL: Sensitive // Legal Privilege

Part 2.21—Mobility allowance

Division 1—Qualification for and payability of mobility allowance

Subdivision A—Qualification

1035 Qualification for mobility allowance (rate specified in subsection 1044(1))

(1) A person is qualified for a mobility allowance at the rate specified in subsection 1044(1) if the person satisfies the travel test set out in subsection (2) and:

(a) all of the following apply:

(i) the person is a handicapped person;

(ii) the person is engaged in gainful employment;

(iii) the Secretary is of the opinion that:

(A) the person is unable to use public transport without substantial assistance, either permanently or for an extended period; and

(B) the person's inability to use public transport without substantial assistance is due to the person's physical or mental disability; and

(C) the person is engaged in the gainful employment for at least 32 hours in every 4 weeks on a continuing basis;

(iv) the person is an Australian resident; or

(b) all of the following apply:

(i) the person is a handicapped person;

(ii) the person is undertaking vocational training;

(iii) the Secretary is of the opinion that:

(A) the person is unable to use public transport without substantial assistance, either permanently or for an extended period; and

(B) the person's inability to use public transport without substantial assistance is due to the person's physical or mental disability; and

(C) the person is undertaking the vocational training for at least 32 hours in every 4 weeks on a continuing basis;

(iv) the person is an Australian resident; or

(c) all of the following apply:

(i) the person is a handicapped person;

(ii) the person is receiving jobseeker payment, youth allowance or austudy payment;

(iii) the Secretary is of the opinion that:

(A) the person is unable to use public transport without substantial assistance, either permanently or for an extended period; and

(B) the person's inability to use public transport without substantial assistance is due to the person's physical or mental disability; and

~~(iv) the person is required to satisfy the activity test;~~

(iv) if the person is receiving jobseeker payment—the person is required to satisfy the employment pathway plan requirements;

(iva) if the person is receiving youth allowance—the person is undertaking full-time study (see section 541B) or is required to satisfy the employment pathway plan requirements;

(ivb) if the person is receiving austudy payment—the person is required to satisfy the activity test;

(v) the person is an Australian resident; or

(d) all of the following apply:

(i) the person is a handicapped person;

(ii) the Secretary is of the opinion that:

(A) the person is unable to use public transport without substantial assistance, either permanently or for an extended period; and

(B) the person's inability to use public transport without substantial assistance is due to the person's physical or mental disability; and

(C) the person is undertaking job search activities under an agreement between the Secretary and a service provider nominated by the Secretary;

(iii) the person is an Australian resident; or

(e) all of the following apply:

(i) the person is a handicapped person;

(ii) the Secretary is of the opinion that:

(A) the person is unable to use public transport without substantial assistance, either permanently or for an extended period; and

(B) the person's inability to use public transport without substantial assistance is due to the person's physical or mental disability; and

(C) the person is undertaking job search activities under the Competitive Employment Placement and Training Program administered by the Department;

(iii) the person is an Australian resident; or

(f) all of the following apply:

(i) the person is a handicapped person;

(ii) the Secretary is of the opinion that:

(A) the person is unable to use public transport without substantial assistance, either permanently or for an extended period; and

(B) the person's inability to use public transport without substantial assistance is due to the person's physical or mental disability; and

(C) the person is engaged in voluntary work for at least 32 hours in every 4 weeks on a continuing basis;

(iii) the person is an Australian resident; or

(g) all of the following apply:

OFFICIAL: Sensitive // Legal Privilege

(i) the person is a handicapped person;
(ii) the Secretary is of the opinion that:
(A) the person is unable to use public transport without substantial assistance, either permanently or for an extended period; and
(B) the person's inability to use public transport without substantial assistance is due to the person's physical or mental disability;
(iii) the Secretary is of the opinion that the person is undertaking a combination of any 2 or more of the following:
(A) gainful employment;
(B) vocational training;
(C) voluntary work;
for at least 32 hours in every 4 weeks on a continuing basis;
(iv) the person is an Australian resident; or

(h) all of the following apply:
(i) the person is a handicapped person;
(ii) the person is undertaking a vocational rehabilitation program;
(iii) the Secretary is of the opinion that:
(A) the person is unable to use public transport without substantial assistance, either permanently or for an extended period; and
(B) the person's inability to use public transport without substantial assistance is due to the person's physical or mental disability;
(iv) the person is an Australian resident.

(2) A person satisfies the travel test mentioned in subsection (1) if the person is required to travel to and from the person's home for the purpose of undertaking:
(a) gainful employment; or
(b) vocational training; or

(c) job search activities; or
(d) voluntary work; or
(e) a vocational rehabilitation program.

(3) In this section:

vocational rehabilitation program means a rehabilitation program (or follow-up program) under Part III of the *Disability Services Act 1986* that provides a person with assistance to obtain or retain unsupported paid employment.

Note: A vocational rehabilitation program may include vocational training within the meaning of section 19.

vocational training means vocational training within the meaning of section 19 (other than training provided as part of a rehabilitation program or follow-up program under Part III of the *Disability Services Act 1986*).

voluntary work means work approved by the Secretary undertaken in a voluntary capacity for charitable, welfare or community organisations.

1035A Qualification for mobility allowance (rate specified in subsection 1044(1A))

General principle

(1) A person is qualified for a mobility allowance at the rate specified in subsection 1044(1A) if:
(a) the person is a handicapped person; and
(b) the Secretary is of the opinion that the person is unable to use public transport without substantial assistance (either permanently or for an extended period) due to the person's physical or mental disability; and
(c) the person is an Australian resident; and
(d) the person satisfies one or more of subsections (2) to (9).

OFFICIAL: Sensitive // Legal Privilege

Disability support pension

(2) A person satisfies this subsection if:

(a) at a particular time, the person's hours of work per week, on wages that are at or above the relevant minimum wage increase to at least 30 hours per week; and

(b) immediately before that time, the person was receiving disability support pension as a result of a claim made before 1 July 2006; and

(c) the person ceased to be qualified for disability support pension because of the increase in the number of hours worked; and

(d) since the time mentioned in paragraph (a), the person:

(i) has been working at least 30 hours per week on wages that are at or above the relevant minimum wage; and

(ii) has not received another income support payment; and

(e) the person is required to travel to and from the person's home for the purpose of performing that work.

However, this subsection ceases to apply to a transitional DSP applicant from the date of effect of the first decision about the person's capacity to perform work made on or after 1 July 2006 following a review of the person's capacity to perform work.

(3) A person satisfies this subsection if:

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

(b) one or both of the following applies to the person:

(i) the person is working for at least 15 hours per week on wages that are at or above the relevant minimum wage;

(ii) the person is undertaking job search activities under an agreement between the Secretary and the person, or an employment pathway plan that is in force in relation to the person, for work of at least 15 hours per week on wages that are at or above the relevant minimum wage; and

(c) if the person is working as mentioned in subparagraph (b)(i)—the person is required to travel to and

from the person's home for the purpose of performing the work; and

(d) if the person is undertaking job search activities as mentioned in subparagraph (b)(ii)—the person is required to travel to and from the person's home for the purpose of undertaking those activities.

(4) A person satisfies this subsection if:

(a) subsection (2) does not apply (or has ceased to apply) to the person; and

(b) the person is working for at least 30 hours per week on wages that are at or above the relevant minimum wage; and

(c) immediately before the person started that work, the person was receiving disability support pension; and

(d) the person ceased to be qualified for disability support pension because of the number of hours worked; and

(e) since starting that work, the person:

(i) has been working at least 30 hours per week on wages that are at or above the relevant minimum wage; and

(ii) has not received another income support payment; and

(f) the person is required to travel to and from the person's home for the purpose of performing that work.

(5) A person satisfies this subsection if:

(a) subsection (2) does not apply (or has ceased to apply) to the person; and

(b) at a particular time, the person starts to earn income from work or the person's income from work increases; and

(c) immediately before that time, the person was receiving disability support pension; and

(d) the disability support pension ceased to be payable to the person because the rate of the pension is nil due to the income, or increased income, the person earned from the work; and

OFFICIAL: Sensitive // Legal Privilege

(e) since the time mentioned in paragraph (b), the person has been working at least 15 hours per week on wages that are at or above the relevant minimum wage; and

(f) the person is required to travel to and from the person's home for the purpose of performing that work; and

(g) since the time mentioned in paragraph (b), no income support payment has been payable to the person because the rate of the payment is nil due to the income, or increased income, the person has been earning from the work.

Jobseeker payment, youth allowance or parenting payment recipients

(6) A person satisfies this subsection if:

(a) the person:

(i) is receiving jobseeker payment; or

(ii) is receiving youth allowance, but is not undertaking full-time study and is not a new apprentice; or

(iii) is receiving parenting payment; and

(b) one or both of the following applies to the person:

(i) the person is working for at least 15 hours per week on wages that are at or above the relevant minimum wage;

(ii) the person is undertaking job search activities under an agreement between the Secretary and the person, or an employment pathway plan that is in force in relation to the person, for work of at least 15 hours per week on wages that are at or above the relevant minimum wage; and

(c) if the person is working as mentioned in subparagraph (b)(i)—the person is required to travel to and from the person's home for the purpose of performing the work; and

(d) if the person is undertaking job search activities as mentioned in subparagraph (b)(ii)—the person is required to travel to and from the person's home for the purpose of undertaking those activities.

Note 1: For ***undertaking full-time study*** see section 541B.

Note 2: For ***new apprentice*** see subsection 23(1).

(7) A person satisfies this subsection if:

(a) at a particular time, the person starts to earn income from work or the person's income from work increases; and

(b) immediately before that time, the person:

(i) was receiving jobseeker payment; or

(ii) was receiving youth allowance, but was not undertaking full-time study and was not a new apprentice; or

(iii) was receiving parenting payment; and

(c) the jobseeker payment, youth allowance or parenting payment ceased to be payable to the person because the rate of the payment or allowance was nil due to the income, or increased income, the person earned from his or her work; and

(d) since the time mentioned in paragraph (a), the person has been working at least 15 hours per week on wages that are at or above the relevant minimum wage; and

(e) the person is required to travel to and from the person's home for the purpose of performing that work; and

(f) since the time mentioned in paragraph (a), no income support payment has been payable to the person because the rate of the payment is nil due to the income, or increased income, the person has been earning from the work.

Note 1: For ***undertaking full-time study*** see section 541B.

Note 2: For ***new apprentice*** see subsection 23(1).

Jobseeker payment, youth allowance, disability support pension and parenting payment recipients

(8) A person satisfies this subsection if:

(a) the person:

(i) is receiving jobseeker payment; or

(ii) is receiving youth allowance, but is not undertaking full-time study and is not a new apprentice; or

(iii) is receiving disability support pension; or
(iv) is receiving parenting payment; and

(b) the person is working for at least 15 hours per week on wages set in accordance with the program administered by the Commonwealth known as the supported wage system; and

(c) the work is not performed by the person in the course of employment that is supported by supported employment services within the meaning of section 7 of the *Disability Services Act 1986*; and

(d) the person is required to travel to and from the person's home for the purpose of performing the work.

Note 1: For ***undertaking full-time study*** see section 541B.

Note 2: For ***new apprentice*** see subsection 23(1).

(9) A person satisfies this subsection if:

(a) at a particular time, the person starts to earn income from work or the person's income from work increases; and

(b) immediately before that time, the person:
(i) was receiving jobseeker payment; or
(ii) was receiving youth allowance, but was not undertaking full-time study and was not a new apprentice; or
(iii) was receiving disability support pension; or
(iv) was receiving parenting payment; and

(c) the jobseeker payment, youth allowance, disability support pension or parenting payment ceased to be payable to the person because the rate of the payment, allowance or pension was nil due to the income, or increased income, the person earned from his or her work; and

(d) since the time mentioned in paragraph (a), the person has been working:
(i) for at least 15 hours per week on wages set in accordance with the program administered by the Commonwealth known as the supported wage system; or
(ii) at least 15 hours per week on wages that are at or above the relevant minimum wage; and

OFFICIAL: Sensitive // Legal Privilege

(e) the work has not been performed by the person in the course of employment that is or was supported by supported employment services within the meaning of section 7 of the *Disability Services Act 1986*; and

(f) the person has been required to travel to and from the person's home for the purpose of performing that work; and

(g) since the time mentioned in paragraph (a), no income support payment has been payable to the person because the rate of the payment is nil due to the income, or increased income, the person has been earning from the work.

Note 1: For ***undertaking full-time study*** see section 541B.

Note 2: For ***new apprentice*** see subsection 23(1).

Subdivision B—Payability

1036 Mobility allowance not payable at 2 rates

Mobility allowance at the rate specified in subsection 1044(1) is not payable to a person while mobility allowance at the rate specified in subsection 1044(1A) is payable to the person.

1037 Mobility allowance not payable where person receiving motor vehicle assistance

A mobility allowance is not payable to a person:

(a) if the person is provided with a motor vehicle under the Vehicle Assistance Scheme prepared under section 105 of the VEA—during any period during which the vehicle is provided; or

(aa) if the person is provided with a motor vehicle under the Motor Vehicle Compensation Scheme under section 212 of the MRCA—during any period during which the vehicle is provided.

Note: For ***VEA*** and ***MRCA*** see section 23.

OFFICIAL: Sensitive // Legal Privilege

1038 Mobility allowance not payable when person is NDIS participant

A mobility allowance is not payable to a person if:

(a) the person is an NDIS participant; and

(b) an NDIS plan is in effect for the NDIS participant; and

(c) the NDIS plan contains a statement specifying the reasonable and necessary supports that will be funded under the National Disability Insurance Scheme (within the meaning of the *National Disability Insurance Scheme Act 2013*).

1039AA Newly arrived resident's waiting period

(1) Subject to this section, a person who:

(a) enters Australia; and

(b) has not been an Australian resident and in Australia for a period of, or periods totalling, 208 weeks;

is subject to a newly arrived resident's waiting period.

(2) Subsection (1) does not apply to a person who has a qualifying residence exemption for a mobility allowance.

Note: For ***qualifying residence exemption*** in relation to mobility allowance, see paragraph 7(6AA)(f).

(4) Subsection (1) does not apply to a person who becomes a handicapped person while in Australia.

Note: For ***handicapped person*** see section 19.

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

(a) the person is a refugee, or a former refugee, at the time the person made the claim for a mobility allowance; or

(b) the following apply:

(i) before the person made the claim for a mobility allowance, the person was a family member of another person at the time the other person became a refugee;

(ii) the person is a family member of that other person at the time the person made the claim for a mobility allowance

or, if that other person has died, the person was a family member of that other person immediately before that other person died; or

(c) the person is an Australian citizen at the time the person made the claim for a mobility allowance.

(6) For the purposes of subsection (5):

(a) ***family member*** has the meaning given by subsection 7(6D); and

(b) ***former refugee*** has the meaning given by subsection 7(1); and

(c) ***refugee*** has the meaning given by subsection 7(6B).

1039AB Duration of newly arrived resident's waiting period

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

(a) starts on the day the person first became an Australian resident; and

(b) ends when the person has been an Australian resident and in Australia for a period of, or periods totalling, 208 weeks.

OFFICIAL: Sensitive // Legal Privilege

Division 2—Rate of mobility allowance

1044 Rate of mobility allowance

(1AA) The rate of mobility allowance is a daily rate worked out by dividing the fortnightly rate by 14.

(1) The fortnightly rate of mobility allowance for a person who qualifies for the allowance under section 1035 is $50.50.

(1A) The fortnightly rate of mobility allowance for a person who qualifies for the allowance under section 1035A is $100.

(2) A person's mobility allowance rate is nil if:

(a) the person has received mobility allowance advance under section 1045; and

(b) the person's advance payment period has not ended.

Note: The rate of mobility allowance is indexed annually in line with CPI increases (see sections 1191 to 1194).

(3) In this section:

advance payment period, in relation to a person, means the period of:

(a) 26 weeks; or

(b) if section 1044A applies—such number of days as is provided for in that section;

that starts at the beginning of the advance entitlement period.

1044A Reduction of the advance payment period

(1) A person's advance payment period is the period worked out using the following Method statement if:

(a) the person has received a mobility allowance advance; and

(b) the amount of the advance was calculated on the basis that the person qualified for mobility allowance under section 1035; and

(c) the person qualifies for mobility allowance under section 1035A, during the period of 26 weeks starting on the day on which the person qualified for the advance; and

(d) this section has not previously applied to the person in relation to the same advance.

Method statement

Step 1. Work out the number of days that, at the time of qualification under section 1035A, remain from the period of 26 weeks referred to in paragraph (c) (counting the day on which that qualification occurs as a whole day).

Step 2. Multiply the result under Step 1 by the amount worked out under the following formula:

$$\frac{\text{Rate of mobility allowance specified in subsection 1044(1)}}{\text{Rate of mobility allowance specified in subsection 1044(1A)}}$$

If the result is not a whole number, round the result down to the next whole number.

Step 3. Subtract the result under Step 2 from the result under Step 1.

Step 4. Subtract the result under Step 3 from the number 182. The result is the number of days in the person's advance payment period.

OFFICIAL: Sensitive // Legal Privilege

Division 3—Mobility allowance advance

1045 Qualification for mobility advance

(1) A person is qualified for a mobility allowance advance if:
  (a) the person is receiving mobility allowance; and
  (b) the person has requested the advance; and
  (c) the Secretary is satisfied that the person will continue to be qualified for mobility allowance for at least 26 weeks from the day on which the person receives the advance; and
  (d) if the person has previously received a mobility allowance advance, a period of not less than 12 months has elapsed since the person last received a mobility allowance advance.

(2) If a person has previously received a mobility allowance advance, a request is not effective for the purpose of paragraph (1)(b) if it was made within 11 months after the person received a mobility allowance advance.

(3) The amount of the advance is calculated by multiplying the mobility allowance rate by 13.

(4) For the purpose of subsection (3):

mobility allowance rate is the rate of mobility allowance on the advance payday.

Division 4—Continuation

1046 Continuation of mobility allowance when person ceases to be qualified

(1) This section applies to a person if:

(a) a mobility allowance at the rate specified in subsection 1044(1) is payable to a person; and

(b) the person would, apart from this section, cease to be qualified for the mobility allowance because he or she ceases, in the Secretary's opinion:

(i) to undertake gainful employment, vocational training or voluntary work; or

(ii) to undertake a combination of any 2 or more of the following:

(A) gainful employment;

(B) vocational training;

(C) voluntary work;

for at least 32 hours in every 4 weeks on a continuing basis.

(2) This section applies to a person if:

(a) a mobility allowance at the rate specified in subsection 1044(1) is payable to a person; and

(b) the person would, apart from this section, cease to be qualified for the mobility allowance because he or she ceases, in the Secretary's opinion:

(i) to receive jobseeker payment for a reason other than ~~the application of section 601 or 605 of this Act, or~~ because the person ceases to satisfy the employment pathway plan requirements and other than the application of subsection 42AL(1), 42AO(1), 42AP(5), 42P(1) or 42S(1), or section 81, of the Administration Act; or

(ii) to receive youth allowance for a reason other than ~~the application of section 541A, 544A, 544C, 550~~because the person ceases to satisfy the employment pathway plan requirements and other than the application of

section 550B, 551 or 553B of this Act, or subsection 42AL(1), 42AO(1), 42AP(5), 42P(1) or 42S(1), or section 81, of the Administration Act; or

(iii) to receive an austudy payment for a reason other than the application of section 569 or 576 of this Act or section 81 of the Administration Act; or

~~(iv) to undertake job search activities under an agreement between the Secretary and the person or an employment pathway plan that is in force in relation to the person; or~~

~~(v) to undertake job search activities under the Competitive Employment Placement and Training Program administered by the Department; or~~

(vi) to undertake a vocational rehabilitation program.

(2A) This section applies to a person if:

(a) a mobility allowance is payable to a person at the rate specified in subsection 1044(1A); and

(b) the person would, apart from this section, cease to be qualified for the mobility allowance because he or she ceases, in the Secretary's opinion, to satisfy one or more of subsections 1035A(2), (3), (4), (5), (6), (7), (8) and (9).

(2B) This section applies to a person if:

(a) a mobility allowance is payable to a person at the rate specified in subsection 1044(1A) because the person satisfies one or both of subsections 1035A(6) and (7); and

(b) the person would, apart from this section, cease to be qualified for the mobility allowance because he or she ceases, in the Secretary's opinion:

(i) to receive jobseeker payment for a reason other than ~~the application of section 601 or 605 of this Act, or~~because the person ceases to satisfy the employment pathway plan requirements and other than the application of subsection 42AL(1), 42AO(1), 42AP(5), 42P(1) or 42S(1), or section 81, of the Administration Act; or

(ii) to receive youth allowance for a reason other than ~~the application of section 541A, 544A,~~because the person

OFFICIAL: Sensitive // Legal Privilege

ceases to satisfy the employment pathway plan requirements and other than the application of section 550B, 551 or 553B of this Act, or subsection 42AL(1), 42AO(1), 42AP(5), 42P(1) or 42S(1), or section 81, of the Administration Act; or

(iia) to receive parenting payment for a reason other than the application of section 500J of this Act, or subsection 42AL(1), 42AO(1), 42AP(5), 42P(1) or 42S(1), or section 81, of the Administration Act; or

(iii) to undertake job search activities, under an agreement between the Secretary and a service provider nominated by the Secretary, for work of at least 15 hours per week on wages that are at or above the relevant minimum wage.

(3) A person to whom this section applies continues to be qualified for the mobility allowance for 12 weeks after the person would, apart from this section, have ceased to be qualified for the mobility allowance.

(4) If:

(a) a mobility allowance is payable to a person; and

(b) the person would, apart from this section, cease to be qualified for the allowance because of circumstances other than those described in subsections (1), (2), (2A) and (2B);

the person continues to be qualified for the mobility allowance for 2 weeks after the person would, apart from this section, have ceased to be qualified for the mobility allowance.

(5) If:

(a) a mobility allowance is payable to a person because of subsection (3); and

(b) circumstances occur that would, if the person were still qualified for the allowance, result in the person ceasing to be qualified;

the mobility allowance ceases to be payable to the person on the day on which those circumstances occur.

OFFICIAL: Sensitive // Legal Privilege

(6) In this section:

vocational rehabilitation program means a rehabilitation program (or follow-up program) under Part III of the *Disability Services Act 1986* that provides a person with assistance to obtain or retain unsupported paid employment.

Note: A vocational rehabilitation program may include vocational training within the meaning of section 19.

vocational training means vocational training within the meaning of section 19 (other than vocational training provided as part of a rehabilitation program or follow-up program under Part III of the *Disability Services Act 1986*).

voluntary work means work approved by the Secretary undertaken in a voluntary capacity for charitable, welfare or community organisations.

OFFICIAL: Sensitive // Legal Privilege

Part 2.21A—Language, literacy and numeracy supplement

Division 1—Preliminary

1047 Definition

In this Part:

designated social security payment means:

(a) disability support pension; or

(c) jobseeker payment; or

(d) parenting payment; or

(e) partner allowance; or

(f) widow allowance; or

(g) youth allowance.

OFFICIAL: Sensitive // Legal Privilege

Division 2—Qualification for language, literacy and numeracy supplement

1048 General statement of qualification

A person is qualified to receive a language, literacy and numeracy supplement in respect of a fortnight if:

(a) the person is receiving a designated social security payment in respect of that fortnight; and

(b) the Secretary is satisfied that, on a day during that fortnight, the person was attending a course included in the language, literacy and numeracy program administered by the Department of State responsible for education and training.

OFFICIAL: Sensitive // Legal Privilege

Division 3—Circumstances where language, literacy and numeracy supplement not payable

1049 Language, literacy and numeracy supplement not payable in certain circumstances

(1) Language, literacy and numeracy supplement is not payable to a person in respect of a fortnight if pensioner education supplement under Part 2.24A or under ABSTUDY is payable to the person in respect of a day in the fortnight.

(2) Language, literacy and numeracy supplement is not payable to a person in respect of a fortnight if an approved program of work supplement or a CDEP Scheme Participant Supplement is payable to the person in respect of that fortnight.

~~(2A) Language, literacy and numeracy supplement is not payable to a person in respect of a fortnight if a training supplement or a National Green Jobs Corps supplement is payable to the person in respect of the fortnight.~~

(3) Language, literacy and numeracy supplement is not payable to a person in respect of a fortnight in relation to attendance at a second or subsequent language, literacy or numeracy course in that fortnight.

(4) For the avoidance of doubt, language, literacy and numeracy supplement is payable in respect of a person's attendance at a language, literacy or numeracy course whether that attendance is voluntary or is required under the provisions of, or of an agreement made under, any other provision of this Act.

OFFICIAL: Sensitive // Legal Privilege

Division 4—Rate increase relating to language, literacy and numeracy supplement

1050 Rate increase attributable to language, literacy and numeracy supplement

If a person:

(a) is qualified to receive language, literacy and numeracy supplement in respect of a fortnight; and

(b) nothing in section 1049 precludes the payability of that supplement to that person in respect of that fortnight;

the rate of the person's designated social security payment in respect of that fortnight, worked out under Chapter 3 and taking account of any rate reduction provided for in this Act, is increased by $20.80, being the fortnightly rate of the supplement.

OFFICIAL: Sensitive // Legal Privilege

Part 2.22—Advance payments of social security entitlements

Division 1—Qualification for advance payment

1061A Qualification for advance payment

Qualifications

(1) Subject to this section, a person is qualified for an advance payment of a social security entitlement only if:

(a) the social security entitlement is payable to the person; and

(b) the person has been receiving an income support payment for a continuous period of 3 months immediately before the day on which the person's application for the advance payment is lodged; and

(d) the Secretary is satisfied that the person will not suffer financial hardship from reductions in instalments of the social security entitlement as a result of receiving the advance payment.

Note 1: Other provisions of this Act deal with advances of social security payments that are not social security entitlements. For example, Division 3 of Part 2.21 deals with mobility allowance advance and Part 2.23 deals with advance pharmaceutical allowance.

Note 2: For ***income support payment*** and ***social security entitlement*** see subsection 23(1).

Note 3: For the determination of the continuous period in respect of which a person received an income support payment see section 38B.

(2) The Secretary may, by legislative instrument, determine that paragraph (1)(b) does not apply to a person who has applied for an advance of youth allowance or austudy payment and the determination has effect accordingly.

OFFICIAL: Sensitive // Legal Privilege

Disqualification—age and disability support pensions and carer payment

(3) A person is not qualified for an advance payment of an age pension, disability support pension or carer payment if:

(a) the maximum amount of advance payment to which the person would be entitled under Division 4 is less than 1/52 of the person's advance payment qualifying amount; or

(b) the amount of an advance payment of a social security entitlement that the person received in full (whether as a single lump sum or in instalments) more than 12 months ago has not been fully repaid; or

(c) the person owes a debt to the Commonwealth (whether arising under this Act or not) that is recoverable under Part 5.2 by means of deductions from the person's social security payment.

The amount worked out under paragraph (a) must be rounded to the nearest cent (rounding 0.5 cents upwards).

Note 1: Paragraph (a) does not prevent payment of an advance payment in instalments of less than the amount worked out under that paragraph.

Note 2: For ***advance payment qualifying amount***, see subsection 23(1).

Disqualification—other social security entitlements

(4) A person is not qualified for an advance payment of a social security entitlement not covered by subsection (3) if:

(a) the maximum amount of advance payment to which the person would be entitled under Division 4 is less than $250; or

(b) the person has received an advance payment, or an instalment of an advance payment, of a social security entitlement and has not fully repaid the advance payment; or

(c) the person has received the amount of an advance payment in a single lump sum, or has received the first instalment of such an amount, on or after 1 January 1997, and the period of 12 months from the day the lump sum or instalment was paid has not elapsed; or

(d) the person owes a debt to the Commonwealth (whether arising under this Act or not) that is recoverable under Part 5.2 by means of deductions from the person's social security payment.

Note: Paragraph (a) does not prevent payment of an advance payment in instalments of less than $250.

(5) Paragraph (4)(c) does not apply to a person:

(a) who is receiving a pension PP (single); and

(b) who applies for an advance payment within the period of 28 days after ceasing to be a member of a couple.

(6) Paragraph (4)(d) does not apply to a person if:

(a) the debt the person owes to the Commonwealth arose as a result of the person's parenting payment rate changing from benefit PP (partnered) to pension PP (single); and

(b) the amount of the debt is smaller than the amount of advance payment to which the person would be entitled under Division 4.

OFFICIAL: Sensitive // Legal Privilege

Division 2—Applying for advance payment

1061B Application

A person who wants an advance payment of a social security entitlement under this Part must apply for the advance payment in accordance with this Division.

1061C Form of application

(1) The application must be in writing and must be in accordance with a form approved by the Secretary.

(2) The application must specify the amount of advance payment sought.

1061D Lodgment of application

(1) The application must be lodged:
  (a) at an office of the Department; or
  (b) at a place approved for the purpose by the Secretary; or
  (c) with a person approved for the purpose by the Secretary.

(2) A place or person approved under subsection (1) must be a place or person in Australia.

(3) The applicant must be in Australia when the application is lodged.

1061E Application may be withdrawn

(1) An applicant for an advance payment or a person acting on behalf of an applicant may withdraw an application that has not been determined.

(2) An application that is withdrawn is taken not to have been lodged.

(3) A withdrawal may be made orally or in writing.

OFFICIAL: Sensitive // Legal Privilege

Division 3—Determination of application and payment of advance payment

1061EA Secretary to determine application

(1) The Secretary must determine the application in accordance with this Act.

(2) The Secretary must grant the application if the Secretary is satisfied that the person is qualified for the advance payment.

1061EB Payment of advance payment

(1) Subject to subsection (3), if the application is granted, the advance payment of the social security entitlement is to be paid on the next day on which the person is paid an instalment of the social security entitlement.

(2) Subject to subsection (3), the advance payment is to be paid as a single lump sum.

(3) The Secretary may determine that:
  (a) an advance payment is to be paid on the day specified in the determination; or
  (b) an advance payment is to be paid in the two instalments specified in the determination on the days specified in the determination.

OFFICIAL: Sensitive // Legal Privilege

Division 4—Amount of advance payment

1061ECA Amount of advance payment—age and disability support pensions and carer payment

Application

(1) The amount of an advance payment of any of the following social security pensions is worked out according to this section:
  (a) age pension;
  (b) disability support pension;
  (d) carer payment.

Amount of advance

(2) The amount of the advance payment is the smaller of the following amounts:
  (a) the amount of advance payment sought;
  (b) the maximum amount of advance payment payable to the person as worked out as follows:

Method statement

Step 1. Work out $^{3}/_{52}$ of the person's advance payment qualifying amount.

Step 2. Work out the annual rate at which the social security pension was payable to the person on the last payday before the application for the advance payment was lodged, disregarding:

  (a) any amount payable by way of remote area allowance; and

  (b) so much of the person's pension supplement amount (if any) as is equal to the person's minimum pension supplement amount; and

	(c) the person's energy supplement (if any).
Step 3.	Work out the smaller of the result of step 1 and 7.5% of the result of step 2.
Step 4.	Subtract the following from the result of step 3: (a) each advance payment (if any) of a social security entitlement paid to the person during any of the 13 fortnights immediately before the application for the current advance payment was lodged; (b) each other advance payment (if any) of a social security entitlement paid to the person that has not been fully repaid.
Step 5.	The result of step 4 (rounded to the nearest cent (rounding 0.5 cents upwards)) is the maximum amount of advance payment payable to the person.

Note 1: The amount of the advance payment will be more than the minimum qualifying amount for the person (see paragraph 1061A(3)(a)).

Note 2: For ***advance payment qualifying amount***, see subsection 23(1).

1061ED Amount of advance payment—pension PP (single)

Application

(1) The amount of an advance payment of pension PP (single) is worked out according to this section.

Amount of advance

(2) The amount of the advance payment is the smallest of the following amounts:
  (a) the amount of advance payment sought;
  (b) the maximum amount of advance payment payable to the person as worked out under subsection (3);
  (c) $500.

Note: The amount of the advance payment will be at least $250 (see paragraph 1061A(4)(a)).

Formula for maximum amount of advance under paragraph (2)(b)

(3) For the purposes of paragraph (2)(b), the maximum amount of advance payment payable to the person is the amount worked out using the following formula:

6% × annual payment rate

where:

annual payment rate means:

(a) if the person was receiving pension PP (single) on the last payday before the application for the advance payment was lodged—the rate at which the pension was payable under the Pension PP (Single) Rate Calculator to the person on that payday, disregarding any amount payable by way of remote area allowance; or

(b) if the person was receiving benefit PP (partnered) on the last payday before the application for the advance payment was lodged—the rate at which pension PP (single) is payable to the person under the Pension PP (Single) Rate Calculator on the person's first pension PP (single) payday after the application for the advance payment was lodged, disregarding any amount payable by way of remote area allowance.

Rounding

(4) Amounts worked out under subsection (3) must be rounded to the nearest cent (rounding 0.5 cents upwards).

Example:

Facts: Geoff has, at all times during the past 5 months, been receiving pension PP (single). His annual payment rate is $4,680. He applies for an advance payment of $290.

Application: The maximum amount of advance payment payable to Geoff is worked out under subsection (3) as follows: 6% × $4680 = $280.80. This is the smallest of the 3 amounts referred to in

subsection (2). Geoff can therefore be paid an advance payment of $280.80.

1061EE Amount of advance payment—certain other social security payments

Application

(1) The amount of an advance payment of widow allowance, benefit PP (partnered), youth allowance, austudy payment or jobseeker payment is worked out according to this section.

Amount of advance

(2) The amount of the advance payment is the smallest of the following amounts:
  (a) the amount of advance payment sought;
  (b) the maximum amount of advance payment payable to the person as worked out under subsection (3) or (4), as the case requires;
  (c) $500.

Note: The amount of the advance payment will be at least $250 (see paragraph 1061A(4)(a)).

Formula for maximum amount of advance: widow allowance and mature age allowance

(3) For the purpose of paragraph (2)(b), the maximum amount of advance payment of widow allowance or mature age allowance under Part 2.12B payable to the person is the amount worked out under the following formula:

$$6\% \times \text{Fortnightly payment rate} \times 26$$

Formula for maximum amount of advance: benefit PP (partnered), youth allowance, austudy payment or jobseeker payment

(4) For the purpose of paragraph (2)(b), the maximum amount of advance payment of benefit PP (partnered), youth allowance,

OFFICIAL: Sensitive // Legal Privilege

austudy payment or jobseeker payment payable to the person is the amount worked out under the following formula:

7% × Fortnightly payment rate × 26

Rounding

(5) Amounts worked out under subsection (3) or (4) must be rounded to the nearest cent (rounding 0.5 cents upwards).

*Meaning of **fortnightly payment rate***

(6) For the purposes of the formulae in subsections (3) and (4):

fortnightly payment rate means:

(a) in relation to benefit PP (partnered)—the fortnightly rate of that benefit payable under the Benefit PP (Partnered) Rate Calculator to the person on the last payday before the application for the advance payment was lodged, excluding any amount payable by way of remote area allowance; or

(b) in relation to widow allowance, mature age allowance under Part 2.12B or jobseeker payment—the fortnightly rate of that benefit payable under Benefit Rate Calculator B to the person on the last payday before the application for the advance payment was lodged, excluding any amount payable by way of remote area allowance; or

(c) in relation to youth allowance—the fortnightly rate of that benefit payable under the Youth Allowance Rate Calculator to the person on the last payday before the application for the advance payment was made, excluding any amount payable by way of remote area allowance; or

(d) in relation to austudy payment—the fortnightly rate of that benefit payable under the Austudy Payment Rate Calculator to the person on the last payday before the application for the advance payment was made, excluding any amount payable by way of remote area allowance.

Example:

OFFICIAL: Sensitive // Legal Privilege

Section 1061EE

Facts: Veronique has, at all times in the past 4 months, been receiving widow allowance. Her fortnightly payment rate is $200. She applies for an advance payment of $300.

Result: The maximum amount of advance payment payable to Veronique is worked out under subsection (3) as follows:

6% × $200 × 26 = $312.00

The smallest of the 3 amounts referred to in subsection (2) is $300. Veronique can therefore be paid an advance payment of $300.

OFFICIAL: Sensitive // Legal Privilege

Division 5—Payment of advance payment

1061EI Advance payment to be paid to person or nominee

(1) Subject to subsection (3), an advance payment of a person's social security entitlement is to be paid to that person.

(2) The Secretary may direct that the whole or part of the advance payment of a person's social security entitlement is to be paid to someone else on behalf of the person.

(3) If the Secretary makes a direction under subsection (2), the advance payment is to be paid in accordance with the direction.

1061EJ Payment into bank account etc.

(1) An amount that is to be paid to a person under section 1061EI may only be paid in accordance with this section.

(2) Subject to this section, the amount is to be paid, at the time or times worked out under section 1061EB, to the credit of a bank account nominated and maintained by the person.

(3) The account may be an account that is maintained by the person either alone or jointly or in common with another person.

(4) Where the person has not nominated an account for the purposes of subsection (2), then, subject to subsections (5) and (7), the amount is not to be paid.

(5) Where:

(a) an amount has not been paid because of subsection (4); and

(b) the person nominates an account for the purposes of subsection (2);

the amount is to be paid under subsection (2).

(6) The Secretary may direct that the whole or a part of the amount be paid to the person in a different way from that provided for by subsection (2).

(7) If the Secretary gives a direction under subsection (6), the amount is to be paid in accordance with the direction.

OFFICIAL: Sensitive // Legal Privilege

Division 6—Protection of advance payment

1061EK Advance payment to be absolutely inalienable

Inalienability

(1) Subject to subsections (2) and (3) and section 238 and Parts 3B and 3D of the Administration Act, an advance payment under this Part is absolutely inalienable, whether by way of, or in consequence of, sale, assignment, charge, execution, bankruptcy or otherwise.

Note: The effect of a garnishee order on an advance payment of a social security entitlement is dealt with in the Part of this Chapter that deals with that social security entitlement. For example, the effect of a garnishee order on an advance payment of age pension is dealt with in Part 2.2 (which deals with age pension).

Payments to Commissioner of Taxation at recipient's request

(2) The Secretary may make deductions from an advance payment payable to a person under this Part if the recipient asks the Secretary:

(a) to make the deductions; and

(b) to pay the amounts to be deducted to the Commissioner of Taxation.

Deductions from advance payment with recipient's consent

(3) The Secretary may make deductions from an advance payment payable to a person under this Part if the recipient consents under section 1234A to the Secretary making the deductions.

Note: Section 1234A enables the Secretary to recover a debt from a person other than the debtor if the person is receiving a social security payment.

OFFICIAL: Sensitive // Legal Privilege

Division 7—Repayment of advance payment

1061EL Repayment of advance payment

(1) If a person receives an advance payment or an instalment of an advance payment under this Part, the person must repay the advance payment or instalment to the Commonwealth by one or more of the following methods:

(a) deductions from the person's social security entitlement under Chapter 3 (General provisions relating to payability and rates);

(b) a method provided for by Chapter 5 (Overpayments and debt recovery);

(c) a method (other than a method described in paragraph (a) or (b)) that is acceptable to both the person and the Secretary.

(2) Subsection (1) does not affect:

(a) the operation of subsection 1224E(1) (Debts arising from advance payments of social security entitlements); or

(b) the Secretary's powers and duties under Part 5.4 (Non-recovery of debts) if the amount of the advance payment or instalment that has not been repaid becomes a debt due to the Commonwealth.

OFFICIAL: Sensitive // Legal Privilege

Part 2.22A—Special employment advances

Division 1—Qualification for special employment advance

1061EM Qualification for special employment advance

(1) Subject to section 1061EO, a person is qualified for a special employment advance at a particular time (the ***relevant time***) only if:

(a) the person is qualified for a special employment advance qualifying entitlement at the relevant time; and

(b) the person has been receiving an income support payment for a continuous period of 3 months immediately before the day on which the person's claim for the special employment advance is made; and

(c) either of the following applies:

(i) the person or, if the person is a member of a couple, the person's partner has earned from casual work in Australia, but has not received, income (the ***unreceived income***);

(ii) the Secretary is satisfied that the person has received a definite offer of employment in Australia (the ***offered employment***) for a period of not less than 6 weeks and needs financial assistance from the Commonwealth to enable him or her to take up the employment; and

(d) subsection (2) or (3), as the case requires, applies for the purpose of determining whether the person is qualified for a special employment advance at the relevant time; and

(e) where subparagraph (c)(i) applies—the person is in severe financial hardship; and

(f) the Secretary is satisfied that the person will not suffer financial hardship as a result of the recovery by the Commonwealth of the special employment advance.

OFFICIAL: Sensitive // Legal Privilege

(2) This subsection applies for the purpose of determining whether a person is qualified for a special employment advance at the relevant time only where:

(a) the person's claim for the advance was based on the effect of the unreceived income on the person's special employment advance qualifying entitlement; and

(b) the person is not a CDEP Scheme participant; and

(c) either of the following subparagraphs applies:

(i) if the person were qualified for the special employment qualifying entitlement on the next payday for the entitlement at a rate equal to the maximum basic rate of the entitlement, the rate of the entitlement on that payday would be reduced by at least 50% as a result of the person or the person's partner having earned the unreceived income;

(ii) subparagraph (i) does not apply in respect of the person but, if the person were qualified for the special employment qualifying entitlement on 2 or more paydays for the entitlement at a rate equal to the maximum basic rate of the entitlement, the average of the rates of the entitlement on those paydays would be reduced by at least 50% as a result of the person or the person's partner having earned the unreceived income.

(3) This subsection applies for the purpose of determining whether a person is qualified for a special employment advance at the relevant time only where the person's claim for the advance was based on the person's need for financial assistance from the Commonwealth to enable him or her to take up the offered employment and:

(a) if the person were qualified for the special employment qualifying entitlement on each of the paydays for the entitlement that occur in the period of 6 weeks referred to in subparagraph (1)(c)(ii) at a rate equal to the maximum basic rate of the entitlement, the average of the rates of the entitlement on those paydays:

(i) would be reduced by at least 50% as a result of the person having taken up the offered employment; or

(ii) would be so reduced if Module J of the Youth Allowance Rate Calculator in section 1067G or Module E of the Austudy Payment Rate Calculator were disregarded; or

(b) the person would cease to be qualified for the special employment advance qualification upon his or her taking up the offered employment.

1061EN Meaning of *in severe financial hardship*

(1) For the purposes of paragraph 1061EM(1)(e) as it applies to a person who makes a claim for special employment advance, the person is ***in severe financial hardship*** if:

(a) where the person is not a member of a couple—the value of the person's liquid assets (within the meaning of subsection 14A(1)) is less than the fortnightly amount of the maximum payment rate of the special employment advance qualifying entitlement that is payable to the person; or

(b) where the person is a member of a couple—the value of the person's liquid assets (within the meaning of subsection 14A(2)) is less than twice the fortnightly amount of the maximum payment rate of the special employment advance qualifying entitlement that is payable to the person.

(2) If the person referred to in subsection (1) is a CDEP Scheme participant, then, in determining for the purposes of that subsection the fortnightly amount of the maximum payment rate of the special employment advance qualifying entitlement payable to the person, the person's maximum basic rate is taken to be the rate that would be that maximum basic rate if sections 408CG, 500W, 552C, 614A, 660YCH and 771HK had not been enacted.

1061EO Person not qualified in certain circumstances

A person is not qualified for a special employment advance if:

OFFICIAL: Sensitive // Legal Privilege

(b) the lump sum amount, or the total of the amounts of the instalments, as the case may be, of the special employment advance to which the person would be entitled under Division 4 is less than $50; or

(c) the person owes a debt to the Commonwealth (whether arising under this Act or not) and the debt is recoverable under Part 5.2 by means of deductions from the person's social security payment; or

(d) where subparagraph 1061EM(1)(c)(ii) applies in respect of the person—the person is participating in a program for the placing of people in employment and the program has been declared by the Secretary, by legislative instrument, to be a program to which this paragraph applies.

Division 4—Amount of special employment advance

1061EW Where claim based on effect of unreceived income on special employment advance qualifying entitlement

(1) This section applies where the claim was based on the effect of the unreceived income on the claimant's special employment advance qualifying entitlement.

(2) The total amount of the special employment advance payable to the claimant is to be the smallest of the following amounts:

(a) the amount sought in the claim for the advance;

(b) the amount by which the instalment, or the sum of the amounts by which the instalments, of the claimant's special employment advance qualifying entitlement is or will be reduced because of the unreceived income;

(c) $500;

(d) if an amount of special employment advance previously paid to the claimant has not been repaid to, or recovered by, the Commonwealth—the difference between that amount and $500.

1061EX Where claim based on claimant's need for financial assistance to take up offered employment

(1) This section applies where the claim was based on the claimant's need for financial assistance to take up offered employment.

(2) Subject to the following provisions of this section, the total amount of the special employment advance payable to the claimant is to be the smallest of the following amounts:

(a) the amount sought in the claim for the advance;

(b) the amount of financial assistance needed by the claimant from the Commonwealth to take up the offered employment;

(c) $500.

OFFICIAL: Sensitive // Legal Privilege

(3) If:

(a) an amount of special employment advance previously paid to the claimant has not been repaid to, or recovered by, the Commonwealth; and

(b) the sum of:

(i) the amount referred to in paragraph (a); and

(ii) the amount of financial assistance needed by the claimant from the Commonwealth to take up the offered employment;

is not more than $500;

the total amount of the special employment advance payable to the claimant is the amount referred to in subparagraph (b)(ii).

(4) If:

(a) an amount of special employment advance previously paid to the claimant has not been repaid to, or recovered by, the Commonwealth; and

(b) the sum of:

(i) the amount referred to in paragraph (a); and

(ii) the amount of financial assistance needed by the claimant from the Commonwealth to take up the offered employment;

is more than $500;

the following paragraphs have effect:

(c) where the amount referred to in paragraph (a) is less than $500 and the claimant satisfies the Secretary that the claimant would have sufficient financial resources to enable him or her to take up the offered employment if the total amount of the special employment advance payable were an amount equal to the difference between $500 and the amount referred to in paragraph (a)—the total amount of the special employment advance payable to the claimant is an amount equal to that difference;

(d) where paragraph (c) does not apply—no amount of special employment advance is payable to the claimant.

OFFICIAL: Sensitive // Legal Privilege

(5) If:

(a) the claimant is not a member of a couple; and

(b) the value of the claimant's liquid assets (within the meaning of subsection 14A(1)) exceeds the fortnightly amount of the maximum payment rate of the special employment advance qualifying entitlement that is payable to the claimant;

the total amount of the special employment advance that, apart from this subsection, would be payable to the claimant under subsections (2) to (4) is reduced by the amount of the excess.

(6) If:

(a) the claimant is a member of a couple; and

(b) the value of the claimant's liquid assets (within the meaning of subsection 14A(2)) exceeds twice the fortnightly amount of the maximum payment rate of the special employment advance qualifying entitlement that is payable to the claimant;

the total amount of the special employment advance that, apart from this subsection, would be payable to the claimant under subsections (2) to (4) is reduced by the amount of the excess.

(7) In determining for the purposes of subsection (5) or (6) the fortnightly amount of the maximum payment rate of the special employment advance qualifying entitlement that is payable to a claimant who is a CDEP Scheme participant, the claimant's maximum basic rate is taken to be the rate that would be that maximum basic rate if sections 408CG, 500W, 552C, 614A, 660YCH and 771HK had not been enacted.

OFFICIAL: Sensitive // Legal Privilege

Division 7—Repayment of special employment advance

1061EZC Repayment of special employment advance

(1) If a person receives a special employment advance or an instalment of a special employment advance under this Part, the person must repay the special employment advance or instalment to the Commonwealth by one or more of the following methods:

(a) deductions from the person's special employment advance qualifying entitlement under Chapter 3 (General provisions relating to payability and rates);

(b) a method provided for by Chapter 5 (Overpayments and debt recovery);

(c) a method (other than a method described in paragraph (a) or (b)) that is acceptable to both the person and the Secretary.

(2) Subsection (1) does not affect the Secretary's powers and duties under Part 5.4 (Non-recovery of debts) if the amount of the special employment advance or instalment that has not been repaid becomes a debt due to the Commonwealth.

OFFICIAL: Sensitive // Legal Privilege

Part 2.23—Advance pharmaceutical allowance

Division 1—Qualification for and payability of advance pharmaceutical allowance

1061F Qualification for advance pharmaceutical allowance

(1) A person is qualified for an advance pharmaceutical allowance if:
  (a) the person is receiving a social security pension; and
  (b) the Secretary is satisfied that the person's ordinary income is not more than $20.50 per fortnight.

(2) For the purposes of this section, a person's ***ordinary income*** does not include:
  (a) a payment:
    (i) that the person is entitled to under the law of a foreign country; and
    (ii) that results in the person's social security pension rate being reduced by an amount equal to the amount of the payment; or
  (b) a periodic compensation payment to which Part 3.14 applies.

(3) For the purposes of this section, if a person is a member of a couple the amount of the person's ***ordinary income*** is worked out by adding the couple's ordinary incomes (on a fortnightly basis) and dividing by 2.

1061G Advance pharmaceutical allowance not payable in some circumstances

(1) Even though a person is qualified for an advance pharmaceutical allowance, the allowance is not payable to the person if the person is not an Australian resident.

(3) Even though a person is qualified for an advance pharmaceutical allowance, the allowance is not payable to the person if

OFFICIAL: Sensitive // Legal Privilege

pharmaceutical allowance is not used to work out the rate of the person's social security pension.

OFFICIAL: Sensitive // Legal Privilege

Division 3—Amount of advance pharmaceutical allowance

1061JC Amount of advance pharmaceutical allowance

Subject to section 1061JD, the amount of a person's advance pharmaceutical allowance is:

$$\frac{\text{pharmaceutical allowance rate} \times 7}{26}$$

where:

pharmaceutical allowance rate is the yearly amount of pharmaceutical allowance that would be added to the person's maximum basic rate if a pharmaceutical allowance advance were not being paid to the person.

Note: Pharmaceutical rates are to be found at:
(d) point 1066A-D8 of Pension Rate Calculator D;
(e) point 1066B-D8 of Pension Rate Calculator E;
(f) point 1068A-C7 of Pension PP (Single) Rate Calculator.

1061JD Annual limit

The amount paid to a person in a calendar year by way of:
(a) pharmaceutical allowance; and
(b) advance pharmaceutical allowance;
is not to exceed the total amount of pharmaceutical allowance that would have been paid to the person during that year if the person had not received any advance pharmaceutical allowance.

Note: For the amount ***paid*** to a person by way of pharmaceutical allowance see subsections 19A(2) to (6).

OFFICIAL: Sensitive // Legal Privilege

Part 2.23A—Crisis payment

Division 1—Qualification for crisis payment

1061JG Qualification—release from gaol or psychiatric confinement

(1) A person is qualified for a crisis payment if, after the commencement of this section:

(a) the person spends at least 14 days in gaol, or in psychiatric confinement that starts because he or she has been charged with an offence, and is released so that he or she is neither in gaol nor in psychiatric confinement; and

(b) the person claims the crisis payment either while the person was in gaol or psychiatric confinement, or within 7 days after being released; and

(c) on the day on which the claim for the crisis payment is made (including the day on which it is taken to have been made under Schedule 2 to the Administration Act):

(i) the person is qualified for a social security pension or social security benefit; and

(ii) the person is in severe financial hardship (see section 19D).

Note: A person does not cease to be in gaol merely because he or she is transferred between a prison and a psychiatric institution where he or she is lawfully detained while still under sentence. See subsection 23(5).

(2) Disregard subsection 23(9) in determining whether a person meets the condition in paragraph (1)(a) of this section.

Note: Subsection 23(9) provides that the confinement of a person in a psychiatric institution when the person is undertaking a course of rehabilitation is not to be taken to be psychiatric confinement.

OFFICIAL: Sensitive // Legal Privilege

1061JH Qualification—extreme circumstances forcing departure from home

(1) A person is qualified for a crisis payment if, after the commencement of this section:

(a) the person has left, or cannot return to, his or her home because of an extreme circumstance; and

(b) the extreme circumstance makes it unreasonable to expect the person to remain in, or return to, the home; and

(c) the person has established, or intends to establish, a new home; and

(d) at the time the extreme circumstance occurred, the person was in Australia; and

(e) the person makes a claim for a crisis payment within 7 days after the extreme circumstance occurred; and

(f) on the day on which the claim is made:

(i) the person is in severe financial hardship (see section 19D); and

(ii) the person has made a claim (whether on the same day or on an earlier day) for a social security pension or benefit and the person is qualified for the pension or benefit; and

(g) during the 12 months immediately preceding the day on which the claim is made, no more than 3 crisis payments have been payable to the person based on:

(i) the qualifications set out in this section; or

(ii) the qualifications set out in section 1061JHA (remaining in home after removal of family member due to domestic or family violence).

Note: Examples of extreme circumstances that would qualify a person for crisis payment are the person's house being burnt down, or the person being subjected to domestic or family violence.

(2) A person is not qualified for a crisis payment in respect of an extreme circumstance if the Secretary is satisfied that the extreme circumstance is brought about with a view to obtaining a crisis payment.

1061JHA Qualification—remaining in home after removal of family member due to domestic or family violence

(1) A person is qualified for a crisis payment if:

(a) the person has been subjected to domestic or family violence, in Australia, by a family member of the person; and

(b) at the time of the domestic or family violence the person was living with that family member; and

(c) the family member leaves, or is removed from, the person's home because of the domestic or family violence; and

(d) the person remains living in the person's home after the family member leaves or is removed; and

(e) the person's home is in Australia; and

(f) the person makes a claim for a crisis payment within 7 days after the day on which the family member left or was removed; and

(g) on the day on which the claim is made:

(i) the person is in severe financial hardship (see section 19D); and

(ii) the person has made a claim (whether on the same day or on an earlier day) for a social security pension or benefit and the person is qualified for the pension or benefit; and

(h) during the 12 months immediately preceding the day on which the claim is made, no more than 3 crisis payments have been payable to the person based on:

(i) the qualifications set out in this section; or

(ii) the qualifications set out in section 1061JH (extreme circumstances forcing departure from home).

Note: For ***family member*** see subsection 23(14).

(2) A person is not qualified for a crisis payment if the Secretary is satisfied that the family member left the person's home with a view to the person obtaining a crisis payment.

1061JI Qualification—humanitarian entrant to Australia

(1) A person is qualified for a crisis payment if:
  (a) the person arrives in Australia; and
  (b) that arrival is the first time the person has arrived in Australia as the holder of a qualifying humanitarian visa (see subsection (2)); and
  (c) the person makes a claim for a crisis payment within 7 days of that arrival; and
  (d) on the day on which the claim is made:
    (i) the person is in severe financial hardship (see section 19D); and
    (ii) the person has made a claim (whether on the same day or on an earlier day) for a social security pension or benefit and the person is qualified for the pension or benefit.

(2) The Minister may, by legislative instrument, specify visas that are qualifying humanitarian visas for the purposes of paragraph (1)(b).

1061JIA Qualification—national health emergency

(1) A person is qualified for a crisis payment if:
  (a) on the day on which the claim for the crisis payment is made:
    (i) the person has made a claim (whether on the same day or on an earlier day) for a social security pension or benefit; and
    (ii) the person is qualified for the pension or benefit; and
  (b) the person satisfies the requirements determined in an instrument under subsection (2).

(2) The Minister may, by legislative instrument, determine requirements for the purposes of paragraph (1)(b). The Minister must be satisfied that the requirements relate to a national health emergency.

(3) Without limiting subsection (2), the requirements may depend on the Secretary being satisfied of one or more specified matters.

1061JJ Crisis payment not payable in addition to disaster relief payment

(1) A crisis payment is not payable to a person in respect of an extreme circumstance if the person is qualified for an AGDRP, a Disaster Recovery Allowance or other disaster relief payment (whether under this Act or otherwise) in respect of the same extreme circumstance.

(2) However, this section does not affect a person's entitlement to a crisis payment in respect of an extreme circumstance if:
  (a) the person has claimed the crisis payment; and
  (b) the person subsequently qualifies for an AGDRP, a Disaster Recovery Allowance or other disaster relief payment in respect of the same extreme circumstance.

1061JK Crisis payment not payable if assurance of support in force

A person is not qualified for a crisis payment if the Secretary is satisfied that at the time the person would otherwise have been qualified for crisis payment:
  (a) an assurance of support was in force in respect of the person (the ***assuree***); and
  (b) the person who gave the assurance of support was willing and able to provide an adequate level of support to the assuree; and
  (c) it was reasonable for the assuree to accept that support.

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

1061JL Person not qualified for crisis payment if qualified for crisis payment under ABSTUDY scheme

A person is not qualified for a crisis payment under section 1061JG, 1061JH, 1061JHA, 1061JI or 1061JIA in respect of a circumstance if the Secretary is satisfied that:
  (a) the person is qualified under the ABSTUDY scheme for a crisis payment in respect of that same circumstance; and

OFFICIAL: Sensitive // Legal Privilege

(b) the crisis payment is payable under that scheme in respect of that circumstance.

OFFICIAL: Sensitive // Legal Privilege

Division 4—Amount of crisis payment

1061JU Amount of payment

(1) Subject to subsection (2), the amount of a crisis payment payable to a person is half the fortnightly amount at the maximum basic rate of the social security pension or social security benefit that is payable to the person.

(2) If a person is a CDEP Scheme participant, the amount of a crisis payment payable to the person is half the fortnightly amount at the maximum basic rate of the social security pension or social security benefit that the person is taken to be receiving under section 1188H.

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

(3) If, under section 1188H, the person is taken to be receiving more than one social security pension or social security benefit, the person is taken, for the purposes of subsection (2), to be receiving the pension or benefit with the higher maximum basic rate.

(4) In this section:

maximum basic rate, in relation to each of the following social security payments, means (unless otherwise stated below) the rate worked out at Module B of the relevant Rate Calculator:

(a) for the following pensions if the recipient is not blind:
  (i) age pension;
  (ii) disability support pension (recipient has turned 21, or is under 21 and has one or more dependent children);
  (iii) carer pension;

  the Rate Calculator at the end of section 1064; or

(b) for age pension and disability support pension (recipient has turned 21, or is under 21 and has one or more dependent children) if the recipient is blind—the Rate Calculator at the end of section 1065; or

OFFICIAL: Sensitive // Legal Privilege

(d) for disability support pension if the recipient is under 21, is not blind and does not have any dependent children—the Rate Calculator at the end of section 1066A; or

(e) for disability support pension if the recipient is under 21, is blind and does not have any dependent children—the Rate Calculator at the end of section 1066B; or

(f) for the following:

(i) jobseeker payment;

(ii) widow allowance;

(iv) partner allowance;

(v) mature age allowance granted under Part 2.12B;

the Rate Calculator at the end of section 1068; or

(h) for a pension PP (single)—the Rate Calculator at the end of section 1068A; or

(i) for benefit PP (partnered)—Module C of the Rate Calculator at the end of section 1068B; or

(k) for special benefit—section 746; or

(l) for youth allowance—the Rate Calculator at the end of section 1067G; or

(m) for austudy payment—Step 3 of the Method statement in Module A of the Rate Calculator at the end of section 1067L.

Note: For ***dependent child*** see section 5.

OFFICIAL: Sensitive // Legal Privilege

Part 2.23B—Disaster Recovery Allowance

Division 1—Qualification for Disaster Recovery Allowance

1061KA Qualification for Disaster Recovery Allowance

(1) A person is qualified for a Disaster Recovery Allowance if:

(a) the person is at least 16 years of age; and

(b) the person:

(i) is an Australian resident; or

(ii) is the holder of a visa that is in a class of visas determined by the Minister for the purposes of subparagraph 729(2)(f)(v); and

(c) under subsection 36A(1), the Minister determines that an event is a Part 2.23B major disaster; and

(d) if the person is under 22 years of age—the Secretary is satisfied that subsection (2) of this section does not apply in relation to the person; and

(e) the Secretary is satisfied that subsection (3) or (4) of this section applies in relation to the person; and

(f) the Secretary is satisfied that the person has suffered a loss of income as a direct result of the event; and

(g) the person is not receiving a social security entitlement; and

(h) the person is not receiving a payment prescribed in an instrument under subsection (5) of this section; and

(i) the Secretary is satisfied that the person satisfies the requirements (if any) prescribed in an instrument under subsection (6) of this section; and

(j) the person's rate of Disaster Recovery Allowance, worked out under section 1061KC, is greater than nil at the time the claim for payment of Disaster Recovery Allowance is determined by the Secretary.

Qualification rule for persons under 22 years of age

(2) This subsection applies in relation to a person if:

OFFICIAL: Sensitive // Legal Privilege

(a) on the day of the determination under subsection 36A(1), the person is wholly or substantially dependent on another person (except the person's partner); and
(b) on that day, the person is not a parent of another person; and
(c) the person's income in the financial year in which that day occurs will not be more than $6,403.

Qualification rule if affected industries and areas

(3) This subsection applies in relation to a person if:
(a) under paragraph 36A(5)(a), the Minister specifies, in a determination under section 36A, one or more industries affected by the event and one or more areas affected by the event; and
(b) the person earns, derives or receives income from one of those industries and the person does so by working in one of those areas.

Qualification rule if affected areas only

(4) This subsection applies in relation to a person if:
(a) under paragraph 36A(5)(b), the Minister specifies, in a determination under section 36A, one or more areas affected by the event; and
(b) either or both of the following apply:
(i) the person earns, derives or receives income from one of those areas and the person does so by working in one of those areas;
(ii) the person resides in one of those areas.

Legislative instruments

(5) The Minister may, in writing, prescribe payments for the purposes of paragraph (1)(h).

(6) The Minister may, in writing, prescribe requirements for the purposes of paragraph (1)(i).

(7) An instrument made under subsection (5) or (6) is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the instrument.

1061KB Disaster Recovery Allowance not payable if assurance of support in force

A person is not qualified for a Disaster Recovery Allowance if the Secretary is satisfied that at the time the person would otherwise have been so qualified:

(a) an assurance of support was in force in respect of the person (the ***assuree***); and

(b) the person who gave the assurance of support was willing and able to provide an adequate level of support to the assuree; and

(c) it was reasonable for the assuree to accept that support.

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

OFFICIAL: Sensitive // Legal Privilege

Division 2—Rate of Disaster Recovery Allowance

1061KC Rate of Disaster Recovery Allowance

(1) The rate of a person's Disaster Recovery Allowance is a daily rate. That rate is worked out by dividing the fortnightly rate worked out in accordance with an instrument under subsection (2) by 14.

(2) The Minister must, by legislative instrument, specify a method for working out the fortnightly rate of Disaster Recovery Allowance for the purposes of subsection (1).

(3) That fortnightly rate may be nil.

Maximum rates

(4) For a person who is under 22 years of age, that fortnightly rate is not to exceed the maximum basic rate of youth allowance that would be payable to the person if:
  (a) the person were qualified for youth allowance; and
  (b) youth allowance were payable to the person.

(5) For a person who is at least 22 years of age, that fortnightly rate is not to exceed the maximum basic rate of jobseeker payment that would be payable to the person if:
  (a) the person were qualified for jobseeker payment; and
  (b) jobseeker payment were payable to the person.

OFFICIAL: Sensitive // Legal Privilege

Division 3—Other matters

1061KD Period that Disaster Recovery Allowance is payable

A person's Disaster Recovery Allowance is payable to the person for a period of 13 weeks.

1061KE Non-receipt of social security payment

(1) This section applies for the purposes of a provision of this or another Act if:

(a) the provision provides a benefit (whether the benefit is a pension, benefit, payment, supplement or any other sort of benefit) if a person meets specified criteria; and

(b) one of the specified criteria is that the person is receiving a social security payment, or is a recipient of a social security payment.

(2) For the purposes of the provision, a person is not taken to be receiving a social security payment, or to be a recipient of a social security payment, merely because the person receives a Disaster Recovery Allowance.

OFFICIAL: Sensitive // Legal Privilege

Part 2.24—Australian Government Disaster Recovery Payment

Division 1—Qualification for Australian Government Disaster Recovery Payment

1061K Qualification for Australian Government Disaster Recovery Payment

(1) A person is qualified for an Australian Government Disaster Recovery Payment if:

(a) the person is at least 16 years old, or is receiving a social security payment; and

(b) the person:

(i) is an Australian resident; or

(ii) is the holder of a visa that is in a class of visas determined by the Minister for the purposes of subparagraph 729(2)(f)(v); or

(iii) is receiving a social security payment; or

(iv) is an Australian citizen who is not an Australian resident and who is covered by a determination under subsection (2); and

(c) the person is adversely affected by a major disaster.

Note 1: For ***Australian resident*** see section 7.

Note 2: For ***adversely affected*** see section 1061L.

Note 3: For ***major disaster*** see section 36.

(2) The Minister may determine in writing that a specified class of Australian citizens who are not Australian residents can qualify for an AGDRP.

Note: For ***Australian resident*** see section 7.

(3) A determination made under subsection (2) is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the determination.

OFFICIAL: Sensitive // Legal Privilege

(4) A person cannot be qualified for more than one AGDRP in relation to the same major disaster.

1061L Meaning of *adversely affected*

(1) For the purposes of this Act, a person is ***adversely affected*** by a major disaster if the person is affected by the disaster in a way determined by the Minister in relation to the disaster.

(2) The Minister may determine in writing, in relation to a major disaster, the circumstances in which persons are to be taken to be adversely affected by the disaster.

(3) A determination made under this section is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the determination.

OFFICIAL: Sensitive // Legal Privilege

Division 2—Amount of Australian Government Disaster Recovery Payment

1061M Amount of payment for disasters in Australia

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

(a) the adult rate for the financial year in which the major disaster is declared under section 36; and

(b) if the person is the principal carer of one or more children—the amount worked out by multiplying the child rate for that financial year by the number of children for whom the person is the principal carer.

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

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

(2) For the purposes of this Division, the ***adult rate*** for a financial year is:

(a) the amount that the Minister determines under subsection 1061P(1) to be the adult rate for the financial year; or

(b) if the Minister has not determined an adult rate for the financial year—the amount that the Minister last determined to be the adult rate for a previous financial year; or

(c) if the Minister has never determined an adult rate for any financial year—$1,000.

(3) For the purposes of this Division, the ***child rate*** for a financial year is:

(a) the amount that the Minister determines under subsection 1061P(2) to be the child rate for the financial year; or

(b) if the Minister has not determined a child rate for the financial year—the amount that the Minister last determined to be the child rate for a previous financial year; or

OFFICIAL: Sensitive // Legal Privilege

(c) if the Minister has never determined a child rate for any financial year—$400.

1061N Amount of payment for disasters outside Australia

The amount of an AGDRP payable to a person in relation to a major disaster that occurs outside Australia is the sum of:

(a) the amount that the Minister determines under subsection 1061P(4) in relation to the disaster; and

(b) if the person is the principal carer of one or more children—the amount worked out by multiplying the amount that the Minister determines under subsection 1061P(5) in relation to the disaster by the number of children for whom the person is the principal carer.

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

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

1061P Determinations of rates

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

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

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

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

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

OFFICIAL: Sensitive // Legal Privilege

(6) A determination made under this section is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the determination.

Division 3—Recoverable payments etc.

1061PAAA Recoverable payments

(1) If, apart from this subsection, the Commonwealth does not have power under the social security law to pay an amount (the ***relevant amount***) to a person (the ***recipient***) purportedly as an Australian Government Disaster Recovery Payment, then the Commonwealth may pay the relevant amount to the recipient.

Recovery

(2) If a payment is made under subsection (1) to the recipient, the relevant amount:
  (a) is a debt due to the Commonwealth by the recipient; and
  (b) may be recovered by the Secretary, on behalf of the Commonwealth, in a court of competent jurisdiction.

1061PAAB Recoverable death payments

(1) If, apart from this subsection, the Commonwealth does not have power under the social security law to pay an amount (the ***relevant amount***) in any of the following circumstances:
  (a) the relevant amount is deposited to an account kept in the name of a deceased person;
  (b) the relevant amount is deposited to an account kept in the names of a deceased person and another person;
  (c) the relevant amount is paid by way of a cheque made out to a deceased person;

the Commonwealth may pay the relevant amount in the circumstances mentioned in paragraph (a), (b) or (c), so long as:
  (d) on the last day on which changes could reasonably be made to the payment of the relevant amount, no Department official knew that the deceased person had died; and
  (e) apart from this subsection, the relevant amount would have been payable as an Australian Government Disaster

Recovery Payment to the deceased person if the deceased person had not died.

Note: For ***Department official***, see section 1061PAAE.

(2) If a payment is made under subsection (1), the relevant amount is taken to have been paid to the deceased person's estate.

Recovery

(3) If a payment is made under subsection (1), the relevant amount:
(a) is a debt due to the Commonwealth by the legal personal representative of the deceased person; and
(b) may be recovered by the Secretary, on behalf of the Commonwealth, in a court of competent jurisdiction.

1061PAAC Reports about recoverable payments and recoverable death payments

(1) During the applicable publication period for a reporting period, the Secretary must cause to be published, in such manner as the Secretary thinks fit, a report that sets out:
(a) both:
(i) the number of payments made under subsection 1061PAAA(1) during the reporting period; and
(ii) the total amount of those payments; and
(b) both:
(i) the number of payments made under subsection 1061PAAB(1) during the reporting period; and
(ii) the total amount of those payments.

(2) However, a report is not required if:
(a) the number mentioned in subparagraph (1)(a)(i) is zero; and
(b) the number mentioned in subparagraph (1)(b)(i) is zero.

OFFICIAL: Sensitive // Legal Privilege

Deferred reporting

(3) Paragraph (1)(a) of this section does not require a report to deal with a payment unless, before the preparation of the report, a Department official was aware the payment was made under subsection 1061PAAA(1).

Note: For ***Department official***, see section 1061PAAE.

(4) Paragraph (1)(b) of this section does not require a report to deal with a payment unless, before the preparation of the report, a Department official was aware the payment was made under subsection 1061PAAB(1).

Note: For ***Department official***, see section 1061PAAE.

(5) For the purposes of this section, if:

(a) a payment was made under subsection 1061PAAA(1) or 1061PAAB(1) in a reporting period; and

(b) either:

(i) because of subsection (3) of this section, paragraph (1)(a) of this section did not require a report to deal with the payment; or

(ii) because of subsection (4) of this section, paragraph (1)(b) of this section did not require a report to deal with the payment; and

(c) during a later reporting period, a Department official becomes aware that the payment was made under subsection 1061PAAA(1) or 1061PAAB(1), as the case may be;

the payment is subject to a ***deferred reporting obligation*** in relation to the later reporting period.

Note: For ***Department official***, see section 1061PAAE.

(6) If one or more payments made under subsection 1061PAAA(1) during a reporting period are subject to a deferred reporting obligation in relation to a later reporting period, the Secretary must, during the applicable publication period for the later reporting period:

(a) prepare a report that sets out:
  (i) the number of those payments; and
  (ii) the total amount of those payments; and
  (iii) the reporting period during which the payments were made; and
(b) if a report is required under subsection (1) in relation to the later reporting period—include the paragraph (a) report in the subsection (1) report; and
(c) if paragraph (b) does not apply—publish, in such manner as the Secretary thinks fit, the paragraph (a) report.

(7) If one or more payments made under subsection 1061PAAB(1) during a reporting period are subject to a deferred reporting obligation in relation to a later reporting period, the Secretary must, during the applicable publication period for the later reporting period:
(a) prepare a report that sets out:
  (i) the number of those payments; and
  (ii) the total amount of those payments; and
  (iii) the reporting period during which the payments were made; and
(b) if a report is required under subsection (1) in relation to the later reporting period—include the paragraph (a) report in the subsection (1) report; and
(c) if paragraph (b) does not apply—publish, in such manner as the Secretary thinks fit, the paragraph (a) report.

Reporting period

(8) For the purposes of this section, a ***reporting period*** is:
(a) a financial year; or
(b) if a shorter recurring period is prescribed in an instrument under subsection (9)—that period.

(9) The Minister may, by legislative instrument, prescribe a recurring period for the purposes of paragraph (8)(b).

Applicable publication period

(10) For the purposes of this section, the ***applicable publication period*** for a reporting period is the period of:

(a) 4 months; or

(b) if a lesser number of months is prescribed, in relation to the reporting period, in an instrument under subsection (11)—that number of months;

beginning immediately after the end of the reporting period.

(11) The Minister may, by legislative instrument, prescribe a number of months, in relation to a reporting period, for the purposes of paragraph (10)(b).

1061PAAD Review of decisions

Part 4 of the *Social Security (Administration) Act 1999* does not apply to a decision under this Division.

1061PAAE Department official

For the purposes of this Division, ***Department official*** means a person:

(a) who:

(i) is an official (within the meaning of the *Public Governance, Performance and Accountability Act 2013*) of the Department; or

(ii) is a Departmental employee (within the meaning of the *Human Services (Centrelink) Act 1997*); and

(b) whose duties consist of, or include, matters relating to Australian Government Disaster Recovery Payments.

OFFICIAL: Sensitive // Legal Privilege

Part 2.24AA—Australian Victim of Terrorism Overseas Payment

Division 1—Qualification for Australian Victim of Terrorism Overseas Payment

1061PAA Qualification for Australian Victim of Terrorism Overseas Payment

Qualification for AVTOP

(1) A person is qualified for an Australian Victim of Terrorism Overseas Payment if:

(a) the person is a primary victim or a secondary victim of a declared overseas terrorist act; and

(b) the person and the person's close family members were not involved in the commission of the terrorist act; and

(c) the person:

(i) is an Australian resident on the day the terrorist act occurred; or

(ii) is covered by a determination under subsection (6).

Note: For declared overseas terrorist act see section 35B.

*Meaning of **primary victim***

(2) A person is a ***primary victim*** of a declared overseas terrorist act if the person:

(a) was in the place where the terrorist act occurred; and

(b) was harmed (within the meaning of the *Criminal Code*) as a direct result of the terrorist act.

*Meaning of **secondary victim***

(3) A person is a ***secondary victim*** of a declared overseas terrorist act if the person is a close family member of a person who:

(a) was in the place where the terrorist act occurred; and

(b) died, before the end of 2 years starting on the day the terrorist act occurred, as a direct result of the terrorist act.

*Meaning of **close family members***

(4) The following are a person's ***close family members***:
(a) the person's partner;
(b) the person's child;
(c) the person's parent;
(d) the person's sibling;
(e) the person's legal guardian.

*Meaning of **involved***

(5) A person was ***involved*** in the commission of a declared overseas terrorist act if the person:
(a) aided, abetted, counselled or procured the terrorist act; or
(b) induced the terrorist act, whether through threats or promises or otherwise; or
(c) was in any way (directly or indirectly) knowingly concerned in, or a party to, the terrorist act; or
(d) conspired with others to effect the terrorist act.

Ministerial determination

(6) The Minister may, by legislative instrument, determine a specified class of persons for the purposes of subparagraph (1)(c)(ii).

1061PAB Whether a person can be qualified for more than one AVTOP in relation to the same terrorist act

Only one AVTOP for primary victim as primary victim

(1) A person cannot be qualified as a primary victim for more than one AVTOP in relation to the same declared overseas terrorist act.

OFFICIAL: Sensitive // Legal Privilege

Only one AVTOP for secondary victims for same family member

(2) A person cannot be qualified as a secondary victim for more than one AVTOP in relation to the same close family member.

When victims can qualify for more than one AVTOP

(3) A person can be qualified for more than one AVTOP in relation to the same declared overseas terrorist act if the person:

(a) is a primary victim and a secondary victim of the terrorist act (whether as a secondary victim in relation to one, or more than one, close family member); or

(b) is a secondary victim of the terrorist act in relation to more than one close family member.

OFFICIAL: Sensitive // Legal Privilege

Division 2—Payability of Australian Victim of Terrorism Overseas Payment to secondary victims

1061PAC When AVTOP for secondary victims is not payable

If:

(a) a person makes a claim for an AVTOP as a secondary victim in relation to a close family member who has died as a direct result of a declared overseas terrorist act; and

(b) either:

(i) before the claim was made, one or more persons were granted an AVTOP as secondary victims in relation to the close family member; or

(ii) the Secretary had notified the person under subsection 35B(2) of the Administration Act of the person's entitlement to make a claim, but the person did not make the claim before the day specified in the notice;

then the AVTOP is not payable to the person.

OFFICIAL: Sensitive // Legal Privilege

Division 3—Amount of Australian Victim of Terrorism Overseas Payment

1061PAD Amount of AVTOP for a primary victim

(1) The Secretary must determine the amount of an AVTOP payable to a person who is a primary victim of a declared overseas terrorist act.

(2) The determination must be made in accordance with subsection (3) and the AVTOP Principles under section 1061PAF.

(3) The amount must not exceed $75,000.

1061PAE Amount of AVTOP for a secondary victim

Secretary to determine amount of AVTOP

(1) The Secretary must determine the amount of an AVTOP (the ***relevant AVTOP***) payable to a person who is a secondary victim in relation to a close family member who has died as a direct result of a declared overseas terrorist act.

(2) The determination must be made in accordance with subsections (3) to (5) and the AVTOP Principles under section 1061PAF.

(3) The amount must not exceed $75,000.

Limit on total payments in relation to close family member

(4) If the person is not the only secondary victim who has made a claim as a secondary victim in relation to the close family member, then, when working out the amount of the relevant AVTOP, the Secretary must ensure that the sum of all the AVTOPs (including the relevant AVTOP) that are paid in relation to the close family member does not exceed $75,000.

Limit on total payments to secondary victim

(5) If:

(a) the person is also a secondary victim of the terrorist act in relation to one or more other close family members; and

(b) an AVTOP has been paid to the person in relation to any of those other family members;

then, when working out the amount of the relevant AVTOP, the Secretary must ensure that the sum of all the AVTOPs (including the relevant AVTOP) that are paid to the person as a secondary victim of the terrorist act does not exceed $75,000.

1061PAF AVTOP Principles

(1) The Minister must, by legislative instrument, determine the principles (the ***AVTOP Principles***) to be applied for the purposes of determining the amount of an AVTOP payable to a person in relation to a declared overseas terrorist act.

(2) Without limiting subsection (1), the AVTOP Principles may provide that the following factors are to be taken into account when determining the amount of the payment:

(a) for a primary victim:

(i) the nature of the injury or disease suffered as a direct result of the terrorist act; and

(ii) the duration of the injury or disease; and

(iii) the impact of the injury or disease on the person's bodily and mental functions; and

(iv) the impact of the injury or disease on the person's life; and

(v) the likelihood of the person suffering future loss, injury or disease as a direct result of the terrorist act; and

(vi) the circumstances in which the injury or disease was incurred; and

(vii) whether the person was directed by an official of Australia or a foreign country not to go to the place where the terrorist act occurred;

(b) for a secondary victim in relation to a close family member who has died:

(i) whether the person was dependant on the close family member; and

(ii) the nature of the relationship between the person and the close family member; and

(iii) the circumstances in which the close family member died; and

(iv) whether the close family member was directed by an official of Australia or a foreign country not to go to the place where the terrorist act occurred; and

(v) whether there are other persons who have made a claim for an AVTOP as a secondary victim in relation to the close family member; and

(vi) if there are such other secondary victims and the person and each of the other secondary victims agree on the amount of the AVTOP that each should be paid—that agreement; and

(vii) if there are such other secondary victims and the person and each of the other secondary victims have not agreed on the amount of the AVTOP that each should be paid—whether the person has also made a claim as a secondary victim of the terrorist act in relation to another close family member;

(c) for a primary victim or a secondary victim:

(i) whether there was travel advice on an Australian government website advising against travelling to the foreign country, region or place where the terrorist act occurred; and

(ii) whether the person has been paid or is likely to be paid an amount by the Commonwealth, a State, a Territory, a foreign country or any other person or entity in relation to the terrorist act.

(3) The AVTOP Principles may specify circumstances in which the amount of an AVTOP is nil.

OFFICIAL: Sensitive // Legal Privilege

Division 4—Other

1061PAG Consultation on the AVTOP Principles

(1) Before determining the AVTOP Principles under section 1061PAF, the Minister must consult with representatives of the following groups (the ***consultation groups***):

(a) victims of overseas terrorist acts and their families;

(b) community or welfare organisations;

(c) health professionals;

(d) international humanitarian agencies;

(e) any other persons the Minister considers appropriate to consult.

(2) The Minister must also consult representatives of the consultation groups each year after the year in which the AVTOP Principles commence.

(3) A failure to consult as required by this section does not affect the validity of the AVTOP Principles.

1061PAH AVTOP is not compensation or damages

For the purposes of any law of the Commonwealth, a payment of AVTOP is not to be treated as being a payment of compensation or damages.

OFFICIAL: Sensitive // Legal Privilege

Part 2.24A—Pensioner education supplement

Division 1—Qualification for pensioner education supplement

Subdivision A—The basic rules

1061PA Qualification for pensioner education supplement

A person is qualified for a pensioner education supplement if the person:

(a) is undertaking qualifying study (see Subdivision B); and

(b) is receiving a payment attracting pensioner education supplement (see Subdivision C); and

(c) is of pensioner education supplement age (see Subdivision D); and

(d) meets the residency requirements under Subdivision E.

Note: Division 2 sets out situations in which pensioner education supplement is not payable even if the person qualifies for it.

Subdivision B—Undertaking qualifying study

1061PB Undertaking qualifying study

General

(1) For the purposes of this Part, a person is ***undertaking qualifying study*** if the Secretary is satisfied that:

(a) the person:

(i) is enrolled in a course of education at an educational institution; or

(ii) was enrolled in the course and satisfies the Secretary that he or she intends, and has (since no longer being enrolled) always intended, to re-enrol in the course when re-enrolments in the course are next accepted; or

(iii) was enrolled in the course and satisfies the Secretary that he or she intends, and has (since no longer being enrolled) always intended, to enrol in another course of education (at the same or a different educational institution) when enrolments in the other course are next accepted; and

(b) the course in which the person is enrolled, or intends to enrol, is an approved course of education or study (see section 1061PC); and

(c) the person is a full-time student or a concessional study-load student in respect of that course (see sections 1061PD and 1061PE); and

(d) the person satisfies the progress rules (see sections 1061PH and 1061PI).

Persons not undertaking qualifying study

(2) A person is not undertaking qualifying study if the person:

(a) is employed on a full-time basis as an apprentice or trainee under an industrial instrument or the National Employment Standards, and has a training agreement (however described) with a training authority (by whatever name called) of a State or Territory; or

(b) has completed a course for:

(i) a degree of Master or Doctor at an educational institution; or

(ii) a qualification at a foreign institution that is, in the Secretary's opinion, of the same standing as a degree of Master or Doctor at an educational institution.

Note: For ***educational institution*** see subsection 23(1).

Taken to be undertaking qualifying study from 1 January

(3) For the purpose of subsection (1), a person is taken to have been undertaking qualifying study from 1 January in a particular year if:

(a) the person is enrolled in a course of education that is a full year course starting before 1 April in that year; and

OFFICIAL: Sensitive // Legal Privilege

(b) the person starts his or her full year course before that day; and

(c) either:

(i) the person did not undertake full-time or part-time study for the whole, or a part, of the immediately preceding semester (excluding vacations); or

(ii) the person did not undertake full-time or part-time study for more than one semester (excluding vacations) during the immediately preceding 12 months and the Secretary is satisfied that this was due to the person's illness or to other circumstances beyond the person's control.

Taken to be undertaking qualifying study from 1 July

(4) For the purpose of subsection (1), a person is taken to have been undertaking qualifying study from 1 July in a particular year if:

(a) the person is enrolled in a course of education that is a full year course starting on or after 1 July in that year; and

(b) the person starts his or her full year course on or after that day; and

(c) either:

(i) the person did not undertake full-time or part-time study for the whole, or a part, of the immediately preceding semester (excluding vacations); or

(ii) the person did not undertake full-time or part-time study for more than one semester (excluding vacations) during the immediately preceding 12 months and the Secretary is satisfied that this was due to the person's illness or to other circumstances beyond the person's control.

Taken to be undertaking qualifying study until 31 December

(5) For the purpose of subsection (1), a person is taken to be undertaking qualifying study until the end of 31 December in a particular year if:

(a) the person completes his or her course of education after 15 September but before 31 December in that year; and

(b) the person's course of education is a full year course or a late starting course.

Industrial instruments

(6) In paragraph (2)(a):

industrial instrument means an award, determination or agreement (however described) that:

(a) is made under or recognised by a law of the Commonwealth or of a State or Territory that:

(i) regulates the relationships between employers and employees; or

(ii) provides for the prevention or settlement of disputes between employers and employees; and

(b) concerns the relationship between an employer and the employer's employees, or provides for the prevention or settlement of a dispute between an employer and the employer's employees.

National Employment Standards has the same meaning as in the *Fair Work Act 2009*.

1061PC Approved course of education or study

For the purposes of paragraph 1061PB(1)(b), a course is an approved course of education or study if it is a course determined, under section 5D of the *Student Assistance Act 1973*, to be a secondary course or a tertiary course for the purposes of that Act.

1061PD Full-time students

For the purposes of this Subdivision, a person is a ***full-time student*** in respect of a course if:

(a) in the case of a person who is enrolled in the course for a particular study period (such as, for example, a semester)—the person is undertaking at least three quarters of the normal

amount of full-time study in respect of the course for that period; or

(b) in the case of a person who intends to enrol in the course for a particular study period—the person intends to undertake at least three quarters of the normal amount of full-time study in respect of the course for that period.

Note: For ***normal amount of full-time study*** see section 1061PF.

1061PE Concessional study-load students

(1) For the purposes of this Subdivision, there are 2 classes of concessional study-load students, namely:

(a) 25% concessional study-load students; and

(b) 66% concessional study-load students.

(2) For the purposes of this Subdivision, a person is a ***25% concessional study-load student*** in respect of a course if this subsection applies to the person and:

(a) in the case of a person who is enrolled in the course for a particular study period (such as, for example, a semester)—the person is undertaking at least one quarter, but less than three quarters, of the normal amount of full-time study in respect of the course for that period; or

(b) in the case of a person who intends to enrol in the course for a particular study period—the person intends to undertake at least one quarter, but less than three quarters, of the normal amount of full-time study in respect of the course for that period.

(3) For the purposes of this Subdivision, a person is a ***66% concessional study-load student*** in respect of a course if this subsection applies to the person and:

(a) in the case of a person who is enrolled in the course for a particular study period (such as, for example, a semester)—the person is undertaking at least two thirds, but less than three quarters, of the normal amount of full-time study in respect of the course for that period; or

(b) in the case of a person who intends to enrol in the course for a particular study period—the person intends to undertake at least two thirds, but less than three quarters, of the normal amount of full-time study in respect of the course for that period.

Note: For ***normal amount of full-time study*** see section 1061PF.

(4) Subsection (2) applies to a person if:

(a) an officer in the Commonwealth Rehabilitation Service or an appropriate medical practitioner who has a detailed knowledge of the person's physical condition has stated in writing that:

(i) the person has a substantial physical disability; and

(ii) the person cannot successfully undertake the normal amount of full-time study in respect of the course because of the disability; or

(b) a medical practitioner specialising in psychiatry has stated in writing that:

(i) the person has a substantial psychiatric disability; and

(ii) the person cannot successfully undertake the normal amount of full-time study in respect of the course because of the disability; or

(c) a psychologist who is registered with the Australian Psychologist Society has stated in writing that the person:

(i) has an intellectual disability; and

(ii) cannot successfully undertake the normal amount of full-time study in respect of the course because of the disability; or

(d) the person is receiving:

(i) a disability support pension, a carer payment, a pension PP (single), a youth allowance or a jobseeker payment under this Act; or

(ii) an invalidity service pension or a carer service pension under the Veterans' Entitlements Act; or

(e) the person has a dependent child aged less than 16 years and:

(ii) is a sole parent and is receiving a special benefit under this Act; or

(iii) is receiving a widow allowance under this Act; or

(iv) is receiving a pension under Part II of the Veterans' Entitlements Act; or

(v) is receiving pension under Part IV of the Veterans' Entitlements Act; or

(vi) has received, or is entitled to receive, compensation for permanent impairment under section 68, 71 or 75 of the Military Rehabilitation and Compensation Act; or

(vii) is receiving a Special Rate Disability Pension under Part 6 of Chapter 4 of the Military Rehabilitation and Compensation Act; or

(viii) is receiving, or has received, the weekly amount mentioned in paragraph 234(1)(b) of the Military Rehabilitation and Compensation Act (including a reduced weekly amount because of a choice under section 236 of that Act) or a lump sum mentioned in subsection 236(5) of that Act.

(5) Subsection (3) applies to a person if:

(a) the person cannot undertake the course as a full-time student because of:

(i) the relevant educational institution's usual requirements for the course; or

(ii) a specific direction in writing to the person from the academic registrar or an equivalent officer; or

(b) the academic registrar (or an equivalent officer) of the relevant educational institution recommends in writing that the person undertake less than the normal amount of full-time study in respect of the course for specified academic or vocational reasons for a period not exceeding half an academic year.

1061PF Normal amount of full-time study

(1) For the purposes of this Subdivision, the ***normal amount of full-time study*** in respect of a course is:

(a) if:

(i) the course is a course of study within the meaning of the *Higher Education Support Act 2003*; and

(ii) there are Commonwealth supported students (within the meaning of that Act) enrolled in the course;

the full-time student load for the course; or

(b) if the course is not such a course and the institution defines an amount of full-time study that a full-time student should typically undertake in respect of the course—the amount so defined; or

(c) otherwise—an amount of full-time study equivalent to the average amount of full-time study that a person would have to undertake for the duration of the course in order to complete the course in the minimum amount of time needed to complete it.

(2) Without limiting subsection (1), the ***normal amount of full-time study*** in respect of a course is an average, taken over the duration of the period for which the person in question is enrolled in the course, of 20 contact hours per week.

1061PG First fortnight of classes

A person is taken to be undertaking full-time study or a concessional study-load (as the case may be) in respect of a course during the period (the ***relevant period***):

(a) starting on the first day of classes in a study period; and

(b) ending on the Friday of the second week of classes in the study period;

if the person is enrolled in the course and undertakes study in respect of the course on at least one day in the relevant period.

1061PH Progress rules—secondary students

General rule

(1) Subject to subsection (2), a person enrolled in, or intending to enrol in, a secondary course satisfies the progress rules for the purposes of paragraph 1061PB(1)(d) if, in the Secretary's opinion, the person is making satisfactory progress towards completing the course.

Students repeating year 12

(2) A person does not satisfy the progress rules if:
  (a) the person is enrolled in a secondary course that is at year 12 level, or the overall level of which is at year 12 level (see subsections (3) and (4)); and
  (b) the person has been a full-time student in respect of a course at that level (a ***previous course***) in each of 2 previous years; and
  (c) none of the following circumstances apply:
    (i) the person failed a previous course because of an illness that had not been diagnosed when the person began that course;
    (ii) the person failed a previous course because of other circumstances beyond the person's control that were not apparent when the person began that course;
    (iii) the person failed a previous course because English is not the person's native language;
    (iv) the person completed or discontinued a previous course within 6 months after the relevant academic year started;
    (v) each of the previous courses was undertaken more than 10 years before the present study.

Course at year 12 level

(3) A secondary course is at year 12 level if the institution in which the course is undertaken regards it as being at year 12 level.

Overall level of course at year 12 level

(4) The overall level of a secondary course is at year 12 level if the institution in which the course is undertaken regards at least 50% of the course as being at year 12 level.

*Meaning of **secondary course***

(5) For the purposes of this section, a course is a secondary course if it is a course determined, under section 5D of the *Student Assistance Act 1973*, to be a secondary course for the purposes of that Act.

1061PI Progress rules—tertiary students

Full-time students

(1) A person who is a full-time student in respect of a tertiary course satisfies the progress rules if:

(a) in the case of a person who is enrolled in the course—on the day on which the person enrolled in the course; or

(b) in the case of a person who is not yet enrolled in the course but intends to enrol in the course—on the day on which enrolments in the course are next accepted;

the time already spent by the student on the course, or on one or more other tertiary courses at the same level as that course, does not exceed the allowable study time for that course.

Note: For allowable study time for a course see subsection (3).

Concessional study-load students

(2) A person who is a concessional study-load student in respect of a tertiary course satisfies the progress rules if:

(a) in the case of a person who is enrolled in the course—on the day on which the person enrolled in the course; or

(b) in the case of a person who is not yet enrolled in the course but intends to enrol in the course—on the day on which enrolments in the course are next accepted;

OFFICIAL: Sensitive // Legal Privilege

the time already spent by the person on the course, or on one or more other tertiary courses at the same level as that course, does not exceed the allowable study time for the course.

Note: For allowable study time for a course see subsections (3) and (4).

Allowable study time—full-time students and 66% concessional study-load students

(3) The allowable study time for a course undertaken by a full-time student or a 66% concessional study-load student is:

(a) if the minimum amount of time needed to complete the course as a full-time student is one year or less—that minimum amount of time; or

(b) if the minimum amount of time needed to complete the course as a full-time student is more than 1 year and:

(i) the student is enrolled, or intends to enrol, in a year-long subject; or

(ii) the student's further progress in the course depends on passing a whole year's work in the course;

the minimum amount of time plus 1 year; or

(c) in any other case—the minimum amount of time needed to complete the course as a full-time student plus half an academic year.

Allowable study time—25% concessional study-load students

(4) The allowable study time for a course undertaken by a 25% concessional study-load student is twice the minimum period in which it is possible to complete the course as a full-time student.

Time spent by person studying part-time

(5) If a student has studied part-time for a course over a certain period, the time spent by the student on that course is taken to be the proportion of that period calculated by using the formula:

OFFICIAL: Sensitive // Legal Privilege

$$\frac{\text{Study undertaken}}{\text{Normal full-time study}}$$

where:

normal full-time study means the normal amount of full-time study for the course.

study undertaken means the amount of study undertaken part-time by the student for the course.

Current full-time students who have previously undertaken courses as concessional study-load students

(6) If:

(a) a person is undertaking a course as a full-time student; and

(b) the person has previously undertaken:

(i) part of the course; or

(ii) one or more than one other course at the same level as that course;

as a concessional study-load student; and

(c) the time spent by the person undertaking the part of the course referred to in subparagraph (b)(i), or the course or courses referred to in subparagraph (b)(ii), (the ***previous study***) is not to be disregarded under subsection (7);

the time spent by the person undertaking the previous study is taken to be equal to the minimum amount of time that a full-time student would have taken to complete the previous study.

Matters to be disregarded in determining whether someone has exceeded the allowable study time

(7) In determining whether a person has exceeded the allowable study time (for a full-time student or a concessional study-load student), disregard the following:

(a) if the person has completed a course (a ***pre-requisite course***), the completion of which is the normal requirement for

OFFICIAL: Sensitive // Legal Privilege

admission to the course in which the person is enrolled, or intends to enrol—time spent undertaking the pre-requisite course;

(b) a failed year of study, or a failed part of a year of study, if the failure is because of:
  (i) the person's illness; or
  (ii) other circumstances beyond the person's control;

(c) time spent undertaking a course that has been permanently discontinued because of:
  (i) the person's illness; or
  (ii) other circumstances beyond the person's control;

(d) time spent undertaking a course that has been completed but which, because of the person's illness, the person cannot use in any of the trades or profession to which the course is appropriate;

(e) time spent undertaking a TAFE course if the normal length of the course for a full-time student is one year or less;

(f) time spent undertaking a course more than 10 years ago, unless the course has since been completed;

(g) time spent undertaking a course after 1973 if the course was not:
  (i) approved for the Tertiary Education Assistance Scheme; or
  (ii) approved for the AUSTUDY scheme; or
  (iii) an approved course for the purposes of paragraph 541B(1)(c), 569A(b) or 1061PB(1)(b) of this Act;

(h) time spent undertaking a course at a foreign institution;

(i) time spent undertaking a subject from which the student withdrew, if the educational institution in which the subject was undertaken did not record the withdrawal from the subject as a failure;

(j) any time spent undertaking a course during which the person was ineligible to receive:
  (i) AUSTUDY; or

(ii) a benefit under the Tertiary Education Assistance Scheme; or

(iii) youth allowance; or

(iv) austudy payment;

because of the application of rules in respect of academic progress.

Levels of tertiary courses

(8) There are 4 levels of tertiary courses—levels A, B, C and D.

Level A courses

(9) The following are Level A courses:

(a) a postgraduate bachelor degree course, with or without honours;

(b) a graduate or postgraduate diploma course;

(c) a course of practical legal training at a higher education institution;

(d) a course of advanced education regarded by an accrediting authority as being at PG1 level;

(e) a graduate certificate course.

Level B courses

(10) The following are Level B courses:

(a) a bachelor degree course (other than a postgraduate course), with or without honours;

(b) the bachelor level component of a masters degree course with concurrent bachelor and masters level study;

(c) a diploma course other than:

(i) a graduate or postgraduate diploma course; or

(ii) a course for which an entry requirement is successful completion of year 10 of secondary studies; or

(iii) a TAFE course;

(d) a Master's qualifying course;

(e) the Barristers or Solicitors Admission Board's course;

(f) a course of advanced education regarded by an accrediting authority as being at UG1 or UG2 level.

Level C courses

(11) The following are Level C courses:
(a) an associate degree course;
(b) an associate diploma course;
(c) a diploma course at a TAFE institution for which an entry requirement is successful completion of year 12 of secondary studies;
(d) a 2-year undergraduate diploma course.

Level D courses

(12) The following are Level D courses:
(a) a TAFE course at a higher education institution;
(b) a TAFE course, unless the course is in Level A, B or C.

*Meaning of **tertiary course***

(13) For the purposes of this section, a course is a tertiary course if it is a course determined, under section 5D of the *Student Assistance Act 1973*, to be a tertiary course for the purposes of that Act.

Subdivision C—Payments attracting pensioner education supplement

1061PJ Payments attracting pensioner education supplement

General

(1) A person is receiving a payment attracting pensioner education supplement if the person is receiving:
(a) a payment under this Act set out in subsection (2); or
(b) a payment under the Veterans' Entitlements Act set out in subsection (3); or

OFFICIAL: Sensitive // Legal Privilege

(c) in the case of a person who has a dependent child—compensation under the Military Rehabilitation and Compensation Act set out in subsection (4).

Payments under this Act

(2) The payments under this Act are the following:
- (a) a disability support pension;
- (c) a carer payment;
- (d) a pension (PP) single;
- (da) subject to subsection (2A), a youth allowance;
- (db) subject to subsection (2B), a jobseeker payment;
- (dc) subject to subsection (2D), a benefit PP (partnered);
- (f) a widow allowance;
- (g) in the case of a person who is a sole parent—a special benefit.

(2A) Paragraph (2)(da) only applies if:
- (a) the person receiving the payment:
  - (i) has a partial capacity to work; and
  - (ii) on the day (being a day occurring on or after 1 July 2006) immediately before the person first qualified for a youth allowance, was a transitional DSP applicant and was receiving a disability support pension; and
  - (iii) ceased to be qualified for that disability support pension because he or she no longer had a continuing inability to work within the meaning of section 94; and
  - (iiia) ceased to be so qualified as a result of the first decision about the person's capacity to work made on or after 1 July 2006; and
  - (iv) on the day immediately before ceasing to be qualified for that disability support pension, was qualified for a pensioner education supplement in relation to a particular course of education or study; or
- (b) the person receiving the payment:

(i) is the principal carer of at least one child and is not a member of a couple; and

(ii) on the day (being a day occurring on or after 1 July 2006) immediately before the person last qualified for a youth allowance, was qualified for parenting payment and was receiving a pension (PP) single; and

(iii) ceased to be qualified for that parenting payment because he or she no longer had a PP child for the reason that his or her youngest dependent child had turned 8; and

(iv) on the day immediately before ceasing to be qualified for that parenting payment, was qualified for a pensioner education supplement in relation to a particular course of education or study;

and the person has:

(c) at all times since that day, been qualified both for:

(i) a youth allowance; and

(ii) a pensioner education supplement in relation to that particular course of education or study; and

(d) at no time since that day, either undertaken full-time study or been a new apprentice.

Note 1: For ***partial capacity to work*** see section 16B.

Note 2: For ***transitional DSP applicant*** see subsection 23(1).

Note 3: For ***principal carer*** see subsections 5(15) to (24). See also subsection (2C) of this section.

Note 4: For ***undertaking full-time study*** see section 541B.

Note 5: For ***new apprentice*** see subsection 23(1).

(2B) Paragraph (2)(db) only applies if subsection (2BA) or (2BB) applies.

(2BA) This subsection applies if the person receiving the payment:

(a) has a partial capacity to work; and

(b) on the day (the ***relevant day***) (being a day occurring on or after 1 July 2006) immediately before the person first

qualified for a jobseeker payment, was a transitional DSP applicant and was:

(i) receiving a disability support pension; or

(ii) receiving a youth allowance in respect of which subsection (2A) applied; and

(c) if he or she was receiving a disability support pension—ceased to be qualified for it because he or she no longer had a continuing inability to work within the meaning of section 94; and

(d) if he or she was receiving a disability support pension—ceased to be so qualified as a result of the first decision about the person's capacity to work made on or after 1 July 2006; and

(e) was, on the relevant day, qualified for a pensioner education supplement in relation to a particular course of education or study; and

(f) at all times since the relevant day, has been qualified both for:

(i) a jobseeker payment; and

(ii) a pensioner education supplement in relation to that particular course of education or study.

Note 1: For ***partial capacity to work*** see section 16B.

Note 2: For ***transitional DSP applicant*** see subsection 23(1).

(2BB) This subsection applies if the person receiving the payment is the principal carer of at least one child and is not a member of a couple.

Note: For ***principal carer*** see subsections 5(15) to (24). See also subsection (2C) of this section.

(2C) If a person is the principal carer of a child who dies, the person is taken, for the purposes of subparagraph (2A)(b)(i) and subsection (2BB), to continue to be the principal carer of the child during the period of 14 weeks that starts on the day of the child's death.

(2D) Paragraph (2)(dc) only applies if the person receiving the payment:

(a) has a partial capacity to work; and

(b) on the day (the ***relevant day***) (being a day occurring on or after 1 July 2006) immediately before the person first qualified for parenting payment, was a transitional DSP applicant and was:

(i) receiving a disability support pension; or

(ii) receiving a youth allowance in respect of which subsection (2A) applied; or

(iii) receiving a jobseeker payment in respect of which subsection (2B) applied; and

(c) if he or she was receiving a disability support pension—ceased to be qualified for it because he or she no longer had a continuing inability to work within the meaning of section 94; and

(d) if he or she was receiving a disability support pension—ceased to be so qualified as a result of the first decision about the person's capacity to work made on or after 1 July 2006; and

(e) was, on the relevant day, qualified for a pensioner education supplement in relation to a particular course of education or study; and

(f) at all times since the relevant day, has been a member of a couple; and

(g) at all times since the relevant day, has been qualified both for:

(i) parenting payment; and

(ii) a pensioner education supplement in relation to that particular course of education or study.

Note 1: For ***partial capacity to work*** see section 16B.

Note 2: For ***transitional DSP applicant*** see subsection 23(1).

Payments under the Veterans' Entitlements Act

(3) The payments under the Veterans' Entitlements Act are the following:

(a) in the case of a person who has a dependent child—a pension under Part II of that Act;
(b) an invalidity service pension;
(ba) income support supplement;
(bb) a veteran payment;
(c) in the case of a person whose partner is receiving an invalidity service pension—a partner service pension;
(d) a carer service pension;
(e) in the case of a person who has a dependent child—a pension under Part IV of that Act.

Compensation under the Military Rehabilitation and Compensation Act

(4) For a person who has a dependent child, the compensation under the Military Rehabilitation and Compensation Act is the following:
(a) compensation for permanent impairment paid as a weekly amount under section 68, 71 or 75 of the Military Rehabilitation and Compensation Act;
(b) a Special Rate Disability Pension under Part 6 of Chapter 4 of the Military Rehabilitation and Compensation Act;
(c) the weekly amount mentioned in paragraph 234(1)(b) of the Military Rehabilitation and Compensation Act (including a reduced weekly amount because of a choice under section 236 of that Act).

Subdivision D—Pensioner education supplement age

1061PK Pensioner education supplement age

For the purposes of this Part, a person is of pensioner education supplement age if the person:
(a) is at least 16 years old; or
(b) is independent and has reached the minimum school leaving age for the State or Territory in which the person is living.

OFFICIAL: Sensitive // Legal Privilege

1061PL When a person is regarded as independent

Application

(1) This section applies to determine whether a person is to be regarded as independent for the purposes of this Part. A person is not to be regarded as independent except as provided by this section.

Person with a dependent child

(2) A person is independent if:
  (a) the person has a natural child, adopted child or relationship child who is wholly or substantially dependent on the person or his or her partner; or
  (b) the person previously had a natural child, adopted child or relationship child who was wholly or substantially dependent on the person or on a person who, at the time, was the person's partner.

Orphan

(3) A person is independent if both the person's parents are dead, whether or not the person is dependent, or was last dependent, on someone other than his or her parents.

If parents cannot exercise responsibilities

(4) A person is independent if both of the person's parents are (or, if the person has only one parent, that parent is):
  (a) serving a prison sentence of at least 10 years; or
  (b) mentally incapacitated and likely to remain so incapacitated for an indefinite period; or
  (c) living in a nursing home and likely to remain there for an indefinite period; or
  (d) missing;

whether or not the person is dependent, or was last dependent, on someone other than a parent of the person.

Refugee

(5) A person is independent if the person:

(a) is the holder, within the meaning of the Migration (1993) Regulations, of a Group 1.3 entry permit (permanent resident) (refugee and humanitarian); or

(b) while the holder of such a permit, was granted Australian citizenship.

However, a person is not independent under this subsection if the person has a parent living in Australia, or is wholly or substantially dependent on someone else on a long-term basis.

Person in State care

(6) A person is independent if the person is not living with a parent, and:

(a) the person is in the guardianship, care or custody of a court, a Minister, or a Department, of the Commonwealth, a State or a Territory; or

(b) there is a current direction from such a court, Minister or Department placing the person in the guardianship, care or custody of someone who is not the person's parent; or

(c) the person stopped being in a situation described in paragraph (a) or (b) only because of his or her age.

A person to whom this subsection applies is taken, for the purposes of this Part, to be ***in State care***.

Unreasonable to live at home

(7) A person is independent if:

(a) the person cannot live at the home of either or both of his or her parents:

(i) because of extreme family breakdown or other similar exceptional circumstances; or

(ii) because it would be unreasonable to expect the person to do so as there would be a serious risk to his or her

OFFICIAL: Sensitive // Legal Privilege

physical or mental well-being due to violence, sexual abuse or other similar exceptional circumstances; and

(b) the person is not receiving continuous support, whether directly or indirectly and whether financial or otherwise, from a parent of the person or from another person who is acting as the person's guardian on a long-term basis; and

(c) the person is not receiving, on a continuous basis, any payments in the nature of income support (other than a social security benefit) from the Commonwealth, a State or a Territory.

Parents of relationship children

(8) If a person (other than a person who is an adopted child) is a relationship child of another person because he or she is a child of the other person, and of a third person, within the meaning of the *Family Law Act 1975*, the other person and the third person are taken to be the person's only parents for the purposes of subsections (3), (4), (5), (6) and (7).

Subdivision E—Residency

1061PM Residency requirements

For the purposes of this Part, a person meets the residency requirements if the person:

(a) is an Australian resident; and

(b) subject to section 1061PN, is in Australia.

1061PN Absence of persons overseas

General

(1) A person who is undertaking qualifying study is taken to be in Australia while the person:

(a) is absent from Australia for the purpose of undertaking part of the studies for the course of education in respect of which the person is undertaking qualifying study; or

OFFICIAL: Sensitive // Legal Privilege

(b) is absent from Australia, for any other purpose, for not more than 6 weeks.

Temporary return to Australia

(2) If the person:

(a) returns to Australia after having been outside Australia (whether before or after the commencement of this section) for more than 6 weeks; and

(b) leaves Australia before the end of 6 weeks after he or she so returned to Australia;

the person is taken to have continued to be absent from Australia throughout the period from the time of the person's return to the time when the person so left Australia.

OFFICIAL: Sensitive // Legal Privilege

Division 2—Situations in which pensioner education supplement is not payable

Subdivision C—Newly arrived resident's waiting period

1061PT Pensioner education supplement not payable during newly arrived resident's waiting period

A pensioner education supplement is not payable to a person while the person is subject to a newly arrived resident's waiting period (see sections 1061PU and 1061PV).

1061PU Newly arrived resident's waiting period

Basic rule

(1) Subject to this section, a person is subject to a newly arrived resident's waiting period if the person:
  (a) has entered Australia; and
  (b) has not been an Australian resident in Australia for a period of, or periods totalling, 208 weeks.

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

Exception—qualifying resident exemption

(2) Subsection (1) does not apply to a person who has a qualifying residence exemption for an austudy payment.

Note: For ***qualifying residence exemption*** in relation to austudy payment, see paragraph 7(6AA)(f).

Exception—other

(3) Subsection (1) does not apply to a person if:
  (a) the person is a refugee, or a former refugee, at the time the person made the claim for a pensioner education supplement; or
  (b) the following apply:

OFFICIAL: Sensitive // Legal Privilege

(i) before the person made the claim for a pensioner education supplement, the person was a family member of another person at the time the other person became a refugee;

(ii) the person is a family member of that other person at the time the person made the claim for a pensioner education supplement or, if that other person has died, the person was a family member of that other person immediately before that other person died; or

(c) the person is an Australian citizen at the time the person made the claim for a pensioner education supplement.

(4) For the purposes of subsection (3):

(a) ***family member*** has the meaning given by subsection 7(6D); and

(b) ***former refugee*** has the meaning given by subsection 7(1); and

(c) ***refugee*** has the meaning given by subsection 7(6B).

1061PV Length of newly arrived resident's waiting period

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

(a) starts on the day the person first became an Australian resident; and

(b) ends when the person has been an Australian resident in Australia for a period of, or periods totalling, 208 weeks after that day.

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

Subdivision D—Multiple entitlement exclusion

1061PW Meaning of multiple entitlement exclusion

For the purposes of this Division, a person is subject to a multiple entitlement exclusion if the person is receiving a pensioner education supplement under the ABSTUDY scheme.

1061PX Multiple entitlement exclusion

A pensioner education supplement is not payable to a person if the person is subject to a multiple entitlement exclusion.

OFFICIAL: Sensitive // Legal Privilege

Division 5—Rate of pensioner education supplement

1061PZG Rate of pensioner education supplement

(1) If a person:

(a) is a sub-50% concessional study-load student in respect of a course; and

(b) is not receiving any of the following:

(i) a disability support pension under this Act;

(ia) a youth allowance, newstart allowance or benefit PP (partnered) under this Act, in a case where the person has a partial capacity to work;

(ii) an invalidity service pension under the Veterans' Entitlements Act;

(iii) an income support supplement under the Veterans' Entitlements Act on the grounds of permanent incapacity;

(iv) a veteran payment;

the pensioner education supplement fortnightly rate for the person is $31.20.

Note 1: Recipients of youth allowance, newstart allowance or benefit PP (partnered) only qualify for pensioner education supplement in the limited circumstances set out in subsection 1061PJ(2A), (2B) or (2D).

Note 2: For ***partial capacity to work*** see section 16B.

(2) The pensioner education supplement fortnightly rate for a person to whom subsection (1) does not apply is $62.40.

(3) The rate of pensioner education supplement for a person is a daily rate worked out by dividing the person's fortnightly rate by 14.

(4) For the purposes of this section, a person is a ***sub-50% concessional study-load student*** in respect of a course if the person is a 25% concessional study-load student in respect of the course for the purposes of Subdivision B of Division 1 of this Part who is undertaking, or who intends to undertake, less than one half of the

OFFICIAL: Sensitive // Legal Privilege

normal amount of full-time study, determined in accordance with section 1061PF, in respect of that course.

OFFICIAL: Sensitive // Legal Privilege

Part 2.25—Telephone allowance

Division 1—Qualification for and payability of telephone allowance

1061Q Qualification for telephone allowance

(1) A person is qualified for a telephone allowance if:
  (a) the person is receiving a social security pension; and
  (c) the person is a telephone subscriber.

Note: For ***telephone subscriber*** see subsection (5).

(2) A person is qualified for a telephone allowance if:
  (a) the person is receiving a youth allowance; and
  (b) the person is not undertaking full-time study; and
  (c) the person is not a new apprentice; and
  (d) the person:
    (i) has a partial capacity to work; or
    (ii) is the principal carer of at least one child and is not a member of a couple; and
  (e) the person is a telephone subscriber.

Note 1: For ***undertaking full-time study*** see section 541B.

Note 2: For ***new apprentice*** see subsection 23(1).

Note 3: For ***partial capacity to work*** see section 16B.

Note 4: For ***principal carer*** see subsections 5(15) to (24). See also subsection (2C) of this section.

Note 5: For ***telephone subscriber*** see subsection (5).

(2A) A person is qualified for a telephone allowance if:
  (a) the person is receiving a jobseeker payment; and
  (b) the person:
    (i) has a partial capacity to work; or
    (ii) is the principal carer of at least one child and is not a member of a couple; and

OFFICIAL: Sensitive // Legal Privilege

(c) the person is a telephone subscriber.

Note 1: For ***partial capacity to work*** see section 16B.

Note 2: For ***principal carer*** see subsections 5(15) to (24). See also subsection (2C) of this section.

Note 3: For ***telephone subscriber*** see subsection (5).

(2B) A person is qualified for a telephone allowance if:

(a) the person is:

(i) receiving a youth allowance while the person is not undertaking full-time study and is not a new apprentice; or

(ii) receiving a jobseeker payment; and

(b) the person is the principal carer of at least one child and is a member of a couple; and

(c) the person is a telephone subscriber; and

(d) the person's partner has turned 60; and

(e) the person's partner is receiving jobseeker payment; and

(f) the person's partner has been receiving income support payments in respect of a continuous period of at least 9 months.

Note 1: For ***undertaking full-time study*** see section 541B.

Note 2: For ***new apprentice*** see subsection 23(1).

Note 3: For ***principal carer*** see subsections 5(15) to (24). See also subsection (2C) of this section.

Note 4: For ***telephone subscriber*** see subsection (5).

Note 5: For ***income support payment*** see subsection 23(1).

Note 6: Subsection 23(4A) can affect when a person is taken to be receiving the pension or allowance.

(2C) If a person is the principal carer of a child who dies, the person is taken, for the purposes of subparagraphs (2)(d)(ii) and (2A)(b)(ii) and paragraph (2B)(b), to continue to be the principal carer of the child during the period of 14 weeks that starts on the day of the child's death.

OFFICIAL: Sensitive // Legal Privilege

(2D) A person is qualified for a telephone allowance if:

(a) the person is receiving a benefit PP (partnered); and

(b) the person has a partial capacity to work; and

(c) the person is a telephone subscriber.

Note 1: For ***partial capacity to work*** see section 16B.

Note 2: For ***telephone subscriber*** see subsection (5).

(3) A person is qualified for a telephone allowance if:

(a) the person is receiving widow allowance, jobseeker payment, partner allowance, benefit PP (partnered) or special benefit; and

(b) the person has been receiving income support payments in respect of a continuous period of at least 9 months; and

(c) the person has turned 60; and

(d) the person is a telephone subscriber.

Note 1: For ***income support payment*** see subsection 23(1).

Note 2: For the determination of the continuous period in respect of which a person received income support payments see section 38B.

Note 3: For ***telephone subscriber*** see subsection (5).

(3A) A person is qualified for telephone allowance if:

(a) the person is receiving partner allowance or benefit PP (partnered); and

(b) the person is a telephone subscriber; and

(c) the person's partner has turned 60; and

(d) the person's partner is receiving job search allowance or jobseeker payment; and

(e) the person's partner has been receiving income support payments in respect of a continuous period of at least 9 months.

Note 1: For ***telephone subscriber*** see subsection (5).

Note 2: For ***income support payment*** see subsection 23(1).

Note 3: For the determination of the continuous period in respect of which a person received income support payments see section 38B.

OFFICIAL: Sensitive // Legal Privilege

(3C) If:

(a) a person has been receiving a social security pension; and

(b) the person ceases to receive the pension because the person or the person's partner has employment income; and

(c) the person is a telephone subscriber;

the person is qualified for a telephone allowance:

(d) if the person has been receiving a disability support pension—for a period of 12 months from the date on which the person ceases to receive the pension; or

(e) in any other situation mentioned in paragraph (a)—for a period of 6 months from the date on which the person ceases to receive the pension.

Note 1: For ***telephone subscriber*** see subsection (5).

Note 2: Subsection 23(4A) can affect when a person is taken to be receiving the pension.

(3D) Subsection (3C) applies to a person who:

(a) has been receiving a youth allowance while the person:

(i) has had a partial capacity to work; and

(ii) has not been undertaking full-time study; and

(iii) has not been a new apprentice; or

(b) has been receiving a jobseeker payment or parenting payment while the person has had a partial capacity to work;

as if the person had been receiving a disability support pension.

Note 1: For ***partial capacity to work*** see section 16B.

Note 2: For ***undertaking full-time study*** see section 541B.

Note 3: For ***new apprentice*** see subsection 23(1).

(3E) Subsection (3C) applies to a person who:

(a) has been receiving a youth allowance while the person:

(i) has been the principal carer of at least one child; and

(ii) has not been a member of a couple; and

(iii) has not had a partial capacity to work; and

(iv) has not been undertaking full-time study; and

(v) has not been a new apprentice; or

(b) has been receiving a jobseeker payment while the person:

(i) has been the principal carer of at least one child; and

(ii) has not been a member of a couple; and

(iii) has not had a partial capacity to work;

as if the person had been receiving pension PP (single).

Note 1: For ***principal carer*** see subsections 5(15) to (24). See also subsection (3K) of this section.

Note 2: For ***partial capacity to work*** see section 16B.

Note 3: For ***undertaking full-time study*** see section 541B.

Note 4: For ***new apprentice*** see subsection 23(1).

(3F) If:

(a) a person has been receiving one of the following social security benefits:

(i) jobseeker payment;

(ii) widow allowance;

(iii) partner allowance;

(v) special benefit;

(vi) benefit PP (partnered); and

(b) the person ceases to receive the benefit because the person or the person's partner has employment income; and

(c) the person has turned 60; and

(d) immediately before the person ceases to receive the benefit, the person had been receiving income support payments in respect of a continuous period of at least 9 months; and

(e) the person is a telephone subscriber;

the person is qualified for a telephone allowance for a period of 6 months from the date on which the person ceases to receive the benefit.

Note 1: For ***telephone subscriber*** see subsection (5).

Note 2: Subsection 23(4A) can affect when a person is taken to be receiving the benefit.

(3G) If:

OFFICIAL: Sensitive // Legal Privilege

(a) a person has been receiving partner allowance or benefit PP (partnered); and
(b) the person ceases to receive the benefit because the person or the person's partner has employment income; and
(c) the person's partner has turned 60; and
(d) the person's partner:
(i) is receiving jobseeker payment; or
(ii) was receiving jobseeker payment immediately before the person ceased to receive partner allowance or benefit PP (partnered); and
(e) immediately before the person ceases to receive the benefit, the person's partner had been receiving income support payments in respect of a continuous period of at least 9 months; and
(f) the person is a telephone subscriber;

the person is qualified for a telephone allowance for a period of 6 months from the date on which the person ceases to receive the benefit.

Note 1: For ***telephone subscriber*** see subsection (5).

Note 2: Subsection 23(4A) can affect when a person is taken to be receiving the benefit.

(3H) Subsection (3G) applies to a person who:
(a) has been receiving youth allowance while the person:
(i) has been the principal carer of at least one child; and
(ii) has been a member of a couple; and
(iii) has not been undertaking full-time study; and
(iv) has not been a new apprentice; or
(b) has been receiving jobseeker payment while the person:
(i) has been the principal carer of at least one child; and
(ii) has been a member of a couple;

as if the person had been receiving partner allowance or benefit PP (partnered).

Note 1: For ***principal carer*** see subsections 5(15) to (24). See also subsection (3K) of this section.

Note 2: For ***undertaking full-time study*** see section 541B.

Note 3: For ***new apprentice*** see subsection 23(1).

(3J) A reference in paragraph (3C)(b), (3F)(b) or (3G)(b) to the employment income of a person is a reference to that person's employment income either alone or in combination with any other ordinary income earned, derived or received, or taken to have been earned, derived or received, by the person or the person's partner.

(3K) If a person was the principal carer of a child who died, the person is taken, for the purposes of subparagraphs (3E)(a)(i) and (3H)(b)(i), to have continued to be the principal carer of the child during the period of 14 weeks that started on the day of the child's death.

(4) For the purposes of paragraph (2B)(f), (3)(b), (3A)(e), (3F)(d) or (3G)(e), it does not matter:

(a) whether the kind of payment received has changed over the period in question; or

(b) whether the period or any part of it occurred before or after the commencement of that paragraph.

(5) In this section:

telephone subscriber means:

(a) a person who has a telephone service connected in Australia in his or her name; or

(b) a person:

(i) to whom paragraph (a) does not apply; and

(ii) who is a member of a couple (other than an illness separated, temporarily separated or respite care couple); and

(iii) whose partner has a telephone service connected in Australia in the partner's name.

Note: For ***member of a couple***, ***illness separated couple***, ***temporarily separated couple*** and ***respite care couple*** see section 4.

OFFICIAL: Sensitive // Legal Privilege

1061R Telephone allowance not payable in some circumstances

Even though a person is qualified for a telephone allowance, the allowance is not payable to the person if:

(a) the person is receiving a social security payment for which a pension supplement amount is used to work out the rate of the payment, with a pension supplement amount that is more than the person's pension supplement basic amount; or

(b) the following subparagraphs apply to the person:

(i) the person is qualified for the telephone allowance because of the application of subsection 1061Q(3C), (3F) or (3G) to the person in relation to a social security payment the person has ceased to receive;

(ii) immediately before the cessation of the payment, a pension supplement amount was used to work out the rate of the payment;

(iii) that pension supplement amount was more than the person's pension supplement basic amount; or

(c) an election by the person under subsection 1061VA(1) is in force; or

(d) the person is receiving energy supplement under Part 2.25B of this Act or Part VIIAD of the Veterans' Entitlements Act; or

(e) the person is receiving MRCA supplement under section 221 or 245 of the Military Rehabilitation and Compensation Act; or

(f) the person is receiving veterans supplement under section 118B of the Veterans' Entitlements Act; or

(g) both:

(i) the person is a member of a couple (other than an illness separated, temporarily separated or respite care couple); and

(ii) the person's partner is receiving veterans supplement under either subsection 118B(2) of the Veterans' Entitlements Act or a determination under subsection 5R(1) of that Act.

Section 1061R

Note 1: For the purposes of subparagraph (b)(i), subsections 1061Q(3C) and (3G) have an extended application (see subsections 1061Q(3D), (3E) and (3H)).

Note 2: For ***member of a couple***, ***illness separated couple***, ***temporarily separated couple*** and ***respite care couple***, see section 4.

Note 3: Subsection 118B(2) of the Veterans' Entitlements Act covers certain categories of World War I veterans.

Note 4: The relevant determination under subsection 5R(1) of the Veterans' Entitlements Act provides eligibility for veterans supplement to certain categories of World War I Australian mariners.

OFFICIAL: Sensitive // Legal Privilege

Division 2—Rate of telephone allowance

1061S Standard rate of telephone allowance

(1) The rate of telephone allowance for a person to whom section 1061SB (increased rate for home internet) does not apply is worked out using the following Table:

Standard rate of telephone allowance

Column 1 Item	Column 2 Person's situation	Column 3 Rate per year
1.	Not member of a couple	$88.00
3.	Partnered (partner getting neither social security pension nor social security benefit), and partner not a holder of a seniors health card	$44.00
4.	Partnered, and: (a) partner getting pension or benefit; or (b) partner is a holder of a seniors health card; and: (c) partner is not getting telephone allowance; and (d) if the partner were taken to be qualified for telephone allowance, section 1061R would not prevent telephone allowance from being payable to the partner	$88.00

Section 1061S

Standard rate of telephone allowance		
Column 1 **Item**	**Column 2** **Person's situation**	**Column 3** **Rate per year**
5.	Partnered, and: (a) partner getting pension or benefit; or (b) partner is a holder of a seniors health card; and: (c) partner is getting telephone allowance; or (d) if the partner were taken to be qualified for telephone allowance, section 1061R would prevent telephone allowance from being payable to the partner	$44.00
6.	Member of an illness separated, temporarily separated or respite care couple	$88.00
7.	Partnered, and: (a) partner not getting veterans supplement under section 118B of the Veterans' Entitlements Act; and (b) partner not getting MRCA supplement under section 221 or 245 of the Military Rehabilitation and Compensation Act	$88.00
8.	Partnered, and: (a) partner getting veterans supplement under section 118B of the Veterans' Entitlements Act; or (b) partner getting MRCA supplement under section 221 or 245 of the Military Rehabilitation and Compensation Act	$44.00
9.	Partnered (partner in gaol)	$88.00

Note: The amounts in column 3 are indexed or adjusted annually in line with CPI increases (see sections 1191 to 1194).

(1A) Item 7 does not apply to a person if any other item applies to the person.

(2) If item 8 applies to a person, item 3 does not apply to the person.

(3A) For the purposes of working out a person's rate of telephone allowance under subsection (1), the person's partner is taken to be the holder of a seniors health card if the partner:

(a) is temporarily absent from Australia for a continuous period not exceeding 6 weeks; and

(b) was the holder of a seniors health card immediately before leaving Australia.

1061SA Increased rate of telephone allowance

(1) The rate of telephone allowance for a person to whom section 1061SB (increased rate for home internet) applies is worked out using the following table:

Increased rate of telephone allowance

Column 1 Item	Column 2 Person's situation	Column 3 Rate per year
1.	Not member of a couple	$132.00
3.	Partnered (partner getting neither social security pension nor social security benefit), and partner not a holder of a seniors health card	$66.00
4.	Partnered, and: (a) partner getting pension or benefit; or (b) partner is a holder of a seniors health card; and:	$132.00

Section 1061SA

Increased rate of telephone allowance		
Column 1 **Item**	**Column 2** **Person's situation**	**Column 3** **Rate per year**
	(c) partner is not getting telephone allowance; and (d) if the partner were taken to be qualified for telephone allowance, section 1061R would not prevent telephone allowance from being payable to the partner	
5.	Partnered, and: (a) partner getting pension or benefit; or (b) partner is a holder of a seniors health card; and: (c) partner is getting telephone allowance at the increased rate; or (d) if the partner were taken to be qualified for telephone allowance, section 1061R would prevent telephone allowance from being payable to the partner	$66.00
6.	Member of an illness separated, temporarily separated or respite care couple	$132.00
7.	Partnered, and: (a) partner not getting veterans supplement under section 118B of the Veterans' Entitlements Act; and (b) partner not getting MRCA supplement under section 221 or 245 of the Military Rehabilitation and Compensation Act	$132.00
8.	Partnered, and:	$66.00

Increased rate of telephone allowance		
Column 1 **Item**	**Column 2** **Person's situation**	**Column 3** **Rate per year**
	(a) partner getting veterans supplement under section 118B of the Veterans' Entitlements Act; or (b) partner getting MRCA supplement under section 221 or 245 of the Military Rehabilitation and Compensation Act	
9.	Partnered (partner in gaol)	$132.00
10.	Partnered (partner getting pension or benefit) and partner getting telephone allowance at the standard rate	$88.00

Note: The amounts in column 3 are indexed or adjusted annually in line with CPI increases (see sections 1191 to 1194).

(2) Item 7 does not apply to a person if any other item applies to the person.

(3) If item 8 applies to a person, item 3 does not apply to the person.

(5) For the purposes of working out a person's rate of telephone allowance under subsection (1), the person's partner is taken to be the holder of a seniors health card if the partner:

(a) is temporarily absent from Australia for a continuous period not exceeding 6 weeks; and

(b) was the holder of a seniors health card immediately before leaving Australia.

1061SB Increased rate of telephone allowance for home internet

(1) This section applies to a person if the person satisfies the conditions in this section.

Note: A person is eligible for an increased rate of telephone allowance if this section applies to him or her: see section 1061SA.

OFFICIAL: Sensitive // Legal Privilege

First condition

(2) The first condition is that the person:

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

(d) is receiving a disability support pension or carer payment.

Second condition

(3) The second condition is that an internet carriage service (within the meaning of the *Broadcasting Services Act 1992*) is connected in Australia either:

(a) in the person's name; or

(b) if the person is a member of a couple (other than an illness separated, temporarily separated or respite care couple)—in the person's partner's name.

Third condition

(4) The third condition is that the person is able to access that internet carriage service at the person's principal home.

Fourth condition

(5) The fourth condition is that, on or before the telephone allowance payday, the person gave oral or written notice to the Secretary about the connection of the internet carriage service mentioned in subsection (3).

Definition

(6) In this section:

telephone allowance payday has the same meaning as in subsection 48(4) of the Administration Act.

OFFICIAL: Sensitive // Legal Privilege

Part 2.25A—Utilities allowance

Division 1—Qualification for and payability of utilities allowance

1061T Qualification for utilities allowance

(1) A person is qualified for utilities allowance if the person:
  (a) either:
    (i) has reached pension age and is receiving an income support payment; or
    (ii) is receiving a widow allowance, a partner allowance, a disability support pension or a carer payment; and
  (c) either:
    (i) is in Australia; or
    (ii) is temporarily absent from Australia and has been so for a continuous period not exceeding 6 weeks.

(2) Even though a person is qualified for utilities allowance, the allowance is not payable to the person:
  (a) if the person is receiving a social security payment for which a pension supplement amount is used to work out the rate of the payment, with a pension supplement amount that is more than the person's pension supplement basic amount; or
  (b) if the person is receiving energy supplement under Part 2.25B; or
  (c) if an election by the person under subsection 1061VA(1) is in force.

1061TA When utilities allowance is payable

(1) Utilities allowance is payable to a person in relation to each utilities allowance test day on which the person is qualified for the allowance.

OFFICIAL: Sensitive // Legal Privilege

(2) However, utilities allowance is not payable to the person in relation to that day if:

(a) a service pension, income support supplement or a veteran payment is payable to the person on that day; or

(b) energy supplement under Part VIIAD of the Veterans' Entitlements Act is payable in relation to that day; or

(c) before that day:

(i) the person had elected not to be covered by this Part; and

(ii) that election had not been withdrawn.

(3) In this section:

utilities allowance test day means:

(a) 20 March; and

(b) 20 June; and

(c) 20 September; and

(d) 20 December.

Division 2—Rate of utilities allowance

1061TB Rate of utilities allowance

A person's annual rate of utilities allowance is worked out using the following table:

Utilities allowance rate table

Column 1	Column 2	Column 3
Item	**Person's situation**	**Annual rate**
1	not a member of a couple	$500
2	member of an illness separated couple	$500
3	member of a respite care couple	$500
4	member of a temporarily separated couple	$500
5	member of a couple (other than an illness separated couple, respite care couple or temporarily separated couple)	half the rate specified in column 3 of item 1

Note: The annual rates of utilities allowance are indexed twice a year in line with CPI increases (see sections 1191 to 1194).

OFFICIAL: Sensitive // Legal Privilege

Part 2.25B—Energy supplement

Division 1—Qualification and payability

1061U Qualification for energy supplement

(1) A person is qualified for energy supplement if the person is the holder of a seniors health card.

Exceptions

(2) Subject to subsections (4), (6) and (8), subsection (1) applies to a person on or after the commencement of this subsection only if on 19 September 2016:

(a) energy supplement was payable to the person under section 1061UA; or

(b) energy supplement was payable to the person under section 118PA of the Veterans' Entitlements Act.

Note: For subsection (1) to apply to the person on a day on or after that commencement, the person needs to be the holder of a seniors health card on that day.

(3) Subject to subsection (8), if:

(a) energy supplement was payable to a person under section 1061UA, or under section 118PA of the Veterans' Entitlements Act, on 19 September 2016; and

(b) energy supplement ceases to be payable to the person under either of those sections on or after 20 September 2016;

then subsection (1) of this section does not apply, and never again applies, to the person from:

(c) if the cessation occurred before the commencement of this subsection—the start of the day this subsection commences; or

(d) if the cessation occurred on or after the commencement of this subsection—the start of the day of that cessation.

(4) If:

OFFICIAL: Sensitive // Legal Privilege

(a) a person was not qualified for energy supplement under subsection (1) on 19 September 2016; and

(b) on 19 September 2016 the person was receiving an income support payment where energy supplement was used to work out the rate of that payment; and

(c) on a day (the ***cessation day***) on or after the commencement of this subsection the person ceases to be in receipt of any income support payment; and

(d) on the day before the cessation day the person was receiving an income support payment where energy supplement was used to work out the rate of that payment; and

(e) the person is required to make a claim for a seniors health card in order for such a card to be granted to the person;

the person can become qualified for energy supplement under subsection (1) only if the person makes a claim for a seniors health card within the period of 6 weeks beginning on the cessation day.

(5) Subject to subsection (8), if:

(a) as a result of a claim mentioned in subsection (4), a seniors health card is issued to a person on a day; and

(b) energy supplement ceases to be payable to the person under section 1061UA on or after that day;

then subsection (1) of this section does not apply, and never again applies, to the person from the start of the day of that cessation.

(6) If:

(a) a person was not qualified for energy supplement under subsection (1) on 31 December 2016; and

(b) on that day, the person was receiving a social security pension and an amount of energy supplement was added to the rate of that pension; and

(c) under subsection 1061ZJA(3) or (4), the Secretary issued a seniors health card to the person;

the person can become qualified for energy supplement under subsection (1) of this section because of holding that card.

(7) Subject to subsection (8), if:

(a) as mentioned in paragraph (6)(c), a seniors health card is issued to a person on a day; and

(b) energy supplement ceases to be payable to the person under section 1061UA on or after that day;

then subsection (1) of this section does not apply, and never again applies, to the person from:

(c) if the cessation occurred before the commencement of this subsection—the start of the day this subsection commences; or

(d) if the cessation occurred on or after the commencement of this subsection—the start of the day of that cessation.

(8) If:

(a) on a day on or after 20 September 2016 the person ceases to hold a seniors health card under the Administration Act or the Veterans' Entitlements Act; and

(b) on that day the person receives an income support payment where energy supplement is used to work out the rate of that payment; and

(c) on a day (the ***cessation day***) on or after the commencement of this subsection, the person ceases to be in receipt of any income support payment; and

(d) on the day before the cessation day the person was receiving an income support payment where energy supplement was used to work out the rate of that payment; and

(e) the person is required to make a claim for a seniors health card in order for such a card to be granted to the person;

the person can become qualified for energy supplement under subsection (1) only if the person makes a claim for a seniors health card within the period of 6 weeks beginning on the cessation day.

1061UA When energy supplement is payable

(1) Energy supplement is payable to a person in relation to each day on which the person is qualified for the supplement.

OFFICIAL: Sensitive // Legal Privilege

(2) However, energy supplement is not payable to the person in relation to a day if:

(a) before that day:

(i) the person had elected not to be covered by this Part; and

(ii) that election had not been withdrawn; or

(b) subsection 55(5) (failing to nominate a bank account) of the Administration Act applies to the person.

Division 2—Rate of energy supplement

1061UB Rate of energy supplement

(1) If subsection (2) applies to the person on a day, the person's daily rate of energy supplement, for that day, is $^{1}/_{364}$ of the amount worked out using the following table:

Energy supplement		
Item	**Person's family situation**	**Amount of energy supplement**
1	Not a member of a couple	$366.60
2	Partnered	$275.60
3	Member of an illness separated couple	$366.60
4	Member of a respite care couple	$366.60
5	Partnered (partner in gaol)	$366.60

(2) This subsection applies to a person on a day if on that day the person is residing in Australia and either:

(a) is in Australia; or

(b) is temporarily absent from Australia and has been so for a continuous period not exceeding 6 weeks.

OFFICIAL: Sensitive // Legal Privilege

Part 2.25C—Quarterly pension supplement

1061V When this Part applies

(1) This Part applies to a person if:

(a) a pension supplement amount is used to work out the rate of the person's social security payment (the ***main payment***); and

(b) the annual rate of that pension supplement amount is more than the person's pension supplement basic amount.

Note: A pension supplement amount that is more than the person's pension supplement basic amount contains a minimum component. The person may elect under this Part to receive that minimum component on a quarterly basis as a separate social security payment.

(2) For the purposes of paragraph (1)(b), if the Rate Calculator for the main payment produces a fortnightly rate, then multiply the person's pension supplement amount by 26 to get the annual rate of that pension supplement amount.

(3) For the purposes of subsection (1), it does not matter if the rate of the person's main payment would become nil were an election by the person under subsection 1061VA(1) to come into force.

1061VA Quarterly pension supplement

(1) The person may, in a manner or way approved by the Secretary, make an election to receive the person's minimum pension supplement amount on a quarterly basis as a separate social security payment.

(2) An election comes into force as soon as practicable after it is made.

(2A) An election ceases to be in force if the main payment ceases to be payable to the person.

(3) The person may, in a manner or way approved by the Secretary, revoke an election. A revocation takes effect as soon as practicable after it happens.

(4) Quarterly pension supplement is payable to the person in relation to each day on which an election is in force.

1061VB Rate of quarterly pension supplement

(1) The person's annual rate of quarterly pension supplement is the person's minimum pension supplement amount.

(2) The person's daily rate of quarterly pension supplement is worked out by dividing the person's annual rate by 364.

(3) This section has effect subject to subsection 1210(3).

OFFICIAL: Sensitive // Legal Privilege

Part 2.26—Fares allowance

Note: Section 19A contains many of the definitions that are relevant to the provisions of this Part.

Division 1—Qualification for fares allowance

1061ZAAA Qualification for fares allowance

(1) A person is qualified for fares allowance for a journey by the person if:

(a) during a period (the ***relevant period***) that is the whole or a part of a study year the person undertakes an approved tertiary course (the ***approved course***) at an educational institution in Australia (the ***relevant educational institution***); and

(b) during the relevant period the person is receiving one or more of the following forms of financial assistance:

(i) youth allowance because the person ~~satisfies the activity test by~~is undertaking full-time study;

(ii) youth allowance where the only term of the relevant ~~Youth Allowance Employment Pathway Plan~~employment pathway plan is a term to the effect that the person has to undertake an approved course of education or study under subsection 541B(5);

(iii) austudy payment;

(iv) pensioner education supplement; and

(c) during the relevant period the person's permanent home is in Australia; and

(d) either:

(i) subsection (2) or (3) applies in respect of the person for the study year; or

(ii) subsection (4) or (5) applies in respect of the person in relation to the journey; and

(e) either section 1061ZAAB or 1061ZAAC applies in respect of the journey; and

(f) the journey has been made or, if it has not been made, the Secretary is satisfied that:

(i) the person intends to make the journey; and

(ii) the person's means of travel for the journey will be provided by a commercial operator.

Note: A person is taken to be receiving a form of financial assistance referred to in paragraph (b) even though the person has traded in, or traded back, the assistance to obtain a financial supplement.

(2) This subsection applies in respect of the person for the study year if, during the relevant period, the person:

(a) has a partner, or a dependent child, living at the person's permanent home; and

(b) is required to live away from his or her permanent home in order to undertake the approved course.

(3) This subsection applies in respect of the person for the study year if, during the relevant period, the person is enrolled as an external student for the approved course.

(4) This subsection applies in respect of the person in relation to the journey if:

(a) during the relevant period, the person:

(i) is receiving youth allowance as referred to in subparagraph (1)(b)(i) or (ii); and

(ii) is required to live away from home within the meaning of Part 3.5 (see section 1067D); and

(b) the person is not independent when the journey is made.

(5) This subsection applies in respect of the person in relation to the journey if:

(a) during the relevant period, the person:

(i) is receiving youth allowance as referred to in subparagraph (1)(b)(i) or (ii); and

(ii) is required to live away from home within the meaning of Part 3.5 (see section 1067D); and

OFFICIAL: Sensitive // Legal Privilege

(b) during the study year and before the journey was made the person became independent because of subsection 1067A(4), (10) or (14); and

(c) if the journey had been made in the study year before the person became independent, subsection (4) would have applied in respect of the person in relation to the journey.

Note: A person is not qualified for a fares allowance in respect of a journey made before the commencement of this section (see clause 126 of Schedule 1A).

1061ZAAB Journey by person who is not an external student

If the person is enrolled for the approved course as a student other than an external student, this section applies in respect of a journey only if the journey is one of the following:

(a) a journey from the person's permanent home to the relevant educational institution to start the course;

(b) a journey made, in the study year or before 1 April in the next year, from the relevant educational institution to the person's permanent home after the person has finished or discontinued the course;

(c) a return journey during the study year between the relevant educational institution and the person's permanent home where the person:

(i) has, during the study year and before the making of the journey, received one or more of the forms of financial assistance referred to in paragraph 1061ZAAA(1)(b) for a total period of 3 months (whether continuous or not); and

(ii) is receiving one of those forms of financial assistance when the journey is made.

1061ZAAC Journey by person who is an external student

If the person is enrolled for the approved course as an external student, this section applies only in respect of one return journey by the person during the study year between the person's

OFFICIAL: Sensitive // Legal Privilege

permanent home and the relevant educational institution in order to attend the institution for a period under a requirement that is a compulsory component of the course.

OFFICIAL: Sensitive // Legal Privilege

Division 3—Amount of fares allowance

1061ZAAJ Fares allowance for public transport

(1) If the Secretary is satisfied that it is practicable for the person to make the entire journey by public transport, the amount of fares allowance for the entire journey is worked out using this section.

(2) If the Secretary is satisfied that it is practicable for the person to make part of the journey by public transport, the amount of fares allowance for that part of the journey is worked out using this section.

(3) The amount of fares allowance is the cost of making the journey, or the part of the journey, using a reasonable route and the least expensive form of public transport that is reasonable.

(4) The cost is to be based on the cost of any concessional fare available to the person.

(5) The cost of a sleeping berth is to be included only if it is reasonable for the person to travel by rail and for the person to have the berth.

(6) In deciding what is practicable or reasonable for the purposes of this section, the period of time needed for the entire journey, and any illness or incapacity of the person, must be taken into account.

(7) The amount of fares allowance to be paid is to be worked out using this section whether or not the person chooses to make the journey, or the part of the journey, in the way described in this section.

1061ZAAK Fares allowance for private transport

(1) If the Secretary is satisfied that it is not practicable for the person to make any part of the journey by public transport, the amount of fares allowance for the entire journey is worked out using this section.

(2) If the Secretary is satisfied that it is not practicable for the person to make a part of the journey by public transport, the amount of

fares allowance for that part of the journey is worked out using this section.

(3) If the person makes the journey, or the part of the journey, by taxi, the fares allowance is 63 cents per kilometre travelled by taxi.

(4) If the person makes the journey, or the part of the journey, by another vehicle, the fares allowance is worked out in accordance with the following table:

Table of rates of allowance

Item	Kind of engine in the vehicle the person uses	Capacity of the vehicle's engine (cubic centimetres)	Allowance per kilometre (cents)
1	Rotary	not more than 800	50.0
2	Rotary	more than 800 but not more than 1,300	60.0
3	Rotary	more than 1,300	61.0
4	Not rotary	not more than 1,600	50.0
5	Not rotary	more than 1,600 but not more than 2,600	60.0
6	Not rotary	more than 2,600	61.0

(5) If the Secretary is satisfied that:

(a) it is unreasonable for the person to make the journey or the part of the journey by taxi or another vehicle because of abnormal travel hazards (for example, bushfire or flood); and

(b) the person makes the journey or the part of the journey by another form of transport that is reasonable because of the distance travelled and the cost of the transport;

the amount of fares allowance for the journey or that part of the journey is the actual cost to the person of making the journey or that part of the journey.

OFFICIAL: Sensitive // Legal Privilege

(6) In deciding what is practicable or reasonable for the purposes of this section, the period of time needed for the entire journey, and any illness or incapacity of the person, must be taken into account.

(7) For the purposes of this section, a vehicle that is registered as a taxi in a State or Territory is to be taken to be a taxi only while it is used in the State or Territory.

(8) The Minister may, by legislative instrument, make determinations:
  (a) varying the amount referred to in subsection (3); or
  (b) amending the table in subsection (4) or omitting that table and substituting another table.

OFFICIAL: Sensitive // Legal Privilege

Part 2.27—Northern Territory CDEP transition payment

Division 1—Qualification for and payability of Northern Territory CDEP transition payment

Subdivision A—Qualification for Northern Territory CDEP transition payment

1061ZAAL Qualification for Northern Territory CDEP transition payment

(1) A person is qualified for Northern Territory CDEP transition payment if:

(a) on 23 July 2007, the person was eligible to participate in the CDEP Scheme under the criteria set out in paragraphs 6.1, 6.2 and 6.3 of CDEP Annexure B (see subsection (2)); and

(b) on 23 July 2007, the person was recorded as active in CDEPManager; and

(c) there is a transition day for the person (see section 1061ZAAM); and

(d) during the period starting on 23 July 2007 and ending on the transition day for the person, the person did not cease to participate in the CDEP Scheme for a period of more than 12 consecutive weeks (disregarding any period during which the person was taking paid or unpaid leave approved by a CDEP Scheme provider); and

(e) the person meets any other conditions specified in rules made for the purposes of this paragraph under section 1061ZAAW.

(2) The reference in paragraph (1)(a) to CDEP Annexure B is a reference to Annexure B to the CDEP Schedule of the 2007/2008 Commonwealth Programme Funding Agreement as in force on 23 July 2007.

OFFICIAL: Sensitive // Legal Privilege

Note: In 2007, the text of the annexure as in force on 23 July 2007 was accessible through the Australian Government website at www.workplace.gov.au.

1061ZAAM Northern Territory CDEP transition day

(1) The Secretary may give a CDEP Scheme provider a written notice specifying the day on which the provider must stop making CDEP Scheme payments to or on behalf of persons participating in the CDEP Scheme in the Northern Territory.

(2) A notice under subsection (1) is not a legislative instrument.

(3) If the Secretary has given a CDEP Scheme provider a notice under subsection (1), the Secretary may, before the day specified in that notice, vary that notice by further written notice to the provider.

(4) The ***transition day*** for a person is the day specified in a notice given to a CDEP Scheme provider under this section, if:
   (a) at any time before the specified day, the person has been registered as active in CDEPManager so far as that system is maintained by that provider; and
   (b) between that time and the specified day, the person has not been registered as active in CDEPManager so far as that system is maintained by any other provider.

(5) However, if, apart from this subsection, a person would have more than one transition day, the ***transition day*** for the person is the earliest of the days that would otherwise have been transition days.

Subdivision B—Payability of Northern Territory CDEP transition payment

1061ZAAN Northern Territory CDEP transition payment only payable if certain claim criteria met

Northern Territory CDEP transition payment is not payable to a person unless one of the following applies:

(a) a claim made by the person for a social security benefit or a social security pension was granted before the transition day for the person and the benefit or pension had not been cancelled by the transition day;
(b) a claim made by the person for a social security benefit or a social security pension before the transition day for the person had not been determined by the transition day;
(c) on or after the transition day for the person, the person has made a claim for a social security benefit or a social security pension.

1061ZAAO Northern Territory CDEP transition payment not payable while CDEP Scheme payments being received

Northern Territory CDEP transition payment is not payable to a person in respect of any period for which the person is receiving CDEP Scheme payments.

1061ZAAP Northern Territory CDEP transition payment not payable if rate too low

Northern Territory CDEP transition payment is not payable to a person if the person's fortnightly rate of Northern Territory CDEP transition payment under subsection 1061ZAAS(2) would be less than $5.

1061ZAAQ Northern Territory CDEP transition payment not payable if compliance penalty period applies

Northern Territory CDEP transition payment is not payable to a person if a compliance penalty period applies in relation to the person.

Note: For ***compliance penalty period*** see subsection 23(1).

OFFICIAL: Sensitive // Legal Privilege

1061ZAAR Northern Territory CDEP transition payment not payable from 1 July 2008

Northern Territory CDEP transition payment is not payable:

(a) for a period that includes 1 July 2008—in respect of so much of the period as occurs on or after 1 July 2008; and

(b) in respect of any period starting on or after 1 July 2008.

OFFICIAL: Sensitive // Legal Privilege

Division 2—Rate of Northern Territory CDEP transition payment

1061ZAAS Rate of Northern Territory CDEP transition payment

(1) The rate of a person's Northern Territory CDEP transition payment is a daily rate, worked out by dividing the person's fortnightly rate worked out under subsection (2) by 14.

(2) The person's fortnightly rate is:
  (a) the excess (if any) of the amount in subparagraph (i) over the amount in subparagraph (ii):
    (i) the person's pre-transition fortnightly income worked out under section 1061ZAAT; and
    (ii) the person's post-transition fortnightly income worked out under section 1061ZAAU; or
  (b) if the Secretary considers that a person's rate worked out under paragraph (a) is not appropriate in the person's circumstances—the rate determined by the Secretary.

(3) In making a determination under this section, the Secretary must have regard to the guidelines (if any) set out in rules made for the purposes of this section under section 1061ZAAW.

1061ZAAT Pre-transition fortnightly income

(1) For the purposes of subparagraph 1061ZAAS(2)(a)(i), a person's ***pre-transition fortnightly income*** is the sum of:
  (a) the person's average fortnightly income from CDEP Scheme payments during the period determined for the person by the Secretary under subsection (2); and
  (b) if the person was receiving a social security benefit on 23 July 2007—the person's provisional fortnightly payment rate for the benefit; and
  (c) if the person was receiving a social security pension on 23 July 2007—the person's provisional annual payment rate for the pension, expressed as a fortnightly rate; and

OFFICIAL: Sensitive // Legal Privilege

(d) if the person received remote area allowance in respect of a fortnight that included 23 July 2007—the person's remote area allowance for the fortnight; and

(e) if the person received CDEP Scheme Participant Supplement under Division 3 of Part 3.15A in respect of a period that included 23 July 2007—$20.80.

(2) The Secretary must determine a period for a person for the purposes of paragraph (1)(a). The period must not be more than 13 weeks and must end on 23 July 2007.

(3) Despite subsection (1), if the Secretary considers that a person's pre-transition fortnightly income as worked out under that subsection would not be appropriate in the person's circumstances, the person's ***pre-transition fortnightly income*** is the amount determined by the Secretary (having regard to the person's income as at 23 July 2007 from CDEP Scheme payments and any social security benefit or social security pension).

(4) In making a determination under this section, the Secretary must have regard to the guidelines (if any) set out in rules made for the purposes of this section under section 1061ZAAW.

1061ZAAU Post-transition fortnightly income

(1) For the purposes of subparagraph 1061ZAAS(2)(a)(ii), a person's ***post-transition fortnightly income*** is the sum of:

(a) if the person is receiving a social security benefit on the relevant day—the person's provisional fortnightly payment rate for the benefit; and

(b) if the person is receiving a social security pension on the relevant day—the person's provisional annual payment rate for the pension, expressed as a fortnightly rate; and

(c) if the person is receiving remote area allowance in respect of a period that includes the relevant day—the person's remote area allowance for the period.

(2) The ***relevant day*** for the purposes of subsection (1) is:

(a) the start day for the person's Northern Territory CDEP transition payment; or

(b) a later day determined by the Secretary.

(3) Despite subsection (1), if the Secretary considers that a person's post-transition fortnightly income as worked out under that subsection would not be appropriate in the person's circumstances, the person's ***post-transition fortnightly income*** is the amount determined by the Secretary.

(4) In making a determination under this section, the Secretary must have regard to the guidelines (if any) set out in rules made for the purposes of this section under section 1061ZAAW.

1061ZAAV Maximum rate of Northern Territory CDEP transition payment

The maximum fortnightly rate of Northern Territory CDEP transition payment under subsection 1061ZAAS(2) is $794.80.

OFFICIAL: Sensitive // Legal Privilege

Division 3—Miscellaneous

1061ZAAW Northern Territory CDEP transition payment rules

(1) The Secretary may, by legislative instrument, make rules in relation to any or all of the following:

(a) any matters required or permitted by this Part to be set out in rules;

(b) qualification for, and payability and rate of, Northern Territory CDEP transition payment;

(c) any other matters in relation to Northern Territory CDEP transition payment.

(2) Rules made for the purposes of paragraph (1)(b) may impose requirements or limitations additional to the requirements or limitations imposed under this Part.

OFFICIAL: Sensitive // Legal Privilege

Chapter 2A—Benefits and concessions other than payments

Part 2A.1—Concession cards

Division 1—Qualification for, and issue of, pensioner concession card

1061ZA General qualification rules

(1) Subject to subsection (3), a person is qualified for a pensioner concession card on a day if a social security pension is payable to the person for that day.

(1A) Paragraph (1)(a) does not apply to a carer payment payable to the person because the person is qualified for that payment for that day under section 197G or 197H or subsection 198AA(4) or (5) (whether or not because of section 197F).

(1B) Subject to subsection (3), a person is qualified for a pensioner concession card on a day if:

(a) immediately before 1 January 2017, the person was receiving a social security pension; and

(b) the Secretary is satisfied that the rate of that pension was nil on 1 January 2017 because of the operation of the amendments made by Part 1 of Schedule 3 to the *Social Services Legislation Amendment (Fair and Sustainable Pensions) Act 2015*; and

(c) the person is not otherwise qualified for a pensioner concession card on that day.

(2) Subject to subsection (3), a person is qualified for a pensioner concession card on a day (the ***qualification day***) if, on that day:

(a) the person has attained 60 years of age; and

(b) the person is receiving:

(i) jobseeker payment; or

OFFICIAL: Sensitive // Legal Privilege

(ii) partner allowance; or
(iii) widow allowance; or
(iv) benefit PP (partnered); or
(vi) special benefit; and

(c) the person has been receiving, for a continuous period of not less than 39 weeks ending immediately before the qualification day:
(i) one or more of the social security benefits referred to in paragraph (b); or
(ii) a social security pension.

(2A) Subject to subsection (3), a person is qualified for a pensioner concession card on a day if, on that day:
(a) the person is receiving a youth allowance; and
(b) the person is not undertaking full-time study and is not a new apprentice; and
(c) the person:
(i) has a partial capacity to work; or
(ii) is the principal carer of at least one child and is not a member of a couple.

Note 1: For ***undertaking full-time study*** see section 541B.

Note 2: For ***new apprentice*** see subsection 23(1).

Note 3: For ***partial capacity to work*** see section 16B.

Note 4: For ***principal carer*** see subsections 5(15) to (24). See also subsection (2C) of this section.

(2B) Subject to subsection (3), a person is qualified for a pensioner concession card on a day if, on that day:
(a) the person is receiving a jobseeker payment; and
(b) the person:
(i) has a partial capacity to work; or
(ii) is the principal carer of at least one child and is not a member of a couple; and
(c) the person is not qualified for a pensioner concession card under subsection (2).

Note 1: For ***partial capacity to work*** see section 16B.

Note 2: For ***principal carer*** see subsections 5(15) to (24). See also subsection (2C) of this section.

(2C) If a person is the principal carer of a child who dies, the person is taken, for the purposes of subparagraphs (2A)(c)(ii) and (2B)(b)(ii), to continue to be the principal carer of the child during the period of 14 weeks that starts on the day of the child's death.

(2D) Subject to subsection (3), a person is qualified for a pensioner concession card on a day if, on that day:

(a) the person is receiving a benefit PP (partnered); and

(b) the person has a partial capacity to work; and

(c) the person is not qualified for a pensioner concession card under subsection (2).

Note: For ***partial capacity to work*** see section 16B.

(2E) Subject to subsection (3), a woman is qualified for a pensioner concession card on a day if, on that day:

(a) the woman is receiving a jobseeker payment; and

(b) the woman's jobseeker payment rate is worked out under section 654.

(3) Subject to subsections (4) and (5), subsections (1), (1B), (2), (2A), (2B), (2D) and (2E) only apply to a person in relation to a day on which the person is in Australia and is an Australian resident.

Note: If the person is temporarily absent from Australia, the person continues to be qualified for a pensioner concession card for a maximum period of up to 6 weeks (see Division 4).

(4) In spite of subsection (3), subsections (1), (2), (2A), (2B) and (2D) apply to a person in relation to a day on which the person:

(a) is in Australia; and

(b) is receiving a social security pension or benefit solely because of the operation of the scheduled international social security agreement between Australia and New Zealand.

OFFICIAL: Sensitive // Legal Privilege

Note: If the person is temporarily absent from Australia, the person continues to be qualified for a pensioner concession card for a maximum period of up to 6 weeks (see Division 4).

(5) In spite of subsection (3), if:

(a) paragraphs (1B)(a), (b) and (c) are satisfied in relation to a person; and

(b) the person was receiving the social security pension immediately before 1 January 2017 solely because of the operation of the scheduled international social security agreement between Australia and New Zealand;

subsection (1B) applies to a person in relation to a day on which the person is in Australia.

Note: If the person is temporarily absent from Australia, the person continues to be qualified for a pensioner concession card for a maximum period of up to 6 weeks (see Division 4).

1061ZC Extended qualification rule: long-term recipient of social security benefits

(1) Subject to subsection (2), if:

(a) a person has been receiving a social security benefit referred to in paragraph 1061ZA(2)(b) for a continuous period of not less than 39 weeks; and

(b) either:

(i) the person or the person's partner commences employment; or

(ii) there is an increase in the ordinary income of the person or the person's partner from employment; and

(c) but for the commencement of employment or increase in ordinary income, as the case may be, the person would have been, or would have continued to be, qualified for a pensioner concession card under subsection 1061ZA(2); and

(ca) the person did not become qualified under section 1061ZEB for a pensioner concession card because of that employment or increase in ordinary income;

the person is qualified for a pensioner concession card:

(d) if the person is qualified for a pensioner concession card under section 1061ZEA until a particular day—for the period of 26 weeks after that day; and

(e) in any other case—for the period of 26 weeks after the commencement or increase, as the case may be.

(1A) If:

(a) either:

(i) the person first referred to in subsection (1) commences employment; or

(ii) there is an increase in the ordinary income from employment of the person so referred to; and

(b) at the start of the instalment period of the person in which the commencement or increase occurs:

(i) the person is a working credit participant; and

(ii) the person's working credit balance is greater than nil; and

(c) the balance is subsequently reduced to nil because of the commencement or increase; and

(d) the person is not qualified for a pensioner concession card under section 1061ZEA;

paragraph (1)(e) has effect as if the reference to 26 weeks after the commencement or increase were a reference to 26 weeks after the day on which the balance is reduced to nil.

(1B) If:

(a) either:

(i) the partner of the person first referred to in subsection (1) commences employment; or

(ii) there is an increase in the ordinary income from employment of the partner of the person so referred to; and

(b) at the start of the instalment period of the partner in which the commencement or increase occurs:

(i) the partner is a working credit participant or a person to whom the student income bank applies; and

OFFICIAL: Sensitive // Legal Privilege

(ii) the partner's working credit balance or student income bank balance is greater than nil; and

(c) the balance is subsequently reduced to nil because of the commencement or increase; and

(d) the person is not qualified for a pensioner concession card under section 1061ZEA;

paragraph (1)(e) has effect as if the reference to 26 weeks after the commencement or increase were a reference to 26 weeks after the day on which the balance is reduced to nil.

(1C) If the person:

(a) is qualified for a pensioner concession card under section 1061ZEA until a particular day; and

(b) has, immediately before becoming so qualified, been receiving a social security benefit referred to in paragraph 1061ZA(2)(b) for a continuous period of less than 39 weeks;

the person is taken, for the purpose of the reference in paragraph (1)(a) to a continuous period of not less than 39 weeks, to be receiving the benefit until the particular day.

(2) Subject to subsection (4), subsection (1) (including that subsection as modified by subsection (1A), (1B) or (1C)) only applies to a person while the person is in Australia and is an Australian resident.

Note: If the person is temporarily absent from Australia, the person continues to be qualified for a pensioner concession card for a maximum period of up to 6 weeks (see Division 4).

(3) If, during the period of 26 weeks referred to in subsection (1) (including that subsection as modified by subsection (1A) or (1B)), a person receives an instalment of a social security pension that relates to one or more days within that period, the person is not qualified under this section for a pensioner concession card on the day or days in relation to which the person receives the instalment.

(4) In spite of subsection (2), subsection (1) (including that subsection as modified by subsection (1A), (1B) or (1C)) applies to a person when:

(a) the person is in Australia; and

(b) the social security benefit that the person had been receiving was received solely because of the operation of the scheduled international agreement between Australia and New Zealand.

Note: If the person is temporarily absent from Australia, the person continues to be qualified for a pensioner concession card for a maximum period of up to 6 weeks (see Division 4).

1061ZD Extended qualification rule: former recipient of disability support pension

(1) Subject to subsections (5), (5A) and (7), a person is qualified for a pensioner concession card for the period of 52 weeks starting on the day on which this section begins to apply to the person.

(2) Subject to subsection (4), this section applies to a person if:

(a) the person has been receiving a disability support pension; and

(b) the person commences employment that requires him or her to work for at least 30 hours per week; and

(c) because of the commencement of that employment, the person ceases (having regard, where appropriate, to the operation of section 1073J) to be qualified for the disability support pension.

(3) Subject to subsection (4), this section applies to a person if:

(a) the person has been receiving a disability support pension; and

(b) because there is an increase in the person's ordinary income from employment (and after any working credit balance of the person is reduced to nil), the disability support pension ceases to be payable to the person.

(4) Subject to subsection (6), this section only applies to a person while the person is in Australia and is an Australian resident.

OFFICIAL: Sensitive // Legal Privilege

Note: If the person is temporarily absent from Australia, the person continues to be qualified for a pensioner concession card for a maximum period of up to 6 weeks (see Division 4).

(5) If, during the period of 52 weeks referred to in subsection (1), a person receives an instalment of a social security pension that relates to one or more days within that period, the person is not qualified under this section for a pensioner concession card on the day or days in relation to which the person receives the instalment.

(5A) If, during the period of 52 weeks referred to in subsection (1), a person receives an instalment of:

(a) a youth allowance while subsection 1061ZA(2A) applies to the person; or

(b) a jobseeker payment while subsection 1061ZA(2B) applies to the person; or

(c) a benefit PP (partnered) while subsection 1061ZA(2D) applies to the person;

that relates to one or more days within that period, the person is not qualified under this section for a pensioner concession card on the day or days in relation to which the person receives the instalment.

(6) In spite of subsection (4), this section applies to a person in relation to a day if:

(a) the person is in Australia on that day; and

(b) the disability support pension that the person had been receiving was received solely because of the operation of the scheduled international agreement between Australia and New Zealand.

Note: If the person is temporarily absent from Australia, the person continues to be qualified for a pensioner concession card for a maximum period of up to 6 weeks (see Division 4).

(7) This section does not apply in any case where a person is qualified for a pensioner concession card under section 1061ZEB.

1061ZDA Extended qualification rule: former recipient of pension PP (single)

(1) If:

(a) a pension PP (single) has been payable to a person; and

(b) the person ceases to be qualified for that payment because, on a day, the person's youngest child turns 8; and

(c) apart from this subsection, the person would cease to be qualified for a pensioner concession card on that day;

then, subject to subsections (2) and (3), the person is qualified for a pensioner concession card for the period of 12 weeks starting on that day.

Other qualification for pensioner concession card

(2) If, during that 12-week period, the person receives an instalment of:

(a) a youth allowance while subsection 1061ZA(2A) applies to the person; or

(b) a jobseeker payment while subsection 1061ZA(2B) applies to the person; or

(c) a benefit PP (partnered) while subsection 1061ZA(2D) applies to the person; or

(d) a social security pension;

that relates to one or more days within that period, the person is not qualified under this section for a pensioner concession card on the day or days in relation to which the person receives the instalment.

Person must be in Australia

(3) Subject to subsection (4), this section only applies to a person while the person is in Australia and is an Australian resident.

Note: If the person is temporarily absent from Australia, the person continues to be qualified for a pensioner concession card for a maximum period of up to 6 weeks (see Division 4).

(4) Despite subsection (3), this section applies to a person in relation to a day if:

(a) the person is in Australia on that day; and
(b) the pension PP (single) that had been payable to the person was payable solely because of the operation of the scheduled international agreement between Australia and New Zealand.

Note: If the person is temporarily absent from Australia, the person continues to be qualified for a pensioner concession card for a maximum period of up to 6 weeks (see Division 4).

1061ZEA Further extended qualification rule: loss of payment because of employment income

(1) This section does not apply in any case where a person is qualified for a pensioner concession card under section 1061ZD, 1061ZDA or 1061ZEB.

(2) If:
(a) a person is receiving a social security pension or a social security benefit; and
(b) the person's rate of payment of the pension or benefit is worked out with regard to the income test module of a rate calculator in Chapter 3; and
(d) the person is qualified for a pensioner concession card; and
(e) the person or the person's partner has employment income; and
(f) a payment mentioned in subsection 1061ZA(1) ceases to be payable to the person or the person ceases to receive a payment mentioned in subsection 1061ZA(2), (2A), (2B) or (2D):
(i) if paragraph (e) applies to the person—because of the employment income of the person (either alone or in combination with any other ordinary income earned, derived or received, or taken to have been earned, derived or received, by the person); or
(ii) if paragraph (e) applies to the partner—because of the employment income of the partner (either alone or in combination with any other ordinary income earned,

derived or received, or taken to have been earned, derived or received, by the partner); and

(g) but for the employment income, or the combined income, referred to in paragraph (f), the person would have been, or would have continued to be, qualified for a pensioner concession card:

(i) under subsection 1061ZA(1)—because the payment referred to in that subsection would have continued to be payable to the person; or

(ii) under subsection 1061ZA(2), (2A), (2B) or (2D)—because the person would have continued to receive the payment referred to in that subsection; and

(ga) the person:

(ii) in the case of a person to whom pension PP (single) ceases to be payable, or who ceases to receive benefit PP (partnered)—continues, but for the requirement to have at least one PP child, to be qualified for that pension or benefit; and

(iia) in the case of a person who is a principal carer of a child and who ceases to receive youth allowance—continues, but for the fact that ~~one or both of paragraphs 540(1)(a) and (c) no longer apply~~paragraph 540(1)(a) no longer applies to the person, to be qualified for youth allowance; and

(iib) in the case of a person who is a principal carer of a child and who ceases to receive jobseeker payment—continues, but for the fact that ~~one or more of paragraphs 593(1)(a) to (f)~~either or both of paragraphs 593(1)(a) and (b) no longer apply to the person, to be qualified for jobseeker payment; and

(iii) in any other case—continues to be qualified for the payment referred to in section 1061ZA;

the person is qualified for a pensioner concession card until:

(h) 12 weeks after the end of the instalment period in which the payment ceases to be payable to the person or the person ceases to receive the payment, as the case requires; or

(j) the day the person would cease to be qualified for a pensioner concession card as mentioned in paragraph (g) for a reason other than the employment income, or the combined income, referred to in paragraph (f); or

(k) the day the person ceases to be qualified as mentioned in paragraph (ga);

whichever happens first.

Note: For ***principal carer*** see subsections 5(15) to (24). See also subsection (2A) of this section.

(2A) If a person is the principal carer of a child who dies, the person is taken, for the purposes of subparagraphs (2)(ga)(iia) and (iib), to continue to be the principal carer of the child during the period of 14 weeks that starts on the day of the child's death.

(3) Subject to subsection (5), subsection (2) only applies to a person while the person is in Australia and is an Australian resident.

Note: If the person is temporarily absent from Australia, the person continues to be qualified for a pensioner concession card for a maximum period of up to 6 weeks (see Division 4).

(4) If, during the period of 12 weeks referred to in subsection (2), a person receives an instalment of social security pension that relates to one or more days within that period, the person is not qualified under this section for a pensioner concession card on the day or the days in relation to which the person receives the instalment.

(5) In spite of subsection (3), subsection (2) applies to a person when:

(a) the person is in Australia; and

(b) the social security pension or the social security benefit that the person had been receiving was received solely because of the operation of the scheduled international agreement between Australia and New Zealand.

Note: If the person is temporarily absent from Australia, the person continues to be qualified for a pensioner concession card for a maximum period of up to 6 weeks (see Division 4).

OFFICIAL: Sensitive // Legal Privilege

1061ZEB Extended qualification rule: persons with a partial capacity to work

(1) A person is qualified for a pensioner concession card for the period of 52 weeks starting on the day on which this section begins to apply to the person.

(2) Subject to subsection (3), this section applies to a person if:
  (a) either:
    (i) the person has been receiving a youth allowance while the person was not undertaking full-time study and was not a new apprentice; or
    (ii) the person has been receiving a jobseeker payment; or
    (iii) the person has been receiving parenting payment; and
  (b) because there is an increase in the person's ordinary income from employment (and after any working credit balance of the person is reduced to nil), the youth allowance, jobseeker payment or parenting payment ceases to be payable to the person; and
  (c) at the time of the cessation the person:
    (i) was qualified for a pensioner concession card under subsection 1061ZA(2A), (2B) or (2D); or
    (ii) was qualified for a pensioner concession card under subsection 1061ZA(1) because a pension PP (single) was payable to the person; and
  (d) at the time of the cessation the person had a partial capacity to work.

Note 1: For ***undertaking full-time study*** see section 541B.

Note 2: For ***new apprentice*** see subsection 23(1).

Note 3: For ***partial capacity to work*** see section 16B.

(3) This section only applies to a person while the person is in Australia and is an Australian resident.

Note: If the person is temporarily absent from Australia, the person continues to be qualified for a pensioner concession card for a maximum period of up to 6 weeks (see Division 4).

(4) If, during the period of 52 weeks referred to in subsection (1), a person receives an instalment of:

(a) a youth allowance while subsection 1061ZA(2A) applies to the person; or

(b) a jobseeker payment while subsection 1061ZA(2B) applies to the person; or

(ba) a benefit PP (partnered) while subsection 1061ZA(2D) applies to the person; or

(c) a social security pension;

that relates to one or more days within that period, the person is not qualified under this section for a pensioner concession card on the day or days in relation to which the person receives the instalment.

1061ZEC Effect of compliance penalty periods

(1) For the purposes of this Division, a social security payment is taken to be payable to a person if the payment would be payable to the person except for the application of a compliance penalty period.

Note: For ***compliance penalty period*** see subsection 23(1).

(2) For the purposes of this Division, a social security payment is taken to have ceased to be payable to a person if:

(a) the payment would have ceased to be payable to the person if the payment had been payable to the person; and

(b) the payment was not payable to the person because of the application of a compliance penalty period.

Note: For ***compliance penalty period*** see subsection 23(1).

(3) In this section:

(a) a reference to a social security payment being payable to a person includes, in appropriate cases, a reference to the person receiving the payment; and

(b) a reference to a social security payment ceasing to be payable to a person includes, in appropriate cases, a reference to the person ceasing to receive the payment.

OFFICIAL: Sensitive // Legal Privilege

1061ZF Issue of pensioner concession card

The Secretary must issue a pensioner concession card to a person who is qualified for such a card.

OFFICIAL: Sensitive // Legal Privilege

Division 2—Qualification for seniors health card

1061ZG Qualification rules

(1) Subject to subsection (2) and sections 1061ZJA and 1061ZJB, a person is qualified for a seniors health card on a day if, on that day, the person:

(a) has reached pension age; and

(b) is an Australian resident or a special category visa holder residing in Australia; and

(c) is in Australia; and

(d) satisfies the seniors health card income test; and

(e) is not receiving a social security pension or benefit; and

(f) is not receiving a service pension, income support supplement or a veteran payment; and

(g) is not subject to a newly arrived resident's waiting period.

Note: If the person is temporarily absent from Australia, the person continues to be qualified for a seniors health card for a maximum period of up to 19 weeks (see Division 4).

(2) A person is not qualified for a seniors health card on a day if:

(a) the person has failed to comply with section 1061ZJ in respect of the reference tax year; or

(aa) on that day the person is the holder of a seniors health card under the Veterans' Entitlements Act; or

(b) where the person made an estimate of taxable income for the reference tax year and the estimate was accepted—the person did not give the Secretary a copy of a notice of assessment of the person's taxable income for that tax year within 52 weeks after the end of that tax year.

Note: If a person is qualified for a seniors health card, the Secretary must not make a determination granting a claim for the card in certain circumstances if the Secretary makes a request under subsection 75(2) or (3) of the Administration Act of the person (about providing tax file numbers): see subsection 77(1) of that Act.

(3) In subsection (2):

reference tax year has the same meaning as in the Seniors Health Card Income Test Calculator.

1061ZH Newly arrived resident's waiting period

(1) Subject to this section, for the purposes of this Division, a person who:

(a) has entered Australia; and

(b) has not been both:

(i) an Australian resident or a special category visa holder residing in Australia; and

(ii) in Australia;

for a period of, or for periods totalling, 208 weeks;

is subject to a newly arrived resident's waiting period.

(2) Subsection (1) does not apply to a person who has a qualifying residence exemption for a seniors health card.

Note: For ***qualifying residence exemption*** in relation to a seniors health card, see paragraph 7(6AA)(f).

(3) Subsection (1) does not apply to a person if:

(a) the person is a refugee, or a former refugee, at the time the person made the claim for a seniors health card; or

(b) the following apply:

(i) before the person made the claim for a seniors health card, the person was a family member of another person at the time the other person became a refugee;

(ii) the person is a family member of that other person at the time the person made the claim for a seniors health card or, if that other person has died, the person was a family member of that other person immediately before that other person died; or

(c) the person is an Australian citizen at the time the person made the claim for a seniors health card.

(4) For the purposes of subsection (3):

OFFICIAL: Sensitive // Legal Privilege

(a) ***family member*** has the meaning given by subsection 7(6D); and

(b) ***former refugee*** has the meaning given by subsection 7(1); and

(c) ***refugee*** has the meaning given by subsection 7(6B).

1061ZI Duration of newly arrived resident's waiting period

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

(a) starts on the day on which the person first became an Australian resident or a special category visa holder residing in Australia; and

(b) ends when the person has been both:

(i) an Australian resident or a special category visa holder residing in Australia; and

(ii) in Australia;

for a period of, or for periods totalling, 208 weeks.

1061ZJ Giving of copy of assessment of taxable income to Secretary

If a person who is the holder of a seniors health card receives a notice of assessment or amended assessment of his or her taxable income for a particular tax year, the person must, if requested by the Secretary to do so, give a copy of the notice to the Secretary within 13 weeks after the day on which the notice was received.

1061ZJA Modifications if person's rate of social security pension is nil on 1 January 2017

(1) This section applies in relation to a person if:

(a) immediately before 1 January 2017, the person was receiving a social security pension; and

(b) the Secretary is satisfied that the rate of that pension is nil on 1 January 2017 because of the operation of the amendments made by Part 1 of Schedule 3 to the *Social Services*

Legislation Amendment (Fair and Sustainable Pensions) Act 2015.

Seniors health card income test does not apply

(2) In determining whether the person is qualified for a seniors health card at any time on or after 1 January 2017, paragraph 1061ZG(1)(d) does not apply to the person.

Automatic issue of seniors health card

(3) If the person is qualified for a seniors health card on 1 January 2017, the Secretary must issue a seniors health card to the person.

Note: The person does not need to make a claim for the card.

(4) If:

(a) on 1 January 2017, the person is outside Australia; and

(b) the person returns to Australia before the end of the period of 19 weeks beginning on the day the person left Australia; and

(c) the person is qualified for a seniors health card on the day the person returns to Australia;

the Secretary must issue a seniors health card to the person.

Note 1: The person does not need to make a claim for the card.

Note 2: If the person returns to Australia after the end of that 19-week period, the person will need to make a claim for a seniors health card.

1061ZJB Other modifications because of Veterans' Entitlements Act

If section 118XA of the Veterans' Entitlements Act applies in relation to a person, then, in determining whether the person is qualified for a seniors health card under this Division at any time on or after 1 January 2017, paragraph 1061ZG(1)(d) does not apply to the person.

OFFICIAL: Sensitive // Legal Privilege

Division 3—Qualification for health care card

Subdivision A—Qualification for automatic issue health care card

1061ZK Qualification: general rules

(1) A person is qualified for a health care card on a day if this section applies to the person on that day.

(2) This section applies to a child on a day if a person is qualified under Part 2.19 for carer allowance for the child on that day.

(3) This section applies to a disabled child on a day if all of the following paragraphs are satisfied on that day:

(a) the child is or would, but for subsection 5(3), be a dependent child of another person (the ***carer***);

(b) because of his or her disability, the child needs, on a daily basis, a level of care and attention that is substantially more than that needed by a person of the same age who does not have a physical, intellectual or psychiatric disability;

(c) the child receives care and attention on a daily basis from:

(i) if the carer is a member of a couple—the carer, the carer's partner or the carer together with another person (whether or not the carer's partner); or

(ii) if the carer is not a member of a couple—the carer or the carer together with another person;

(d) that care and attention is received in a private home that is the residence of the child and the carer;

(e) the carer satisfies the carer allowance income test under section 957A.

(3A) This section applies to a person on a day if a person is qualified under section 197G or 197H or subsection 198AA(4) or (5) (whether or not because of section 197F) for a carer payment on that day.

(4) This section applies to a person on a day if, on that day:

(a) the person is entitled, under the Family Assistance Administration Act, to be paid family tax benefit by instalment; and

(b) the person's daily rate of family tax benefit consists of, or includes, a Part A rate calculated under Part 2 or 3A of Schedule 1 to the Family Assistance Act that is greater than nil (disregarding reductions (if any) under clause 5 of that Schedule); and

(c) the person's income excess for the purposes of Division 2C of Part 5 of Schedule 1 to the Family Assistance Act is nil.

(4A) This section applies to a person on a day if, on that day:

(a) the person has a regular care child; and

(b) the person is not entitled, under the Family Assistance Administration Act, to be paid family tax benefit by instalment; and

(c) the person's income excess for the purposes of Division 2C of Part 5 of Schedule 1 to the Family Assistance Act is nil.

(5) This section applies to a person (other than a person who is qualified for a pensioner concession card because of subsection 1061ZA(2A), (2B), (2D) or (2E)) on a day if on that day the person is receiving:

(a) a youth allowance; or

(b) an austudy payment; or

(c) a jobseeker payment; or

(d) a partner allowance; or

(e) a widow allowance; or

(f) benefit PP (partnered); or

(h) special benefit.

(6) This section applies to a person on a day if on that day:

(a) the person is receiving a payment under the ABSTUDY Scheme that includes an amount identified as living allowance, where the person satisfies the eligibility criteria for that payment; or

OFFICIAL: Sensitive // Legal Privilege

(b) another person, on behalf of the person, is receiving a payment under the ABSTUDY Scheme that includes an amount identified as living allowance.

(7) This section applies to a person on a day if, on that day, the person is receiving mobility allowance.

(8) In this section:

disabled child means a person aged under 16 who:

(a) has a physical, intellectual or psychiatric disability; and

(b) is likely to suffer from that disability permanently or for an extended period.

(9) This section has effect subject to section 1061ZN.

1061ZM Qualification for health care card: employment-affected person

(1) Subject to subsection (2), if:

(a) either:

(i) a person who is an employment-affected person or the partner of such a person commences employment; or

(ii) there is an increase in the ordinary income from employment of a person who is an employment-affected person or the partner of such a person; and

(b) because either:

(i) the person or the partner commences employment; or

(ii) there is an increase in the ordinary income of the person or the partner from employment;

the person ceases to be an employment-affected person; and

(c) the person has been a qualified recipient for a continuous period of 52 weeks immediately before so ceasing;

the person is qualified for a health care card for the period of 26 weeks starting on the day on which the person ceases to be an employment-affected person.

OFFICIAL: Sensitive // Legal Privilege

(1A) If the person is qualified for a health care card under section 1061ZMA until a day (the ***particular day***), subsection (1) has effect as if the reference to 26 weeks starting on the day on which the person ceases to be an employment-affected person were a reference to 26 weeks starting on the particular day.

(1B) If the person:

(a) was an employment-affected person because of receiving pension PP (single); and

(b) is qualified for a pensioner concession card under section 1061ZEA until a day (the ***particular day***);

subsection (1) has effect as if the reference to the period of 26 weeks starting on the day on which the person ceases to be an employment-affected person were a reference to the period starting on the particular day and ending 26 weeks after the person ceases to be an employment-affected person.

(1BA) If the person:

(a) was an employment-affected person because of receiving youth allowance or jobseeker payment; and

(b) was, on the day on which the person ceased to be an employment-affected person, the principal carer of at least one child; and

(c) is qualified for a pensioner concession card under section 1061ZEA until a day (the ***particular day***);

subsection (1) has effect as if the reference to the period of 26 weeks starting on the day on which the person ceases to be an employment-affected person were a reference to the period starting on the particular day and ending 26 weeks after the person ceases to be an employment-affected person.

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

(1C) If the person:

(a) is qualified for a health care card under section 1061ZMA until a particular day; and

(b) has, immediately before the commencement or increase mentioned in subsection (1), been a qualified recipient

OFFICIAL: Sensitive // Legal Privilege

because of receiving jobseeker payment, widow allowance, partner allowance or youth allowance, other than while undertaking full-time study or being a new apprentice, for a continuous period of less than 52 weeks;

the person is taken, for the purpose of the reference in paragraph (1)(c) to a continuous period of 52 weeks, to be receiving the payment or allowance until the particular day.

(2) If, during the period of 26 weeks referred to in subsection (1) (including that subsection as modified by subsection (1A)) or the period provided by subsection (1B), a person receives a payment of a social security pension or benefit specified in the definition of ***employment-affected person*** in subsection (3) that relates to one or more days within that period, the person ceases to be qualified under this section for a health care card on the day on which the person receives the payment.

(3) In this section:

employment-affected person means:

(a) a person who is receiving any of the following:
  (i) pension PP (single);
  (ii) jobseeker payment;
  (iv) special benefit;
  (v) widow allowance;
  (vi) partner allowance; or

(b) a person who is receiving a youth allowance but who:
  (i) is not undertaking full-time study; and
  (ii) is not a new apprentice.

qualified recipient means:

(a) a person who is receiving:
  (i) a social security pension, other than a pension under Part 2.16; or
  (ii) a social security benefit, other than a youth allowance or austudy payment; or

(b) a person who is receiving a youth allowance but who:

(i) is not undertaking full-time study; and
(ii) is not a new apprentice.

(4) This section has effect subject to section 1061ZN.

1061ZMA Further extended qualification rule: loss of payment because of employment income

(2) If:
(a) a person is receiving a social security pension or a social security benefit; and
(b) the person's rate of payment of the pension or benefit is worked out with regard to the income test module of a rate calculator in Chapter 3; and
(d) the person is qualified for a health care card; and
(e) the person or the person's partner has employment income; and
(f) the person ceases to receive a payment mentioned in subsection 1061ZK(5):
(i) if paragraph (e) applies to the person—because of the employment income of the person (either alone or in combination with any other ordinary income earned, derived or received, or taken to have been earned, derived or received, by the person); or
(ii) if paragraph (e) applies to the partner—because of the employment income of the partner (either alone or in combination with any other ordinary income earned, derived or received, or taken to have been earned, derived or received, by the partner); and
(g) but for the employment income, or the combined income, referred to in paragraph (f), the person would have been, or would have continued to be, qualified for a health care card under section 1061ZK because the person would have continued to receive the payment mentioned in subsection 1061ZK(5); and
(ga) the person:

OFFICIAL: Sensitive // Legal Privilege

(i) in the case of a person who ceases to receive benefit PP (partnered)—continues, but for the requirement to have at least one PP child, to be qualified for that benefit; and

(ii) in any other case—continues to be qualified for the payment referred to in subsection 1061ZK(5);

the person is qualified for a health care card until:

(h) 12 weeks after the end of the instalment period in which the person ceases to receive the pension or benefit; or

(j) the day the person would cease to be qualified for a health care card as mentioned in paragraph (g) for a reason other than the employment income, or the combined income, referred to in paragraph (f); or

(k) the day the person ceases to be qualified as mentioned in paragraph (ga);

whichever happens first.

(3) If, during the period of 12 weeks referred to in subsection (2), a person receives a payment of a social security pension or benefit specified in the definition of ***employment-affected person*** in subsection (4) that relates to one or more days within that period, the person ceases to be qualified under this section for a health care card on the day on which the person receives the payment.

(4) In this section:

employment-affected person has the same meaning as it has for the purposes of section 1061ZM.

(5) This section has effect subject to section 1061ZN.

1061ZN Residence requirement

(1) Sections 1061ZK, 1061ZM and 1061ZMA only have effect in relation to a person on a day on which:

(a) the person is in Australia and is:

(i) an Australian resident or a special category visa holder residing in Australia; or

(ii) the holder of a visa included in a class of visas determined by the Minister for the purposes of this paragraph; or

(iii) a person declared by the Minister to be a person to whom this subparagraph applies; or

(b) the person:

(i) is in Australia; and

(ii) is receiving a social security pension or benefit solely because of the operation of the scheduled international agreement between Australia and New Zealand.

Note: If the person is temporarily absent from Australia, the person continues to be qualified for a health care card for a maximum period of up to 6 weeks (see Division 4).

(2) The Minister may, by legislative instrument, declare that a person who:

(a) is included in a specified class of persons; and

(b) is, or has been, in Australia in specified circumstances;

is a person to whom subparagraph (1)(a)(iii) applies.

(3) The circumstances that may be specified in a declaration under subsection (2) include circumstances that existed or exist at any time before or after the making of the declaration.

1061ZNA Effect of compliance penalty periods

(1) For the purposes of this Subdivision, a person is taken to have been receiving, or to be receiving, a social security pension or social security benefit if the person would have been receiving, or would be receiving, the pension or benefit except for the application of a compliance penalty period.

Note: For ***compliance penalty period*** see subsection 23(1).

(2) For the purposes of this Subdivision, a person is taken to have ceased to receive a social security pension or social security benefit if:

OFFICIAL: Sensitive // Legal Privilege

(a) the person would have ceased to receive the pension or benefit if the person had been receiving it; and

(b) the person had not been receiving the pension or benefit because of the application of a compliance penalty period.

Note: For ***compliance penalty period*** see subsection 23(1).

Subdivision B—Qualification for health care card in other circumstances

1061ZO Qualification

(1) A person is qualified for a health care card on a day if this section applies to the person on that day.

(2) This section applies to a person on a day if, on that day:

(a) in the case of a child—the person is:

(i) an Australian resident or a special category visa holder residing in Australia; or

(ii) living in Australia with an Australian resident or with a special category visa holder residing in Australia; and

(b) in the case of a person other than a child—the person is:

(i) an Australian resident or a special category visa holder residing in Australia; and

(ii) in Australia; and

(c) the person is neither an FTB child, nor a regular care child, aged over 16 years; and

(d) the person satisfies the health care card income test.

Note: If the person is temporarily absent from Australia, the person continues to be qualified for a health care card for a maximum period of up to 6 weeks (see Division 4).

(3) This section applies to a person on a day if, on that day, the person:

(a) is an Australian resident or a special category visa holder residing in Australia; and

(b) is in Australia; and

(c) is an FTB child, or a regular care child, who is 16 or more, but not yet 19, years of age; and
(d) is not undertaking secondary studies; and
(e) satisfies the health care card income test.

Note: If the person is temporarily absent from Australia, the person continues to be qualified for a health care card for a maximum period of up to 6 weeks (see Division 4).

(4) This section applies to a person on a day if, on that day, the person:
(a) is an Australian resident or a special category visa holder residing in Australia; and
(b) is in Australia; and
(c) is an FTB child, or a regular care child, who is 19 or more years of age; and
(d) satisfies the health care card income test.

Note: If the person is temporarily absent from Australia, the person continues to be qualified for a health care card for a maximum period of up to 6 weeks (see Division 4).

(5) This section applies to a child on a day if:
(a) on that day, the child is in foster care; and
(b) the child is living in Australia with an Australian resident or with a special category visa holder residing in Australia.

(7) The Minister may, by legislative instrument, declare that a person who:
(a) is included in a specified class of persons; and
(b) is, or has been, in Australia in specified circumstances;
is a person to whom this section applies.

(8) The circumstances that may be specified in a declaration under subsection (7) include circumstances that existed or exist at any time before or after the making of the declaration.

(9) This section applies to a person on a day if:
(a) on that day, the person:
(i) is aged at least 16 and has not turned 26; and

(ii) is a full-time student; and
(iii) is an Australian resident; and
(iv) is living in Australia; and

(b) on the day before the person turned 16:
(i) another person was qualified under Part 2.19 for carer allowance for the person; or
(ii) subsection 1061ZK(3) applied to the person; and

(c) on the day before the person turned 16, the person was qualified for, and held, a health care card.

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

1061ZP Person subject to newly arrived resident's waiting period

This Subdivision does not apply to a person while the person is subject to a newly arrived resident's waiting period.

1061ZQ Newly arrived resident's waiting period

(1) Subject to this section, for the purposes of this Division, a person who has entered Australia is subject to a newly arrived resident's waiting period.

(2) Subsection (1) does not apply to a person who:
(a) has a qualifying residence exemption for a health care card; or
(b) has an FTB child; or
(c) has been an Australian resident, or a special category visa holder residing in Australia, and in Australia for a period of, or for periods totalling, 208 weeks; or
(d) holds, or formerly held, a visa included in a class of visas determined by the Minister for the purposes of subsection 739A(6); or
(e) is not subject to a newly arrived resident's waiting period under subsection 739A(1) or (2) because of the operation of subsection 739A(7).

Note: For paragraph (a): for ***qualifying residence exemption*** in relation to a health care card, see paragraph 7(6AA)(f).

(3) Subsection (1) does not apply to a person if:

(a) the person is a refugee, or a former refugee, at the time the person made the claim for a health care card; or

(b) the following apply:

(i) before the person made the claim for a health care card, the person was a family member of another person at the time the other person became a refugee;

(ii) the person is a family member of that other person at the time the person made the claim for a health care card or, if that other person has died, the person was a family member of that other person immediately before that other person died; or

(c) the person is an Australian citizen at the time the person made the claim for a health care card.

(4) For the purposes of subsection (3):

(a) ***family member*** has the meaning given by subsection 7(6D); and

(b) ***former refugee*** has the meaning given by subsection 7(1); and

(c) ***refugee*** has the meaning given by subsection 7(6B).

1061ZR Duration of newly arrived resident's waiting period

(1) Subject to subsection (2), if a person is subject to a newly arrived resident's waiting period, the period:

(a) starts on the day on which the person first became an Australian resident or a special category visa holder residing in Australia; and

(b) ends when the person has been both:

(i) an Australian resident or a special category visa holder residing in Australia; and

(ii) in Australia;

for a period of, or for periods totalling, 208 weeks.

OFFICIAL: Sensitive // Legal Privilege

(2) If:

(a) a person is subject to a newly arrived resident's waiting period; and

(b) before, on or after the commencement of this subsection, the person applied for a visa that is in a class of visas determined by the Minister for the purposes of paragraph 739A(3)(b);

the waiting period:

(c) starts on the day on which the person applied for that visa; and

(d) ends when the person has been in Australia for a period of, or for periods totalling, 208 weeks after that day.

Subdivision C—Miscellaneous provisions relating to health care cards

1061ZS Issue of health care cards

The Secretary must issue an automatic issue health care card to a person who is qualified for such a card.

1061ZT Certain dependants not qualified for health care card

(1) Subject to subsection (2), a person is not qualified for a health care card in respect of any day on which the person:

(a) is a dependant of any person; or

(b) is wholly or substantially dependent on:

(i) a resident of; or

(ii) a corporation carrying on business in; or

(iii) the government of;

a country other than Australia.

(2) Subsection (1) does not apply to:

(a) a person who is the partner of another person; or

(b) a person who is qualified for a health care card under subsection 1061ZK(2) or (3) or subsection 1061ZO(3), (4), (5) or (9).

OFFICIAL: Sensitive // Legal Privilege

Division 4—Non-cancellation of concession cards for temporary overseas absences

1061ZUA Persons to whom Division applies

(1) This Division applies to a person if:

(a) the person leaves Australia temporarily (see subsection (2)); and

(b) the person is continuously absent from Australia during a period (the ***period of absence***) beginning on the day the person leaves Australia; and

(c) any of the following applies:

(i) immediately before the period of absence commences, the person was the holder of a concession card;

(ii) during the period of absence, the person's claim for a seniors health card or a health care card is granted under the Administration Act;

(iii) during the period of absence, the person is issued an automatic issue card.

(2) For the purposes of paragraph (1)(a), in determining if an absence is temporary, regard must be had to:

(a) the purpose of the absence; and

(b) the intended duration of the absence.

1061ZUB Non-cancellation of concession cards for temporary overseas absences

(1) Throughout the person's maximum non-cancellation period (see subsection (3)), the person's qualification for the concession card is not affected merely by the absence.

(2) For a concession card (other than a seniors health card), throughout so much (if any) of the period of absence as occurs after the end of the period of 6 weeks beginning on the day the person leaves Australia, the person is not qualified for the concession card.

OFFICIAL: Sensitive // Legal Privilege

(2A) For a concession card that is a seniors health card, throughout so much (if any) of the period of absence as occurs after the end of the period of 19 weeks beginning on the day the person leaves Australia, the person is not qualified for the concession card.

(3) For the purposes of subsection (1), a person's ***maximum non-cancellation period*** is the shorter of the following periods:

(a) the person's period of absence;

(b) the following:

(i) for a concession card (other than a seniors health card)—the period of 6 weeks beginning on the day the person leaves Australia;

(ii) for a concession card that is a seniors health card—the period of 19 weeks beginning on the day the person leaves Australia.

1061ZUC Extension cards

(1) This section applies if:

(a) a person qualifies for a concession card under the following section (the ***qualification section***):

(i) section 1061ZC, 1061ZD, 1061ZDA, 1061ZEB or 1061ZM;

(ii) section 1061ZEA as a result of the operation of subsection 1061ZEA(2A); and

(b) as a result of subsection 1061ZUB(1), the person's qualification for the card is not affected by a period of absence; and

(c) at the end of the period of 6 weeks mentioned in subsection 1061ZUB(2), the card is cancelled; and

(d) after that time, the person returns to Australia; and

(e) the person qualifies again for the card under the qualification section (and in the case of section 1061ZEA, the person qualifies as a result of the operation of subsection 1061ZEA(2A)); and

(f) the period for which the person was qualified under the qualification section has not yet ended.

OFFICIAL: Sensitive // Legal Privilege

(2) To avoid doubt, the person continues to qualify for the concession card until the end of the period for which the person was qualified under the qualification section (unless the person ceases to be qualified for the card at an earlier time).

OFFICIAL: Sensitive // Legal Privilege

Chapter 2AA—Student start-up loans

Part 2AA.1—Introduction

1061ZVAA Simplified outline of this Chapter

Student start-up loans are social security payments that are income-contingent loans.

Broadly, full-time students who are receiving youth allowance or austudy might be qualified for a student start-up loan. A person can qualify for up to 2 loans each calendar year. To receive a loan, a person must make a claim before the end of the relevant period for each loan.

Once the person's income exceeds the minimum repayment income under the *Higher Education Support Act 2003* and the person has finished repaying any debt under that Act and certain other income-contingent loan schemes, the person must start repaying debt in relation to student start-up loans.

Part 2AA.2—Qualification for and amount of student start-up loan

1061ZVBA Simplified outline of this Part

Broadly, full-time students who are receiving youth allowance or austudy might be qualified for a student start-up loan. A person can qualify for up to 2 loans each calendar year.

1061ZVBB Qualification for student start-up loan

Receiving youth allowance

(1) A person is qualified for a student start-up loan for a qualification period if:

(a) on the person's qualification test day for the period:

(i) the person is qualified for youth allowance and youth allowance is payable to the person; and

(ii) the person is receiving youth allowance and would be receiving youth allowance if steps 2 and 3 of the method statement in point 1067G-A1 of the Youth Allowance Rate Calculator were disregarded for the purposes of working out the person's rate of that allowance; and

(iii) the person is qualified for youth allowance under section 540 in circumstances where ~~paragraph 541(1)(a)~~subparagraph 540(1)(a)(i) (about full-time study) applies and the relevant course of education is an approved scholarship course; and

(b) the Secretary is satisfied that the person is not likely to receive the amount or value of a disqualifying education costs scholarship in the period of 6 months starting immediately after that qualification test day; and

(c) the person notifies the Secretary of the person's tax file number.

Note 1: For ***approved scholarship course***, see section 592M.

Note 2: If the condition in subparagraph (a)(iii) is no longer met in a certain period starting on the qualification test day, the amount of the loan might become an immediately recoverable debt, rather than an income-contingent SSL debt: see subsection 1223ABF(1).

Receiving austudy payment

(2) A person is qualified for a student start-up loan for a qualification period if:

(a) on the person's qualification test day for the period:

(i) the person is qualified for austudy payment and austudy payment is payable to the person; and

(ii) the person is receiving austudy payment and would be receiving austudy payment if steps 2 and 2A of the method statement in point 1067L-A1 of the Austudy Payment Rate Calculator were disregarded for the purposes of working out the person's rate of that payment; and

(iii) the person is qualified for austudy payment under section 568 in circumstances where subsection 569(1) (about qualifying study) applies and the relevant course of education is an approved scholarship course; and

(b) the Secretary is satisfied that the person is not likely to receive the amount or value of a disqualifying education costs scholarship in the period of 6 months starting immediately after that qualification test day; and

(c) the person notifies the Secretary of the person's tax file number.

Note 1: For ***approved scholarship course***, see section 592M.

Note 2: The person might incur a debt if the condition in subparagraph (a)(iii) is no longer met in a certain period starting on the qualification test day: see subsection 1223ABF(1).

Qualification test day

(3) A person's ***qualification test day*** for a qualification period is the earliest of the following:

(a) the day the Secretary determines the person's claim for a student start-up loan for the qualification period;
(b) if the approved scholarship course ends in the qualification period—the last day of the approved scholarship course;
(c) the last day of the qualification period.

1061ZVBC Circumstances in which person is not qualified for student start-up loan

Despite section 1061ZVBB, a person is not qualified for a student start-up loan for a qualification period if:

(a) immediately before the person's qualification test day for the period:
  (i) a determination is in effect that the person is qualified for a student start-up loan for the qualification period; or
  (ii) a determination is in effect that the person is qualified for an ABSTUDY student start-up loan under the *Student Assistance Act 1973* for the qualification period; or
(b) in the period of 6 months ending immediately before that qualification test day, the person:
  (i) has received a payment known as a student start-up scholarship payment under the scheme referred to in section 117 of the Veterans' Entitlements Act; or
  (ii) has received a payment known as a student start-up scholarship payment under the scheme referred to in section 258 of the Military Rehabilitation and Compensation Act; or
  (iii) has received the amount or value of a disqualifying education costs scholarship; or
  (iv) was entitled to the amount or value of a disqualifying education costs scholarship but has not received the full entitlement only because the scholarship was suspended.

OFFICIAL: Sensitive // Legal Privilege

1061ZVBD Amount of student start-up loan

The amount of a student start-up loan for which a person is qualified is $1,025.

Note: The amount of the loan is to be indexed on each 1 January in line with CPI increases (see sections 1190 to 1194).

Part 2AA.3—Indebtedness

Division 1—Introduction

1061ZVCA Simplified outline of this Part

A person incurs an SSL debt if the person receives a student start-up loan (except in certain circumstances when the loan is required to be recovered as a social security debt under this Act).

Each SSL debt is incorporated into the person's accumulated SSL debt. This accumulated SSL debt forms the basis for working out the amounts the person is obliged to repay.

OFFICIAL: Sensitive // Legal Privilege

Division 2—Incurring SSL debts

1061ZVDA SSL debts

(1) A person incurs an SSL debt to the Commonwealth if the person is paid a student start-up loan for a qualification period.

(2) The SSL debt is incurred by the person on the later of:
  (a) the day the person was paid the loan; and
  (b) the day after the person's enrolment test day for the qualification period.

Note: For ***enrolment test day***, see subsection (5).

(3) The amount of the person's SSL debt is the amount of the loan, reduced by any amount repaid before the day on which the debt is incurred.

(4) Despite subsection (1), an SSL debt is not incurred, and is taken never to have been incurred, in relation to a loan if:
  (a) the loan has been fully repaid before the day on which the SSL debt in respect of the loan would be incurred; or
  (b) the amount of the loan is a debt under section 1223 or 1223ABF; or
  (c) the Secretary has formed an opinion under subsection 1223ABF(3) in relation to the loan (relating to exceptional circumstances beyond the person's control).

(5) A person's ***enrolment test day***, for a qualification period, is the earliest of the following days:
  (a) if the relevant approved scholarship course ends in the qualification period—the last day of that approved scholarship course;
  (b) the last day of the qualification period;
  (c) the 35th day of the period starting on whichever of the following applies:
    (i) if the person's qualification test day for the qualification period was before the first day of the relevant approved

scholarship course—the first day of that approved scholarship course;

(ii) otherwise—the qualification test day.

Note: For ***approved scholarship course***, see section 592M.

1061ZVDB SSL debt discharged by death

Upon the death of a person who owes an SSL debt to the Commonwealth, the debt is taken to have been paid.

Note: SSL debts are not provable in bankruptcy: see subsection 82(3AB) of the *Bankruptcy Act 1966*.

1061ZVDC Notice to Commissioner

(1) If a person incurs an SSL debt, the Secretary must give the Commissioner a notice specifying the amount of the debt incurred by the person.

(2) The Secretary may include in the notice any other details the Commissioner requests for the purpose of ensuring the Commissioner has the information needed to exercise powers or perform functions of the Commissioner under this Act.

OFFICIAL: Sensitive // Legal Privilege

Division 3—Working out accumulated SSL debts

1061ZVEA Simplified outline of this Division

There are 2 stages to working out a person's accumulated SSL debt for a financial year.

In stage 1, the person's former accumulated SSL debt is worked out by adjusting the preceding financial year's accumulated SSL debt to take account of:

(a) the HELP debt indexation factor for 1 June in that financial year; and
(b) the debts that the person incurs during the last 6 months of the preceding financial year; and
(c) voluntary SSL repayments of the debt; and
(d) compulsory SSL repayment amounts in respect of the debt.

In stage 2, the person's accumulated SSL debt is worked out from:

(a) the person's former accumulated SSL debt; and
(b) the SSL debts that the person incurs during the first 6 months of the financial year; and
(c) voluntary SSL repayments of those debts.

1061ZVEB Stage 1—working out a former accumulated SSL debt

(1) A person's ***former accumulated SSL debt***, in relation to the person's accumulated SSL debt for a financial year, is worked out by multiplying:

(a) the amount worked out using the following method statement; by
(b) the HELP debt indexation factor for 1 June in that financial year.

Method statement

Section 1061ZVEB

Step 1.	Take the person's accumulated SSL debt for the immediately preceding financial year. (This amount is taken to be zero if the person has no accumulated SSL debt for that financial year.)
Step 2.	Add the sum of all of the SSL debts (if any) that the person incurred during the last 6 months of the immediately preceding financial year.
Step 3.	Subtract the sum of the amounts by which the person's debts referred to in steps 1 and 2 are reduced because of any voluntary SSL repayments that have been made during the period: (a) starting on 1 June in the immediately preceding financial year; and (b) ending immediately before the next 1 June.
Step 4.	Subtract the sum of all of the person's compulsory SSL repayment amounts that: (a) were assessed during that period (excluding any assessed as a result of a return given before that period); or (b) were assessed after the end of that period as a result of a return given before the end of that period.
Step 5.	Subtract the sum of the amounts by which any compulsory SSL repayment amount of the person is increased (whether as a result of an increase in the person's taxable income of an income year or otherwise) by an amendment of an assessment made during that period.

Step 6.	Add the sum of the amounts by which any compulsory SSL repayment amount of the person is reduced (whether as a result of a reduction in the person's taxable income of an income year or otherwise) by an amendment of an assessment made during that period.

(2) For the purposes of this section, an assessment, or an amendment of an assessment, is taken to have been made on the day specified in the notice of assessment, or notice of amended assessment, as the date of issue of that notice.

1061ZVEC Stage 2—working out an accumulated SSL debt

(1) A person's ***accumulated SSL debt***, for a financial year, is worked out as follows:

$$\text{Former accumulated SSL debt} + \text{SSL debts incurred} - \text{SSL debt repayments}$$

where:

former accumulated SSL debt is the person's former accumulated SSL debt in relation to that accumulated SSL debt.

SSL debt repayments is the sum of all of the voluntary SSL repayments (if any) paid, on or after 1 July in the financial year and before 1 June in that year, in reduction of the SSL debts incurred in that year.

SSL debts incurred is the sum of the amounts of all of the SSL debts (if any) that the person incurred during the first 6 months of the financial year.

(2) The person incurs the accumulated SSL debt on 1 June in the financial year.

OFFICIAL: Sensitive // Legal Privilege

1061ZVED Rounding of amounts

(1) If, apart from this section, a person's accumulated SSL debt would be an amount consisting of a number of whole dollars and a number of cents, disregard the number of cents.

(2) If, apart from this section, a person's accumulated SSL debt would be an amount of less than $1.00, the person's accumulated SSL debt is taken to be zero.

1061ZVEE Accumulated SSL debt discharges earlier debts

(1) The accumulated SSL debt that a person incurs on 1 June in a financial year discharges, or discharges the unpaid part of:
  (a) any SSL debt that the person incurred during the calendar year immediately preceding that day; and
  (b) any accumulated SSL debt that the person incurred on the immediately preceding 1 June.

(2) Nothing in subsection (1) affects the application of Division 2 of this Part or sections 1061ZVEB and 1061ZVEC.

1061ZVEF Accumulated SSL debt discharged by death

(1) Upon the death of a person who has an accumulated SSL debt, the accumulated SSL debt is taken to be discharged.

(2) To avoid doubt, this section does not affect any compulsory SSL repayment amounts required to be paid in respect of the accumulated SSL debt, whether or not those amounts were assessed before the person's death.

Note: Accumulated SSL debts are not provable in bankruptcy: see subsection 82(3AB) of the *Bankruptcy Act 1966*.

OFFICIAL: Sensitive // Legal Privilege

Part 2AA.4—Discharge of indebtedness

Division 1—Introduction

1061ZVFA Simplified outline of this Part

A person who owes a debt to the Commonwealth under this Chapter may make voluntary SSL repayments.

The person is required to make repayments once the person's income exceeds the minimum repayment income under the *Higher Education Support Act 2003* and the person has finished repaying any debt under that Act and certain other income-contingent loan schemes.

The amount of the repayments is based on the person's income.

The Commissioner makes assessments of repayment amounts, which are collected in the same way as amounts of income tax.

1061ZVFB Debts under this Chapter

(1) The debts under this Chapter are:
  (a) SSL debts; and
  (b) accumulated SSL debts.

(2) To avoid doubt, debts that arise under the following sections are not debts under this Chapter:
  (a) section 1223 (Debts arising from lack of qualification, overpayment etc.);
  (b) section 1223ABF (Debts in respect of student start-up loans).

Division 2—Voluntary discharge of indebtedness

1061ZVGA Voluntary SSL repayments in respect of debts

(1) A person may at any time make a payment in respect of a debt that the person owes to the Commonwealth under this Chapter.

(2) The payment must be made to the Commissioner.

1061ZVGB Application of voluntary SSL repayments

(1) Any money a person pays under this Division to meet the person's debts to the Commonwealth under this Chapter is to be applied in payment of those debts as the person directs at the time of the payment.

(2) If the person has not given any directions, or the directions given do not adequately deal with the matter, any money available is to be applied as follows:

(a) first, in discharge or reduction of any accumulated SSL debt of the person;

(b) second, in discharge or reduction of:

(i) any SSL debt of the person; or

(ii) if there is more than one such debt, those debts in the order in which they were incurred.

1061ZVGC Refunding of payments

If:

(a) a person pays an amount to the Commonwealth under this Division; and

(b) the amount exceeds the sum of:

(i) the amount required to discharge the total debt that the person owed to the Commonwealth under this Chapter; and

OFFICIAL: Sensitive // Legal Privilege

(ii) the total amount of the person's primary tax debts (within the meaning of Part IIB of the *Taxation Administration Act 1953*);

the Commonwealth must refund to the person an amount equal to that excess.

Division 3—Compulsory discharge of indebtedness

Subdivision A—Liability to repay amounts

1061ZVHA Liability to repay amounts

(1) If:

(a) a person's HELP repayment income for an income year exceeds the minimum HELP repayment income for the income year; and

(b) on 1 June immediately preceding the making of an assessment in respect of the person's income of that income year, the person had an accumulated SSL debt;

the person is liable to pay to the Commonwealth, in accordance with this Division, so much of the person's repayable SSL debt for the income year as does not exceed the amount worked out using the formula:

$$\text{Applicable percentage of repayment income} _ \text{Relevant income-contingent loans liability}$$

where:

applicable percentage of repayment income means the amount that is the percentage of the person's HELP repayment income applicable under the table in section 154-20 of the *Higher Education Support Act 2003*.

relevant income-contingent loans liability means the amount that is the sum of the following:

(a) the sum of any amounts the person is liable to pay under section 154-1 or 154-16 of the *Higher Education Support Act 2003* in respect of the income year;

(aa) the sum of any amounts the person is liable to pay under section 23EA or 23EC of the *VET Student Loans Act 2016* in respect of the income year;

(b) the sum of any amounts the person is liable to pay under section 1061ZZEZ of this Act, or section 12ZK of the *Student Assistance Act 1973*, in respect of the income year.

(2) A person is not liable under this section to pay an amount for an income year if the amount worked out under subsection (1) is zero or less.

(3) A person is not liable under this section to pay an amount for an income year if, under section 8 of the *Medicare Levy Act 1986*:

(a) no Medicare levy is payable by the person on the person's taxable income for the income year; or

(b) the amount of the Medicare levy payable by the person on the person's taxable income for the income year is reduced.

1061ZVHB Repayable SSL debt for an income year

(1) A person's ***repayable SSL debt*** for an income year is:

(a) the person's accumulated SSL debt referred to in paragraph 1061ZVHA(1)(b) in relation to that income year; or

(b) if one or more amounts:

(i) have been paid in reduction of that debt; or

(ii) have been assessed under section 1061ZVHC to be payable in respect of that debt;

the amount (if any) remaining after deducting from that debt any amounts referred to in subparagraph (i) or (ii).

(2) A reference in paragraph (1)(b) of this section to an amount assessed to be payable is, if the amount has been increased or reduced by an amendment of the relevant assessment, a reference to the increased amount or the reduced amount.

Subdivision B—Assessments

1061ZVHC Commissioner may make assessments

The Commissioner may, from any information in the Commissioner's possession, whether from a return or otherwise, make an assessment of:

(a) the person's accumulated SSL debt on 1 June immediately before the making of the assessment; and
(b) the amount required to be paid in respect of the person's repayable SSL debt under section 1061ZVHA.

1061ZVHD Notification of notices of assessment of tax

If:

(a) the Commissioner is required to serve on a person a notice of assessment in respect of the person's income of an income year under section 174 of the *Income Tax Assessment Act 1936*; and
(b) the Commissioner has made, in respect of the person, an assessment under paragraph 1061ZVHC(b) of this Act of the amounts referred to in that paragraph; and
(c) notice of the assessment under that paragraph has not been served on the person;

notice of the assessment under that paragraph may be served by specifying the amounts concerned in the notice referred to in paragraph (a).

1061ZVHE Commissioner may defer making assessments

(1) A person may apply in the approved form to the Commissioner for deferral of the making of an assessment in respect of the person under section 1061ZVHC.

(2) The application must specify:
(a) the income year for which the deferral is being sought; and
(b) the reasons for seeking the deferral.

(3) The income year specified in the application must be:
(a) the income year in which the person makes the application; or
(b) the immediately preceding income year; or
(c) the immediately succeeding income year.

OFFICIAL: Sensitive // Legal Privilege

(4) The Commissioner may, on application by a person under this section, defer making an assessment in respect of the person under section 1061ZVHC if the Commissioner is of the opinion that:
  (a) if the assessment were made, payment of the assessed amount would cause serious hardship to the person; or
  (b) there are other special reasons that make it fair and reasonable to defer making the assessment.

(5) The Commissioner may defer making the assessment for any period that he or she thinks appropriate.

(6) The Commissioner must, as soon as practicable after an application is made under this section:
  (a) consider the matter to which the application relates; and
  (b) notify the applicant of the Commissioner's decision on the application.

Note: Deferrals of making assessments, or refusals of applications, are reviewable under Division 2A of Part 4 of the Administration Act.

1061ZVHF Commissioner may amend assessments

(1) A person may apply in the approved form to the Commissioner for an amendment of an assessment made in respect of the person under section 1061ZVHC so that:
  (a) the amount payable under the assessment is reduced; or
  (b) no amount is payable under the assessment.

(2) The application:
  (a) must be made within 2 years after the day on which the Commissioner gives notice of the assessment to the person; or
  (b) must specify the reasons justifying a later application.

(3) The Commissioner may, on application by a person under this section, amend an assessment made in respect of the person under section 1061ZVHC so that:
  (a) the amount payable under the assessment is reduced; or
  (b) no amount is payable under the assessment;

if the Commissioner is of the opinion that:

(c) payment of the assessed amount has caused or would cause serious hardship to the person; or

(d) there are other special reasons that make it fair and reasonable to make the amendment.

(4) The Commissioner must, as soon as practicable after an application is made under this section:

(a) consider the matter to which the application relates; and

(b) notify the applicant of the Commissioner's decision on the application.

Note: Amendments of assessments, or refusals of applications, are reviewable under Division 2A of Part 4 of the Administration Act.

OFFICIAL: Sensitive // Legal Privilege

Part 2AA.5—Tax administration matters

1061ZVJA Simplified outline of this Part

The Secretary and the Commissioner may share information about tax file numbers for the purposes of administering student start-up loans. The Commissioner is also responsible for the recovery of debts under this Chapter and has functions and powers to fulfil that responsibility relating to returns, assessments, collection and other administrative matters.

1061ZVJB Verification of tax file numbers

(1) The Secretary may provide to the Commissioner a tax file number that a person has notified to the Secretary for the purposes of paragraph 1061ZVBB(1)(c) or (2)(c), for the purpose of verifying that the number is the person's tax file number.

(2) If the Commissioner is satisfied that the number is the person's tax file number, the Commissioner may give the Secretary a written notice informing the Secretary accordingly.

1061ZVJC When person with tax file number incorrectly notifies number

(1) If the Commissioner is satisfied:

(a) that the tax file number that a person has notified to the Secretary for the purposes of paragraph 1061ZVBB(1)(c) or (2)(c):

(i) has been cancelled or withdrawn since the notification was given; or

(ii) is otherwise wrong; and

(b) that the person has a tax file number;

the Commissioner may give to the Secretary written notice of the incorrect notification and of the person's tax file number.

(2) That number is taken to be the number that the person notified to the Secretary.

1061ZVJD When person without tax file number incorrectly notifies number

(1) If:

(a) the Commissioner is satisfied that the tax file number that a person notified to the Secretary for the purposes of paragraph 1061ZVBB(1)(c) or (2)(c):

(i) has been cancelled since the notification was given; or

(ii) is for any other reason not the person's tax file number; and

(b) the Commissioner is not satisfied that the person has a tax file number;

the Commissioner may give to the Secretary a written notice informing the Secretary accordingly.

(2) The Commissioner must give a copy of any notice under subsection (1) to the person concerned, together with a written statement of the reasons for the decision to give the notice.

Note: Decisions to give notice under subsection (1) are reviewable under section 202F of the *Income Tax Assessment Act 1936*.

1061ZVJE When tax file numbers are altered

(1) If the Commissioner issues, to a person who has notified a tax file number to the Secretary for the purposes of paragraph 1061ZVBB(1)(c) or (2)(c), a new tax file number in place of a tax file number that has been withdrawn, the Commissioner may give to the Secretary a written notice informing the Secretary accordingly.

(2) That new number is taken to be the number that the person notified to the Secretary.

OFFICIAL: Sensitive // Legal Privilege

1061ZVJF When tax file numbers are cancelled

(1) If the Commissioner cancels a tax file number issued to a person who has notified the tax file number to the Secretary for the purposes of paragraph 1061ZVBB(1)(c) or (2)(c), the Commissioner may give to the Secretary a written notice informing the Secretary accordingly.

(2) The Commissioner must give a copy of any notice under subsection (1) to the person concerned, together with a written statement of the reasons for the decision to give the notice.

Note: Decisions to give notice under subsection (1) are reviewable under section 202F of the *Income Tax Assessment Act 1936*.

1061ZVJG Returns, assessments, collection and recovery

Subject to Part 2AA.4 and this Part:

(a) Part IV of the *Income Tax Assessment Act 1936*; and

(b) Division 5 of the *Income Tax Assessment Act 1997*; and

(c) Part 4-15 in Schedule 1 to the *Taxation Administration Act 1953*;

apply, so far as they are capable of application, in relation to a compulsory SSL repayment amount of a person as if it were income tax assessed to be payable by a taxpayer by an assessment made under Part IV of the *Income Tax Assessment Act 1936*.

1061ZVJH Charges and civil penalties for failing to meet obligations

(1) Part 4-25 in Schedule 1 to the *Taxation Administration Act 1953* has effect as if:

(a) any compulsory SSL repayment amount of a person were income tax payable by the person in respect of the income year in respect of which the assessment of that debt was made; and

(b) paragraphs 1061ZVBB(1)(c) and (2)(c), and Parts 2AA.3 and 2AA.4 and this Part, were income tax laws.

(2) Subsection (1) does not have the effect of making a person liable to a penalty for any act or omission that happened before the commencement of this subsection.

1061ZVJJ Pay as you go (PAYG) withholding

Part 2-5 (other than section 12-55 and Subdivisions 12-E, 12-F and 12-G) in Schedule 1 to the *Taxation Administration Act 1953* applies, so far as it is capable of application, in relation to the collection of amounts of a compulsory SSL repayment amount of a person as if the compulsory SSL repayment amount were income tax.

1061ZVJK Pay as you go (PAYG) instalments

Division 45 in Schedule 1 to the *Taxation Administration Act 1953* applies, so far as it is capable of application, in relation to the collection of a compulsory SSL repayment amount of a person as if the compulsory SSL repayment amount were income tax.

1061ZVJL Administration of this Chapter

The Commissioner has the general administration of:

(a) paragraphs 1061ZVBB(1)(c) and (2)(c); and

(b) Parts 2AA.3 and 2AA.4 and this Part; and

(c) Division 2A of Part 4 of the Administration Act (Internal review of certain Commissioner decisions relating to student start-up loans).

Note: One effect of this is that these provisions are taxation laws for the purposes of the *Taxation Administration Act 1953*.

OFFICIAL: Sensitive // Legal Privilege

Chapter 2B—Student Financial Supplement Scheme

Note: Section 19AB contains many of the definitions that are relevant to the provisions of this Chapter.

Part 2B.1—Establishment of scheme

Division 1—Preliminary

1061ZW Object of this Chapter

The object of this Chapter is to establish a Student Financial Supplement Scheme enabling certain tertiary students to obtain a repayable financial supplement by entering into a contract for that purpose with a financial corporation that participates in the scheme.

1061ZX Outline of the scheme

(1) The scheme provides for the reduction of the rate of youth allowance, austudy payment or pensioner education supplement payable to a person who obtains financial supplement.

(2) The scheme contains provisions under which the amount of supplement that the person is eligible to obtain depends on the total rate of youth allowance, austudy payment or pensioner education supplement that the person chooses to receive. Those provisions allow the person to choose to repay some or all of the youth allowance, austudy payment or pensioner education supplement, or to receive a lower rate of payment of such an allowance, payment or supplement, in order to receive a higher amount of financial supplement.

(3) The scheme provides that the person is not liable to pay interest to the financial corporation in respect of financial supplement received by the person, but provides for payment by the

Commonwealth, without cost to the person, to the financial corporation of a subsidy that includes an amount in lieu of interest.

(4) The scheme provides for the amount of the financial supplement that has to be repaid under a contract to be indexed on 1 June in the year next following the year in which the contract is entered into, and on 1 June in each later year. The amount by which the supplement is increased by indexation is owed by the person to the Commonwealth and not to the financial corporation.

(5) Under the scheme, the person is entitled, but not required, to make early repayments in respect of the supplement during the period of the contract. The scheme provides for a discount for any repayments made before the end of that period.

(6) The scheme provides that, if financial supplement paid to a person is not repaid in full before the end of the period of the contract, the obligation to repay the outstanding amount of the supplement is transferred to the Commonwealth, and the indexed amount is repayable by the person to the Commonwealth through the taxation system when the person's income reaches a specified level.

OFFICIAL: Sensitive // Legal Privilege

Division 2—Eligibility to obtain financial supplement

1061ZY Eligibility to obtain financial supplement

(1) Subject to subsection (2), a person is eligible to obtain financial supplement for a period (an ***eligibility period***) that is a year or a part of a year if:

(a) the person is undertaking, or intending to undertake, a tertiary course at an educational institution throughout the period; and

(b) the person does not undertake a course of primary or secondary education at any time during the period; and

(c) the person is a category 1 student or a category 2 student in respect of the period; and

(d) the amount of financial supplement that the person is eligible to obtain under Division 6 for the year is not less than the minimum amount of financial supplement.

(2) A person is not eligible to obtain financial supplement for an eligibility period that begins on or after the day on which the *Student Assistance Legislation Amendment Act 2006* receives the Royal Assent.

1061ZZ Category 1 student

(1) A person is a ***category 1 student*** in respect of a period if, throughout the period, one or more of the payments referred to in this section are payable to the person.

(2) The payment may be youth allowance if:

(a) the person's youth allowance general rate is more than zero; and

(b) the youth allowance is payable because the person is undertaking full-time study.

(3) The payment may be austudy payment if the person's austudy payment general rate is more than zero.

(4) The payment may be pensioner education supplement.

1061ZZA Category 2 student

(1) A person is a ***category 2 student*** in respect of a period if:

(a) the person is not a category 1 student in respect of the period; and

(b) throughout the period the person is undertaking full-time study; and

(c) throughout the period youth allowance at the youth allowance general rate is not payable to the person only because of the operation of one or more of the following:

(i) Module F (the parental income test) of the Youth Allowance Rate Calculator in section 1067G;

(ii) Module G (the family actual means test) of that Calculator;

(iii) Subdivision AB (the youth allowance assets test) of Division 2 of Part 2.11; and

(d) if subparagraph (c)(i) applies—the person's combined parental income for the appropriate tax year under Submodule 4 of Module F is throughout the period less than the person's modified parental income free area; and

(e) if subparagraph (c)(ii) applies—the actual means of the person's family under Module G is throughout the period less than the person's modified parental income free area; and

(ea) if subparagraph (c)(iii) applies—the allowance would have been payable if the reference to 50% in subsection 547G(2) were instead a reference to 75%; and

(f) neither section 1061ZZAA nor 1061ZZAB applies to the person.

(2) For the purposes of paragraphs (1)(d) and (e), the person's ***modified parental income free area*** is the indexed amount that would be the person's parental income free area under point 1067G-F22 if the amount of $23,400 that was specified in paragraph 1067G-F22(a) when that paragraph was enacted had been $54,949.

OFFICIAL: Sensitive // Legal Privilege

1061ZZAA Failure by person to comply with request to provide person's tax file number

(1) This section applies to a person if:

(a) the Secretary has requested the person under section 1061ZZBP to:

(i) give the Secretary a written statement of the person's tax file number; or

(ii) apply to the Commissioner of Taxation for a tax file number and give the Secretary a written statement of the person's tax file number after it has been issued; and

(b) at the end of 28 days after the request is made, the person has neither:

(i) given the Secretary a written statement of the person's tax file number; nor

(ii) given the Secretary an employment declaration and satisfied either subsection (2) or (3).

(2) The person satisfies this subsection if:

(a) the employment declaration states that the person:

(i) has a tax file number but does not know what it is; and

(ii) has asked the Commissioner of Taxation to inform him or her of the number; and

(b) the person has given the Secretary a document authorising the Commissioner to tell the Secretary:

(i) whether the person has a tax file number; and

(ii) if the person has a tax file number—the tax file number; and

(c) the Commissioner has not told the Secretary that the person has no tax file number.

(3) The person satisfies this subsection if:

(a) the employment declaration states that the person has applied for a tax file number; and

(b) the person has given the Secretary a document authorising the Commissioner of Taxation to tell the Secretary:

(i) if a tax file number is issued to the person—the tax file number; or

(ii) if the application is refused—that the application has been refused; or

(iii) if the application is withdrawn—that the application has been withdrawn; and

(c) the Commissioner has not told the Secretary that the person has not applied for a tax file number; and

(d) the Commissioner has not told the Secretary that an application by the person for a tax file number has been refused; and

(e) the application for a tax file number has not been withdrawn.

1061ZZAB Failure by person to comply with request to provide the tax file number of a parent of the person

(1) Subject to subsection (4), this section applies to a person if:

(a) the person is requested under section 1061ZZBQ to give the Secretary a written statement of the tax file number of a parent of the person; and

(b) at the end of 28 days after the request is made the person has neither:

(i) given the Secretary a written statement of the parent's tax file number; nor

(ii) given the Secretary a declaration by the parent in a form approved by the Secretary and satisfied either subsection (2) or (3).

(2) The person satisfies this subsection if:

(a) the parent's declaration states that the parent:

(i) has a tax file number but does not know what it is; and

(ii) has asked the Commissioner of Taxation to inform him or her of his or her tax file number; and

(b) the person has given the Secretary a document signed by the parent that authorises the Commissioner to tell the Secretary:

(i) whether the parent has a tax file number; and

OFFICIAL: Sensitive // Legal Privilege

(ii) if the parent has a tax file number—the tax file number; and

(c) the Commissioner has not told the Secretary that the parent has no tax file number.

(3) The person satisfies this subsection if:

(a) the parent's declaration states that he or she has applied for a tax file number; and

(b) the person has given the Secretary a document signed by the parent that authorises the Commissioner of Taxation to tell the Secretary:

(i) if a tax file number is issued to the parent—the tax file number; or

(ii) if the application is refused—that the application has been refused; or

(iii) if the application is withdrawn—that the application has been withdrawn; and

(c) the Commissioner has not told the Secretary that an application by the parent for a tax file number has been refused; and

(d) the application for a tax file number has not been withdrawn.

(4) The Secretary may waive the request for a statement of the parent's tax file number if the Secretary is satisfied that:

(a) the person does not know the parent's tax file number; and

(b) the person can obtain none of the following from the parent:

(i) the parent's tax file number;

(ii) a statement of the parent's tax file number;

(iii) a declaration by the parent under subparagraph (1)(b)(ii).

OFFICIAL: Sensitive // Legal Privilege

Division 3—Decision and notice about eligibility to obtain financial supplement

1061ZZAC Secretary's decision

(1) If a person claims youth allowance, austudy payment or pensioner education supplement, the Secretary must decide whether the person is eligible to obtain financial supplement for a period that is the whole or a part of a year.

(2) Also, if:

(a) the Secretary has made a decision in a year that a person is eligible to obtain financial supplement for a period that is the whole or a part of that year; and

(b) the person is likely to:

(i) continue to undertake the person's tertiary course in the next year; or

(ii) undertake a new tertiary course in the next year when enrolments in the course are next accepted;

the Secretary must make a new decision, as early as practicable in the next year, about whether the person is eligible to obtain financial supplement for a period that is the whole or a part of that next year.

(3) If the Secretary decides that the person is eligible to obtain financial supplement for a period, the Secretary must give the person a notice (a ***supplement entitlement notice***):

(a) stating that the person is eligible to obtain financial supplement for that period; and

(b) specifying the minimum and maximum amounts of financial supplement that the person can obtain.

(4) This section does not apply in relation to a period that is the whole or part of a year if the year begins on or after the day on which the *Student Assistance Legislation Amendment Act 2006* receives the Royal Assent.

1061ZZAD Revocation or variation of decision after review

(1) This section applies if:
  (a) the Secretary has made a decision under section 1061ZZAC in relation to a person; and
  (b) the Secretary has given the person a supplement entitlement notice under subsection 1061ZZAC(3) as a result of the decision; and
  (c) after the notice was given the decision is reviewed under Chapter 6; and
  (d) as a result of the review, the decision is revoked or varied.

(2) The revocation or variation revokes the supplement entitlement notice and the notice ceases to be valid for the purpose of applying for financial supplement.

(3) The Secretary must give the person a statement telling the person:
  (a) that the decision has been revoked, or has been varied in a manner set out in the statement, as the case may be; and
  (b) that the supplement entitlement notice has been revoked and ceases to be valid for the purpose of applying for financial supplement.

(4) If the decision is varied and, after the variation, the person is or becomes eligible to obtain financial supplement for a period, the Secretary must give the person a notice (also a ***supplement entitlement notice***):
  (a) stating that the person is eligible to obtain financial supplement for that period; and
  (b) specifying the minimum and maximum amounts of financial supplement that the person can obtain.

1061ZZAE Transitional

(1) This section applies if, immediately before the commencement of this Chapter, a person held a notice given under Part 3 of the Social Security Student Financial Supplement Scheme 1998.

(2) If the person had not used the notice before that commencement in an application for financial supplement under that Scheme, the person is eligible to obtain financial supplement under this Chapter for the period to which the notice related.

(3) The notice is taken to be a ***supplement entitlement notice*** given under this Division.

OFFICIAL: Sensitive // Legal Privilege

Division 4—Agreements between Commonwealth and financial corporations

1061ZZAF Applications for financial supplement

A person may apply for financial supplement only to a participating corporation.

1061ZZAG Agreements

(1) The Minister may enter into an agreement, on behalf of the Commonwealth, with a financial corporation for the payment by the corporation after the commencement of this Chapter, in the year in which this Chapter commences or a later year, of financial supplement.

(2) An agreement referred to in subsection (1) does not have any effect unless it:
  (a) is expressed to have effect subject to this Chapter; and
  (b) provides for the payment by the Commonwealth to the financial corporation, in respect of each amount of financial supplement paid by the corporation to a person that has not been repaid, or in respect of which the rights of the corporation have been transferred to the Commonwealth, of a subsidy of such amount or amounts, or at such rate or rates, and in respect of such period or periods, as are stated in the agreement.

(3) If such an agreement is entered into, the corporation is a ***participating corporation*** for the purposes of this Chapter in respect of the year, or each year, concerned.

(4) The parties to an agreement referred to in subsection (2) (including such an agreement as previously amended under this subsection) may enter into an agreement amending or terminating it.

(5) The amendment or termination of an agreement does not affect any financial supplement contract that was in force immediately before the amendment or termination took effect.

OFFICIAL: Sensitive // Legal Privilege

(6) If an agreement was in force, immediately before the commencement of this Chapter, between the Commonwealth and a financial corporation under section 1.7 of the Social Security Student Financial Supplement Scheme 1998, the amendment or termination of the agreement, and the commencement of an agreement under this section, do not affect any financial supplement contract made under that Scheme.

(7) An agreement between the Commonwealth and a financial corporation is not subject to any stamp duty or other tax under a law of a State or Territory.

(8) An officer may disclose to a participating corporation any information about a person that is relevant to the exercise or performance by the corporation of any of its rights or obligations in respect of the person under this Chapter.

(9) A participating corporation may disclose to an officer any information about a person that is relevant to the exercise or performance of any rights, powers or obligations conferred or imposed on an officer or on the Commonwealth in respect of the person under this Chapter.

OFFICIAL: Sensitive // Legal Privilege

Division 5—Application for financial supplement

1061ZZAH When to apply

A person who is eligible to obtain financial supplement for an eligibility period may apply to a participating corporation, during that period, for financial supplement.

1061ZZAI How to apply

A person may only apply for financial supplement by:

(a) completing an application form approved by the Secretary; and

(b) lodging it, with the person's supplement entitlement notice, at an office of a participating corporation.

1061ZZAJ Changing an application

A person who has applied for financial supplement for the eligibility period may, at any time, lodge another application form approved by the Secretary at an office of the participating corporation, telling the corporation that the person requires for that period:

(a) a specified lesser amount of financial supplement, which must be:

(i) not less than the total amount of financial supplement already paid to the person for the period; and

(ii) not less than the minimum amount of financial supplement in respect of the person for the year that constitutes, or includes, the eligibility period; or

(b) a specified greater amount of financial supplement, which must be not more than the maximum amount of financial supplement in respect of the person for the period.

Division 6—Amount of financial supplement

Subdivision A—Category 1 students

1061ZZAK Maximum amount of financial supplement

(1) If the relevant eligibility period of a person who is a category 1 student is a year, the ***maximum amount of financial supplement*** for the period in respect of the person is the lesser of:

(a) $7,000; and

(b) the amount worked out using the following Method statement.

Method statement

Step 1. Work out the total amount of youth allowance general rate, austudy payment general rate or pensioner education supplement that would be payable to the person for the eligibility period if the person did not apply for financial supplement.

Step 2. Work out the total amount of advance payment deductions (if any) to be made from the person's rate of youth allowance or austudy payment, under Part 3.16A, in the eligibility period.

Subtract that total amount from the total amount worked out under Step 1.

Step 3. Work out the total amount of overpayments (if any) for the eligibility period.

Subtract that total amount from the total amount worked out under Step 2.

Step 4.	Work out the total amount of deductions (if any) that are to be paid to the Commissioner of Taxation, under section 1359, for the eligibility period. Note: Section 1359 provides for the deduction and payment to the Commissioner of Taxation of amounts of tax that a person is required to pay. Subtract that total amount from the total amount worked out under Step 3.
Step 5.	Work out the total amount (if any) of youth allowance general rate, austudy payment general rate or pensioner education supplement that has already been paid for the eligibility period. Ignore any amount that has already been dealt with under Step 2. Ignore any amount that is taken never to have been paid because of section 1061ZZAW. Subtract the total amount from the amount worked out under Step 4.
Step 6.	Multiply the amount left by 2.
Step 7.	If the result is not a number of whole dollars, round the result up to the next number of whole dollars.

(2) If the relevant eligibility period of a person who is a category 1 student is less than a year, the ***maximum amount of financial supplement*** for the period in respect of the person is the lesser of:

(a) the amount worked out using the Method statement in subsection (1); and

(b) the amount worked out using the following Method statement.

Method statement	
Step 1.	Multiply $7,000 by the number of days in the eligibility period.
Step 2.	Divide the result by the number of days in the year in which the eligibility period is included. If the result is not a number of whole dollars, round the result up to the next number of whole dollars.

(3) This section has effect subject to Subdivision C.

Subdivision B—Category 2 students

1061ZZAL Change in eligibility period

(1) The maximum amount of financial supplement in respect of a person who is a category 2 student depends on the person's eligibility period.

(2) If the person is undertaking, or intends to undertake, a short course, it is necessary to work out whether the person's eligibility period is to be changed under section 1061ZZAM.

(3) If the person is neither undertaking, nor intending to undertake, a short course, it is necessary to work out whether the person's eligibility period is to be changed under section 1061ZZAN.

1061ZZAM Eligibility period (short course)

(1) This section explains whether, and how, to change the eligibility period for a person who is undertaking, or intending to undertake, a short course.

(2) Subject to subsection (3), the eligibility period that would have applied to the person apart from this subsection (the ***eligibility period otherwise applicable***) must be changed if the person applied

OFFICIAL: Sensitive // Legal Privilege

for financial supplement more than 4 weeks after being given a supplement entitlement notice.

(3) The Secretary may decide that the eligibility period otherwise applicable is not to be changed if the Secretary is satisfied that:
  (a) the person took reasonable steps to apply within 4 weeks after being given a supplement entitlement notice; and
  (b) circumstances beyond the person's control prevented the person from applying within the 4 weeks; and
  (c) the person applied as soon as practicable after the circumstances stopped.

(4) If the eligibility period otherwise applicable is to be changed, the person's new eligibility period is the period:
  (a) starting on the later of:
    (i) the day when the person applied; and
    (ii) the start of the eligibility period otherwise applicable; and
  (b) ending when the eligibility period otherwise applicable would have ended.

1061ZZAN Eligibility period (no short course)

(1) This section explains whether, and how, to change the eligibility period for a person who is neither undertaking, nor intending to undertake, a short course.

(2) Subject to subsection (3), the eligibility period that would have applied to the person apart from this subsection (the ***eligibility period otherwise applicable***) must be changed if the person applied for financial supplement after 31 May in the year in which the period is included.

(3) The Secretary may decide that the period is not to be changed if the Secretary is satisfied that:
  (a) the person took reasonable steps to apply within 4 weeks after being given a supplement entitlement notice; and

(b) circumstances beyond the person's control prevented the person from applying within the 4 weeks; and

(c) the person applied as soon as practicable after the circumstances stopped.

(4) If the eligibility period otherwise applicable is to be changed and the person applied before 1 October in the year, the person's new eligibility period is the period:

(a) starting on the later of 1 July and the start of the eligibility period otherwise applicable; and

(b) ending when the eligibility period otherwise applicable would have ended.

(5) If the eligibility period otherwise applicable is to be changed and the person applied on or after 1 October in the year, the person's new eligibility period is the period:

(a) starting on the later of:

(i) the day when the person applied; and

(ii) the start of the eligibility period otherwise applicable; and

(b) ending when the eligibility period otherwise applicable would have ended.

1061ZZAO Maximum amount of financial supplement

(1) If:

(a) the person is undertaking, or intending to undertake, a short course; or

(b) the person is neither undertaking, nor intending to undertake, a short course and the person's eligibility period is less than a year;

the ***maximum amount of financial supplement*** for the eligibility period in respect of the person is worked out using the following Method statement.

Method statement

Step 1. Multiply $2,000 by the number of days in the eligibility period.

Step 2. Divide the result by the number of days in the year that includes the eligibility period.

If the result is not a number of whole dollars, round the result up to the next number of whole dollars.

(2) If the person is neither undertaking, nor intending to undertake, a short course, and the person's eligibility period is a year, the ***maximum amount of financial supplement*** for the eligibility period in respect of the person is $2,000.

(3) This section has effect subject to Subdivision C.

Subdivision C—Provisions applying to both category 1 students and category 2 students

1061ZZAP Minimum amount of financial supplement

The ***minimum amount of financial supplement*** in respect of a person is $500.

1061ZZAQ Person doing more than one course

(1) This section applies if a person undertakes, or intends to undertake, more than one tertiary course in the same period in a year.

(2) The ***maximum amount of financial supplement*** for the period in respect of the person is the maximum amount worked out under this Division for the period in respect of the person for one of the courses.

Division 7—Trading in youth allowance, austudy payment or pensioner education supplement for financial supplement

1061ZZAR Purpose of Division

(1) Financial supplement will be paid to a person who is eligible to obtain financial supplement at a rate determined by the person's financial supplement contract.

(2) If youth allowance, austudy payment or pensioner education supplement is payable to the person, the payment of financial supplement will reduce the rate at which the youth allowance, austudy payment or pensioner education supplement is payable.

(3) The reduction of the rate of payment is a ***trade in***.

(4) The Division explains how trade in works.

1061ZZAS Reduction of youth allowance, austudy payment or pensioner education supplement for financial supplement

(1) The period for which a payment of financial supplement will be made is an ***instalment period***.

(2) Subject to subsection (3), the rate of youth allowance, austudy payment or pensioner education supplement that would have been payable to the person in an instalment period is reduced by an amount equal to one-half of the amount of financial supplement to be paid during the instalment period under the financial supplement contract.

(3) If, apart from this subsection, the amount by which the rate would be reduced is an amount including one-half of a cent, the amount is to be increased by one-half of a cent.

(4) This section has effect despite any other provision of this Act.

OFFICIAL: Sensitive // Legal Privilege

Division 8—Obtaining or increasing financial supplement by trading back youth allowance, austudy payment or pensioner education supplement

Subdivision A—Purpose of Division

1061ZZAT Purpose of Division

(1) If a person who is eligible to obtain financial supplement wishes to obtain financial supplement, the person may repay an amount of youth allowance, austudy payment or pensioner education supplement.

(2) If a person who is obtaining financial supplement wishes to increase the amount of financial supplement, the person may repay an amount of youth allowance, austudy payment or pensioner education supplement.

(3) The repayment of the youth allowance, austudy payment or pensioner education supplement is a ***trade back***.

(4) This Division explains how trade back works.

(5) This Division also sets out the effect of trade back.

(6) This Division does not affect the operation of Chapter 5.

Subdivision B—When a person may repay youth allowance, austudy payment or pensioner education supplement to obtain or increase financial supplement

1061ZZAU Election to repay youth allowance, austudy payment or pensioner education supplement

(1) A person to whom youth allowance, austudy payment or pensioner education supplement was payable during a payment period may elect to repay to the Commonwealth some or all of the youth allowance, austudy payment or pensioner education supplement.

OFFICIAL: Sensitive // Legal Privilege

(2) The person must make the election using the form approved under paragraph 1061ZZAI(a).

(3) A ***payment period*** is:
  (a) the part of a year starting on 1 January and ending on 31 May; or
  (b) the part of a year starting on 1 July and ending on 30 September.

1061ZZAV Timing of repayment

(1) A person who is not obtaining financial supplement may, in order to obtain financial supplement, repay to the Commonwealth youth allowance, austudy payment or pensioner education supplement:
  (a) while the person is eligible to obtain financial supplement; and
  (b) during the payment period.

(2) However, if the person does not repay youth allowance, austudy payment or pensioner education supplement during the payment period, the person may, in order to obtain financial supplement, repay youth allowance, austudy payment or pensioner education supplement after that period if the Secretary is satisfied that:
  (a) the person took reasonable steps to repay it during the payment period; and
  (b) circumstances beyond the person's control prevented the person from repaying it during the period; and
  (c) the person repays it as soon as practicable after the end of the payment period and during the year that includes the payment period.

(3) A person who is obtaining financial supplement may, in order to increase the amount of financial supplement, repay to the Commonwealth youth allowance, austudy payment or pensioner education supplement:
  (a) while the person is eligible to obtain financial supplement; and

OFFICIAL: Sensitive // Legal Privilege

(b) during the year in which the youth allowance, austudy payment or pensioner education supplement was paid.

Subdivision C—Repayment

1061ZZAW Effect of repayment

If an amount is repaid by a person under this Division, the amount is taken never to have been paid to the person.

Division 9—Financial supplement contracts

Subdivision A—Making a contract for payment of financial supplement

1061ZZAX Making a contract between person and participating corporation

(1) If a person applies to a participating corporation under Division 5 for the payment of financial supplement for an eligibility period, the corporation must, as soon as practicable, accept the application by written notice to the person.

(2) A contract is made when the corporation accepts the application by giving the notice referred to in subsection (1). The contract is a ***financial supplement contract***.

(3) A financial supplement contract is a contract for the making of a loan by the corporation to the person under this Division without any requirement on the person to pay interest.

(4) The contract must be for the amount of financial supplement for which the person from time to time asks, but the amount must not be less than the minimum amount, or more than the maximum amount, of financial supplement that the person is, from time to time, eligible to obtain under Division 6.

(5) The contract must also allow, but not compel, the person to make repayments during the contract period under Division 13 of the amount outstanding at any time under the contract.

(6) The contract must set out the ***termination date*** for the contract. The date to be set out is the last day of the contract period.

(7) The ***contract period*** is the period beginning on the day when the contract is made and ending on 31 May in the year in which the last of the periods referred to in paragraph 1061ZZCH(1)(b) ends.

1061ZZAY Existing contracts

(1) A contract is also a ***financial supplement contract*** if it is a contract referred to in section 8.2 of the Social Security Student Financial Supplement Scheme 1998.

(2) The ***termination date*** for the contract is the date set out in the contract.

(3) The ***contract period*** is the period beginning on the day when the contract was made and ending on 31 May in the year in which the last of the periods referred to in paragraph 1061ZZCH(1)(b) ended or ends.

1061ZZAZ Liability for money paid under a financial supplement contract

(1) A participating corporation may rely on advice given by the Commonwealth to decide:
  (a) whether it must pay financial supplement to a person; and
  (b) the amount of financial supplement.

(2) An amount paid to a person by a corporation, relying on advice given by the Commonwealth, is taken to be financial supplement paid under the contract even though the person may not have been eligible to obtain the amount.

(3) Subsection (2) does not affect the operation of Part 2B.2.

1061ZZBA Validity of financial supplement contract

(1) The validity of a financial supplement contract with a person is not affected merely because the person was not eligible to obtain financial supplement when the contract was made, or ceases at a later time to be eligible.

(2) The contract is not invalid, and is not voidable, under any other law (whether written or unwritten) in force in a State or Territory.

(3) The contract is not invalid merely because the person is an undischarged bankrupt when the contract is made.

(4) Bankruptcy does not release a person from his or her obligations under the contract.

Subdivision B—When a financial supplement contract can be cancelled

1061ZZBB Person has right to cancel financial supplement contract

(1) A person who makes a financial supplement contract has a right to cancel the contract.

(2) Subsection (1) does not affect the operation of section 1061ZZCU.

(3) If, under section 1061ZZBF, the person waives his or her right to cancel the contract, sections 1061ZZBC to 1061ZZBE do not apply to the contract.

1061ZZBC How to cancel financial supplement contract

(1) To exercise the right to cancel the contract, the person must give to the participating corporation written notice that the person is withdrawing his or her application for financial supplement.

(2) The notice must be lodged at an office of the corporation.

1061ZZBD When to cancel financial supplement contract

The person's right may be exercised within 14 days (the ***cooling off period***) after the day when the contract is made under section 1061ZZAX.

1061ZZBE Payments made during cooling off period

(1) In the cooling off period, the participating corporation must not make a payment to the person under the contract.

(2) If the corporation makes a payment to the person under the contract within the cooling off period, the payment is taken not to be a payment of financial supplement if the person repays to the corporation an amount equal to the payment within 7 days after the date of the payment.

(3) If the corporation makes a payment to the person under the contract after the cooling off period and the person has exercised the right to cancel the contract, the payment is taken not to be a payment of financial supplement if the person repays to the corporation an amount equal to the payment within 7 days after the date of the payment.

1061ZZBF Person may waive right to cancel contract

The person may waive the right to cancel the contract.

1061ZZBG How to waive right to cancel contract

To waive the right to cancel the contract, the person must give to the participating corporation written notice that he or she is waiving the right to cancel the contract.

1061ZZBH When to waive right to cancel contract

To exercise the right of waiver, the person must give the participating corporation the notice referred to in section 1061ZZBG immediately after the contract is made under section 1061ZZAX.

Subdivision C—Financial supplement contract exempt from certain laws and taxes

1061ZZBI Financial supplement contract exempt from certain laws and taxes

(1) A law of a State or Territory about giving credit or other financial assistance does not apply to a financial supplement contract.

(2) An application for the payment of financial supplement, a financial supplement contract, or an act or thing done or transaction entered into under such a contract, is not taxable under any law of a State or Territory.

OFFICIAL: Sensitive // Legal Privilege

Division 10—Payment of financial supplement

1061ZZBJ Payment by instalments

(1) Financial supplement is to be paid by instalments for periods determined by the Secretary.

(2) Instalments of financial supplement are to be paid at times determined by the Secretary.

1061ZZBK Rounding off

If the amount of an instalment includes a fraction of a cent, the amount is to be rounded to the nearest whole cent (0.5 cent being rounded upwards).

1061ZZBL To whom instalments must be paid

(1) If a person who is a category 1 student is trading in, or trading back, youth allowance, financial supplement must be paid to the person to whom instalments of youth allowance are or were being paid under section 559D or 559E.

(2) If a person who is a category 1 student is trading in, or trading back, austudy payment, financial supplement must be paid to the person to whom instalments of austudy payment are or were being paid under section 584D.

(3) If a person who is a category 1 student is trading in, or trading back, pensioner education supplement, financial supplement must be paid to the person to whom instalments of pensioner education supplement are or were being paid under section 1061PZK.

(4) If a person who is a category 2 student obtains financial supplement, it must be paid to the person to whom instalments of youth allowance would be paid under section 559D or 559E if youth allowance were payable to the student.

(5) This section does not affect the liability of a person to make repayments under Part 2B.3.

1061ZZBM Payment into bank account

(1) If an amount of financial supplement is paid to a person, it must be paid to the credit of a bank account nominated and maintained by the person.

(2) The bank account may be maintained by the person alone or jointly or in common with someone else.

OFFICIAL: Sensitive // Legal Privilege

Division 11—Protection of financial supplement

1061ZZBN Financial supplement to be absolutely inalienable

Financial supplement is absolutely inalienable, whether by way of, or in consequence of, sale, assignment, charge, execution, bankruptcy or otherwise.

1061ZZBO Effect of garnishee or attachment order

(1) This section applies if:

(a) a person has an account with a financial institution (whether the account is maintained by the person alone, or jointly or in common with someone else); and

(b) a court order in the nature of a garnishee order comes into force in respect of the account; and

(c) an amount of financial supplement has been paid (whether on the person's own behalf or not) to the credit of the account in the 4 weeks immediately before the court order came into force.

(2) The court order does not apply to the saved amount (if any) in the account.

(3) The ***saved amount*** is the amount worked out using the following Method statement.

Method statement

Step 1. Work out the amount of financial supplement paid to the credit of the account in the 4 weeks.

Step 2. Subtract from that amount the total amount withdrawn from the account in the 4 weeks.

The amount left is the saved amount.

Division 12—Obligations of category 2 students

Subdivision A—Statements about tax file numbers

1061ZZBP Secretary may request person obtaining financial supplement to give statement of person's tax file number

Request for tax file number

(1) The Secretary may request, but not compel, a person who is a category 2 student and is obtaining financial supplement:
  (a) if the person has a tax file number—to give the Secretary a written statement of the person's tax file number; or
  (b) if the person does not have a tax file number:
    (i) to apply to the Commissioner of Taxation for a tax file number; and
    (ii) to give the Secretary a written statement of the person's tax file number after the Commissioner has issued it.

Failure to satisfy request

(2) A person is not eligible to obtain financial supplement if, at the end of 28 days after a request is made:
  (a) the person has failed to satisfy the request; and
  (b) the Secretary has not exempted the person from having to satisfy the request.

1061ZZBQ Secretary may request person obtaining financial supplement to give statement of parent's tax file number

Request for parent's tax file number

(1) If:
  (a) a person (the ***recipient***) who is a category 2 student is obtaining financial supplement; and

(b) the income of a parent of the recipient is required to be taken into account for the purpose of working out the recipient's eligibility for financial supplement; and

(c) the parent is in Australia;

the Secretary may request, but not compel, the recipient to give the Secretary a written statement of the parent's tax file number.

Failure to satisfy request

(2) A recipient is not eligible to obtain financial supplement if, at the end of 28 days after the request is made:

(a) the recipient has failed to satisfy the request; and

(b) the Secretary has not exempted the recipient from having to satisfy the request.

(3) In this section:

parent has the same meaning as in paragraph (b) of the definition of ***parent*** in subsection 5(1).

Note 1: In some cases the request can be satisfied in relation to a parent by giving the Secretary a declaration by the parent about the parent's tax file number and an authority by the parent to the Commissioner of Taxation to give the Secretary certain information relevant to the parent's tax file number (see subsections 1061ZZAB(2) and (3).

Note 2: The Secretary may waive the requirement in some cases (see subsection 1061ZZAB(4)).

Subdivision B—Notice of events or changes in circumstances

1061ZZBR Secretary may give notice requiring information

(1) The Secretary may give a notice under this section to a person who is a category 2 student if:

(a) financial supplement is paid to the person on the person's own behalf; or

(b) financial supplement is paid to someone else, on the person's behalf, under section 1061ZZBL.

(2) The notice must require the person to tell the Department if:

(a) a stated event or change of circumstances happens; or
(b) the person becomes aware that a stated event or change of circumstances is likely to happen.

1061ZZBS Event or change relevant to payment

An event or change of circumstances is not to be stated in a notice given under section 1061ZZBR unless the event or change of circumstances might affect the payment of financial supplement.

1061ZZBT Formalities related to notice

Subject to section 1061ZZBU, a notice under section 1061ZZBR:
(a) must be in writing; and
(b) may be given personally or by post; and
(c) must state how the person is to give the information to the Department; and
(d) must state the period in which the person is to give the information to the Department; and
(e) must state that the notice is a ***recipient notification notice*** given under this Act.

1061ZZBU Validity of notice

A notice under section 1061ZZBR is not invalid merely because it does not comply with paragraph 1061ZZBT(c) or (e).

1061ZZBV Period within which information to be given

(1) Subject to this section, the period stated under paragraph 1061ZZBT(d) must be the period of 14 days after:
(a) the day on which the event or change of circumstances happens; or
(b) the day on which the person becomes aware that the event or change of circumstances is likely to happen.

OFFICIAL: Sensitive // Legal Privilege

(2) If the Secretary is satisfied that there are special circumstances related to the person to whom the notice under section 1061ZZBR is to be given, the period to be stated under paragraph 1061ZZBT(d) is such period as the Secretary directs in writing, being a period that ends not less than 15 days, and not more than 28 days, after:

(a) the day on which the event or change of circumstances happens; or

(b) the day on which the person becomes aware that the event or change of circumstances is likely to happen.

(3) If the notice specifies an event consisting of the death of a person, the period to be stated under paragraph 1061ZZBT(d) is a period of 28 days after the day on which the event happens.

(4) If the notice requires the person to tell the Department of a proposal by the person to leave Australia, subsection (1) does not apply to that requirement.

(5) If the notice requires information about receipt of a compensation payment, the period stated under paragraph 1061ZZBT(d) in relation to the information must end at least 7 days after the day when the person becomes aware that he or she has received, or is to receive, a compensation payment.

1061ZZBW Refusal or failure to comply with notice

(1) A person commits an offence if:

(a) the person is required to comply with a notice; and

(b) the notice is a notice under section 1061ZZBR; and

(c) the person refuses or fails to comply with the notice; and

(d) the person is reckless as to the requirement.

Penalty: Imprisonment for 6 months.

(2) Subsection (1) applies only to the extent to which the person is capable of complying with the notice.

(3) Subsection (1) does not apply if the person has a reasonable excuse.

(4) Strict liability applies to paragraph (1)(b).

1061ZZBX Application overseas

This Subdivision extends to:

(a) acts, omissions, matters and things outside Australia whether or not in a foreign country; and

(b) all people irrespective of their nationality or citizenship.

Subdivision C—Notice about a matter relevant to payment of financial supplement

1061ZZBY Secretary may give notice requiring statement on matter

(1) The Secretary may give a notice under this section to a person who is a category 2 student if:

(a) financial supplement is paid to the person on the person's own behalf; or

(b) financial supplement is paid to someone else, on the person's behalf, under section 1061ZZBL.

(2) The notice must require the person to give the Department a statement about a matter that might affect the payment of financial supplement.

1061ZZBZ Formalities related to notice

Subject to section 1061ZZCA, a notice under section 1061ZZBY:

(a) must be in writing; and

(b) may be given personally or by post; and

(c) must state how the statement is to be given to the Department; and

(d) must state the period within which the person is to give the statement to the Department; and

(e) must state that the notice is a ***recipient statement notice*** given under this Act.

1061ZZCA Validity of notice

A notice under section 1061ZZBY is not invalid merely because it does not comply with paragraph 1061ZZBZ(c) or (e).

1061ZZCB Period within which statement to be given

The period stated under paragraph 1061ZZBZ(d) must be at least 14 days after the day on which the notice is given.

1061ZZCC Statement must be in approved form

A statement given in response to a notice under section 1061ZZBY must be in writing and in accordance with a form approved by the Secretary.

1061ZZCD Refusal or failure to comply with notice

(1) A person commits an offence if:
  (a) the person is required to comply with a notice; and
  (b) the notice is a notice under section 1061ZZBY; and
  (c) the person refuses or fails to comply with the notice; and
  (d) the person is reckless as to the requirement.

  Penalty: Imprisonment for 6 months.

(2) Subsection (1) applies only to the extent to which the person is capable of complying with the notice.

(3) Subsection (1) does not apply if the person has a reasonable excuse.

(4) Strict liability applies to paragraph (1)(b).

OFFICIAL: Sensitive // Legal Privilege

1061ZZCE Application overseas

This Subdivision extends to:

(a) acts, omissions, matters and things outside Australia whether or not in a foreign country; and

(b) all people irrespective of their nationality or citizenship.

OFFICIAL: Sensitive // Legal Privilege

Division 13—Early repayments of financial supplement

Subdivision A—Calculation and notification of amount outstanding under financial supplement contract

1061ZZCF Application of Subdivision

This Subdivision has effect subject to section 1061ZZEE.

1061ZZCG Calculation of amount outstanding under financial supplement contract before 1 June in the year after the year in which the contract was made

(1) The ***amount outstanding*** under a financial supplement contract at a time (the ***test time***) before 1 June in the year immediately after the year in which the contract was made is the amount worked out using the formula:

Principal sum − (Amounts repaid + Discounts)

(2) For the purpose of applying the formula in subsection (1) at the test time:

amounts repaid means the total of the amounts repaid under the contract before the test time.

discounts means the total of the discounts to which the person became entitled before the test time.

principal sum means the principal sum at the test time.

1061ZZCH Calculation of amount outstanding under financial supplement contract at a later time

(1) Subject to subsections 1061ZZCN(6) and (7), the ***amount outstanding*** under a financial supplement contract at a time (the ***test time***) during a period of 12 months (the ***test period***) referred to in either of the following paragraphs:

(a) the period of 12 months beginning on 1 June in the year immediately after the year in which the contract was made; or

(b) any of the following 3 periods of 12 months;

is the amount worked out using the formula:

$$\left(\begin{array}{c}\text{Previous amount}\\ \text{outstanding}\end{array} \times \begin{array}{c}\text{Indexation}\\ \text{factor}\end{array}\right) - \left(\begin{array}{c}\text{Amounts}\\ \text{repaid}\end{array} + \text{Discounts}\right)$$

(2) For the purpose of applying the formula in subsection (1) at the test time:

amounts repaid means the total of the amounts repaid under the contract during the test period but before the test time.

discounts means the total of the discounts to which the person became entitled during the test period but before the test time.

indexation factor means the number worked out using the method statement in subsection (3).

previous amount outstanding means the amount outstanding under the contract immediately before the beginning of the test period.

(3) The Method statement for the purposes of the definition of ***indexation factor*** in subsection (2) is as follows:

Method statement	
Step 1.	Work out the total of the index number for the March quarter in the later reference period and the index numbers for the 3 immediately preceding quarters.
Step 2.	Work out the total of the index number for the March quarter in the earlier reference period and the index numbers for the 3 immediately preceding quarters.

Step 3.	Divide the total worked out under Step 1 by the total worked out under Step 2.
Step 4.	Round the result to 3 decimal places.

(4) In subsection (3):

earlier reference period means the period of 12 months immediately before the later reference period.

later reference period means the period of 12 months immediately before the test period.

(5) If an indexation factor worked out under subsection (3) would end with a number greater than 4, were it to be worked out to 4 decimal places, the indexation factor is increased by 0.001.

(6) If, apart from this subsection, an amount worked out under this section would be an amount of dollars and cents, disregard the amount of the cents.

1061ZZCI Notification of amount outstanding

(1) The Secretary must give to a person who is a party to a financial supplement contract with a participating corporation a notice of an amount outstanding under the contract that exists on:

(a) 1 June in the year following the year in which the contract was made; or

(b) 1 June in any of the following 3 years.

(2) The notice must state the amount outstanding under the contract at that date.

Subdivision B—Person's rights to make repayments during contract period

1061ZZCJ Person not required to, but may, make repayments during contract period

(1) Subject to sections 1061ZZDE, 1061ZZDL, 1061ZZDV and 1061ZZEE, a person who is a party to a financial supplement contract with a participating corporation is not required during the contract period to make a repayment of the amount outstanding under the contract.

(2) Non-payment by the person during the contract period of the amount outstanding is not a default under the contract for the purposes of any law of the Commonwealth, of a State or of a Territory.

(3) However, the person may, at any time during the contract period, make a repayment (an ***amount repaid***) to the corporation of the whole or a part of the amount outstanding at that time.

(4) Subsection (3) has effect subject to section 1061ZZCL.

1061ZZCK What happens if person makes an excess repayment

If a person purports to make a repayment to a participating corporation under a financial supplement contract by paying an amount under subsection 1061ZZCJ(3) that exceeds the amount that, having regard to the discount to which the person is entitled, would be needed to pay in full the amount outstanding, the excess:

(a) is taken not to be a repayment; and

(b) must be repaid by the corporation to the person.

1061ZZCL Amount repaid not to include certain amounts

If the person makes a repayment under subsection 1061ZZCJ(3), the amount repaid is to be disregarded for the purposes of this Division:

(a) to the extent to which it relates to wrongly paid supplement; or
(b) if it is repaid after the giving of a notice under section 1061ZZCZ, 1061ZZDG, 1061ZZDQ or 1061ZZEA.

1061ZZCM How to work out discount

(1) If, during the contract period, a person makes a repayment of an amount that is less than the amount outstanding, the person is entitled, in respect of the repayment, to a ***discount*** of an amount worked out using the formula:

$$\left(\text{Amount repaid} \times \frac{100}{85}\right) - \text{Amount repaid}$$

(2) If, during the contract period, a person makes a repayment of an amount that is equal to the amount outstanding, the person is entitled, in respect of the repayment, to a ***discount*** of an amount worked out using the formula:

$$\left(\text{Amount repaid} \times \frac{115}{100}\right) - \text{Amount repaid}$$

(3) If, apart from this subsection, an amount worked out under subsection (1) or (2) would be an amount of dollars and cents, the amount is to be rounded to the nearest number of whole dollars (rounding 50 cents upwards).

1061ZZCN Effect of making a repayment during contract period

Application

(1) This section applies if a person, at a time (the ***repayment time***) during the contract period of a financial supplement contract made by the person with a participating corporation, makes a repayment (the ***relevant repayment***) in respect of the amount outstanding under the contract. For the purposes of this section, it is first necessary to work out whether an indexation amount is taken to

have existed in respect of the contract immediately before the repayment time.

When an indexation amount is taken to have existed

(2) For the purposes of this section, an ***indexation amount*** is taken to have existed in respect of the contract immediately before the repayment time if:

(a) an amount outstanding under the contract existed immediately before the repayment time under section 1061ZZCH; and

(b) that amount outstanding exceeds the amount worked out using the formula:

$$\text{Principal sum} - \left(\text{Amounts repaid} + \begin{array}{c}\text{Amounts previously}\\ \text{notionally repaid}\end{array} \right)$$

Meaning of expressions used in formula

(3) For the purpose of applying the formula in subsection (2) immediately before the repayment time:

amounts previously notionally repaid means the total of the amounts notionally repaid under the contract before the repayment time because of the application of this section in respect of previous repayments.

amounts repaid means the total of the amounts repaid under the contract before the repayment time.

principal sum means the principal sum immediately before the repayment time.

What constitutes indexation amount

(4) The indexation amount referred to in subsection (2) is the amount of the excess referred to in paragraph (2)(b).

If no indexation amount

(5) If no indexation amount existed in respect of the contract immediately before the repayment time, the person is taken to have repaid to the corporation at the repayment time an amount (an ***amount notionally repaid***) equal to the discount to which the person is entitled in respect of the relevant repayment.

If discount does not exceed indexation amount

(6) If:

(a) an indexation amount existed in respect of the contract immediately before the repayment time; and

(b) the discount to which the person is entitled in respect of the relevant repayment is equal to or less than the indexation amount;

the amount outstanding under the contract is taken to be reduced by the discount.

If discount exceeds indexation amount

(7) If:

(a) an indexation amount existed in respect of the contract immediately before the repayment time; and

(b) the discount to which the person is entitled in respect of the relevant repayment exceeds the indexation amount;

the following paragraphs have effect:

(c) the amount outstanding under the contract is taken to be reduced by the indexation amount;

(d) the person is taken to have repaid to the corporation at the repayment time an amount (an ***amount notionally repaid***) equal to the excess.

Commonwealth to pay corporation amounts notionally repaid

(8) The Commonwealth must pay to the corporation an amount equal to any amount notionally repaid.

1061ZZCO Rights and liabilities of participating corporation if repayment made

(1) This section applies if, immediately after a repayment is made under a financial supplement contract made by a participating corporation, the total of the amounts repaid and the amounts notionally repaid is equal to or exceeds the principal sum.

(2) The corporation's rights under the contract are, by this subsection, transferred to the Commonwealth immediately after the repayment is made.

(3) If the total of the amounts repaid and the amounts notionally repaid exceeds the principal sum, the corporation must pay the excess to the Commonwealth.

Subdivision C—What happens at the end of the contract period

1061ZZCP Corporation's rights at end of contract period

(1) This section applies if, at the end of the contract period of a financial supplement contract made by a participating corporation, the corporation's rights under the contract have not previously been transferred to the Commonwealth.

(2) The corporation's rights under the contract are, by this subsection, transferred to the Commonwealth at the end of the contract period.

(3) If the principal sum exceeds the total of the amounts repaid and the amounts notionally repaid, the Commonwealth must pay the excess to the corporation.

1061ZZCQ Termination notice

(1) As soon as practicable after the termination date of a financial supplement contract made by a person with a participating corporation, the Secretary must arrange for written notice (the ***termination notice***) to be given to the person if such a notice has not already been given under the Social Security Student Financial

OFFICIAL: Sensitive // Legal Privilege

Supplement Scheme 1998 or the *Student Assistance Act 1973* as in force at a time before 1 July 1998.

(2) The termination notice must:

(a) state that, at the end of the contract period, the person no longer owes a debt to the corporation under the contract and will not receive a discount for repayments made after that time; and

(b) state that, on a date referred to in the notice, being 1 June immediately following the termination date, the person incurred or will incur an FS debt or FS debts to the Commonwealth; and

(c) specify the amount of that debt or the amounts of those debts; and

(d) state that the person is entitled at any time to make repayments in respect of that debt or those debts and that so much of that debt or those debts as is not voluntarily repaid by the person will be recovered through the taxation system.

1061ZZCR Secretary may give notice correcting information in previous notice

If, after a notice has been given to a person under this Division or under the corresponding provision of the Social Security Student Financial Supplement Scheme 1998 or of the *Student Assistance Act 1973* as in force at a time before 1 July 1998 (including a notice previously given under this section or under a provision of that Scheme or Act corresponding to this section), the Secretary is satisfied that significant information in the notice was not, or is no longer, correct, the Secretary must arrange for a further written notice to be given to the person setting out the correct information.

1061ZZCS Person may request notice to be corrected

(1) If a person considers that a notice given to the person under this Division or under the corresponding provision of the Social Security Student Financial Supplement Scheme 1998 or of the *Student Assistance Act 1973* as in force at a time before 1 July

1998, was not, or is no longer, correct in a significant respect, the person may, by writing, request the Secretary to correct the notice.

(2) The person must make the request within 14 days after the date when the notice was received by the person or within such further period as the Secretary allows.

(3) A request must set out the information that is considered to be incorrect and the grounds on which the person considers the information to be incorrect.

(4) If a request is received by the Secretary, the Secretary must arrange, as soon as practicable, for it to be considered and for written notice of the decision on the request to be given to the person.

1061ZZCT Effect of notices and requests

(1) A notice to a person under this Division or under the corresponding provision of the Social Security Student Financial Supplement Scheme 1998 or of the *Student Assistance Act 1973* as in force at a time before 1 July 1998, is intended only to give information to the person and an FS debt of the person is not affected by a failure to give a notice or by any incorrect statement or information in a notice given under this Division or that corresponding provision.

(2) The making by a person of a request for a notice to be corrected does not affect an FS debt of the person.

OFFICIAL: Sensitive // Legal Privilege

Part 2B.2—Payments of financial supplement under scheme to stop in certain circumstances

Division 1—Payments to stop at request of recipient

1061ZZCU Person may ask for payment to stop

A person who is a party to a financial supplement contract with a participating corporation may, by written notice to the corporation lodged at an office of the corporation, tell the corporation that he or she does not want further payments under the contract to be made after a day stated in the notice.

1061ZZCV Effect of notice

(1) If a person gives a notice referred to in section 1061ZZCU, the corporation is discharged from liability to make further payments to the person under the contract from the end of the day stated in the notice.

(2) However, if the corporation continues to make payments to the person after that day, any amounts paid after that day or the end of 4 weeks after the day on which the notice was given to the corporation, whichever is the later:

(a) are taken not to be payments of financial supplement made under the contract; and

(b) are repayable by the person to the corporation; and

(c) may be recovered by the corporation as a debt due to it by the person.

OFFICIAL: Sensitive // Legal Privilege

Division 2—Payments to stop if the maximum amount of financial supplement is reduced to the amount already paid or a lesser amount

Subdivision A—Notice that payments are to stop

1061ZZCW Secretary must give notice to person and corporation

(1) This section applies if:

(a) a person is a party to a financial supplement contract with a participating corporation; and

(b) the decision (the ***original decision***) made in respect of the person under section 1061ZZAC, or under Part 3 of the Social Security Student Financial Supplement Scheme 1998, is reviewed under Chapter 6; and

(c) the person remains eligible to obtain financial supplement for the year or part of the year to which the contract relates; and

(d) because of the review, the original decision is varied so that the maximum amount (the ***original amount***) of financial supplement that the person is eligible to obtain under the contract is reduced to another amount (the ***revised amount***); and

(e) the revised amount is equal to or less than the amount of financial supplement that the person has already been paid under the contract.

(2) The Secretary must give written notice to the person and to the corporation:

(a) stating:

(i) that this section applies to the contract; and

(ii) that the corporation must stop paying financial supplement to the person; and

(b) specifying:

(i) the revised amount that the person is eligible to obtain; and

(ii) the amount (if any) of financial supplement paid in excess of the revised amount.

1061ZZCX Effect of notice

(1) If the Secretary gives a notice under section 1061ZZCW to the person and the corporation, then, unless the decision on the review is set aside or varied after a further review under Chapter 6, the following provisions have effect.

(2) From the time when the notice is given to the corporation, the corporation is discharged from liability to make further payments to the person under the contract.

(3) However, if the corporation continues to make payments to the person after that time, any amounts paid after the end of 4 weeks after the day on which the notice is given to the corporation:
(a) are taken not to be payments of financial supplement made under the contract; and
(b) are repayable by the person to the corporation; and
(c) may be recovered by the corporation as a debt due to it by the person.

1061ZZCY This Subdivision is subject to sections 1061ZZFS and 1061ZZFT

This Subdivision has effect subject to sections 1061ZZFS and 1061ZZFT.

Subdivision B—Original amount paid because person failed to notify change of circumstances

1061ZZCZ Secretary may give notice to person and corporation

(1) If the Secretary is satisfied that:

(a) a person who is a party to a financial supplement contract with a participating corporation was given a notice under section 1061ZZCW; and

(b) the person failed to tell the Secretary, in response to a notice under section 561B, 586B, 1061PZQ or 1061ZZBR, about the happening of, or about becoming aware of the likely happening of, a stated event or change of circumstances within the period prescribed for complying with the notice; and

(c) the person was paid the original amount after the end of that period; and

(d) the payment of the original amount after the end of that period resulted from the person's failure to comply with the notice referred to in paragraph (b);

the Secretary may give to the person and the corporation a notice stating that he or she is so satisfied and telling them that this Subdivision applies in relation to them.

(2) If the Secretary is satisfied that:

(a) a person who is a party to a financial supplement contract with a participating corporation was given a notice under section 14.5 of the Social Security Student Financial Supplement Scheme 1998; and

(b) the person failed to tell the Secretary, in response to a notice under section 561B, 586B or 1061PZQ, or a notice under section 12.2 of that Scheme, about the happening of, or about becoming aware of the likely happening of, a stated event or change of circumstances within the period prescribed for complying with the notice; and

(c) the person was paid the original amount after the commencement of this Chapter; and

(d) the payment of the original amount after the commencement of this Chapter resulted from the person's failure to comply with the notice referred to in paragraph (b);

the Secretary may give to the person and the corporation a notice stating that he or she is so satisfied and telling them that this Subdivision applies in relation to them.

1061ZZDA Effect of notice

If the Secretary gives a notice under section 1061ZZCZ to the person and the corporation, then, unless the decision to give the notice is set aside or varied after a review under Chapter 6, the following provisions have effect.

1061ZZDB Transfer of corporation's rights to Commonwealth

(1) On the giving of the notice to the corporation, the corporation's rights referred to in subsection (2) or (3), as the case may be, are transferred to the Commonwealth by this subsection.

(2) If the notice was given under subsection 1061ZZCZ(1), the rights transferred are the corporation's rights under the contract that relate to payment of financial supplement during the period:
  (a) beginning at the end of the period referred to in paragraph 1061ZZCZ(1)(b); and
  (b) ending at the end of the period of 4 weeks referred to in subsection 1061ZZCX(3).

(3) If the notice was given under subsection 1061ZZCZ(2), the rights transferred are the corporation's rights under the contract that relate to payment of financial supplement during the period:
  (a) beginning at the commencement of this Chapter; and
  (b) ending at the end of the period of 4 weeks referred to in subsection 1061ZZCX(3).

(4) Financial supplement paid during the period referred to in subsection (2) or (3), as the case requires, is ***wrongly paid supplement***.

1061ZZDC Apportionment of financial supplement

Repayments of financial supplement made by the person before the notice was given to the person under subsection 1061ZZCZ(1) or (2) are taken to have been made:

(a) first, in or towards the repayment of the wrongly paid supplement; and

(b) then, if those repayments exceed the amount of the wrongly paid supplement, in or towards the repayment of the rest of the financial supplement paid to the person under the contract.

1061ZZDD Liability of Commonwealth to corporation

The Commonwealth is liable to pay to the corporation the amount of any wrongly paid supplement that has not been repaid.

1061ZZDE Liability of person to Commonwealth

(1) If the notice was given to the person under subsection 1061ZZCZ(1), the person is liable to pay to the Commonwealth an amount equal to the total of:

(a) the amount that the Commonwealth is liable to pay to the corporation under section 1061ZZDD; and

(b) the interest subsidy for the period referred to in subsection 1061ZZDB(2).

(2) If the notice was given to the person under subsection 1061ZZCZ(2), the person is liable to pay to the Commonwealth an amount equal to the total of:

(a) the amount that the Commonwealth is liable to pay to the corporation under section 1061ZZDD; and

(b) the interest subsidy for the period referred to in subsection 1061ZZDB(3).

1061ZZDF This Subdivision not to affect Subdivision A

This Subdivision does not affect the operation of Subdivision A.

Subdivision C—Original amount paid because of false or misleading information

1061ZZDG Secretary may give notice to person and corporation

(1) If the Secretary is satisfied that:

(a) a person who is a party to a financial supplement contract with a participating corporation was given a notice under section 1061ZZCW; and

(b) false or misleading information was given to the Commonwealth in relation to the calculation of the original amount; and

(c) the payment of financial supplement in excess of the revised amount resulted from the false or misleading information;

the Secretary may give to the person and the corporation a notice stating that he or she is so satisfied and telling them that this Subdivision applies in relation to them.

(2) If the Secretary is satisfied that:

(a) a person who is a party to a financial supplement contract with a participating corporation was given a notice under section 14.5 of the Social Security Student Financial Supplement Scheme 1998; and

(b) false or misleading information was given to the Commonwealth in relation to the calculation of the original amount; and

(c) the payment of financial supplement in excess of the revised amount resulted from the false or misleading information;

the Secretary may give to the person and the corporation a notice stating that he or she is so satisfied and telling them that this Subdivision applies in relation to them.

1061ZZDH Effect of notice

If the Secretary gives a notice under section 1061ZZDG to the person and the corporation, then, unless the decision to give the notice is set aside or varied after a review under Chapter 6, the following provisions have effect.

1061ZZDI Transfer of corporation's rights to Commonwealth

(1) On the giving of the notice to the corporation, the corporation's rights referred to in subsection (2) or (3), as the case may be, are transferred to the Commonwealth by this subsection.

(2) If the notice was given under subsection 1061ZZDG(1), the rights transferred are the corporation's rights under the contract that relate to payment of financial supplement during the period:
  (a) beginning at the time when the person had been paid an amount equal to the revised amount; and
  (b) ending at the end of the period of 4 weeks referred to in subsection 1061ZZCX(3).

(3) If the notice was given under subsection 1061ZZDG(2), the rights transferred are the corporation's rights under the contract that relate to payment of financial supplement during the period:
  (a) beginning at the commencement of this Chapter; and
  (b) ending at the end of the period of 4 weeks referred to in subsection 1061ZZCX(3).

(4) Financial supplement paid during the period referred to in subsection (2) or (3), as the case requires, is ***wrongly paid supplement***.

1061ZZDJ Apportionment of financial supplement

Repayments of financial supplement made by the person before the notice was given to the person under subsection 1061ZZDG(1) or (2) are taken to have been made:

(a) first, in or towards the repayment of the wrongly paid supplement; and

(b) then, if those repayments exceed the amount of the wrongly paid supplement, in or towards the repayment of the rest of the financial supplement paid to the person under the contract.

1061ZZDK Liability of Commonwealth to corporation

The Commonwealth is liable to pay to the corporation the amount of any wrongly paid supplement that has not been repaid.

1061ZZDL Liability of person to Commonwealth

(1) If the notice was given to the person under subsection 1061ZZDG(1), the person is liable to pay to the Commonwealth an amount equal to the total of:

(a) the amount that the Commonwealth is liable to pay to the corporation under section 1061ZZDK; and

(b) the interest subsidy for the period referred to in subsection 1061ZZDI(2).

(2) If the notice was given to the person under subsection 1061ZZDG(2), the person is liable to pay to the Commonwealth an amount equal to the total of:

(a) the amount that the Commonwealth is liable to pay to the corporation under section 1061ZZDK; and

(b) the interest subsidy for the period referred to in subsection 1061ZZDI(3).

1061ZZDM This Subdivision not to affect Subdivision A

This Subdivision does not affect the operation of Subdivision A.

OFFICIAL: Sensitive // Legal Privilege

Division 3—Payments to stop if person ceases to be eligible to obtain financial supplement

Subdivision A—Notice that payments are to stop

1061ZZDN Secretary must give notice to person and corporation

(1) This section applies if:
  (a) a person is a party to a financial supplement contract with a participating corporation; and
  (b) the decision (the ***original decision***) made in respect of the person under section 1061ZZAC or under Part 3 of the Social Security Student Financial Supplement Scheme 1998 is reviewed under Chapter 6; and
  (c) because of the review, the original decision is varied so that the person ceases to be eligible to obtain financial supplement.

(2) The Secretary must give written notice to the person and the corporation:
  (a) stating that the person ceased to be eligible; and
  (b) specifying the date when the person ceased to be eligible.

1061ZZDO Effect of notice

(1) If the Secretary gives a notice under section 1061ZZDN to the person and the corporation, then, unless the decision on the review is set aside or varied after a further review under Chapter 6, the following provisions have effect.

(2) From the time when the notice is given to the corporation, the corporation is discharged from liability to make further payments to the person under the contract.

(3) However, if the corporation continues to make payments to the person after that time, any amounts paid after the end of 4 weeks after the day on which the notice is given to the corporation:
  (a) are taken not to be payments of financial supplement made under the contract; and
  (b) are repayable by the person to the corporation; and
  (c) may be recovered by the corporation as a debt payable to it by the person.

1061ZZDP This Subdivision is subject to sections 1061ZZFS and 1061ZZFT

This Subdivision has effect subject to sections 1061ZZFS and 1061ZZFT.

Subdivision B—Financial supplement paid because person failed to notify change of circumstances

1061ZZDQ Secretary may give notice to person and corporation

(1) If the Secretary is satisfied that:
  (a) a person who is a party to a financial supplement contract with a participating corporation was given a notice under section 1061ZZDN; and
  (b) the person failed to tell the Secretary, in response to a notice under section 561B, 586B, 1061PZQ or 1061ZZBR, about the happening of, or about becoming aware of the likely happening of, a stated event or change in circumstances, within the period prescribed for complying with the notice; and
  (c) the person ceased to be eligible to obtain financial supplement because of the event or change in circumstances; and
  (d) the person was paid financial supplement after the end of the period referred to in paragraph (b); and

(e) the payment of financial supplement after the end of that period resulted from the person's failure to comply with the notice referred to in paragraph (b);

the Secretary may give to the person and the corporation a notice stating that he or she is so satisfied and telling them that this Subdivision applies in relation to them.

(2) If the Secretary is satisfied that:

(a) a person who is a party to a financial supplement contract with a participating corporation was given a notice under section 14.24 of the Social Security Student Financial Supplement Scheme 1998; and

(b) the person failed to tell the Secretary, in response to a notice under section 561B, 586B or 1061PZQ, or a notice under section 12.2 of that Scheme, about the happening of, or about becoming aware of the likely happening of, a stated event or change of circumstances within the period prescribed for complying with the notice; and

(c) the person was paid financial supplement after the commencement of this Chapter; and

(d) the payment of financial supplement after the commencement of this Chapter resulted from the person's failure to comply with the notice referred to in paragraph (b);

the Secretary may give to the person and the corporation a notice stating that he or she is so satisfied and telling them that this Subdivision applies in relation to them.

1061ZZDR Effect of notice

If the Secretary gives a notice under section 1061ZZDQ to the person and the corporation, then, unless the decision to give the notice is set aside or varied after a review under Chapter 6, the following provisions have effect.

1061ZZDS Transfer of corporation's rights to Commonwealth

(1) On the giving of the notice to the corporation, the corporation's rights referred to in subsection (2) or (3), as the case may be, are transferred to the Commonwealth by this subsection.

(2) If the notice was given under subsection 1061ZZDQ(1), the rights transferred are the corporation's rights under the contract that relate to payment of financial supplement during the period:
  (a) beginning at the end of the period referred to in paragraph 1061ZZDQ(1)(b); and
  (b) ending at the end of the period of 4 weeks referred to in subsection 1061ZZDO(3).

(3) If the notice was given under subsection 1061ZZDQ(2), the rights transferred are the corporation's rights under the contract that relate to payment of financial supplement during the period:
  (a) beginning at the commencement of this Chapter; and
  (b) ending at the end of the period of 4 weeks referred to in subsection 1061ZZDO(3).

(4) Financial supplement paid during the period referred to in subsection (2) or (3), as the case requires, is ***wrongly paid supplement***.

1061ZZDT Apportionment of financial supplement

Repayments of financial supplement made by the person before the notice was given to the person under subsection 1061ZZDQ(1) or (2) are taken to have been made:
  (a) first, in or towards the repayment of the wrongly paid supplement; and
  (b) then, if those repayments exceed the amount of the wrongly paid supplement, in or towards the repayment of the rest of the financial supplement paid to the person under the contract.

1061ZZDU Liability of Commonwealth to corporation

The Commonwealth is liable to pay to the corporation the amount of any wrongly paid supplement that has not been repaid.

1061ZZDV Liability of person to Commonwealth

(1) If the notice was given to the person under subsection 1061ZZDQ(1), the person is liable to pay to the Commonwealth an amount equal to the total of:
  (a) the amount that the Commonwealth is liable to pay to the corporation under section 1061ZZDU; and
  (b) the interest subsidy for the period referred to in subsection 1061ZZDS(2).

(2) If the notice was given to the person under subsection 1061ZZDQ(2), the person is liable to pay to the Commonwealth an amount equal to the total of:
  (a) the amount that the Commonwealth is liable to pay to the corporation under section 1061ZZDU; and
  (b) the interest subsidy for the period referred to in subsection 1061ZZDS(3).

1061ZZDW This Subdivision not to affect Subdivision A

This Subdivision does not affect the operation of Subdivision A.

OFFICIAL: Sensitive // Legal Privilege

Division 4—Payments to stop if person is found never to have been eligible to obtain financial supplement

Subdivision A—Notice that payments are to stop

1061ZZDX Secretary must give notice to person and corporation

(1) This section applies if:

(a) a person is a party to a financial supplement contract with a participating corporation; and

(b) the decision (the ***original decision***) made in respect of the person under section 1061ZZAC or under Part 3 of the Social Security Student Financial Supplement Scheme 1998 is reviewed under Chapter 6; and

(c) because of the review the original decision is varied so that the statement in the supplement entitlement notice given to the person that the person was eligible to obtain financial supplement during an eligibility period was incorrect.

(2) The Secretary must give written notice to the person and the corporation stating that the person had never been eligible to obtain financial supplement.

1061ZZDY Effect of notice

(1) If the Secretary gives a notice under section 1061ZZDX to the person and the corporation, then, unless the decision on the review is set aside or varied after a further review under Chapter 6, the following provisions have effect.

(2) From the time when the notice is given to the corporation, the corporation is discharged from liability to make further payments to the person under the contract.

(3) However, if the corporation continues to make payments to the person after that time, any amounts paid after the end of 4 weeks after the day on which the notice is given to the corporation:

(a) are taken not to be payments of financial supplement made under the contract; and
(b) are repayable by the person to the corporation; and
(c) may be recovered by the corporation as a debt payable to it by the person.

1061ZZDZ This Subdivision is subject to sections 1061ZZFS and 1061ZZFT

This Subdivision has effect subject to sections 1061ZZFS and 1061ZZFT.

Subdivision B—Financial supplement paid because of false or misleading information

1061ZZEA Secretary may give notice to person and corporation

If the Secretary is satisfied that the incorrectness of a statement referred to in section 1061ZZDX that was given to a person who is a party to a financial supplement contract with a participating corporation resulted from false or misleading information given to the Commonwealth about the person, the Secretary may give notice to the person and the corporation stating that he or she is so satisfied and that this Subdivision applies in relation to them.

1061ZZEB Effect of notice

If the Secretary gives a notice under section 1061ZZEA to the person and the corporation, then, unless the decision to give the notice is set aside or varied after a review under Chapter 6, the following provisions have effect.

1061ZZEC Transfer of corporation's rights to Commonwealth

(1) On the giving of the notice to the corporation, the corporation's rights referred to in subsection (2) or (3), as the case may be, are transferred to the Commonwealth by this subsection.

(2) If the statement was in a supplement entitlement notice given under subsection 1061ZZAC(3) or 1061ZZAD(4), the rights transferred are the corporation's rights under the contract that relate to payment of financial supplement during the period:
  (a) beginning at the start of the contract period; and
  (b) ending at the end of the period of 4 weeks referred to in subsection 1061ZZDY(3).

(3) If the statement was in a supplement entitlement notice referred to in subsection 1061ZZAE(3), the rights transferred are the corporation's rights under the contract that relate to payment of financial supplement during the period:
  (a) beginning at the commencement of this Chapter; and
  (b) ending at the end of the period of 4 weeks referred to in subsection 1061ZZDY(3).

(4) Financial supplement paid during the period referred to in subsection (2) or (3), as the case requires, is ***wrongly paid supplement***.

1061ZZED Liability of Commonwealth to corporation

The Commonwealth is liable to pay to the corporation an amount worked out, as at the end of the period of 4 weeks referred to in subsection 1061ZZDY(3), using the formula:

Principal sum – (Amounts repaid + Amounts notionally repaid)

1061ZZEE Liability of person

(1) No amount is taken to be outstanding under the contract after the notice is given.

(2) However, the person is liable to pay to the Commonwealth an amount worked out, as at the end of the period of 4 weeks referred to in subsection 1061ZZDY(3), using the formula:

Principal sum − Amounts repaid + Interest subsidy

1061ZZEF Definitions

In sections 1061ZZED and 1061ZZEE:

amounts notionally repaid means the total of the amounts notionally repaid before the notice was given.

amounts repaid means the total of the amounts repaid under the contract before the notice was given.

interest subsidy means the interest subsidy in relation to financial supplement paid under the contract.

principal sum means the principal sum at the time when the notice was given.

1061ZZEG This Subdivision not to affect Subdivision A

This Subdivision does not affect the operation of Subdivision A.

OFFICIAL: Sensitive // Legal Privilege

Division 5—Payments to stop if person dies

1061ZZEH Secretary may give notice to corporation if other party to contract dies

If the Secretary becomes aware that a person who is a party to a financial supplement contract with a participating corporation has died, the Secretary may give written notice to the corporation stating that this Division applies in respect of the contract.

1061ZZEI Effect of notice

If the Secretary gives a notice under section 1061ZZEH to the corporation, the following provisions have effect.

1061ZZEJ Discharge of corporation's liability

(1) From the time when the notice is given to the corporation, the corporation is discharged from liability to make further payments under the contract.

(2) However, if the corporation continues to make payments under the contract after that time, any amounts paid after the end of 4 weeks after the day on which the notice is given to the corporation:
  (a) are taken not to be payments of financial supplement made under the contract; and
  (b) are repayable from the person's estate to the corporation; and
  (c) may be recovered by the corporation as a debt payable to it from the person's estate.

1061ZZEK Transfer of corporation's rights to Commonwealth

(1) The corporation's rights referred to in subsection (2) are transferred to the Commonwealth, by this subsection, at the earlier of:
  (a) the time when the corporation stopped making payments under the contract; or

(b) the end of 4 weeks after the time when the notice was given.

(2) The rights transferred are the corporation's rights under the contract that relate to payment of financial supplement during the period:

(a) beginning at the start of the contract period; and

(b) ending at the end of the period of 4 weeks referred to in paragraph (1)(b).

1061ZZEL Liability of Commonwealth to corporation

(1) The Commonwealth is liable to pay to the corporation an amount worked out, as at the earlier of:

(a) the time when the corporation stopped making payments under the contract; or

(b) the end of the period of 4 weeks referred to in paragraph 1061ZZEK(1)(b);

using the formula:

Principal sum – (Amounts repaid + Amounts notionally repaid)

(2) In this section:

amounts notionally repaid means the total of the amounts notionally repaid before the notice was given.

amounts repaid means the total of the amounts repaid under the contract before the notice was given.

principal sum means the principal sum at the time when the notice was given.

1061ZZEM Discharge of person's liability

The person's liability to the Commonwealth under the contract as a result of the transfer referred to in section 1061ZZEK is discharged by this section.

OFFICIAL: Sensitive // Legal Privilege

Part 2B.3—Repayment of financial supplement through taxation system after termination date

Division 1—Purpose and application of Part

1061ZZEN Purpose and application of Part

This Part provides for the recovery through the taxation system of a person's debt in respect of financial supplement at the end of 4 years beginning on 1 June in the year immediately after the year in which the relevant financial supplement contract was made.

1061ZZENA Extent of Commissioner of Taxation's general administration of this Part

The Commissioner of Taxation has the general administration of this Part to the following extent:

(a) Divisions 2 and 4;
(b) Division 5;
(c) Divisions 6 to 8;
(d) section 1061ZZFO.

Note: One effect of this is that this Part is to that extent a taxation law for the purposes of the *Taxation Administration Act 1953*.

Division 2—FS debt and accumulated FS debt

1061ZZEO FS debt owed by person

(1) If, at the termination date of a financial supplement contract made by a person with a participating corporation, there was or is an amount outstanding under the contract, the person owes an ***FS debt*** to the Commonwealth.

(2) The FS debt is taken to have been incurred, or is incurred, as the case may be, on 1 June immediately after the termination date.

1061ZZEP How to work out FS debt

(1) The FS debt is worked out using the formula:

Amount outstanding × Indexation factor

(2) In subsection (1):

amount outstanding means the amount outstanding under the contract at the termination date.

indexation factor means the factor worked out under section 1061ZZET.

1061ZZEQ Accumulated FS debt incurred by person

(1) If:

(a) a person had or has an FS debt or FS debts on 1 June in a year (the ***later date***); and

(b) the debt was not or is not, or the debts did not or do not include, an FS debt that existed on the previous 1 June;

the person is taken to have incurred, or incurs, as the case may be, an ***accumulated FS debt*** to the Commonwealth on the later date.

(2) If:

(a) a person had or has an FS debt or FS debts on 1 June in a year (the ***later date***); and

(b) the debt was or is, or the debts included or include, an FS debt that existed on the previous 1 June (the ***earlier date***);

the person is taken to have incurred, or incurs, as the case may be, an ***accumulated FS debt*** to the Commonwealth on the later date.

1061ZZER How to work out accumulated FS debt

(1) A person's ***accumulated FS debt*** referred to in subsection 1061ZZEQ(1) is an amount equal to the FS debt or the total of the FS debts referred to in that subsection.

(2) A person's ***accumulated FS debt*** referred to in subsection 1061ZZEQ(2) is an amount worked out using the formula:

$$\left(\text{Adjusted accumulated FS debt} \times \text{Indexation factor}\right) + \text{Later FS debts}$$

(3) In subsection (2):

adjusted accumulated FS debt means the person's adjusted accumulated FS debt on the earlier date.

indexation factor means the factor worked out under section 1061ZZET.

later FS debts means any FS debt, or the total of any FS debts, of the person that did not exist on the earlier date.

1061ZZES Adjusted accumulated FS debt

(1) A person's ***adjusted accumulated FS debt*** on the earlier date is the amount worked out using the formula:

$$\text{Accumulated FS debt} - \left(\text{FSA debts} + \text{Repayments} + \text{Increases in FSA debts} - \text{Reductions in FSA debts}\right)$$

(2) In this section:

Section 1061ZZES

accumulated FS debt means the person's accumulated FS debt on the earlier date as worked out under this Division as it previously applied in respect of that date.

FSA debts means the total of:

(a) any FS assessment debt or FS assessment debts of the person, assessed on or after the earlier date and before the later date, excluding any FS assessment debt assessed because of a return lodged before the earlier date; and

(b) any FS assessment debt or FS assessment debts of the person, assessed on or after the later date because of a return lodged before the later date.

increases in FSA debts means any amount, or the total of any amounts, by which any FS assessment debt is increased by an amendment of the relevant assessment (whether because of an increase in the person's taxable income or otherwise) where the amendment was made on or after the earlier date and before the later date.

reductions in FSA debts means any amount, or the total of any amounts, by which any FS assessment debt is reduced by an amendment of the relevant assessment (whether as a result of a reduction in the person's taxable income or otherwise) where the amendment was made on or after the earlier date and before the later date.

repayments means any amount, or the total of any amounts, repaid, except in discharge of an FS assessment debt, on or after the earlier date and before the later date in reduction of the accumulated FS debt on the earlier date as worked out under this Division as it previously applied in respect of that date.

(3) For the purposes of subsection (2), an assessment or an amendment of an assessment is taken to have been made on the date stated in the notice of assessment or notice of amended assessment, as the case may be, to be the date of that notice.

1061ZZET Indexation factor

(1) The ***indexation factor*** for the purpose of calculating a person's FS debt or accumulated FS debt at 1 June in a year (the ***relevant year***), is worked out using the following Method statement.

Method statement

Step 1. Work out the total of the index number for the March quarter in the relevant year and the index numbers for the 3 immediately preceding quarters.

Step 2. Work out the total of the index number for the March quarter immediately before the relevant year and the index numbers for the 3 immediately preceding quarters.

Step 3. Divide the total worked out using Step 1 by the total worked out using Step 2.

Step 4. Round the result to 3 decimal places.

(2) If an indexation factor worked out using the Method statement would end with a number greater than 4 were it to be worked out to 4 decimal places, the indexation factor is increased by 0.001.

(3) If, apart from this subsection, the amount of an FS debt or accumulated FS debt worked out under this section would be an amount of dollars and cents, disregard the amount of the cents.

1061ZZEU Accumulated FS debt discharges earlier debts

(1) An accumulated FS debt that a person is taken to have incurred or incurs on 1 June in a year (the ***relevant date***) discharges, or discharges the unpaid part of:

(a) an accumulated FS debt that the person incurred on the previous 1 June; and

(b) an FS debt that the person incurred on the relevant date.

OFFICIAL: Sensitive // Legal Privilege

(2) The accumulated FS debt also discharges the person's liability to pay the amount outstanding immediately before the relevant date.

(3) However, in applying sections 1061ZZEP to 1061ZZET, subsection (1) of this section is disregarded.

OFFICIAL: Sensitive // Legal Privilege

Division 3—Information to be given to Commissioner of Taxation

1061ZZEV Secretary to give notice to Commissioner of Taxation

If a person who has made a financial supplement contract with a participating corporation has an FS debt immediately after the termination date of the contract, the Secretary must, if such a notice has not already been given under the corresponding provision of the Social Security Student Financial Supplement Scheme 1998 or of the *Student Assistance Act 1973* as in force at a time before 1 July 1998, give to the Commissioner of Taxation, as soon as practicable after that date, a notice stating as many of the following matters as the Secretary knows:

(a) the person's name;
(b) the person's identifying number;
(c) the person's last-known address;
(d) the person's tax file number;
(e) the amount of the FS debt or the amounts of the FS debts that the person incurred on 1 June immediately following the termination date;
(f) any other information about the person that is reasonably required by the Commissioner to administer this Part.

1061ZZEW Secretary to give further notice to Commissioner of Taxation

If the Secretary or an officer of the Department is convinced that significant information in a notice referred to in section 1061ZZEV was not, or is no longer, correct, the Secretary must give to the Commissioner of Taxation a further notice setting out the correct information.

OFFICIAL: Sensitive // Legal Privilege

Section 1061ZZEX

1061ZZEX Secretary to give certificate to Commissioner of Taxation

The Secretary must, if asked by the Commissioner of Taxation to do so, give a written certificate to the Commissioner setting out a matter mentioned by the Commissioner that was, or was required to be, set out in a notice under section 1061ZZEV or 1061ZZEW.

Division 4—Voluntary repayments of FS debts

1061ZZEY Voluntary repayments of FS debts

(1) If a person has a debt to the Commonwealth under this Part, he or she may at any time make a payment to reduce the debt.

(2) A payment under subsection (1) must be made to the Commissioner of Taxation.

1061ZZEYA Refunding of payments

If:

(a) a person pays an amount to the Commonwealth under this Division; and

(b) the amount exceeds the sum of:

(i) the amount required to discharge the total debt that the person owed to the Commonwealth under this Part; and

(ii) the total amount of the person's primary tax debts (within the meaning of Part IIB of the *Taxation Administration Act 1953*);

the Commonwealth must refund to the person an amount equal to that excess.

Note: Interest is payable if the Commonwealth is late in paying requested refunds: see Part IIIA of the *Taxation (Interest on Overpayments and Early Payments) Act 1983*.

Division 5—Compulsory repayments in respect of accumulated FS debt

1061ZZEZ Compulsory payments in respect of accumulated FS debt

(1) If:

(a) a person's repayment income for the income year 2006-07 or a subsequent income year exceeds the minimum repayment income for that income year; and

(b) on 1 June immediately preceding the making of an assessment in respect of the person's income for that income year, the person had an accumulated FS debt;

the person is liable to pay to the Commonwealth, in accordance with this Division, the amount worked out under section 1061ZZFD in reduction of the person's repayable debt.

(2) A person is not liable under this section to pay an amount for an income year if, under section 8 of the *Medicare Levy Act 1986*:

(a) no Medicare levy is payable by the person on the person's taxable income for the income year; or

(b) the amount of the Medicare levy payable by the person on the person's taxable income for the income year is reduced.

1061ZZFA Repayment income

(1) A person's ***repayment income*** for an income year is an amount equal to the sum of:

(a) the person's taxable income for the income year, disregarding the person's assessable FHSS released amount (within the meaning of the *Income Tax Assessment Act 1997*) for the income year; and

(b) the person's total net investment loss (within the meaning of the *Income Tax Assessment Act 1997*) for the income year; and

(c) if the person:

(i) is an employee (within the meaning of the *Fringe Benefits Tax Assessment Act 1986*); and

(ii) has a reportable fringe benefits total (within the meaning of that Act) for the income year;

the reportable fringe benefits total for the income year; and

(d) the person's exempt foreign income for the income year; and

(e) the person's reportable superannuation contributions (within the meaning of the *Income Tax Assessment Act 1997*) for the income year.

(4) The person's ***exempt foreign income*** is the total amount (if any) by which the person's income that is exempt from tax under section 23AF or 23AG of the *Income Tax Assessment Act 1936* exceeds the total amount of losses and outgoings that the person incurs in deriving that exempt income.

(5) For the purposes of subsection (4), disregard any capital losses and outgoings.

1061ZZFB Minimum repayment income

The ***minimum repayment income*** for the 2006-07 income year or for a later income year is the amount worked out under paragraph 154-10(b) of the *Higher Education Support Act 2003* in respect of that income year.

1061ZZFC Repayable debt for an income year

(1) A person's ***repayable debt*** for an income year is:

(a) the person's accumulated FS debt referred to in paragraph 1061ZZEZ(1)(b) in relation to that income year; or

(b) if one or more amounts:

(i) have been paid in reduction of that debt; or

(ii) have been assessed under section 1061ZZFH to be payable in respect of that debt;

the amount (if any) remaining after deducting from that debt the amount, or sum of the amounts, so paid or assessed to be payable.

(2) A reference in paragraph (1)(b) to an amount assessed to be payable is, if the amount has been increased or reduced by an amendment of the relevant assessment, a reference to the increased amount or the reduced amount.

1061ZZFD Amounts payable to the Commonwealth

(1) The amount that a person is liable to pay under section 1061ZZEZ, in respect of:

(a) the 2019-20 income year; or

(b) a later income year;

is the amount worked out using the formula:

$$\text{Applicable percentage of repayment income} _ \text{Relevant income-contingent loans liability}$$

where:

applicable percentage of repayment income means an amount equal to so much of the person's repayable debt for the income year as does not exceed the percentage of the person's repayment income worked out in respect of the income year using the table in section 154-20 of the *Higher Education Support Act 2003*.

relevant income-contingent loans liability means the amount that is the sum of the following:

(a) the sum of any amounts the person is liable to pay under section 154-1 or 154-16 of the *Higher Education Support Act 2003* in respect of the income year;

(b) the sum of any amounts the person is liable to pay under section 23EA or 23EC of the *VET Student Loans Act 2016* in respect of the income year.

OFFICIAL: Sensitive // Legal Privilege

(2) For the purposes of subsection (1), assume that the reference in the table in section 154-20 of the *Higher Education Support Act 2003* to the person's repayment income is a reference to the person's repayment income within the meaning of section 1061ZZFA of this Act.

(3) A person is not liable under this section to pay an amount for an income year if the amount worked out under subsection (1) is zero or less.

OFFICIAL: Sensitive // Legal Privilege

Division 6—Application of tax legislation

1061ZZFG Application of tax legislation

Part IV of the *Income Tax Assessment Act 1936*, Division 5 of the *Income Tax Assessment Act 1997*, and Part IVC of, and Part 4-15 in Schedule 1 to, the *Taxation Administration Act 1953*, apply, so far as they can be applied and subject to this Part, to a person's FS assessment debt as if it were income tax assessed to be payable by a taxpayer by an assessment made under Part IV of the *Income Tax Assessment Act 1936*.

Note: FS assessment debts are also collected through the Pay As You Go (PAYG) system of collecting income tax: see Parts 2-1, 2-5 and 2-10 in Schedule 1 to the *Taxation Administration Act 1953*.

1061ZZFGA Charges and administrative penalties for failing to meet obligations

(1) Part 4-25 in Schedule 1 to the *Taxation Administration Act 1953* has effect as if:

(a) any compulsory repayment amount of a person were income tax payable by the person in respect of the income year in respect of which the assessment of that debt was made; and

(b) this Part were an income tax law.

(2) Subsection (1) does not have the effect of making a person liable to a penalty for any act or omission that happened before the commencement of this subsection.

1061ZZFGB Pay as you go (PAYG) withholding

Part 2-5 (other than section 12-55 and Subdivisions 12-E, 12-F and 12-G) in Schedule 1 to the *Taxation Administration Act 1953* applies, so far as it is capable of application, in relation to the collection of amounts of a compulsory repayment amount of a person as if the compulsory repayment amount were income tax.

OFFICIAL: Sensitive // Legal Privilege

1061ZZFGD Pay as you go (PAYG) instalments

Division 45 in Schedule 1 to the *Taxation Administration Act 1953* applies, so far as it is capable of application, in relation to the collection of a compulsory repayment amount of a person as if the compulsory repayment amount were income tax.

Division 7—Assessments

1061ZZFH Commissioner of Taxation may make assessment

(1) The Commissioner of Taxation may make an assessment of:

(a) the amount of a person's accumulated FS debt at 1 June immediately before the assessment is made; and

(b) the amount required to be paid to reduce that debt under Division 5.

(2) To make an assessment, the Commissioner may use any information in his or her possession, whether or not it came from a return.

1061ZZFI Notice of assessment may be served

If:

(a) the Commissioner of Taxation is required to serve on a person a notice of assessment in respect of the person's income of a year of income under section 174 of the *Income Tax Assessment Act 1936*; and

(b) an assessment (the ***relevant assessment***) has been made in respect of the person of the amounts referred to in section 1061ZZFH but notice of the relevant assessment has not been served on the person;

notice of the relevant assessment may be served by setting out the amounts concerned in the notice referred to in paragraph (a).

OFFICIAL: Sensitive // Legal Privilege

Division 8—Commissioner of Taxation may delay assessment

1061ZZFJ Commissioner of Taxation may delay assessment

(1) The Commissioner of Taxation may, on application in the approved form by a person who has an accumulated FS debt, delay the making of an assessment under section 1061ZZFH.

(2) An assessment may be delayed if the Commissioner considers that:
  (a) were the assessment to be made, payment of the assessed amount would cause serious hardship to the person; or
  (b) there are other special reasons that make it fair and reasonable to delay the assessment.

(3) The Commissioner may delay the assessment for a period that he or she considers appropriate.

(4) In this section:

approved form has the meaning given by section 388-50 in Schedule 1 to the *Taxation Administration Act 1953*.

1061ZZFK Commissioner of Taxation may amend assessment

(1) The Commissioner of Taxation may, on application in the approved form by a person who has an accumulated FS debt, amend an assessment made under section 1061ZZFH so that no amount is payable under the assessment.

(2) The Commissioner may amend the assessment if he or she considers that:
  (a) payment of the assessed amount has caused or would cause serious hardship to the person; or
  (b) there are other special reasons that make it fair and reasonable to make the amendment.

(3) In this section:

approved form has the meaning given by section 388-50 in Schedule 1 to the *Taxation Administration Act 1953*.

1061ZZFL When Commissioner of Taxation must make decision to delay or amend assessment

(1) If an application referred to in section 1061ZZFJ or 1061ZZFK is made, the Commissioner of Taxation must, as soon as practicable:
  (a) consider it; and
  (b) give to the applicant written notice of his or her decision on the application.

(2) A notice of the decision must:
  (a) include a statement that, if the applicant is dissatisfied with the decision of the Commissioner on the application, an application may, subject to the *Administrative Appeals Tribunal Act 1975*, be made to the Administrative Appeals Tribunal for review of the decision; and
  (b) except if subsection 28(4) of that Act applies, also include a statement to the effect that the applicant may ask for a statement under section 28 of that Act.

(3) A failure to comply with subsection (2) does not affect the validity of the notice or of the decision to which the notice relates.

OFFICIAL: Sensitive // Legal Privilege

Division 9—Review of Commissioner of Taxation's decision

1061ZZFM Application to Administrative Appeals Tribunal

An applicant under section 1061ZZFJ or 1061ZZFK may apply to the Administrative Appeals Tribunal for review of:

(a) a decision of the Commissioner of Taxation on the application referred to in section 1061ZZFJ; or

(b) a decision by the Commissioner refusing to amend an assessment after receiving the application referred to in section 1061ZZFK.

Division 10—Treatment of payments under financial supplement scheme

1061ZZFN Payments not subject to taxation

(1) An amount paid, or other benefit given, to a person under this Chapter is not subject to taxation under a law of the Commonwealth unless a provision of such a law expressly provides to the contrary.

(2) However, subsection (1) does not affect the liability to taxation of a participating corporation for a subsidy or other amount paid to the corporation under this Chapter.

1061ZZFO Application of payments

An amount paid by a person to reduce the person's debt to the Commonwealth under this Part must be applied in accordance with the person's direction or, if there is no direction or the direction does not adequately deal with the matter:

(a) first, to discharge or reduce the person's FS assessment debts; and

(b) then, to discharge or reduce the person's accumulated FS debt.

1061ZZFP Debt discharged by death

If a person dies owing a debt owing to the Commonwealth under this Part, other than an FS assessment debt, the debt is discharged by force of this section.

OFFICIAL: Sensitive // Legal Privilege

Part 2B.4—Miscellaneous

Division 1—Application of the Bankruptcy Act 1966

1061ZZFQ Application of Division

This Division applies if, after a person makes a financial supplement contract with a participating corporation, whether before or after the termination date:

(a) the person becomes bankrupt; or

(b) the person enters into a personal insolvency agreement under Part X of the *Bankruptcy Act 1966*.

1061ZZFR Treatment of debt

(1) A debt arising under or out of the contract is not a provable debt in the bankruptcy or for the purposes of the personal insolvency agreement.

(2) A right of the Commonwealth or of the corporation to bring an action or other proceeding against the person in respect of the debt is not affected by the bankruptcy or personal insolvency agreement.

(3) The trustee of the estate of the bankrupt person or the trustee of the personal insolvency agreement is not entitled to recover under the *Bankruptcy Act 1966* a payment made by the person to the Commonwealth or to the corporation in respect of the debt.

(4) In this section:

debt arising under or out of the contract:

(a) includes, but is not limited to:

(i) an amount outstanding under the contract; and

(ii) an amount that the person is liable to pay under section 1061ZZDE, 1061ZZDL, 1061ZZDV or 1061ZZEE; and

(iii) an accumulated FS debt that discharges, or discharges the unpaid part of, an FS debt; but

(b) does not include:

(i) a debt constituted by an obligation to repay the amount of a payment that, because of paragraph 1061ZZCV(2)(a), 1061ZZCX(3)(a), 1061ZZDO(3)(a) or 1061ZZDY(3)(a), is not a payment of financial supplement; or

(ii) an FS assessment debt that is required to be paid to reduce an accumulated FS debt.

OFFICIAL: Sensitive // Legal Privilege

Division 2—Review of decisions

1061ZZFS What happens if a decision of the Secretary is set aside

(1) Subject to subsection (2), if a decision of the Secretary under this Chapter is set aside after a review under Chapter 6, this Chapter has effect, and is taken to have always had effect, as if the decision had not been made.

(2) If the decision is set aside after a review under Chapter 6 and another decision is substituted for the original decision, this Chapter has effect, and is taken to have always had effect, as if the substituted decision had been the original decision.

1061ZZFT What happens if a decision of the Secretary is varied

If a decision of the Secretary under this Chapter is varied after a review under Chapter 6, this Chapter has effect, and is taken to have always had effect, as if the decision as varied had been the original decision.

Division 3—Transfer of rights under this Chapter

1061ZZFU Notices of transfer

If any rights of a participating corporation to receive a payment from a person under this Chapter are transferred to the Commonwealth, the Secretary must, as soon as practicable, arrange for a written notice to be given to the person:

(a) stating that the rights have been transferred; and

(b) identifying any future payments that, because of the transfer, are required to be made to the Commonwealth.

1061ZZFV Transfers not subject to State or Territory taxes

A transfer to the Commonwealth under this Chapter of any of the corporation's rights under a financial supplement contract, or any other act or thing done or transaction entered into under this Chapter, is not subject to taxation under a law of a State or Territory.

OFFICIAL: Sensitive // Legal Privilege

Chapter 2C—Assurances of support

Part 2C.1—Giving assurances

1061ZZGA What is an assurance of support?

In this Chapter:

assurance of support means an undertaking by a person under this Chapter that the person will pay the Commonwealth an amount equal to the amount of social security payments that are:

(a) received in respect of a period by another person who:

(i) is identified in the undertaking; and

(ii) becomes the holder under the *Migration Act 1958* of a visa granted in connection with the undertaking (whether or not the person continues to hold the visa throughout the period); and

(b) specified in a determination in force under section 1061ZZGH when the payments are received.

Note: An assurance of support may relate to social security payments received by 2 or more persons. See paragraph 23(b) of the *Acts Interpretation Act 1901*.

1061ZZGB Who may give an assurance of support?

A person may give an assurance of support only if the requirements specified for the purposes of this section in a determination under section 1061ZZGH are met in relation to the person.

Note 1: If a person who does not meet the requirements gives an undertaking purporting to be an assurance of support, the undertaking is not an assurance of support (because it is not under this Chapter) and the Secretary is not required either to accept or to reject the purported assurance.

Note 2: This section lets 2 or more persons give an assurance of support if they all meet the requirements specified in a determination under

section 1061ZZGH. See paragraph 23(b) of the *Acts Interpretation Act 1901*.

1061ZZGC How to give an assurance of support

(1) A person gives an assurance of support by:

(a) delivering the assurance in writing in accordance with a form approved by the Secretary:

(i) to a person apparently performing duties at a place approved for the purpose by the Secretary; or

(ii) to a person approved for the purpose by the Secretary; or

(iii) in a manner, and to a place, approved for the purpose by the Secretary; or

(b) giving the assurance in a manner approved by the Secretary for the purposes of this paragraph.

Note: If an undertaking purporting to be an assurance of support is given in some other way, the undertaking is not an assurance of support (because it is not under this Chapter) and the Secretary is not required either to accept or to reject the purported assurance.

(2) A form approved for the purposes of paragraph (1)(a) may include other undertakings as well as the assurance of support.

(3) A place or person approved for the purposes of paragraph (1)(a) may be in or out of Australia.

(4) The Secretary's power to approve for the purposes of paragraph (1)(b) is not limited by any other provision of this section.

Material to accompany assurance of support

(5) When a person is giving an assurance of support, the person must also give the following material in a way in which an assurance of support may be given under subsection (1):

(a) information specified in a form approved by the Secretary;

(b) documents specified by the Secretary.

OFFICIAL: Sensitive // Legal Privilege

(6) If the person giving the assurance of support contravenes subsection (5), the assurance is taken not to have been given.

Part 2C.2—Acceptance of assurances

1061ZZGD Accepting or rejecting an assurance of support

(1) If an assurance of support is given under this Chapter, the Secretary must accept or reject the assurance.

Accepting the assurance

(2) The Secretary may accept the assurance, but only if:

(a) he or she is satisfied that the requirements that are specified for the purposes of this paragraph in a determination under section 1061ZZGH and relate to the person who gave the assurance are met; and

(b) the requirements in subsection (3) are met, if the assurance is in respect of:

(i) a visa of a kind that can be granted under the *Migration Act 1958* only if an assurance of support is accepted; and

(ii) another person who was at least 18 at the time of the application for the visa;

(whether or not the assurance is also in respect of someone else who was under 18 at the time of the application for the visa).

Note 1: The Secretary may accept an assurance given by 2 or more persons only if satisfied that the requirements specified in a determination under item 3 of the table in subsection 1061ZZGH(1) and relating to all of them are met. See paragraph 23(b) of the *Acts Interpretation Act 1901*.

Note 2: Subparagraph (2)(b)(i) does not apply to a visa of a kind in relation to which there is a discretion to request an assurance of support, because a visa of that kind can be granted without accepting an assurance if one is not requested (even if, in a case in which an assurance is requested, acceptance of the assurance is a condition for the grant of the visa).

(3) At least one person who gave the assurance must have given the Secretary a single security for the liability that may be incurred,

under section 1061ZZGG in connection with the assurance and a social security payment received by anyone identified in the assurance, by everyone who gave the assurance. The security must:

(a) be in a form approved by the Secretary; and

(b) be of a value specified for the purposes of this paragraph in a determination under section 1061ZZGH.

Rejecting the assurance

(4) The Secretary may reject the assurance.

(5) The circumstances in which the Secretary may reject the assurance include failure of the person giving the assurance to attend an interview relating to the assurance as requested by the Secretary. This subsection does not limit subsection (4).

1061ZZGE Notices relating to an assurance of support

(1) If the Secretary accepts or rejects an assurance of support, he or she must give written notice of the acceptance or rejection to:

(a) the person who gave the assurance; and

(b) the Minister administering the *Migration Act 1958*.

The notice must name the person in respect of whom the assurance was given.

(2) If:

(a) the Secretary has accepted an assurance of support given by a person (the ***assurer***) in respect of another person and a visa; and

(b) the Secretary is informed that the other person:

(i) is a holder under the *Migration Act 1958* of the visa; and

(ii) has entered the migration zone (as defined in that Act) before, on or after becoming the holder of the visa;

the Secretary must give the assurer written notice of the period for which the assurance is in force in respect of the other person.

OFFICIAL: Sensitive // Legal Privilege

Note: Section 1061ZZGF explains when an assurance of support is in force in respect of the other person.

(3) If the assurance of support ceases to be in force in respect of the other person at a time determined by the Secretary under subparagraph 1061ZZGF(1)(b)(ii) or (iii), the Secretary must give the assurer written notice of that fact.

OFFICIAL: Sensitive // Legal Privilege

Part 2C.3—Effect of accepted assurances

1061ZZGEA Assurance cannot be withdrawn once visa issued

A person who has given an assurance of support that has been accepted under this Chapter cannot withdraw that assurance once the person in respect of whom the assurance was given becomes the holder under the *Migration Act 1958* of a visa granted in connection with the assurance.

1061ZZGF When an accepted assurance is in force

(1) For the purposes of this Act, an assurance of support that has been given in respect of a person identified in the assurance and has been accepted under this Chapter:

(a) comes into force in respect of the person at the later of the following times:

(i) the time at which the person becomes under the *Migration Act 1958* the holder of the visa that was granted under that Act in connection with the assurance;

(ii) the time at which the person enters the migration zone (as defined in that Act) as the holder of the visa; and

(b) remains in force in respect of the person until the earliest of the following times:

(i) the end of the period specified for the purposes of this subparagraph in a determination under section 1061ZZGH;

(ii) the time (if any) determined by the Secretary under subsection (2);

(iii) if a circumstance specified for the purposes of this subparagraph in a determination under section 1061ZZGH applies in relation to the assurance—the time determined by the Secretary in relation to that circumstance.

Note: An assurance of support given in respect of 2 or more persons may be in force at different times in respect of each of those persons.

(2) The Secretary may determine that the assurance of support ceases to be in force in respect of the person at the time (which may be before the determination is made) another assurance of support comes into force in respect of the person.

(3) For the purposes of this Act, an assurance of support (as defined in section 1061ZZGA) is in force in respect of a person only for the period for which it is in force in respect of the person under subsection (1) of this section.

(4) Except as provided by paragraph (1)(b), an assurance of support that has come into force in respect of a person remains in force in respect of that person in spite of any change in circumstances whatsoever (including any purported withdrawal, however described, of the assurance).

1061ZZGG Liability to pay for social security payments

(1) This section has effect if:
  (a) a person (the ***assurer***) has given an assurance of support that has been accepted under this Chapter; and
  (b) a social security payment is received, by another person who is identified in the assurance, in respect of all or part of the period for which the assurance is in force in respect of the other person; and
  (c) the social security payment is specified for the purposes of this section in a determination in force under section 1061ZZGH when the payment is received.

(2) The assurer is liable to pay the Commonwealth the amount of the social security payment.

(3) If the assurance was given by more than one person, all of the persons who gave it are jointly and severally liable to pay the Commonwealth the amount of the social security payment.

Part 2C.4—Determinations

1061ZZGH Determinations

(1) The Minister must, by legislative instrument, make a determination specifying, for the purposes of the provisions mentioned in the table, the things in the table.

Determinations		
	Provision(s)	**Things to be specified**
1	Definition of ***assurance of support*** in section 1061ZZGA and section 1061ZZGG	Social security payments
2	Section 1061ZZGB	Requirements to be met in relation to persons for them to be permitted by section 1061ZZGB to give assurances of support
3	Paragraph 1061ZZGD(2)(a)	Requirements to be met in relation to persons giving assurances of support for the Secretary to be permitted by subsection 1061ZZGD(2) to accept such assurances
4	Paragraph 1061ZZGD(3)(b)	Values of securities to be given for the Secretary to be permitted to accept assurances of support
5	Subparagraph 1061ZZGF(1)(b)(i)	Periods for which assurances of support accepted under this Chapter remain in force in respect of persons under section 1061ZZGF
6	Subparagraph 1061ZZGF(1)(b)(iii)	Circumstances in which assurances of support accepted under this Chapter cease to be in force

Note 1: A determination may specify matters and things by reference to classes and may make different provision with respect to different matters or classes of matters. See the *Legislation Act 2003*.

Note 2: The Minister may amend a determination by another legislative instrument. See the *Acts Interpretation Act 1901*.

Section 1061ZZGH

(2) A determination may specify, as a requirement to be met in relation to a person (the ***assurer***) giving an assurance of support for the Secretary to be permitted by subsection 1061ZZGD(2) to accept the assurance, a requirement that relates to:

(a) the members of a couple consisting of the assurer and the assurer's partner; or

(b) the assurer's partner.

This subsection does not limit the requirements that may be specified under item 3 of the table in subsection (1) of this section.

(3) Before making a determination specifying a thing described in item 4 or 5 of the table in subsection (1), the Minister must ask the Minister administering the *Migration Act 1958* for comments on the things that should be specified and consider the comments (if any) received.

OFFICIAL: Sensitive // Legal Privilege

Part 2C.5—Assurances by unincorporated bodies

1061ZZGI Application of social security law to unincorporated bodies

(1) This Chapter, and the rest of the social security law so far as it relates to this Chapter, apply to an unincorporated body or association (the ***body***) as if it were a person other than an individual, but they apply with the following changes.

Acts of certain persons treated as acts of the body

(2) One change is that anything done or omitted by or in relation to:
  (a) if the body is a partnership—a partner; or
  (b) in any other case—a member of the committee of management of the body;
on behalf of the body is taken to have been done or omitted by the body.

Imposition of obligations and liabilities

(3) Another change is that obligations, or liabilities under section 1061ZZGG, that would be imposed on the body are imposed instead on:
  (a) if the body is a partnership—each partner; or
  (b) in any other case—each member of the committee of management of the body;
but they may be discharged by any of the partners or any of those members.

The body cannot commit an offence

(4) Another change is that if, apart from this subsection, the body would commit an offence, the body does not commit the offence.

Example: Subsection (1) applies section 217 of the *Social Security (Administration) Act 1999* to the body as if it were a person. That section provides that a person who contravenes certain provisions of

that Act about false or misleading statements commits an offence. The body does not commit an offence if it contravenes those provisions by making a false or misleading statement.

Limit on scope of changes

(5) Subsections (2) and (3) do not affect:

(a) whether, for the purposes of section 1061ZZGB (about giving an assurance of support), the requirements specified in a determination under section 1061ZZGH are met in relation to the body; or

(b) whether, for the purposes of paragraph 1061ZZGD(2)(a) (about accepting an assurance of support), the requirements specified in a determination under section 1061ZZGH are met in relation to the body.

Note: Whether the body may give an assurance of support and whether such an assurance may be accepted depend on whether the requirements specified in relation to the body are met, rather than whether requirements relating to a person who is a partner or member of the body's management committee are met in relation to that partner or member.

(6) A determination under section 1061ZZGH (applying in accordance with this section) may specify, for the purposes of section 1061ZZGB or paragraph 1061ZZGD(2)(a) (as so applying in relation to the body), a requirement that relates to:

(a) one or more of the partners, if the body is a partnership; or

(b) some or all of the members of the body or of its committee of management, if the body is not a partnership.

This subsection does not limit the requirements relating to the body that may be specified.

Chapter 2D—Arrangements and grants relating to assisting persons to obtain and maintain paid work

1062 Simplified outline of this Chapter

The Employment Secretary may, on behalf of the Commonwealth, make, vary or administer an arrangement for the making of payments by the Commonwealth, or make, vary or administer a grant of financial assistance, in relation to various activities aimed at assisting unemployed or other persons to obtain and maintain paid work.

1062A Arrangements and grants relating to assisting persons to obtain and maintain paid work

(1) The Employment Secretary may, on behalf of the Commonwealth, make, vary or administer an arrangement for the making of payments by the Commonwealth, or make, vary or administer a grant of financial assistance, in relation to:

(a) assisting unemployed persons to obtain and maintain paid work; or

(b) assisting other persons to obtain and maintain paid work; or

(c) assisting persons at risk of losing paid work to maintain that paid work or to obtain and maintain other paid work; or

(d) assisting unemployed persons to become self-employed; or

(e) assisting other persons to become self-employed; or

(f) assisting recipients of participation payments (within the meaning of the Administration Act) to meet their mutual obligation requirements; or

(g) the funding of measures designed to reduce discrimination in employment practices and to encourage workforce

participation, including in relation to mature aged, young and Indigenous persons, persons with a disability and parents seeking to re-join the workforce; or

(h) the provision of online employment services; or

(i) the funding of projects to create pathways to paid work and to address labour shortages; or

(j) the funding of the activities of employment services providers; or

(k) the provision of wage subsidies or other incentives to employers to employ unemployed persons; or

(l) an activity determined in an instrument under subsection (2); or

(m) a matter that is incidental or ancillary to a matter mentioned in paragraph (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k) or (l).

(2) The Employment Minister may, by legislative instrument, determine an activity for the purposes of paragraph (1)(l).

Reimbursement of costs or expenses

(3) An arrangement under subsection (1) may provide for the Commonwealth to reimburse, or partly reimburse, costs or expenses.

(4) A grant under subsection (1) may be made by way of the reimbursement, or partial reimbursement, of costs or expenses.

(5) Subsections (3) and (4) do not limit subsection (1).

Definitions

(6) In this section:

arrangement includes a contract, agreement, deed or understanding.

Indigenous person has the same meaning as in the *Indigenous Education (Targeted Assistance) Act 2000*.

make, in relation to an arrangement, includes enter into.

1062B Constitutional limits

An arrangement or grant referred to in section 1062A must be with respect to one or more of the following:

(a) the provision of unemployment benefits, or other benefits, allowances, services or endowment, referred to in paragraph 51(xxiiiA) of the Constitution;

(b) implementing any of Australia's international obligations under the ILO Convention (No. 88) concerning the Organisation of the Employment Service done at San Francisco on 9 July 1948 ([1950] ATS 9), as amended and in force for Australia from time to time;

(c) implementing any of Australia's international obligations under the ILO Convention (No. 122) concerning Employment Policy done at Geneva on 9 July 1964 ([1970] ATS 17), as amended and in force for Australia from time to time;

(d) implementing any of Australia's international obligations under the ILO Convention (No. 142) concerning Vocational Guidance and Vocational Training in the Development of Human Resources done at Geneva on 23 June 1975 ([1986] ATS 2), as amended and in force for Australia from time to time;

(e) implementing any of Australia's international obligations under the International Covenant on Economic, Social and Cultural Rights done at New York on 16 December 1966 ([1976] ATS 5), as amended and in force for Australia from time to time;

(f) implementing any of Australia's international obligations under the Convention on the Elimination of All Forms of Discrimination Against Women done at New York on 18 December 1979 ([1983] ATS 9), as amended and in force for Australia from time to time;

(g) implementing any of Australia's international obligations under the Convention on the Rights of the Child done at New

York on 20 November 1989 ([1991] ATS 4), as amended and in force for Australia from time to time;

(h) implementing any of Australia's international obligations under the Convention on the Rights of Persons with Disabilities done at New York on 13 December 2006 ([2008] ATS 12), as amended and in force for Australia from time to time;

(i) the granting of financial assistance to a State or Territory;

(j) a Territory;

(k) people to whom paragraph 51(xxvi) of the Constitution applies;

(l) postal, telegraphic, telephonic or other like services within the meaning of paragraph 51(v) of the Constitution;

(m) aliens within the meaning of paragraph 51(xix) of the Constitution;

(n) the implied power of the Parliament to make laws with respect to nationhood;

(o) matters incidental to the execution of any of the legislative powers of the Parliament or the executive power of the Commonwealth.

Note: The text of a Convention or Covenant could in 2021 be viewed in the Australian Treaties Library on the AustLII website (http://www.austlii.edu.au).

1062C Executive power of the Commonwealth

This Chapter does not, by implication, limit the executive power of the Commonwealth.

1062D Inclusion of information in annual report

The Employment Secretary, when preparing the Employment Department's annual report under section 46 of the *Public Governance, Performance and Accountability Act 2013* for a period, must include the following information in that report:

(a) the total of the amounts paid in that period under arrangements or grants referred to in section 1062A;

(b) the total number of arrangements and grants referred to in section 1062A that were made in that period.

OFFICIAL: Sensitive // Legal Privilege

Chapter 3—General provisions relating to payability and rates

Part 3.1—Rate Calculators (General)

1062E~~1062~~ Steps in rate calculation

(1) The following are the usual steps in the rate calculation process:
  (a) start with a maximum basic rate;
  (b) add any additional amounts that are subject to income or assets testing;
  (c) apply the income and assets tests;
  (d) add any additional amounts that are not subject to income or assets testing.

(2) The overall rate calculation process is usually described in an early Module of the relevant Rate Calculator.

1063 Standard categories of family situations

(1) The Rate Calculators use the following standard categories of family situations:
- not member of a couple;
- member of a couple (or partnered);
- partnered (partner getting neither pension nor benefit);
- partnered (partner getting pension or benefit);
- partnered (partner getting pension);
- partnered (partner getting benefit);
- partnered (partner in gaol).

Note: See section 4 for definitions of those terms.

(2) If it is necessary to distinguish between the members of sub-categories of these standard categories further words of description are added to the standard category label.

OFFICIAL: Sensitive // Legal Privilege

Part 3.2—Pension Rate Calculator A

1064 Rate of age and disability support pensions and carer payment (people who are not blind)

(1) The rate of:

(a) age pension; and

(b) disability support pension of a person who has turned 21, or of a person who has not turned 21 and has one or more dependent children; and

(d) carer payment;

is, subject to subsection (2), to be calculated in accordance with the Rate Calculator at the end of this section.

Note 1: Module A of the Rate Calculator establishes the overall rate calculation process and the remaining Modules provide for the calculation of the component amounts used in the overall rate calculation.

Note 2: The rate obtained by applying the Rate Calculator may be reduced because of:

- the receipt of compensation (see Part 3.14); or
- overseas portability (see Part 4.2—Division 3); or
- the receipt of payments under the New Enterprise Incentive Scheme (see Part 3.15).

Note 3: For ***dependent child*** see section 5.

(2) Subsection (1) does not apply to a person's age or disability support pension if the person is permanently blind.

Note: The rate for an age pension or disability support pension payable to a person who is permanently blind is dealt with in section 1065.

(4) If:

(a) a person has a relationship with another person, whether of the same sex or a different sex (***other person***); and

(b) the relationship between them is a de facto relationship in the Secretary's opinion (formed after the Secretary has had regard to all the circumstances of the relationship, including,

OFFICIAL: Sensitive // Legal Privilege

in particular, the matters referred to in paragraphs 4(3)(a) to (e) and subsection 4(3A));

(c) either or both of them are under the age of consent applicable in the State or Territory in which they are living;

the person's pension rate is not to exceed the rate at which it would be payable to the person if the other person were the person's partner.

Note: This provision has the effect of taking into account the ordinary income, maintenance income and assets of the partner in applying the ordinary income test, maintenance income test and assets test respectively.

Rate limited for armed service widow

(5) If:

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

(b) one of the following is payable to the widow:

(i) an age pension;

(ii) a disability support pension;

(iv) a carer payment;

the widow's pension rate is not to exceed:

(c) if:

(i) the widow has been receiving the payment referred to in paragraph (a) continuously since before 1 November 1986; and

(ii) immediately before 1 November 1986, the widow was receiving a payment referred to in paragraph (b) at a rate exceeding $3,247.40; and

(iii) the pension referred to in paragraph (b) is of the same type as the one which was payable to the person before 1 November 1986;

the rate of pension received by the widow immediately before 1 November 1986; and

(d) in any other case—$3,247.40.

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

Rate limited for armed services widower

(6) If:

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

(b) one of the following is payable to the widower:

(i) an age pension;

(ii) a disability support pension;

(iii) a carer payment;

the rate of pension payable to the widower is not to exceed $3,247.40.

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

(7) If:

(a) an armed services widow or an armed services widower is receiving the weekly amount mentioned in paragraph 234(1)(b) of the MRCA (including a reduced weekly amount because of a choice under section 236 of the MRCA) or has received a lump sum mentioned in subsection 236(5) of the MRCA; and

(b) one of the following is payable to the widow or widower:

(i) an age pension;

(ii) a disability support pension;

(iv) a carer payment;

the rate of pension payable to the widow or widower is not to exceed $3,247.40.

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

OFFICIAL: Sensitive // Legal Privilege

Pension Rate Calculator A

Module A—Overall rate calculation process

Method of calculating rate

1064-A1 The rate of pension is a daily rate. That rate is worked out by dividing the annual rate calculated according to this Rate Calculator by 364 (fortnightly rates are provided for information only).

Method statement

Step 1. Work out the person's ***maximum basic rate*** using MODULE B below.

Step 1A. Work out the amount of pension supplement using Module BA below.

Step 1B. Work out the energy supplement (if any) using Module C below.

Step 3. Work out the amount per year (if any) for rent assistance in accordance with paragraph 1070A(b).

Step 4. Add up the amounts obtained in Steps 1, 1A, 1B and 3: the result is called the ***maximum payment rate***.

Step 5. Apply the ordinary income test using MODULE E below to work out the income reduction.

Note: Module F contains provisions that may apply to working out the ordinary income of a person, and the ordinary income of a partner of the person, for the purposes of disability support pension.

Step 8. Take the income reduction away from the maximum payment rate: the result is called the ***income reduced rate***.

Step 9.	Apply the assets test using MODULE G below to work out the reduction for assets.
Step 10.	Take the reduction for assets away from the maximum payment rate: the result is called the ***assets reduced rate***.
Step 11.	Compare the income reduced rate and the assets reduced rate: the lower of the 2 rates, or the income reduced rate if the rates are equal, is the ***provisional annual payment rate***.
Step 12.	The ***rate of pension*** is the amount obtained by: (a) subtracting from the provisional annual payment rate any special employment advance deduction (see Part 3.16B); and (b) if there is any amount remaining, subtracting from that amount any advance payment deduction (see Part 3.16A); and (c) adding any amount payable by way of remote area allowance (see Module H).

Note 1: If a person's assets reduced rate is less than the person's income reduced rate, the person may be able to take advantage of provisions dealing with financial hardship (sections 1129 and 1130).

Note 2: Section 1210 deals with the application of income and assets test reductions.

Note 3: The rate calculation for a member of a couple is affected by the operation of points 1064-A2 and 1064-A3.

Note 4: In some circumstances a person may also be qualified for a pharmaceutical allowance under Part 2.22.

Note 5: A person's rate may also be reduced because the person or the person's partner receives compensation (see section 1173) or because the person or the person's partner is receiving a foreign pension (see scheduled international social security agreements at section 1208).

Note 7: Clause 146 of Schedule 1A may affect the provisional annual payment rate in step 11.

Members of a couple

1064-A2 Where 2 people are members of a couple, they will be treated as pooling their resources (income and assets) and sharing them on a 50/50 basis (see points 1064-E2 and 1064-G2 below). They will also be treated as sharing expenses (e.g. for rent) on a 50/50 basis (see section 1070V).

Module B—Maximum basic rate

Maximum basic rate

1064-B1 A person's maximum basic rate depends on the person's family situation. Work out which family situation in Table B applies to the person. The maximum basic rate is the corresponding amount in column 3.

Table B—Maximum basic rates

Column 1 Item	Column 2 Person's family situation	Column 3 Rate per year	Column 4 Rate per fortnight
1.	Not member of couple	$8,114.60	$312.10
2.	Partnered	$6,767.80	$260.30
3.	Member of illness separated couple	$8,114.60	$312.10
4.	Member of respite care couple	$8,114.60	$312.10
5.	Partnered (partner in gaol)	$8,114.60	$312.10

Note 1: For ***member of couple***, ***partnered***, ***illness separated couple***, ***respite care couple*** and ***partnered (partner in gaol)*** see section 4.

Note 2: The maximum basic rates are adjusted 6 monthly: see sections 1191 to 1198A.

Module BA—Pension supplement

Pension supplement

1064-BA1 A pension supplement amount is to be added to the person's maximum basic rate.

Residents in Australia etc.

1064-BA2 If the person is residing in Australia and:

(a) is in Australia; or

(b) is temporarily absent from Australia and has been so for a continuous period not exceeding 6 weeks;

the person's pension supplement amount is:

(c) if an election by the person under subsection 1061VA(1) is in force—the amount worked out under point 1064-BA4; and

(d) otherwise—the amount worked out under point 1064-BA3.

Residents in Australia etc.—no election in force

1064-BA3 The person's pension supplement amount is the amount worked out by:

(a) applying the applicable percentage in the following table to the combined couple rate of pension supplement; and

(b) if:

(i) the person is not partnered; and

(ii) the amount resulting from paragraph (a) is not a multiple of $2.60;

rounding the amount up or down to the nearest multiple of $2.60 (rounding up if the amount is not a multiple of $2.60 but is a multiple of $1.30).

Item	Person's family situation	Use this %
1	Not member of couple	66.33%
2	Partnered	50%
3	Member of illness separated couple	66.33%

OFFICIAL: Sensitive // Legal Privilege

Item	Person's family situation	Use this %
4	Member of respite care couple	66.33%
5	Partnered (partner in gaol)	66.33%

Note: For ***combined couple rate of pension supplement***, see subsection 20A(1).

Residents in Australia etc.—election in force

1064-BA4 The person's pension supplement amount is the amount worked out as follows:

(a) work out the amount for the person under point 1064-BA3 as if the election were not in force;

(b) from that amount, subtract the person's minimum pension supplement amount.

Persons absent from Australia for more than 6 weeks

1064-BA5 If the person is not covered by point 1064-BA2, the person's pension supplement amount is the person's pension supplement basic amount.

Module C—Energy supplement

1064-C1 An energy supplement is to be added to the person's maximum basic rate if the person is residing in Australia and:

(a) is in Australia; or

(b) is temporarily absent from Australia and has been so for a continuous period not exceeding 6 weeks.

Note: Section 918 may affect the addition of the energy supplement.

1064-C2 However, this Module does not apply if quarterly energy supplement is payable to the person.

1064-C3 The person's energy supplement is the amount worked out using the following table:

Energy supplement		
Item	**Person's family situation**	**Amount of energy supplement**
1	Not a member of a couple	$366.60
2	Partnered	$275.60
3	Member of an illness separated couple	$366.60
4	Member of a respite care couple	$366.60
5	Partnered (partner in gaol)	$366.60

Module E—Ordinary income test

Effect of income on maximum payment rate

1064-E1 This is how to work out the effect of a person's ordinary income on the person's maximum payment rate:

Method statement

Step 1. Work out the amount of the person's ordinary income on a yearly basis.

Note 1: For the treatment of the ordinary income of members of a couple see point 1064-E2.

Note 2: Module F contains provisions that may apply to working out the ordinary income of a person, and the ordinary income of a partner of the person, for the purposes of disability support pension.

Step 2. Work out the person's ordinary income free area (see point 1064-E4 below).

Note: A person's ordinary income free area is the amount of ordinary income that the person can have without any deduction being made from the person's maximum payment rate.

Step 3. Work out whether the person's ordinary income exceeds the person's ordinary income free area.

Step 4.	If the person's ordinary income does not exceed the person's ordinary income free area, the person's ordinary income excess is nil.
Step 5.	If the person's ordinary income exceeds the person's ordinary income free area, the person's ordinary income excess is the person's ordinary income less the person's ordinary income free area.
Step 6.	Use the person's ordinary income excess to work out the person's reduction for ordinary income using points 1064-E10 to 1064-E12 below.

Note 1: See point 1064-A1 (Steps 5 to 8) for the significance of the person's reduction for ordinary income.

Note 2: The application of the ordinary income test is affected by provisions concerning:

- the general concept of ordinary income and the treatment of certain income amounts (Division 1 of Part 3.10);
- the work bonus (section 1073AA);
- business income (sections 1074 and 1075);
- income from financial assets (including income streams (short term) and certain income streams (long term)) (Division 1B of Part 3.10);
- income from income streams not covered by Division 1B of Part 3.10 (Division 1C of Part 3.10);
- disposal of income (sections 1106 to 1111).

Ordinary incomes of members of couples

1064-E2 If a person is a member of a couple, add the couple's ordinary incomes (on a yearly basis) and divide by 2 to work out the amount of the person's ordinary income for the purposes of this Module.

Note: For the purposes of working out a person's disability support pension rate under this Rate Calculator, Module F applies to working out the ordinary incomes of both members of the couple.

Payment of arrears of periodic compensation payments

1064-E3 If:

(a) at the time of an event that gives rise to an entitlement of a person to compensation, the person is receiving age pension, disability support pension or carer pension; and

(b) in relation to that entitlement, the person receives a payment of arrears of periodic compensation;

the person is taken to receive on each day in the periodic payments period an amount calculated by dividing the amount received by the number of days in the periodic payments period.

Note: For ***periodic payments period*** see section 17.

How to calculate a person's ordinary income free area

1064-E4 A person's ordinary income free area is worked out using Table E-1. Work out which family situation in Table E-1 applies to the person. The ordinary income free area is the corresponding amount in column 3.

Table E-1—Ordinary free area limits

Column 1 Item	Column 2 Category of person	Column 3 Basic free area per year	Column 4 Basic free area per fortnight
1.	Not member of a couple	$2,080	$80
2.	Partnered (partner getting neither pension nor benefit)	$1,820	$70
3.	Partnered (partner getting benefit)	$1,820	$70
4.	Partnered (partner getting pension)	$1,820	$70

Note 1: For ***member of a couple***, ***partnered (partner getting neither pension nor benefit)***, ***partnered (partner getting benefit)*** and ***partnered (partner getting pension)*** see section 4.

Note 3: Items 2, 3 and 4 of Table E-1 apply to members of illness separated and respite care couples.

Note 4: The basic free area limits are indexed annually in line with CPI increases (see sections 1191 to 1194).

Pension reduction for ordinary income in excess of ordinary income free area

1064-E10 A person's reduction for ordinary income is:

Ordinary income excess × 0.5

Ordinary income excess

1064-E11 A person's ordinary income excess is the person's ordinary income less the person's ordinary income free area.

Module F—Ordinary income for the purposes of disability support pension

Application of this Module

1064-F1 This Module applies only for the purposes of working out the rate of disability support pension payable to a person. It so applies to that person and, if the person is a member of a couple, to the person's partner.

Lump sum payments arising from termination of employment

1064-F2 Subject to points 1064-F4 to 1064-F14 (inclusive), if:

(a) a person's employment has been terminated; and

(b) as a result the person is entitled to a lump sum payment from the person's former employer;

the person is taken to have received the lump sum payment on the day on which the person's employment was terminated.

Certain leave payments taken to be ordinary income—employment continuing

1064-F4 If:

(a) a person is employed; and

(b) the person is on leave for a period; and

(c) the person is or was entitled to receive a leave payment (whether as a lump sum payment, as a payment that is one of a series of regular payments or otherwise) in respect of a part or all of a leave period;

the person is taken to have received ordinary income for a period (the ***income maintenance period***) equal to the leave period to which the leave payment entitlement relates.

Certain payments taken to be ordinary income—employment terminated

1064-F5 If:

(a) a person's employment has been terminated; and

(b) the person receives a termination payment (whether as a lump sum payment, as a payment that is one of a series of regular payments or otherwise);

the person is taken to have received ordinary income for a period (the ***income maintenance period***) equal to the period to which the payment relates.

More than one termination payment on a day

1064-F6 If:

(a) a person is covered by point 1064-F5; and

(b) the person receives more than one termination payment on a day;

the income maintenance period is worked out by adding the periods to which the payments relate.

Start of income maintenance period—employment continuing

1064-F7 If a person is covered by point 1064-F4, the income maintenance period starts on the first day of the leave period to which the leave payment entitlement relates.

Start of income maintenance period—employment terminated

1064-F8 If a person is covered by point 1064-F5, the income maintenance period starts, subject to point 1064-F9, on the day on which the person is paid the termination payment.

Commencement of income maintenance period where there is a second termination payment

1064-F9 If:

(a) a person who is covered by point 1064-F5 is subject to an income maintenance period (the ***first period***); and

(b) the person is paid another termination payment during that period (the ***second termination payment***);

the income maintenance period for the second termination payment starts on the day after the end of the first period.

Leave payments or termination payments in respect of periods longer than a fortnight

1064-F10 If:

(a) a person receives a leave payment or termination payment; and

(b) the payment is in respect of a period longer than a fortnight;

the person is taken to receive in a payment fortnight or part of a payment fortnight an amount calculated by:

(c) dividing the amount received by the number of days in the period to which the payment relates (the ***daily rate***); and

(d) multiplying the daily rate by the number of days in the payment fortnight that are also in the period.

1064-F11 If the Secretary is satisfied that a person is in severe financial hardship because the person has incurred unavoidable or reasonable expenditure while an income maintenance period applies to the person, the Secretary may determine that the whole, or any part, of the period does not apply to the person.

Note 1: For ***in severe financial hardship*** see subsection 19C(2) (person who is not a member of a couple) and subsection 19C(3) (person who is a member of a couple).

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

Note 3: If an income maintenance period applies to a person, then, during that period:
(a) the pension claimed may not be payable to the person; or
(b) the amount of the pension payable to the person may be reduced.

When a person receives a leave payment or a termination payment

1064-F12 For the purposes of points 1064-F4 to 1064-F11 (inclusive), a person (the ***first person***) is taken to receive a leave payment or termination payment if:
(a) the payment is made to another person:
(i) at the direction of the first person or a court; or
(ii) on behalf of the first person; or
(iii) for the benefit of the first person; or
(b) the first person waives or assigns his or her right to receive the payment.

Single payment in respect of different kinds of termination payments

1064-F13 If a person who is covered by point 1064-F5 receives a single payment in respect of different kinds of termination payments, then, for the purposes of the application of points 1064-F4 to 1064-F12 (inclusive):
(a) each part of the payment that is in respect of a different kind of termination payment is taken to be a separate payment; and

(b) the income maintenance period in respect of the single payment is worked out by adding the periods to which the separate payments relate.

Definitions

1064-F14 In this Module:

leave payment includes a payment in respect of sick leave, annual leave, maternity leave and long service leave, but does not include:

(a) an instalment of parental leave pay; or

(b) dad and partner pay.

payment fortnight means a fortnight in respect of which a disability support pension is paid, or would be paid apart from the application of an income maintenance period, to a person.

period to which the payment relates means:

(a) if the payment is a leave payment—the leave period to which the payment relates; or

(b) if the payment is a termination payment and is calculated as an amount equivalent to an amount of ordinary income that the person would (but for the termination) have received from the employment that was terminated—the period for which the person would have received that amount of ordinary income; or

(c) if the payment is a termination payment and paragraph (b) does not apply—the period of weeks (rounded down to the nearest whole number) in respect of which the person would have received ordinary income, from the employment that was terminated, of an amount equal to the amount of the termination payment if:

(i) the person's employment had continued; and

(ii) the person received ordinary income from the employment at the rate per week at which the person usually received ordinary income from the employment prior to the termination.

redundancy payment includes a payment in lieu of notice.

termination payment includes:

(a) a redundancy payment; and

(b) a leave payment relating to a person's employment that has been terminated; and

(c) any other payment that is connected with the termination of a person's employment.

Module G—Assets test

Effect of assets on maximum payment rate

1064-G1 This is how to work out the effect of a person's assets on the person's maximum payment rate:

Method statement

Step 1. Work out the value of the person's assets.

Note 1: For the treatment of the assets of members of a couple see point 1064-G2.

Note 2: For the assets that are to be disregarded in valuing a person's assets see section 1118.

Note 3: For the valuation of an asset that is subject to a charge or encumbrance see section 1121.

Step 2. Work out the person's assets value limit (see point 1064-G3 below).

Note: A person's assets value limit is the maximum value of assets the person can have without affecting the person's pension rate.

Step 3. Work out whether the value of the person's assets exceeds the person's assets value limit.

Step 4.	If the value of the person's assets does not exceed the person's assets value limit, the person's assets excess is nil.
Step 5.	If the value of the person's assets exceeds the person's assets value limit, the person's assets excess is the value of the person's assets less the person's assets value limit.
Step 6.	Use the person's assets excess to work out the person's reduction for assets using points 1064-G4 to 1064-G7 below.

Note 1: See point 1064-A1 (steps 9 and 10) for the significance of the person's reduction for assets.

Note 2: The application of the assets test is affected by provisions concerning disposal of assets (sections 1123 to 1128), retirement villages (sections 1145 to 1157) and financial hardship (sections 1129 and 1130).

Value of assets of members of couples

1064-G2 For the purposes of this Module:

(a) the value of the assets of a member of a couple is to be taken to be 50% of the sum of:
  (i) the value of the person's assets; and
  (ii) the value of the person's partner's assets; and

(b) the value of the assets of a particular kind of a member of a couple is to be taken to be 50% of the sum of:
  (i) the value of the person's assets of that kind; and
  (ii) the value of the person's partner's assets of that kind.

Assets value limit

1064-G3 A person's assets value limit is worked out using Table G-1. Work out the person's family situation and home ownership situation. The assets value limit is the corresponding amount in column 3.

Table G-1—Assets value limit

Column 1	Column 2	Column 3	
		Assets value limit	
Item	Person's family situation	Column 3A Either person or partner homeowner	column 3B Neither person nor partner homeowner
1.	Not member of a couple	$250,000	$450,000
2.	Partnered (partner getting neither pension nor benefit)	$187,500	$287,500
3.	Partnered (partner getting pension or benefit)	$187,500	$287,500

Note 1: For ***member of a couple***, ***partnered (partner getting neither pension nor benefit)*** and ***partnered (partner getting pension or benefit)*** see section 4.

Note 2: For ***homeowner*** see section 11.

Note 3: Items 2 and 3 apply to members of illness separated and respite care couples.

Note 4: The assets value limits are indexed or adjusted annually in line with CPI increases (see sections 1191 to 1194 and 1203).

Pension reduction for assets in excess of assets value limit

1064-G4 A person's reduction for assets is worked out using Table G-2. Work out which family situation applies to the person. The reduction for assets is the amount per year worked out using the corresponding calculation in column 3.

Table G-2—Reduction for assets

Column 1 Item	Column 2 Person's family situation	Column 3 Reduction
1.	Not member of a couple	$\frac{\text{Assets excess} \times 19.5}{250}$
2.	Partnered (partner getting neither pension nor benefit)	$\frac{\text{Assets excess} \times 19.5}{250}$
3.	Partner (partner getting pension or benefit)	$\frac{\text{Assets excess} \times 19.5}{250}$

Note 1: For ***member of a couple***, ***partnered (partner getting neither pension nor benefit)***, ***partnered (partner getting benefit)*** and ***partnered (partner getting pension)*** see section 4.

Note 4: For ***assets excess*** see point 1064-G5 below.

Assets excess

1064-G5 A person's ***assets excess*** is the value of the person's assets less the person's assets value limit.

1064-G7 In calculating a person's assets excess under point 1064-G5 disregard any part of the excess that is not a multiple of $250.

Module H—Remote area allowance

Remote area allowance

1064-H1 An amount by way of remote area allowance is to be added to a person's rate of pension if:

(aa) either:

(i) the person's rate of pension apart from this point is greater than nil; or

(ii) apart from this point, the person's rate of pension would be nil merely because an election by the person under subsection 1061VA(1) is in force; and

(a) the person's usual place of residence is situated in the remote area; and

(b) the person is physically present in the remote area.

Note: For ***remote area*** and ***physically present in the remote area*** see section 14.

Rate of remote area allowance

1064-H2 The rate of remote area allowance payable to a person is worked out using Table H. Work out which family situation in the Table applies to the person. The rate of remote area allowance is the corresponding amount in column 3 plus an additional corresponding amount in column 5 for each FTB child, and each regular care child, of the person.

Table H—Remote area allowance

Column 1 Item	Column 2 Person's family situation	Column 3 Basic allowance per year	Column 4 Basic allowance per fortnight	Column 5 Additional allowance per year	Column 6 Additional allowance per fortnight
1.	Not member of couple	$473.20	$18.20	$189.80	$7.30
2.	Partnered	$405.60	$15.60	$189.80	$7.30
3.	Member of illness separated couple	$473.20	$18.20	$189.80	$7.30
4.	Member of respite care couple	$473.20	$18.20	$189.80	$7.30

Table H—Remote area allowance

Column 1 Item	Column 2 Person's family situation	Column 3 Basic allowance per year	Column 4 Basic allowance per fortnight	Column 5 Additional allowance per year	Column 6 Additional allowance per fortnight
5.	Partnered (partner in gaol)	$473.20	$18.20	$189.80	$7.30

Note: For ***member of couple***, ***partnered***, ***illness separated couple***, ***respite care couple*** and ***partnered (partner in gaol)*** see section 4.

Special rule where partner has an FTB or regular care child but is not receiving a pension

1064-H5 If:

(a) a person who is a member of a couple is qualified for an amount by way of remote area allowance; and

(b) the person's partner is not receiving a pension or benefit; and

(c) the person's partner has an FTB child or a regular care child;

the child is taken, for the purposes of this Module, to be an FTB child, or a regular care child, (as the case requires) of the person.

Special rule where partner has an FTB or regular care child but is not receiving additional allowance for the child

1064-H6 If:

(a) a person who is a member of a couple is qualified for an amount by way of remote area allowance; and

(b) the person's partner has an FTB child or a regular care child; and

(c) the person's partner is not receiving additional allowance for the child;

the child is taken, for the purposes of this Module, to be an FTB child, or a regular care child, (as the case requires) of the person.

Section 1064

Special rule dealing with the death of an FTB or regular care child

1064-H7 If an FTB child, or a regular care child, of a person dies, this Module has effect, for a period of 14 weeks after the death of the child, as if the child had not died.

Note: This point does not prevent this Module having the effect it would have had if the child would otherwise have ceased to be an FTB child, or a regular care child, during that 14 weeks.

OFFICIAL: Sensitive // Legal Privilege

Part 3.3—Pension Rate Calculator B

1065 Rate of age and disability support pension (blind people)

(1) The rate of:

(a) age pension payable to a person who is permanently blind; and

(b) disability support pension payable to a person who:

(i) is permanently blind; and

(ii) has turned 21; and

(c) disability support pension payable to a person who:

(i) is permanently blind; and

(ii) has not turned 21; and

(iii) has one or more dependent children;

is to be calculated in accordance with the Rate Calculator at the end of this section.

Note 1: Module A of the Rate Calculator establishes the overall rate calculation process and the remaining Modules provide for the calculation of the component amounts used in the overall rate calculation.

Note 2: For ***dependent child*** see section 5.

(3) Where:

(a) a person who is permanently blind has a relationship with another person, whether of the same sex or a different sex (***other person***); and

(b) the relationship between them is a de facto relationship in the Secretary's opinion (formed after the Secretary has had regard to all the circumstances of the relationship, including, in particular, the matters referred to in paragraphs 4(3)(a) to (e) and subsection 4(3A));

(c) either or both of them are under the age of consent applicable in the State or Territory in which they are living;

the rate of pension payable to the person who is permanently blind is not to exceed the rate at which it would be payable to the person if the other person were the person's partner.

Note: This provision has the effect of taking into account the ordinary income, maintenance income and assets of the partner in applying the ordinary income test, maintenance income test and assets test respectively.

Rate limited for certain armed services widows

(4) If:

(a) an armed services widow is receiving a pension under Part II or IV of the Veterans' Entitlements Act at a rate determined under or by reference to subsection 30(1) of that Act; and

(b) an age or disability support pension is payable to the widow;

the rate of pension payable to the widow is not to exceed:

(c) if:

(i) the widow has been receiving the payment referred to in paragraph (a) continuously since before 1 November 1986; and

(ii) immediately before 1 November 1986, the widow was receiving a payment referred to in paragraph (b) at a rate exceeding $3,247.40; and

(iii) the pension referred to in paragraph (b) is of the same type as the one which was payable to the person before 1 November 1986;

the rate of pension received by the widow immediately before 1 November 1986; and

(d) in any other case—$3,247.40.

Note: For ***armed services widow*** see subsection 4(1).

Rate limited for certain armed services widowers

(5) If:

(a) an armed services widower is receiving a pension under Part II or IV of the Veterans' Entitlements Act at a rate

determined under or by reference to subsection 30(1) of that Act; and

(b) an age or disability support pension is payable to the widower;

the rate of pension payable to the widower is not to exceed $3,247.40.

Note: For ***armed services widower*** see subsection 4(1).

Rate limited for certain armed services widows and widowers

(6) If:

(a) an armed services widow or an armed services widower is receiving the weekly amount mentioned in paragraph 234(1)(b) of the MRCA (including a reduced weekly amount because of a choice under section 236 of the MRCA) or has received a lump sum mentioned in subsection 236(5) of the MRCA; and

(b) an age or disability support pension is payable to the widow or widower;

the rate of pension payable to the widow or widower is not to exceed $3,247.40.

Note: For ***armed services widow*** and ***armed services widower*** see subsection 4(1).

Pension Rate Calculator B

Module A—Overall rate calculation process

Method of calculating rate

1065-A1 The rate of pension is a daily rate. That rate is worked out by dividing the annual rate calculated according to this Rate Calculator by 364 (fortnightly rates are provided for information only).

Section 1065

Method statement

Step 1. Work out what would be the person's rate of pension if Pension Rate Calculator A applied to the person: the result is called the ***notional income/assets tested rate***.

Step 2. Work out the person's ***maximum basic rate*** using MODULE B below.

Step 2A. Work out the amount of pension supplement using Module BA below.

Step 3. Work out the energy supplement (if any) using Module C below.

Step 4. Add up the amounts obtained in Steps 2, 2A and 3: the result is called the ***maximum payment rate***.

Step 5. Work out the ***non-income/assets tested rate*** by:

(a) subtracting from the maximum payment rate any special employment advance deduction (see Part 3.16B); and

(b) if there is any amount remaining, subtracting from that amount any advance payment deduction (see Part 3.16A); and

(c) adding any amount payable by way of remote area allowance (see Module E).

Step 6. Compare the notional income/assets tested rate and the non-income/assets tested rate: whichever is the greater is the person's ***rate of pension***.

Note 1: The person will also be qualified for a pharmaceutical allowance under Part 2.22.

Note 2: An amount of remote area allowance is to be added under Step 5 only if the person's rate of pension after Step 4 is greater than nil.

Module B—Maximum basic rate

Maximum basic rate

1065-B1 A person's maximum basic rate depends on the person's family situation. Work out which family situation in Table B applies to the person. The maximum basic rate is the corresponding amount in column 3 of the Table.

Table B—Maximum basic rates

Column 1 Item	Column 2 Person's family situation	Column 3 Rate per year	Column 4 Rate per fortnight
1.	Not member of couple	$8,114.60	$312.10
2.	Partnered	$6,767.80	$260.30
3.	Member of illness separated couple	$8,114.60	$312.10
4.	Member of respite care couple	$8,114.60	$312.10
5.	Partnered (partner in gaol)	$8,114.60	$312.10

Note 1: For ***member of couple***, ***partnered***, ***illness separated couple***, ***respite care couple*** and ***partnered (partner in gaol)*** see section 4.

Note 2: The maximum basic rates are adjusted 6 monthly: see sections 1191 to 1198A.

Module BA—Pension supplement

Pension supplement

1065-BA1 A pension supplement amount is to be added to the person's maximum basic rate.

Residents in Australia etc.

1065-BA2 If the person is residing in Australia and:

(a) is in Australia; or
(b) is temporarily absent from Australia and has been so for a continuous period not exceeding 6 weeks;

the person's pension supplement amount is:

(c) if an election by the person under subsection 1061VA(1) is in force—the amount worked out under point 1065-BA4; and
(d) otherwise—the amount worked out under point 1065-BA3.

Residents in Australia etc.—no election in force

1065-BA3 The person's pension supplement amount is the amount worked out by:

(a) applying the applicable percentage in the following table to the combined couple rate of pension supplement; and
(b) if:
(i) the person is not partnered; and
(ii) the amount resulting from paragraph (a) is not a multiple of $2.60;

rounding the amount up or down to the nearest multiple of $2.60 (rounding up if the amount is not a multiple of $2.60 but is a multiple of $1.30).

Item	Person's family situation	Use this %
1	Not member of couple	66.33%
2	Partnered	50%
3	Member of illness separated couple	66.33%
4	Member of respite care couple	66.33%
5	Partnered (partner in gaol)	66.33%

Note: For ***combined couple rate of pension supplement***, see subsection 20A(1).

Residents in Australia etc.—election in force

1065-BA4 The person's pension supplement amount is the amount worked out as follows:

(a) work out the amount for the person under point 1065-BA3 as if the election were not in force;
(b) from that amount, subtract the person's minimum pension supplement amount.

Persons absent from Australia for more than 6 weeks

1065-BA5 If the person is not covered by point 1065-BA2, the person's pension supplement amount is the person's pension supplement basic amount.

Module C—Energy supplement

1065-C1 An energy supplement is to be added to the person's maximum basic rate if the person is residing in Australia and:
(a) is in Australia; or
(b) is temporarily absent from Australia and has been so for a continuous period not exceeding 6 weeks.

Note: Section 918 may affect the addition of the energy supplement.

1065-C2 However, this Module does not apply if quarterly energy supplement is payable to the person.

1065-C3 The person's energy supplement is the amount worked out using the following table:

Energy supplement

Item	Person's family situation	Amount of energy supplement
1	Not a member of a couple	$366.60
2	Partnered	$275.60
3	Member of an illness separated couple	$366.60
4	Member of a respite care couple	$366.60
5	Partnered (partner in gaol)	$366.60

Module E—Remote area allowance

Remote area allowance

1065-E1 An amount by way of remote area allowance is to be added to a person's rate of pension if:

(aa) either:

(i) the person's rate of pension apart from this point is greater than nil; or

(ii) apart from this point, the person's rate of pension would be nil merely because an election by the person under subsection 1061VA(1) is in force; and

(a) the person's usual place of residence is situated in the remote area; and

(b) the person is physically present in the remote area.

Note: For ***remote area*** and ***physically present in the remote area*** see section 14.

Rate of remote area allowance

1065-E2 The rate of remote area allowance payable to a person is worked out using Table E. Work out which family situation in the Table applies to the person. The rate of remote area allowance is the corresponding amount in column 3 plus an additional corresponding amount in column 5 for each FTB child, and each regular care child, of the person.

Table E—Remote area allowance

Column 1 Item	Column 2 Person's family situation	Column 3 Basic allowance per year	Column 4 Basic allowance per fortnight	Column 5 Additional allowance per year	Column 6 Additional allowance per fortnight
1.	Not member of couple	$473.20	$18.20	$189.80	$7.30
2.	Partnered	$405.60	$15.60	$189.80	$7.30

Table E—Remote area allowance

Column 1 Item	Column 2 Person's family situation	Column 3 Basic allowance per year	Column 4 Basic allowance per fortnight	Column 5 Additional allowance per year	Column 6 Additional allowance per fortnight
3.	Member of illness separated couple	$473.20	$18.20	$189.80	$7.30
4.	Member of respite care couple	$473.20	$18.20	$189.80	$7.30
5.	Partnered (partner in gaol)	$473.20	$18.20	$189.80	$7.30

Note: For ***member of couple***, ***partnered***, ***illness separated couple***, ***respite care couple*** and ***partnered (partner in gaol)*** see section 4.

Special rule where partner has an FTB or regular care child but is not receiving a pension

1065-E4 If:

(a) a person who is a member of a couple is qualified for an amount by way of remote area allowance; and

(b) the person's partner is not receiving a pension or benefit; and

(c) the person's partner has an FTB child or a regular care child;

the child is taken, for the purposes of this Module, to be an FTB child, or a regular care child, (as the case requires) of the person.

Special rule where partner has an FTB or regular care child but is not receiving additional allowance for the child

1065-E5 If:

(a) a person who is a member of a couple is qualified for an amount by way of remote area allowance; and

(b) the person's partner has an FTB child or a regular care child; and

(c) the person's partner is not receiving additional allowance for the child;

the child is taken, for the purposes of this Module, to be an FTB child, or a regular care child, (as the case requires) of the person.

Special rule dealing with the death of an FTB or regular care child

1065-E6 If an FTB child, or a regular care child, of a person dies, this Module has effect, for a period of 14 weeks after the death of the child, as if the child had not died.

Note: This point does not prevent this Module having the effect it would have had if the child would otherwise have ceased to be an FTB child, or a regular care child, during that 14 weeks.

OFFICIAL: Sensitive // Legal Privilege

Part 3.4A—Pension Rate Calculator D

1066A Rate of disability support pension (people under 21 who are not blind)

(1) The rate of disability support pension of a person who has not turned 21 is, subject to subsection (2), to be calculated in accordance with the Rate Calculator at the end of this section.

Note: Module A of the Rate Calculator establishes the overall rate calculation process and the remaining Modules provide for the calculation of the component amounts used in the overall rate calculation.

(2) Subsection (1) does not apply if:

(a) the person is permanently blind; or

(b) the person has one or more dependent children.

Note 1: The rate for a disability support pension payable to a person under 21 who is permanently blind is dealt with in section 1066B.

Note 2: For ***dependent child*** see section 5.

Note 3: The rate for a disability support pension payable to a person under 21 who has one or more dependent children is dealt with in section 1064 or 1065.

(3) A person's disability support pension rate is not to exceed the rate at which a disability support pension would be payable to that person if the person's rate were calculated using Pension Rate Calculator A at the end of section 1064.

(5) If:

(a) a person has a relationship with another person, whether of the same sex or a different sex (***other person***); and

(b) the relationship between them is a de facto relationship in the Secretary's opinion (formed after the Secretary has had regard to all the circumstances of the relationship, including, in particular, the matters referred to in paragraphs 4(3)(a) to (e) and subsection 4(3A));

(c) either or both of them are under the age of consent applicable in the State or Territory in which they are living;

the person's disability support pension rate is not to exceed the rate at which it would be payable to the person if the other person were the person's partner.

Note: This provision has the effect of taking into account the ordinary income, maintenance income and assets of the partner in applying the ordinary income test, maintenance income test and assets test respectively.

Pension Rate Calculator D

Module A—Overall rate calculation process

Method of calculating rate

1066A-A1 The rate of pension is a daily rate. That rate is worked out by dividing the annual rate calculated according to this Rate Calculator by 364 (fortnightly rates are provided for information only).

Method statement

Step 1. Work out the person's ***maximum basic rate*** using MODULE B below.

Step 1A. Work out the energy supplement (if any) using Module BA below.

Step 2. Work out the amount per year for youth disability, Supplement using MODULE C below.

Step 3. Work out the amount per year (if any) of pharmaceutical allowance using MODULE D below.

Step 4. Work out the amount per year (if any) for rent assistance in accordance with paragraph 1070A(b).

Step 5. Add up the amounts obtained in Steps 1, 1A, 2, 3 and 4: the result is called the ***maximum payment rate***.

Note: Module G contains provisions that may apply to working out, under this Rate Calculator, the ordinary income of a person, and the ordinary income of a partner of the person.

Step 6. Apply the ordinary income test using MODULE F below to work out the income reduction.

Step 9. Take the income reduction away from the maximum payment rate: the result is called the ***income reduced rate***.

Step 10. Apply the assets test using MODULE H below to work out the reduction for assets.

Step 11. Take the reduction for assets away from the maximum payment rate: the result is called the ***assets reduced rate***.

Step 12. Compare the income reduced rate and the assets reduced rate: the lower of the 2 rates, or the income reduced rate if the rates are equal, is the ***provisional annual payment rate***.

Step 13. The ***rate of pension*** is the amount obtained by:

(a) subtracting from the provisional annual payment rate any special employment advance deduction (see Part 3.16B); and

(b) if there is any amount remaining, subtracting from that amount any advance payment deduction (see Part 3.16A); and

(c) adding any amount payable by way of remote area allowance (see Module I).

Note 1: If a person's assets reduced rate is less than the person's income reduced rate, the person may be able to take advantage of provisions dealing with financial hardship (sections 1129 and 1130).

Note 2: Section 1210 deals with the application of income and assets test reductions.

Note 3: The rate calculation for a member of a couple is affected by the operation of point 1066A-A2.

Members of a couple

1066A-A2 Where 2 people are members of a couple, they will be treated as pooling their resources (income and assets) and sharing them on a 50/50 basis (see points 1066A-F2, and 1066A-H2 below). They will also be treated as sharing expenses (e.g. for rent) on a 50/50 basis (see section 1070V).

Module B—Maximum basic rate

Maximum basic rate

1066A-B1 A person's maximum basic rate is to be worked out using Table B. Work out the family situation. The maximum basic rate is the corresponding amount in column 3.

Table B—Maximum basic rates

Column 1 Item	Column 2 Person's family situation	Column 3 Rate per year	Column 4 Rate per fortnight
1	Not a member of a couple and person: (a) is under 18 years of age; and (b) is not independent; and	$7,883.20	$303.20

OFFICIAL: Sensitive // Legal Privilege

Table B—Maximum basic rates

Column 1 Item	Column 2 Person's family situation	Column 3 Rate per year	Column 4 Rate per fortnight
	(c) is not living away from the person's parental home because of a medical condition of the person		
2	Not a member of a couple and person: (a) is under 18 years of age; and (b) either: (i) is independent; or (ii) is living away from the person's parental home because of a medical condition of the person	$13,325	$512.50
3	Not a member of a couple and person: (a) has reached 18 years of age; and (b) is living at home of parent or parents; and (c) is not independent	$9,219.60	$354.60

Table B—Maximum basic rates

Column 1 Item	Column 2 Person's family situation	Column 3 Rate per year	Column 4 Rate per fortnight
4	Not a member of a couple and person: (a) has reached 18 years of age; and (b) either: (i) is not living at a home of parent or parents; or (ii) is living at a home of parent or parents, but is independent	$13,325	$512.50
5	Partnered	$13,325	$512.50
6	Member of illness separated couple, member of respite care couple or partnered (partner in gaol)	$13,325	$512.50

Note 1: For ***member of a couple***, ***partnered***, ***illness separated couple***, ***respite care couple*** and ***partnered (partner in gaol)*** see section 4.

Note 2: For ***independent*** see section 5.

Note 3: For ***living away from the person's parental home*** see subsection 23(4D).

Note 4: The rates in column 3 are adjusted annually in line with CPI changes (see section 1198B).

Module BA—Energy supplement

1066A-BA1 An energy supplement is to be added to the person's maximum basic rate if the person is residing in Australia and:

(a) is in Australia; or

(b) is temporarily absent from Australia and has been so for a continuous period not exceeding 6 weeks.

However, this Module does not apply if quarterly energy supplement is payable to the person.

Note: Section 918 may affect the addition of the energy supplement.

1066A-BA2 The person's energy supplement is the amount worked out using the following table:

Energy supplement

Item	Person's family situation for maximum basic rate	Amount of energy supplement
1	If the person's maximum basic rate is worked out under item 1 of the table in point 1066A-B1	$153.40
2	If the person's maximum basic rate is worked out under item 2, 4, 5 or 6 of the table in point 1066A-B1	$236.60
3	If the person's maximum basic rate is worked out under item 3 of the table in point 1066A-B1	$171.60

Module C—Youth disability supplement

Youth disability supplement

1066A-C1 An amount by way of youth disability supplement is to be added to a person's rate. The rate of youth disability supplement is $1,557.40 per year ($59.90 per fortnight).

Note: The rate of youth disability supplement is adjusted annually in line with CPI increases (see section 1198C).

Module D—Pharmaceutical allowance

Qualification for pharmaceutical allowance

1066A-D1 Subject to points 1066A-D2, 1066A-D3,1066A-D4 and 1066A-D6, an additional amount by way of pharmaceutical allowance is to be added to a person's maximum basic rate if the person is an Australian resident.

No pharmaceutical allowance if person receiving certain supplements under other Acts

1066A-D2 Pharmaceutical allowance is not to be added to a person's maximum basic rate if the person is receiving:

(a) veterans supplement under section 118A of the Veterans' Entitlements Act; or

(b) MRCA supplement under section 300 of the Military Rehabilitation and Compensation Act; or

(c) pharmaceutical supplement under Part 3A of the *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) Act 2006*; or

(d) pharmaceutical supplement under Part 4 of the *Treatment Benefits (Special Access) Act 2019*.

No pharmaceutical allowance if partner receiving certain supplements under other Acts

1066A-D3 Pharmaceutical allowance is not to be added to a person's maximum basic rate if:

(a) the person is a member of a couple; and

(b) the person's partner is receiving:

(i) veterans supplement under section 118A of the Veterans' Entitlements Act; or

(ii) MRCA supplement under section 300 of the Military Rehabilitation and Compensation Act; or

(iii) pharmaceutical supplement under Part 3A of the *Australian Participants in British Nuclear Tests and*

British Commonwealth Occupation Force (Treatment) Act 2006; or

(iv) pharmaceutical supplement under Part 4 of the *Treatment Benefits (Special Access) Act 2019*; and

(c) the person's partner is not receiving a service pension or a veteran payment.

No pharmaceutical allowance before advance payment period ends

1066A-D4 Pharmaceutical allowance is not to be added to a person's maximum basic rate if:

(a) the person has received an advance pharmaceutical allowance under Part 2.23 of this Act; and

(b) the person's advance payment period has not ended.

Note: For ***advance payment period*** see point 1066A-D5.

Advance payment period

1066A-D5 A person's advance payment period:

(a) starts on the day on which the advance pharmaceutical allowance is paid to the person; and

(b) ends after the number of paydays worked out using the following formula have passed:

$$\frac{\text{amount of advance} \times 26}{\text{pharmaceutical allowance rate}}$$

where:

amount of advance is the amount of the advance paid to the person.

pharmaceutical allowance rate is the yearly amount of pharmaceutical allowance which would be added to the person's maximum basic rate in working out the instalment for the day on which the advance is paid if pharmaceutical allowance were to be added to the person's maximum basic rate on that day.

No pharmaceutical allowance if annual limit reached

1066A-D6 Pharmaceutical allowance is not to be added to a person's maximum basic rate if:

(a) the person has received an advance pharmaceutical allowance during the current calendar year; and

(b) the total amount paid to the person for that year by way of:

(i) pharmaceutical allowance; and

(ii) advance pharmaceutical allowance;

equals the total amount of pharmaceutical allowance that would have been paid to the person during that year if the person had not received any advance pharmaceutical allowance.

Note 1: For the amount ***paid*** to a person by way of pharmaceutical allowance see subsections 19A(2) to (6).

Note 2: The annual limit is affected by:

- how long during the calendar year the person was on pension or benefit;
- the rate of pharmaceutical allowance the person attracts at various times depending on the person's family situation.

Amount of pharmaceutical allowance

1066A-D8 The amount of pharmaceutical allowance is the amount per year worked out using the following Table:

Pharmaceutical allowance amount table

Column 1 Item	Column 2 Person's family situation	Column 3 Amount per year	Column 4 Amount per fortnight
1.	Not member of couple	$135.20	$5.20
2.	Partnered	$67.60	$2.60
3.	Member of illness separated couple	$135.20	$5.20
4.	Member of respite care couple	$135.20	$5.20

5.	Partnered (partner getting service pension)	$67.60	$2.60
6.	Partnered (partner in gaol)	$135.20	$5.20

Note 1: For ***member of couple***, ***partnered***, ***illness separated couple***, ***respite care couple*** and ***partnered (partner in gaol)*** see section 4.

Note 2: The amounts in column 3 are adjusted annually in line with CPI increases (see section 1206A).

Module F—Ordinary income test

Effect of income on maximum payment rate

1066A-F1 This is how to work out the effect of a person's ordinary income on the person's maximum payment rate:

Method statement

Step 1. Work out the amount of the person's ordinary income on a yearly basis.

Note 1: For the treatment of the ordinary income of members of a couple see point 1066A-F2.

Note 2: Module G contains provisions that may apply to working out, under this Rate Calculator, the ordinary income of a person, and the ordinary income of a partner of the person.

Step 2. Work out the person's ordinary income free area (see point 1066A-F3 below).

Note: A person's ordinary income free area is the amount of ordinary income that the person can have without any deduction being made from the person's maximum payment.

Step 3. Work out whether the person's ordinary income exceeds the person's ordinary income free area.

Step 4.	If the person's ordinary income does not exceed the person's ordinary income free area, the person's ordinary income excess is nil.
Step 5.	If the person's ordinary income exceeds the person's ordinary income free area, the person's ordinary income excess is the person's ordinary income less the person's ordinary income free area.
Step 6.	Use the person's ordinary income excess to work out the person's reduction for ordinary income using points 1066A-F9 to 1066A-F11 below.

Note 1: See point 1066A-A1 (Steps 6 to 9) for the significance of the person's reduction for ordinary income.

Note 2: The application of the ordinary income test is affected by provisions concerning:

- the general concept of ordinary income and the treatment of certain income amounts (Division 1 of Part 3.10);
- business income (sections 1074 and 1075);
- income from financial assets (including income streams (short term) and certain income streams (long term)) (Division 1B of Part 3.10);
- income from income streams not covered by Division 1B of Part 3.10 (Division 1C of Part 3.10);
- disposal of income (sections 1106 to 1111).

Ordinary incomes of members of couples

1066A-F2 If a person is a member of a couple, add the couple's ordinary incomes (on a yearly basis) and divide by 2 to work out the amount of the person's ordinary income for the purposes of this Module.

Payment of arrears of periodic compensation payments

1066A-F2A If:

(a) at the time of an event that gives rise to an entitlement of a person to compensation, the person is receiving disability support pension; and

(b) in relation to that entitlement, the person receives a payment of arrears of periodic compensation;

the person is taken to receive on each day in the periodic payments period an amount calculated by dividing the amount received by the number of days in the periodic payments period.

Note: For ***periodic payments period*** see section 17.

How to calculate a person's ordinary income free area

1066A-F3 A person's ordinary income free area is worked out using Table F-1. Work out which family situation in Table F-1 applies to the person. The ordinary income free area is the corresponding amount in column 3.

Table F-1—Ordinary income free area

Column 1 Item	Column 2 Category of person	Column 3 Basic free area per year	Column 4 Basic free area per fortnight
1.	Not member of a couple	$2,184	$80
2.	Partnered (partner getting neither pension nor benefit)	$1,924	$70
3.	Partnered—(partner getting benefit)	$1,924	$70
4.	Partnered—(partner getting pension)	$1,924	$70

Note 1: For ***member of a couple***, ***partnered (partner getting neither pension nor benefit)***, ***partnered (partner getting benefit)*** and ***partnered (partner getting pension)*** see section 4.

Note 3: Items 2, 3 and 4 of Table F-1 apply to members of illness separated couples.

Note 4: The basic free area limits are indexed annually in line with CPI increases (see sections 1191 to 1194).

Pension reduction for ordinary income in excess of ordinary income free area

1066A-F9 A person's reduction for ordinary income is:

Ordinary income excess × 0.5

Ordinary income excess

1066A-F10 A person's ***ordinary income excess*** is the person's ordinary income less the person's ordinary income free area.

Module G—Payments taken to be ordinary income

Application of this Module

1066A-G1 This Module applies to a person and, if the person is a member of a couple, the person's partner.

Lump sum payments arising from termination of employment

1066A-G2 Subject to points 1066A-G4 to 1066A-G14 (inclusive), if:

(a) a person's employment has been terminated; and

(b) as a result the person is entitled to a lump sum payment from the person's former employer;

the person is taken to have received the lump sum payment on the day on which the person's employment was terminated.

Certain leave payments taken to be ordinary income—employment continuing

1066A-G4 If:

(a) a person is employed; and

(b) the person is on leave for a period; and

(c) the person is or was entitled to receive a leave payment (whether as a lump sum payment, as a payment that is one of a series of regular payments or otherwise) in respect of a part or all of a leave period;

the person is taken to have received ordinary income for a period (the ***income maintenance period***) equal to the leave period to which the leave payment entitlement relates.

Certain payments taken to be ordinary income—employment terminated

1066A-G5 If:

(a) a person's employment has been terminated; and

(b) the person receives a termination payment (whether as a lump sum payment, as a payment that is one of a series of regular payments or otherwise);

the person is taken to have received ordinary income for a period (the ***income maintenance period***) equal to the period to which the payment relates.

More than one termination payment on a day

1066A-G6 If:

(a) a person is covered by point 1066A-G5; and

(b) the person receives more than one termination payment on a day;

the income maintenance period is worked out by adding the periods to which the payments relate.

Start of income maintenance period—employment continuing

1066A-G7 If a person is covered by point 1066A-G4, the income maintenance period starts on the first day of the leave period to which the leave payment entitlement relates.

Start of income maintenance period—employment terminated

1066A-G8 If a person is covered by point 1066A-G5, the income maintenance period starts, subject to point 1066A-G9, on the day on which the person is paid the termination payment.

Commencement of income maintenance period where there is a second termination payment

1066A-G9 If:

(a) a person who is covered by point 1066A-G5 is subject to an income maintenance period (the ***first period***); and

(b) the person is paid another termination payment during that period (the ***second termination payment***);

the income maintenance period for the second termination payment starts on the day after the end of the first period.

Leave payments or termination payments in respect of periods longer than a fortnight

1066A-G10 If:

(a) a person receives a leave payment or termination payment; and

(b) the payment is in respect of a period longer than a fortnight;

the person is taken to receive in a payment fortnight or part of a payment fortnight an amount calculated by:

(c) dividing the amount received by the number of days in the period to which the payment relates (the ***daily rate***); and

(d) multiplying the daily rate by the number of days in the payment fortnight that are also in the period.

1066A-G11 If the Secretary is satisfied that a person is in severe financial hardship because the person has incurred unavoidable or reasonable expenditure while an income maintenance period applies to the person, the Secretary may determine that the whole, or any part, of the period does not apply to the person.

Note 1: For ***in severe financial hardship*** see subsection 19C(2) (person who is not a member of a couple) and subsection 19C(3) (person who is a member of a couple).

Note 2: For ***unavoidable or reasonable expenditure*** see subsection 19C(4).

Note 3: If an income maintenance period applies to a person, then, during that period:
(a) the pension claimed may not be payable to the person; or
(b) the amount of the pension payable to the person may be reduced.

When a person receives a leave payment or a termination payment

1066A-G12 For the purposes of points 1066A-G4 to 1066A-G11 (inclusive), a person (the ***first person***) is taken to receive a leave payment or termination payment if:
(a) the payment is made to another person:
(i) at the direction of the first person or a court; or
(ii) on behalf of the first person; or
(iii) for the benefit of the first person; or
(b) the first person waives or assigns his or her right to receive the payment.

Single payment in respect of different kinds of termination payments

1066A-G13 If a person who is covered by point 1066A-G5 receives a single payment in respect of different kinds of termination payments, then, for the purposes of the application of points 1066A-G4 to 1066A-G12 (inclusive):
(a) each part of the payment that is in respect of a different kind of termination payment is taken to be a separate payment; and
(b) the income maintenance period in respect of the single payment is worked out by adding the periods to which the separate payments relate.

Definitions

1066A-G14 In this Module:

leave payment includes a payment in respect of sick leave, annual leave, maternity leave and long service leave, but does not include:

(a) an instalment of parental leave pay; or

(b) dad and partner pay.

payment fortnight means a fortnight in respect of which a disability support pension is paid, or would be paid apart from the application of an income maintenance period, to a person.

period to which the payment relates means:

(a) if the payment is a leave payment—the leave period to which the payment relates; or

(b) if the payment is a termination payment and is calculated as an amount equivalent to an amount of ordinary income that the person would (but for the termination) have received from the employment that was terminated—the period for which the person would have received that amount of ordinary income; or

(c) if the payment is a termination payment and paragraph (b) does not apply—the period of weeks (rounded down to the nearest whole number) in respect of which the person would have received ordinary income, from the employment that was terminated, of an amount equal to the amount of the termination payment if:

(i) the person's employment had continued; and

(ii) the person received ordinary income from the employment at the rate per week at which the person usually received ordinary income from the employment prior to the termination.

redundancy payment includes a payment in lieu of notice.

termination payment includes:

(a) a redundancy payment; and

(b) a leave payment relating to a person's employment that has been terminated; and

(c) any other payment that is connected with the termination of a person's employment.

Module H—Assets test

Effect of assets on maximum payment rate

1066A-H1 This is how to work out the effect of a person's assets on the person's maximum payment rate:

Method statement

Step 1. Work out the value of the person's assets.

Note 1: For the treatment of the assets of members of a couple see point 1066A-H2.

Note 2: For the assets that are to be disregarded in valuing a person's assets see section 1118.

Note 3: For the valuation of an asset that is subject to a charge or encumbrance see section 1121.

Step 2. Work out the person's assets value limit (see point 1066A-H3 below).

Note: A person's assets value limit is the maximum value of assets the person can have without affecting the person's pension rate.

Step 3. Work out whether the value of the person's assets exceeds the person's assets value limit.

Step 4. If the value of the person's assets does not exceed the person's assets value limit, the person's assets excess is nil.

Step 5.	If the value of the person's assets exceeds the person's assets value limit, the person's assets excess is the value of the person's assets less the person's assets value limit.
Step 6.	Use the person's assets excess to work out the person's reduction for assets using points 1066A-H4 to 1066A-H7 below.

Note 1: See point 1066A-A1 Steps 10 and 11 for the significance of the person's reduction for assets.

Note 2: The application of the assets test is affected by provisions concerning disposal of assets (sections 1123 to 1128), retirement villages (sections 1145 to 1157) and financial hardship (sections 1129 and 1130).

Value of assets of members of couples

1066A-H2 For the purposes of this Module:

(a) the value of the assets of a member of a couple is to be taken to be 50% of the sum of:
  (i) the value of the person's assets; and
  (ii) the value of the person's partner's assets; and

(b) the value of the assets of a particular kind of a member of a couple is to be taken to be 50% of the sum of:
  (i) the value of the person's assets of that kind; and
  (ii) the value of the person's partner's assets of that kind.

Assets value limit

1066A-H3 A person's assets value limit is worked out using Table H-1. Work out the person's family situation and home ownership situation. The assets value limit is the corresponding amount in column 3.

Table H-1—Assets value limit

Column 1	Column 2	Column 3	
		Assets value limit	
Item	Person's family situation	Column 3A Either person or partner homeowner	Column 3B Neither person nor partner homeowner
1.	Not member of a couple	$250,000	$450,000
2.	Partnered (partner getting neither pension nor benefit)	$187,500	$287,500
3.	Partnered (partner getting pension or benefit)	$187,500	$287,500

Note 1: For ***member of a couple***, ***partnered (partner getting neither pension nor benefit)*** and ***partnered (partner getting pension or benefit)*** see section 4.

Note 2: For ***homeowner*** see section 11.

Note 3: Items 2 and 3 apply to members of illness separated couples.

Note 4: The assets value limits are indexed or adjusted annually in line with CPI increases (see sections 1191 to 1194 and 1203).

Pension reduction for assets in excess of assets value limit

1066A-H4 A person's reduction for assets is worked out using Table H-2. Work out which family situation applies to the person. The reduction for assets is the amount per year worked out using the corresponding calculation in column 3.

Table H-2—Reduction for assets		
Column 1 **Item**	**Column 2** **Person's family situation**	**Column 3** **Reduction**
1.	Not member of couple	$\frac{\text{Assets excess} \times 19.5}{250}$
2.	Partnered (partner getting neither pension nor benefit)	$\frac{\text{Assets excess} \times 19.5}{250}$
3.	Partner (partner getting pension or benefit)	$\frac{\text{Assets excess} \times 19.5}{250}$

Note 1: For ***member of a couple***, ***partnered (partner getting neither pension nor benefit)***, ***partnered (partner getting benefit)*** and ***partnered (partner getting pension)*** see section 4.

Note 3: For ***assets excess*** see point 1066A-H5 below.

Assets excess

1066A-H5 A person's ***assets excess*** is the value of the person's assets less the person's assets value limit.

1066A-H7 In calculating a person's assets excess under point 1066A-H5 disregard any part of the excess that is not a multiple of $250.

Module I—Remote area allowance

Remote area allowance

1066A-I1 An amount by way of remote area allowance is to be added to a person's rate of pension if:

(aa) either:

(i) the person's rate of pension apart from this point is greater than nil; or

(ii) apart from this point, the person's rate of pension would be nil merely because an advance pharmaceutical allowance has been paid to the person under Part 2.23 of this Act; and

(a) the person's usual place of residence is situated in the remote area; and

(b) the person is physically present in the remote area.

Note: For ***remote area*** and ***physically present in the remote area*** see section 14.

Rate of remote area allowance

1066A-I2 The rate of remote area allowance payable to a person is worked out using Table I. Work out which family situation in the Table applies to the person. The rate of remote area allowance is the corresponding amount in column 3 plus an additional corresponding amount in column 5 for each FTB child, and each regular care child, of the person.

Table I—Remote area allowance

Column 1 Item	Column 2 Person's family situation	Column 3 Basic allowance per year	Column 4 Basic allowance per fortnight	Column 5 Additional allowance per year	Column 6 Additional allowance per fortnight
1.	Not member of couple	$473.20	$18.20	$189.80	$7.30
2.	Partnered	$405.60	$15.60	$189.80	$7.30
3.	Member of illness separated couple	$473.20	$18.20	$189.80	$7.30
4.	Member of respite care couple	$473.20	$18.20	$189.80	$7.30

Section 1066A

Table I—Remote area allowance

Column 1 Item	Column 2 Person's family situation	Column 3 Basic allowance per year	Column 4 Basic allowance per fortnight	Column 5 Additional allowance per year	Column 6 Additional allowance per fortnight
5.	Partnered (partner in gaol)	$473.20	$18.20	$189.80	$7.30

Note: For ***member of couple***, ***partnered***, ***illness separated couple***, ***respite care couple*** and ***partnered (partner in gaol)*** see section 4.

Special rule where partner has an FTB or regular care child but is not receiving a pension

1066A-I4 If:

(a) a person who is a member of a couple is qualified for an amount by way of additional allowance; and

(b) the person's partner is not receiving a pension or benefit; and

(c) the person's partner has an FTB child or a regular care child;

the child is taken, for the purposes of this Module, to be an FTB child, or a regular care child, (as the case requires) of the person.

Special rule where partner has an FTB or regular care child but is not receiving additional allowance for the child

1066A-I5 If:

(a) a person who is a member of a couple is qualified for an amount by way of remote area allowance; and

(b) the person's partner has an FTB child or a regular care child; and

(c) the person's partner is not receiving additional allowance for the child;

the child is taken, for the purposes of this Module, to be an FTB child, or a regular care child, (as the case requires) of the person.

OFFICIAL: Sensitive // Legal Privilege

Special rule dealing with the death of an FTB or regular care child

1066A-I6 If an FTB child, or a regular care child, of a person dies, this Module has effect, for a period of 14 weeks after the death of the child, as if the child had not died.

Note: This point does not prevent this Module having the effect it would have had if the child would otherwise have ceased to be an FTB child, or a regular care child, during that 14 weeks.

OFFICIAL: Sensitive // Legal Privilege

Part 3.4B—Pension Rate Calculator E

1066B Rate of disability support pension (people under 21 who are blind)

(1) The rate of disability support pension of a person who has not turned 21 and is permanently blind is to be calculated in accordance with the Rate Calculator at the end of this section.

Note: Module A of the Rate Calculator establishes the overall rate calculation process and the remaining Modules provide for the calculation of the component amounts used in the overall rate calculation.

(1A) Subsection (1) does not apply if the person has one or more dependent children.

Note 1: The rate for a disability support pension payable to a person under 21 who has one or more dependent children is dealt with in section 1065.

Note 2: For ***dependent child*** see section 5.

(2) A person's disability support pension rate is not to exceed the rate at which a disability support pension would be payable to that person if the person's rate were calculated using Pension Rate Calculator B at the end of section 1065.

(4) Where:

(a) a person who is permanently blind has a relationship with another person, whether of the same sex or a different sex (***other person***); and

(b) the relationship between them is a de facto relationship in the Secretary's opinion (formed after the Secretary has had regard to all the circumstances of the relationship, including, in particular, the matters referred to in paragraphs 4(3)(a) to (e) and subsection 4(3A));

(c) that other person is under the age of consent applicable in the State or Territory in which the person is living;

the rate of disability support pension payable to the person who is permanently blind is not to exceed the rate at which it would be payable to the person if the other person were the person's partner.

Pension Rate Calculator E

Module A—Overall rate calculation process

Method of calculating rate

1066B-A1 The rate of pension is a daily rate. That rate is worked out by dividing the annual rate calculated according to this Rate Calculator by 364 (fortnightly rates are provided for information only).

Method statement

Step 1. Work out what would be the person's rate of pension if Pension Rate Calculator D applied to the person: the result is called the ***notional income/assets tested rate***.

Step 2. Work out the person's ***maximum basic rate*** using MODULE B below.

Step 2A. Work out the energy supplement (if any) using Module BA below.

Step 3.	Work out the amount per year for youth disability supplement using MODULE C below.
Step 4.	Work out the amount per year (if any) of pharmaceutical allowance using MODULE D below.
Step 5.	Add up the amounts obtained in Steps 2, 2A, 3 and 4: the result is called the ***maximum payment rate***.
Step 6.	Work out the ***non-income/assets tested rate*** by: (a) subtracting from the maximum payment rate any special employment advance deduction (see Part 3.16B); and (b) if there is any amount remaining, subtracting from that amount any advance payment deduction (see Part 3.16A); and (c) adding any amount payable by way of remote area allowance (see Module F).
Step 7.	Compare the notional income/assets tested rate and the non-income/assets tested rate: whichever is the greater is the person's ***rate of pension***.

Note: An amount of remote area allowance is to be added under Step 6 only if the person's rate of pension after Step 5 is greater than nil.

Module B—Maximum basic rate

Maximum basic rate

1066B-B1 A person's maximum basic rate is to be worked out using Table B. Work out the family situation. The maximum basic rate is the corresponding amount in column 3 of the Table.

Table B—Maximum basic rates

Column 1 Item	Column 2 Person's family situation	Column 3 Rate per year	Column 4 Rate per fortnight
1	Not a member of a couple and person: (a) is under 18 years of age; and (b) is not independent; and (c) is not living away from the person's parental home because of a medical condition of the person	$7,883.20	$303.20
2	Not a member of a couple and person: (a) is under 18 years of age; and (b) either: (i) is independent; or (ii) is living away from the person's parental home because of a medical condition of the person	$13,325	$512.50

Table B—Maximum basic rates

Column 1 Item	Column 2 Person's family situation	Column 3 Rate per year	Column 4 Rate per fortnight
3	Not a member of a couple and person: (a) has reached 18 years of age; and (b) is living at home of parent or parents; and (c) is not independent	$9,219.60	$354.60
4	Not a member of a couple and person: (a) has reached 18 years of age; and (b) either: (i) is not living at a home of parent or parents; or (ii) is living at a home of parent or parents, but is independent	$13,325	$512.50
5	Partnered	$13,325	$512.50
6	Member of illness separated couple, member of respite care couple or partnered (partner in gaol)	$13,325	$512.50

Note 1: For ***member of a couple***, ***partnered***, ***illness separated couple***, ***respite care couple*** and ***partnered (partner in gaol)*** see section 4.

Note 2: For ***independent*** see section 5.

Note 3: For ***living away from the person's parental home*** see subsection 23(4D).

Note 4: The rates in column 3 are adjusted annually in line with CPI changes (see section 1198B).

Module BA—Energy supplement

1066B-BA1 An energy supplement is to be added to the person's maximum basic rate if the person is residing in Australia and:

(a) is in Australia; or

(b) is temporarily absent from Australia and has been so for a continuous period not exceeding 6 weeks.

However, this Module does not apply if quarterly energy supplement is payable to the person.

Note: Section 918 may affect the addition of the energy supplement.

1066B-BA2 The person's energy supplement is the amount worked out using the following table:

Energy supplement

Item	Person's family situation for maximum basic rate	Amount of energy supplement
1	If the person's maximum basic rate is worked out under item 1 of the table in point 1066B-B1	$153.40
2	If the person's maximum basic rate is worked out under item 2, 4, 5 or 6 of the table in point 1066B-B1	$236.60
3	If the person's maximum basic rate is worked out under item 3 of the table in point 1066B-B1	$171.60

Module C—Youth disability supplement

Youth disability supplement

1066B-C1 An amount by way of youth disability supplement is to be added to a person's rate. The rate of youth disability supplement is $1,557.40 per year ($59.90 per fortnight).

Note: The rate of youth disability supplement is adjusted annually in line with CPI increases (see section 1198C).

Module D—Pharmaceutical allowance

Qualification for pharmaceutical allowance

1066B-D1 Subject to points 1066B-D2, 1066B-D3, 1066B-D4 and 1066B-D6, an additional amount by way of pharmaceutical allowance is to be added to a person's maximum basic rate if the person is an Australian resident.

No pharmaceutical allowance if person receiving certain supplements under other Acts

1066B-D2 Pharmaceutical allowance is not to be added to a person's maximum basic rate if the person is receiving:

(a) veterans supplement under section 118A of the Veterans' Entitlements Act; or

(b) MRCA supplement under section 300 of the Military Rehabilitation and Compensation Act; or

(c) pharmaceutical supplement under Part 3A of the *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) Act 2006*; or

(d) pharmaceutical supplement under Part 4 of the *Treatment Benefits (Special Access) Act 2019*.

No pharmaceutical allowance if partner receiving certain supplements under other Acts

1066B-D3 Pharmaceutical allowance is not to be added to a person's maximum basic rate if:

(a) the person is a member of a couple; and

(b) the person's partner is receiving:

(i) veterans supplement under section 118A of the Veterans' Entitlements Act; or

(ii) MRCA supplement under section 300 of the Military Rehabilitation and Compensation Act; or

(iii) pharmaceutical supplement under Part 3A of the *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) Act 2006*; or

(iv) pharmaceutical supplement under Part 4 of the *Treatment Benefits (Special Access) Act 2019*; and

(c) the person's partner is not receiving a service pension or a veteran payment.

No pharmaceutical allowance before advance payment period ends

1066B-D4 Pharmaceutical allowance is not to be added to a person's maximum basic rate if:

(a) the person has received an advance pharmaceutical allowance under Part 2.23 of this Act; and

(b) the person's advance payment period has not ended.

Note: For ***advance payment period*** see point 1066B-D5.

Advance payment period

1066B-D5 A person's advance payment period:

(a) starts on the day on which the advance pharmaceutical allowance is paid to the person; and

(b) ends after the number of paydays worked out using the following formula have passed:

$$\frac{\text{amount of advance} \times 26}{\text{pharmaceutical allowance rate}}$$

where:

amount of advance is the amount of the advance paid to the person.

pharmaceutical allowance rate is the yearly amount of pharmaceutical allowance which would be added to the person's maximum basic rate in working out the instalment for the day on which the advance is paid if pharmaceutical allowance were to be added to the person's maximum basic rate on that day.

No pharmaceutical allowance if annual limit reached

1066B-D6 Pharmaceutical allowance is not to be added to a person's maximum basic rate if:

(a) the person has received an advance pharmaceutical allowance during the current calendar year; and

(b) the total amount paid to the person for that year by way of:

(i) pharmaceutical allowance; and

(ii) advance pharmaceutical allowance;

equals the total amount of pharmaceutical allowance that would have been paid to the person during that year if the person had not received any advance pharmaceutical allowance.

Note 1: For the amount ***paid*** to a person by way of pharmaceutical allowance see subsections 19A(2) to (6).

Note 2: The annual limit is affected by:

- how long during the calendar year the person was on pension or benefit;
- the rate of pharmaceutical allowance the person attracts at various times depending on the person's family situation.

Amount of pharmaceutical allowance

1066B-D8 The amount of pharmaceutical allowance is the amount per year worked out using the following Table:

Pharmaceutical allowance amount table

Column 1 Item	Column 2 Person's family situation	Column 3 Amount per year	Column 4 Amount per fortnight
1.	Not member of couple	$135.20	$5.20
2.	Partnered	$67.60	$2.60
3.	Member of illness separated couple	$135.20	$5.20
4.	Member of respite care couple	$135.20	$5.20
5.	Partnered (partner getting service pension)	$67.60	$2.60
6.	Partnered (partner in gaol)	$135.20	$5.20

Note 1: For ***member of couple***, ***partnered***, ***illness separated couple***, ***respite care couple*** and ***partnered (partner in gaol)*** see section 4.

Note 2: The amounts in column 3 are adjusted annually in line with CPI increases (see section 1206A).

Module F—Remote area allowance

Remote area allowance

1066B-F1 An amount by way of remote area allowance is to be added to a person's rate of pension if:

(aa) either:

(i) the person's rate of pension apart from this point is greater than nil; or

(ii) apart from this point, the person's rate of pension would be nil merely because an advance pharmaceutical

allowance has been paid to the person under Part 2.23 of this Act; and

(a) the person's usual place of residence is situated in the remote area; and

(b) the person is physically present in the remote area.

Note: For ***remote area*** and ***physically present in the remote area*** see section 14.

Rate of remote area allowance

1066B-F2 The rate of remote area allowance payable to a person is worked out using Table F. Work out which family situation in the Table applies to the person. The rate of remote area allowance is the corresponding amount in column 3 plus an additional corresponding amount in column 5 for each FTB child, and each regular care child, of the person.

Table F—Remote area allowance

Column 1 Item	Column 2 Person's family situation	Column 3 Basic allowance per year	Column 4 Basic allowance per fortnight	Column 5 Additional allowance per year	Column 6 Additional allowance per fortnight
1.	Not member of couple	$473.20	$18.20	$189.80	$7.30
2.	Partnered	$405.60	$15.60	$189.80	$7.30
3.	Member of illness separated couple	$473.20	$18.20	$189.80	$7.30
4.	Member of respite care couple	$473.20	$18.20	$189.80	$7.30
5.	Partnered (partner in gaol)	$473.20	$18.20	$189.80	$7.30

Note: For ***member of couple***, ***partnered***, ***illness separated couple***, ***respite care couple*** and ***partnered (partner in gaol)*** see section 4.

Special rule where partner has an FTB or regular care child but is not receiving a pension

1066B-F4 If:

(a) a person who is a member of a couple is qualified for an amount by way of remote area allowance; and

(b) the person's partner is not receiving a pension or benefit; and

(c) the person's partner has an FTB child or a regular care child;

the child is taken, for the purposes of this Module, to be an FTB child, or a regular care child, (as the case requires) of the person.

Special rule where partner has an FTB or regular care child but is not receiving additional allowance for the child

1066B-F5 If:

(a) a person who is a member of a couple is qualified for an amount by way of remote area allowance; and

(b) the person's partner has an FTB child or a regular care child; and

(c) the person's partner is not receiving additional allowance for the child;

the child is taken, for the purposes of this Module, to be an FTB child, or a regular care child, (as the case requires) of the person.

Special rule dealing with the death of an FTB or regular care child

1066B-F6 If an FTB child, or a regular care child, of a person dies, this Module has effect, for a period of 14 weeks after the death of the child, as if the child had not died.

Note: This point does not prevent this Module having the effect it would have had if the child would otherwise have ceased to be an FTB child, or a regular care child, during that 14 weeks.

OFFICIAL: Sensitive // Legal Privilege

Part 3.5—Youth Allowance Rate Calculator

1067 Definitions

General definitions

(1) In this Part:

accommodated independent person has the meaning given by section 1067B.

independent has the meaning given by section 1067A.

Note: This definition also applies in Parts 2.11, 2.11B, 3.4A, 3.4B and 3.7.

in State care has the meaning given by subsection 1067A(8).

in supported State care, in relation to a person, means being a person in State care in respect of whom both of the following apply:

(a) the person qualifies for payments under a law of, or a non-statutory scheme administered by, a State or Territory for the making of any payments by, or by the authority of, the State or Territory to or in respect of the person for his or her upkeep;

(b) such payments are being made.

in unsupported State care, in relation to a person, means being a person in State care in respect of whom either of the following applies:

(a) the person does not qualify for payments under a law of, or a non-statutory scheme administered by, a State or Territory for the making of any payments by, or by the authority of, the State or Territory to or in respect of the person for his or her upkeep;

(b) the person qualifies, but such payments are not being made.

living at home has the meaning given by section 1067E.

OFFICIAL: Sensitive // Legal Privilege

long term income support student has the meaning given by section 1067F.

member of a YA couple, in sections 1067A and 1067B, has the meaning given by section 1067C.

premises or lodgings means accommodation of any kind for which rent (within the meaning of subsection 13(2)) is payable.

required to live away from home has the meaning given by section 1067D.

1067A When a person is regarded as independent

Application

(1) This section applies to determine whether a person is to be regarded as independent for the purposes of this Part and Parts 2.11, 2.11B, 3.4A, 3.4B and 3.7. A person is not to be regarded as independent except as provided by this section.

Member of a YA couple

(2) A person is independent if the person is, or has been, a member of a YA couple (see section 1067C).

Person with a dependent child

(3) A person is independent if:
  (a) the person has a natural child, adoptive child or relationship child who is wholly or substantially dependent on the person or his or her partner; or
  (b) the person previously had a natural child, adoptive child or relationship child who was wholly or substantially dependent on the person or on a person who, at the time, was the person's partner.

Person at least a certain age

(4) For the purposes of Parts 2.11 and 2.11B, this Part and section 1070G, a person is independent at a time in a period specified in an item of the table if at the time the person is at least the age specified in the item:

Age when person becomes independent

Item	Period	Age
1	The period starting at the start of 1 April 2010 and ending at the end of 31 December 2010	24 years
2	The year 2011	23 years
3	A year after 2011	22 years

(4A) For the purposes of Parts 3.4A, 3.4B and 3.7, except section 1070G, a person is independent if the person is at least 25 years old.

Orphan

(5) A person is independent if both of the person's parents are dead, whether or not the person is dependent, or was last dependent, on someone other than his or her parents.

If parents cannot exercise responsibilities

(6) A person is independent if both of the person's parents are (or, if the person has only one parent, that parent is):

(a) serving a prison sentence; or

(b) mentally incapacitated and likely to remain so incapacitated for an indefinite period; or

(c) living in a nursing home and likely to remain there for an indefinite period; or

(d) missing;

whether or not the person is dependent, or was last dependent, on someone other than a parent of the person.

OFFICIAL: Sensitive // Legal Privilege

Refugee

(7) A person is independent if the person:

(a) is the holder, within the meaning of the Migration (1993) Regulations, of a Group 1.3 entry permit (permanent resident) (refugee and humanitarian); or

(b) while the holder of such a permit, was granted Australian citizenship.

However, a person is not independent under this subsection if the person has a parent living in Australia, or is wholly or substantially dependent on someone else on a long-term basis.

Person in State care

(8) A person is independent if the person is not living with a parent, and:

(a) the person is in the guardianship, care or custody of a court, a Minister, or a Department, of the Commonwealth, a State or a Territory; or

(b) there is a current direction from such a court, Minister or Department placing the person in the guardianship, care or custody of someone who is not the person's parent; or

(c) the person stopped being in a situation described in paragraph (a) or (b) only because of his or her age.

A person to whom this subsection applies is taken, for the purposes of this Part to be ***in State care***.

Unreasonable to live at home

(9) A person is independent if:

(a) the person cannot live at the home of either or both of his or her parents:

(i) because of extreme family breakdown or other similar exceptional circumstances; or

(ii) because it would be unreasonable to expect the person to do so as there would be a serious risk to his or her

physical or mental well-being due to violence, sexual abuse or other similar unreasonable circumstances; or

(iii) because the parent or parents are unable to provide the person with a suitable home owing to a lack of stable accommodation; and

(b) the person is not receiving continuous support, whether directly or indirectly and whether financial or otherwise, from a parent of the person or from another person who is acting as the person's guardian on a long-term basis; and

(c) the person is not receiving, on a continuous basis, any payments in the nature of income support (other than a social security benefit) from the Commonwealth, a State or a Territory.

People who are self-supporting

(10) A person is independent if the person has supported himself or herself through paid work consisting of:

(a) full-time employment of on average 30 hours per week for at least 18 months during any period of 2 years; or

(b) part-time employment of at least 15 hours per week for at least 2 years since the person last left secondary school; or

(c) for the purposes of Parts 3.4A, 3.4B and 3.7, except section 1070G—a period or periods of employment over an 18 month period since the person last left secondary school, earning the person at least the equivalent of 75% of:

(i) the maximum rate of pay under Wage Level A of a transitional Australian Pay and Classification Scale or modern award generally applicable to trainees; or

(ii) that maximum rate as varied or replaced from time to time by the Fair Work Commission;

that applied at the start of the period of employment; or

(d) for the purposes of Parts 2.11 and 2.11B, this Part and section 1070G—a period or periods of employment over a 14 month period since the person last left secondary school, earning the person at least the equivalent of 75% of:

OFFICIAL: Sensitive // Legal Privilege

(i) the maximum rate of pay under Wage Level A of a transitional Australian Pay and Classification Scale or modern award generally applicable to trainees; or

(ii) that maximum rate as varied or replaced from time to time by the Fair Work Commission;

that applied at the start of the period of employment.

(10A) For the purposes of determining whether a person is to be regarded as independent for the purposes of Part 2.11 or 2.11B, this Part or section 1070G:

(a) paragraph (10)(b) does not apply unless subsection (10E) applies to the person because of paragraph (10E)(d); and

(b) paragraph (10)(d) does not apply unless subsection (10E) applies to the person because of paragraph (10E)(e).

(10E) This subsection applies to a person if:

(a) the person's family home is:

(i) in a location categorised under the Remoteness Structure as Inner Regional Australia, Outer Regional Australia, Remote Australia or Very Remote Australia; or

(ii) on Norfolk Island; and

(b) the person is required to live away from home (see section 1067D); and

(c) the person is undertaking full-time study (see section 541B); and

(d) in relation to paragraph (10)(b)—the person's combined parental income (as defined in point 1067G-F10) for:

(i) the last tax year that ended before the start of the 2 years referred to in that paragraph; or

(ii) the appropriate tax year worked out under Submodule 3 of Module F of the Youth Allowance Rate Calculator in section 1067G;

is less than the threshold amount (see subsection (10K)) for the person for that tax year; and

(e) in relation to paragraph (10)(d)—the person's combined parental income (as defined in point 1067G-F10) for:

(i) the last tax year that ended before the start of the 14-month period referred to in that paragraph; or

(ii) the appropriate tax year worked out under Submodule 3 of Module F of the Youth Allowance Rate Calculator in section 1067G;

is less than the threshold amount (see subsection (10K)) for the person for that tax year.

(10F) For the purposes of paragraph (10E)(a), ***Remoteness Structure*** means the Remoteness Structure described in:

(a) the document titled "Australian Statistical Geography Standard (ASGS): Volume 5 - Remoteness Structure, July 2011", published by the Australian Statistician and as amended from time to time; or

(b) any replacement document that is published by the Australian Statistician and that is in effect in accordance with subsection (10G); or

(c) any document that is determined by the Secretary in an instrument under subsection (10H) and that is in effect in accordance with subsection (10J).

(10G) If a replacement document mentioned in paragraph (10F)(b) is published by the Australian Statistician:

(a) the replacement document takes effect on the first 1 January or 1 July to occur after the day of that publication and then has effect as amended from time to time; and

(b) the document in effect immediately before that publication is taken to continue to have effect until the end of the day before that 1 January or 1 July.

(10H) The Secretary may, by notifiable instrument, determine a document for the purposes of paragraph (10F)(c). The Secretary may do so only if the Australian Statistician has notified the Secretary that the Australian Statistician will no longer be publishing replacement documents mentioned in paragraph (10F)(b).

(10J) A document determined in an instrument under subsection (10H) takes effect on the day specified in the determination and then has effect as amended from time to time.

(10K) For the purposes of paragraphs (10E)(d) and (e) and (14)(d), the ***threshold amount*** for the person (the ***primary person***) for a tax year is the sum of the following:

(a) $160,000;

(b) $10,000 for each person who is a related person (see subsection (10L)) of the primary person on:

(i) subject to subparagraph (ii)—30 June of that tax year; or

(ii) if that tax year is the tax year following the base tax year because of point 1067G-F7 or 1067G-F8—the day the request was made.

(10L) For the purposes of paragraph (10K)(b), a person (the ***first person***) is a ***related person*** of the primary person on a day if on that day:

(a) the first person is aged under 22; and

(b) a parent of the first person is also a parent of the primary person; and

(c) none of the following applies to the first person:

(i) the first person is living away from the home of each parent covered by paragraph (b) and the first person is a member of a YA couple under subsection 1067C(1);

(ii) the first person is living away from the home of each parent covered by paragraph (b) and the first person has a natural child, adoptive child or relationship child who is wholly or substantially dependent on the first person or the first person's partner (if any);

(iii) the first person is receiving youth allowance or disability support pension and the first person is independent under subsection (9);

(iv) the first person is in State care.

Note: For ***parent***, see paragraph (b) of the definition of ***parent*** in subsection 5(1).

(10M) For the purposes of the application of paragraph (10)(a), (b) or (d) in relation to a person:

(a) if, for a week that falls wholly in the 2-year period referred to in paragraph (10)(a) and wholly in the COVID-19 concession period, the person was not in paid work consisting of full-time employment of at least 30 hours—the person is taken, for that week, to have been in paid work consisting of full-time employment of 30 hours; and

(b) if, for a week that falls wholly in the 2-year period referred to in paragraph (10)(b) and wholly in the COVID-19 concession period, the person was not in paid work consisting of part-time employment of at least 15 hours—the person is taken, for that week, to have been in paid work consisting of part-time employment of 15 hours; and

(c) if, for a week that falls wholly in the 14-month period referred to in paragraph (10)(d) and wholly in the COVID-19 concession period, the person was not in paid work consisting of employment that earnt the person at least the equivalent of 75% of the maximum rate applicable under that paragraph on 25 March 2020—the person is taken, for that week, to have been in paid work consisting of employment that earnt the person 75% of that maximum rate.

(10N) For the purposes of subsection (10M), the ***COVID-19 concession period*** is the period:

(a) beginning on 25 March 2020; and

(b) ending at the end of 24 September 2020.

People who are disadvantaged

(11) A person is independent if the person:

(a) is at least 18 years old; and

(b) has had full-time employment of at least 30 hours per week for a period of at least 12 months, or for periods that total at least 12 months; and

(c) does not live at the home of either or both of his or her parents; and

(d) in the Secretary's opinion, is specially disadvantaged with respect to education or employment; and

(e) is not receiving financial support, whether directly or indirectly, from a parent of the person or from another person who is acting as the person's guardian on a long-term basis.

Note: For ***parent*** see section 5 (paragraph (a) of that definition).

People with a partial capacity to work

(12) A person is independent if the person:

(a) has turned 16; and

(b) has a partial capacity to work; and

(c) is not undertaking full-time study and is not a new apprentice.

Note 1: For ***partial capacity to work*** see section 16B.

Note 2: For ***undertaking full-time study*** see section 541B.

Note 3: For ***new apprentice*** see subsection 23(1).

Parents of relationship children

(13) If a person (other than a person who is an adopted child) is a relationship child of another person because he or she is a child of the other person, and of a third person, within the meaning of the *Family Law Act 1975*, the other person and the third person are taken to be the person's only parents for the purposes of subsections (5), (6), (7), (8), (9) and (11).

Agricultural work

(14) A person is independent if:

(a) ~~paragraph 541(1)(a)~~subparagraph 540(1)(a)(i) (about full time study) applies in relation to the person; and

(b) the person undertook qualifying agricultural work between 30 November 2020 and 31 December 2021; and

(c) the gross earnings of the person for that work are at least $15,000; and

(d) the person's combined parental income (as defined in point 1067G-F10) for the 2019-2020 tax year or 2018-2019 tax year is less than the threshold amount (see subsection (10K)) for the person for that tax year.

(15) For the purposes of this section, ***qualifying agricultural work*** is work of a kind determined in an instrument under subsection (16).

(16) The Secretary of the Department administered by the Minister administering the *Social Security (International Agreements) Act 1999* may, by legislative instrument, determine kinds of work for the purposes of subsection (15).

1067B Accommodated independent person

(1) A person is taken to be an ***accommodated independent person*** for the purposes of Part 2.11B and this Part if, and only if, the person:

(a) is independent; and

(b) lives at the home of either or both of his or her parents; and

(c) is not, and has never been, a member of a YA couple (see section 1067C); and

(d) does not have a natural child, adoptive child or relationship child who is wholly or substantially dependent on the person or his or her partner; and

(e) has never had a natural child, adoptive child or relationship child who was wholly or substantially dependent on the person or on a person who, at the time, was the person's partner; and

(f) is not a person who:

(i) qualified for the independent living allowance under the AUSTUDY scheme, as in force immediately before the commencement of Schedule 11 to the *Social Security Legislation Amendment (Youth Allowance Consequential and Related Measures) Act 1998*, only under AUSTUDY Regulation 68, as in force at that time; and

OFFICIAL: Sensitive // Legal Privilege

(ii) had not, at that time, turned 25.

Note: For ***parent*** see section 5 (paragraph (a) of that definition).

(2) If a person (other than a person who is an adopted child) is a relationship child of another person because he or she is a child of the other person, and of a third person, within the meaning of the *Family Law Act 1975*, the other person and the third person are taken to be the person's only parents for the purposes of paragraph (1)(b).

1067C Member of a YA couple

Current member of a YA couple

(1) Subject to this section, a person is a ***member of a YA couple*** for the purposes of sections 1067A and 1067B if:

(a) the person is legally married to another person and is not, in the Secretary's opinion (formed as mentioned in subsection (3)), living separately and apart from the other person on a permanent or indefinite basis; or

(aa) both of the following conditions are met:

(i) a relationship between the person and another person (whether of the same sex or a different sex) is registered under a law of a State or Territory prescribed for the purposes of section 2E of the *Acts Interpretation Act 1901* as a kind of relationship prescribed for the purposes of that section;

(ii) the person is not, in the Secretary's opinion (formed as mentioned in subsection (3)), living separately and apart from the other person on a permanent or indefinite basis; or

(b) all of the following conditions are met:

(i) the person has a relationship with another person, whether of the same sex or a different sex (***partner***);

(ii) the person is not legally married to the partner;

(iii) the relationship has existed for a continuous period of at least 12 months;

(iv) in the Secretary's opinion (formed as mentioned in subsections (3) and (4)), the relationship is, and has for a continuous period of at least 12 months been, a de facto relationship;

(v) if, at the time the relationship became a de facto relationship, the person and the partner were living in Australia—both the person and the partner were over the age of consent applicable in the State or Territory in which they lived at that time;

(vi) if, at the time the relationship became a de facto relationship, the person and the partner were living outside Australia—both the person and the partner were over the age of consent applicable in the State or Territory in which they first lived after that time;

(vii) the person and the partner are not within a prohibited relationship.

Former member of a YA couple

(2) Subject to this section, a person has been a ***member of a YA couple*** for the purposes of sections 1067A and 1067B if:

(a) the person has been legally married to another person (whether or not they are still legally married) and was not, in the Secretary's opinion (formed as mentioned in subsection (3)), living separately and apart from the other person, on a permanent or indefinite basis, at all times while so married; or

(aa) both of the following conditions are met:

(i) a relationship between the person and another person (whether of the same sex or a different sex) was registered under a law of a State or Territory prescribed for the purposes of section 2E of the *Acts Interpretation Act 1901* as a kind of relationship prescribed for the purposes of that section (whether or not the relationship is still registered);

(ii) the person was not, in the Secretary's opinion (formed as mentioned in subsection (3)), living separately and apart from the other person on a permanent or indefinite basis at all times while the relationship was registered; or

(b) all of the following conditions are met:

(i) the person had a relationship with another person, whether of the same sex or a different sex (***partner***);

(ii) the person was not legally married to the partner;

(iii) the relationship existed for a continuous period of at least 12 months;

(iv) in the Secretary's opinion (formed as mentioned in subsections (3) and (4)), the relationship between the person and the partner was, and had for a continuous period of at least 12 months or, in special circumstances determined by the Secretary, at least 6 months been, a de facto relationship;

(v) if, at the time the relationship became a de facto relationship, the person and the partner were living in Australia—both the person and the partner were over the age of consent applicable in the State or Territory in which they lived at that time;

(vi) if, at the time the relationship became a de facto relationship, the person and the partner were living outside Australia—both the person and the partner were over the age of consent applicable in the State or Territory in which they first lived after that time;

(vii) the person and the partner were not within a prohibited relationship.

Criteria for forming opinion about relationship

(3) In forming an opinion about the relationship between 2 people for the purposes of paragraph (1)(a), subparagraph (1)(aa)(ii), subparagraph (1)(b)(iv), paragraph (2)(a), subparagraph (2)(aa)(ii) or subparagraph (2)(b)(iv), the Secretary is to have regard to all the

circumstances of the relationship including, in particular, the matters referred to in subsection 4(3).

People living separately and apart

(4) The Secretary must not form the opinion that the relationship between a person and his or her partner is, or was, a de facto relationship if the person is, or was at the time in question, living separately and apart from the partner on a permanent or indefinite basis.

Moving to a State or Territory with a higher age of consent

(5) For the purposes of calculating the period of 2 years referred to in subparagraphs (1)(b)(iii) and (iv) and (2)(b)(iii) and (iv), any period during which the couple in question lived in a State or Territory in which one or both of them was under the age of consent is to be disregarded.

1067D Person required to live away from home

When a person is taken to be required to live away from home

(1) A person is taken to be required to live away from home for the purposes of Part 2.11B and this Part if, and only if:
  (a) the person is not independent; and
  (b) the person does not live at the home of either or both his or her parents; and
  (c) the Secretary determines that:
    (i) the person needs to live away from home for the purpose of education, training, searching for employment or doing anything else in preparation for getting employment; or
    (ii) the likelihood of the person's getting employment will be significantly increased if the person lives away from home; or
    (iii) the person needs to live away from home because the person is a new apprentice.

OFFICIAL: Sensitive // Legal Privilege

Note: For ***parent*** see section 5 (paragraph (a) of that definition).

Matters to which Secretary is to have regard

(3) In making a determination under subparagraph (1)(c)(ii), the Secretary is to have regard to:
  (a) the overall employment prospects for young people in the areas where the home is situated and in the area where the person is living; and
  (b) matters relating to the person that would affect the likelihood of the person's getting employment in those areas.

Parents of relationship children

(4) If a person (other than a person who is an adopted child) is a relationship child of another person because he or she is a child of the other person, and of a third person, within the meaning of the *Family Law Act 1975*, the other person and the third person are taken to be the person's only parents for the purposes of paragraph (1)(b).

1067E Person living at home

If a person:
  (a) is not independent; and
  (b) is not taken by section 1067D to be required to live away from home;

the person is taken for the purposes of this Part to be living at home.

1067F Long term income support student

(1) A person is a ***long term income support student*** if the person:
  (a) is at least 22 years old; and
  (ba) does not have a dependent child; and
  (c) is either:

(i) undertaking full-time study in respect of a course of education that the person had commenced after turning 22; or

(ii) a new apprentice and became a new apprentice after turning 22; and

(d) has, for at least 26 weeks out of the period of 39 weeks that ended when the person commenced to undertake the full-time study or became a new apprentice, been receiving one or more of the following:

(i) jobseeker payment;

(iii) youth allowance (disregarding youth allowance received while the person was undertaking full-time study);

(iv) special benefit;

(v) disability support pension;

(vii) carer payment;

(x) pension PP (single);

(xi) sole parent pension;

(xii) benefit parenting allowance;

(xiii) benefit PP (partnered).

(2) A person is also a ***long term income support student*** if the person:

(a) is at least 22 years old; and

(c) does not have English as a first language; and

(d) is undertaking a course in English, being a course that the Secretary has approved.

1067G Rate of youth allowance

Youth allowance rate calculator

(1) The rate of youth allowance of a person referred to in section 556 is to be calculated in accordance with the Rate Calculator in this section.

Limit on rate of allowance

(2) If:

(a) a person is living with another person as the spouse of the other person on a genuine domestic basis although not legally married to the other person (whether the persons are the same sex or different sexes); and

(c) either or both of them are under the age of consent that applies in the State or Territory in which they are living;

the rate of the person's youth allowance is not to be more than the rate at which the allowance would be payable to the person if the other person were the person's partner.

Youth Allowance Rate Calculator

Module A—Overall rate calculation process

Method of calculating rate

1067G-A1 The rate of allowance is a daily rate. That rate is worked out by dividing the fortnightly rate calculated according to this Rate Calculator by 14.

Method statement

Step 1. Work out the person's maximum basic rate using Module B below.

Step 1A. Work out the energy supplement (if any) using Module BA below.

Step 2. Work out the amount a fortnight (if any) of pharmaceutical allowance using Module C below.

Step 2A. Work out the amount per fortnight (if any) for youth disability supplement using Module D below.

Step 3. Work out the applicable amount per fortnight (if any) for rent assistance in accordance with paragraph 1070A(a).

Step 4.	Add up the amounts obtained in Steps 1 to 3: the result is the ***maximum payment rate***.
Step 8.	If the person is not independent, work out the person's ***reduction for parental income*** using Module E.
Step 12.	Apply the income test using Module H below to work out the person's income reduction.
Step 13.	Take away from the maximum payment rate the greatest of the following that apply: (a) the person's reduction for parental income; (c) the person's income reduction. (If a reduction described in paragraph (a) applies, and is not less than any other reduction that applies, take away from the maximum payment rate the first-mentioned reduction.) The result is the ***provisional fortnightly payment rate***. If that rate is nil because of the taking away of a reduction described in paragraph (a) then youth allowance is not payable to the person. Note: If a person's maximum payment rate is reduced under this step, section 1210 sets the order in which the components of that rate are to be reduced.
Step 14.	The ***rate of allowance*** is the amount obtained by: (a) subtracting from the provisional fortnightly payment rate any special employment advance deduction (see Part 3.16B); and (b) if there is any amount remaining, subtracting from that amount any advance payment deduction (see Part 3.16A); and

OFFICIAL: Sensitive // Legal Privilege

(c) except where the person is a CDEP Scheme participant in respect of the whole or a part of the period for which the rate of allowance is being worked out, adding any amount payable by way of remote area allowance (see Module K).

Module B—Maximum basic rate

Maximum basic rate

1067G-B1 The maximum basic rate of a person other than a person who is a CDEP Scheme participant in respect of the whole or a part of the period for which the maximum basic rate is being worked out is to be worked out as follows:

(a) if the person is not independent (see section 1067A) and is not a long term income support student (see section 1067F)—use Table BA;

(b) if the person is independent and is not a long term income support student—use Table BB or point 1067G-B3A;

(c) if the person is a long term income support student—use Table BC.

The maximum basic rate of a person who is a CDEP Scheme participant in respect of the whole or a part of the period for which the maximum basic rate is being worked out is nil (see section 552C).

Person who is not independent

1067G-B2 If the person is not independent (see section 1067A) and is not a long term income support student (see section 1067F), work out whether the person:

(a) lives at home (see section 1067E); or

(b) is required to live away from home (see section 1067D).

The person's maximum basic rate is the amount in column 3 of the table that corresponds to the person's situation as described in column 2 of the table.

Table BA—Maximum basic rates (people who are not independent)		
Column 1	**Column 2**	**Column 3**
Item	**Person's situation**	**Rate**
1	Lives at home and not yet 18 years old	$303.20
2	Lives at home and at least 18 years old	$354.60
3	Required to live away from home	$512.50

Note: The rates in column 3 are indexed annually in line with CPI increases (see sections 1191–1194).

Person who is independent

1067G-B3 If the person is independent (see section 1067A) and is not a long term income support student (see section 1067F), work out:

(a) whether the person is an accommodated independent person (see section 1067B); and

(b) if the person is not an accommodated independent person, whether the person:

(i) is in supported State care (see section 1067); or

(ii) is in unsupported State care (see section 1067); or

(iii) is a member of a couple (see section 4); or

(iv) has a dependent child (see subsections 5(2) to (9)).

The person's maximum basic rate is the amount in column 3 of the table that corresponds to the person's situation as described in column 2 of the table.

Table BB—Maximum basic rates (people who are independent)		
Column 1	**Column 2**	**Column 3**
Item	**Person's situation**	**Rate**
1	Accommodated independent person and not yet 18 years old	$303.20
2	Accommodated independent person and at least 18 years old	$354.60

Table BB—Maximum basic rates (people who are independent)		
Column 1 **Item**	**Column 2** **Person's situation**	**Column 3** **Rate**
3	In supported State care and not yet 18 years old	$303.20
4	In supported State care and at least 18 years old	$354.60
5	In unsupported State care	$512.50
6	Not a member of a couple and has a dependent child	$656
7	Member of a couple and has a dependent child	$557.90
8	Not an accommodated independent person, not in supported State care, not in unsupported State care and does not have a dependent child	$512.50

Note: The rates in column 3 are indexed annually in line with CPI increases (see sections 1191–1194).

Certain children treated as dependent children if in recipient's care for at least minimum period

1067G-B3AA For the purposes of point 1067G-B3, the maximum basic rate for a person receiving youth allowance is worked out as if the person had a dependent child if:

(a) the person is not undertaking full-time study and is not a new apprentice; and

(b) either:

(i) the person is legally responsible (whether alone or jointly with another person) for the day-to-day care, welfare and development of a child under 16; or

(ii) under a family law order, registered parenting plan or parenting plan that is in force, a child under 16 is supposed to live or spend time with the person; and

(c) the child is in the person's care for at least 14% of:

(i) the instalment period in relation to which the maximum basic rate is being worked out; or

(ii) if the Secretary, under point 1067G-B3AB, determines another period for the person for the purposes of this subparagraph—that other period; and

(d) none of subsections 5(3), (6) and (7) prevents the child from being a dependent child of the person.

Note 1: For ***undertaking full-time study*** see section 541B.

Note 2: For ***new apprentice***, ***family law order***, ***registered parenting plan*** and ***parenting plan*** see subsection 23(1).

1067G-B3AB The Secretary may, in writing, determine a period of either 14 days or 28 days for the purposes of subparagraph 1067G-B3AA(c)(ii). In making the determination, the Secretary must have regard to the guidelines (if any) determined under point 1067G-B3AD.

1067G-B3AC A determination made under point 1067G-B3AB is not a legislative instrument.

1067G-B3AD The Secretary may, by legislative instrument, determine guidelines to be complied with when making a determination under point 1067G-B3AB.

1067G-B3A Despite point 1067G-B3, if a person:

(a) is independent (see section 1067A) and is not a long term income support student (see section 1067F); and

(b) is not a member of a couple; and

~~(c) has an exemption under section 542FA because of a determination in relation to the person under subsection 542FA(3) or (3A);~~

(c) either:

(i) has an exemption under section 542FA because of a determination in relation to the person under subsection 542FA(3) or (3A); or

(ii) is not required to satisfy the employment pathway plan requirements because of a determination that is in effect

under subsection 40P(2) of the Administration Act because of paragraph 40P(2)(a) or (b) of that Act;

the person's maximum basic rate is the amount worked out as follows:

$$\frac{\text{Pension PP (Single) maximum basic amount}}{26}$$

where:

pension PP (Single) maximum basic amount is the sum of:

(a) the amount that would have been the person's maximum basic rate under Module B of the Pension PP (Single) Rate Calculator if the person was receiving parenting payment; and

(b) the amount that would have been the person's pension supplement under Module BA of the Pension PP (Single) Rate Calculator if the person was receiving parenting payment.

Note: A person's maximum basic rate under Module B of the Pension PP (Single) Rate Calculator is indexed 6 monthly in line with increases in Male Total Average Weekly Earnings (see section 1195).

Long term income support student

1067G-B4 If the person is a long term income support student (see section 1067F), work out:

(a) whether the person is independent (see section 1067A); and

(b) if the person is not independent, whether the person:

(i) lives at home (see section 1067E); or

(ii) is required to live away from home (see section 1067D); and

(c) if the person is independent, whether the person is an accommodated independent person (see section 1067B); and

(d) whether the person is a member of a couple (see section 4).

The person's maximum basic rate is the amount in column 3 of the table that corresponds to the person's situation as described in column 2 of the table.

Table BC—Maximum basic rates (long term income support students)		
Column 1 **Item**	**Column 2** **Person's situation**	**Column 3** **Rate**
1	Not independent, lives at home and not a member of a couple	$423.70
2	Not independent, required to live away from home and not a member of a couple	$611.90
3	Accommodated independent person and not a member of a couple	$423.70
4	Independent, not an accommodated independent person and not a member of a couple	$611.90
5	Member of a couple	$557.90

Note: The rates in column 3 are indexed annually in line with CPI increases (see sections 1191 to 1194).

Module BA—Energy supplement

1067G-BA1 An energy supplement is to be added to the person's (the ***recipient's***) maximum basic rate if the recipient is residing in Australia and:

(a) is in Australia; or

(b) is temporarily absent from Australia and has been so for a continuous period not exceeding 6 weeks.

However, this Module does not apply if quarterly energy supplement is payable to the recipient.

Note: Section 918 may affect the addition of the energy supplement.

General case—recipient not covered by point 1067G-B3A and youth disability supplement not added

1067G-BA2 The recipient's energy supplement is the amount worked out using the following table if:

(a) the recipient is not covered by point 1067G-B3A; and

(b) an amount of youth disability supplement is not added under Module D to the recipient's rate.

Energy supplement

Item	Recipient's family situation for maximum basic rate	Amount of energy supplement
1	If the recipient's maximum basic rate is worked out under item 1 of the table in point 1067G-B2	$3.90
2	If the recipient's maximum basic rate is worked out under item 2 of the table in point 1067G-B2	$4.60
3	If the recipient's maximum basic rate is worked out under item 3 of the table in point 1067G-B2	$7.00
4	If the recipient's maximum basic rate is worked out under item 1 or 3 of the table in point 1067G-B3	$3.90
5	If the recipient's maximum basic rate is worked out under item 2 or 4 of the table in point 1067G-B3	$4.60
6	If the recipient's maximum basic rate is worked out under item 5 of the table in point 1067G-B3	$7.00
7	If the recipient's maximum basic rate is worked out under item 6 of the table in point 1067G-B3	$9.20
8	If the recipient's maximum basic rate is worked out under item 7 of the table in point 1067G-B3	$7.70
9	If the recipient's maximum basic rate is worked out under item 8 of the table in point 1067G-B3	$7.00
10	If the recipient's maximum basic rate is worked out under item 1 or 3 of the table in point 1067G-B4	$5.70

Energy supplement		
Item	**Recipient's family situation for maximum basic rate**	**Amount of energy supplement**
11	If the recipient's maximum basic rate is worked out under item 2 or 4 of the table in point 1067G-B4	$8.60
12	If the recipient's maximum basic rate is worked out under item 5 of the table in point 1067G-B4	$7.70

Recipient covered by point 1067G-B3A

1067G-BA3 If the recipient is covered by point 1067G-B3A, the recipient's energy supplement is $12.00.

Youth disability supplement added to the recipient's rate

1067G-BA4 If an amount of youth disability supplement is added under Module D to the recipient's rate, the recipient's energy supplement is the amount worked out using the following table:

Energy supplement		
Item	**Recipient's family situation for maximum basic rate**	**Amount of energy supplement**
1	If the recipient's maximum basic rate is worked out under item 1 of the table in point 1067G-B2	$5.90
2	If the recipient's maximum basic rate is worked out under item 2 of the table in point 1067G-B2	$6.60
3	If the recipient's maximum basic rate is worked out under item 3 of the table in point 1067G-B2	$8.50
4	If the recipient's maximum basic rate is worked out under item 1 or 3 of the table in point 1067G-B3	$5.90

Energy supplement		
Item	**Recipient's family situation for maximum basic rate**	**Amount of energy supplement**
5	If the recipient's maximum basic rate is worked out under item 2 or 4 of the table in point 1067G-B3	$6.60
6	If the recipient is a member of a couple and the recipient's maximum basic rate is worked out under item 5 or 8 of the table in point 1067G-B3	$7.70
6A	If the recipient is not a member of a couple and the recipient's maximum basic rate is worked out under item 5 or 8 of the table in point 1067G-B3	$8.50
7	If the recipient's maximum basic rate is worked out under item 6 of the table in point 1067G-B3	$9.20
8	If the recipient's maximum basic rate is worked out under item 7 of the table in point 1067G-B3	$7.70

Module C—Pharmaceutical allowance

Qualification for pharmaceutical allowance

1067G-C1 Subject to points 1067G-C2 and 1067G-C2A, an amount by way of pharmaceutical allowance is to be added to a person's maximum basic rate if the person:

(a) has a partial capacity to work; or

(b) is the principal carer of at least one child and is not a member of a couple; or

~~(c) has a temporary incapacity exemption under section 542A.~~

(c) either:

(i) has a temporary incapacity exemption under section 542A; or

OFFICIAL: Sensitive // Legal Privilege

(ii) is not required to satisfy the employment pathway plan requirements because of a determination that is in effect under section 40L of the Administration Act and that has been made because of the circumstance referred to in paragraph 40L(5)(a) of that Act.

Note 1: For ***partial capacity to work*** see section 16B.

Note 2: For ***principal carer*** see subsections 5(15) to (24).

No pharmaceutical allowance if partner receiving certain supplements under other Acts

1067G-C2 Pharmaceutical allowance is not to be added to a person's maximum basic rate if:

(a) the person is a member of a couple; and

(b) the person's partner is receiving:

(i) veterans supplement under section 118A of the Veterans' Entitlements Act; or

(ii) MRCA supplement under section 300 of the Military Rehabilitation and Compensation Act; or

(iii) pharmaceutical supplement under Part 3A of the *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) Act 2006*; or

(iv) pharmaceutical supplement under Part 4 of the *Treatment Benefits (Special Access) Act 2019*; and

(c) the person's partner is not receiving a service pension or a veteran payment.

No pharmaceutical allowance for full-time students and new apprentices without temporary incapacity exemptions

1067G-C2A Pharmaceutical allowance is not to be added to a person's maximum basic rate if the person:

(a) does not have a temporary incapacity exemption under section 542A; and

(b) is undertaking full-time study or is a new apprentice.

Note 1: For ***undertaking full-time study*** see section 541B.

Note 2: For ***new apprentice*** see subsection 23(1).

Amount of pharmaceutical allowance

1067G-C3 The amount of pharmaceutical allowance is the amount a fortnight worked out using the following table:

Table C—Pharmaceutical allowance amounts

Column 1 Item	Column 2 Person's family situation	Column 3 Amount a fortnight
1	Not a member of a couple	$5.40
2	Partnered	$2.70
3	Member of an illness separated couple	$5.40
4	Member of a respite care couple	$5.40
5	Partnered (partner getting service pension)	$2.70
6	Partnered (partner in gaol)	$5.40

Note 1: For ***member of a couple***, ***partnered***, ***illness separated couple***, ***respite care couple*** and ***partnered (partner in gaol)*** see section 4.

Note 2: The amounts in column 3 are indexed or adjusted annually in line with CPI increases on 1 January (see sections 1191 to 1194 and 1206A).

Module D—Youth disability supplement

Youth disability supplement

1067G-D1 If a person:

(a) has a partial capacity to work; and

(b) has not turned 22;

an amount by way of youth disability supplement is to be added to a person's rate. The rate of youth disability supplement is $92.40 per fortnight.

Note 1: For ***partial capacity to work*** see section 16B.

Note 2: The rate of youth disability supplement is adjusted annually in line with CPI increases (see section 1198C).

1067G-D2 If:

(a) an amount by way of youth disability supplement is to be added to a person's rate of youth allowance under point 1067G-D1; and

(b) the sum of:

(i) the person's maximum basic rate of youth allowance; and

(ii) the amount of youth disability supplement;

would exceed the maximum basic rate of jobseeker payment for a person with a partial capacity to work;

the rate of youth disability supplement is to be reduced (but not below zero) by the amount of the excess.

Note: For ***partial capacity to work***, see section 16B.

Module E—Person's reduction for parental income

Person's reduction for parental income

1067G-E1 This is how to work out the person's ***reduction for parental income*** for the purposes of the method statement in point 1067G-A1.

Method statement

Step 1. Work out the ***MIT reducible amount*** by subtracting the base FTB child rate in point 1067G-E2 from the maximum FTB child rate in point 1067G-E3 and then multiplying the result by:

$$\frac{14}{365}$$

Step 2.	Apply the parental income test in Module F to work out the parental income test result for the person.
Step 3.	If the parental income test result is equal to or more than the MIT reducible amount, the person's ***reduction for parental income*** is the parental income test result.
Step 4.	If the parental income test result is less than the person's MIT reducible amount, apply the maintenance income test in Module GA to work out the maintenance income test result for the person.
Step 5.	Add the parental income test result to the maintenance income test result to get the person's ***notional reduction***.
Step 6.	If the notional reduction is less than or equal to the MIT reducible amount, the person's ***reduction for parental income*** is the notional reduction.
Step 7.	If the notional reduction is more than the MIT reducible amount, the person's ***reduction for parental income*** is the MIT reducible amount.

Base FTB child rate

1067G-E2 The ***base FTB child rate*** is the amount that would be the base FTB child rate within the meaning of the Family Assistance Act, if the person were an FTB child of a parent of the person.

Maximum FTB child rate

1067G-E3 The ***maximum FTB child rate*** is the amount specified for item 2 in column 2 of the table in clause 7 of Schedule 1 to the Family Assistance Act.

Note: The amount is indexed under Schedule 4 of the Family Assistance Act.

Module F—Parental income test

Submodule 1—Parental income test result

Parental income test result

1067G-F1 This is how to work out the parental income test result for a person for the purposes of the method statement in point 1067G-E1.

Method statement

Step 1. Work out whether the person is exempt from the parental income test using Submodule 2. If the person is exempt, go to step 5.

Step 2. If the person is not exempt, identify the appropriate tax year using Submodule 3.

Step 3. Work out the person's combined parental income for the appropriate tax year using Submodule 4.

Step 4. Work out the person's parental income free area using Submodule 5.

Step 5. If:

(a) the person's combined parental income does not exceed the person's parental income free area; or

(b) the person is exempt from the parental income test;

then the ***parental income test result*** for the person is nil.

Step 6. If the person's combined parental income exceeds the person's parental income free area, then the ***parental income test result*** for the person is the amount worked out using Submodule 6.

OFFICIAL: Sensitive // Legal Privilege

Submodule 2—Exemption from parental income test

Parent receiving Commonwealth benefit

1067G-F3 A person is exempt from the parental income test while a parent of the person:

(a) is receiving a payment of pension, benefit, allowance or compensation referred to in Module L; or

(c) is receiving a payment under the ABSTUDY Scheme.

Submodule 3—Appropriate tax year

Appropriate tax year

1067G-F4 Subject to this Submodule, the ***appropriate tax year*** for a youth allowance payment period is the base tax year for that period.

Base tax year

1067G-F5 The ***base tax year*** for a youth allowance payment period is the tax year that ended on 30 June in the calendar year that came immediately before the calendar year in which the period ends.

Example: A youth allowance payment period ends on 25 January 1999—this day occurs in the calendar year 1 January 1999 to 31 December 1999—the calendar year that came immediately before this one is the calendar year 1 January 1998 to 31 December 1998—the base tax year is the tax year that ended on 30 June 1998 (i.e. the year of income that began on 1 July 1997).

Change to appropriate tax year because of increase in combined parental income

1067G-F6 If a person's combined parental income under Submodule 4 for the tax year following the base tax year exceeds:

(a) 125% of the person's combined parental income under that Submodule for the base tax year; and

(b) 125% of the person's parental income free area under Submodule 5;

the appropriate tax year, for the purpose of applying this Module to the person in respect of a youth allowance payment period that ends after 30 September in a year, is the tax year following the base tax year.

Change to appropriate tax year at person's request

1067G-F7 If:

(aa) a person's combined parental income for the tax year following the base tax year is substantially less than it was in the base tax year and is likely to continue to be so for 2 years after the later of:

(i) 1 January in the tax year following the base tax year; or

(ii) the day on which the combined parental income is reduced; and

(a) the person requests the Secretary to make a determination under point 1067G-F8; and

(b) as a result, the Secretary determines under that point that, for the purpose of applying this Module to the person in respect of a youth allowance payment period that ends on or after:

(i) the day on which the request is made; or

(ii) 1 January in a year;

whichever day is later, the appropriate tax year is the tax year following the base tax year;

the appropriate tax year, for that purpose, is the tax year following the base tax year.

Person may ask Secretary to change appropriate tax year

1067G-F8 If:

(a) youth allowance:

(i) is not payable to a person because the rate of youth allowance because of this Module is nil; or

(ii) is payable at a reduced rate because of this Module; and

(b) the person gives the Secretary an estimate of the person's combined parental income under Submodule 4 for the tax year following the base tax year; and

(c) the person requests the Secretary to make a determination under this point; and

(d) the person agrees that the person's rate of youth allowance is to be recalculated if the person's actual combined parental income for that tax year exceeds the amount that the person estimated;

the Secretary must determine that, for the purpose of applying this Module to the person in respect of a youth allowance payment period that ends on or after:

(e) the day on which the request is made; or

(f) 1 January in a year;

whichever day is later, the appropriate tax year is the tax year following the base tax year.

Form of request

1067G-F9 A request under point 1067G-F8 must be made in writing in accordance with a form approved by the Secretary.

Submodule 4—Combined parental income

Combined parental income

1067G-F10 For the purposes of this Module, a person's ***combined parental income*** for a particular tax year is the sum of the following amounts (***income components***) in respect of each of the person's parents:

(a) the parent's taxable income for that year, disregarding each parent's assessable FHSS released amount (within the meaning of the *Income Tax Assessment Act 1997*) for that year;

(b) the parent's adjusted fringe benefits total for that year;

(c) the parent's target foreign income for that year;

(d) the parent's total net investment loss for that year;

(da) the parent's tax free pensions or benefits for that year (worked out in accordance with clause 7 of Schedule 3 to the Family Assistance Act);

(e) the parent's reportable superannuation contributions (within the meaning of the *Income Tax Assessment Act 1997*) for that year.

Note 2: For ***taxable income*** see subsection 23(1).

Note 3: For ***adjusted fringe benefits total*** see subpoint 1067G-F11(2).

Note 4: For ***target foreign income*** see subpoint 1067G-F11(3).

Note 5: For ***total net investment loss***, see subsection 10B(2).

Income components for tax year

1067G-F11(1) A parent's ***taxable income*** for a tax year is:

(a) the parent's assessed taxable income for that year; or

(b) if the parent does not have an assessed taxable income for that year—the accepted estimate, in respect of the parent, of taxable income for that year.

1067G-F11(2) A parent's ***adjusted fringe benefits total*** for a tax year is the amount worked out using the formula:

$$\text{Section 57A employer fringe benefits total} + \text{Other employer fringe benefits total}$$

where:

other employer fringe benefits total is the amount that is the sum of the following:

(a) each of the parent's reportable fringe benefits amounts for the tax year under section 135P of the *Fringe Benefits Tax Assessment Act 1986*;

(b) each of the parent's reportable fringe benefits amounts for the tax year under section 135Q of the *Fringe Benefits Tax Assessment Act 1986*, to the extent that section relates to the parent's employment by an employer described in section 58 of that Act.

section 57A employer fringe benefits total is the amount that is the sum of each of the parent's individual quasi-fringe benefits amounts for the tax year under section 135Q of the *Fringe Benefits Tax Assessment Act 1986*, to the extent that section relates to the

parent's employment by an employer described in section 57A of that Act.

1067G-F11(3) A parent's ***target foreign income*** for a tax year is the accepted estimate of the amount of the parent's foreign income (as defined in section 10A) for the tax year that is not:

(a) taxable income; or

(b) received in the form of a fringe benefit (as defined in the *Fringe Benefits Tax Assessment Act 1986*, as it applies of its own force or because of the *Fringe Benefits Tax (Application to the Commonwealth) Act 1986*) in relation to the parent as employee (as defined in the *Fringe Benefits Tax Assessment Act 1986*) and a year of tax.

Assessed taxable income

1067G-F12 A parent's ***assessed taxable income*** for a tax year at a particular time is the most recent of:

(a) if, at that time, the Commissioner of Taxation has made an assessment or an amended assessment of that taxable income—that taxable income according to the assessment or amended assessment; or

(b) if, at that time, a tribunal has amended an assessment or an amended assessment made by the Commissioner—that taxable income according to the amendment made by the tribunal; or

(c) if, at that time, a court has amended an assessment or an amended assessment made by the Commissioner or an amended assessment made by a tribunal—that taxable income according to the amendment made by the court.

Accepted estimate

1067G-F13 An ***accepted estimate*** of an income component or an amount described in subpoint 1067G-F11(3), in respect of a parent, for a tax year is that income component or amount according to the most recent notice given under point 1067G-F14 and accepted by the Secretary for the purposes of this Module.

Notice estimating income component

1067G-F14 A notice setting out an estimate of an income component or an amount described in subpoint 1067G-F11(3), for a tax year, of a parent of a person claiming or receiving youth allowance may be given to the Secretary by:

(a) the parent; or

(b) the person claiming or receiving youth allowance.

However, if the parent gives a notice, any notice given, in respect of the same income component or amount and the same tax year, by the person claiming or receiving youth allowance is taken not to be, or not to have been, given.

Acceptance of notice

1067G-F15 The Secretary is to accept a notice referred to in point 1067G-F14 for the purposes of this Module only if the Secretary is satisfied that the estimate is reasonable.

Income reduced by maintenance paid by a parent

1067G-F20 A parent's combined parental income for a tax year is reduced by an amount equal to any maintenance paid during the tax year by the parent:

(a) for the upkeep of a child of the parent if the parent does not have care of the child; or

(b) to a former partner of the parent.

Submodule 5—Parental income free area

Parental income free area

1067G-F22 For the purposes of this Module, a person's ***parental income free area*** for a time in a calendar year is an amount equal to the income free area under clause 38N of Schedule 1 to the *A New Tax System (Family Assistance) Act 1999*, as affected by indexation under Schedule 4 to that Act, on 1 January in the calendar year.

OFFICIAL: Sensitive // Legal Privilege

Note: The parental income free area is not indexed under this Act because it is affected by indexation under the *A New Tax System (Family Assistance) Act 1999*.

Submodule 6—If person's combined parental income exceeds parental income free area

Having parental income in common

1067G-F26 For the purposes of this Submodule, 2 or more persons have parental income in common if:

(a) the parental income test applies to each of them; and

(b) a parent of one of the persons is also a parent of each of the other persons.

Note: See also points 1067G-F30 and 1067G-F31, which extend the situations in which a person will have parental income in common with other persons.

Person who does not have parental income in common with anyone else

1067G-F27 Work out a person's parental income test result using the following formula and point 1067G-F29 if:

(a) the person does not have parental income in common with anyone else; and

(b) the person's combined parental income (see Submodule 4) for the appropriate tax year exceeds the person's parental income free area (see Submodule 5):

$$\frac{\text{The excess}}{130}$$

Note: Dividing by 130 is equivalent to dividing by 26 (for 26 fortnights in a year) and dividing again by 5 (so that the parental income test result is only 20 cents for each dollar of the excess).

Person who has parental income in common with someone else

1067G-F28 Work out a person's parental income test result using the following formula and point 1067G-F29 if:

(a) the person has parental income in common with one or more other persons; and

(b) the person's combined parental income (see Submodule 4) for the appropriate tax year exceeds the person's parental income free area (see Submodule 5):

$$\frac{\text{The excess}}{130} \times \frac{\text{Person's maximum payment rate under Module A}}{\text{Total of maximum payment rate of each person who has parental income in common}}$$

Note: Dividing by 130 is equivalent to dividing by 26 (for 26 fortnights in a year) and dividing again by 5.

Rounding the parental income test result

1067G-F29 If the result of the formula in whichever of points 1067G-F27 and 1067G-F28 applies is not a multiple of 10 cents, round the result to the nearest 10 cents (rounding a multiple of 5 cents upwards).

Extension to recipients under ABSTUDY or Assistance for Isolated Children Scheme

1067G-F30 This Submodule applies in relation to a person in respect of whom a payment is made under the ABSTUDY Scheme or the Assistance for Isolated Children Scheme and to whom a parental income test under that scheme applies as if:

(a) the parental income test under this Module applied to the person; and

(b) the total of the amounts described in the following table as relevant to the person were the maximum payment rate for the person for the purposes of this Submodule.

Amounts included in total treated as maximum payment rate

Item	If this allowance is being paid in respect of the person	This amount is relevant to the person
1	Living allowance under the ABSTUDY Scheme	The person's maximum payment rate of the living allowance

Amounts included in total treated as maximum payment rate		
Item	**If this allowance is being paid in respect of the person**	**This amount is relevant to the person**
2	Group 2 school fees allowance under the ABSTUDY Scheme	1/26 of the school fees allowance amount subject to income testing
3	Additional boarding allowance under the Assistance for Isolated Children Scheme	1/26 of the maximum rate of the additional boarding allowance

Note: This Submodule does not (of its own force) affect the amount payable to the person under the ABSTUDY Scheme or the Assistance for Isolated Children Scheme.

Extension to FTB children and regular care children

1067G-F31 In working out a person's (the ***recipient's***) parental income test result for the purposes of this Module:

(a) an FTB child, or a regular care child, of someone who is a parent of the recipient is taken to be a person (a ***relevant sibling***) who has parental income in common with the recipient; and

(b) in using the formula in point 1067G-F28 for the recipient, the maximum payment rate for relevant siblings is 14/365 of the amount worked out under point 1067G-F32.

Note: For ***FTB child*** and ***regular care child***, see section 23.

1067G-F32 For the purposes of paragraph 1067G-F31(b), the amount worked out under this point is the amount that would, at the time the recipient's rate of youth allowance is worked out, be the parent's maximum rate:

(a) under step 1 of the method statement in clause 3 of Schedule 1 to the Family Assistance Act (having regard only to clauses 7 and 11 for the purposes of paragraph (a) of that step); or

(b) if the only relevant sibling is a regular care child—under step 1 of the method statement in clause 28A of Schedule 1 to the Family Assistance Act.

1067G-F33 In working out the parent's maximum rate for the purposes of point 1067G-F32:

(a) assume that the parent has made a claim for payment of family tax benefit by instalment in accordance with the Family Assistance Administration Act; and

(b) assume that the parent has not made an election under subsection 58A(1) of the Family Assistance Act; and

(c) make any other assumption that the Minister, by legislative instrument, specifies.

1067G-F34 Work out the amount under point 1067G-F32 for one parent only.

1067G-F35 Count the amount worked out under point 1067G-F32 once only in using the formula in point 1067G-F28 for a recipient, regardless of how many relevant siblings the recipient has.

Module GA—Maintenance income test

Submodule 1—Maintenance income test result

Maintenance income test result

1067G-GA1 This is how to work out the maintenance income test result for a person for the purposes of the method statement in point 1067G-E1.

Method statement

Step 1. Work out whether the person is exempt from the maintenance income test using Submodule 2. If the person is exempt, go to step 5.

Step 2. If the person is not exempt, work out the annualised amount of maintenance income for a parent of the person (the ***parent's maintenance income***) using Submodule 3.

OFFICIAL: Sensitive // Legal Privilege

Step 3.	Work out the parent's maintenance income free area using Submodule 4.
Step 4.	Work out whether the parent's maintenance income exceeds the parent's maintenance income free area.
Step 5.	If: (a) the parent's maintenance income does not exceed the parent's maintenance income free area; or (b) the person is exempt from the maintenance income test; then the ***maintenance income test result*** for the person is nil.
Step 6.	If the parent's maintenance income exceeds the parent's maintenance income free area, multiply the excess by 0.5. The result, divided by 26, is the ***maintenance income test result*** for the person.

Submodule 2—Exemption from maintenance income test

Parent exempt from FTB maintenance income test

1067G-GA2 A person is exempt from the maintenance income test if paragraphs 19B(a) and (b) of Schedule 1 to the Family Assistance Act apply to the person's parent or to the parent's partner.

Submodule 3—Annualised amount of maintenance income for parent of a person

Annualised amount of maintenance income

1067G-GA3 Work out the annualised amount of maintenance income for a parent of the person as if step 1 of the method statement in

OFFICIAL: Sensitive // Legal Privilege

clause 20 of Schedule 1 to the Family Assistance Act applied. In doing so:

(a) assume that the person is an FTB child of the parent; and

(b) assume that paragraphs (a), (b), (c) and (d) are not in the step; and

(c) only take into account maintenance income received in relation to the person; and

(d) in working out whether maintenance income is received in relation to the person, have regard to the considerations that would apply under the Family Assistance Act; and

(e) have regard to maintenance income for the income year in respect of which the person's rate of youth allowance is being worked out.

Submodule 4—Maintenance income free area

Main rule

1067G-GA4 The ***maintenance income free area*** for a parent of a person is:

(a) the column 2 amount (see point 1067G-GA7); or

(b) if another point in this Submodule applies—the amount worked out in the point.

If there are other siblings including an FTB child

1067G-GA5 This point applies if the parent of the person is also the parent of:

(a) an FTB child in relation to whom the parent receives maintenance income; or

(b) both:

(i) an FTB child in relation to whom the parent receives maintenance income; and

(ii) another person who is receiving youth allowance and in relation to whom the parent receives maintenance income.

The ***maintenance income free area*** for the parent is the column 3 amount (see point 1067G-GA7).

OFFICIAL: Sensitive // Legal Privilege

If there are other siblings but no FTB child

1067G-GA6 This point applies if the parent of the person:

(a) is also the parent of another person (an ***other recipient***) who is receiving youth allowance and in relation to whom the parent receives maintenance income; and

(b) is not the parent of an FTB child in relation to whom the parent receives maintenance income.

The ***maintenance income free area*** for the parent is worked out using this formula:

$$\frac{\text{Column 2 amount} + \text{Column 3 amount for each other recipient}}{1 + \text{Number of other recipients}}$$

Definitions of column 2 amount and column 3 amount

1067G-GA7 In this Submodule:

column 2 amount means the amount specified for item 1 in column 2 of the table in clause 22 of Schedule 1 to the Family Assistance Act.

column 3 amount means the amount specified for item 1 in column 3 of the table in clause 22 of Schedule 1 to the Family Assistance Act.

Note: The amounts are indexed under Schedule 4 of the Family Assistance Act.

Receiving maintenance income in relation to a person

1067G-GA8 In working out whether a parent of a person receives maintenance income in relation to an FTB child or other person, have regard to the considerations that would apply under the Family Assistance Act.

Module H—Income test

Effect of ordinary income on maximum payment rate

1067G-H1 This is how to work out the effect of a person's ordinary income, and the ordinary income of a partner of the person, on the person's maximum payment rate:

Method statement

Step 1. Work out the amount of the person's ordinary income on a fortnightly basis (where appropriate, taking into account the matters provided for in points 1067G-H2 to 1067G-H25).

Step 2. If the person is a member of a couple, work out the partner income free area using point 1067G-H26.

Note: The partner income free area is the maximum amount of ordinary income the person's partner can have without affecting the person's benefit.

Step 3. Use point 1067G-H27 to work out the person's partner income excess. (If there is no partner income excess under that point, the person's partner income excess is taken to be nil.)

Step 4. Use the person's partner income excess to work out the person's partner income reduction using point 1067G-H28.

Step 5. Use point 1067G-H30 to work out the person's ordinary income excess. (If there is no ordinary income excess under that point, the person's ordinary income excess is taken to be nil.)

Step 6. Use the person's ordinary income excess to work out the person's ordinary income reduction using points 1067G-H31, 1067G-H32 and 1067G-H33.

Step 7.	Add the person's partner income reduction and ordinary income reduction: the result is the ***person's income reduction*** referred to in Step 12 of the Method statement in point 1067G-A1.

Note 1: For ***ordinary income*** see subsection 8(1).

Note 2: The application of the income test is affected by provisions concerning:

(a) the general concept of ordinary income and the treatment of certain income amounts (Division 1 of Part 3.10);

(b) business income (sections 1074 and 1075);

(c) income from financial assets (including income streams (short term) and certain income streams (long term)) (Division 1B of Part 3.10);

(d) income from income streams not covered by Division 1B of Part 3.10 (Division 1C of Part 3.10);

(e) disposal of income (sections 1106 to 1111).

Ordinary income of members of certain couples

1067G-H2 If a person is a member of a couple and the person's partner is receiving a social security pension, a service pension, income support supplement or a veteran payment, the person's ordinary income is taken to be one half of the sum of:

(a) the amount that would be the person's ordinary income if he or she were not a member of a couple; and

(b) the amount that would be the ordinary income of the person's partner if the partner were not a member of a couple.

Friendly society amounts

1067G-H3 The ordinary income of a person:

(a) who has a temporary incapacity exemption under section 542A; or

(b) who is a partner of a person who has a temporary incapacity exemption under that section;

is not to include any amount received from an approved friendly society in respect of the incapacity to which the temporary incapacity exemption relates.

1067G-H3A The ordinary income of a person:

(a) who is not required to satisfy the employment pathway plan requirements because of a determination that is in effect under section 40L of the Administration Act and that has been made because of the circumstance referred to in paragraph 40L(5)(a) of that Act; or

(b) who is a partner of a person who is not required to satisfy the employment pathway plan requirements because of a determination that is in effect under section 40L of the Administration Act and that has been made because of the circumstance referred to in paragraph 40L(5)(a) of that Act;

is not to include any amount received from an approved friendly society in respect of the incapacity that resulted in the determination.

Lump sum payments arising from termination of employment

1067G-H4 Subject to points 1067G-H11 to 1067G-H20 (inclusive), if:

(a) a person's employment has been terminated; and

(b) as a result the person is entitled to a lump sum payment from the person's former employer;

the person is taken to have received the lump sum payment on the day on which the person's employment was terminated.

~~*Ordinary income to include certain sick leave entitlements*~~

~~1067G-H5 If a person is qualified for youth allowance and has a temporary incapacity exemption under section 542A, the person's ordinary income is taken to include an amount equal to the amount in respect of sick leave worked out under points 1067G-H6, 1067G-H7 and 1067G-H8.~~

Ordinary income to include certain sick leave entitlements

1067G-H5 If a person is qualified for youth allowance and the person:

(a) has a temporary incapacity exemption under section 542A; or

(b) is not required to satisfy the employment pathway plan requirements because of a determination that is in effect

OFFICIAL: Sensitive // Legal Privilege

under section 40L of the Administration Act and that has been made because of the circumstance referred to in paragraph 40L(5)(a) of that Act;

the person's ordinary income is taken to include an amount equal to the amount in respect of sick leave worked out under points 1067G-H6, 1067G-H7 and 1067G-H8.

Sick leave entitlements

1067G-H6 If:

(a) a person has sick leave entitlements on a day that the person is incapacitated for work; and

(b) the person has the right to claim payment from the person's employer by way of sick leave payment in respect of that day; and

(c) the person's employer is able to pay the person the person's sick leave payment in respect of that day; and

(d) the person is not receiving a leave payment (other than a sick leave payment) in respect of that day;

the person is, for the purposes of this point, taken to have received a sick leave payment equal to the person's sick leave entitlements in respect of that day, assuming that the person does not exercise any rights the person may have in relation to the amount to be paid in respect of that day.

Subsequent consecutive applications of point 1067G-H6

1067G-H7 If point 1067G-H6 has applied to a person in respect of a day, then, for the purposes of any subsequent consecutive applications of the point, the person's sick leave entitlements are to be taken to be reduced by a day.

Sick leave payments already included in ordinary income

1067G-H8 A person's ordinary income is not to include a payment received by the person in respect of sick leave to the extent that an amount equal to the payment has been included in the person's ordinary income under point 1067G-H5.

~~*Granting of allowance after a cancellation*~~

~~1067G-H9 If:~~

~~(a) point 1067G-H5 has applied to a person while the person was qualified for youth allowance and had a temporary incapacity exemption under section 542A; and~~

~~(b) that allowance has ceased to be payable under Subdivision B of Division 9 of Part 2.11, or has been cancelled under Subdivision E of that Division; and~~

~~(c) at least 6 weeks after the day on which the youth allowance ceased to be payable or was cancelled, the person is granted youth allowance, and has a temporary incapacity exemption under section 542A, again;~~

~~point 1067G-H5 applies to the person in respect of the person's sick leave entitlements.~~

Certain leave payments taken to be ordinary income—employment continuing

1067G-H11 If:

(a) a person is employed; and

(b) the person is on leave for a period; and

(c) the person is or was entitled to receive a leave payment (whether as a lump sum payment, as a payment that is one of a series of regular payments or otherwise) in respect of a part or all of a leave period;

the person is taken to have received ordinary income for a period (the ***income maintenance period***) equal to the leave period to which the leave payment entitlement relates.

Certain termination payments taken to be ordinary income

1067G-H12 If:

(a) a person's employment has been terminated; and

(b) the person receives a termination payment (whether as a lump sum payment, as a payment that is one of a series of regular payments or otherwise);

the person is taken to have received ordinary income for a period (the ***income maintenance period***) equal to the period to which the payment relates.

Exception to points 1067G-H11 and 1067G-H12

1067G-H12A Point 1067G-H11 or 1067G-H12 does not apply in relation to a person's entitlement referred to in paragraph 1067G-H11(c) or in relation to a person's termination payment referred to in paragraph 1067G-H12(b) if:

(a) the person makes a claim for youth allowance on or after the commencement of this point; and

(b) the person makes the claim after the death of the person's partner on or after the commencement of this point; and

(c) if the person is a man or a woman who was not pregnant when her partner died—the person makes the claim in the period of 14 weeks starting on the day of the death of the partner; and

(d) if the person is a woman who was pregnant when her partner died—the person makes the claim:

(i) in the period of 14 weeks starting on the day of the death of the partner; or

(ii) in the period starting on the day of the death of the partner and ending when the child is born or the woman otherwise stops being pregnant;

whichever ends later; and

(e) the entitlement referred to in paragraph 1067G-H11(c) arose, or the termination payment referred to in paragraph 1067G-H12(b) was paid, in the period applicable under paragraph (c) or (d) of this point.

More than one termination payment on a day

1067G-H13 If:

(a) the person is covered by point 1067G-H12; and

(b) the person receives more than one termination payment on a day;

the income maintenance period is worked out by adding the periods to which the payments relate.

Start of income maintenance period—employment continuing

1067G-H14 If the person is covered by point 1067G-H11, the income maintenance period starts on the first day of the leave period to which the leave payment entitlement relates.

Start of income maintenance period—employment terminated

1067G-H14A Subject to point 1067G-H14C, if the person is covered by point 1067G-H12, the income maintenance period starts, subject to point 1067G-H14B, on the day the person is paid the termination payment.

Commencement of income maintenance period where there is a second termination payment

1067G-H14B If a person who is covered by point 1067G-H12 is subject to an income maintenance period (the ***first period***) and the person is paid another termination payment during that period (the ***second leave payment***), the income maintenance period for the second termination payment commences the day after the end of the first period.

Start of income maintenance period where liquid assets test waiting period applies

1067G-H14C If a person to whom point 1067G-H14A applies is subject to a liquid assets test waiting period, the income maintenance period is taken to have started on the day on which the liquid assets test waiting period started.

Leave payments or termination payments in respect of periods longer than a fortnight

1067G-H15 Subject to points 1067G-H5 to ~~1067G-H9~~1067G-H8 (inclusive), if:

(a) a person receives a leave payment or termination payment; and

(b) the payment is in respect of a period greater than a fortnight;

the person is taken to receive in a payment fortnight or part of a payment fortnight an amount calculated by:

(c) dividing the amount received by the number of days in the period to which the payment relates (***daily rate***); and

(d) multiplying the daily rate by the number of days in the payment fortnight that are also in the period.

1067G-H16 If the Secretary is satisfied that a person is in severe financial hardship because the person has incurred unavoidable or reasonable expenditure while an income maintenance period applies to the person, the Secretary may determine that the whole, or any part, of the period does not apply to the person.

Note 1: For ***in severe financial hardship*** see subsection 19C(2) (person who is not a member of a couple) and subsection 19C(3) (person who is a member of a couple).

Note 2: For ***unavoidable or reasonable expenditure*** see subsection 19C(4).

Note 3: If an income maintenance period applies to a person, then, during that period:

(a) the allowance claimed may not be payable to the person; or

(b) the amount of the allowance payable to the person may be reduced.

When a person receives a leave payment or a termination payment

1067G-H17 For the purposes of points 1067G-H6 to 1067G-H16 (inclusive), a person (***first person***) is taken to receive a leave payment or termination payment if the payment is made to another person:

(a) at the direction of the first person or a court; or

(b) on behalf of the first person; or

(c) for the benefit of the first person; or

(d) the first person waives or assigns the first person's right to receive the payment.

Single payment in respect of different kinds of termination payments

1067G-H18 If a person who is covered by point 1067G-H12 receives a single payment in respect of different kinds of termination payments, then, for the purposes of the application of points 1067G-H11 to 1067G-H17 (inclusive), each part of the payment that is in respect of a different kind of termination payment is taken to be a separate payment and the income maintenance period in respect of the single payment is worked out by adding the periods to which the separate payments relate.

Definitions

1067G-H19 In points 1067G-H11 to 1067G-H18 (inclusive):

payment fortnight means a fortnight in respect of which a youth allowance is paid, or would be paid apart from the application of an income maintenance period, to a person.

period to which the payment relates means:

(a) if the payment is a leave payment—the leave period to which the payment relates; or

(b) if the payment is a termination payment and is calculated as an amount equivalent to an amount of ordinary income that the person would (but for the termination) have received from the employment that was terminated—the period for which the person would have received that amount of ordinary income; or

(c) if the payment is a termination payment and paragraph (b) does not apply—the period of weeks (rounded down to the nearest whole number) in respect of which the person would have received ordinary income, from the employment that was terminated, of an amount equal to the amount of the termination payment if:

(i) the person's employment had continued; and

(ii) the person received ordinary income from the employment at the rate per week at which the person

usually received ordinary income from the employment prior to the termination.

redundancy payment includes a payment in lieu of notice.

termination payment includes:

(a) a redundancy payment; and

(b) a leave payment relating to a person's employment that has been terminated; and

(c) any other payment that is connected with the termination of a person's employment.

Meaning of leave payment

1067G-H20 In points 1067G-H5 to 1067G-H19 (inclusive):

leave payment includes a payment in respect of sick leave, annual leave, maternity leave and long service leave, but does not include:

(a) an instalment of parental leave pay; or

(b) dad and partner pay.

Board and lodging

1067G-H22 A person's ordinary income is not to include a payment to the person for board or lodging provided by the person to a parent, child, brother or sister of the person.

Ordinary income generally taken into account when first earned, derived or received

1067G-H23 Subject to points 1067G-H23A, 1067-H23B, 1067G-H24 and 1067G-H25 and sections 1072A and 1073, ordinary income (except employment income) is to be taken into account in the fortnight in which it is first earned, derived or received.

Note: See Division 1AA of Part 3.10 for the treatment of employment income.

Claimant or recipient receives lump sum amount for remunerative work

1067G-H23A If a person whose claim for youth allowance has been granted receives, after the claim was made, a lump sum amount that:

(a) is paid to him or her in relation to remunerative work; and

(b) is not a payment to which point 1067G-H24 applies; and

(c) is not an exempt lump sum; and

(d) is not employment income;

the person is, for the purposes of this Module, taken to receive one fifty-second of that amount as ordinary income during each week in the 12 months commencing on the day on which the person becomes entitled to receive that amount.

Partner of claimant or recipient receives lump sum amount for remunerative work

1067G-H23B If:

(a) a person whose claim for youth allowance has been granted is a member of a couple; and

(b) after the person had made the claim, the person's partner receives a lump sum amount that:

(i) is paid to him or her in relation to remunerative work; and

(ii) is not a payment to which point 1067G-H24 applies; and

(iii) is not an exempt lump sum; and

(iv) is not employment income;

the partner is, for the purposes of this Module, taken to receive one fifty-second of that amount as ordinary income during each week in the 12 months commencing on the day on which the partner becomes entitled to receive that amount.

Operation of points 1067G-H23A and 1067G-H23B

1067G-H23C Points 1067G-H23A and 1067G-H23B have effect even if the person who has made the claim:

(a) is subject to a liquid assets test waiting period or an income maintenance period in respect of the allowance claimed; or

(b) is subject to a seasonal work preclusion period;

during the period of 12 months referred to in those points.

Ordinary income received at intervals longer than one fortnight

1067G-H24 Subject to points 1067G-H11 to 1067G-H20 (inclusive), if:

(a) a person receives a number of payments of ordinary income (except employment income); and

(b) each payment is in respect of a period (***work period***) that is greater than a fortnight; and

(c) there is reasonable predictability or regularity as to the timing of the payments; and

(d) there is reasonable predictability as to the quantum of the payments;

the person is taken to receive in a fortnight falling within, or overlapping with, a work period an amount calculated by:

(e) dividing the amount received by the number of days in the work period (***daily rate***); and

(f) multiplying the daily rate by the number of days in the fortnight that are also within the work period.

Payment of arrears of periodic compensation payments

1067G-H25 If:

(a) at the time of an event that gives rise to an entitlement of a person to compensation, the person is receiving youth allowance; and

(b) in relation to that entitlement, the person receives a payment of arrears of periodic compensation;

the person is taken to receive, in a fortnight falling within, or overlapping with, the periodic payments period, an amount calculated by:

(c) dividing the amount received by the number of days in the periodic payments period (***daily rate***); and

OFFICIAL: Sensitive // Legal Privilege

(d) multiplying the daily rate by the number of days in the fortnight that are also within the periodic payments period.

Note: For ***periodic payments period*** see section 17.

Partner income free area

1067G-H26 The partner income free area for a person is:

(a) if the person's partner is not receiving a social security benefit and has not turned 22—the amount of income of the partner (rounded up to the nearest dollar) beyond which youth allowance would not be payable to the partner if the partner were qualified for a youth allowance and were not undertaking full-time study (see section 541B); or

(b) if the person's partner is not receiving a social security benefit and has turned 22—the amount of income of the partner (rounded up to the nearest dollar) beyond which jobseeker payment would not be payable to the partner if the partner were qualified for a jobseeker payment; or

(c) if the person's partner is receiving a social security benefit—the amount of income of the partner (rounded up to the nearest dollar) beyond which that benefit would not be payable to the partner.

1067G-H26A For the purposes of paragraph 1067G-H26(a), disregard steps 2, 2A and 3 of the method statement in point 1067G-A1.

1067G-H26B For the purposes of paragraph 1067G-H26(b), disregard steps 2 and 3 of the method statement in point 1068-A1.

Partner income excess

1067G-H27 If:

(a) a person is a member of a couple; and

(b) the person's partner is not receiving a social security pension, a service pension, income support supplement or a veteran payment; and

(c) the partner's ordinary income exceeds the partner income free area for the partner;

then:

(d) the person has a partner income excess; and

(e) the person's partner income excess is the amount by which the partner's ordinary income exceeds the partner income free area.

Partner income reduction

1067G-H28 If a person has a partner income excess, the person's partner income reduction is an amount equal to 60% of the person's partner income excess.

Example:

Facts: Alice's partner Martin has an ordinary income of $800. Assume that the partner income free area under point 1067G-H26 is $640.

Result: Martin's ordinary income exceeds the partner income free area. Alice therefore has a partner income excess under point 1067G-H27 of:

$800 – $640 = $160

Alice's partner income reduction under point 1067G-H28 is therefore:

60% × $160 = $96

Ordinary income free area

1067G-H29 A person's ordinary income free area is:

(a) if the person is undertaking full-time study at any time in the fortnight in respect of which a youth allowance may be payable, other than in compliance with a requirement contained in an employment pathway plan that is in force in relation to the person—$400; or

(aa) if the person is a new apprentice at any time in the fortnight in respect of which a youth allowance may be payable—$400; or

(b) otherwise—$150.

Ordinary income excess

1067G-H30 If a person's ordinary income exceeds the person's ordinary income free area:

(a) the person has an ordinary income excess; and

(b) the person's ordinary income excess is the amount by which the person's ordinary income exceeds the person's ordinary income free area.

Ordinary income reduction

1067G-H31 If a person has an ordinary income excess, the person's ordinary income reduction is the sum of:

(a) the person's lower range reduction (if any)(see point 1067G-H32); and

(b) the person's upper range reduction (if any) (see point 1067G-H33).

Lower range reduction

1067G-H32 The person's lower range reduction is an amount equal to 50% of the part of the person's ordinary income excess that does not exceed:

(a) if the person is undertaking full-time study at any time in the fortnight in respect of which a youth allowance may be payable, other than in compliance with a requirement contained in an employment pathway plan that is in force in relation to the person—$80; or

(b) if the person is a new apprentice at any time in the fortnight in respect of which a youth allowance may be payable—$80; or

(c) otherwise—$100.

Upper range reduction

1067G-H33 The person's upper range reduction is an amount equal to 60% of the part (if any) of the person's ordinary income excess that exceeds:

OFFICIAL: Sensitive // Legal Privilege

(a) if the person is undertaking full-time study at any time in the fortnight in respect of which a youth allowance may be payable, other than in compliance with a requirement contained in an employment pathway plan that is in force in relation to the person—$80; or

(b) if the person is a new apprentice at any time in the fortnight in respect of which a youth allowance may be payable—$80; or

(c) otherwise—$100.

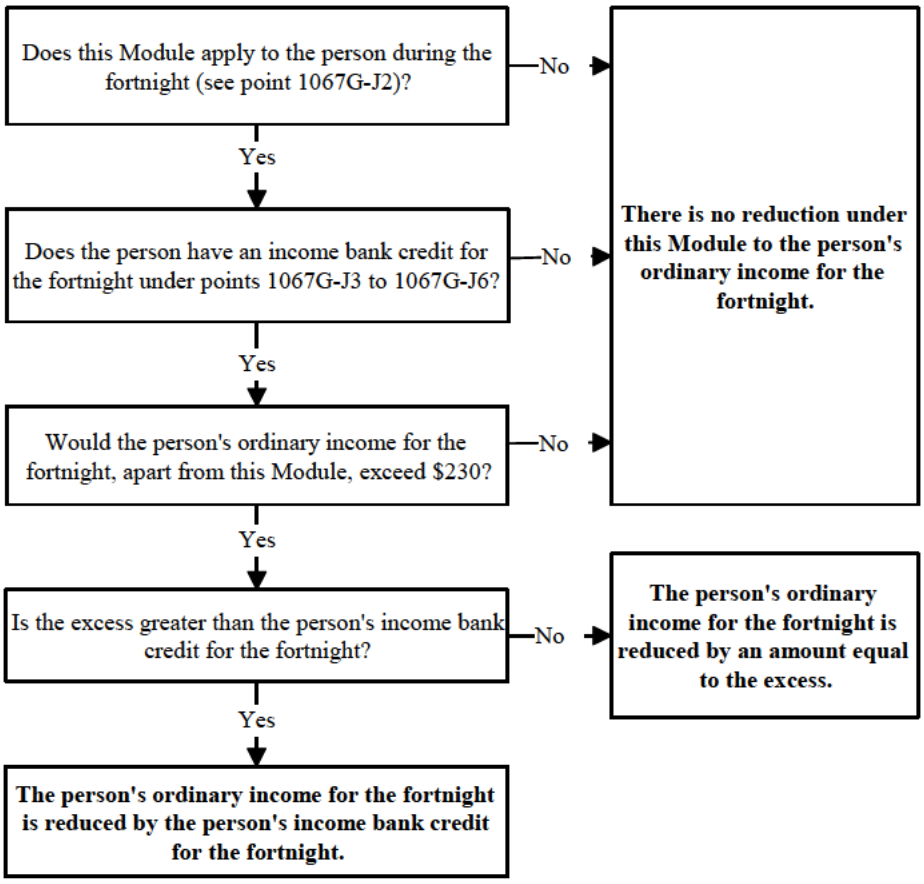
Module J—Student income bank

Student income bank

1067G-J1 A person's ordinary income under Module H may be reduced under this Module. This diagram sets out how to work out:

(a) whether the person's ordinary income for a particular fortnight, in respect of which youth allowance may be payable to the person, is to be reduced; and

(b) if it is to be reduced, the amount of the reduction.



Application of this Module

1067G-J2 This Module applies to a person during a particular fortnight, in respect of which youth allowance may be payable to the person, if the person is undertaking full-time study (see section 541B) or is a new apprentice (see subsection 23(1)) at any time during the fortnight.

Income bank credit

1067G-J3 A person's income bank credit for a particular income bank fortnight of the person is to be worked out as follows:

Method statement

Step 1. Assume that the person's income bank credit, at the time this Module starts applying to the person, is an opening balance of zero.

Step 2. If, for the person's first income bank fortnight, the person has an income credit under point 1067G-J4, add it to the opening balance.

Step 3. For each subsequent income bank fortnight of the person, up to but not including the fortnight in question, either:

(a) if the person has an income credit for that fortnight under point 1067G-J4 and the person is not a new apprentice—add it to the balance of the person's income bank credit in respect of all the previous fortnights, but not so as to increase the balance beyond $10,000; or

(aa) if the person has an income credit for that fortnight under point 1067G-J4 and the person is a new apprentice—add it to the balance of the person's income bank credit in respect of all the previous

fortnights, but not so as to increase the balance beyond $1,000; or

(b) if the person has, in respect of that fortnight, drawn from the person's income bank credit under point 1067G-J5—deduct from that balance the amount drawn, but not so as to reduce the balance below zero.

The result is the person's income bank credit for the fortnight in question.

Income credit

1067G-J4 For the purposes of point 1067G-J3, if the amount that would, apart from this Module, be the person's ordinary income for an income bank fortnight of the person is less than the ordinary income free area (see paragraph 1067G-H29(a) or (aa)):

(a) the person has an income credit for that fortnight; and

(b) the income credit is an amount equal to the difference between the ordinary income free area (see paragraph 1067G-H29(a) or (aa)) and the first-mentioned amount.

Drawing from income bank credit

1067G-J5 For the purposes of point 1067G-J3, if the amount that would, apart from this Module, be the person's ordinary income for an income bank fortnight of the person is greater than the ordinary income free area (see paragraph 1067G-H29(a) or (aa)):

(a) the person is taken to have drawn from the person's income bank credit in respect of that fortnight; and

(b) the amount drawn is taken to be an amount equal to the difference between the first-mentioned amount and the ordinary income free area (see paragraph 1067G-H29(a) or (aa)).

Income bank fortnight

1067G-J6 For the purposes of this Module, an income bank fortnight of a person is any fortnight, in respect of which youth allowance may be payable to the person, during the whole or a part of which this Module applies to the person.

Opening balance following cancellation of another social security pension or benefit

1067G-J7 If:

(a) a person ceases to be a working credit participant because of a determination to cancel, or an automatic cancellation of, the person's social security pension or social security benefit; and

(b) the person had a working credit balance greater than nil immediately before the date of effect of the determination or cancellation; and

(c) the person makes a claim, or is taken to have made a claim, for a youth allowance; and

(d) the Secretary determines that the claim is to be granted with effect from a day within 12 months after the date of effect mentioned in paragraph (b); and

(e) the person becomes a person to whom this Module applies on a day (the ***module application day***), being either the day with effect from which the claim is granted or a day following that day;

the working credit balance mentioned in paragraph (b) becomes the opening balance of the income bank credit applicable to the person on the module application day.

Opening balance following suspension of youth allowance

1067G-J8 If:

(a) a person ceases to be a working credit participant because of a determination to suspend the person's youth allowance; and

OFFICIAL: Sensitive // Legal Privilege

(b) the person had a working credit balance greater than nil immediately before the date of effect of the determination; and

(c) within 12 months after the date of effect of the determination:

(i) the person commences to undertake full-time study or becomes a new apprentice; and

(ii) the payment of the person's youth allowance is resumed; and

(d) the person becomes a person to whom this module applies on the day with effect from which the person's youth allowance is resumed;

the working credit balance mentioned in paragraph (b) becomes the opening balance of the income bank credit applicable to the person on the day mentioned in paragraph (d).

Opening balance following suspension and subsequent cancellation of another social security pension or benefit

1067G-J9 If:

(a) a person ceases to be a working credit participant because of a determination to suspend the person's social security pension or social security benefit; and

(b) while the person's pension or benefit is suspended, there is a determination to cancel the person's pension or benefit; and

(c) the person had a working credit balance greater than nil immediately before the date of effect of the suspension determination; and

(d) the person makes a claim, or is taken to have made a claim, for a youth allowance; and

(e) the Secretary determines that the claim is to be granted with effect from a day within 12 months after the date of effect mentioned in paragraph (c); and

(f) the person becomes a person to whom this Module applies on a day (the ***module application day***), being either the day with effect from which the claim is granted or a day following that day;

the working credit balance mentioned in paragraph (c) becomes the opening balance of the income bank credit applicable to the person on the module application day.

Opening balance following commencement of full-time study by youth allowance recipient

1067G-J10 If:

(a) a person is receiving youth allowance and is not undertaking full-time study; and

(b) the person commences to undertake full-time study; and

(c) either because of a determination made as a result of the commencement or, if no determination is necessary, because of the commencement itself, the person, on a day (the ***module application day***):

(i) ceases to be a working credit participant; and

(ii) becomes a person to whom this Module applies; and

(d) the person had a working credit balance greater than nil immediately before the module application day;

the working credit balance mentioned in paragraph (d) becomes the opening balance of the income bank credit applicable to the person on the module application day.

Opening balance following commencement as a new apprentice by youth allowance recipient

1067G-J11 If:

(a) a person is receiving youth allowance and is not a new apprentice; and

(b) the person becomes a new apprentice; and

(c) either because of a determination made as a result of the commencement or, if no determination is necessary, because of the commencement itself, the person, on a day (the ***module application day***):

(i) ceases to be a working credit participant; and

(ii) becomes a person to whom this Module applies; and

(d) the person had a working credit balance greater than nil immediately before the module application day;

the working credit balance mentioned in paragraph (d) becomes the opening balance of the income bank credit applicable to the person on the module application day.

Module K—Remote area allowance

Remote area allowance—person physically in remote area

1067G-K1 An amount by way of remote area allowance is to be added to a person's rate of youth allowance if:

(a) the person's rate of youth allowance apart from this point is greater than nil; and

(b) the person's usual place of residence is situated in the remote area; and

(c) the person is physically present in the remote area.

Note 1: For ***remote area*** see subsection 14(1).

Note 2: A person may be considered to be physically present in a remote area during temporary absences (see subsection 14(2)).

Rate of remote area allowance

1067G-K2 A person's rate of remote area allowance is worked out using Table K. Work out which family situation in the table applies to the person. The rate of remote area allowance is the corresponding amount in column 3 plus an additional corresponding amount in column 4 for each FTB child, and each regular care child, of the person.

Table K—Remote area allowance

Column 1 Item	Column 2 Person's family situation	Column 3 Basic allowance	Column 4 Additional allowance for each FTB child and regular care child
1	Not a member of a couple	$18.20	$7.30
2	Partnered	$15.60	$7.30
3	Member of an illness separated couple	$18.20	$7.30
4	Partnered (partner in gaol)	$18.20	$7.30

Note: For ***member of a couple***, ***partnered***, ***illness separated couple*** and ***partnered (partner in gaol)*** see section 4.

Meaning of remote area allowance

1067G-K3 In Table K, remote area allowance means an amount added to a person's youth allowance by way of remote area allowance.

In remote area

1067G-K4 For the purposes of Table K, a person is in the remote area if:

(a) the person's usual place of residence is in the remote area; and

(b) the person is physically present in the remote area.

Special rule if partner has an FTB or regular care child but is not receiving a pension

1067G-K6 If:

(a) an additional allowance is to be included in the rate of remote area allowance for a person who is a member of a couple; and

(b) the person's partner is not receiving a social security pension or social security benefit; and

(c) the person's partner has an FTB child or a regular care child;

the child is taken, for the purposes of this Module, to be an FTB child, or a regular care child, (as the case requires) of the person.

Special rule if partner has an FTB or regular care child but is not receiving additional allowance for the child

1067G-K7 If:

(a) an additional allowance is to be included in the rate of remote area allowance for a person who is a member of a couple; and

(b) the person's partner has an FTB child or a regular care child; and

(c) the person's partner is not receiving additional allowance for the child;

the child is taken, for the purposes of this Module, to be an FTB child, or a regular care child, (as the case requires) of the person.

Special rule dealing with the death of an FTB or regular care child

1067G-K9 If an FTB child, or a regular care child, of a person dies, this Module has effect, for a period of 14 weeks after the death of the child, as if the child had not died.

Note: This point does not prevent this Module having the effect it would have had if the child would otherwise have ceased to be an FTB child, or a regular care child, during that 14 weeks.

Module L—Table of pensions, benefits, allowances and compensation

Table of pensions, benefits, allowances and compensation		
Item	**Type of pension, benefit, allowance and compensation**	
1	Age pension	(Part 2.2)
2	Service pension (age)	(Section 36 of the Veterans' Entitlements Act)
3	Defence widow's pension—if the widow has no dependent children	(Section 70 of the Veterans' Entitlements Act)
4	War widow's pension—if the widow has no dependent children	(Section 13 of the Veterans' Entitlements Act)
4A	Compensation for an armed services widow who has no dependent children	(Paragraph 234(1)(b) or subsection 236(5) of the Military Rehabilitation and Compensation Act)
7	Service pension (partner)—if partner is receiving service pension (age)	(Section 38 of the Veterans' Entitlements Act)
7A	Income support supplement	(section 45A of the Veterans' Entitlements Act)
7B	Veteran payment	(section 45SB of the Veterans' Entitlements Act)
12	Carer payment	(Part 2.5)
13	Service pension (carer)	(Section 39 of the Veterans' Entitlements Act)
14	Defence widow's pension—if the widow has a dependent child	(Section 70 of the Veterans' Entitlements Act)
15	Disability support pension	(Part 2.3)
16	Service pension (invalidity)	(Section 37 of the Veterans' Entitlements Act)
17	Pension PP (single)	(Part 2.10)
20	War widow's pension—if the widow has a dependent child	(Section 13 of the Veterans' Entitlements Act)

Section 1067G

Table of pensions, benefits, allowances and compensation		
Item	**Type of pension, benefit, allowance and compensation**	
20A	Compensation for an armed services widow who has a dependent child	(Paragraph 234(1)(b) or subsection 236(5) of the Military Rehabilitation and Compensation Act)
22	Wife's service pension—if husband is receiving an invalidity service pension	(Section 40 of the Veterans' Entitlements Act)
23	Jobseeker payment	(Part 2.12)
25	Special benefit	(Part 2.15)
26	Benefit PP (partnered)	(Part 2.10)
27	Austudy payment	(Part 2.11A)

OFFICIAL: Sensitive // Legal Privilege

Part 3.5A—Austudy Payment Rate Calculator

1067H Definitions

In this Part:

living at home has the meaning given by section 1067J.

long term income support student has the meaning given by section 1067K.

1067J Person living at home

(1) A person ***lives at home*** if the person lives at the home of either or both of his or her parents.

Note: For parent see section 5 (paragraph (a) of the definition of ***parent***).

(2) If a person (other than a person who is an adopted child) is a relationship child of another person because he or she is a child of the other person, and of a third person, within the meaning of the *Family Law Act 1975*, the other person and the third person are taken to be the person's only parents for the purposes of subsection (1).

1067K Long term income support student

(1) A person is a ***long term income support student*** if the person:

(b) does not have a dependent child; and

(c) is either:

(i) undertaking study (whether as a full-time student or as a concessional study-load student) in respect of a course of education that the person has commenced after turning 21; or

(ii) a new apprentice and became a new apprentice after turning 21; and

(d) has, for at least 26 weeks in the period of 39 weeks that ended when the person commenced to undertake the study or

became a new apprentice, been receiving one or more of the following:

(i) jobseeker payment;
(iii) special benefit;
(iv) disability support pension;
(vi) carer payment;
(ix) pension PP (single);
(x) sole parent pension;
(xi) benefit parenting allowance;
(xii) benefit PP (partnered).

Note 1: For ***dependent child*** see subsections 5(2) to (9).

Note 2: For ***full-time student*** and ***concessional study-load student*** see sections 569C and 569D.

(2) A person is also a ***long term income support student*** if the person:

(b) does not have a dependent child; and
(c) does not have English as a first language; and
(d) is undertaking a course in English, being a course that the Secretary has approved.

Note: For ***dependent child*** see subsections 5(2) to (9).

1067L Rate of austudy payment

Austudy Payment Rate Calculator

(1) The rate of austudy payment of a person referred to in section 581 is to be calculated in accordance with the Rate Calculator in this section.

Limit on rate of payment

(2) If:

(a) a person is living with another person as the spouse of the other person on a genuine domestic basis although not legally married to the other person (whether the persons are the same sex or different sexes); and

OFFICIAL: Sensitive // Legal Privilege

(b) the other person is under the age of consent that applies in the State or Territory in which they are living;

the rate of the person's austudy payment is not to be more than the rate at which the austudy payment would be payable to the person if the other person were the person's partner.

Austudy Payment Rate Calculator

Module A—Overall rate calculation process

Method of calculating rate

1067L-A1 The rate of payment is a daily rate. That rate is worked out by dividing the fortnightly rate calculated according to this Rate Calculator by 14.

Method statement

Step 1. Work out the person's maximum basic rate using Module B below.

Step 1A. Work out the pension supplement amount (if any) using Module BA below.

Step 1B. Work out the energy supplement (if any) using Module BB below.

Step 2. Work out the amount a fortnight (if any) of pharmaceutical allowance using Module C below.

Step 2A. Work out the applicable amount per fortnight (if any) for rent assistance in accordance with paragraph 1070A(a).

Step 3. Add up the amounts obtained in Steps 1, 1A, 1B, 2 and 2A: the result is the ***maximum payment rate***.

Step 4.	Apply the income test using Module D below to work out the person's income reduction.
Step 5.	Take away the person's income reduction from the maximum payment rate: the result is the ***provisional fortnightly payment rate***. Note: If a person's rate is reduced under this step, the order in which the reduction is to be made is laid down by section 1210.
Step 6.	The ***rate of payment*** is the amount obtained by: (a) subtracting from the provisional fortnightly payment rate any special employment advance deduction (see Part 3.16B); and (b) if there is any amount remaining, subtracting from that amount any advance payment deduction (see Part 3.16A); and (c) adding any amount payable by way of remote area allowance (see Module F).

Module B—Maximum basic rate

Maximum basic rate

1067L-B1 A person's maximum basic rate is to be worked out as follows:

(a) if the person is not a long term income support student (see section 1067K)—use Table BA;

(b) if the person is a long term income support student—use point 1067L-B3.

Person who is not a long term income support student

1067L-B2(1) If the person is not a long term income support student (see section 1067K), work out:

(a) whether the person is a member of a couple (see section 4); and
(b) whether the person has a dependent child (see subsections 5(2) to (9)); and
(c) if the person is not a member of a couple, whether the person has a YA child (see subpoint (2)).

The person's maximum basic rate is the amount in column 3 of the table that corresponds to the person's situation as described in column 2 of the table.

Table BA—Maximum basic rates (persons who are not long term income support students)

Column 1 Item	Column 2 Person's situation	Column 3 Rate
1	Does not have a dependent child or a YA child	$512.50
2	Is a member of a couple and has a dependent child	$557.90
3	Is not a member of a couple and has a dependent child or YA child	$656

Note: The rates in column 3 are indexed annually in line with CPI increases (see sections 1191–1194).

(2) In this point:

YA child, in relation to a person who is not a member of a couple, means a child who is receiving youth allowance, is under 18 years of age and would be a dependent child of the person if he or she were not receiving the allowance.

Person who is a long term income support student

1067L-B3 If the person is a long term income support student (see section 1067K), work out whether the person is a member of a couple (see section 4).

OFFICIAL: Sensitive // Legal Privilege

The person's maximum basic rate is the amount in column 3 of the table that corresponds to the person's situation as described in column 2 of the table.

Table BB—Maximum basic rates (persons who are long term income support students)

Column 1 Item	Column 2 Person's situation	Column 3 Rate
1	Is a member of a couple	$557.90
2	Is not a member of a couple	$611.90

Module BA—Pension supplement

Pension supplement

1067L-BA1 A pension supplement amount is to be added to the person's maximum basic rate if the person is residing in Australia, has reached pension age and:

(a) is in Australia; or

(b) is temporarily absent from Australia and has been so for a continuous period not exceeding 6 weeks.

1067L-BA2 The person's pension supplement amount is:

(a) if an election by the person under subsection 1061VA(1) is in force—the amount worked out under point 1067L-BA4; and

(b) otherwise—the amount worked out under point 1067L-BA3.

Amount if no election in force

1067L-BA3 The person's pension supplement amount is the amount worked out by:

(a) applying the applicable percentage in the following table to the combined couple rate of pension supplement; and

(b) dividing the result by 26; and

(c) if:

(i) the person is not partnered; and

(ii) the amount resulting from paragraph (b) is not a multiple of 10 cents;

rounding the amount up or down to the nearest multiple of 10 cents (rounding up if the amount is not a multiple of 10 cents but is a multiple of 5 cents).

Item	Person's family situation	Use this %
1	Not member of couple	66.33%
2	Partnered	50%
3	Member of illness separated couple	66.33%
4	Member of respite care couple	66.33%
5	Partnered (partner in gaol)	66.33%

Note: For ***combined couple rate of pension supplement***, see subsection 20A(1).

Amount if election in force

1067L-BA4 The person's pension supplement amount is the amount worked out as follows:

(a) work out the amount for the person under point 1067L-BA3 as if the election were not in force;

(b) from that amount, subtract $^{1}/_{26}$ of the person's minimum pension supplement amount.

Module BB—Energy supplement

1067L-BB1 An energy supplement is to be added to the person's (the ***recipient's***) maximum basic rate if the recipient is residing in Australia and:

(a) is in Australia; or

(b) is temporarily absent from Australia and has been so for a continuous period not exceeding 6 weeks.

However, this Module does not apply if quarterly energy supplement is payable to the recipient.

Note: Section 918 may affect the addition of the energy supplement.

Recipient has reached pension age

1067L-BB2 If the recipient has reached pension age, the recipient's energy supplement is the amount worked out using the following table:

Energy supplement		
Item	**Recipient's family situation**	**Amount of energy supplement**
1	Not a member of a couple	$14.10
2	Partnered	$10.60
3	Member of an illness separated couple	$14.10
4	Member of a respite care couple	$14.10
5	Partnered (partner in gaol)	$14.10

Recipient has not reached pension age

1067L-BB3 If the recipient has not reached pension age, the recipient's energy supplement is worked out using the following table:

Energy supplement		
Item	**Recipient's family situation for maximum basic rate**	**Amount of energy supplement**
1	If the recipient's maximum basic rate is worked out under item 1 of the table in subpoint 1067L-B2(1)	$7.00
2	If the recipient's maximum basic rate is worked out under item 2 of the table in subpoint 1067L-B2(1)	$7.70
3	If the recipient's maximum basic rate is worked out under item 3 of the table in subpoint 1067L-B2(1)	$9.20
4	If the recipient's maximum basic rate is worked out under item 1 of the table in point 1067L-B3	$7.70

Energy supplement		
Item	**Recipient's family situation for maximum basic rate**	**Amount of energy supplement**
5	If the recipient's maximum basic rate is worked out under item 2 of the table in point 1067L-B3	$8.60

Module C—Pharmaceutical allowance

Qualification for pharmaceutical allowance

1067L-C1 Subject to points 1067L-C1A and 1067L-C2, an amount by way of pharmaceutical allowance is to be added to a person's maximum basic rate if:

(b) the person has turned 60; and

(c) the person has been receiving income support payments in respect of a continuous period of at least 9 months (whether or not the kind of payment received has changed over the period and whether the period or any part of it occurred before or after the commencement of this paragraph).

Note 1: For ***income support payment*** see subsection 23(1).

Note 2: For the determination of the continuous period in respect of which a person received income support payments see section 38B.

No pharmaceutical allowance if person receiving pension supplement

1067L-C1A Pharmaceutical allowance is not to be added to a person's maximum basic rate if a pension supplement amount has been added to that rate.

No pharmaceutical allowance if partner receiving certain supplements under other Acts

1067L-C2 Pharmaceutical allowance is not to be added to a person's maximum basic rate if:

(a) the person is a member of a couple; and

(b) the person's partner is receiving:
  (i) veterans supplement under section 118A of the Veterans' Entitlements Act; or
  (ii) MRCA supplement under section 300 of the Military Rehabilitation and Compensation Act; or
  (iii) pharmaceutical supplement under Part 3A of the *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) Act 2006*; or
  (iv) pharmaceutical supplement under Part 4 of the *Treatment Benefits (Special Access) Act 2019*; and
(c) the person's partner is not receiving a service pension or a veteran payment.

Amount of pharmaceutical allowance

1067L-C3 The amount of pharmaceutical allowance is the amount per fortnight worked out using the following table:

Table C—Pharmaceutical allowance amounts

Column 1 Item	Column 2 Person's family situation	Column 3 Amount per fortnight
1	Not a member of a couple	$5.40
2	Partnered	$2.70
3	Member of an illness separated couple	$5.40
4	Member of a respite care couple	$5.40
5	Partnered (partner getting service pension)	$2.70
6	Partnered (partner in gaol)	$5.40

Note 1: For ***member of a couple***, ***partnered***, ***illness separated couple***, ***respite care couple*** and ***partnered (partner in gaol)*** see section 4.

Note 2: The amounts in column 3 are indexed or adjusted annually in line with CPI increases on 1 January (see sections 1191 to 1194 and 1206A).

Module D—Income test

Effect of ordinary income on maximum payment rate

1067L-D1 This is how to work out the effect of:

(a) a person's ordinary income; and

(b) the ordinary income of a partner of the person;

on the person's maximum payment rate:

Method statement

Step 1. Work out the amount of the person's ordinary income on a fortnightly basis (where appropriate, taking into account the matters provided for in points 1067L-D2 to 1067L-D24).

Step 2. If the person is a member of a couple, work out the partner income free area using point 1067L-D25.

Note: The partner income free area is the maximum amount of ordinary income the person's partner can have without affecting the person's benefit.

Step 3. Use point 1067L-D26 to work out the person's partner income excess. (If there is no partner income excess under that point, the person's partner income excess is taken to be nil.)

Step 4. Use the person's partner income excess to work out the person's partner income reduction using point 1067L-D27.

OFFICIAL: Sensitive // Legal Privilege

Step 5.	Use point 1067L-D29 to work out the person's ordinary income excess. (If there is no ordinary income excess under that point, the person's ordinary income excess is taken to be nil.)
Step 6.	Use the person's ordinary income excess to work out the person's ordinary income reduction using points 1067L-D30, 1067L-D31 and 1067L-D32.
Step 7.	Add the person's partner income reduction and ordinary income reduction: the result is the ***person's income reduction*** referred to in Step 4 of the Method statement in point 1067L-A1.

Note 1: For ***ordinary income*** see subsection 8(1).

Note 2: The application of the income test is affected by provisions concerning the following:

(a) the general concept of ordinary income and the treatment of certain income amounts (Division 1 of Part 3.10);
(b) business income (sections 1074 and 1075);
(c) income from financial assets (including income streams (short term) and certain income streams (long term)) (Division 1B of Part 3.10);
(d) income from income streams not covered by Division 1B of Part 3.10 (Division 1C of Part 3.10);
(e) disposal of income (sections 1106 to 1111).

Ordinary income of members of certain couples

1067L-D2 If a person is a member of a couple and the person's partner is receiving a social security pension, a service pension, income support supplement or a veteran payment, the person's ordinary income is taken to be one half of the sum of:

(a) the amount that would be the person's ordinary income if he or she were not a member of a couple; and
(b) the amount that would be the ordinary income of the person's partner if the partner were not a member of a couple.

Lump sum payments arising from termination of employment

1067L-D3 Subject to points 1067L-D5 to 1067L-D16 (inclusive), if:

(a) a person's employment has been terminated; and

(b) as a result the person is entitled to a lump sum payment from the person's former employer;

the person is taken to have received the lump sum payment on the day on which the person's employment was terminated.

Certain leave payments taken to be ordinary income—employment continuing

1067L-D5 If:

(a) a person is employed; and

(b) the person is on leave for a period; and

(c) the person is or was entitled to receive a leave payment (whether as a lump sum payment, as a payment that is one of a series of regular payments or otherwise) in respect of a part or all of a leave period;

the person is taken to have received ordinary income for a period (the ***income maintenance period***) equal to the leave period to which the leave payment entitlement relates.

Certain termination payments taken to be ordinary income

1067L-D6 If:

(a) a person's employment has been terminated; and

(b) the person receives a termination payment (whether as a lump sum payment, as a payment that is one of a series of regular payments or otherwise);

the person is taken to have received ordinary income for a period (the ***income maintenance period***) equal to the period to which the payment relates.

More than one termination payment on a day

1067L-D7 If:

(a) the person is covered by point 1067L-D6; and

(b) the person receives more than one termination payment on a day;

the income maintenance period is worked out by adding the periods to which the payments relate.

Start of income maintenance period—employment continuing

1067L-D8 If the person is covered by point 1067L-D5, the income maintenance period starts on the first day of the leave period to which the leave payment entitlement relates.

Start of income maintenance period—employment terminated

1067L-D9 Subject to point 1067L-D10A, if the person is covered by point 1067L-D6, the income maintenance period starts, subject to point 1067L-D10, on the day on which the person is paid the termination payment.

Commencement of income maintenance period where there is a second termination payment

1067L-D10 If:

(a) a person who is covered by point 1067L-D6 is subject to an income maintenance period (the ***first period***); and

(b) the person is paid another termination payment during that period (the ***second leave payment***);

the income maintenance period for the second termination payment starts on the day after the end of the first period.

Start of income maintenance period where liquid assets test waiting period applies

1067L-D10A If a person to whom point 1067L-D10 applies is subject to a liquid assets test waiting period, the income maintenance period is taken to have started on the day on which the liquid assets test waiting period started.

Leave payments or termination payments in respect of periods longer than a fortnight

1067L-D11 If:

(a) a person receives a leave payment or termination payment; and

(b) the payment is in respect of a period longer than a fortnight;

the person is taken to receive in a payment fortnight or part of a payment fortnight an amount calculated by:

(c) dividing the amount received by the number of days in the period to which the payment relates (***daily rate***); and

(d) multiplying the daily rate by the number of days in the payment fortnight that are also in the period.

1067L-D12 If the Secretary is satisfied that a person is in severe financial hardship because the person has incurred unavoidable or reasonable expenditure while an income maintenance period applies to the person, the Secretary may determine that the whole, or any part, of the period does not apply to the person.

Note 1: For ***in severe financial hardship*** see subsection 19C(2) (person who is not a member of a couple) and subsection 19C(3) (person who is a member of a couple).

Note 2: For ***unavoidable or reasonable expenditure*** see subsection 19C(4).

Note 3: If an income maintenance period applies to a person, then, during that period:

(a) the allowance claimed may not be payable to the person; or

(b) the amount of the allowance payable to the person may be reduced.

When a person receives a leave payment or a termination payment

1067L-D13 For the purposes of points 1067L-D5 to 1067L-D12 (inclusive), a person (***first person***) is taken to receive a leave payment or termination payment if:

(a) the payment is made to another person:

(i) at the direction of the first person or a court; or

(ii) on behalf of the first person; or

(iii) for the benefit of the first person; or

(b) the first person waives or assigns his or her right to receive the payment.

Single payment in respect of different kinds of termination payments

1067L-D14 If a person who is covered by point 1067L-D6 receives a single payment in respect of different kinds of termination payments, then, for the purposes of the application of points 1067L-D5 to 1067L-D13 (inclusive):

(a) each part of the payment that is in respect of a different kind of termination payment is taken to be a separate payment; and

(b) the income maintenance period in respect of the single payment is worked out by adding the periods to which the separate payments relate.

Definitions

1067L-D15 In points 1067L-D5 to 1067L-D14 (inclusive):

payment fortnight means a fortnight in respect of which an austudy payment is paid, or would be paid apart from the application of an income maintenance period, to a person.

period to which the payment relates means:

(a) if the payment is a leave payment—the leave period to which the payment relates; or

(b) if the payment is a termination payment and is calculated as an amount equivalent to an amount of ordinary income that the person would (but for the termination) have received from the employment that was terminated—the period for which the person would have received that amount of ordinary income; or

(c) if the payment is a termination payment and paragraph (b) does not apply—the period of weeks (rounded down to the nearest whole number) in respect of which the person would have received ordinary income, from the employment that

was terminated, of an amount equal to the amount of the termination payment if:

(i) the person's employment had continued; and

(ii) the person received ordinary income from the employment at the rate per week at which the person usually received ordinary income from the employment prior to the termination.

redundancy payment includes a payment in lieu of notice.

termination payment includes:

(a) a redundancy payment; and

(b) a leave payment relating to a person's employment that has been terminated; and

(c) any other payment that is connected with the termination of a person's employment.

Meaning of leave payment

1067L-D16 In points 1067L-D5 to 1067L-D15 (inclusive):

leave payment includes a payment in respect of sick leave, annual leave, maternity leave and long service leave, but does not include:

(a) an instalment of parental leave pay; or

(b) dad and partner pay.

Board and lodging

1067L-D18 A person's ordinary income is not to include a payment to the person for board or lodging provided by the person to a parent, child, brother or sister of the person.

Ordinary income generally taken into account when first earned, derived or received

1067L-D19 Subject to points 1067L-D20, 1067L-D21, 1067L-D23 and 1067L-D24 and sections 1072A and 1073, ordinary income (except employment income) is to be taken into account in the fortnight in which it is first earned, derived or received.

Note: See Division 1AA of Part 3.10 for the treatment of employment income.

Claimant or recipient receives lump sum amount for remunerative work

1067L-D20 If a person whose claim for austudy payment has been granted receives, after the claim was made, a lump sum amount that:

(a) is paid to him or her in relation to remunerative work; and
(b) is not a payment to which point 1067L-D21 applies; and
(c) is not an exempt lump sum; and
(d) is not employment income;

the person is, for the purposes of this Module, taken to receive one fifty-second of that amount as ordinary income during each week in the 12 months commencing on the day on which the person becomes entitled to receive that amount.

Partner of claimant or recipient receives lump sum amount for remunerative work

1067L-D21 If:

(a) a person whose claim for austudy payment has been granted is a member of a couple; and
(b) after the person has made the claim, the person's partner receives a lump sum amount that:
  (i) is paid to him or her in relation to remunerative work; and
  (ii) is not a payment to which point 1067L-D23 applies; and
  (iii) is not an exempt lump sum; and
  (iv) is not employment income;

the partner is, for the purposes of this Module, taken to receive one fifty-second of that amount as ordinary income during each week in the 12 months commencing on the day on which the partner becomes entitled to receive that amount.

Operation of points 1067L-D20 and 1067L-D21

1067L-D22 Points 1067L-D20 and 1067L-D21 have effect even if the person who has made the claim:

(a) is subject to a liquid assets test waiting period or an income maintenance period in respect of the allowance claimed; or

(b) is subject to a seasonal work preclusion period;

during the period of 12 months referred to in those points.

Ordinary income received at intervals longer than one fortnight

1067L-D23 Subject to points 1067L-D5 to 1067L-D16 (inclusive), if:

(a) a person receives a number of payments of ordinary income (except employment income); and

(b) each payment is in respect of a period (***work period***) that is greater than a fortnight; and

(c) there is reasonable predictability or regularity as to the timing of the payments; and

(d) there is reasonable predictability as to the quantum of the payments;

the person is taken to receive in a fortnight falling within, or overlapping with, a work period an amount calculated by:

(e) dividing the amount received by the number of days in the work period (***daily rate***); and

(f) multiplying the daily rate by the number of days in the fortnight that are also within the work period.

Payment of arrears of periodic compensation payments

1067L-D24 If:

(a) at the time of an event that gives rise to an entitlement of a person to compensation, the person is receiving an austudy payment; and

(b) in relation to that entitlement, the person receives a payment of arrears of periodic compensation;

the person is taken to receive, in a fortnight falling within, or overlapping with, the periodic payments period, an amount calculated by:

(c) dividing the amount received by the number of days in the periodic payments period (***daily rate***); and

(d) multiplying the daily rate by the number of days in the fortnight that are also within the periodic payments period.

Note: For ***periodic payments period*** see section 17.

Partner income free area

1067L-D25 The partner income free area for a person is:

(a) if the person's partner is not receiving a social security benefit and has not turned 22—the amount of income of the partner (rounded up to the nearest dollar) beyond which youth allowance would not be payable to the partner if the partner were qualified for a youth allowance and were not undertaking full-time study (see section 541B); or

(b) if the person's partner is not receiving a social security benefit and has turned 22—the amount of income of the partner (rounded up to the nearest dollar) beyond which jobseeker payment would not be payable to the partner if the partner were qualified for a jobseeker payment; or

(c) if the person's partner is receiving a social security benefit—the amount of income of the partner (rounded up to the nearest dollar) beyond which that benefit would not be payable to the partner.

1067L-D25A For the purposes of paragraph 1067L-D25(a), disregard steps 2, 2A and 3 of the method statement in point 1067G-A1.

1067L-D25B For the purposes of paragraph 1067L-D25(b), disregard steps 2 and 3 of the method statement in point 1068-A1.

OFFICIAL: Sensitive // Legal Privilege

Partner income excess

1067L-D26 If:

(a) a person is a member of a couple; and

(b) the person's partner is not receiving a social security pension, a service pension, income support supplement or a veteran payment; and

(c) the partner's ordinary income exceeds the partner income free area for the partner;

then:

(d) the person has a partner income excess; and

(e) the person's partner income excess is the amount by which the partner's ordinary income exceeds the partner income free area.

Partner income reduction

1067L-D27 If a person has a partner income excess, the person's partner income reduction is an amount equal to 60% of the person's partner income excess.

Example:

Facts: Alice's partner Martin has an ordinary income of $800. Assume that the partner income free area under point 1067L-D25 is $640.

Result: Martin's ordinary income exceeds the partner income free area. Alice therefore has a partner income excess under point 1067L-D26 of:

$800 – $640 = $160

Alice's partner income reduction under point 1067L-D27 is therefore:

60% × $160 = $96

Ordinary income free area

1067L-D28 A person's ordinary income free area is $400.

Ordinary income excess

1067L-D29 If a person's ordinary income exceeds the person's ordinary income free area:

(a) the person has an ordinary income excess; and

(b) the person's ordinary income excess is the amount by which the person's ordinary income exceeds the person's ordinary income free area.

Ordinary income reduction

1067L-D30 If a person has an ordinary income excess, the person's ordinary income reduction is the sum of:

(a) the person's lower range reduction (if any) (see point 1067L-D31); and

(b) the person's upper range reduction (if any) (see point 1067L-D32).

Lower range reduction

1067L-D31 The person's lower range reduction is an amount equal to 50% of the part of the person's ordinary income excess that does not exceed $80.

Upper range reduction

1067L-D32 The person's upper range reduction is an amount equal to 60% of the part (if any) of the person's ordinary income excess that exceeds $80.

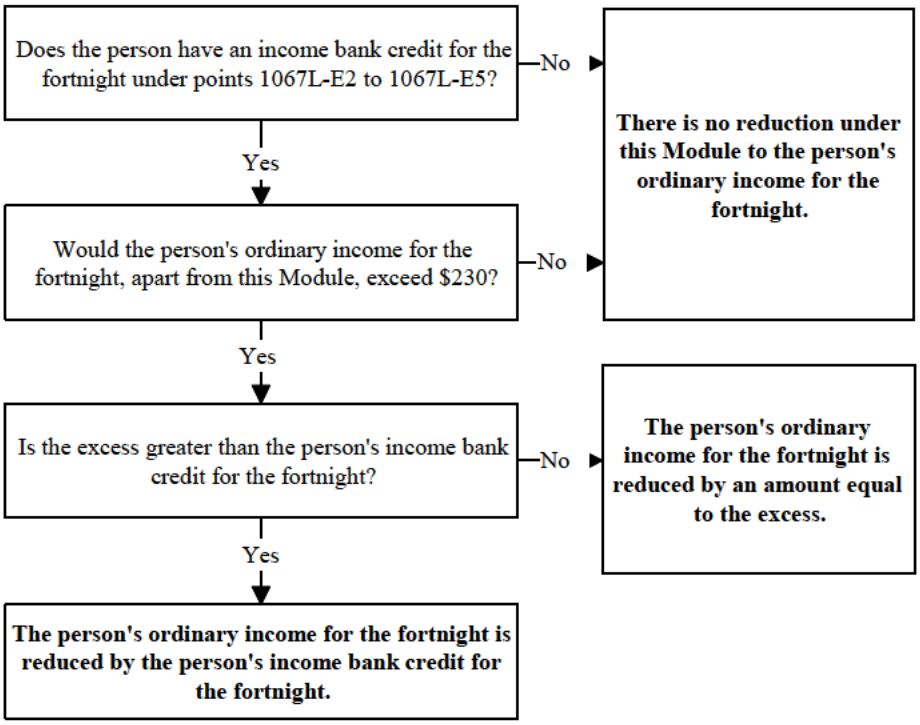
Module E—Student income bank

Student income bank

1067L-E1 A person's ordinary income under Module D may be reduced under this Module. This diagram sets out how to work out:

(a) whether the person's ordinary income for a particular fortnight in respect of which austudy payment may be payable to the person, is to be reduced; and

(b) if it is to be reduced, the amount of the reduction.



Income bank credit

1067L-E2 A person's income bank credit for a particular income bank fortnight of the person is to be worked out as follows:

Method statement

Step 1. Assume that the person's income bank credit, at the time this Module starts applying to the person, is an opening balance of zero.

Step 2. If, for the person's first income bank fortnight, the person has an income credit under point 1067L-E3, add it to the opening balance.

Step 3. For each subsequent income bank fortnight of the person, up to but not including the fortnight in question, either:

(a) if the person has an income credit for that fortnight under point 1067L-E3 and the person is not a new apprentice—add it to the balance of the person's income bank credit in respect of all the previous fortnights, but not so as to increase the balance beyond $10,000; or

(aa) if the person has an income credit for that fortnight under point 1067L-E3 and the person is a new apprentice—add it to the balance of the person's income bank credit in respect of all the previous fortnights, but not so as to increase the balance beyond $1,000; or

(b) if the person has, in respect of that fortnight, drawn from the person's income bank credit under point 1067L-E4—deduct from that balance the amount drawn, but not so as to reduce the balance below zero.

The result is the person's income bank credit for the fortnight in question.

Income credit

1067L-E3 For the purposes of point 1067L-E2, if the amount that would, apart from this Module, be the person's ordinary income for an income bank fortnight of the person is less than the ordinary income free area (see point 1067L-D28):

(a) the person has an income credit for that fortnight; and

(b) the income credit is an amount equal to the difference between the ordinary income free area (see point 1067L-D28) and the first-mentioned amount.

Drawing from income bank credit

1067L-E4 For the purposes of point 1067L-E2, if the amount that would, apart from this Module, be the person's ordinary income for an income bank fortnight of the person is greater than the ordinary income free area (see point 1067L-D28):

(a) the person is taken to have drawn from the person's income bank credit in respect of that fortnight; and

(b) the amount drawn is taken to be an amount equal to the difference between the first-mentioned amount and the ordinary income free area (see point 1067L-D28).

Income bank fortnight

1067L-E5 For the purposes of this Module, an income bank fortnight of a person is any fortnight in respect of which an austudy payment may be payable to the person.

Opening balance following cancellation of another social security pension or benefit

1067L-E6 If:

(a) a person ceases to be a working credit participant because of a determination to cancel, or an automatic cancellation of, the person's social security pension or social security benefit; and

(b) the person had a working credit balance greater than nil immediately before the date of effect of the determination or cancellation; and

(c) the person makes a claim, or is taken to have made a claim, for an austudy payment; and

(d) the Secretary determines that the claim is to be granted with effect from a day within 12 months after the date of effect mentioned in paragraph (b); and

(e) the person becomes a person to whom this Module applies on a day (the ***module application day***), being either the day with effect from which the claim is granted or a day following that day; and

(f) the person has not reached pension age before the module application day;

the working credit balance mentioned in paragraph (b) becomes the opening balance of the income bank credit applicable to the person on the module application day.

Opening balance following suspension and subsequent cancellation of another social security pension or benefit

1067L-E7 If:

(a) a person ceases to be a working credit participant because of a determination to suspend the person's social security pension or social security benefit; and

(b) while the person's pension or benefit is suspended, there is a determination to cancel the person's pension or benefit; and

(c) the person had a working credit balance greater than nil immediately before the date of effect of the suspension determination; and

(d) the person makes a claim, or is taken to have made a claim, for an austudy payment; and

(e) the Secretary determines that the claim is to be granted with effect from a day within 12 months after the date of effect mentioned in paragraph (c); and

(f) the person becomes a person to whom this Module applies on a day (the ***module application day***), being either the day with

effect from which the claim is granted or a day following that day; and

(g) the person has not reached pension age before the module application day;

the working credit balance mentioned in paragraph (c) becomes the opening balance of the income bank credit applicable to the person on the module application day.

Module F—Remote area allowance

Remote area allowance—person physically in remote area

1067L-F1 An amount by way of remote area allowance is to be added to a person's rate of austudy payment if:

(a) the person's rate of austudy payment apart from this point is greater than nil; and

(b) the person's usual place of residence is situated in the remote area; and

(c) the person is physically present in the remote area.

Note 1: For ***remote area*** see subsection 14(1).

Note 2: A person may be considered to be physically present in a remote area during temporary absences (see subsection 14(2)).

Rate of remote area allowance

1067L-F2 A person's rate of remote area allowance is worked out using Table F. Work out which family situation in the table applies to the person. The rate of remote area allowance is the corresponding amount in column 3 plus the additional corresponding amount in column 4 for each FTB child, and each regular care child, of the person.

OFFICIAL: Sensitive // Legal Privilege

Table F—Remote area allowance

Column 1 Item	Column 2 Person's family situation	Column 3 Basic allowance	Column 4 Additional allowance for each FTB child and regular care child
1	Not a member of a couple	$18.20	$7.30
2	Partnered	$15.60	$7.30
3	Member of an illness separated couple	$18.20	$7.30
4	Partnered (partner in gaol)	$18.20	$7.30

Note: For ***member of a couple***, ***partnered***, ***illness separated couple*** and ***partnered (partner in gaol)*** see section 4.

Meaning of remote area allowance

1067L-F3 In Table F, remote area allowance means an amount added to a person's austudy payment by way of remote area allowance.

In remote area

1067L-F4 For the purposes of Table F, a person is in the remote area if:

(a) the person's usual place of residence is in the remote area; and

(b) the person is physically present in the remote area.

Special rule if partner has an FTB or regular care child but is not receiving a pension

1067L-F6 If:

(a) an additional allowance is to be included in the rate of remote area allowance for a person who is a member of a couple; and

OFFICIAL: Sensitive // Legal Privilege

(b) the person's partner is not receiving a social security pension or social security benefit; and

(c) the person's partner has an FTB child or a regular care child;

the child is taken, for the purposes of this Module, to be an FTB child, or a regular care child, (as the case requires) of the person.

Special rule if partner has an FTB or regular care child but is not receiving additional allowance for the child

1067L-F7 If:

(a) an additional allowance is to be included in the rate of remote area allowance for a person who is a member of a couple; and

(b) the person's partner has an FTB child or a regular care child; and

(c) the person's partner is not receiving additional allowance for the child;

the child is taken, for the purposes of this Module, to be an FTB child, or a regular care child, (as the case requires) of the person.

Special rule dealing with the death of an FTB or regular care child

1067L-F9 If an FTB child, or a regular care child, of a person dies, this Module has effect, for a period of 14 weeks after the death of the child, as if the child had not died.

Note: This point does not prevent this Module having the effect it would have had if the child would otherwise have ceased to be an FTB child, or a regular care child, during that 14 weeks.

OFFICIAL: Sensitive // Legal Privilege

Social Security Act 1991

No. 46, 1991

This future law compilation was prepared on 8 June 2021 taking into account amendments made by the Social Security Legislation Amendment (Streamlined Participation Requirements and Other Measures) Bill 2021.

The date of commencement for the incorporated amendments was unknown at the time of preparation.

Volume 1: sections 1–660M
Volume 2: sections 665A–1067L
Volume 3: sections 1068–1263
Schedule 1A
Volume 4: Endnotes 1–4
Volume 5: Endnote 5

Each volume has its own contents

Prepared by the Office of Parliamentary Counsel, Canberra

About this compilation

This compilation

This is a future compilation of the *Social Security Act 1991* that shows the expected text of the law as amended by the Social Security Legislation Amendment (Streamlined Participation Requirements and Other Measures) Bill 2021.

The notes at the end of this compilation (the ***endnotes***) include information about amending laws and the amendment history of provisions of the future compilation.

Future amendments

The details of expected future amendments incorporated into the text, that have not yet commenced are underlined in the endnotes.

Any future amendments that are included in the endnotes are underlined.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

Contents

Chapter 3—General provisions relating to payability and rates 1

Part 3.6—Benefit Rate Calculator B 1

1068 Rate of widow allowance, jobseeker payment (18 or over), partner allowance, and mature age allowance under Part 2.12B 1

Benefit Rate Calculator B 2

Module A—Overall rate calculation process 2

Module B—Maximum basic rate 4

Module BA—Pension supplement 10

Module C—Energy supplement 11

Module D—Pharmaceutical allowance 13

Module G—Income test 17

Module J—Remote area allowance 31

Part 3.6A—Parenting Payment Rate Calculator 35

1068A Rate of parenting payment—pension PP (single) 35

Pension PP (Single) Rate Calculator 35

Module A—Overall rate calculation process 35

Module B—Maximum basic rate 37

Module BA—Pension supplement 37

Module BB—Energy supplement 38

Module C—Pharmaceutical allowance 39

Module E—Ordinary income test 41

Module F—Remote area allowance 49

1068B Rate of parenting payment—PP (partnered) 50

Benefit PP (Partnered) Rate Calculator 50
Module A—Overall rate calculation process 50
Module C—Maximum basic rate 53
Module D—Income test 54
Module DA—Pension supplement 63
Module DB—Energy supplement 65
Module E—Pharmaceutical allowance 66
Module G—Remote area allowance 70
Part 3.7—Rent assistance 73
Division 1—Operation of this Part 73
1070 When this Part applies 73
1070A Effect of this Part 73
Division 2—Qualification for rent assistance 75
1070B Qualification—general rule 75
1070C Common requirements (about aged care residence, home ownership and rent)....75
1070D Specific requirement (carer payments and certain age and disability support pensions)....75
1070E Specific requirement (certain parenting payments) 76
1070F Specific requirement (certain disability support pensions) 77
1070G Specific requirement (youth allowance)....80
1070H Specific requirement (austudy payment, mature age allowance under Part 2.12B, jobseeker payment, partner allowance or widow allowance) 81
1070J Specific requirement (certain parenting payments) 82
Division 3—Rate of rent assistance 84
1070K Rate depends on social security payment and family situation 84
1070L Rate for carer payments and certain age and disability support pensions....84
1070M Rate for certain parenting payments 87
1070N Rate for disability support pension (person aged under 18) 88

1070P Rate for disability support pension (person aged between 18 and 21) 92
1070Q Rate for youth allowance, austudy payment, mature age allowance under Part 2.12B, jobseeker payment, partner allowance and widow allowance 95
1070R Rate for certain parenting payments 97

Division 4—Certain concepts used in this Part 99
1070S Division has effect for purposes of Part 99
1070T Rent threshold amount 99
1070U Fortnightly rent 99
1070V Rent paid by a member of certain couples 100
1070W Partner with a rent increased pension 100
1070X Partner with a rent increased benefit 100

Part 3.9—Seniors Health Card Income Test Calculator 103
1071 Seniors Health Card Income Test Calculator 103

Seniors Health Card Income Test Calculator 103

Part 3.9A—Health Care Card Income Test Calculator 111
1071A Health care card income test 111

Health Care Card Income Test Calculator 111

Part 3.10—General provisions relating to the ordinary income test 116

Division 1—Ordinary income concept and treatment of certain income amounts 116
1072 General meaning of ordinary income 116
1072A Treatment of certain lump sum payments 116
1073 Certain amounts taken to be received over 12 months 117

Division 1AAA—Work bonus 119
1073AA Work bonus 119
1073AAA Meaning of *gainful work* 124
1073AB Unused concession balance 126

Division 1AA—Employment income attribution rules 127
1073A Attribution of employment income paid in respect of a particular period or periods 127

1073B Attribution of employment income paid monthly 129
1073BA Attribution of employment income paid not in respect of a particular period 130
1073BB Anti-avoidance....132
1073BC Exclusion of certain payments....134
1073BD Daily attribution of employment income for amounts not elsewhere covered in this Division 135
1073C Fortnightly or yearly expression of attributed employment income....135

Division 1AB—Working credit accrual and depletion rules and their consequences 136

1073D To whom do working credit accrual and depletion rules apply?....136
1073E Opening balance 136
1073F Working out accruals and depletions of working credit for social security beneficiaries 140
1073G Working out the effect of a working credit depletion on the fortnightly rate of ordinary income for a social security beneficiary 142
1073H Working out accruals and depletions of working credit for social security pensioners....142
1073I Working out the effect of a working credit depletion on the yearly rate of ordinary income for a social security pensioner 144
1073J Working credit balance prevents loss of qualification in certain cases....145

Division 1A—Business income 146

1074 Ordinary income from a business—treatment of trading stock....146
1075 Permissible reductions of business income 146

Division 1B—Income from financial assets (including income streams (short term) and certain income streams (long term)) 148

1076 Deemed income from financial assets—persons other than members of couples 148
1077 Deemed income from financial assets—members of pensioner couples 149
1078 Deemed income from financial assets—members of non-pensioner couples 150

1081 Deeming threshold....151
1082 Below threshold rate, above threshold rate....152
1083 Actual return on financial assets not treated as ordinary income....152
1084 Certain money and financial investments not taken into account....152
1084A Valuation and revaluation of certain financial investments....153

Division 1C—Income from income streams not covered by Division 1B 154

Subdivision B—Income streams that are not family law affected income streams 154

1097A Scope of Subdivision....154
1098 Income from asset-test exempt income stream..154
1099 Income—income stream not a defined benefit income stream....155
1099A Income—income stream is a defined benefit income stream....156
1099AA Income from market-linked asset-test exempt income stream....156
1099B Income from asset-tested income stream (long term)....158
1099C Income—asset-tested income stream (long term) that is not a defined benefit income stream....159
1099D Income—asset-tested income stream (long term) that is a defined benefit income stream....160
1099DAA Income from certain low-payment asset-tested income streams....160
1099DAB Income—asset-tested income stream (lifetime) 162

Subdivision C—Family law affected income streams 162

1099DA Scope of Subdivision....162
1099DB Income from asset-test exempt income streams 163
1099DC Income from asset-tested income stream (long term)....164
1099DCA Income from asset-tested income stream (lifetime)....164
1099DD Decision-making principles....164

Division 1D—Aged care accommodation bonds: certain transactions before 6 November 1997 165

1099E Scope of Division....165

1099F Exempt bond amount does not count as income 166
1099G Person's ordinary income reduced using financial asset rules 166
1099H Meaning of *exempt bond amount* 166

Division 1E—Refunds to charge exempt residents 168
1099J Scope of Division 168
1099K Refunded amount does not count as income 168
1099L Person's ordinary income reduced using financial asset rules 168
1099M Application of Division 169

Division 2—Conversion of foreign currency amounts 170
1100 How value of a payment received in a foreign currency is to be determined 170
1100A Determining value of a payment originally denominated in a foreign currency but made in Australian currency 171

Division 3—Disposal of ordinary income 173
1106 Disposal of ordinary income 173
1107 Amount of disposition 174
1108 Disposal of ordinary income—individuals 174
1109 Disposal of ordinary income—members of couples 175
1111 Dispositions more than 5 years old to be disregarded 176

Part 3.12—General provisions relating to the assets test 178

Division 1—Value of person's assets 178
1118 Certain assets to be disregarded in calculating the value of a person's assets 178
1118A Value of superannuation investments determined by Minister to be disregarded 186
1118AA Value of assets reduced by amounts received from Mark Fitzpatrick Trust 187
1118AB Value of person's assets reduced: certain transactions to do with aged care accommodation bonds 188
1118AC Value of person's assets reduced: refunds to charge exempt residents 188

1119 Value of asset-tested income streams that are not defined benefit income streams, asset-tested income streams (lifetime) or family law affected income streams 188
1120 Value of asset-tested income streams that are defined benefit income streams 190
1120AA Value of asset-tested income streams (lifetime) that are managed investments 191
1120AB Value of asset-tested income streams (lifetime) that are not managed investments 193
1120A Value of asset-tested FLA income streams....199
1120B Value of partially asset-test exempt income streams 200
1120C Value of superannuation reserves for superannuation funds of 4 members or less....200
1121 Effect of charge or encumbrance on value of assets 201
1121A Effect of certain liabilities on value of assets used in primary production 203
1121B Value of life policy 204
1122 Loans....205

Division 2—Disposal of assets 206

1123 Disposal of assets....206
1124 Amount of disposal or disposition 207
1124A Disposal of assets in pre-pension years—individuals....208
1125 Disposal of assets in pension years—individuals 209
1125A Disposal of assets in pre-pension years—members of couples....210
1126 Disposal of assets in pension years—members of couples 212
1126AA Disposal of assets in income year—individuals 214
1126AB Disposals of assets in 5 year period—individuals 215
1126AC Disposal of assets in income year—members of couples 217
1126AD Disposal of assets in 5 year period—members of couples 218
1126A Disposal of assets in pre-pension year—family members....220

1126B Disposal of assets in pension year—family members....221
1126C Disposal of assets in income year—family members....222
1126D Disposals of assets in 5 year period—family members....224
1126E Modification of this Division in respect of certain assets....225
1127 Disposition more than 5 years old to be disregarded....227
1127A Division does not apply for purposes of care receiver assets test....227

Division 3—Financial hardship 228
1129 Access to financial hardship rules—pensions....228
1130 Application of financial hardship rules—pensions....229
1130A Division does not apply for purposes of care receiver assets test....232
1130B Access to financial hardship rules—pension PP (single)....232
1130C Application of financial hardship rules—pension PP (single)....234
1131 Access to financial hardship rules—benefits....236
1132 Application of financial hardship rules—benefits....237

Division 4—Pension loans scheme 240
1133AA *Pension loans scheme* definitions....240
1133 Qualification for participation in pension loans scheme....240
1134 Effect of participation in pension loans scheme—pension rate....243
1135 Effect of participation in pension loans scheme—creation of debt....244
1135A Effect of participation in pension loans scheme—maximum loan available....245
1136 Need for a request to participate....246
1137 Need for a request to later nominate or change nominated amount or rate of pension....247
1137A Non-receipt of social security pension or social security payment....248

1138 Existence of debt results in charge over real assets 249
1139 Debt not to be recovered until after death....250
1140 Enforcement of charge....251
1141 Person ceases to participate in pension loans scheme if debt exceeds maximum loan available 252
1141A Secretary may cease person's participation in pension loans scheme....252
1142 Person withdraws from pension loans scheme ..253
1142A Repayment or recovery of debt after pension loans scheme ceases to operate 253
1143 Registration of charge....254
1144 Manner of enforcement of charge....255
1144A Division does not apply for purposes of care receiver assets test....255

Division 5—Provisions relating to special residences and special residents 256

Subdivision A—General 256
1145A Application of Division to granny flat residents256
1146 Basis for different treatment 256
1147 Entry contribution....256
1148 Extra allowable amount 258
1149 Renegotiation of retirement village agreement..260

Subdivision B—Residents who are not members of a couple 261
1150 Residents who are not members of a couple....261

Subdivision C—Residents who are members of couple and share principal home 262
1151 Members of couples....262

Subdivision D—Residents who are members of illness separated couple 263
1152 Members of illness separated couples (both in special residences) 263
1153 Members of illness separated couples (partner not in special residence and partner homeowner)....265
1154 Members of illness separated couples (partner not in special residence and partner not homeowner) 267

Subdivision E—Residents who are members of ordinary couple with different principal homes 269

1155 Members of ordinary couple with different principal homes (both in special residences) 269

1156 Members of ordinary couple with different principal homes (partner not in special residence and partner homeowner) 270

1157 Members of ordinary couple with different principal homes (partner not in special residence and partner not homeowner) 271

Part 3.12A—Provisions for carer allowance and seniors health card income test 274

Division 1—Purpose of this Part 274

1157A Purpose of Part 274

Division 2—Benefits that may be assessable fringe benefits 275

1157B Benefits received in or outside Australia 275

1157C Car benefits 275

1157D Exempt car benefits 277

1157E School fees benefits 278

1157F Health insurance benefits 279

1157G Loan benefits 280

1157H Exempt loan benefit 282

1157I Housing benefits 283

1157J Exempt housing benefits—live-in residential care workers 285

1157JA Expense benefits 286

1157JB Exempt expense benefit 287

1157JC Financial investment benefit 287

Division 3—Value of car fringe benefits 288

1157K Method of valuing car fringe benefits 288

1157L Value of car fringe benefits 288

1157M Minister may determine alternative method of valuing car fringe benefits 290

Division 4—Value of school fees fringe benefits 291

1157N Value of school fees fringe benefits 291

Division 5—Value of health insurance fringe benefits 292

1157O Value of health insurance fringe benefits 292

OFFICIAL: Sensitive // Legal Privilege

Division 6—Value of loan fringe benefits 293
1157P Method of valuing loan fringe benefits.....293
1157Q Value of loan fringe benefits 293
1157R Minister may determine alternative method of valuing loan fringe benefits 296
Division 7—Value of housing fringe benefits 297
Subdivision A—Grants of housing rights 297
1157S Methods of valuing housing fringe benefits—grants of housing rights.....297
1157T Value of grants of housing rights—general.....297
1157TA Value of grants of housing rights—employees of the Defence Force 300
Subdivision B—Payments associated with loans 302
1157TB Method of valuing housing fringe benefits—payments associated with loans 302
1157TC Value of payments associated with loans 302
Subdivision C—Payments associated with enjoying housing rights 302
1157TD Methods of valuing housing fringe benefits—payments associated with enjoying housing rights 302
1157TE Value of payments associated with enjoying housing rights—general.....303
1157TF Value of payments associated with enjoying housing rights—employees of the Defence Force 305
Subdivision D—Alternative methods of valuing housing fringe benefits 308
1157U Minister may determine alternative method of valuing housing fringe benefits.....308
Division 8—Value of expense fringe benefit 309
1157UA Value of expense fringe benefits 309
Division 9—Value of financial investment fringe benefit 310
1157UB Value of financial investment fringe benefit 310
Division 10—Foreign currency rates 311
1157V Foreign currency rates 311

Part 3.13—Imprisonment 312

1158 Some social security payments not payable during period in gaol or in psychiatric confinement following criminal charge....312

1159 Payment may be redirected to dependent partner or child....312

1159A Person not qualified for some concession cards when in gaol or in psychiatric confinement following criminal charge....313

Part 3.14—Compensation recovery 314

Division 1—General 314

1160 General effect of Part....314

1161 Application of Part....314

1161A Application of Part to supplementary compensation affected payments....316

1162 Part to bind Crown....319

1163 Interpretation....319

1164 Certain lump sums to be treated as though they were received as periodic compensation payments....319

1165 Effect of certain State and Territory laws....320

Division 2—Enforcement of compensation rights 321

1166 Secretary may require person to take action to obtain compensation....321

1167 Failure to comply with a requirement to take action to obtain compensation....322

Division 3—Receipt of compensation 323

1168 Application....323

1169 Compensation affected payment not payable during lump sum preclusion period....323

1170 Lump sum preclusion period....323

1171 Deemed lump sum payment arising from separate payments....324

1172 Lump sum compensation not counted as ordinary income....325

1173 Effect of periodic compensation payments on rate of person's compensation affected payment....325

1174 Effect of periodic compensation payments on rate of partner's compensation affected payment....326

1175 Rate reduction under both income/assets test and this Part 327
1176 Periodic compensation not counted as ordinary income....327

Division 4—Recoverable amounts 329

Subdivision A—Preliminary 329
1177 Interpretation....329

Subdivision B—Recovery from recipient of compensation affected payment 329
1178 Repayment of amount where both lump sum and payments of compensation affected payment have been received 329
1179 The section 1178 recoverable amount 330
1180 Repayment where both periodic compensation payments and payments of compensation affected payment have been received....330
1181 The section 1180 recoverable amount 331

Subdivision C—Recovery from compensation payers and insurers 332
1182 Secretary may send preliminary notice to potential compensation payer or insurer....332
1183 Potential compensation payer or insurer must notify Secretary of liability....333
1184 Secretary may send recovery notice to compensation payer or insurer....334
1184A The section 1184 recoverable amount 335
1184B Preliminary notice or recovery notice suspends liability to pay compensation....338
1184C Compensation payer's or insurer's payment to Commonwealth discharges liability to compensation claimant 338
1184D Offence to make compensation payment after receiving preliminary notice or recovery notice 339
1184E Liability of compensation payer or insurer to pay the Commonwealth if there is a contravention of section 1184D 340

Division 5—Recoverable debts 341
1184F Debts resulting from notices under section 1178 or 1180 341
1184G Debts resulting from notices under section 1184 341

1184H Debts resulting from contravention of section 1184D 341
1184I Compensation arrears debts 341
Division 6—Miscellaneous 342
1184J Secretary may give recovery notice either to compensation payer or to insurer but not to both 342
1184K Secretary may disregard some payments 342
1184L Application to review compensation decision—disability support pension 343
1185 Special provision for certain recipients of dependency-based payments 343
Part 3.15—New Enterprise Incentive Scheme 345
1186 General effect of Part 345
1187 Reduction in rate of payments under this Act if recipient or partner also receiving payments under New Enterprise Incentive Scheme (NEIS) 345
1188 Rate reduction under this Part 346
Part 3.15A—Community Development Employment Projects Scheme 347
Division 1—Preliminary 347
1188A General effect of Part 347
1188B CDEP Scheme participants 347
1188BA Approval of Northern Territory CDEP transitional activities 347
1188BB Effect of undertaking Northern Territory CDEP transitional activities 348
Division 2—Reduction in rate of pension or allowance 349
1188C Reductions in rate of payments under this Act if recipient or partner also receiving payments under CDEP Scheme 349
Division 3—CDEP Scheme Participant Supplement 361
1188D Entitlement to Supplement: people receiving pension-type payments on or after 20 March 1999 361
1188E Entitlement to Supplement between 20 March 1999 and 19 March 2000: people not covered by section 1188D 362

1188F Entitlement to Supplement on or after 20 March 2000: people not covered by section 1188D.....365
1188G Notification of periods in respect of which a CDEP Scheme payment is not payable.....370
1188H Person receiving CDEP Scheme Participant Supplement to be taken to be in receipt of social security benefit or pension.....370
1188J CDEP Scheme participant may accumulate supplement.....370
1188K Need for a claim.....371
1188KA CDEP Scheme Participant Supplement not payable in certain circumstances.....371

Division 4—Transitional 373
1188L Existing CDEP Scheme participants to be treated as long-term social security recipients.....373
1188M Certain people receiving CDEP Scheme Participant Supplement to be taken to have been receiving social security benefit for 9 months...373

Part 3.16—Indexation and adjustment of amounts 374

Division 1—Preliminary 374
1189 Analysis of Part.....374
1190 Indexed and adjusted amounts.....374

Division 2—CPI indexation 397
1191 CPI Indexation Table.....397
1192 Indexation of amounts.....413
1193 Indexation factor.....416
1194 Rounding off indexed amounts.....416
1195 Certain indexed amounts to be increased in line with increases in Male Total Average Weekly Earnings.....417

Division 3—Social security pension indexation using Pensioner and Beneficiary Living Cost Index 421
1196 Social security pension indexation using Pensioner and Beneficiary Living Cost Index.....421
1197 Living cost indexation factor.....422
1198 Rounding off amounts.....423

Division 4—Adjustment of other rates 424
1198A Adjustment of single pension rate MBR amounts.....424

OFFICIAL: Sensitive // Legal Privilege

1198B Adjustment of disability support pension (under 21) MBRs....424
1198C Adjustment of youth disability supplement....425
1203 Adjustment of pension "single non-homeowner" AVL....426
1204 Adjustment of benefit AVLs....426
1205 Adjustment of special illness separated special resident AVL....427
1206A Adjustment of certain pharmaceutical allowance rates....428
1206B Adjustment of certain telephone allowance rates....430

Part 3.16A—Advance payment deductions 433
1206H Advance payment deduction....433
1206J Amount of advance payment deduction—basic calculation....433
1206K Person may request larger advance payment deduction....434
1206L Reduction of advance payment deduction in cases of severe financial hardship....434
1206M The final advance payment deduction....435
1206N Provisional payment rate insufficient to cover advance payment deduction....435
1206P Rounding of amounts....437

Part 3.16B—Special employment advance deductions 438
1206Q Special employment advance deduction....438
1206R Amount of special employment advance deduction—basic calculation....438
1206S Person may request larger special employment advance deduction....439
1206T Reduction of special employment advance deduction in cases of severe financial hardship.439
1206U The final special employment advance deduction....440
1206V Provisional payment rate insufficient to cover special employment advance deduction....440
1206W Rounding of amounts....441

Part 3.18—Means test treatment of private companies and private trusts 442

Division 1—Introduction 442

1207 Simplified outline 442
1207A Definitions 443
1207B Relatives....447
1207C Associates 448
1207D When a company is sufficiently influenced by an entity 449
1207E Majority voting interest in a company....450
1207F Entitled to acquire....450
1207G Transfer of property or services....450
1207H Constructive transfers of property or services to an entity 451
1207J Active involvement with a primary production enterprise....452
1207K Power to veto decisions of a trustee....452
1207L Extra-territorial operation 452
1207M Application to things happening before commencement 453

Division 2—Designated private companies 454

1207N Designated private companies 454

Division 3—Designated private trusts 456

1207P Designated private trusts....456

Division 4—Controlled private companies 458

1207Q Controlled private companies 458
1207R Direct voting interest in a company....459
1207S Voting power 460
1207T Direct control interest in a company....461
1207U Interest in a share 462

Division 5—Controlled private trusts 464

1207V Controlled private trusts....464
1207W Interest in a trust 467

Division 6—Attributable stakeholders and attribution percentages 469

1207X Attributable stakeholder, asset attribution percentage and income attribution percentage...469

OFFICIAL: Sensitive // Legal Privilege

Division 7—Attribution of income of controlled private companies and controlled private trusts 471

1207Y Attribution of income....471
1207Z No double counting of attributed income....472
1208 Ordinary income of a company or trust....473
1208A Ordinary income from a business—treatment of trading stock....474
1208B Permissible reductions of business and investment income....474
1208C Derivation periods....475
1208D Attribution periods....476

Division 8—Attribution of assets of controlled private companies and controlled private trusts 478

1208E Attribution of assets....478
1208F When attributed asset is unrealisable....479
1208G Effect of charge or encumbrance on value of assets....479
1208H Effect of unsecured loan on value of assets....481
1208J Value of company's or trust's assets etc....482

Division 9—Modification of asset deprivation rules 483

1208K Individual disposes of asset to company or trust....483
1208L Disposal of asset by company or trust....483
1208M Individual ceases to be an attributable stakeholder of a company or trust....487
1208N Individual disposes of asset to company or trust before 1 January 2002—individual is attributable stakeholder....487
1208P Individual disposes of asset to company or trust before 1 January 2002—individual's spouse is attributable stakeholder....489

Division 10—Modification of income deprivation rules 491

1208Q Individual disposes of ordinary income to company or trust....491
1208R Disposal of income by company or trust....491
1208S Individual disposes of income to company or trust before 1 January 2002—individual is attributable stakeholder....494

1208T Individual disposes of income to company or trust before 1 January 2002—individual's spouse is attributable stakeholder....495

Division 11—Concessional primary production trusts 497

1208U Concessional primary production trusts 497
1208V Individual ceases to be an attributable stakeholder of trust—receipt of remuneration or other benefits from trust during asset deprivation period....501
1208W Net value of asset....503
1208X Value of entity's assets 504
1208Y When asset is controlled by an individual 504
1208Z Adjusted net value of asset 505
1209 Adjusted net primary production income 505
1209A Net income of a primary production enterprise .506
1209B Net income from a primary production enterprise—treatment of trading stock 507
1209C Permissible reductions of income from carrying on a primary production enterprise....508

Division 12—Anti-avoidance 509

1209D Anti-avoidance....509

Division 13—Decision-making principles 511

1209E Decision-making principles 511

Division 14—Information management 512

1209F Transitional period....512
1209G Information-gathering powers 512
1209H Secretary may obtain tax information....513
1209J Disclosure of tax information 514
1209K Disclosure of tax file number information....515

Part 3.18A—Private financial provision for certain people with disabilities 517

Division 1—Special disability trusts 517

1209L What is a *special disability trust*? 517
1209M Beneficiary requirements....517
1209N Trust purpose requirements 519
1209P Trust deed requirements....521
1209Q Trustee requirements....521
1209R Trust property requirements....522
1209RA Trust expenditure requirements 523

1209S Reporting requirements....523
1209T Audit requirements....524
1209U Waiver of contravention of this Division....526
Division 2—Income of special disability trusts 527
1209V Attribution of income....527
1209X Income amounts from special disability trusts....527
Division 3—Assets of special disability trusts 528
1209Y Attribution of assets....528
Division 4—Transfers to special disability trusts 529
1209Z Effect of certain transfers to special disability trusts....529
1209ZA The effect of exceeding the $500,000 limit....530
1209ZB Transfers by the immediate family members prior to reaching pension age etc....531
1209ZC Transfers by principal beneficiaries or partners 532
1209ZD Cessation of special disability trusts....532
1209ZE Effect of this Division....534
Part 3.19—Miscellaneous 535
1210 Application of income and assets test reductions and of compensation reductions for income tax purposes....535
1210A Effect of nil rate of pension etc....538
Chapter 4—International agreements and portability 540
Part 4.2—Overseas portability 540
Division 1—Preliminary 540
1211 Social Security (International Agreements) Act overrides Part....540
1212 Meaning of terms used in this Part....540
1212A Meaning of *acute family crisis*....541
1212B Meaning of *humanitarian purpose*....541
1212C Meaning of *temporary absence*....542
1212D Part does not affect need for qualification....542
Division 2—Portability of social security payments 543
Subdivision A—Basic portability provisions 543
1213 Persons to whom Division applies....543

OFFICIAL: Sensitive // Legal Privilege

1214 Some payments generally portable with no time limit....543
1215 Some payments generally portable with time limit....543
1216 Amounts added to rate....544
1217 Meaning of *maximum portability period*, *allowable absence* and *portability period*....545
Subdivision B—Exceptions to Subdivision A rules 550
1218AAA Unlimited portability period for disability support pension—severely impaired disability support pensioner....550
1218AA Unlimited portability period for disability support pension—terminally ill overseas disability support pensioner....552
1218AB Extended portability period for disability support pension....553
1218 Exception—full-time students outside Australia for purposes of Australian course....553
1218A Exception—Reserve service....554
1218B Exception—waiting period in Australia before parenting payment is portable....554
1218BA Exception—new apprentices....555
1218C Extension of person's portability period—general....555
1218D Extension of person's portability period—life-saving medical treatment overseas....556
1220 No portability where claim based on short residence....557
Division 3—Rate of portable pensions 559
1220A Proportionality—age pension rate....559
1220B Proportionality—disability support pension rate for a severely disabled person....560
1221 Pension Portability Rate Calculator....561
Pension Portability Rate Calculator 562
Module A—Overall rate calculation process 562
Module B—Australian working life residence 564
Module C—Residence factor 565
Division 4—Other portability rules 566
1221A Other portability rules....566

Chapter 5—Overpayments and debt recovery 567

Part 5.1—Effect of Chapter 567

1222 General effect of Chapter....567

Part 5.2—Amounts recoverable under this Act 572

1222A Debts due to the Commonwealth....572
1223 Debts arising from lack of qualification, overpayment etc.....572
1223A Debt resulting from commutation of asset-test exempt income stream contrary to subsection 9A(2), 9B(2) or 9BA(2).....578
1223AA Debts arising from prepayments and certain other payments.....582
1223AB Debts arising from AAT stay orders.....584
1223ABAA Debts arising in respect of one-off payments to older Australians.....584
1223ABA Debts arising in respect of one-off payments to carers.....586
1223ABAAA Debts arising in respect of economic security strategy payments.....593
1223ABAAB Debts arising in respect of training and learning bonuses etc.....595
1223ABB Debts in respect of child disability assistance ...598
1223ABC Debts in respect of carer supplement for 2009 ..599
1223ABD Debts in respect of carer supplement for 2010 and later years.....600
1223ABE Debts in respect of relocation scholarship payments.....601
1223ABF Debts in respect of student start-up loans.....603
1223ABG Debts in respect of one-off energy assistance payments.....603
1223ABH Debts in respect of 2019 one-off energy assistance payments.....604
1223ABI Debts in respect of first 2020 economic support payments.....605
1223ABJ Debts in respect of second 2020 economic support payments.....606
1223ABK Debts in respect of additional economic support payment 2020.....608
1223ABL Debts in respect of additional economic support payment 2021.....609

1224	Debts relating to clean energy advances	610
1224A	Debts relating to essential medical equipment payments	611
1224AA	Person other than payee obtaining payment of a cheque	612
1224AB	Joint and several liability for persons involved in contravention of Act	612
1224B	Education entry payment debt	613
1224C	Data-matching Program (Assistance and Tax) Acts debts	613
1224D	Mobility allowance advance debts	613
1224E	Debts arising from advance payments of social security entitlements	614
1224EA	Debts arising from special employment advances of special employment advance qualifying entitlements	615
1227	Assurance of support debt	615
1227B	Debts arising under Part 8 of the *Student Assistance Act 1973* as in force before 1 July 1998	616
1228	Overpayments arising under other Acts and schemes	616
1228A	Comparable foreign payment debt recovery	618
1228B	Additional 10% penalty for understatement etc. of income	619
1229	Notices in respect of debt	620
1229A	Interest charge—no repayment arrangement in effect	621
1229B	Interest charge—failure to comply with or termination of repayment arrangement	622
1229C	Other rules for interest charge	624
1229D	What is the *interest charge rate*?	624
1229E	Exemption from interest charge—general	625
1229F	Exemption from interest charge—Secretary's determination	626
1229G	Guidelines on interest charge provisions	627
1230	Debt from failure to comply with garnishee notice	627
1230A	Debt from failure before 1 July 1991 to comply with garnishee notice under the 1947 Act	628
1230B	Overseas application of provisions	630
1230C	Methods of recovery of debt	630

Part 5.3—Methods of recovery 632

1231AA Application of sections dealing with deductions 632
1231 Deductions from debtor's pension, benefit or allowance 632
1232 Legal proceedings 634
1233 Garnishee notice 634
1234 Arrangement for payment of debt....636
1234AA Recovery of amounts from financial institutions 637
1234A Deductions by consent from social security payment of person who is not a debtor 639
1234B No time limit on debt recovery action 640

Part 5.4—Non-recovery of debts 641

1235 Meaning of *debt* 641
1236 Secretary may write off debt....641
1236A Application....642
1237 Power to waive Commonwealth's right to recover debt....643
1237A Waiver of debt arising from error 643
1237AA Waiver of debt relating to an offence 644
1237AAA Waiver of small debt....645
1237AAB Waiver in relation to settlements 645
1237AAC Waiver where debtor or debtor's partner would have been entitled to an allowance 647
1237AAD Waiver in special circumstances....650
1237AAE Extra rules for waiver of assurance of support debts 651
1237AB Secretary may waive debts of a particular class 652

Part 5.5—Departure prohibition orders 653

Division 1—Secretary may make departure prohibition orders 653

1240 Secretary may make departure prohibition orders 653

Division 2—Departure from Australia of debtors prohibited 655

1241 Departure from Australia of debtors prohibited 655

Division 3—Other rules for departure prohibition orders 656
1242 Notification requirements for departure prohibition orders 656
1243 Operation of departure prohibition order....657
1244 Revocation and variation of departure prohibition orders 657
1245 Notification requirements for revocations and variations....658
Division 4—Departure authorisation certificates 659
1246 Application for departure authorisation certificate 659
1247 When Secretary must issue departure authorisation certificate 659
1248 Security for person's return to Australia....660
1249 What departure authorisation certificate must authorise....660
1250 Notification requirements for departure authorisation certificates....661
1251 Notification requirements for substituted days..661
Division 5—Appeals and review in relation to departure prohibition orders and departure authorisation certificates 663
1252 Appeals to courts against making of departure prohibition orders....663
1253 Jurisdiction of courts....663
1254 Orders of court on appeal....663
1255 Review of decisions....663
Division 6—Enforcement 664
1256 Powers of officers of Customs and members of the Australian Federal Police....664
1257 Privilege against self-incrimination....665
1258 Production of authority to depart....665
Division 7—Interpretation 667
1259 Interpretation—departure from Australia for foreign country....667
1260 Meaning of *Australia* 667
Chapter 6—Modification of social security law 668
1261 Simplified outline of this Chapter....668

OFFICIAL: Sensitive // Legal Privilege

1262 Minister may determine modifications of social security law....668
1263 Period that determination is in force and variation and revocation....670

Schedule 1A—Savings and transitional provisions 672

Part 1—General 672

1 Correspondence of pensions, benefits and allowances....672
2 Correspondence of provisions....673
2A References in other Acts and instruments to provisions of the 1947 Act....674

Part 2—Savings and Transitional Provisions Applicable on the Transition from the 1947 Act to this Act 675

Division 4—Continuation of earlier savings provisions 675

28 Rent assistance—retirement village residents (changes introduced on 13 June 1989)....675

Part 3—Saving and Transitional Provisions Applicable after the Commencement of this Act 678

36 Incentive allowance (changes introduced on 12 November 1991)....678
63 Rent assistance (changes introduced on 20 March 1993)....679
74 Partner allowance for persons born on or before 1 July 1955 (changes made on 1 July 1995)....683
86 Transitional and saving provisions applicable to the amendments relating to the pension loans scheme....684
88 Saving: Determinations under repealed sections 1099E and 1099L....685
96A Application of revised Schedule 1B....685
103 Application provision: income maintenance periods....686
105 Application and saving provisions: debts due to the Commonwealth and their recovery....687
105A Parenting payment (changes introduced 20 March 1998)....688
115 Persons under 21 receiving newstart allowance or sickness allowance on 17 June 1997....694

126	Application and transitional provisions relating to fares allowance	695
128	Saving provision—portability rules relating to rates of pension	696
128A	Saving of certain pensions payable under 1986 Agreement between Australia and Italy	697
130	Saving provision—other portability rules	699
131	Certain payments not recoverable	699
132	Saving—ABSTUDY recipients	700
133	Meaning of *Australian resident*	701
134	Transitional and saving provisions—substitution of Part 3.14	701
135	Unlimited maximum portability period for disability support pension	706
136	Transitional definition of *deductible amount* (commencing 1 July 2007)	706
137	Application—general	708
138	Application—subsections 198AA(1) and (3)	709
139	Application—subsection 955(2)	709
139A	Application—general	709
139B	Application—sections 198AAA and 198AB	709
139C	Application—subsections 731J(2) and (6)	710
139D	Saving—principal beneficiary of a special disability trust	710
140	Person whose carer payment was cancelled on or after 1 July 2008 and before 1 July 2010	710
141	Saving—profoundly disabled child and disabled child	711
142	Person whose special benefit was cancelled on or after 1 July 2008 and before 1 July 2010	713
143	Saving—profoundly disabled child and disabled child	714
144	Saving and transitional provisions for section 93H	715
145	Saving provision for income test taper rate for disability support pensioners under 21 without dependent children	715
146	Transitional provision for rates of certain social security pensions on and after 20 September 2009	716
147	Amounts for subparagraph 146(4)(a)(i)	721

148 Rate of social security payments to partners of persons affected by clause 146 726
149 Payment and income tax consequences of receiving social security pension at rate affected by clause 146 726
150 Persons exempt from requirement to be Australian residents to qualify for disability support pension 728

OFFICIAL: Sensitive // Legal Privilege

Chapter 3—General provisions relating to payability and rates

Part 3.6—Benefit Rate Calculator B

1068 Rate of widow allowance, jobseeker payment (18 or over), partner allowance, and mature age allowance under Part 2.12B

(1) The rate of:

(a) jobseeker payment; or

(c) partner allowance; or

(ca) mature age allowance under Part 2.12B; or

(d) widow allowance;

is to be calculated in accordance with the Rate Calculator at the end of this section.

Note: Module A of the Rate Calculator establishes the overall rate calculation process and the remaining Modules provide for the calculation of the component amounts used in the overall rate calculation.

(2) If:

(a) a person has a relationship with another person, whether of the same sex or a different sex (***other person***); and

(b) the relationship between them is a de facto relationship in the Secretary's opinion (formed after the Secretary has had regard to all the circumstances of the relationship, including, in particular, the matters referred to in paragraphs 4(3)(a) to (e) and subsection 4(3A));

(c) the other person is under the age of consent applicable in the State or Territory in which the person is living;

the person's benefit rate is not to exceed the rate at which it would be payable to the person if the other person were the person's partner.

Note: This provision has the effect of taking into account the ordinary income and assets of the partner in applying the ordinary income test and assets test respectively.

Rate of benefit limited for certain armed services widows

(3) If:

(a) an armed services widow is receiving a pension under Part II or IV of the Veterans' Entitlements Act at a rate determined under or by reference to subsection 30(1) of that Act; and

(b) the widow has been receiving a payment referred to in paragraph (a) continuously since before 1 November 1986; and

(c) before 1 November 1986 the widow was also receiving a social security benefit;

the rate of benefit payable to the widow is not to be increased:

(d) if, immediately before 1 November 1986, the widow was receiving a social security benefit at a rate less than $124.90 per fortnight—to a rate greater than $124.90 per fortnight; or

(e) if, immediately before 1 November 1986, the widow was receiving a social security benefit at a rate equal to or greater than $124.90 per fortnight—to a rate greater than the rate at which it was payable immediately before 1 November 1986.

Note 1: A benefit is not payable to a widow who starts to get a payment referred to in subsection (3) after 1 November 1986—see sections 408CF, 614, 660YCF and 771HI.

Note 2: For ***armed services widow*** see subsection 4(1).

Benefit Rate Calculator B

Module A—Overall rate calculation process

Method of calculating rate

1068-A1 The rate of benefit is a daily rate. That rate is worked out by dividing the fortnightly rate calculated according to this Rate Calculator by 14.

Method statement

Step 1. Work out the person's ***maximum basic rate*** using MODULE B below.

Step 1A. Work out the pension supplement amount (if any) using Module BA below.

Step 1B. Work out the energy supplement (if any) using Module C below.

Step 2. Work out the amount per fortnight (if any) of pharmaceutical allowance using MODULE D below.

Step 3. Work out the applicable amount per fortnight (if any) for rent assistance in accordance with paragraph 1070A(a).

Step 4. Add up the amounts obtained in Steps 1 to 4: the result is called the ***maximum payment rate***.

Step 5. Apply the income test using MODULE G below to work out the income reduction.

Step 6. Take the income reduction away from the maximum payment rate: the result is called the ***provisional fortnightly payment rate***.

Step 7. The ***rate of benefit*** is the amount obtained by:

(a) subtracting from the provisional fortnightly payment rate any special employment advance deduction (see Part 3.16B); and

(b) if there is any amount remaining, subtracting from that amount any advance payment deduction (see Part 3.16A); and

OFFICIAL: Sensitive // Legal Privilege

(c)	except where the person is a CDEP Scheme participant in respect of the whole or a part of the period for which the rate of benefit is being worked out, adding any amount payable by way of remote area allowance (see Module J).

Note 1: If a person's rate is reduced under step 6, the order in which the reduction is to be made against the components of the maximum payment rate is laid down by section 1210.

Note 2: In some circumstances a person may also be qualified for a pharmaceutical allowance under Part 2.22.

Note 3: An amount of remote area allowance is to be added under paragraph (c) of step 7 only if the conditions in point 1068-J1 are satisfied.

Module B—Maximum basic rate

Maximum basic rate

1068-B1 The maximum basic rate of a person other than a person who is a CDEP Scheme participant in respect of the whole or a part of the period for which the maximum basic rate is being worked out is worked out using Table B. Work out the person's family situation and whether the person has a dependent child or not. The maximum basic rate is the corresponding amount in the ***rate*** column. The maximum basic rate of a person who is a CDEP Scheme participant in respect of the whole or a part of the period for which the maximum basic rate is being worked out is nil (see sections 408CG, 614A, 660YCH and 771HK).

OFFICIAL: Sensitive // Legal Privilege

Table B—Maximum basic rates

Column 1	Column 2	Column 3	
		Rate	
Item	Person's family situation	Column 3A Person with dependent child	Column 3B Person without dependent child
4A	Not member of couple and person: (a) receives jobseeker payment or widow allowance; and (b) has not turned 60	$667.50	$620.80
4B	Not member of couple and person: (a) receives jobseeker payment or widow allowance; and (b) has turned 60; and (c) has not been receiving one, or a combination, of social security pension or social security benefit or service pension, income support supplement or veteran payment for a continuous period of at least 9 months	$667.50	$620.80

OFFICIAL: Sensitive // Legal Privilege

Table B—Maximum basic rates

Column 1	Column 2	Column 3	
		Rate	
Item	Person's family situation	Column 3A Person with dependent child	Column 3B Person without dependent child
5	Not member of couple and person: (a) has turned 60; and (b) has been receiving one, or a combination, of social security pension or social security benefit or service pension or income support supplement for a continuous period of at least 9 months	$667.50	$667.50
7	Partnered	$565.40	$565.40
9	Member of illness separated couple	$667.50	$667.50
11	Partnered (partner in gaol)	$667.50	$667.50

Note 1: For ***member of couple***, ***partnered***, ***illness separated couple*** and ***partnered (partner in gaol)*** see section 4.

Note 2: For ***dependent child*** see section 5.

Note 5: The rates in column 3 are indexed 6 monthly in line with CPI increases (see sections 1191 to 1194).

Note 7: Some dependent children will not be taken into account in working out a person's maximum basic rate (see point 1068-B2).

OFFICIAL: Sensitive // Legal Privilege

Note 8: Some recipients of jobseeker payment have a maximum basic rate based on the maximum basic rate under the Pension PP (Single) Rate Calculator (see point 1068-B5).

Certain children who are not young persons are to be treated as dependent children

1068-B1A If:

(a) a person is not a member of a couple; and

(b) the person has at least one natural child, adopted child or relationship child who has turned 16 but has not turned 18; and

(c) either:

(i) a social security benefit is payable to the child; or

(ii) if the person is receiving jobseeker payment—a disability support pension is payable to the child; and

(d) the child is substantially dependent on the person;

the person's maximum basic rate is worked out as if the person had a dependent child.

Certain children treated as dependent children if in recipient's care for at least minimum period

1068-B1B The maximum basic rate for a person receiving jobseeker payment is worked out as if the person had a dependent child if:

(a) either:

(i) the person is legally responsible (whether alone or jointly with another person) for the day-to-day care, welfare and development of a child under 16; or

(ii) under a family law order, registered parenting plan or parenting plan that is in force, a child under 16 is supposed to live or spend time with the person; and

(b) the child is in the person's care for at least 14% of:

(i) the instalment period in relation to which the maximum basic rate is being worked out; or

OFFICIAL: Sensitive // Legal Privilege

(ii) if the Secretary, under point 1068-B1C, determines another period for the person for the purposes of this subparagraph—that other period; and

(c) none of subsections 5(3), (6) and (7) prevents the child from being a dependent child of the person; and

(d) the person is not a member of a couple.

Note: For ***family law order***, ***registered parenting plan*** and ***parenting plan*** see subsection 23(1).

1068-B1C The Secretary may, in writing, determine a period of either 14 days or 28 days for the purposes of subparagraph 1068-B1B(b)(ii). In making the determination, the Secretary must have regard to the guidelines (if any) determined under point 1068-B1E.

1068-B1D A determination made under point 1068-B1C is not a legislative instrument.

1068-B1E The Secretary may, by legislative instrument, determine guidelines to be complied with when making a determination under point 1068-B1C.

Certain dependent children to be disregarded

1068-B2 For the purposes of items 4A and 4B of Table B in point 1068-B1, if:

(a) a person has a dependent child; and

(b) the child has turned 18; and

(c) the child is a prescribed student child;

the child is to be disregarded in working out the person's maximum basic rate under that point.

Note: For ***prescribed student child*** see section 5.

1068-B3 On 20 March 1994 the amounts specified in items 3, 4, 4A and 4B in column 3B of Table B in point 1068-B1 are increased by $6.00. The increase is to be made after the indexation of the amounts on that day has occurred.

1068-B4 The amounts in items 3, 4, 4A and 4B in columns 3A and 3B of Table B in point 1068-B1 are to be indexed on 20 September 1993 and 20 March 1994 under section 1192 as if Part 2 of the *Social Security Amendment Act (No. 2) 1993* had commenced on 1 September 1993.

Maximum basic rate for certain jobseeker payment recipients

1068-B5 Despite point 1068-B1, if a person:

(a) is not a member of a couple; and

(b) receives jobseeker payment; and

(c) is not required to ~~satisfy the activity test because of a determination in relation to the person under subsection 602C(3) or (3A)~~satisfy the employment pathway plan requirements because of a determination that is in effect under subsection 40P(2) of the Administration Act because of paragraph 40P(2)(a) or (b) of that Act;

the person's maximum basic rate is the amount worked out as follows:

$$\frac{\text{Pension PP (Single) maximum basic amount}}{26}$$

where:

pension PP (Single) maximum basic amount is the sum of:

(a) the amount that would have been the person's maximum basic rate under Module B of the Pension PP (Single) Rate Calculator if the person was receiving parenting payment; and

(b) the amount that would have been the person's pension supplement under Module BA of the Pension PP (Single) Rate Calculator if the person was receiving parenting payment.

Note: A person's maximum basic rate under Module B of the Pension PP (Single) Rate Calculator is indexed 6 monthly in line with increases in Male Total Average Weekly Earnings (see section 1195).

Module BA—Pension supplement

Pension supplement

1068-BA1 A pension supplement amount is to be added to the person's maximum basic rate if the person is residing in Australia, has reached pension age and:

(a) is in Australia; or

(b) is temporarily absent from Australia and has been so for a continuous period not exceeding 6 weeks.

1068-BA2 The person's pension supplement amount is:

(a) if an election by the person under subsection 1061VA(1) is in force—the amount worked out under point 1068-BA4; and

(b) otherwise—the amount worked out under point 1068-BA3.

Amount if no election in force

1068-BA3 The person's pension supplement amount is the amount worked out by:

(a) applying the applicable percentage in the following table to the combined couple rate of pension supplement; and

(b) dividing the result by 26; and

(c) if:

(i) the person is not partnered; and

(ii) the amount resulting from paragraph (b) is not a multiple of 10 cents;

rounding the amount up or down to the nearest multiple of 10 cents (rounding up if the amount is not a multiple of 10 cents but is a multiple of 5 cents).

Item	Person's family situation	Use this %
1	Not member of couple	66.33%
2	Partnered	50%
3	Member of illness separated couple	66.33%
4	Member of respite care couple	66.33%

Item	Person's family situation	Use this %
5	Partnered (partner in gaol)	66.33%

Note: For ***combined couple rate of pension supplement***, see subsection 20A(1).

Amount if election in force

1068-BA4 The person's pension supplement amount is the amount worked out as follows:

(a) work out the amount for the person under point 1068-BA3 as if the election were not in force;

(b) from that amount, subtract $^{1}/_{26}$ of the person's minimum pension supplement amount.

Module C—Energy supplement

1068-C1 An energy supplement is to be added to the person's (the ***recipient's***) maximum basic rate if the recipient is residing in Australia and:

(a) is in Australia; or

(b) is temporarily absent from Australia and has been so for a continuous period not exceeding 6 weeks.

However, this Module does not apply if quarterly energy supplement is payable to the recipient.

Note: Section 918 may affect the addition of the energy supplement.

Recipient has reached pension age

1068-C2 If the recipient has reached pension age and is not covered by point 1068-B5, the recipient's energy supplement is the amount worked out using the following table:

Energy supplement		
Item	**Recipient's family situation**	**Amount of energy supplement**
1	Not a member of a couple	$14.10

Energy supplement		
Item	**Recipient's family situation**	**Amount of energy supplement**
2	Partnered	$10.60
3	Member of an illness separated couple	$14.10
4	Member of a respite care couple	$14.10
5	Partnered (partner in gaol)	$14.10

Recipient has not reached pension age

1068-C3 If the recipient has not reached pension age and is not covered by point 1068-B5, the recipient's energy supplement is the amount worked out using the following table:

Energy supplement		
Item	**Recipient's family situation for maximum basic rate**	**Amount of energy supplement**
1	If the recipient's maximum basic rate is worked out under column 3A of item 4A, 4B, 5, 9 or 11 of the table in point 1068-B1	$9.50
2	If the recipient's maximum basic rate is worked out under column 3A of item 7 of the table in point 1068-B1	$7.90
3	If the recipient's maximum basic rate is worked out under column 3B of item 4A or 4B of the table in point 1068-B1	$8.80
4	If the recipient's maximum basic rate is worked out under column 3B of item 5, 9 or 11 of the table in point 1068-B1	$9.50

Energy supplement		
Item	**Recipient's family situation for maximum basic rate**	**Amount of energy supplement**
5	If the recipient's maximum basic rate is worked out under column 3B of item 7 of the table in point 1068-B1	$7.90

Recipient covered by point 1068-B5

1068-C4 If the recipient is covered by point 1068-B5, the recipient's energy supplement is $12.00.

Module D—Pharmaceutical allowance

Qualification for pharmaceutical allowance

1068-D1 Subject to points 1068-D3A, 1068-D4, 1068-D5, 1068-D6 and 1068-D8, an additional amount by way of pharmaceutical allowance is to be added to a person's maximum basic rate if:

(c) one of the following subparagraphs applies:

(ia) the person is receiving mature age allowance under Part 2.12B;

(ii) the person is receiving widow allowance, jobseeker payment or partner allowance and point 1068-D2, 1068-D2A, 1068-D2B or 1068-D3 applies to the person.

Incapacity for work—jobseeker payment

1068-D2 This point applies to a person if the person is receiving jobseeker payment and the person ~~is, under Subdivision BA of Division 1 of Part 2.12, exempt from the activity test~~is not required to satisfy the employment pathway plan requirements because of a determination that is in effect under section 40L of the Administration Act and that has been made because of the circumstance referred to in paragraph 40L(5)(a) of that Act.

Incapacity for work—widow allowance and partner allowance recipients

1068-D2A This point applies to a person who is receiving widow allowance or partner allowance if the person is incapacitated for work.

Jobseeker payment recipients who have a partial capacity to work or are principal carers

1068-D2B This point applies to a person who is receiving jobseeker payment if the person:

(a) has a partial capacity to work; or

(b) is the principal carer of at least one child and is not a member of a couple.

Note 1: For ***partial capacity to work*** see section 16B.

Note 2: For ***principal carer*** see subsections 5(15) to (24).

Long term recipients over 60

1068-D3 This point applies to a person if the person:

(a) has turned 60; and

(b) has been receiving income support payments in respect of a continuous period of at least 9 months (whether or not the kind of payment received has changed over the period and whether the period or any part of it occurred before or after the commencement of this paragraph).

Note 1: For ***income support payment*** see subsection 23(1).

Note 2: For the determination of the continuous period in respect of which a person received income support payments see section 38B.

No pharmaceutical allowance if person receiving pension supplement

1068-D3A Pharmaceutical allowance is not to be added to a person's maximum basic rate if a pension supplement amount has been added to that rate.

No pharmaceutical allowance if person receiving certain supplements under other Acts

1068-D4 Pharmaceutical allowance is not to be added to a person's maximum basic rate if the person is receiving:

(a) veterans supplement under section 118A of the Veterans' Entitlements Act; or

(b) MRCA supplement under section 300 of the Military Rehabilitation and Compensation Act; or

(c) pharmaceutical supplement under Part 3A of the *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) Act 2006*; or

(d) pharmaceutical supplement under Part 4 of the *Treatment Benefits (Special Access) Act 2019*.

No pharmaceutical allowance if partner receiving certain supplements under other Acts

1068-D5 Pharmaceutical allowance is not to be added to a person's maximum basic rate if:

(a) the person is a member of a couple; and

(b) the person's partner is receiving:

(i) veterans supplement under section 118A of the Veterans' Entitlements Act; or

(ii) MRCA supplement under section 300 of the Military Rehabilitation and Compensation Act; or

(iii) pharmaceutical supplement under Part 3A of the *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) Act 2006*; or

(iv) pharmaceutical supplement under Part 4 of the *Treatment Benefits (Special Access) Act 2019*; and

(c) the person's partner is not receiving a service pension or a veteran payment.

OFFICIAL: Sensitive // Legal Privilege

No pharmaceutical allowance before advance payment period ends

1068-D6 Pharmaceutical allowance is not to be added to a person's maximum basic rate if:

(a) the person has received an advance pharmaceutical allowance under Part 2.23 of this Act; and

(b) the person's advance payment period has not ended.

Note: For ***advance payment period*** see point 1068-D7.

Advance payment period

1068-D7 A person's advance payment period:

(a) starts on the day on which the advance pharmaceutical allowance is paid to the person; and

(b) ends after the number of paydays worked out using the following formula have passed:

$$\frac{\text{amount of advance} \times 26}{\text{pharmaceutical allowance rate}}$$

where:

amount of advance is the amount of the advance paid to the person;

pharmaceutical allowance rate is the fortnightly amount of pharmaceutical allowance which would be added to the person's maximum basic rate in working out the social security benefit instalment for the day on which the advance is paid if a social security benefit were payable to the person and pharmaceutical allowance were to be added to the person's maximum basic rate on that day.

Note: The person may have come on social security benefit after having been a pension recipient and have received an advance while a pension recipient.

OFFICIAL: Sensitive // Legal Privilege

No pharmaceutical allowance if annual limit reached

1068-D8 Pharmaceutical allowance is not to be added to a person's maximum basic rate if:

(a) the person has received an advance pharmaceutical allowance during the current calendar year; and

(b) the total amount paid to the person for that year by way of:

(i) pharmaceutical allowance; and

(ii) advance pharmaceutical allowance;

equals the total amount of pharmaceutical allowance that would have been paid to the person during that year if the person had not received any advance pharmaceutical allowance.

Note 1: For the amount ***paid*** to a person by way of pharmaceutical allowance see subsections 19A(2) to (6).

Note 2: The annual limit is affected by:

- how long during the calendar year the person was on pension or benefit;
- the rate of pharmaceutical allowance the person attracts at various times depending on the person's family situation.

Amount of pharmaceutical allowance

1068-D10 The amount of pharmaceutical allowance is the amount per fortnight worked out using the following Table:

Pharmaceutical allowance amount table

Column 1 Item	Column 2 Person's family situation	Column 3 Amount per fortnight
1.	Not member of couple	$5.20
2.	Partnered	$2.60
4.	Member of illness separated couple	$5.20
5.	Member of respite care couple	$5.20
6.	Partnered (partner getting service pension)	$2.60
7.	Partnered (partner in gaol)	$5.20

OFFICIAL: Sensitive // Legal Privilege

Note 1: For ***member of couple***, ***partnered***, ***illness separated couple***, ***respite care couple*** and ***partnered (partner in gaol)*** see section 4.

Note 2: The amounts in column 3 are indexed or adjusted annually in line with CPI increases (see sections 1191 to 1194 and 1206A).

Module G—Income test

Effect of ordinary income on maximum payment rate

1068-G1 This is how to work out the effect of a person's ordinary income, and the ordinary income of a partner of the person, on the person's maximum payment rate:

Method statement

Step 1. Work out the amount of the person's ordinary income on a fortnightly basis.

Note: For the treatment of amounts received from friendly societies, see point 1068-G4.

Step 2. If the person is a member of a couple, work out the partner income free area using point 1068-G9.

Note: The partner income free area is the maximum amount of ordinary income the person's partner may have without affecting the person's benefit.

Step 3. Use paragraphs 1068-G10(a), (b) and (c) to work out whether the person has a partner income excess.

Step 4. If the requirements of paragraphs 1068-G10(a), (b) and (c) are not satisfied then the person's partner income excess is nil.

Step 5. If the requirements of paragraphs 1068-G10(a), (b) and (c) are satisfied, the person's partner income excess is the partner's ordinary income less the partner income free area.

Step 6.	Use the person's partner income excess to work out the person's ***partner income reduction*** using point 1068-G11.
Step 7.	Work out whether the person's ordinary income exceeds the person's ordinary income free area under point 1068-G12.
	Note: A person's ordinary income free area is the maximum amount of ordinary income the person may have without affecting the person's benefit rate.
Step 8.	If the person's ordinary income does not exceed the person's ordinary income free area, the person's ordinary income excess is nil.
Step 9.	If the person's ordinary income exceeds the person's ordinary income free area, the person's ordinary income excess is the person's ordinary income less the person's ordinary income free area.
Step 10.	Use the person's ordinary income excess to work out the person's ***ordinary income reduction*** using points 1068-G14, 1068-G15, 1068-G16 and 1068-G17.
Step 11.	Add the person's partner income reduction and ordinary income reduction: the result is the person's ***income reduction*** referred to in Step 5 of point 1068-A1.

Note 1: For ***ordinary income*** see section 8.

Note 2: See point 1068-A1 (Steps 6 to 9) for the significance of the person's income reduction.

Note 3: The application of the ordinary income test is affected by provisions concerning:

- the general concept of ordinary income and the treatment of certain income amounts (Division 1 of Part 3.10);
- business income (sections 1074 and 1075);
- income from financial assets (including income streams (short term) and certain income streams (long term)) (Division 1B of Part 3.10);

- income from income streams not covered by Division 1B of Part 3.10 (Division 1C of Part 3.10);
- disposal of income (sections 1106 to 1111).

Ordinary income of members of certain couples

1068-G2 Subject to point 1068-G3, if a person is a member of a couple and the person's partner is receiving a social security pension, a service pension, income support supplement or a veteran payment, the person's ordinary income is taken to be one half of the sum of:

(a) the amount that would be the person's ordinary income if he or she were not a member of a couple; and

(b) the amount that would be the ordinary income of the person's partner if the partner were not a member of a couple.

Friendly society amounts

1068-G4 The ordinary income of a person to whom, or to whose partner, jobseeker payment is payable and who, or whose partner, ~~under Subdivision BA of Division 1 of Part 2.12, is not required to satisfy the activity test~~is not required to satisfy the employment pathway plan requirements because of a determination that is in effect under section 40L of the Administration Act and that has been made because of the circumstance referred to in paragraph 40L(5)(a) of that Act, is not to include any amount received by the person or partner from an approved friendly society in respect of the incapacity because of which the person or partner is not required to satisfy ~~the activity test~~those employment pathway plan requirements.

Board and lodging

1068-G6 A person's ordinary income is not to include a payment to the person for board or lodging provided by the person to a parent, child, brother or sister of the person.

Lump sum payments arising from termination of employment

1068-G7 Subject to points 1068-G7AF to 1068-G7AR (inclusive), if:

OFFICIAL: Sensitive // Legal Privilege

(a) a person's employment has been terminated; and
(b) as a result the person is entitled to a lump sum payment from the person's former employer;

the person is taken to have received the lump sum payment on the day on which the person's employment was terminated.

Directed termination payments excluded

1068-G7AF If:

(a) a person's employment has been terminated; and
(b) as a result the person is entitled to a lump sum payment from the person's former employer; and
(c) the payment, or part of the payment, is a directed termination payment within the meaning of section 82-10F of the *Income Tax (Transitional Provisions) Act 1997*;

the payment, or that part, is to be disregarded in working out the ordinary income of the person for the purposes of Module G of section 1068.

Certain leave payments taken to be ordinary income—employment continuing

1068-G7AG If:

(a) a person is employed; and
(b) the person is on leave for a period; and
(c) the person is or was entitled to receive a leave payment (whether as a lump sum payment, as a payment that is one of a series of regular payments or otherwise) in respect of a part or all of a leave period;

the person is taken to have received ordinary income for a period (the ***income maintenance period***) equal to the leave period to which the leave payment entitlement relates.

Certain termination payments taken to be ordinary income

1068-G7AH If:

(a) a person's employment has been terminated; and

(b) the person receives a termination payment (whether as a lump sum payment, as a payment that is one of a series of regular payments or otherwise);

the person is taken to have received ordinary income for a period (the ***income maintenance period***) equal to the period to which the payment relates.

Exception to points 1068-G7AG and 1068-G7AH

1068-G7AI Point 1068-G7AG or 1068-G7AH does not apply in relation to a person's entitlement referred to in paragraph 1068-G7AG(c) or in relation to a person's termination payment referred to in paragraph 1068-G7AH(b) if:

(a) the person makes a claim for jobseeker payment on or after the commencement of this point; and

(b) the person makes the claim after the death of the person's partner on or after the commencement of this point; and

(c) if the person is a man or a woman who was not pregnant when her partner died—the person makes the claim in the period of 14 weeks starting on the day of the death of the partner; and

(d) if the person is a woman who was pregnant when her partner died—the person makes the claim:

(i) in the period of 14 weeks starting on the day of the death of the partner; or

(ii) in the period starting on the day of the death of the partner and ending when the child is born or the woman otherwise stops being pregnant;

whichever ends later; and

(e) the entitlement referred to in paragraph 1068-G7AG(c) arose, or the termination payment referred to in paragraph 1068-G7AH(b) was paid, in the period applicable under paragraph (c) or (d) of this point.

More than one termination payment on a day

1068-G7AJ If:

OFFICIAL: Sensitive // Legal Privilege

(a) the person is covered by point 1068-G7AH; and
(b) the person receives more than one termination payment on a day;

the income maintenance period is worked out by adding the periods to which the payments relate.

Start of income maintenance period—employment continuing

1068-G7AK If the person is covered by point 1068-G7AG, the income maintenance period starts on the first day of the leave period to which the leave payment entitlement relates.

Start of income maintenance period—employment terminated

1068-G7AKA Subject to point 1068-G7AKC, if the person is covered by point 1068-G7AH, the income maintenance period starts, subject to point 1068-G7AKB, on the day the person is paid the termination payment.

Commencement of income maintenance period where there is a second termination payment

1068-G7AKB If a person who is covered by point 1068-G7AH is subject to an income maintenance period (the ***first period***) and the person is paid another termination payment during that period (the ***second leave payment***), the income maintenance period for the second termination payment commences the day after the end of the first period.

Start of income maintenance period where liquid assets test waiting period applies

1068-G7AKC If a person to whom point 1068-G7AKA applies is subject to a liquid assets test waiting period, the income maintenance period is taken to have started on the day on which the liquid assets test waiting period started.

OFFICIAL: Sensitive // Legal Privilege

Leave payments or termination payments in respect of periods longer than a fortnight

1068-G7AL If:

(a) a person receives a leave payment or termination payment; and

(b) the payment is in respect of a period greater than a fortnight;

the person is taken to receive in a payment fortnight or part of a payment fortnight an amount calculated by:

(c) dividing the amount received by the number of days in the period to which the payment relates (the ***daily rate***); and

(d) multiplying the daily rate by the number of days in the payment fortnight that are also in the period.

1068-G7AM If the Secretary is satisfied that a person is in severe financial hardship because the person has incurred unavoidable or reasonable expenditure while an income maintenance period applies to the person, the Secretary may determine that the whole, or any part, of the period does not apply to the person.

Note 1: For ***in severe financial hardship*** see subsection 19C(2) (person who is not a member of a couple) and 19C(3) (person who is a member of a couple).

Note 2: For ***unavoidable or reasonable expenditure*** see subsection 19C(4).

Note 3: If an income maintenance period applies to a person, then, during that period:

(a) the payment or allowance claimed may not be payable to the person; or

(b) the amount of the payment or allowance payable to the person may be reduced.

When a person receives a leave payment or a termination payment

1068-G7AN For the purposes of points 1068-G7AF to 1068-G7AM (inclusive), a person (the ***first person***) is taken to receive a leave payment or termination payment if the payment is made to another person:

(a) at the direction of the first person or a court; or

(b) on behalf of the first person; or

OFFICIAL: Sensitive // Legal Privilege

(c) for the benefit of the first person; or

(d) the first person waives or assigns the first person's right to receive the payment.

Single payment in respect of different kinds of termination payments

1068-G7AP If a person who is covered by point 1068-G7AH receives a single payment in respect of different kinds of termination payments, then, for the purposes of the application of points 1068-G7AG to 1068-G7AN (inclusive), each part of the payment that is in respect of a different kind of termination payment is taken to be a separate payment and the income maintenance period in respect of the single payment is worked out by adding the periods to which the separate payments relate.

Definitions

1068-G7AQ In points 1068-G7AG to 1068-G7AP (inclusive):

payment fortnight means a fortnight in respect of which a jobseeker payment is paid, or would be paid, apart from the application of an income maintenance period, to a person.

period to which the payment relates means:

(a) if the payment is a leave payment—the leave period to which the payment relates; or

(b) if the payment is a termination payment and is calculated as an amount equivalent to an amount of ordinary income that the person would (but for the termination) have received from the employment that was terminated—the period for which the person would have received that amount of ordinary income; or

(c) if the payment is a termination payment and paragraph (b) does not apply—the period of weeks (rounded down to the nearest whole number) in respect of which the person would have received ordinary income, from the employment that was terminated, of an amount equal to the amount of the termination payment if:

(i) the person's employment had continued; and
(ii) the person received ordinary income from the employment at the rate per week at which the person usually received ordinary income from the employment prior to the termination.

redundancy payment includes a payment in lieu of notice, but does not include a directed termination payment within the meaning of section 82-10F of the *Income Tax (Transitional Provisions) Act 1997*.

termination payment includes:

(a) a redundancy payment; and
(b) a leave payment relating to a person's employment that has been terminated; and
(c) any other payment that is connected with the termination of a person's employment.

1068-G7AR In points 1068-G7AG to 1068-G7AQ (inclusive):

leave payment includes a payment in respect of sick leave, annual leave, maternity leave and long service leave, but does not include:

(a) an instalment of parental leave pay; or
(b) dad and partner pay.

Ordinary income generally taken into account when first earned, derived or received

1068-G7A Subject to points 1068-G7B, 1068-G7C, 1068-G8 and 1068-G8A and sections 1072A and 1073, ordinary income (except employment income) is to be taken into account in the fortnight in which it is first earned, derived or received.

Note: See Division 1AA of Part 3.10 for the treatment of employment income.

Claimant or recipient receives lump sum amount for remunerative work

1068-G7B If a person whose claim for a payment or an allowance has been granted receives a lump sum amount after the claim was made that:

(a) is paid to him or her in relation to remunerative work; and

(b) is not a payment to which point 1068-G8 applies; and

(c) is not an exempt lump sum; and

(d) is not employment income;

the person is, for the purposes of this Module, taken to receive one fifty-second of that amount as ordinary income during each week in the 12 months commencing on the day on which the person becomes entitled to receive that amount.

Partner of claimant or recipient receives lump sum amount for remunerative work

1068-G7C If:

(a) a person whose claim for a payment or an allowance has been granted is a member of a couple; and

(b) after the person has made the claim, the person's partner receives a lump sum amount that:

(i) is paid to him or her in relation to remunerative work; and

(ii) is not a payment to which point 1068-G8 applies; and

(iii) is not an exempt lump sum; and

(iv) is not employment income;

the partner is, for the purposes of this Module, taken to receive one fifty-second of that amount as ordinary income during each week in the 12 months commencing on the day on which the partner becomes entitled to receive that amount.

Reference to payment or allowance

1068-G7D A reference in point 1068-G7B or 1068-G7C to ***a payment or an allowance*** is a reference to a payment or an allowance the rate of which is calculated under this Rate Calculator.

OFFICIAL: Sensitive // Legal Privilege

Operation of points 1068-G7B and 1068-G7C

1068-G7E Points 1068-G7B and 1068-G7C have effect even if the person who has made the claim:

(a) has to serve an ordinary waiting period or a liquid assets test waiting period in respect of the payment or allowance claimed; or

(b) is subject to an income maintenance period in respect of the payment or allowance claimed; or

(c) is subject to a seasonal work preclusion period;

during the period of 12 months referred to in those points.

Ordinary income received at intervals longer than one fortnight

1068-G8 Subject to points 1068-G7AF to 1068-G7AR (inclusive), if:

(a) a person receives a number of payments of ordinary income (except employment income); and

(b) each payment is in respect of a period (in this point called the ***work period***) that is greater than a fortnight; and

(c) there is reasonable predictability or regularity as to the timing of the payments; and

(d) there is reasonable predictability as to the quantum of the payments;

the person is taken to receive in a fortnight falling within, or overlapping with, a work period an amount calculated by:

(e) dividing the amount received by the number of days in the work period (the result is called the ***daily rate***); and

(f) multiplying the daily rate by the number of days in the fortnight that are also within the work period.

Payment of arrears of periodic compensation payments

1068-G8A If:

(a) at the time of an event that gives rise to an entitlement of a person to compensation, the person is receiving jobseeker payment; and

(b) in relation to that entitlement, the person receives a payment of arrears of periodic compensation;

the person is taken to receive in a fortnight falling within, or overlapping with, the periodic payments period, an amount calculated by:

(c) dividing the amount received by the number of days in the periodic payments period (the result is called the ***daily rate***); and

(d) multiplying the daily rate by the number of days in the fortnight that are also within the periodic payments period.

Note: For ***periodic payments period*** see section 17.

Partner income free area

1068-G9 The partner income free area for a person is:

(a) if the person's partner is not receiving a social security benefit and has not turned 22—the amount of income of the partner (rounded up to the nearest dollar) beyond which youth allowance would not be payable to the partner if the partner were qualified for a youth allowance and were not undertaking full-time study (see section 541B); or

(b) if the person's partner is not receiving a social security benefit and has turned 22—the amount of income of the partner (rounded up to the nearest dollar) beyond which jobseeker payment would not be payable to the partner if the partner were qualified for a jobseeker payment; or

(c) if the person's partner is receiving a social security benefit—the amount of income of the partner (rounded up to the nearest dollar) beyond which that benefit would not be payable to the partner.

1068-G9A For the purposes of paragraph 1068-G9(a), disregard steps 2, 2A and 3 of the method statement in point 1067G-A1.

1068-G9B For the purposes of paragraph 1068-G9(b), disregard steps 2 and 3 of the method statement in point 1068-A1.

Partner income excess

1068-G10 If:

(a) a person is a member of a couple; and

(b) the person's partner is not receiving a social security pension, a service pension, income support supplement or a veteran payment; and

(c) the partner's ordinary income exceeds the partner income free area for the partner;

then:

(d) the person has a partner income excess; and

(e) the person's partner income excess is the amount by which the partner's ordinary income exceeds the partner income free area.

Partner income reduction

1068-G11 If a person has a partner income excess, the person's partner income reduction is an amount equal to 60% of the part of the partner's ordinary income that exceeds the partner income free area.

Example:

Facts: Susan's partner Colin has an ordinary income of $800. Assume that the partner income free area under point 1068-G9 is $640.

Application: Colin's ordinary income exceeds the partner income free area. He therefore has a partner income excess under point 1068-G10 of:

$800 – $640 = $160

Susan's partner income reduction under point 1068-G11 is therefore:

60% × $160 = $96

Ordinary income free area

1068-G12 A person's ordinary income free area is $150.

Note: The income free area is used in the ordinary income test in relation to fortnightly income.

OFFICIAL: Sensitive // Legal Privilege

Ordinary income excess

1068-G13 If a person's ordinary income exceeds the person's ordinary income free area:

(a) the person has an ordinary income excess; and

(b) the person's ordinary income excess is the amount by which the person's ordinary income exceeds the person's ordinary income free area.

Ordinary income reduction—general

1068-G14 Subject to point 1068-G17, if a person has an ordinary income excess, the person's ordinary income reduction is the sum of:

(a) the person's lower range reduction (see point 1068-G15); and

(b) the person's upper range reduction (if any) (see point 1068-G16).

Lower range reduction

1068-G15 The person's lower range reduction is an amount equal to 50% of the part of the person's ordinary income excess that does not exceed $106.

Upper range reduction

1068-G16 The person's upper range reduction is an amount equal to 60% of the part (if any) of the person's ordinary income excess that exceeds $106.

Ordinary income reduction for certain recipients of jobseeker payment

1068-G17 If:

(a) a person has an ordinary income excess; and

(b) the person is receiving jobseeker payment; and

(c) the person is not a member of a couple; and

(d) the person is the principal carer of a child;

OFFICIAL: Sensitive // Legal Privilege

the person's ordinary income reduction is an amount equal to 40% of the person's ordinary income excess.

Module J—Remote area allowance

Remote area allowance—person physically in remote area

1068-J1 An amount by way of remote area allowance is to be added to a person's rate if:

(aa) any of the following subparagraphs applies:

(i) apart from this point, the person's rate would be greater than nil;

(ii) apart from this point, the person's rate would be nil merely because an advance pharmaceutical allowance has been paid to the person under Part 2.23 of this Act;

(iii) apart from this point, the person's rate would be nil merely because an election by the person under subsection 1061VA(1) is in force;

(iv) apart from this point, the person's rate would be nil merely because of both of the matters mentioned in subparagraphs (ii) and (iii); and

(a) the person's usual place of residence is situated in the remote area; and

(b) the person is physically present in the remote area.

Note 1: For ***remote area*** see subsection 14(1).

Note 2: A person may be considered to be physically present in a remote area during temporary absences—see subsection 14(2).

Rate of remote area allowance

1068-J3 The rate of remote area allowance payable to a person is worked out using Table J. Work out which family situation in the Table applies to the person. The rate of remote area allowance is the corresponding amount in column 3 plus an additional corresponding amount in column 4 for each FTB child, and regular care child, of the person.

Table J
Remote area allowance

Column 1 Item	Column 2 Person's family situation	Column 3 Basic allowance	Column 4 Additional allowance for each FTB child and regular care child
1.	Not member of couple	$18.20	$7.30
2.	Partnered	$15.60	$7.30
3.	Member of illness separated couple	$18.20	$7.30
5.	Partnered (partner in gaol)	$18.20	$7.30

Meaning of remote area allowance

1068-J4 In Table J, ***remote area allowance*** means:

(a) an amount added to a person's social security pension or benefit by way of remote area allowance; or

(b) a remote area allowance payable under point SCH6-G1 of the VEA.

In remote area

1068-J5 For the purposes of Table J in point 1068-J3, a person is ***in the remote area*** if:

(a) the person's usual place of residence is in the remote area; and

(b) the person is physically present in the remote area.

OFFICIAL: Sensitive // Legal Privilege

Special rule where partner has an FTB or regular care child but is not receiving a pension

1068-J7 If:

(a) a person who is a member of a couple is qualified for an amount by way of additional allowance; and

(b) the person's partner is not receiving a pension or benefit; and

(c) the person's partner has an FTB child or a regular care child;

the child is taken, for the purposes of this Module, to be an FTB child, or a regular care child, (as the case requires) of the person.

Special rule where partner has an FTB or regular care child but is not receiving additional allowance for the child

1068-J8 If:

(a) a person who is a member of a couple is qualified for an amount by way of remote area allowance; and

(b) the person's partner has an FTB child or a regular care child; and

(c) the person's partner is not receiving additional allowance for the child;

the child is taken, for the purposes of this Module, to be an FTB child, or a regular care child, (as the case requires) of the person.

Special rule dealing with the death of an FTB or regular care child

1068-J9 If an FTB child, or a regular care child, of a person dies, this Module has effect, for a period of 14 weeks after the death of the child, as if the child had not died.

Note: This point does not prevent this Module having the effect it would have had if the child would otherwise have ceased to be an FTB child, or a regular care child, during that 14 weeks.

OFFICIAL: Sensitive // Legal Privilege

Part 3.6A—Parenting Payment Rate Calculator

1068A Rate of parenting payment—pension PP (single)

(1) If a person is not a member of a couple, the person's rate of parenting payment is the pension PP (single) rate.

(2) The pension PP (single) rate is worked out in accordance with the rate calculator at the end of this section.

Note: For rate of a person who is a member of a couple see section 1068B.

(3) If:

(a) a person has a relationship with another person, whether of the same sex or a different sex (the ***other person***); and

(b) the relationship between them is a de facto relationship in the Secretary's opinion (formed after the Secretary has had regard to all the circumstances of the relationship, including, in particular, the matters referred to in paragraphs 4(3)(a) to (e) and subsection 4(3A)); and

(c) either or both of them are under the age of consent applicable in the State or Territory in which they are living;

the person's pension PP (single) rate is not to exceed the benefit PP (partnered) rate which would be payable to the person if the other person were the person's partner.

Pension PP (Single) Rate Calculator

Module A—Overall rate calculation process

Method of calculating rate

1068A-A1 The rate of pension PP (single) is a daily rate. That rate is worked out by dividing the annual rate calculated according to this Rate Calculator by 364 (fortnightly rates are provided for information only).

OFFICIAL: Sensitive // Legal Privilege

Section 1068A

Method statement

Step 1. Work out the person's ***maximum basic rate*** using Module B below.

Step 1A. Work out the amount of pension supplement using Module BA below.

Step 1B. Work out the energy supplement (if any) using Module BB below.

Step 2. Work out the amount per year (if any) of pharmaceutical allowance using Module C below.

Step 3. Work out the amount per year (if any) for rent assistance in accordance with paragraph 1070A(b).

Step 4. Add up the amounts obtained in Steps 1, 1A, 1B, 2 and 3: the result is called the ***maximum payment rate***.

Step 5. Apply the ordinary income test using Module E below to work out the income reduction.

Step 6. Take the income reduction away from the maximum payment rate: the result is called the ***provisional annual payment rate***.

Step 7. The ***rate of pension PP (single)*** is the amount obtained by:

(a) subtracting from the provisional annual payment rate any special employment advance deduction (see Part 3.16B); and

(b) if there is any amount remaining, subtracting from that amount any advance payment deduction (see Part 3.16A); and

OFFICIAL: Sensitive // Legal Privilege

(c) adding any amount payable by way of remote area allowance (see Module F).

Note 1: If a person's rate is reduced under Step 6, the order in which the reduction is to be made against the components of the maximum payment rate is laid down by section 1210.

Note 2: In some circumstances a person may also be qualified for a pharmaceutical allowance under Part 2.22.

Note 3: An amount of remote area allowance is to be added under Step 7 only if the person's provisional payment rate under Step 6 is greater than nil.

Module B—Maximum basic rate

Maximum basic rate

1068A-B1 A person's maximum basic rate is $21,470.80 per year ($825.80 per fortnight).

Note: The maximum basic rate is indexed 6 monthly in line with CPI increases (see sections 1191 to 1194).

Module BA—Pension supplement

Pension supplement

1068A-BA1 A pension supplement amount is to be added to the person's maximum basic rate.

Residents of pension age who are in Australia etc.

1068A-BA2 If the person is residing in Australia, has reached pension age and:

(a) is in Australia; or

(b) is temporarily absent from Australia and has been so for a continuous period not exceeding 6 weeks;

the person's pension supplement amount is:

(c) if an election by the person under subsection 1061VA(1) is in force—the amount worked out under point 1068A-BA4; and

(d) otherwise—the amount worked out under point 1068A-BA3.

OFFICIAL: Sensitive // Legal Privilege

Residents of pension age in Australia etc.—no election in force

1068A-BA3 The person's pension supplement amount is the amount worked out by:

(a) working out 66.33% of the combined couple rate of pension supplement; and

(b) if the result is not a multiple of $2.60, rounding the result up or down to the nearest multiple of $2.60 (rounding up if the result is not a multiple of $2.60 but is a multiple of $1.30).

Note: For ***combined couple rate of pension supplement***, see subsection 20A(1).

Residents of pension age in Australia etc.—election in force

1068A-BA4 The person's pension supplement amount is the amount worked out as follows:

(a) work out the amount for the person under point 1068A-BA3 as if the election were not in force;

(b) from that amount, subtract the person's minimum pension supplement amount.

Other persons

1068A-BA5 If the person is not covered by point 1068A-BA2, the person's pension supplement amount is the person's pension supplement basic amount.

Module BB—Energy supplement

1068A-BB1 An energy supplement is to be added to the person's (the ***recipient's***) maximum basic rate if the recipient is residing in Australia and:

(a) is in Australia; or

(b) is temporarily absent from Australia and has been so for a continuous period not exceeding 6 weeks.

However, this Module does not apply if quarterly energy supplement is payable to the recipient.

Note: Section 918 may affect the addition of the energy supplement.

Recipient has reached pension age

1068A-BB2 If the recipient has reached pension age, the recipient's energy supplement is $366.60.

Recipient has not reached pension age

1068A-BB3 If the recipient has not reached pension age, the recipient's energy supplement is $312.00.

Module C—Pharmaceutical allowance

Qualification for pharmaceutical allowance

1068A-C1 Subject to points 1068A-C1A, 1068A-C2, 1068A-C3 and 1068A-C5, an additional amount by way of pharmaceutical allowance is to be added to a person's maximum basic rate if the person is an Australian resident.

No pharmaceutical allowance if person has reached pension age

1068A-C1A Pharmaceutical allowance is not to be added to a person's maximum basic rate if the person has reached pension age.

No pharmaceutical allowance if person receiving certain supplements under other Acts

1068A-C2 Pharmaceutical allowance is not to be added to a person's maximum basic rate if the person is receiving:

(a) veterans supplement under section 118A of the Veterans' Entitlements Act; or

(b) MRCA supplement under section 300 of the Military Rehabilitation and Compensation Act; or

(c) pharmaceutical supplement under Part 3A of the *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) Act 2006*; or

(d) pharmaceutical supplement under Part 4 of the *Treatment Benefits (Special Access) Act 2019*.

OFFICIAL: Sensitive // Legal Privilege

No pharmaceutical allowance before advance payment period ends

1068A-C3 Pharmaceutical allowance is not to be added to a person's maximum basic rate if:

(a) the person has received an advance pharmaceutical allowance under Part 2.23 of this Act; and

(b) the person's advance payment period has not ended.

Note: For ***advance payment period*** see point 1068A-C4.

Advance payment period

1068A-C4(1) A person's advance payment period starts on the day on which the advance pharmaceutical allowance is paid to the person.

(2) The period ends after the number of paydays worked out using the following formula have passed:

$$\frac{\text{Amount of advance} \times 26}{\text{Pharmaceutical allowance rate}}$$

where:

amount of advance is the amount of the advance paid to the person.

pharmaceutical allowance rate is the yearly amount of pharmaceutical allowance which would be added to the person's maximum basic rate in working out the person's rate of pension PP (single) on the day on which the advance is paid if pharmaceutical allowance were to be added to the person's maximum basic rate on that day.

No pharmaceutical allowance if annual limit reached

1068A-C5 Pharmaceutical allowance is not to be added to a person's maximum basic rate if:

(a) the person has received an advance pharmaceutical allowance during the current calendar year; and

(b) the total amount paid to the person for that year by way of:

(i) pharmaceutical allowance; and
(ii) advance pharmaceutical allowance;

equals the total amount of pharmaceutical allowance that would have been paid to the person during that year if the person had not received any advance pharmaceutical allowance.

Note 1: For the amount paid to a person by way of pharmaceutical allowance see subsections 19A(2) to (7).

Note 2: The annual limit is affected by the following:

(a) how long during the calendar year the person was on pension or benefit;

(b) the rate of pharmaceutical allowance the person attracts at various times depending on the person's family situation.

Amount of pharmaceutical allowance

1068A-C7 The amount of pharmaceutical allowance is $140.40 per year ($5.40 per fortnight).

Note: The annual amount is adjusted annually in line with CPI increases (see section 1206A).

Module E—Ordinary income test

Effect of income on maximum payment rate

1068A-E1 This is how to work out the effect of a person's ordinary income on the person's maximum payment rate:

Method statement

Step 1. Work out the amount of the person's ordinary income on a yearly basis.

Step 2. Work out the person's ordinary income free area (see points 1068A-E14 to 1068A-E18 below).

Note:	A person's ordinary income free area is the amount of ordinary income that the person can have without any deduction being made from the person's maximum payment rate.
Step 3.	Work out whether the person's ordinary income exceeds the person's ordinary income free area.
Step 4.	If the person's ordinary income does not exceed the person's ordinary income free area, the person's ordinary income excess is nil.
Step 5.	If the person's ordinary income exceeds the person's ordinary income free area, the person's ordinary income excess is the person's ordinary income less the person's ordinary income free area.
Step 6.	Use the person's ordinary income excess to work out the person's reduction for ordinary income using points 1068A-E19 and 1068A-E20 below.

Note 1: See point 1068A-A1 (Steps 5 and 6) for the significance of the person's reduction for ordinary income.

Note 2: The application of the ordinary income test is affected by provisions concerning the following:

(a) the general concept of ordinary income and the treatment of certain income amounts (Division 1 of Part 3.10);
(b) business income (sections 1074 and 1075);
(c) income from financial assets (including income streams (short term) and certain income streams (long term)) (Division 1B of Part 3.10);
(d) income from income streams not covered by Division 1B of Part 3.10 (Division 1C of Part 3.10);
(e) disposal of income (sections 1106 to 1111).

Directed termination payments excluded

1068A-E2 If:

(a) a person's employment has been terminated; and

OFFICIAL: Sensitive // Legal Privilege

(b) as a result the person is entitled to a lump sum payment from the person's former employer; and

(c) the payment, or part of the payment, is a directed termination payment within the meaning of section 82-10F of the *Income Tax (Transitional Provisions) Act 1997*;

the payment, or that part, is to be disregarded in working out the ordinary income of the person for the purposes of this Module.

Certain leave payments taken to be ordinary income—employment continuing

1068A-E3 If:

(a) a person is employed; and

(b) the person is on leave for a period; and

(c) the person is or was entitled to receive a leave payment (whether as a lump sum payment, as a payment that is one of a series of regular payments or otherwise) in respect of a part or all of the leave period;

the person is taken to have received ordinary income for a period (the ***income maintenance period***) equal to the leave period to which the leave payment entitlement relates.

Certain termination payments taken to be ordinary income

1068A-E4 If:

(a) a person's employment has been terminated; and

(b) the person receives a termination payment (whether as a lump sum payment, as a payment that is one of a series of regular payments or otherwise);

the person is taken to have received ordinary income for a period (the ***income maintenance period***) equal to the period to which the payment relates.

More than one termination payment on a day

1068A-E5 If:

(a) the person is covered by point 1068A-E4; and

OFFICIAL: Sensitive // Legal Privilege

(b) the person receives more than one termination payment on a day;

the income maintenance period is worked out by adding the periods to which the payments relate.

Start of income maintenance period—employment continuing

1068A-E6 If the person is covered by point 1068A-E3, the income maintenance period starts on the first day of the leave period to which the leave payment entitlement relates.

Start of income maintenance period—employment terminated

1068A-E7 If the person is covered by point 1068A-E4, the income maintenance period starts, subject to point 1068A-E8, on the day the person is paid the termination payment.

Commencement of income maintenance period where there is a second termination payment

1068A-E8 If a person who is covered by point 1068A-E4 is subject to an income maintenance period (the ***first period***) and the person is paid another termination payment during that period (the ***second leave payment***), the income maintenance period for the second termination payment commences on the day after the end of the first period.

1068A-E9 If the Secretary is satisfied that a person is in severe financial hardship because the person has incurred unavoidable or reasonable expenditure while an income maintenance period applies to the person, the Secretary may determine that the whole, or any part, of the period does not apply to the person.

Note 1: For ***in severe financial hardship*** see subsection 19C(2) (person who is not a member of a couple).

Note 2: For ***unavoidable or reasonable expenditure*** see subsection 19C(4).

Note 3: If an income maintenance period applies to a person, then, during that period:

(a) the pension PP (single) claimed may not be payable to the person; or

OFFICIAL: Sensitive // Legal Privilege

(b) the amount of the pension PP (single) payable to the person may be reduced.

When a person receives a leave payment or a termination payment

1068A-E10 For the purposes of points 1068A-E2 to 1068A-E9 (inclusive), a person (the ***first person***) is taken to receive a leave payment or termination payment if the payment is made to another person:

(a) at the direction of the first person or a court; or

(b) on behalf of the first person; or

(c) for the benefit of the first person; or

the first person waives or assigns the first person's right to receive the payment.

Single payment in respect of different kinds of termination payments

1068A-E11 If a person who is covered by point 1068A-E4 receives a single payment in respect of different kinds of termination payments, then, for the purposes of the application of points 1068A-E3 to 1068A-E10 (inclusive), each part of the payment that is in respect of a different kind of termination payment is taken to be a separate payment and the income maintenance period in respect of the single payment is worked out by adding the periods to which the separate payments relate.

Definitions

1068A-E12 In points 1068A-E3 to 1068A-E12 (inclusive):

leave payment includes a payment in respect of sick leave, annual leave, maternity leave and long service leave, but does not include:

(a) an instalment of parental leave pay; or

(b) dad and partner pay.

period to which the payment relates means:

(a) if the payment is a leave payment—the leave period to which the payment relates; or

OFFICIAL: Sensitive // Legal Privilege

(b) if the payment is a termination payment and is calculated as an amount equivalent to an amount of ordinary income that the person would (but for the termination) have received from the employment that was terminated—the period for which the person would have received that amount of ordinary income; or

(c) if the payment is a termination payment and paragraph (b) does not apply—the period of weeks (rounded down to the nearest whole number) in respect of which the person would have received ordinary income, from the employment that was terminated, of an amount equal to the amount of the termination payment if:

(i) the person's employment had continued; and

(ii) the person received ordinary income from the employment at the rate per week at which the person usually received ordinary income from the employment prior to the termination.

redundancy payment includes a payment in lieu of notice, but does not include a directed termination payment within the meaning of section 82-10F of the *Income Tax (Transitional Provisions) Act 1997*.

termination payment includes:

(a) a redundancy payment; and

(b) a leave payment relating to a person's employment that has been terminated; and

(c) any other payment that is connected with the termination of a person's employment.

Payment of arrears of periodic compensation payments

1068A-E13 If:

(a) at the time of an event that gives rise to an entitlement of a person to compensation, the person is receiving a compensation affected payment; and

(b) in relation to that entitlement, the person receives a payment of arrears of periodic compensation;

the person is taken to receive, on each day in the periodic payments period, an amount calculated by dividing the amount received by the number of days in the periodic payments period.

Note: For ***compensation affected payment*** and ***periodic payments period*** see section 17.

How to calculate a person's ordinary income free area

1068A-E14 A person's ordinary income free area is worked out using Table E. The ordinary income free area is the amount in Column 2 plus the additional amount in Column 4 for each dependent child of the person.

Table E—Ordinary income free area

Column 1 Item	Column 2 Basic free area per year	Column 3 Basic free area per fortnight	Column 4 Additional free area per year	Column 5 Additional free area per fortnight
1	$2,600	$100	$639.60	$24.60

Note 1: For ***dependent child*** see section 5 and point 1068A-E21.

Note 2: The basic free area per year is indexed annually in line with CPI increases (see sections 1191 to 1194).

No additional free area for certain prescribed student children

1068A-E15 No additional free area is to be added for a dependent child who:

(a) has turned 18; and

(b) is a prescribed student child;

unless the person whose rate is being calculated receives carer allowance for the child.

Reduction of additional free area for dependent children

1068A-E16 The additional free area for a dependent child is reduced by the annual amount of any payment received by the person for or in respect of that particular child. The payments referred to in point 1068A-E17 do not result in a reduction.

OFFICIAL: Sensitive // Legal Privilege

Payments that do not reduce additional free area

1068A-E17 No reduction is to be made under point 1068A-E16 for a payment:

(a) under this Act; or
(b) of maintenance income; or
(c) under the Veterans' Entitlements Act; or
(d) under an Aboriginal study assistance scheme; or
(e) under the Assistance for Isolated Children Scheme.

Note: For ***Aboriginal study assistance scheme*** see subsection 23(1).

Examples of payments reducing additional free area

1068A-E18 Examples of the kinds of payments that result in a reduction under point 1068A-E16 are:

(a) amounts received from State authorities or registered public benevolent institutions in respect of the boarding out of the child; or
(b) amounts of superannuation or compensation paid in respect of the child; or
(c) amounts (other than amounts covered by point 1068A-E17) paid in respect of the child under educational schemes; or
(d) foster care allowance payments made by a State welfare authority.

Ordinary income excess

1068A-E19 A person's ordinary income excess is the person's ordinary income less the person's ordinary income free area.

Reduction for ordinary income

1068A-E20 A person's reduction for ordinary income is:

Ordinary income excess × 0.4

1068A-E21 In this Module:

dependent child, in relation to a person, includes any child of the person who is under 18 and is receiving a youth allowance.

OFFICIAL: Sensitive // Legal Privilege

Module F—Remote area allowance

Remote area allowance

1068A-F1 An amount by way of remote area allowance is to be added to a person's rate if:

(a) any of the following subparagraphs applies:

(i) apart from this point, the person's rate would be greater than nil;

(ii) apart from this point, the person's rate would be nil merely because an advance pharmaceutical allowance has been paid to the person under Part 2.23 of this Act;

(iii) apart from this point, the person's rate would be nil merely because an election by the person under subsection 1061VA(1) is in force;

(iv) apart from this point, the person's rate would be nil merely because of both of the matters mentioned in subparagraphs (ii) and (iii); and

(b) the person's usual place of residence is situated in a remote area; and

(c) the person is physically present in the remote area.

Note: For ***remote area*** and ***physically present in the remote area*** see section 14.

Rate of remote area allowance

1068A-F2 The rate of remote area allowance payable to a person is worked out using Table F. The rate of remote area allowance is the amount in Column 2 plus the additional corresponding amount in Column 4 for each FTB child, and each regular care child, of the person.

OFFICIAL: Sensitive // Legal Privilege

Table F—Remote area allowance				
Column 1	**Column 2**	**Column 3**	**Column 4**	**Column 5**
Item	**Basic allowance per year**	**Basic allowance per fortnight**	**Additional allowance per year**	**Additional allowance per fortnight**
1	$473.20	$18.20	$189.80	$7.30

1068B Rate of parenting payment—PP (partnered)

(1) If a person is a member of a couple, the person's rate of parenting payment is the benefit PP (partnered) rate.

(2) The benefit PP (partnered) rate is worked out in accordance with the rate calculator at the end of this section.

Note: For ***member of a couple*** see section 4.

Benefit PP (Partnered) Rate Calculator

Module A—Overall rate calculation process

Method of calculating rate—general

1068B-A1 The rate of benefit PP (partnered) is a daily rate. That rate is worked out by dividing the fortnightly rate calculated according to this Rate Calculator by 14. There are 2 ways of working out the fortnightly rate:

(a) one for a person who is not a partner of a non-independent YA recipient (see point 1068B-A2); and

(b) one for a person who is a partner of a non-independent YA recipient (see point 1068B-A3).

Note: For ***partner of a non-independent YA recipient*** see subsection 23(1).

Method of calculating rate for person who is not a partner of a non-independent YA recipient

1068B-A2 If a person is not the partner of a non-independent YA recipient, the fortnightly rate of benefit PP (partnered) for the person is worked out as follows:

Method statement

Step 1. Work out the person's ***maximum basic rate*** using Module C below.

Step 2. Work out the amount per fortnight (if any) of rent assistance in accordance with paragraph 1070A(a).

Step 2A. Work out the pension supplement amount (if any) using Module DA below.

Step 2B. Work out the energy supplement (if any) using Module DB below.

Step 3. Work out the amount per fortnight (if any) of pharmaceutical allowance using Module E below.

Step 4. Add up the amounts obtained in steps 1 to 3: the result is called the ***maximum payment rate***.

Step 5. Apply the income test using Module D below to work out the person's income reduction.

Step 6. Take the income reduction away from the maximum payment rate: the result is called the ***provisional payment rate***.

Step 7. The rate of benefit PP (partnered) is the difference between:

(a) the provisional payment rate; and

(b) any advance payment deduction (see Part 3.16A);

plus, except where the person is a CDEP Scheme participant in respect of the whole or part of the period for which the rate of payment is being worked out, any amount by way of remote area allowance that, under Module G, is to be added to the person's rate of benefit PP (partnered).

Note 1: For ***partner of a non-independent YA recipient*** see subsection 23(1).

Note 2: If a person's rate is reduced under step 6, the order in which the reduction is to be made against the components of the maximum payment rate is laid down by section 1210 (maximum basic rate first, then rent assistance).

Method of calculating rate for partner of a non-independent YA recipient

1068B-A3 If a person is the partner of a non-independent YA recipient, the fortnightly rate of benefit PP (partnered) for the person is worked out as follows:

Method statement

Step 1. Work out the person's ***maximum basic rate*** using Module C below.

Step 2. Work out the amount per fortnight (if any) of rent assistance in accordance with paragraph 1070A(a).

Step 2A. Work out the pension supplement amount (if any) using Module DA below.

Step 2B. Work out the energy supplement (if any) using Module DB below.

Step 3. Work out the amount per fortnight (if any) of pharmaceutical allowance using Module E below.

OFFICIAL: Sensitive // Legal Privilege

Step 4.	Add up the amounts obtained in steps 1 to 3: the result is called the ***maximum payment rate***.
Step 5.	Apply the income test using Module E of the Rate Calculator in section 1068A to work out the person's income reduction.
Step 6.	Take the income reduction away from the maximum payment rate: the rate is called the ***provisional payment rate***.
Step 7.	The rate of benefit is the difference between: (a) the provisional payment rate; and (b) any advance payment deduction (see Part 3.16A); plus, except where the person is a CDEP Scheme participant in respect of the whole or part of the period for which the rate of payment is being worked out, any amount by way of remote area allowance that, under Module G, is to be added to the person's rate of benefit PP (partnered).

Note 1: For ***partner of a non-independent YA recipient*** see subsection 23(1).

Note 2: If a person's rate is reduced under step 6, the order in which the reduction is to be made against the components of the maximum payment rate is laid down by section 1210 (maximum basic rate first, then rent assistance).

Module C—Maximum basic rate

Maximum basic rate

1068B-C2 If a person is not a CDEP Scheme participant in respect of the whole or part of the period for which the rate of payment is being worked out, the person's maximum basic rate is worked out using

OFFICIAL: Sensitive // Legal Privilege

Table C. Work out the person's family situation. The maximum basic rate is the corresponding amount in Column 3.

Table C—Maximum basic rates

Column 1 Item	Column 2 Person's family situation	Column 3 Rate
1	Person not covered by item 2, 3 or 4	$565.40
2	Member of illness separated couple	$667.50
3	Member of respite care couple	$667.50
4	Partnered (partner in gaol)	$667.50

Note 1: For ***illness separated couple***, ***respite care couple*** and ***partnered (partner in gaol)*** see section 4.

Note 2: The rates are indexed 6 monthly in line with CPI increases (see sections 1191 to 1194).

Maximum basic rate—CDEP Scheme participant

1068B-C3 The maximum basic rate of a person who is a CDEP Scheme participant in respect of the whole or a part of the period for which the maximum basic rate is being worked out is nil (see section 500W).

Module D—Income test

Effect of income on maximum payment rate

1068B-D1 This is how to work out the effect of a person's ordinary income, and the ordinary income of the person's partner, on the person's maximum payment rate:

OFFICIAL: Sensitive // Legal Privilege

Method statement

Step 1. Work out the amount of the person's ordinary income on a fortnightly basis.

Note: The amount of the person's ordinary income is affected by points 1068B-D2 to 1068B-D21.

Step 2. Work out the partner income free area using point 1068B-D22.

Note: The partner income free area is the maximum amount of ordinary income the person's partner can have without affecting the person's rate.

Step 3. Use point 1068B-D23 to work out the person's partner income excess.

Step 4. Use the person's partner income excess to work out the person's partner income reduction using point 1068B-D24.

Step 5. Work out whether the person's ordinary income exceeds the person's ordinary income free area (see point 1068B-D27).

Note: A person's ordinary income free area is the maximum amount of ordinary income the person can have without affecting the person's rate.

Step 6. If the person's ordinary income does not exceed the person's ordinary income free area, the person's ordinary income excess is nil.

Step 7. If the person's ordinary income exceeds the person's ordinary income free area, the person's ordinary income excess is the person's ordinary income less the person's ordinary income free area.

Step 8.	Use the person's ordinary income excess to work out the person's ***ordinary income reduction*** using points 1068B-D29 to 1068B-D31.
Step 9.	Add the person's ordinary income reduction and partner income reduction: the result is the person's income reduction referred to in step 5 of the method statement in point 1068B-A2.

Note 1: For ***ordinary income*** see section 8.

Note 2: See point 1068B-A2 (step 6) for the significance of the person's income reduction.

Note 3: The application of the ordinary income test is affected by provisions concerning the following:

(a) the general concept of ordinary income and the treatment of certain income amounts (Division 1 of Part 3.10);
(b) business income (sections 1074 and 1075);
(c) income from financial assets (including income streams (short term) and certain income streams (long term)) (Division 1B of Part 3.10);
(d) income from income streams not covered by Division 1B of Part 3.10 (Division 1C of Part 3.10);
(e) disposal of income (sections 1106 to 1111).

Ordinary income of members of certain couples

1068B-D2 If a person's partner is receiving a social security pension, a service pension, income support supplement or a veteran payment, the person's ordinary income is taken to be one half of the sum of:

(a) the amount that would be the person's ordinary income if he or she were not a member of a couple; and
(b) the amount that would be the ordinary income of the person's partner if the partner were not a member of a couple.

Board and lodging

1068B-D6 A person's ordinary income is not to include a payment to the person for board or lodging provided by the person to a parent, child, brother or sister of the person.

Lump sum payments arising from termination of employment

1068B-D7 Subject to points 1068B-D8 to 1068B-D18 (inclusive), if:

(a) a person's employment has been terminated; and

(b) as a result, the person is entitled to a lump sum payment from the person's former employer;

the person is taken to have received the lump sum payment on the day on which the person's employment was terminated.

Directed termination payments excluded

1068B-D8 If:

(a) a person's employment has been terminated; and

(b) as a result the person is entitled to a lump sum payment from the person's former employer; and

(c) the payment, or part of the payment, is a directed termination payment within the meaning of section 82-10F of the *Income Tax (Transitional Provisions) Act 1997*;

the payment, or that part, is to be disregarded in working out the ordinary income of the person for the purposes of this Module.

Certain leave payments taken to be ordinary income—employment continuing

1068B-D9 If:

(a) a person is employed; and

(b) the person is on leave for a period; and

(c) the person is or was entitled to receive a leave payment (whether as a lump sum payment, as a payment that is one of a series of regular payments or otherwise) in respect of a part or all of the leave period;

the person is taken to have received ordinary income for a period (the ***income maintenance period***) equal to the leave period to which the leave payment entitlement relates.

OFFICIAL: Sensitive // Legal Privilege

Certain termination payments taken to be ordinary income

1068B-D10 If:

(a) a person's employment has been terminated; and

(b) the person receives a termination payment (whether as a lump sum payment, as a payment that is one of a series of regular payments or otherwise);

the person is taken to have received ordinary income for a period (the ***income maintenance period***) equal to the period to which the payment relates.

More than one termination payment on a day

1068B-D11 If:

(a) the person is covered by point 1068B-D10; and

(b) the person receives more than one termination payment on a day;

the income maintenance period is worked out by adding the periods to which the payments relate.

Start of income maintenance period—employment continuing

1068B-D12 If the person is covered by point 1068B-D9, the income maintenance period starts on the first day of the leave period to which the leave payment entitlement relates.

Start of income maintenance period—employment terminated

1068B-D13 If the person is covered by point 1068B-D10, the income maintenance period starts, subject to point 1068B-D14, on the day the person is paid the termination payment.

Commencement of income maintenance period where there is a second termination payment

1068B-D14 If a person who is covered by point 1068B-D10 is subject to an income maintenance period (the ***first period***) and the person is paid another termination payment during that period (the ***second leave payment***), the income maintenance period for the second

termination payment commences the day after the end of the first period.

1068B-D15 If the Secretary is satisfied that a person is in severe financial hardship because the person has incurred unavoidable or reasonable expenditure while an income maintenance period applies to the person, the Secretary may determine that the whole, or any part, of the period does not apply to the person.

Note 1: For ***in severe financial hardship*** see subsection 19C(3) (person who is a member of a couple).

Note 2: For ***unavoidable or reasonable expenditure*** see subsection 19C(4).

Note 3: If an income maintenance period applies to a person, then, during that period:

(a) the benefit PP (partnered) claimed may not be payable to the person; or

(b) the amount of the benefit PP (partnered) payable to the person may be reduced.

When a person receives a leave payment or a termination payment

1068B-D16 For the purposes of points 1068B-D8 to 1068B-D15 (inclusive), a person (the ***first person***) is taken to receive a leave payment or termination payment if the payment is made to another person:

(a) at the direction of the first person or a court; or

(b) on behalf of the first person; or

(c) for the benefit of the first person; or

the first person waives or assigns the first person's right to receive the payment.

Single payment in respect of different kinds of termination payments

1068B-D17 If a person who is covered by point 1068B-D10 receives a single payment in respect of different kinds of termination payments, then, for the purposes of the application of points 1068B-D9 to 1068B-D16 (inclusive), each part of the payment that is in respect of a different kind of termination payment is taken to be a separate payment and the income maintenance period in respect of the

OFFICIAL: Sensitive // Legal Privilege

single payment is worked out by adding the periods to which the separate payments relate.

Definitions

1068B-D18 In points 1068B-D9 to 1068B-D18 (inclusive):

leave payment includes a payment in respect of sick leave, annual leave, maternity leave and long service leave, but does not include:

(a) an instalment of parental leave pay; or

(b) dad and partner pay.

period to which the payment relates means:

(a) if the payment is a leave payment—the leave period to which the payment relates; or

(b) if the payment is a termination payment and is calculated as an amount equivalent to an amount of ordinary income that the person would (but for the termination) have received from the employment that was terminated—the period for which the person would have received that amount of ordinary income; or

(c) if the payment is a termination payment and paragraph (b) does not apply—the period of weeks (rounded down to the nearest whole number) in respect of which the person would have received ordinary income, from the employment that was terminated, of an amount equal to the amount of the termination payment if:

(i) the person's employment had continued; and

(ii) the person received ordinary income from the employment at the rate per week at which the person usually received ordinary income from the employment prior to the termination.

redundancy payment includes a payment in lieu of notice, but does not include a directed termination payment within the meaning of section 82-10F of the *Income Tax (Transitional Provisions) Act 1997*.

termination payment includes:

(a) a redundancy payment; and

(b) a leave payment relating to a person's employment that has been terminated; and

(c) any other payment that is connected with the termination of a person's employment.

Period over which ordinary income taken into account

1068B-D19 Subject to points 1068B-D8 to 1068B-D18 (inclusive), a person's ordinary income (except employment income) is to be taken into account over such period, not exceeding 52 weeks, as the Secretary determines.

Note 1: This point, in conjunction with point 1068B-D20, enables the Secretary to determine the person's fortnightly income amount that best represents the person's income situation.

Note 2: See Division 1AA of Part 3.10 for the treatment of employment income.

Fortnightly rate of ordinary income

1068B-D20 For the purposes of this Module, the person's ordinary income (except employment income) for such a period is to be reduced to a fortnightly rate rounded to the nearest cent (rounding 0.5 cents downwards).

Payment of arrears of periodic compensation payments

1068B-D21 If:

(a) at the time of an event that gives rise to an entitlement of a person to compensation, the person is receiving a compensation affected payment; and

(b) in relation to that entitlement, the person receives a payment of arrears of periodic compensation;

the person is taken to receive, on each day in the periodic payments period, an amount calculated by dividing the amount received by the number of days in the periodic payments period.

Note: For ***compensation affected payment*** and ***periodic payments period*** see section 17.

Partner income free area

1068B-D22 The partner income free area for a person is:

(a) if the person's partner is not receiving a social security benefit and has not turned 22—the amount of income of the partner (rounded up to the nearest dollar) beyond which youth allowance would not be payable to the partner if the partner were qualified for a youth allowance and were not undertaking full-time study (see section 541B); or

(b) if the person's partner is not receiving a social security benefit and has turned 22—the amount of income of the partner (rounded up to the nearest dollar) beyond which jobseeker payment would not be payable to the partner if the partner were qualified for a jobseeker payment; or

(c) if the person's partner is receiving a social security benefit—the amount of income of the partner (rounded up to the nearest dollar) beyond which that benefit would not be payable to the partner.

1068B-D22A For the purposes of paragraph 1068B-D22(a), disregard steps 2, 2A and 3 of the method statement in point 1067G-A1.

1068B-D22B For the purposes of paragraph 1068B-D22(b), disregard steps 2 and 3 of the method statement in point 1068-A1.

Partner income excess

1068B-D23 If:

(b) the person's partner is not receiving a social security pension, a service pension, income support supplement or a veteran payment; and

(c) the partner's ordinary income exceeds the partner income free area for the partner;

the person's partner income excess is the amount by which the partner's ordinary income exceeds the partner income free area. Otherwise, the person's partner income excess is nil.

OFFICIAL: Sensitive // Legal Privilege

Partner income reduction

1068B-D24 If a person has a partner income excess, the person's partner income reduction is an amount equal to 60% of the part of the partner's ordinary income that exceeds the partner income free area.

Ordinary income free area

1068B-D27 A person's ordinary income free area is $150.

Note: The income free area is used in the ordinary income test in relation to fortnightly income.

Ordinary income excess

1068B-D28 If a person's ordinary income exceeds the person's ordinary income free area:

(a) the person has an ordinary income excess; and

(b) the person's ordinary income excess is the amount by which the person's ordinary income exceeds the person's ordinary income free area.

Ordinary income reduction

1068B-D29 If a person has an ordinary income excess, the person's ordinary income reduction is the sum of:

(a) the person's lower range reduction (see point 1068B-D30); and

(b) the person's upper range reduction (if any) (see point 1068B-D31).

Lower range reduction

1068B-D30 The person's lower range reduction is an amount equal to 50% of the part of the person's ordinary income excess that does not exceed $106.

OFFICIAL: Sensitive // Legal Privilege

Upper range reduction

1068B-D31 The person's upper range reduction is an amount equal to 60% of the part (if any) of the person's ordinary income excess that exceeds $106.

Module DA—Pension supplement

Pension supplement

1068B-DA1 A pension supplement amount is to be added to the person's maximum basic rate if the person is residing in Australia, has reached pension age and:

(a) is in Australia; or

(b) is temporarily absent from Australia and has been so for a continuous period not exceeding 6 weeks.

1068B-DA2 The person's pension supplement amount is:

(a) if an election by the person under subsection 1061VA(1) is in force—the amount worked out under point 1068B-DA4; and

(b) otherwise—the amount worked out under point 1068B-DA3.

Amount if no election in force

1068B-DA3 The person's pension supplement amount is the amount worked out by:

(a) applying the applicable percentage in the following table to the combined couple rate of pension supplement; and

(b) dividing the result by 26; and

(c) if:

(i) the person is not partnered; and

(ii) the amount resulting from paragraph (b) is not a multiple of 10 cents;

rounding the amount up or down to the nearest multiple of 10 cents (rounding up if the amount is not a multiple of 10 cents but is a multiple of 5 cents).

Item	Person's family situation	Use this %
1	Partnered	50%
2	Member of illness separated couple	66.33%
3	Member of respite care couple	66.33%
4	Partnered (partner in gaol)	66.33%

Note: For ***combined couple rate of pension supplement***, see subsection 20A(1).

Amount if election in force

1068B-DA4 The person's pension supplement amount is the amount worked out as follows:

(a) work out the amount for the person under point 1068B-DA3 as if the election were not in force;

(b) from that amount, subtract $^{1}/_{26}$ of the person's minimum pension supplement amount.

Module DB—Energy supplement

1068B-DB1 An energy supplement is to be added to the person's (the ***recipient's***) maximum basic rate if the recipient is residing in Australia and:

(a) is in Australia; or

(b) is temporarily absent from Australia and has been so for a continuous period not exceeding 6 weeks.

However, this Module does not apply if quarterly energy supplement is payable to the recipient.

Note: Section 918 may affect the addition of the energy supplement.

Recipient has reached pension age

1068B-DB2 If the recipient has reached pension age, the recipient's energy supplement is the amount worked out using the following table:

OFFICIAL: Sensitive // Legal Privilege

Energy supplement		
Item	**Recipient's family situation**	**Amount of energy supplement**
1	Partnered	$10.60
2	Member of an illness separated couple	$14.10
3	Member of a respite care couple	$14.10
4	Partnered (partner in gaol)	$14.10

Recipient has not reached pension age

1068B-DB3 If the recipient has not reached pension age, the recipient's energy supplement is the amount worked out using the following table:

Energy supplement		
Item	**Recipient's family situation for maximum basic rate**	**Amount of energy supplement**
1	If the recipient's maximum basic rate is worked out under item 1 of the table in point 1068B-C2	$7.90
2	If the recipient's maximum basic rate is worked out under item 2, 3 or 4 of the table in point 1068B-C2	$9.50

Module E—Pharmaceutical allowance

Qualification for pharmaceutical allowance

1068B-E1 Subject to points 1068B-E1A, 1068B-E2, 1068B-E3, 1068B-E4 and 1068B-E6, an additional amount by way of pharmaceutical allowance is to be included in a person's maximum payment rate in points 1068B-A2 and 1068B-A3 if:

(b) the person is an Australian resident, or has a qualifying residence exemption for parenting payment; and

(d) one or more of the following applies:

(i) the person has turned 60, and has been receiving income support payments in respect of a continuous period of at least 9 months (whether or not the kind of payment received has changed over the period and whether the period or any part of it occurred before or after the commencement of this paragraph);

~~(ii) under section 502H, the person is covered by a participation exemption under Division 3A of Part 2.10;~~

(ii) the person is not required to satisfy the employment pathway plan requirements because of a determination that is in effect under section 40L of the Administration Act and that has been made because of the circumstance referred to in paragraph 40L(5)(a) of that Act;

(iii) the person has a partial capacity to work.

Note 1: For ***income support payment*** see subsection 23(1).

Note 2: For the determination of the continuous period in respect of which a person received income support payments see section 38B.

Note 3: For ***Australian resident*** and ***qualifying residence exemption*** see section 7.

Note 4: For ***partial capacity to work*** see section 16B.

No pharmaceutical allowance if person receiving pension supplement

1068B-E1A Pharmaceutical allowance is not to be added to a person's maximum basic rate if a pension supplement amount has been added to that rate.

No pharmaceutical allowance if person receiving certain supplements under other Acts

1068B-E2 Pharmaceutical allowance is not to be included in a person's maximum basic rate if the person is receiving:

(a) veterans supplement under section 118A of the Veterans' Entitlements Act; or

(b) MRCA supplement under section 300 of the Military Rehabilitation and Compensation Act; or

(c) pharmaceutical supplement under Part 3A of the *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) Act 2006*; or

(d) pharmaceutical supplement under Part 4 of the *Treatment Benefits (Special Access) Act 2019*.

No pharmaceutical allowance if partner receiving certain supplements under other Acts

1068B-E3 Pharmaceutical allowance is not to be included in a person's maximum basic rate if:

(a) the person is a member of a couple; and

(b) the person's partner is receiving:

(i) veterans supplement under section 118A of the Veterans' Entitlements Act; or

(ii) MRCA supplement under section 300 of the Military Rehabilitation and Compensation Act; or

(iii) pharmaceutical supplement under Part 3A of the *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) Act 2006*; or

(iv) pharmaceutical supplement under Part 4 of the *Treatment Benefits (Special Access) Act 2019*; and

(c) the person's partner is not receiving a service pension or a veteran payment.

No pharmaceutical allowance before advance payment period ends

1068B-E4 Pharmaceutical allowance is not to be included in a person's provisional payment rate if:

(a) the person has received an advance pharmaceutical allowance under Part 2.23 of this Act; and

(b) the person's advance payment period has not ended.

Note: For ***advance payment period*** see point 1068B-E5.

OFFICIAL: Sensitive // Legal Privilege

Advance payment period

1068B-E5(1) A person's advance payment period starts on the day on which the advance pharmaceutical allowance is paid to the person.

1068B-E5(2) The period ends after the number of paydays worked out using the following formula have passed:

$$\frac{\text{Amount of advance} \times 26}{\text{Pharmaceutical allowance rate}}$$

where:

amount of advance is the amount of the advance paid to the person.

pharmaceutical allowance rate is the fortnightly amount of pharmaceutical allowance which would be included in the person's maximum payment rate in working out the benefit PP (partnered) instalment for the day on which the advance is paid if parenting payment were payable to the person and pharmaceutical allowance were to be included in the person's maximum payment rate. (The person's maximum payment rate is the maximum payment rate at step 4 of whichever of the method statements in points 1068B-A2 and 1068B-A3 is applicable to the person.)

Note: The person may have commenced receiving parenting payment after having been a pension recipient and have received an advance while a pension recipient.

No pharmaceutical allowance if annual limit reached

1068B-E6 Pharmaceutical allowance is not to be included in a person's provisional payment rate if:

(a) the person has received an advance pharmaceutical allowance during the current calendar year; and

(b) the total amount paid to the person for that year by way of:

(i) pharmaceutical allowance; and

(ii) advance pharmaceutical allowance;

OFFICIAL: Sensitive // Legal Privilege

equals the total amount of pharmaceutical allowance that would have been paid to the person during that year if the person had not received any advance pharmaceutical allowance.

Note 1: For the amount ***paid*** to a person by way of pharmaceutical allowance see subsections 19A(2) to (7).

Note 2: The annual limit is affected by:

(a) how long during the calendar year the person was on pension or benefit; and

(b) whether the person's rate of pharmaceutical allowance varies during the calendar year.

Amount of pharmaceutical allowance

1068B-E8 The amount of pharmaceutical allowance is the amount per fortnight worked out using Table E.

Table E—Pharmaceutical allowance amounts

Column 1 Item	Column 2 Person's family situation	Column 3 Amount per fortnight
1	Person not covered by item 2, 3, 4 or 5	$2.70
2	Member of illness separated couple	$5.40
3	Member of respite care couple	$5.40
4	Partnered (partner getting service pension)	$2.70
5	Partnered (partner in gaol)	$5.40

Note 1: For ***illness separated couple***, ***respite care couple*** and ***partnered (partner in gaol)*** see section 4.

Note 2: The amounts in Column 3 are indexed or adjusted annually in line with CPI increases (see sections 1191 to 1194 and 1206A).

OFFICIAL: Sensitive // Legal Privilege

Module G—Remote area allowance

Remote area allowance—person physically in remote area

1068B-G1 An amount by way of remote area allowance is to be added in step 7 of the method statements in points 1068B-A2 and 1068B-A3 to a person's rate of benefit PP (partnered) if:

(b) any of the following subparagraphs applies:

(i) apart from this point, the person's rate of benefit PP (partnered) would be greater than nil;

(ii) apart from this point, the person's rate of benefit PP (partnered) would be nil merely because an advance pharmaceutical allowance has been paid to the person under Part 2.23 of this Act;

(iii) apart from this point, the person's rate of benefit PP (partnered) would be nil merely because an election by the person under subsection 1061VA(1) is in force;

(iv) apart from this point, the person's rate of benefit PP (partnered) would be nil merely because of both of the matters mentioned in subparagraphs (ii) and (iii); and

(c) the person's usual place of residence is in a remote area; and

(d) the person is physically present in the remote area.

Note 1: For ***remote area*** see subsection 14(1).

Note 2: A person may be considered to be physically present in a remote area during temporary absences—see subsection 14(2).

Rate of remote area allowance

1068B-G2 The rate of remote area allowance payable to a person is worked out using Table G. Work out which family situation in the table applies to the person. The rate of remote area allowance is the corresponding amount in Column 3 plus the additional corresponding amount in Column 4 for each FTB child, and each regular care child, of the person.

Table G—Remote area allowance

Column 1 Item	Column 2 Person's family situation	Column 3 Basic allowance	Column 4 Additional allowance for each FTB child and regular care child
1	Person not covered by item 2, 3 or 4	$15.60	$7.30
2	Member of illness separated couple	$18.20	$7.30
3	Member of respite care couple	$18.20	$7.30
4	Partnered (partner in gaol)	$18.20	$7.30

Note: For ***illness separated couple, respite care couple*** and ***partnered (partner in gaol)*** see section 4.

Meaning of remote area allowance

1068B-G3 In point 1068B-G2, remote area allowance means:

(a) an amount added to a person's social security pension or benefit by way of remote area allowance; or

(b) a remote area allowance payable under point SCH6-G1 of the VEA.

FTB or regular care child must be present in Australia

1068B-G4 Additional allowance is not payable for an FTB child, or a regular care child, unless the child is physically present in Australia.

Special rule where partner has an FTB or regular care child but is not receiving additional allowance for the child

1068B-G5 If:

(a) an amount of remote area allowance is to be added to the person's rate; and

(b) the person's partner has an FTB child or a regular care child; and

OFFICIAL: Sensitive // Legal Privilege

(c) the person's partner is not receiving an additional amount of remote area allowance for the child;

the child is taken, for the purposes of this Module, to be an FTB child, or a regular care child, (as the case requires) of the person.

Special rule dealing with the death of an FTB or regular care child

1068B-G6 If an FTB child, or a regular care child, of a person dies, this Module has effect, for a period of 14 weeks after the death of the child, as if the child had not died.

Note: This point does not prevent this Module having the effect it would have had if the child would otherwise have ceased to be an FTB child, or a regular care child, during that 14 weeks.

OFFICIAL: Sensitive // Legal Privilege

Part 3.7—Rent assistance

Division 1—Operation of this Part

1070 When this Part applies

This Part applies if the rate of a person's social security payment is to be calculated in accordance with any of the following Rate Calculators:

(a) Pension Rate Calculator A (carer payments and certain age and disability support pensions);

(c) Pension Rate Calculator D (certain disability support pensions);

(d) Youth Allowance Rate Calculator;

(da) Austudy Payment Rate Calculator;

(e) Benefit Rate Calculator B (mature age allowance under Part 2.12B, jobseeker payment and partner and widow allowance);

(f) Pension PP (Single) Rate Calculator or Benefit PP (Partnered) Rate Calculator (parenting payments).

1070A Effect of this Part

If a person to whom this Part applies qualifies for rent assistance in accordance with Division 2, to help cover the cost of rent:

(a) if paragraph (b) does not apply—the amount per fortnight worked out in accordance with Division 3 is added to the person's maximum basic rate for the social security payment; or

(b) if the rate of the person's social security payment is to be calculated in accordance with Pension Rate Calculator A or D, or the Pension PP (Single) Rate Calculator—the amount per fortnight worked out in accordance with Division 3 is multiplied by 26 to calculate an amount per year and the amount per year is added to the person's maximum basic rate for the social security payment.

OFFICIAL: Sensitive // Legal Privilege

Division 2—Qualification for rent assistance

1070B Qualification—general rule

A person qualifies for rent assistance if the person satisfies:

(a) the common requirements set out in section 1070C; and

(b) any specific requirement, set out in a later section of this Division, applicable to the person's social security payment.

1070C Common requirements (about aged care residence, home ownership and rent)

The common requirements are that:

(a) the person is not an aged care resident, and is not taken to be an aged care resident for the purposes of the Rate Calculator concerned; and

(b) the person is not an ineligible homeowner; and

(c) the person pays, or is liable to pay, rent, other than Government rent, in respect of a period in respect of premises in Australia; and

(d) the person's fortnightly rent is more than the rent threshold amount (see section 1070T).

1070D Specific requirement (carer payments and certain age and disability support pensions)

(1) If the rate of the person's social security payment is to be calculated in accordance with Pension Rate Calculator A and subsection (2) applies, the specific requirement applicable to the person's social security payment is that set out in subsection (3).

(2) This subsection applies if:

(a) the following conditions are satisfied:

(i) the person is not a member of a couple, or is a member of an illness separated couple, a respite care couple or a temporarily separated couple;

(ii) the person is entitled to be paid family tax benefit; or

OFFICIAL: Sensitive // Legal Privilege

(b) the following conditions are satisfied:
(i) the person is a member of a couple, other than an illness separated couple, a respite care couple or a temporarily separated couple;
(ii) the person, or the person's partner, is entitled to be paid family tax benefit.

(3) The specific requirement is that:
(a) in a paragraph (2)(a) case, either of the following is satisfied:
(i) the person's maximum Part A rate of family tax benefit does not include rent assistance;
(ii) the person's maximum Part A rate of family tax benefit includes rent assistance and clause 38J of Schedule 1 to the Family Assistance Act applies to reduce the person's Part A rate of family tax benefit; and
(b) in a paragraph (2)(b) case, either of the following is satisfied:
(i) the person's, or the person's partner's, maximum Part A rate of family tax benefit does not include rent assistance;
(ii) the person's, or the person's partner's, maximum Part A rate of family tax benefit includes rent assistance and clause 38J or 38K of Schedule 1 to the Family Assistance Act applies to reduce the person's, or the person's partner's, Part A rate of family tax benefit.

(4) Subsections (1), (2) and (3) do not apply if:
(a) the person's social security payment is disability support pension; and
(b) the person has not turned 21.

Note: The specific requirement for a person who is receiving disability support pension and has not turned 21 is in section 1070F.

1070E Specific requirement (certain parenting payments)

If:

OFFICIAL: Sensitive // Legal Privilege

(a) the rate of the person's social security payment is to be calculated in accordance with the Pension PP (Single) Rate Calculator; and

(b) the person is entitled to be paid family tax benefit;

the specific requirement applicable to the social security payment is that either of the following is satisfied:

(c) the person's maximum Part A rate of family tax benefit does not include rent assistance;

(d) the person's maximum Part A rate of family tax benefit includes rent assistance and clause 38J of Schedule 1 to the Family Assistance Act applies to reduce the person's Part A rate of family tax benefit.

1070F Specific requirement (certain disability support pensions)

(1) If:

(a) the person's social security payment is disability support pension; and

(b) the person has not turned 21; and

(c) the rate of the person's social security payment is to be calculated in accordance with Pension Rate Calculator A or Pension Rate Calculator D;

the specific requirement applicable to the social security payment is that the person comply with subsection (2) or (3).

Person who has not turned 18

(2) The person complies with this subsection if:

(a) the person has not turned 18; and

(b) one of the following applies:

(i) the person is a member of a couple and, if the person's partner is living with the person in their home, the person's partner is not receiving incentive allowance;

(ii) the person is in disability accommodation;

(iii) the person is independent;

OFFICIAL: Sensitive // Legal Privilege

(iv) the person is living away from the person's parental home because of a medical condition of the person; and

(c) if:

(i) the person is not a member of a couple, or is a member of an illness separated couple, a respite care couple or a temporarily separated couple; and

(ii) the person is entitled to be paid family tax benefit;

either of the following is satisfied:

(iii) the person's maximum Part A rate of family tax benefit does not include rent assistance;

(iv) the person's maximum Part A rate of family tax benefit includes rent assistance and clause 38J of Schedule 1 to the Family Assistance Act applies to reduce the person's Part A rate of family tax benefit; and

(d) if:

(i) the person is a member of a couple, other than an illness separated couple, a respite care couple or a temporarily separated couple; and

(ii) the person, or the person's partner, is entitled to be paid family tax benefit;

either of the following is satisfied:

(iii) the person's, or the person's partner's, maximum Part A rate of family tax benefit does not include rent assistance;

(iv) the person's, or the person's partner's, maximum Part A rate of family tax benefit includes rent assistance but clause 38J or 38K of Schedule 1 to the Family Assistance Act applies to reduce the person's, or the person's partner's, Part A rate of family tax benefit.

Person who has turned 18

(3) The person complies with this subsection if:

(a) the person has turned 18; and

(b) one of the following applies:

OFFICIAL: Sensitive // Legal Privilege

(i) the person is a member of a couple and, if the person's partner is living with the person in their home, the person's partner is not receiving incentive allowance;

(ii) the person is in disability accommodation;

(iii) the person is living away from the person's parental home permanently or indefinitely; and

(c) if:

(i) the person is not a member of a couple, or is a member of an illness separated couple, a respite care couple or a temporarily separated couple; and

(ii) the person is entitled to be paid family tax benefit;

either of the following is satisfied:

(iii) the person's maximum Part A rate of family tax benefit does not include rent assistance;

(iv) the person's maximum Part A rate of family tax benefit includes rent assistance and clause 38J of Schedule 1 to the Family Assistance Act applies to reduce the person's Part A rate of family tax benefit; and

(d) if:

(i) the person is a member of a couple, other than an illness separated couple, a respite care couple or a temporarily separated couple; and

(ii) the person, or the person's partner, is entitled to be paid family tax benefit;

either of the following is satisfied:

(iii) the person's, or the person's partner's, maximum Part A rate of family tax benefit does not include rent assistance;

(iv) the person's, or the person's partner's, maximum Part A rate of family tax benefit includes rent assistance but clause 38J or 38K of Schedule 1 to the Family Assistance Act applies to reduce the person's, or the person's partner's, Part A rate of family tax benefit.

OFFICIAL: Sensitive // Legal Privilege

(4) For the purposes of applying the definition of ***living away from the person's parental home*** in subsection (3), a step-parent or guardian is taken to be a parent.

1070G Specific requirement (youth allowance)

(1) If the rate of the person's social security payment is to be calculated in accordance with the Youth Allowance Rate Calculator, the specific requirement applicable to the social security payment is that:

(a) the person:

(i) is independent but is not an accommodated independent person; or

(ii) is not independent and is required to live away from home; and

(b) the person does not have a partner with a rent increased pension; and

(c) if:

(i) the person is not a member of a couple, or is a member of an illness separated couple, a respite care couple or a temporarily separated couple; and

(ii) the person is entitled to be paid family tax benefit;

either of the following is satisfied:

(iii) the person's maximum Part A rate of family tax benefit does not include rent assistance;

(iv) the person's maximum Part A rate of family tax benefit includes rent assistance and clause 38J of Schedule 1 to the Family Assistance Act applies to reduce the person's Part A rate of family tax benefit; and

(d) if:

(i) the person is a member of a couple, other than an illness separated couple, a respite care couple or a temporarily separated couple; and

(ii) the person, or the person's partner, is entitled to be paid family tax benefit;

either of the following is satisfied:

OFFICIAL: Sensitive // Legal Privilege

(iii) the person's, or the person's partner's, maximum Part A rate of family tax benefit does not include rent assistance;

(iv) the person's, or the person's partner's, maximum Part A rate of family tax benefit includes rent assistance but clause 38J or 38K of Schedule 1 to the Family Assistance Act applies to reduce the person's, or the person's partner's, Part A rate of family tax benefit.

(2) In this section, ***accommodated independent person*** and ***required to live away from home*** have the same meanings as in Part 3.5.

1070H Specific requirement (austudy payment, mature age allowance under Part 2.12B, jobseeker payment, partner allowance or widow allowance)

(1) If the rate of the person's social security payment is to be calculated in accordance with the Austudy Payment Rate Calculator or Benefit Rate Calculator B, the specific requirement applicable to the social security payment is that set out in subsection (2).

(2) The specific requirement is that:

(a) if the person:

(i) is not a member of a couple; and

(ii) is not living away from the principal home of a parent permanently or indefinitely;

the person has turned 25; and

(b) the person does not have a partner with a rent increased pension; and

(c) if:

(i) the person is not a member of a couple, or is a member of an illness separated couple, a respite care couple or a temporarily separated couple; and

(ii) the person is entitled to be paid family tax benefit;

either of the following is satisfied:

OFFICIAL: Sensitive // Legal Privilege

(iii) the person's maximum Part A rate of family tax benefit does not include rent assistance;

(iv) the person's maximum Part A rate of family tax benefit includes rent assistance and clause 38J of Schedule 1 to the Family Assistance Act applies to reduce the person's Part A rate of family tax benefit; and

(d) if:

(i) the person is a member of a couple, other than an illness separated couple, a respite care couple or a temporarily separated couple; and

(ii) the person, or the person's partner, is entitled to be paid family tax benefit;

either of the following is satisfied:

(iii) the person's, or the person's partner's, maximum Part A rate of family tax benefit does not include rent assistance;

(iv) the person's, or the person's partner's, maximum Part A rate of family tax benefit includes rent assistance but clause 38J or 38K of Schedule 1 to the Family Assistance Act applies to reduce the person's, or the person's partner's, Part A rate of family tax benefit.

(3) For the purposes of subparagraph (2)(a)(ii), a step-parent or guardian is taken to be a parent.

1070J Specific requirement (certain parenting payments)

If the rate of the person's social security payment is to be calculated in accordance with the Benefit PP (Partnered) Rate Calculator, the specific requirement applicable to the social security payment is that:

(a) the person's partner is not receiving a rent increased pension; and

(b) if:

(i) the person is a member of an illness separated couple, a respite care couple or a temporarily separated couple; and

OFFICIAL: Sensitive // Legal Privilege

(ii) the person is entitled to be paid family tax benefit;

either of the following is satisfied:

(iii) the person's maximum Part A rate of family tax benefit does not include rent assistance;

(iv) the person's maximum Part A rate of family tax benefit includes rent assistance and clause 38J of Schedule 1 to the Family Assistance Act applies to reduce the person's Part A rate of family tax benefit; and

(c) if:

(i) the person is a member of a couple, other than an illness separated couple, a respite care couple or a temporarily separated couple; and

(ii) the person, or the person's partner, is entitled to be paid family tax benefit;

either of the following is satisfied:

(iii) the person's, or the person's partner's, maximum Part A rate of family tax benefit does not include rent assistance;

(iv) the person's, or the person's partner's, maximum Part A rate of family tax benefit includes rent assistance but clause 38J or 38K of Schedule 1 to the Family Assistance Act applies to reduce the person's, or the person's partner's, Part A rate of family tax benefit.

OFFICIAL: Sensitive // Legal Privilege

Division 3—Rate of rent assistance

1070K Rate depends on social security payment and family situation

A person's rate of rent assistance depends on the person's social security payment and the person's family situation.

1070L Rate for carer payments and certain age and disability support pensions

(1) The person's rate of rent assistance is worked out under this section if the rate of the person's social security payment is to be calculated in accordance with Pension Rate Calculator A.

(2) Using the following table, work out which family situation applies to the person and calculate rate A for the person using the formula in column 3. This is the person's rate of rent assistance per fortnight but only up to the person's maximum rent assistance rate. If the person is not a single person sharing accommodation, the person's maximum rent assistance rate is rate B worked out using column 4 of the table. If the person is a single person sharing accommodation, the person's maximum rent assistance rate is two-thirds of rate B.

Rate of rent assistance

Column 1 Item	Column 2 Person's family situation	Column 3 Rate A	Column 4 Rate B
1	Not a member of a couple	$3 \times \frac{\text{Fortnightly rent} - \$82.80}{4}$	$93.20
2	Partnered and partner does not have rent increased pension	$3 \times \frac{\text{Fortnightly rent} - \$134.80}{4}$	$88.00

Rate of rent assistance

Column 1 Item	Column 2 Person's family situation	Column 3 Rate A	Column 4 Rate B
3	Partnered and partner: (a) is receiving a social security pension; and (b) has rent increased pension	$3 \times \frac{\left[\text{Fortnightly rent} - \$134.80\right]}{8}$	Half the rate specified in column 4 of item 2
4	Partnered and partner: (a) is receiving a service pension, income support supplement or a veteran payment; and (b) has rent increased pension; and (c) does not have a dependent child or dependent children	$3 \times \frac{\left[\text{Fortnightly rent} - \$134.80\right]}{8}$	Half the rate specified in column 4 of item 2

OFFICIAL: Sensitive // Legal Privilege

Section 1070L

Rate of rent assistance

Column 1 Item	Column 2 Person's family situation	Column 3 Rate A	Column 4 Rate B
5	Partnered and partner: (a) is receiving a service pension, income support supplement or a veteran payment; and (b) has rent increased pension; and (c) has 1 or 2 dependent children	$3 \times \frac{\left[\text{Fortnightly rent} - \$161.20\right]}{8}$	$54.80
6	Partnered and partner: (a) is receiving a service pension, income support supplement or a veteran payment; and (b) has rent increased pension; and (c) has 3 or more dependent children	$3 \times \frac{\left[\text{Fortnightly rent} - \$161.20\right]}{8}$	$62.00

Rate of rent assistance			
Column 1 **Item**	**Column 2** **Person's family situation**	**Column 3** **Rate A**	**Column 4** **Rate B**
7	Partnered—member of an illness separated couple	$3 \times \frac{[\text{Fortnightly rent} - \$82.80]}{4}$	$93.20
8	Partnered—member of a respite care couple	$3 \times \frac{[\text{Fortnightly rent} - \$82.80]}{4}$	$93.20
9	Partnered—member of a temporarily separated couple	$3 \times \frac{[\text{Fortnightly rent} - \$82.80]}{4}$	$88.00
10	Partnered (partner in gaol)	$3 \times \frac{[\text{Fortnightly rent} - \$82.80]}{4}$	$93.20

(3) Subsections (1) and (2) do not apply if:

(a) the person's social security payment is disability support pension; and

(b) the person has not turned 21.

Note: The rate of rent assistance for a person who is receiving disability support pension and has not turned 21 is worked out:

(a) under section 1070N if the person has not turned 18; and

(b) under section 1070P if the person has turned 18.

1070M Rate for certain parenting payments

(1) The person's rate of rent assistance is worked out under this section if the rate of the person's social security payment is to be

calculated in accordance with the Pension PP (Single) Rate Calculator.

(2) Using the following table, calculate rate A for the person using the formula in column 2. This will be the person's rate of rent assistance per fortnight but only up to the person's maximum rent assistance rate. If the person is not a single person sharing accommodation, the person's maximum rent assistance rate is rate B worked out using column 3 of the table. If the person is a single person sharing accommodation, the person's maximum rent assistance rate is two-thirds of rate B.

Rate of rent assistance

Column 1 Item	Column 2 Rate A	Column 3 Rate B
1	$3 \times \frac{\left[\text{Fortnightly rent} - \$82.80\right]}{4}$	$93.20

1070N Rate for disability support pension (person aged under 18)

(1) The person's rate of rent assistance is worked out under this section if:

(a) the person is receiving disability support pension; and

(b) the person has not turned 18; and

(c) the rate of the person's pension is to be calculated in accordance with Pension Rate Calculator A or Pension Rate Calculator D.

(2) Using the table below, work out which family situation applies to the person and calculate rate A for the person using the formula in column 3. This is the person's rate of rent assistance per fortnight but only up to the person's maximum rent assistance rate. The person's maximum rent assistance rate is rate B worked out using column 4 of the table.

Rate of rent assistance

Column 1 Item	Column 2 Person's family situation	Column 3 Rate A	Column 4 Rate B
1	Not a member of a couple and: (a) in disability accommodation; or (b) independent	$3 \times \frac{[\text{Fortnightly rent} - \$82.80]}{4}$	$93.20
2	Partnered and partner does not have rent increased pension	$3 \times \frac{[\text{Fortnightly rent} - \$134.80]}{4}$	$88.00
3	Partnered and partner: (a) is receiving a social security pension; and (b) has rent increased pension	$3 \times \frac{[\text{Fortnightly rent} - \$134.80]}{8}$	Half the rate specified in column 4 of item 2

OFFICIAL: Sensitive // Legal Privilege

Rate of rent assistance

Column 1 Item	Column 2 Person's family situation	Column 3 Rate A	Column 4 Rate B
4	Partnered and partner: (a) is receiving a service pension, income support supplement or a veteran payment; and (b) has rent increased pension; and (c) does not have a dependent child or dependent children	$3 \times \frac{\left[\text{Fortnightly rent} - \$134.80\right]}{8}$	Half the rate specified in column 4 of item 2
5	Partnered and partner: (a) is receiving a service pension, income support supplement or a veteran payment; and (b) has rent increased pension; and (c) has 1 or 2 dependent children	$3 \times \frac{\left[\text{Fortnightly rent} - \$161.20\right]}{8}$	$54.80

Rate of rent assistance

Column 1 Item	Column 2 Person's family situation	Column 3 Rate A	Column 4 Rate B
6	Partnered and partner: (a) is receiving a service pension, income support supplement or a veteran payment; and (b) has rent increased pension; and (c) has 3 or more dependent children	$3 \times \frac{\left[\text{Fortnightly rent} - \$161.20\right]}{8}$	$62.00
7	Partnered—member of an illness separated couple	$3 \times \frac{\left[\text{Fortnightly rent} - \$82.80\right]}{4}$	$93.20
8	Partnered—member of a respite care couple	$3 \times \frac{\left[\text{Fortnightly rent} - \$82.80\right]}{4}$	$93.20
9	Partnered—member of a temporarily separated couple	$3 \times \frac{\left[\text{Fortnightly rent} - \$82.80\right]}{4}$	$88.00
10	Partnered (partner in gaol)	$3 \times \frac{\left[\text{Fortnightly rent} - \$82.80\right]}{4}$	$93.20

1070P Rate for disability support pension (person aged between 18 and 21)

(1) The person's rate of rent assistance is worked out under this section if:

(a) the person is receiving disability support pension; and

(b) the person has turned 18 but has not turned 21; and

(c) the rate of the person's pension is to be calculated in accordance with Pension Rate Calculator A or Pension Rate Calculator D.

(2) Using the table below, work out which family situation applies to the person and calculate rate A for the person using the formula in column 3. This is the person's rate of rent assistance per fortnight but only up to the person's maximum rent assistance rate. The person's maximum rent assistance rate is rate B worked out using column 4 of the table.

Rate of rent assistance

Column 1 Item	Column 2 Person's family situation	Column 3 Rate A	Column 4 Rate B
1	Not a member of a couple and: (a) in disability accommodation; or (b) living away from the person's parental home permanently or indefinitely	$3 \times \frac{[\text{Fortnightly rent} - \$82.80]}{4}$	$93.20
2	Partnered and partner does not have rent increased pension	$3 \times \frac{[\text{Fortnightly rent} - \$134.80]}{4}$	$88.00

OFFICIAL: Sensitive // Legal Privilege

Rate of rent assistance

Column 1 Item	Column 2 Person's family situation	Column 3 Rate A	Column 4 Rate B
3	Partnered and partner: (a) is receiving a social security pension; and (b) has rent increased pension	$3 \times \frac{\left[\text{Fortnightly rent} - \$134.80\right]}{8}$	Half the rate specified in column 4 of item 2
4	Partnered and partner: (a) is receiving a service pension, income support supplement or a veteran payment; and (b) has rent increased pension; and (c) does not have a dependent child or dependent children	$3 \times \frac{\left[\text{Fortnightly rent} - \$134.80\right]}{8}$	Half the rate specified in column 4 of item 2

Rate of rent assistance

Column 1 Item	Column 2 Person's family situation	Column 3 Rate A	Column 4 Rate B
5	Partnered and partner: (a) is receiving a service pension, income support supplement or a veteran payment; and (b) has rent increased pension; and (c) has 1 or 2 dependent children	$3 \times \frac{\left[\text{Fortnightly rent} - \$161.20\right]}{8}$	$54.80
6	Partnered and partner: (a) is receiving a service pension, income support supplement or a veteran payment; and (b) has rent increased pension; and (c) has 3 or more dependent children	$3 \times \frac{\left[\text{Fortnightly rent} - \$161.20\right]}{8}$	$62.00
7	Partnered—member of an illness separated couple	$3 \times \frac{\left[\text{Fortnightly rent} - \$82.80\right]}{4}$	$93.20

Rate of rent assistance

Column 1 Item	Column 2 Person's family situation	Column 3 Rate A	Column 4 Rate B
8	Partnered—member of a respite care couple	$3 \times \frac{[\text{Fortnightly rent} - \$82.80]}{4}$	$93.20
9	Partnered—member of a temporarily separated couple	$3 \times \frac{[\text{Fortnightly rent} - \$82.80]}{4}$	$88.00
10	Partnered (partner in gaol)	$3 \times \frac{[\text{Fortnightly rent} - \$82.80]}{4}$	$93.20

1070Q Rate for youth allowance, austudy payment, mature age allowance under Part 2.12B, jobseeker payment, partner allowance and widow allowance

(1) The person's rate of rent assistance is worked out under this section if the rate of the person's social security payment is to be calculated in accordance with the Youth Allowance Rate Calculator, the Austudy Payment Rate Calculator or Benefit Rate Calculator B.

(2) Using the table below, work out which family situation applies to the person and calculate rate A for the person using the formula in column 3. This is the person's rate of rent assistance per fortnight but only up to the person's maximum rent assistance rate. If the person is not a single person sharing accommodation, the person's maximum rent assistance rate is rate B worked out using column 4 of the table. If the person is a single person sharing accommodation, the person's maximum rent assistance rate is two-thirds of rate B.

Rate of rent assistance

Column 1 Item	Column 2 Person's family situation	Column 3 Rate A	Column 4 Rate B
1	Not a member of a couple	$3 \times \frac{\left[\text{Fortnightly rent} - \$82.80\right]}{4}$	$93.20
2	Partnered—partner does not have rent increased benefit	$3 \times \frac{\left[\text{Fortnightly rent} - \$134.80\right]}{4}$	$88.00
3	Partnered—partner has rent increased benefit	$3 \times \frac{\left[\text{Fortnightly rent} - \$134.80\right]}{8}$	Half the rate specified in column 4 of item 2
4	Partnered—member of an illness separated couple	$3 \times \frac{\left[\text{Fortnightly rent} - \$82.80\right]}{4}$	$93.20
5	Partnered—member of a respite care couple	$3 \times \frac{\left[\text{Fortnightly rent} - \$82.80\right]}{4}$	$93.20
6	Partnered—member of a temporarily separated couple	$3 \times \frac{\left[\text{Fortnightly rent} - \$82.80\right]}{4}$	$88.00

Rate of rent assistance			
Column 1 **Item**	**Column 2** **Person's family situation**	**Column 3** **Rate A**	**Column 4** **Rate B**
7	Partnered (partner in gaol)	$3 \times \frac{\left[\text{Fortnightly rent} - \$82.80\right]}{4}$	$93.20

1070R Rate for certain parenting payments

(1) The person's rate of rent assistance is worked out under this section if the rate of the person's social security payment is to be calculated in accordance with Benefit PP (Partnered) Rate Calculator.

(2) Using the table below, work out which family situation applies to the person and calculate rate A for the person using the formula in column 3. This is the person's rate of rent assistance per fortnight but only up to the person's maximum rent assistance rate. The person's maximum rent assistance rate is rate B worked out using column 4 of the table.

Rate of rent assistance

Column 1 Item	Column 2 Person's family situation	Column 3 Rate of rent assistance	Column 4 Maximum rate
1	Partnered—partner does not have rent increased benefit	$3 \times \frac{[\text{Fortnightly rent} - \$134.80]}{4}$	$88.00
2	Partnered—partner has rent increased benefit	$3 \times \frac{[\text{Fortnightly rent} - \$134.80]}{8}$	Half the rate specified in column 4 of item 1
3	Partnered—member of an illness separated couple	$3 \times \frac{[\text{Fortnightly rent} - \$82.80]}{4}$	$93.20
4	Partnered—member of a respite care couple	$3 \times \frac{[\text{Fortnightly rent} - \$82.80]}{4}$	$93.20
5	Partnered—member of a temporarily separated couple	$3 \times \frac{[\text{Fortnightly rent} - \$82.80]}{4}$	$88.00
6	Partnered (partner in gaol)	$3 \times \frac{[\text{Fortnightly rent} - \$82.80]}{4}$	$93.20

OFFICIAL: Sensitive // Legal Privilege

Division 4—Certain concepts used in this Part

1070S Division has effect for purposes of Part

This Division has effect for the purposes of this Part.

1070T Rent threshold amount

(1) If the rate of a person's social security payment is to be calculated in accordance with the Pension PP (Single) Rate Calculator, the person's rent threshold amount is $82.80.

(2) In any other case, a person's rent threshold amount is worked out in accordance with subsection (3).

(3) First, identify which of sections 1070L, 1070N, 1070P, 1070Q and 1070R applies to work out the rate of rent assistance for the person's social security payment. Next, identify which family situation in the table in that section applies to the person. The person's rent threshold amount is the amount in the formula in column 3 of the table, in relation to the family situation, that is deducted from fortnightly rent.

Example: If a person who is not a member of a couple receives an age pension, the person's rent threshold amount is worked out as follows. First, identify section 1070L as the section applicable to an age pension. Then identify the family situation in item 1 of the table in that section as applicable to the person. Finally, the person's rent threshold amount is $82.80, being the amount that, in the formula in column 3 of that table, is deducted from the person's fortnightly rent. Indexation of the $82.80 has been ignored for the purposes of this example.

1070U Fortnightly rent

Fortnightly rent is the fortnightly rent paid or payable by the person whose rate of social security payment is being calculated.

OFFICIAL: Sensitive // Legal Privilege

1070V Rent paid by a member of certain couples

Rent paid by a member of a couple where person's partner is living with the person in their home

(1) If a person is a member of a couple and the person's partner is living with the person in their home, any rent that the person's partner pays or is liable to pay in respect of the home is to be treated as paid or payable by the person.

Rent paid by a member of an illness separated, respite care couple or temporarily separated couple

(2) If a person is a member of an illness separated couple, respite care couple or temporarily separated couple, any rent that the person's partner pays or is liable to pay in respect of the premises or lodgings occupied by the person is to be treated as paid or payable by the person.

1070W Partner with a rent increased pension

A person has a partner with a rent increased pension if:

(a) the partner is living with the person in their home; and

(b) the partner receives a social security pension, a service pension, income support supplement or a veteran payment; and

(c) the rate of the pension or supplement is increased to take account of rent paid or payable by the person.

1070X Partner with a rent increased benefit

Youth Allowance Rate Calculator

(1) If the rate of a person's social security payment is to be calculated in accordance with the Youth Allowance Rate Calculator, the person's partner has a rent increased benefit if the partner:

(a) is living with the person in their home; and

(b) either:

OFFICIAL: Sensitive // Legal Privilege

(i) is receiving a social security benefit the rate of which is increased to take account of rent; or

(ii) is receiving a designated ABSTUDY payment, or would be receiving such a payment but for the partner's income.

Note 1: See also subsections 23(4A) and (4AA).

Note 2: For ***designated ABSTUDY payment***, see subsection (5).

Benefit Rate Calculator B

(2) If the rate of a person's social security payment is to be calculated in accordance with Benefit Rate Calculator B, the person's partner has a rent increased benefit if the partner:

(a) is living with the person in their home; and

(b) either:

(i) is receiving a social security benefit the rate of which is increased to take account of rent; or

(ii) is receiving a designated ABSTUDY payment, or would be receiving such a payment but for the partner's income.

Note 1: See also subsections 23(4A) and (4AA).

Note 2: For ***designated ABSTUDY payment***, see subsection (5).

Benefit PP (Partnered) Rate Calculator

(3) If the rate of a person's social security payment is to be calculated in accordance with the Benefit PP (Partnered) Rate Calculator, the person's partner has a rent increased benefit if the partner:

(a) is living with the person in their home; and

(b) either:

(i) is receiving a social security benefit the rate of which is increased to take account of rent; or

(ii) is receiving a designated ABSTUDY payment, or would be receiving such a payment but for the partner's income.

Note 1: See also subsections 23(4A) and (4AA).

OFFICIAL: Sensitive // Legal Privilege

Note 2: For ***designated ABSTUDY payment***, see subsection (5).

Austudy Payment Rate Calculator

(4) If the rate of a person's social security payment is to be calculated in accordance with the Austudy Payment Rate Calculator, the person's partner has a rent increased benefit if the partner:
  (a) is living with the person in their home; and
  (b) either:
    (i) is receiving a social security benefit the rate of which is increased to take account of rent; or
    (ii) is receiving a designated ABSTUDY payment, or would be receiving such a payment but for the partner's income.

Note 1: See also subsections 23(4A) and (4AA).

Note 2: For ***designated ABSTUDY payment***, see subsection (5).

Designated ABSTUDY payment

(5) For the purposes of this section, a ***designated ABSTUDY payment*** is a payment under the scheme known as the ABSTUDY scheme:
  (a) the rate of which is increased to take account of rent; and
  (b) that includes an amount identified as living allowance.

OFFICIAL: Sensitive // Legal Privilege

Part 3.9—Seniors Health Card Income Test Calculator

Note: Section 10A contains many of the definitions that are relevant to the provisions of this Part.

1071 Seniors Health Card Income Test Calculator

The Seniors Health Card Income Test Calculator at the end of this section is to be used in working out whether a person satisfies the seniors health card income test for the purposes of this Act.

Seniors Health Card Income Test Calculator

Satisfying the seniors health card income test

1071-1 This is how to work out whether a person satisfies the seniors health card income test at a particular time (the ***test time***).

Method statement

Step 1. Work out the amount of the person's adjusted taxable income for the reference tax year.

Step 1A. If, at the test time, the person, or the person's partner (if any), has at least one long-term financial asset (see point 1071-13), work out the person's deemed income amount under:

(a) if, at the test time, the person is not a member of a couple—point 1071-11A; or

(b) if, at the test time, the person is a member of a couple—point 1071-11B.

Step 1B. Work out the sum of the amounts at step 1 and step 1A (if any).

OFFICIAL: Sensitive // Legal Privilege

Step 2.	Work out the person's seniors health card income limit using point 1071-12.
Step 3.	Work out whether the amount at step 1B exceeds the seniors health card income limit.
Step 4.	If the amount at step 1B is less than the person's seniors health card income limit, the person satisfies the seniors health card income test.
Step 5.	If the amount at step 1B is equal to or exceeds the person's seniors health card income limit, the person does not satisfy the seniors health card income test.

Reference tax year

1071-2(1) In the ordinary case, a person's ***reference tax year*** is:

(a) if the person has received a notice of assessment of his or her taxable income for the tax year immediately preceding the tax year in which the test time occurred—that immediately preceding tax year; or

(b) otherwise—the tax year immediately preceding the tax year applicable under paragraph (a).

(2) However, if the person has informed the Secretary in writing that the person wishes to have his or her entitlement to a seniors health card determined by reference to his or her adjusted taxable income for the tax year in which the test time occurred (the ***current tax year***), the person's ***reference tax year*** is the current tax year.

Adjusted taxable income

1071-3 For the purposes of this Part, a person's ***adjusted taxable income*** for a particular tax year is the sum of the following amounts (***income components***):

(a) the person's taxable income for that year, disregarding the person's assessable FHSS released amount (within the

meaning of the *Income Tax Assessment Act 1997*) for that year;

(b) the person's fringe benefits value for that year;

(c) the person's target foreign income for that year;

(d) the person's total net investment loss (within the meaning of the *Income Tax Assessment Act 1997*) for that year;

(e) the person's reportable superannuation contributions (within the meaning of the *Income Tax Assessment Act 1997*) for that year.

Note 1: For ***taxable income*** see subsection 23(1) and point 1071-4.

Note 2: For ***fringe benefits value*** see point 1071-6.

Note 3: For ***target foreign income*** see subsection 10A(2) and point 1071-7.

Taxable income

1071-4 For the purposes of this Part, a person's ***taxable income*** for a particular tax year is:

(a) the person's assessed taxable income for that year; or

(b) if the person does not have an assessed taxable income for that year—the person's accepted estimate of taxable income for that year.

Assessed taxable income

1071-5 For the purposes of this Part, a person's ***assessed taxable income*** for a particular tax year at a particular time is the most recent of:

(a) if, at that time, the Commissioner of Taxation has made an assessment or an amended assessment of that taxable income—that taxable income according to the assessment or amended assessment; or

(b) if, at that time, a tribunal has amended an assessment or an amended assessment made by the Commissioner—that taxable income according to the amendment made by the tribunal; or

(c) if, at that time, a court has amended an assessment or an amended assessment made by the Commissioner or an

OFFICIAL: Sensitive // Legal Privilege

amended assessment made by a tribunal—that taxable income according to the amendment made by the court.

Fringe benefits value

1071-6 For the purposes of this Part, a person's ***fringe benefits value*** for a particular tax year is the person's accepted estimate of the amount by which the total of the assessable fringe benefits received or to be received by the person in the tax year exceeds $1,000.

Note: For ***assessable fringe benefit*** see subsection 10A(2) and Part 3.12A.

Target foreign income

1071-7 For the purposes of this Part, a person's ***target foreign income*** for a particular tax year is the person's accepted estimate of the amount of that income for that year.

Total net investment loss

1071-8 For the purposes of this Part, a person's ***total net investment loss*** for a particular tax year is the person's accepted estimate of the amount of that loss for that year.

Accepted estimate

1071-9 For the purposes of this Part, a person's ***accepted estimate*** of an income component for a particular tax year is that income component according to the most recent notice given by the person to the Secretary under point 1071-10 and accepted by the Secretary for the purposes of this Part.

Notice estimating income component

1071-10(1) A person may give the Secretary a notice, in a form approved by the Secretary, setting out the person's estimate of an income component of the person for a tax year.

(2) The notice is to contain, or be accompanied by, such information as is required by the form to be contained in it or to accompany it, as the case may be.

(3) The Secretary is to accept a notice only if the Secretary is satisfied that the estimate is reasonable.

Adjusted taxable income of members of couples

1071-11 If a person is a member of a couple, add the couple's adjusted taxable incomes for the reference tax year and divide by 2 to work out the amount of the person's adjusted taxable income for the reference tax year.

Deemed income amount

1071-11A This is how to work out the person's deemed income amount under this point:

Method statement

Step 1. Work out the total value of all of the person's long-term financial assets (see point 1071-13) at the test time.

Step 2. Work out under section 1076 the amount of ordinary income the person would be taken to receive per year on the financial assets:

(a) on the assumption that the only financial assets of the person were the financial assets referred to in step 1; and

(b) on the assumption that the total value of the person's financial assets were the amount at step 1.

Step 3. The result at step 2 is the person's ***deemed income amount***.

OFFICIAL: Sensitive // Legal Privilege

1071-11B This is how to work out the person's deemed income amount under this point:

Method statement

Step 1. Work out the total value of all of the person's long-term financial assets (see point 1071-13) at the test time.

Step 2. If, at the test time, the person's partner has reached the minimum age mentioned in section 301-10 of the *Income Tax Assessment Act 1997*, work out the total value of all of the person's partner's long-term financial assets (see point 1071-13) at the test time.

Step 3. Work out under section 1077 the amount of ordinary income the couple would be taken to receive per year on the financial assets:

(a) on the assumption that section 1077 applied to the person and the person's partner; and

(b) on the assumption that the only financial assets of the person and the person's partner were the financial assets referred to in steps 1 and 2; and

(c) on the assumption that the total value of the couple's financial assets were the sum of the amounts at steps 1 and 2.

Step 4. Divide the amount at step 3 by 2: the result is the person's ***deemed income amount***.

Seniors health card income limit

1071-12 A person's seniors health card income limit is worked out using the Seniors Health Card Income Limit Table. Work out which family situation in the table applies to the person. The person's seniors health card income limit is the corresponding amount in column 3

plus an additional corresponding amount in column 4 for each dependent child of the person.

Seniors Health Card Income Limit Table

Column 1 Item	Column 2 Person's family situation	Column 3 Amount per year	Column 4 Additional dependent child Amount per year
1	Not member of couple	$50,000	$639.60
2	Partnered	$40,000	$639.60
3	Member of illness separated couple	$50,000	$639.60
4	Member of respite care couple	$50,000	$639.60
5	Partnered (partner in gaol)	$50,000	$639.60

Note: The amounts in column 3 are to be indexed on 20 September 2014 and each later 20 September in line with CPI increases (see sections 1190 to 1194).

Long-term financial asset

1071-13 For the purposes of this Part, a ***long-term financial asset*** is:

(a) a financial investment within the meaning of paragraph (i) of the definition of ***financial investment*** in subsection 9(1), where the asset-tested income stream (long term) arises under a complying superannuation plan (within the meaning of the *Income Tax Assessment Act 1997*) that is not a constitutionally protected fund (within the meaning of that Act); or

(b) a financial investment within the meaning of paragraph (j) of the definition of ***financial investment*** in subsection 9(1).

Note: Schedule 7 to the *Social Services and Other Legislation Amendment (2014 Budget Measures No. 6) Act 2014* preserves the rules in this

OFFICIAL: Sensitive // Legal Privilege

Section 1071

Calculator for a certain kind of long-term financial asset that was being provided to a person immediately before 1 January 2015 where the person held a seniors health card immediately before that day provided that, since that day, the person has held a seniors health card.

OFFICIAL: Sensitive // Legal Privilege

Part 3.9A—Health Care Card Income Test Calculator

1071A Health care card income test

The Health Care Card Income Test Calculator at the end of this section is to be used in working out whether a person satisfies the health care card income test for the purposes of Division 3 of Part 2A.1.

Health Care Card Income Test Calculator

Satisfying the health care card income test: persons claiming a card

1071A-1 This is how to work out whether a person claiming a health care card satisfies the health care card income test on the day on which the person claims the card, whether or not the person is the holder of a health care card at that time.

Method statement

Step 1. Work out the amount of the person's ascertained income for the period of 8 weeks ending on the day on which the person lodged the claim.

Step 2. Work out the amount of the person's allowable income for the period.

Step 3. If the person's ascertained income for the period is less than the person's allowable income for the period, the person satisfies the health care card income test.

Step 4.	If the person's ascertained income for the period equals or exceeds the person's allowable income for the period, the person does not satisfy the health care card income test.

Satisfying the health care card income test: cardholders

1071A-2 This is how to work out whether a person who holds a health care card satisfies the health care card income test at a particular time where there has been a change in circumstances.

Method statement

Step 1.	Work out the amount of the person's ascertained income for the period of 8 weeks ending on the day on which the change of circumstances occurred.
Step 2.	Work out the amount of the person's allowable income for the period.
Step 3.	If the person's ascertained income for the period is less than 125% of the person's allowable income for that period, the person satisfies the health care card income test.
Step 4.	If the person's ascertained income for the period is 125% or more of the person's allowable income for that period, the person does not satisfy the health care card income test.

Working out allowable income

1071A-2A For the purposes of step 2 of the method statement in point 1071A-1 or 1071A-2:

(a) disregard steps 1A, 2 and 3 of the method statement in point 1068-A1; and

OFFICIAL: Sensitive // Legal Privilege

(b) the amount at step 1B of the method statement in point 1068-A1 is taken to be the amount applicable under item 5 of the table in point 1068-C3.

Cessation of dependency

1071A-3 For the purposes of point 1071A-2, if a person (the ***first person***) ceases to be a dependant of another person who is the holder of a health care card:

(a) the fact that the first person has so ceased is to be disregarded for a period of 4 weeks commencing on the day on which the first person so ceased; and

(b) if, at the end of the period, the first person has not become again a dependant of that other person, the first person is taken to have ceased to be a dependant of the other person at the expiration of that period of 4 weeks.

Definitions

1071A-4 In this Part:

allowable income, in relation to any period of 8 weeks, means:

(a) in relation to a person who had a dependant or dependants on the last day of the period—the amount worked out by multiplying by 8, or such other number as is prescribed, the aggregate of:

(i) the amount of the weekly rate of income that would, on the last day of the period, be sufficient to prevent both members of a one-income couple from receiving jobseeker payment; and

(ii) $20, or such other amount as is prescribed; and

(iii) an amount worked out by multiplying $34, or such higher amount as is prescribed, by the number of the dependants of the person on the last day of the period; or

(b) in relation to a person who had no dependants on the last day of the period—the amount worked out by multiplying by 8, or such other number as is prescribed, an amount equal to

OFFICIAL: Sensitive // Legal Privilege

60%, or such other percentage as is prescribed, of the aggregate of the amount worked out under subparagraph (a)(i) and the amount referred to in subparagraph (a)(ii) if paragraph (a) had applied to the person.

ascertained income, in relation to a period, means:

(a) in relation to a person who is not a member of a couple—the income of the person in respect of that period; and

(b) in relation to a person who is a member of a couple—the income of the person and his or her partner in respect of that period.

income, in relation to a person, means ordinary income and, to the extent that they are not ordinary income, includes:

(aa) payments of a social security pension or a social security benefit; and

(a) if the person is receiving a social security pension or benefit—the person's maintenance income (if any) within the meaning of the Family Assistance Act; and

(b) payments of a pension under the Veterans' Entitlements Act; and

(c) payments of a pension payable by a foreign country, being a pension that, in the opinion of the Secretary, is similar in character to a pension referred to in paragraph (b); and

(ca) payments of income support supplement; and

(cb) a payment under Part VIIAB (DFISA) of the Veterans' Entitlements Act (including a payment made under regulations made under that Part); and

(d) payments under the scheme known as the New Enterprise Incentive Scheme; and

(e) payments of compensation, including compensation within the meaning of the Military Rehabilitation and Compensation Act; and

(f) instalments of parental leave pay; and

(g) dad and partner pay.

OFFICIAL: Sensitive // Legal Privilege

1071A-5 If a weekly rate of income referred to in subparagraph (a)(i) of the definition of ***allowable income*** in point 1071A-4 or an amount worked out under paragraph (b) of that definition includes an amount of cents, the amount of that weekly rate is, for the purposes of that definition, increased to the nearest whole dollar.

1071A-6 A couple is a ***one-income couple*** for the purposes of point 1071A-4 if only one member of the couple is receiving income.

OFFICIAL: Sensitive // Legal Privilege

Part 3.10—General provisions relating to the ordinary income test

Division 1—Ordinary income concept and treatment of certain income amounts

1072 General meaning of ordinary income

A reference in this Act to a person's ordinary income for a period is a reference to the person's gross ordinary income from all sources for the period calculated without any reduction, other than a reduction under Division 1A.

Note 1: For ***ordinary income*** see subsection 8(1).

Note 2: For other provisions affecting the amount of a person's ordinary income see section 1073AA (work bonus), sections 1074 and 1075 (business income), Division 1B (income from financial assets (including income streams (short term) and certain income streams (long term)) and Division 1C (income from income streams not covered by Division 1B).

1072A Treatment of certain lump sum payments

(1) This section applies if:

(a) a person has claimed a social security pension or a social security benefit; and

(b) on or after the first day of the period of 12 months ending at the end of the day the person made the claim, the person receives an amount of income in the form of a lump sum payment of arrears of periodic payments; and

(c) the lump sum payment is not income within the meaning of Division 1B or 1C of this Part; and

(d) the lump sum payment is not in relation to remunerative work undertaken by the person; and

(e) the lump sum payment is not an exempt lump sum; and

(f) the lump sum payment is not a payment of compensation.

OFFICIAL: Sensitive // Legal Privilege

(2) The Secretary may determine that the person is taken to have received the lump sum payment over such period, not exceeding 52 weeks, as the Secretary determines.

(3) The period determined by the Secretary must begin on the day on which the person received the lump sum payment.

(4) For each day in the period determined by the Secretary, the person is taken to have received an amount of ordinary income worked out by dividing the amount of the lump sum payment by the number of days in that period.

1073 Certain amounts taken to be received over 12 months

(1) Subject to points 1067G-H5 to 1067G-H20 (inclusive), 1067L-D5 to 1067L-D16 (inclusive), 1068-G7AF to 1068-G7AR (inclusive), 1068A-E2 to 1068A-E12 (inclusive) and 1068B-D7 to 1068B-D18 (inclusive), if a person receives, whether before or after the commencement of this section, an amount that:

(a) is not income within the meaning of Division 1B or 1C of this Part; and

(b) is not:

(i) income in the form of periodic payments; or

(ii) ordinary income from remunerative work undertaken by the person; or

(iii) an exempt lump sum.

the person is, for the purposes of this Act, taken to receive one fifty-second of that amount as ordinary income of the person during each week in the 12 months commencing on the day on which the person becomes entitled to receive that amount.

(2) Subsection (1) applies to a person who has claimed one of the following:

(a) jobseeker payment;

(c) youth allowance;

(d) widow allowance;

(e) partner allowance;

OFFICIAL: Sensitive // Legal Privilege

even if the person:

(g) has to serve an ordinary waiting period or a liquid assets test waiting period in respect of the payment or allowance claimed; or

(h) is subject to an income maintenance period in respect of the payment or allowance claimed; or

(i) is subject to a seasonal work preclusion period;

during the period of 12 months referred to in subsection (1).

OFFICIAL: Sensitive // Legal Privilege

Division 1AAA—Work bonus

1073AA Work bonus

(1) This section applies to a person if:

(a) the person's rate of social security pension is calculated in accordance with Pension Rate Calculator A at the end of section 1064; and

(b) the person has reached pension age.

Note: For ***pension age*** see subsections 23(5A), (5B), (5C) and (5D).

Work bonus income greater than or equal to income concession amount

(2) If the person's work bonus income for an instalment period is greater than or equal to the income concession amount for that period, then, for the purposes of Module E of that Rate Calculator, the amount of the person's work bonus income for that period is reduced by an amount equal to the income concession amount.

Note: For ***work bonus income***, see subsection (4BA).

Example 1: David has $2,300 of work bonus income in an instalment period of 14 days. David's rate of social security pension for that period is greater than nil.

David's work bonus income for that period is reduced by $300, leaving David $2,000 of work bonus income for that period.

Example 2: Amy has $1,000 of work bonus income in an instalment period of 14 days. Amy's rate of social security pension for that period is greater than nil.

Amy's work bonus income for that period is reduced by $300, leaving Amy $700 of work bonus income for that period.

(3) If the person's unused concession balance (see section 1073AB) is greater than or equal to the amount (the ***current amount***) of the person's work bonus income that remains after applying subsection (2) of this section in relation to an instalment period:

OFFICIAL: Sensitive // Legal Privilege

(a) for the purposes of Module E of that Rate Calculator, the person's work bonus income for that period is further reduced to nil; and

(b) if the person's rate of social security pension for that period is greater than nil—the person's unused concession balance is reduced by an amount equal to the current amount.

Example 1: To continue example 1 in subsection (2), assume David's unused concession balance is $2,000. The current amount is $2,000.

David's work bonus income for that period is further reduced to nil.

David's unused concession balance is now nil.

Example 2: To continue example 2 in subsection (2), assume Amy's unused concession balance is $1,600. The current amount is $700.

Amy's work bonus income for that period is further reduced to nil.

Amy's unused concession balance is now $900.

(4) If the person's unused concession balance (see section 1073AB) is greater than nil but less than the amount of the person's work bonus income that remains after applying subsection (2) of this section in relation to an instalment period:

(a) for the purposes of Module E of that Rate Calculator, the person's work bonus income for that period is further reduced by an amount equal to that unused concession balance; and

(b) if the person's rate of social security pension for that period is greater than nil—the person's unused concession balance is reduced to nil.

Example: Bill has $1,300 of work bonus income in an instalment period of 14 days. Bill's rate of social security pension for that period is greater than nil.

Under subsection (2), Bill's work bonus income for that period is reduced by $300, leaving Bill $1,000 of work bonus income for that period.

Assume Bill's unused concession balance is $800.

Under subsection (4), Bill's work bonus income for that period is further reduced by $800 leaving Bill $200 of work bonus income for that period.

OFFICIAL: Sensitive // Legal Privilege

Bill's unused concession balance is now nil.

Work bonus income less than income concession amount

(4A) If the person has work bonus income for an instalment period but that income is less than the income concession amount for that period:

(a) for the purposes of Module E of that Rate Calculator, the person's work bonus income for that period is reduced to nil; and

(b) if the person's rate of social security pension for that period is greater than nil—the person's unused concession balance (see section 1073AB) is increased, subject to subsection 1073AB(2), by an amount equal to the difference between that income concession amount and that work bonus income (before it was reduced).

Note: For ***work bonus income***, see subsection (4BA).

Example: Emma has $100 of work bonus income in an instalment period of 14 days. Emma's rate of social security pension for that period is greater than nil.

Emma's work bonus income for that period is reduced to nil.

Emma's unused concession balance is increased by $200.

No work bonus income

(4B) If:

(a) the person has no work bonus income for an instalment period; and

(b) the person's rate of social security pension for that period is greater than nil;

the person's unused concession balance (see section 1073AB) is increased, subject to subsection 1073AB(2), by an amount equal to the income concession amount for that period.

Note: For ***work bonus income***, see subsection (4BA).

OFFICIAL: Sensitive // Legal Privilege

Definitions

(4BA) For the purposes of this section, a person's ***work bonus income*** for an instalment period is the sum of the following:

(a) the person's employment income taken, in accordance with Division 1AA, to have been received for that period;

(b) the sum of the person's gainful work income for each day in that period.

Note: For ***employment income***, see section 8.

(4BB) For the purposes of this section, a person's ***gainful work income*** for a day in an instalment period is the amount worked out using the following formula:

$$\frac{\text{Annual amount}}{364}$$

where:

annual amount means the annual amount of ordinary income of the person that is earned, derived or received by the person from gainful work (within the meaning of section 1073AAA) undertaken by the person, being the annual amount as last determined by the Secretary.

(4BC) The amount at paragraph (4BA)(b) is to be rounded to the nearest cent (rounding 0.5 cents downwards).

(4C) The ***income concession amount*** is:

(a) for an instalment period of 14 days—$300; and

(b) for an instalment period of less than 14 days—the amount worked out using the following formula:

$$\$300 \times \frac{\text{Number of days in the instalment period}}{14}$$

Interpretation

(5A) If a person has gainful work income for an instalment period, the rate of the person's gainful work income on a yearly basis for each day in that period may be worked out using the following formula:

$$\frac{\text{Total amount of gainful work income for that period}}{\text{Number of days in that period}} \times 364$$

Note: This subsection will be relevant to working out the person's rate of social security pension in accordance with Pension Rate Calculator A at the end of section 1064 or Pension Rate Calculator C at the end of section 1066.

(5B) An amount worked out under subsection (5A) is to be rounded to the nearest cent (rounding 0.5 cents downwards).

(6) If the person is a member of a couple, apply this section in relation to the person, and to the person's partner, before applying point 1064-E2.

(7) In working out a person's employment income for the purposes of this section, disregard subsection 8(1B).

(8) If:

(a) the person is a member of a couple; and

(b) the person's partner's work bonus income (within the meaning of section 46AA of the *Veterans' Entitlements Act 1986*) is reduced by one or more amounts (each of which is a ***reduction amount***) under section 46AA of that Act;

then, in applying point 1064-E2, the ordinary income of the person's partner is to be reduced by an amount equal to the total of the reduction amounts.

OFFICIAL: Sensitive // Legal Privilege

1073AAA Meaning of *gainful work*

General rule

(1) For the purposes of this Division, ***gainful work*** is work for financial gain or reward (other than as an employee), where:
  (a) the work involves personal exertion on the part of the person concerned; and
  (b) the work is carried on within or outside Australia.

Disregard managing or administering family financial investments and real property

(2) Work undertaken by a person is taken not to be ***gainful work*** for the purposes of this Division to the extent to which the work consists of the management or administration of any financial investment, or any real property, in which any of the following has a legal or equitable interest:
  (a) a member of the person's family group;
  (b) a company that is a family company in relation to the person;
  (c) the trustee or trustees of a trust that is a family trust in relation to the person.

Note: For ***financial investment***, see section 9.

Disregard domestic duties

(3) Work undertaken by a person is taken not to be ***gainful work*** for the purposes of this Division if the work consists of carrying out:
  (a) domestic tasks; or
  (b) household maintenance tasks; or
  (c) gardening tasks; or
  (d) similar tasks;

in relation to:
  (e) the person's place of residence; or
  (f) if the person has 2 or more places of residence—any of those places of residence.

OFFICIAL: Sensitive // Legal Privilege

Definitions

(4) For the purposes of this section, a ***place of residence*** includes:

(a) if the place is a dwelling-house—any land or building that is adjacent to the dwelling-house and that is used primarily for private or domestic purposes in association with that dwelling-house; or

(b) if the place is a flat or home unit—a garage or storeroom that is used for private or domestic purposes in association with the flat or home unit.

(5) In this section:

family company, in relation to a person, means a company where:

(a) the company is, or its directors are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of any or all of the members of the person's family group; or

(b) any or all of the members of the person's family group are in a position to cast, or control the casting of, more than 50% of the maximum number of votes that may be cast at a general meeting of the company; or

(c) both:

(i) the company has one or more shareholders; and

(ii) each shareholder is a member of the person's family group.

family group, in relation to a person, means the group consisting of the person and the family members of the person. If the person has no family members, the person is taken to be a family group in the person's own right.

Note: For ***family member***, see subsection 23(1).

family trust, in relation to a person, means a trust where a member of the person's family group benefits, or is capable (whether by the exercise of a power of appointment or otherwise) of benefiting, under the trust.

OFFICIAL: Sensitive // Legal Privilege

1073AB Unused concession balance

Initial unused concession balance of nil

(1) A person has an unused concession balance of nil on the first day that is after 30 June 2011 and is a day on which section 1073AA applies to the person.

Maximum unused concession balance

(2) If, apart from this subsection, the person's unused concession balance would exceed $7,800, that balance is instead taken to be $7,800.

Example: John has an unused concession balance of $7,700. John has $100 of work bonus income in an instalment period of 14 days.

Instead of John's unused concession balance increasing to $7,900 under subsection 1073AA(4A), John's unused concession balance increases to $7,800.

Effect of ceasing to receive social security pension

(3) If the person ceases to receive the social security pension referred to in paragraph 1073AA(1)(a), the person retains the person's unused concession balance immediately before that cessation.

Note: If section 1073AA applies to the person again, the person's unused concession balance will be that retained balance.

OFFICIAL: Sensitive // Legal Privilege

Division 1AA—Employment income attribution rules

1073A Attribution of employment income paid in respect of a particular period or periods

(1) This section applies if:

(a) a person is receiving a social security pension or a social security benefit; and

(b) the person's rate of payment of the pension or benefit is worked out with regard to the income test module of a rate calculator in this Chapter; and

(c) one or more amounts of employment income, each of which is in respect of a particular period or periods (each period is an ***employment period***), are paid in an instalment period of the person to or for the benefit of the person by the same employer.

Note 1: If the person has multiple employers, this section applies separately in relation to each employer.

Note 2: If a person is receiving a social security pension and is paid employment income monthly, section 1073B may apply to that income instead of this section.

Note 3: Section 1073BA deals with the payment of employment income that is not in respect of a particular period.

(2) The person is taken to have received the employment income over a period (the ***assessment period***) that consists of the number of days that is equal to the sum of the number of days in each employment period, where the assessment period begins on the first day of the instalment period in which the amounts of employment income are paid.

Example: On 3 June a person is paid $756 employment income for work the person performed in the period beginning on 9 May and ending at the end of 29 May. The number of days in the employment period is 21.

Assume the instalment period begins on 1 June. The person is taken to have received the $756 over the period beginning on 1 June and ending at the end of 21 June (a period of 21 days).

OFFICIAL: Sensitive // Legal Privilege

(3) Subject to subsection (4), for each day in the assessment period, the person is taken to have received an amount of employment income worked out by dividing the total amount of the employment income covered by paragraph (1)(c) by the number of days in the assessment period.

Example: To continue the example in subsection (2), the person is taken to have received $36 ($756/21) on each of the days in the period beginning on 1 June and ending at the end of 21 June.

(4) If the person is taken, under subsection (3), to have received employment income (the ***attributed employment income***) during a part, but not the whole, of a particular instalment period, the person is taken to receive on each day in that instalment period an amount of employment income worked out by dividing the total amount of the attributed employment income by the number of days in the instalment period.

Example: To continue the example in subsection (2), for the instalment period beginning on 15 June and ending at the end of 28 June the person is taken, under subsection (3), to have received employment income during a part of that instalment period (15 June to 21 June). The person is taken to have received $252 ($36 x 7).

Under subsection (4), the person is taken to receive on each day in that instalment period an amount of employment income of $18 ($252/14).

Interpretation

(5) This section applies in relation to an amount of employment income paid on a day in an instalment period, whether or not the amount is received on that day.

(6) In applying subsection (2) in relation to one or more amounts of employment income paid by a particular employer in an instalment period, in working out the sum of the number of days in each employment period, if a day in an employment period overlaps with a day in another employment period, that day must only be counted once.

OFFICIAL: Sensitive // Legal Privilege

1073B Attribution of employment income paid monthly

(1) This section applies if:

(a) a person is receiving a social security pension; and

(b) the person's rate of payment of the pension is worked out with regard to the income test module of a rate calculator in this Chapter; and

(c) an amount (the ***initial amount***) of employment income, in respect of a period of 1 month, is paid on a day in a calendar month (the ***initial calendar month***) to or for the benefit of the person by the person's employer; and

(d) the Secretary is satisfied that, for the reasonably foreseeable future, an amount of employment income, in respect of a period of 1 month, equal to the initial amount will be paid to or for the benefit of the person by that employer on the following:

(i) the corresponding day in each calendar month (a ***later calendar month***) after the initial calendar month;

(ii) if there is no such day in a later calendar month month—the last day of the later calendar month.

Note: If the person has multiple employers, this section applies separately in relation to each employer.

(2) Subject to this section, for the day on which the initial amount is paid and for each day after that day, the person is taken to have received an amount of employment income worked out as follows:

$$\frac{\text{Initial amount} \times 12}{364}$$

(3) If, after the day on which the initial amount is paid, the Secretary ceases to be satisfied as mentioned in paragraph (1)(d) in relation to the person and the person's employer, then subsection (2) ceases to apply in relation to the person and the person's employer at the end of the period of 1 month beginning on the last payment day.

(4) For the purposes of this section, a ***payment day*** is:

OFFICIAL: Sensitive // Legal Privilege

(a) the day in the calendar month on which the initial amount is paid by the person's employer; or

(b) the following on which an amount of employment income equal to the initial amount is paid to or for the benefit of the person by that employer:

(i) a corresponding day in a later calendar month;

(ii) if there is no such day in a later calendar month—the last day of the later calendar month.

(5) If the person is taken, under this section, to have received employment income (the ***attributed employment income***) during a part, but not the whole, of a particular instalment period, the person is taken to receive on each day in that instalment period an amount of employment income worked out by dividing the total amount of the attributed employment income by the number of days in the instalment period.

(6) Section 1073A does not apply to an amount of employment income covered by paragraph (4)(a) or (b).

Interpretation

(7) This section applies in relation to an amount of employment income paid on a day in a calendar month, whether or not the amount is received on that day.

(8) Subsection (3) does not prevent a later application of this section in relation to the person, whether in connection with the same employer or another employer.

1073BA Attribution of employment income paid not in respect of a particular period

(1) This section applies if:

(a) a person is receiving a social security pension or a social security benefit; and

OFFICIAL: Sensitive // Legal Privilege

(b) the person's rate of payment of the pension or benefit is worked out with regard to the income test module of a rate calculator in this Chapter; and

(c) an amount of employment income is paid on a day to or for the benefit of the person; and

(d) the employment income is not in respect of a particular period.

(2) The person is taken to have received that employment income over such period, not exceeding 52 weeks, as the Secretary determines.

Note 1: When determining the period, the Secretary may take into consideration the following:

(a) the nature of the person's remunerative work;

(b) the nature of the person's employment income;

(c) the person's financial interests;

(d) any financial hardship which may be caused to the person;

(e) whether the employment income relates to remunerative work that was undertaken at a time when the person was not receiving a social security pension or a social security benefit.

Note 2: The period determined by the Secretary should be fair and reasonably beneficial, taking into account the financial interests of the person receiving the social security pension or social security benefit.

(3) The period determined by the Secretary must begin on the first day of the instalment period in which the amount of employment income is paid.

(4) Subject to subsection (5), for each day in the period determined by the Secretary, the person is taken to have received an amount of employment income worked out by dividing the amount of employment income covered by paragraph (1)(c) by the number of days in that period.

(5) If the person is taken, under subsection (4), to have received employment income (the ***attributed employment income***) during a part, but not the whole, of a particular instalment period, the person is taken to receive on each day in that instalment period an amount of employment income worked out by dividing the total amount of the attributed employment income by the number of days in the instalment period.

OFFICIAL: Sensitive // Legal Privilege

Interpretation

(6) This section applies in relation to an amount of employment income paid on a day, whether or not the amount is received on that day.

1073BB Anti-avoidance

(1) This section applies if:

(a) a person (the ***relevant person***) is receiving a social security pension or a social security benefit; and

(b) the relevant person earns or derives employment income during the whole or a part of an instalment period of the person; and

(c) one or more entities (who may be, or may include, the relevant person) enter into, commence to carry out, or carry out, a scheme to defer the payment of that employment income; and

(d) it would be concluded that the entity, or any of the entities, who entered into, commenced to carry out, or carried out, the scheme did so for the sole or dominant purpose of obtaining a social security advantage for a person (who may be the relevant person or may be the entity or one of the entities).

(2) The Secretary may determine that the relevant person is taken to have received an amount of employment income, equal to the amount of employment income referred to in paragraph (1)(b), over the period determined by the Secretary.

(3) The period determined by the Secretary must begin on the first day of the instalment period referred to in paragraph (1)(b).

(4) Subject to subsection (5), for each day in the period determined by the Secretary, the relevant person is taken to have received an amount of employment income worked out by dividing the total amount of the employment income referred to in paragraph (1)(b) by the number of days in that period.

OFFICIAL: Sensitive // Legal Privilege

(5) If the relevant person is taken, under subsection (4), to have received employment income (the ***attributed employment income***) during a part, but not the whole, of a particular instalment period, the relevant person is taken to receive on each day in that instalment period an amount of employment income worked out by dividing the total amount of the attributed employment income by the number of days in the instalment period.

(6) Sections 1073A, 1073B and 1073BA do not apply in relation to the payment of the employment income referred to in paragraph (1)(b).

(7) A determination under subsection (2) has effect accordingly.

Obtaining a social security advantage

(8) For the purposes of this section, an entity has a purpose of obtaining a social security advantage for a person (who may be the entity) if the entity has a purpose of:

(a) enabling the person to obtain any of the following:
  (i) a social security pension;
  (ii) a social security benefit;
  (iii) a service pension;
  (iv) income support supplement;
  (v) a veteran payment;
  (vi) a payment under a current special educational assistance scheme; or

(b) enabling the person to obtain any of the following at a higher rate than would otherwise have been payable:
  (i) a social security pension;
  (ii) a social security benefit;
  (iii) a service pension;
  (iv) income support supplement;
  (v) a veteran payment;
  (vi) a payment under a current special educational assistance scheme.

OFFICIAL: Sensitive // Legal Privilege

Definitions

(9) In this section:

entity means any of the following:

(a) an individual;

(b) a company within the meaning of the *Income Tax Assessment Act 1997*;

(c) a trust;

(d) a partnership within the meaning of the *Income Tax Assessment Act 1997*;

(e) any other unincorporated association or body of persons;

(f) a corporation sole;

(g) a body politic.

scheme means:

(a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings; or

(b) any scheme, plan, proposal, action, course of action or course of conduct, whether there are 2 or more parties or only one party involved.

1073BC Exclusion of certain payments

Sections 1073A, 1073B, 1073BA and 1073BB do not apply in relation to the following:

(a) a payment in respect of which a person is taken to have received ordinary income for a period under point 1064-F4, 1066A-G4, 1067G-H11, 1067L-D5, 1068-G7AG, 1068A-E3 or 1068B-D9;

(b) a payment in respect of which a person is taken to receive an amount under point 1064-F10, 1066A-G10, 1067G-H15, 1067L-D11 or 1068-G7AL;

(c) an amount that a person's ordinary income is taken to include under point 1067G-H5 or 1068-G7AA.

OFFICIAL: Sensitive // Legal Privilege

1073BD Daily attribution of employment income for amounts not elsewhere covered in this Division

If:

(a) a person is receiving a social security pension or a social security benefit; and

(b) the person's rate of payment of the pension or benefit is worked out with regard to the income test module of a rate calculator in this Chapter; and

(c) the person is taken, under a provision of this Act (except section 1073A, 1073B, 1073BA or 1073BB), to receive employment income during the whole or a part of a particular instalment period of the person;

the person is taken to receive, on each day in that instalment period, an amount of employment income worked out by dividing the total amount of the employment income referred to in paragraph (c) by the number of days in the instalment period.

1073C Fortnightly or yearly expression of attributed employment income

If, in accordance with the operation of section 1073A, 1073B, 1073BA, 1073BB or 1073BD, a person is taken to receive a particular amount of employment income on each day in an instalment period:

(a) the rate of the person's employment income on a fortnightly basis for that day may be worked out by multiplying that amount by 14; and

(b) the rate of the person's employment income on a yearly basis for that day may be worked out by multiplying that amount by 364.

OFFICIAL: Sensitive // Legal Privilege

Division 1AB—Working credit accrual and depletion rules and their consequences

1073D To whom do working credit accrual and depletion rules apply?

The rules in this Division apply to a person (a ***working credit participant***):

(a) who is receiving a social security pension or a social security benefit; and

(b) whose rate of payment of the pension or benefit is worked out with regard to the income test module of a rate calculator in this Chapter; and

(c) who has not reached pension age; and

(d) to whom the student income bank does not apply.

1073E Opening balance

Basic opening balance rule

(1) Subject to this section, each working credit participant has, on becoming a working credit participant, a working credit opening balance of nil.

Opening balance following cancellation of social security pension or benefit

(2) If:

(a) a person ceases to be a working credit participant or a person to whom the student income bank applies because of a determination to cancel, or an automatic cancellation of, the person's social security pension or social security benefit; and

(b) the person had a working credit balance or a student income bank balance greater than nil immediately before the date of effect of the determination or cancellation; and

OFFICIAL: Sensitive // Legal Privilege

(c) the person makes, or is taken to have made, a new claim for a social security pension or social security benefit; and

(d) the Secretary determines that the new claim is to be granted with effect from a day within 12 months after the date of effect mentioned in paragraph (b); and

(e) the person becomes a working credit participant on a day (the ***participation day***), being either the day with effect from which the new claim is granted or a day following that day;

the working credit balance mentioned in paragraph (b), or the student income bank balance mentioned in that paragraph to the extent that it does not exceed the threshold amount (see subsection (7)), becomes the opening balance of the working credit applicable to the person on the participation day.

Opening balance following suspension of social security pension or benefit

(3) If:

(a) a person ceases to be a working credit participant because of a determination to suspend the person's social security pension or social security benefit; and

(b) the person had a working credit balance greater than nil immediately before the date of effect of the determination; and

(c) within 12 months after the date of effect of the determination, the payment of the person's pension or benefit is resumed; and

(d) the person becomes a working credit participant on the day with effect from which the person's pension or benefit is resumed;

the working credit balance mentioned in paragraph (b) becomes the opening balance of the working credit applicable to the person on the day mentioned in paragraph (d).

OFFICIAL: Sensitive // Legal Privilege

Opening balance following suspension and subsequent cancellation of social security pension or benefit

(4) If:

(a) a person ceases to be a working credit participant or a person to whom the student income bank applies because of a determination to suspend the person's social security pension or social security benefit; and

(b) while the person's pension or benefit is suspended there is a determination to cancel the person's pension or benefit; and

(c) the person had a working credit balance or a student income bank balance greater than nil immediately before the date of effect of the suspension determination; and

(d) the person makes, or is taken to have made, a new claim for a social security pension or social security benefit; and

(e) the Secretary determines that the new claim is to be granted with effect from a day within 12 months after the date of effect mentioned in paragraph (c); and

(f) the person becomes a working credit participant on a day (the ***participation day***), being either the day with effect from which the new claim is granted or a day following that day;

the working credit balance mentioned in paragraph (c), or the student income bank balance mentioned in that paragraph to the extent that it does not exceed the threshold amount (see subsection (7)), becomes the opening balance of the working credit applicable to the person on the participation day.

Opening balance following cessation of full-time study by youth allowance recipient

(5) If:

(a) a person is receiving youth allowance and is undertaking full-time study; and

(b) the person ceases to undertake full-time study; and

(c) either because of a determination made as a result of that cessation or, if no determination is necessary, because of the cessation itself, the person, on a day (the ***participation day***):

(i) ceases to be a person to whom the student income bank set out in Module J of the Youth Allowance Rate Calculator applies; and

(ii) becomes a working credit participant; and

(d) the person had a student income bank balance greater than nil immediately before the participation day;

the student income bank balance mentioned in paragraph (d), to the extent that it does not exceed the threshold amount (see subsection (7)), becomes the opening balance of the working credit applicable to the person on the participation day.

Opening balance following cessation as a new apprentice by youth allowance recipient

(5A) If:

(a) a person is receiving youth allowance and is a new apprentice; and

(b) the person ceases to be a new apprentice; and

(c) either because of a determination made as a result of that cessation or, if no determination is necessary, because of the cessation itself, the person, on a day (the ***participation day***):

(i) ceases to be a person to whom the student income bank set out in Module J of the Youth Allowance Rate Calculator applies; and

(ii) becomes a working credit participant; and

(d) the person had a student income bank balance greater than nil immediately before the participation day;

the student income bank balance mentioned in paragraph (d), to the extent that it does not exceed the threshold amount (see subsection (7)), becomes the opening balance of the working credit applicable to the person on the participation day.

Opening balance following cessation of ABSTUDY payment

(6) If:

(a) a person to whom the income bank under the ABSTUDY scheme applies stops being such a person; and

OFFICIAL: Sensitive // Legal Privilege

(b) the person becomes a working credit participant on a day (the ***participation day***) within 12 months after so stopping; and

(c) immediately before so stopping, the person had a credit balance greater than nil under the scheme;

the credit balance, to the extent that it does not exceed the threshold amount (see subsection (7)), becomes the opening balance of the working credit applicable to the person on the participation day.

Threshold amount

(7) In this section:

threshold amount means:

(a) if, on the participation day, the person is receiving youth allowance, the person is not undertaking full-time study and the person is not a new apprentice—$3,500; or

(b) in any other case—$1,000.

1073F Working out accruals and depletions of working credit for social security beneficiaries

This section determines, in respect of each working credit participant who is receiving a social security benefit, whether, for each day in an instalment period:

(a) there is an accrual to the participant's working credit balance; or

(b) the participant's working credit balance is unaffected; or

(c) the participant's working credit balance is depleted;

and, if there is an accrual to, or a depletion from, the participant's working credit balance, the amount of that accrual or depletion.

Method statement

Step 1. Work out the amount (including a nil amount) of the participant's employment income taken, in accordance with Division 1AA, to have been received on that day.

OFFICIAL: Sensitive // Legal Privilege

Step 2. Multiply the amount determined under step 1 by 14. This is the participant's rate of employment income on a fortnightly basis for the day.

Step 3. Add to the participant's rate of employment income on a fortnightly basis for the day the participant's rate of any other ordinary income on a fortnightly basis for the day. This is the participant's rate of total ordinary income on a fortnightly basis for the day.

Step 4. If the participant's rate of total ordinary income on a fortnightly basis for the day is less than $48, there is an accrual to the participant's working credit balance for the day of an amount equal to one fourteenth of the amount by which $48 exceeds that rate. The maximum working credit balance is:

(a) if the participant became a working credit participant on a day under subsection 1073E(2), (3), (4), (5), (5A) or (6) and on that day the participant was receiving youth allowance, the participant was not undertaking full-time study and the participant was not a new apprentice—$3,500; or

(b) in any other case—$1,000.

Step 5. If the participant's rate of total ordinary income on a fortnightly basis for the day is at least $48 but does not exceed the ordinary income free area applicable to the participant for the day under the income test module of the appropriate rate calculator, the participant's working credit balance for the day is neither increased nor reduced.

Step 6. If the participant's rate of total ordinary income on a fortnightly basis for the day is at least $48 and exceeds

OFFICIAL: Sensitive // Legal Privilege

the participant's applicable ordinary income free area for the day, the participant's working credit balance, if it is greater than nil on the day, is depleted on that day by the least of:

(a) the amount of employment income determined under step 1; or

(b) one fourteenth of the amount by which the participant's rate of total ordinary income on a fortnightly basis exceeds the participant's applicable ordinary income free area; or

(c) the participant's available working credit balance.

1073G Working out the effect of a working credit depletion on the fortnightly rate of ordinary income for a social security beneficiary

If, under section 1073F, the working credit balance of a working credit participant is depleted on a particular day, the participant's rate of ordinary income on a fortnightly basis for that day is reduced by the working credit depletion amount applicable to that day, determined under step 6 of the method statement, multiplied by 14.

1073H Working out accruals and depletions of working credit for social security pensioners

This section determines, in respect of each working credit participant who is receiving a social security pension, whether, for each day in an instalment period:

(a) there is an accrual to the participant's working credit balance; or

(b) the participant's working credit balance is unaffected; or

(c) the participant's working credit balance is depleted;

and, if there is an accrual to, or a depletion from, the participant's working credit balance, the amount of that accrual or depletion.

Method statement

Step 1. Work out the amount (including a nil amount) of the participant's employment income taken, in accordance with Division 1AA, to have been received on that day.

Step 2. Multiply the amount determined under step 1 by 364. This is the participant's rate of employment income on a yearly basis for the day.

Step 3. Add to the participant's rate of employment income on a yearly basis for the day the participant's rate of any other ordinary income on a yearly basis for the day. This is the participant's rate of total ordinary income on a yearly basis for the day.

Step 4. Divide the participant's rate of total ordinary income on a yearly basis for the day by 26. This is the participant's rate of total ordinary income, expressed on a fortnightly basis, for the day.

Step 5. Divide the yearly ordinary income free area applicable to the participant for the day under the ordinary income test module of the appropriate rate calculator by 26. This is the participant's applicable ordinary income free area, expressed on a fortnightly basis, for the day.

Step 6. If the participant's rate of total ordinary income, expressed on a fortnightly basis, for the day, is less than $48, there is an accrual to the participant's working credit balance, for the day, of an amount equal to one fourteenth of the amount by which $48 exceeds that rate. The maximum working credit balance is $1,000.

OFFICIAL: Sensitive // Legal Privilege

Step 7.	If the participant's rate of total ordinary income, expressed on a fortnightly basis, for the day, is at least $48 but does not exceed the participant's applicable ordinary income free area, expressed on a fortnightly basis for the day in accordance with step 5, the participant's working credit balance for the day is neither increased nor reduced.
Step 8.	If the participant's rate of total ordinary income, expressed on a fortnightly basis, for the day, is at least $48 and exceeds the participant's applicable ordinary income free area, expressed on a fortnightly basis for the day in accordance with step 5, the participant's working credit balance, if it is greater than nil on the day, is depleted on that day by the least of: (a) the amount of employment income determined under step 1; or (b) one fourteenth of the amount by which the participant's rate of total ordinary income, expressed on a fortnightly basis, exceeds the participant's applicable ordinary income free area, expressed on that basis; or (c) the participant's available working credit balance.

1073I Working out the effect of a working credit depletion on the yearly rate of ordinary income for a social security pensioner

If, under section 1073H, the working credit balance of a working credit participant is depleted on a particular day, the participant's rate of ordinary income on a yearly basis for that day is reduced by the working credit depletion amount applicable to that day, determined under step 8 of the method statement, multiplied by 364.

OFFICIAL: Sensitive // Legal Privilege

1073J Working credit balance prevents loss of qualification in certain cases

If:

(a) a person receiving disability support pension, carer payment, youth allowance or jobseeker payment is a working credit participant; and

(b) either:

(i) the participant commences to be taken, under a provision of this Act, to receive employment income; or

(ii) there is an increase in the employment income that is taken, under a provision of this Act, to be received by the participant; and

(c) the participant has a working credit balance greater than nil at the start of the instalment period of the participant in which the commencement or increase occurs; and

(d) but for the commencement or increase, the participant would have continued to be qualified for the payment mentioned in paragraph (a) until the earlier of:

(i) a day determined under Division 8 or 9 of Part 3 of the Administration Act; or

(ii) the day on which the participant's working credit balance is reduced to nil;

the participant is to be treated as if he or she had continued to be so qualified until the earlier of the days determined as referred to in subparagraphs (d)(i) and (ii).

OFFICIAL: Sensitive // Legal Privilege

Division 1A—Business income

1074 Ordinary income from a business—treatment of trading stock

(1) If:

(a) a person carries on a business; and

(b) the value of all the trading stock on hand at the end of a tax year is greater than the value of all the trading stock on hand at the beginning of that tax year;

the person's ordinary income for that tax year in the form of profits from the business is to include the amount of the difference in values.

(2) If:

(a) a person carries on a business; and

(b) the value of all the trading stock on hand at the end of a tax year is less than the value of all the trading stock on hand at the beginning of that tax year;

the person's ordinary income for that tax year in the form of profits from the business is to be reduced by the amount of the difference in values.

1075 Permissible reductions of business income

(1) Subject to subsection (2), if a person carries on a business, the person's ordinary income from the business is to be reduced by:

(a) losses and outgoings that relate to the business and are allowable deductions for the purposes of section 8-1 of the *Income Tax Assessment Act 1997*; and

(b) amounts that relate to the business and can be deducted in respect of plant (within the meaning of the *Income Tax Assessment Act 1997*) under Division 40 of that Act; and

OFFICIAL: Sensitive // Legal Privilege

(c) amounts that relate to the business and are allowable deductions under section 290-60 of the *Income Tax Assessment Act 1997*.

(2) If, under Division 1B, a person is taken to receive ordinary income on a financial investment, that ordinary income is not to be reduced by the amount of any expenses incurred by the person because of that investment.

Note: For ***financial investment*** see subsection 9(1).

(3) If a person's ordinary income for a period includes rental income from a property that is not business income, the person's ordinary income from that property is to be reduced by losses and outgoings that relate to the property and are allowable deductions for the purposes of section 8-1 of the *Income Tax Assessment Act 1997* for that period.

(4) If the amount of the allowable deductions relating to a property for a period under section 8-1 of the *Income Tax Assessment Act 1997* exceeds the amount of the rental income from the property for that period, the amount of the ordinary income from the property for that period is taken to be nil.

OFFICIAL: Sensitive // Legal Privilege

Division 1B—Income from financial assets (including income streams (short term) and certain income streams (long term))

1076 Deemed income from financial assets—persons other than members of couples

(1) This section applies to a person who is not a member of a couple.

(2) A person who has financial assets is taken, for the purposes of this Act, to receive ordinary income on those assets in accordance with this section.

(3) If the total value of the person's financial assets is equal to or less than the person's deeming threshold, the ordinary income the person is taken to receive per year on the financial assets is the amount worked out by multiplying the value of those assets by the below threshold rate.

(3A) If the total value of the person's financial assets exceeds the person's deeming threshold, the ordinary income that the person is taken to receive is worked out as follows:

Method statement

Step 1. Multiply the person's deeming threshold by the below threshold rate.

Note 1: For ***deeming threshold*** see subsection 1081(1).

Note 2: For ***below threshold rate*** see subsection 1082(1).

Step 2. Subtract the deeming threshold from the total value of the person's financial assets.

Note: For ***deeming threshold*** see subsection 1081(1).

OFFICIAL: Sensitive // Legal Privilege

Step 3.	Multiply the remainder worked out at Step 2 by the above threshold rate. Note: For ***above threshold rate*** see subsection 1082(2).
Step 4.	The total of the amounts worked out at Steps 1 and 3 represents the ordinary income the person is taken to receive per year on the financial assets.

(4) The person is taken, for the purposes of this Act, to receive one fifty-second of the amount calculated under subsection (3) or (3A) as ordinary income of the person during each week.

1077 Deemed income from financial assets—members of pensioner couples

(1) This section applies to the members of a pensioner couple.

(2) If one or both of the members of a couple have financial assets, the members of the couple are taken, for the purposes of this Act, to receive together ordinary income on those assets in accordance with this section.

(3) If the total value of the couple's financial assets is equal to or less than the couple's deeming threshold, the ordinary income the couple is taken to receive per year on the financial assets is the amount worked out by multiplying the value of those assets by the below threshold rate.

(3A) If the total value of the couple's financial assets exceeds the couple's deeming threshold, the ordinary income that the couple is taken to receive is worked out as follows:

Method statement	
Step 1.	Multiply the couple's deeming threshold by the below threshold rate. Note 1: For ***deeming threshold*** see subsection 1081(2).

Note 2: For ***below threshold rate*** see subsection 1082(1).

Step 2. Subtract the deeming threshold from the total value of the couple's financial assets.

Note: For ***deeming threshold*** see subsection 1081(2).

Step 3. Multiply the remainder worked out at Step 2 by the above threshold rate.

Note: For ***above threshold rate*** see subsection 1082(2).

Step 4. The total of the amounts worked out at Steps 1 and 3 represents the ordinary income the couple is taken to receive per year on the financial assets.

(4) Each member of the couple is taken, for the purposes of this Act, to receive, as ordinary income during each week, an amount worked out under the following formula:

$$\frac{\text{Amount calculated under subsection } (3) \text{ or } (3A)}{52} \times 0.5$$

1078 Deemed income from financial assets—members of non-pensioner couples

(1) This section applies to a person who is a member of a couple, other than a pensioner couple.

(2) A person who has financial assets is taken, for the purposes of this Act, to receive ordinary income on those assets in accordance with this section.

(3) If the total value of the person's financial assets is equal to or less than the person's deeming threshold, the ordinary income the person is taken to receive per year on the financial assets is the amount worked out by multiplying the value of those assets by the below threshold rate.

OFFICIAL: Sensitive // Legal Privilege

(3A) If the total value of the person's financial assets exceeds the person's deeming threshold, the ordinary income that the person is taken to receive is worked out as follows:

Method statement

Step 1. Multiply the person's deeming threshold by the below threshold rate.

Note 1: For ***deeming threshold*** see subsection 1081(3).

Note 2: For ***below threshold rate*** see subsection 1082(1).

Step 2. Subtract the deeming threshold from the total value of the person's financial assets.

Note: For ***deeming threshold*** see subsection 1081(3).

Step 3. Multiply the remainder worked out at Step 2 by the above threshold rate.

Note: For ***above threshold rate*** see subsection 1082(2).

Step 4. The total of the amounts worked out at Steps 1 and 3 represents the ordinary income the person is taken to receive per year on the financial assets.

(4) The person is taken, for the purposes of this Act, to receive one fifty-second of the amount calculated under subsection (3) or (3A) as ordinary income of the person during each week.

1081 Deeming threshold

(1) The deeming threshold for a person who is not a member of a couple is $30,000.

(2) The deeming threshold for a pensioner couple is $50,000.

(3) The deeming threshold for a member of a couple, other than a pensioner couple, is an amount equal to one-half of the amount fixed by subsection (2).

OFFICIAL: Sensitive // Legal Privilege

Note: The amounts fixed by subsections (1) and (2) are indexed every 1 July. See sections 1190–1192.

1082 Below threshold rate, above threshold rate

(1) For the purposes of this Division, the below threshold rate is the rate determined, by legislative instrument, by the Minister to be the below threshold rate for the purposes of this Division.

(2) For the purposes of this Division, the above threshold rate is the rate determined, by legislative instrument, by the Minister to be the above threshold rate for the purposes of this Division.

(3) A rate determined under this section must be in the form of a specified percentage.

1083 Actual return on financial assets not treated as ordinary income

(1) Subject to subsection (2), any return on a financial asset that a person actually earns, derives or receives is taken, for the purposes of this Act, not to be ordinary income of the person.

(2) If, because of:
(a) a determination under subsection 1084(1); or
(b) the operation of subsection 1084(2);
a financial investment is not to be regarded as a financial asset for the purposes of section 1076, 1077 or 1078, subsection (1) does not apply to any return on the investment that the person actually earns, derives or receives.

1084 Certain money and financial investments not taken into account

(1) The Minister may determine that:
(a) specified financial investments; or
(b) a specified class of financial investments;

OFFICIAL: Sensitive // Legal Privilege

are not to be regarded as financial assets for the purposes of section 1076, 1077 or 1078.

(2) If a financial investment is an unrealisable asset for the purposes of section 1129, 1130B or 1131, the financial asset is not to be regarded as a financial asset for the purposes of section 1076, 1077 or 1078.

(3) A determination under subsection (1):
  (a) must be in writing; and
  (b) takes effect on the day on which it is made or on such other day (whether earlier or later) as is specified in the determination.

1084A Valuation and revaluation of certain financial investments

The total value of a person's listed securities and managed investments (being listed securities and managed investments that fluctuate depending on the market) (the ***relevant investments***) is determined in accordance with the following:
  (a) an initial total valuation is to be given to the relevant investments on 1 July 1996, or when a new claim is determined, by the method set out in departmental guidelines;
  (b) that total valuation continues in effect until the relevant investments are revalued by the method set out in departmental guidelines, and that revaluation must occur:
    (i) on 20 March in each calendar year after 1996; and
    (ii) on 20 September in each calendar year after 1996; and
    (iii) when the person requests a revaluation of one or more of the person's listed securities and managed investments; and
    (iv) following an event that affects the relevant investments and is the subject of a notice given under section 68 of the Administration Act.

OFFICIAL: Sensitive // Legal Privilege

Division 1C—Income from income streams not covered by Division 1B

Subdivision B—Income streams that are not family law affected income streams

1097A Scope of Subdivision

(1) This Subdivision applies to income streams that are not family law affected income streams.

(2) However, this Subdivision does not apply to:

(a) an asset-tested income stream (long term) that is an account-based pension within the meaning of the *Superannuation Industry (Supervision) Regulations 1994*; or

(b) an asset-tested income stream (long term) that is an annuity (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) provided under a contract that meets the requirements determined in an instrument under subsection 9(1EA) of this Act.

Note 1: For treatment of an income stream mentioned in subsection (2), see Division 1B.

Note 2: Part 2 of Schedule 11 to the *Social Services and Other Legislation Amendment Act 2014* preserves the rules in this Subdivision for a certain kind of income stream that was being provided to a person immediately before 1 January 2015 where the person was receiving an income support payment immediately before that day provided that, since that day, that income stream has been provided to the person and the person has been continuously receiving an income support payment.

1098 Income from asset-test exempt income stream

(1) For the purpose of working out the annual rate of ordinary income of a person from an asset-test exempt income stream to which this Subdivision applies, the person is taken to receive from that income stream each year the amount worked out under section 1099 or 1099A.

OFFICIAL: Sensitive // Legal Privilege

Note: For ***asset-test exempt income stream*** see sections 9A, 9B and 9BA.

(2) Sections 1099 and 1099A do not apply if:

(a) the income stream is covered by subsection 9BA(1); or

(b) on the income stream's commencement day, there was a reasonable likelihood that the income stream would have been covered by subsection 9BA(1), but the income stream is no longer covered by that subsection.

Note: See section 1099AA.

1099 Income—income stream not a defined benefit income stream

If the asset-test exempt income stream to which this Subdivision applies is not a defined benefit income stream, the amount that the person is taken to receive from the income stream each year is worked out as follows:

$$\text{Annual payment} - \frac{\text{Purchase price}}{\text{Relevant number}}$$

where:

annual payment means the amount payable to the person for the year under the income stream.

purchase price has the meaning given by subsection 9(1).

relevant number has the meaning given by subsection 9(1).

Example: Mark is 65 years old and single. He purchases an annuity for $100,000 with a term based on life expectancy (i.e. 15.41 years, which he chooses to round up to 16 years). The annuity has all the revised characteristics listed in the legislation. His annual payment from the annuity totals $9,895. Mark's assessable income from this income stream is:

$$\$9{,}895 - \left[\frac{\$100{,}000}{16 \text{ years}}\right] = \$3{,}645$$

OFFICIAL: Sensitive // Legal Privilege

1099A Income—income stream is a defined benefit income stream

(1) Subject to subsection (2), if the asset-test exempt income stream to which this Subdivision applies is a defined benefit income stream, the amount that the person is taken to receive from the income stream each year is worked out as follows:

Annual payment – Deductible amount

where:

annual payment means the amount payable to the person for the year under the income stream.

deductible amount has the meaning given by subsection 9(1).

Cap on deductible amount

(2) If:

(a) the defined benefit income stream is not a military defined benefit income stream; and

(b) apart from this subsection, the deductible amount under subsection (1) in relation to the income stream for the year would exceed 10% of the amount payable to the person for the year under the income stream;

then that deductible amount is taken to be an amount equal to 10% of the amount payable to the person for the year under the income stream.

1099AA Income from market-linked asset-test exempt income stream

(1) If either of the following conditions is satisfied in relation to the asset-test exempt income stream to which this Subdivision applies:

(a) the income stream is covered by subsection 9BA(1);

(b) on the income stream's commencement day, there was a reasonable likelihood that the income stream would have been covered by subsection 9BA(1), but the income stream is no longer covered by that subsection;

the annual rate of ordinary income of a person from the income stream is worked out under whichever of subsections (2) and (3) is applicable.

Recipient makes election

(2) If:

(a) the person has elected that a particular amount is to be the payment, or the total of the payments, to be made under the income stream in respect of a period (the ***payment period***) that:

(i) consists of the whole or a part of a particular financial year; and

(ii) begins on or after the income stream's commencement day; and

(b) the election is in force on a particular day in the payment period;

the annual rate of ordinary income of the person from the income stream on that day is worked out using the following formula:

$$\left[\frac{\text{Total payments}}{\text{Days in payment period}} - \frac{\text{Purchase price}}{\text{Relevant number} \times 365}\right] \times 365$$

where:

purchase price has the meaning given by subsection 9(1).

relevant number has the meaning given by subsection 9(1).

total payments means the payment, or the total of the payments, to be made under the income stream in respect of the payment period.

Recipient does not make election

(3) If the person has not elected that a particular amount is to be the payment, or the total of the payments, to be made under the income stream in respect of a period (the ***payment period***) that:

(a) consists of the whole or a part of a particular financial year; and

(b) begins on or after the income stream's commencement day;

the annual rate of ordinary income of the person from the income stream on each day during the payment period is worked out using the following formula:

$$\left[\frac{\text{Default amount}}{\text{Days in payment period}} - \frac{\text{Purchase price}}{\text{Relevant number} \times 365}\right] \times 365$$

where:

default amount means 100% of the amount worked out for the financial year using the formula in subsection 9BA(5) (for pro-rating, see subsection (4)).

purchase price has the meaning given by subsection 9(1).

relevant number has the meaning given by subsection 9(1).

(4) If the income stream's commencement day is not a 1 July, the default amount (within the meaning of subsection (3)) for the financial year starting on the preceding 1 July must be reduced on a pro-rata basis by reference to the number of days in the financial year that are on and after the commencement day.

Exception—income stream's commencement day happens in June

(5) If:

(a) the income stream's commencement day happens in June; and

(b) no payment is made under the income stream for the financial year in which the commencement day happens;

subsections (2), (3) and (4) do not apply in working out the annual rate of ordinary income of the person from the income stream on a day in that financial year.

1099B Income from asset-tested income stream (long term)

(1) For the purpose of working out the annual rate of ordinary income of a person from an asset-tested income stream (long term) to

which this Subdivision applies, the person is taken to receive from that income stream each year the amount worked out under section 1099C or 1099D.

(2) Sections 1099C and 1099D do not apply to an income stream if section 1099DAA applies to the income stream.

1099C Income—asset-tested income stream (long term) that is not a defined benefit income stream

If the asset-tested income stream (long term) to which this Subdivision applies is not a defined benefit income stream, the amount that the person is taken to receive from the income stream each year is worked out as follows:

$$\text{Annual payment} - \left[\frac{\text{Purchase price} - \text{Residual capital value}}{\text{Relevant number}}\right]$$

where:

annual payment means the amount payable to the person for the year under the income stream.

purchase price has the meaning given by subsection 9(1).

relevant number has the meaning given by subsection 9(1).

residual capital value has the meaning given by subsection 9(1).

Note: For treatment of asset-tested income streams (short term) see Division 1B of Part 3.10.

Example: Sally is 65 years old and single. She purchases a 10 year annuity for $150,000, with a residual capital value of $20,000. Her total annual annuity payment is $18,337. Sally's assessable income from her 10 year annuity is:

$$\$18{,}337 - \frac{\$150{,}000 - \$20{,}000}{10} = \$5{,}337$$

OFFICIAL: Sensitive // Legal Privilege

1099D Income—asset-tested income stream (long term) that is a defined benefit income stream

(1) Subject to subsection (2), if the asset-tested income stream (long term) to which this Subdivision applies is a defined benefit income stream, the amount that the person is taken to receive from the income stream each year is worked out as follows:

Annual payment – Deductible amount

where:

annual payment means the amount payable to the person for the year under the income stream.

deductible amount has the meaning given by subsection 9(1).

Cap on deductible amount

(2) If:

(a) the defined benefit income stream is not a military defined benefit income stream; and

(b) apart from this subsection, the deductible amount under subsection (1) in relation to the income stream for the year would exceed 10% of the amount payable to the person for the year under the income stream;

then that deductible amount is taken to be an amount equal to 10% of the amount payable to the person for the year under the income stream.

1099DAA Income from certain low-payment asset-tested income streams

(1) If:

(a) an income stream is an asset-tested income stream (long term) to which this Subdivision applies; and

(b) the income stream is an allocated pension within the meaning of the *Superannuation Industry (Supervision) Regulations 1994*; and

(c) one or more payments have been, or are to be, made under the income stream in respect of a period (the ***payment period***) that:

(i) consists of the whole or a part of a financial year; and

(ii) begins on or after the income stream's commencement day; and

(d) on a day in the payment period, the amount worked out using the formula in subsection (2) is less than the amount worked out using the formula in subsection (3);

the annual rate of ordinary income of a person from the income stream on that day is worked out under subsection (3).

Annual rate based on total payments

(2) For the purposes of paragraph (1)(d), the formula in this subsection is:

$$\left[\frac{\text{Total payments}}{\text{Days in payment period}} - \frac{\text{Purchase price}}{\text{Relevant number} \times 365}\right] \times 365$$

where:

purchase price has the meaning given by subsection 9(1).

relevant number has the meaning given by subsection 9(1).

total payments means the payment, or the total of the payments, made, or to be made, under the income stream in respect of the payment period.

Annual rate based on minimum amount

(3) For the purposes of paragraph (1)(d), the formula in this subsection is:

$$\left(\frac{\text{Minimum amount}}{\text{Days in payment period}} - \frac{\text{Purchase price}}{\text{Relevant number} \times 365}\right) \times 365$$

OFFICIAL: Sensitive // Legal Privilege

where:

minimum amount means the minimum amount calculated in accordance with the method determined, by legislative instrument, by the Minister for the purposes of this definition.

purchase price has the meaning given by subsection 9(1).

relevant number has the meaning given by subsection 9(1).

Exception—income stream's commencement day happens in June

(4) If:

(a) the income stream's commencement day happens in June; and

(b) no payment is made under the income stream for the financial year in which the commencement day happens;

subsections (2) and (3) do not apply in working out the annual rate of ordinary income of the person from the income stream on a day in that financial year.

1099DAB Income—asset-tested income stream (lifetime)

If the income stream is an asset-tested income stream (lifetime), the amount that the person is taken to receive from the income stream each year is worked out as follows:

$$\text{Annual payment} \times 0.6$$

where:

annual payment means the amount payable to the person for the year under the income stream.

Subdivision C—Family law affected income streams

1099DA Scope of Subdivision

(1) This Subdivision applies to family law affected income streams.

OFFICIAL: Sensitive // Legal Privilege

(2) However, this Subdivision does not apply to:

(a) an asset-tested income stream (long term) that is an account-based pension within the meaning of the *Superannuation Industry (Supervision) Regulations 1994*; or

(b) an asset-tested income stream (long term) that is an annuity (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) provided under a contract that meets the requirements determined in an instrument under subsection 9(1EA) of this Act.

Note 1: For treatment of an income stream mentioned in subsection (2), see Division 1B.

Note 2: Part 2 of Schedule 11 to the *Social Services and Other Legislation Amendment Act 2014* preserves the rules in this Subdivision for a certain kind of income stream that was being provided to a person immediately before 1 January 2015 where the person was receiving an income support payment immediately before that day provided that, since that day, that income stream has been provided to the person and the person has been continuously receiving an income support payment.

1099DB Income from asset-test exempt income streams

(1) For the purpose of working out the annual rate of ordinary income of a person from an asset-test exempt income stream to which this Subdivision applies, the person is taken to receive from that income stream each year:

(a) if the income stream is not a defined benefit income stream—the amount determined by the Secretary under this paragraph; or

(b) if the income stream is a defined benefit income stream—the amount determined by the Secretary under this paragraph.

(2) In making a determination under paragraph (1)(a) or (b), the Secretary must comply with any relevant decision-making principles in force under section 1099DD.

OFFICIAL: Sensitive // Legal Privilege

1099DC Income from asset-tested income stream (long term)

(1) For the purpose of working out the annual rate of ordinary income of a person from an asset-tested income stream (long term) to which this Subdivision applies, the person is taken to receive from that income stream each year:

(a) if the income stream is not a defined benefit income stream—the amount determined by the Secretary under this paragraph; or

(b) if the income stream is a defined benefit income stream—the amount determined by the Secretary under this paragraph.

(2) In making a determination under paragraph (1)(a) or (b), the Secretary must comply with any relevant decision-making principles in force under section 1099DD.

1099DCA Income from asset-tested income stream (lifetime)

(1) For the purpose of working out the annual rate of ordinary income of a person from an asset-tested income stream (lifetime) to which this Subdivision applies, the person is taken to receive from that income stream each year the amount determined by the Secretary under this subsection.

(2) In making a determination under subsection (1), the Secretary must comply with any relevant decision-making principles in force under section 1099DD.

1099DD Decision-making principles

The Secretary may, by legislative instrument, formulate principles (***decision-making principles***) to be complied with by him or her in making decisions under:

(a) paragraph 1099DB(1)(a); or

(b) paragraph 1099DB(1)(b); or

(c) paragraph 1099DC(1)(a); or

(d) paragraph 1099DC(1)(b); or

(e) subsection 1099DCA(1).

OFFICIAL: Sensitive // Legal Privilege

Division 1D—Aged care accommodation bonds: certain transactions before 6 November 1997

1099E Scope of Division

(1) This Division applies to a person if:

(a) at any time from the beginning of 1 October 1997 until the end of 5 November 1997, the person became liable to pay an accommodation bond for entry to a residential care service; and

(b) either an accommodation charge would have been payable for the entry, or the person would have been a charge exempt resident, had section 44-8B and Division 57A of the *Aged Care (Transitional Provisions) Act 1997* been in force at the time of the entry; and

(c) the person later made an agreement (a ***refund agreement***) with the provider of the service that the person's liability to pay an accommodation bond for the entry was to be replaced with a liability to pay an accommodation charge for the entry, and that any payment of any of the bond was to be refunded to the person.

Note: For ***accommodation bond***, ***accommodation charge*** and ***charge exempt resident***, see subsection 11(1).

(2) This Division also applies to a person if the Secretary is satisfied that:

(a) on or before 5 November 1997, the person sold his or her principal home for the sole or principal purpose of raising money to pay an accommodation bond for entry to a residential care service; and

(b) either an accommodation charge would have been payable for the entry, or the person would have been a charge exempt resident, had section 44-8B and Division 57A of the *Aged Care Act 1997* been in force at the time of the entry.

Note: For ***accommodation bond***, ***accommodation charge*** and ***charge exempt resident***, see subsection 11(1).

OFFICIAL: Sensitive // Legal Privilege

(3) This Division also applies to the partner of a person covered by subsection (1) or (2) (even if the person so covered is now deceased).

(4) For the purposes of subsection (2), the time at which a person ***sells*** his or her home is the time when he or she comes under a legal obligation to transfer the home to the buyer.

1099F Exempt bond amount does not count as income

The person's exempt bond amount (see section 1099H) does not count as ***income*** of the person for the purposes of this Act.

Note: ***Income*** is otherwise defined in section 8.

1099G Person's ordinary income reduced using financial asset rules

(1) For the purposes of this section, assume that the person's exempt bond amount (see section 1099H) were a financial asset of the person.

(2) The person's ordinary income for a year is reduced by the amount of ordinary income taken to be received on the asset for the year, as worked out under Division 1B (income from financial assets (including income streams (short term) and certain income streams (long term)).

(3) In working out that reduction, assume that the total value of the person's financial assets exceeded the person's deeming threshold (***deeming threshold*** is a term used in Division 1B).

1099H Meaning of *exempt bond amount*

(1) The following is how to work out a person's ***exempt bond amount***.

(2) If the person is covered by subsection 1099E(1) (but not subsection 1099E(2)), the person's ***exempt bond amount*** is any amount of accommodation bond payment refunded to the person under the refund agreement mentioned in that subsection.

OFFICIAL: Sensitive // Legal Privilege

(3) If the person is covered by subsection 1099E(2) (but not subsection 1099E(1)), the person's ***exempt bond amount*** is the gross proceeds of the sale mentioned in that subsection, less:

(a) any costs incurred in the course of the sale; and

(b) the amount of any debt the person or the person's partner owed immediately before the sale, so far as the debt was secured by the home at that time.

(4) If the person is covered by both subsections 1099E(1) and (2), the person's ***exempt bond amount*** is the greater of the 2 amounts worked out under subsections (2) and (3) of this section.

(5) If the person is covered by subsection 1099E(3), the person's ***exempt bond amount*** is equal to the exempt bond amount of the person's partner, as worked out under subsection (2), (3) or (4) of this section.

(6) But in all of the above cases, if the person currently has a partner (who is not deceased), the person's ***exempt bond amount*** is half of what it would otherwise be.

OFFICIAL: Sensitive // Legal Privilege

Division 1E—Refunds to charge exempt residents

1099J Scope of Division

(1) This Division applies to an amount (the ***refunded amount***) that is refunded as mentioned in paragraph 56-1(kc) or 56-3(ic) of the *Aged Care Act 1997* (as in force before 1 July 2014) to a person because the person is or was a charge exempt resident.

Note: For ***charge exempt resident***, see subsection 11(1).

(2) This Division also applies to an amount (also called the ***refunded amount***) that is paid to a person under paragraph 44-8A(6)(b) of the *Aged Care (Transitional Provisions) Act 1997* because the person is or was a charge exempt resident.

Note: For ***charge exempt resident***, see subsection 11(1).

(3) To avoid doubt, this Division does not apply if the amount is paid to the person's estate or to any other person.

1099K Refunded amount does not count as income

The refunded amount does not count as ***income*** of the person for the purposes of this Act.

Note: ***Income*** is otherwise defined in section 8.

1099L Person's ordinary income reduced using financial asset rules

(1) For the purposes of this section, assume that the refunded amount were a financial asset of the person.

(2) The person's ordinary income for a year is reduced by the amount of ordinary income taken to be received on the asset for the year, as worked out under Division 1B (income from financial assets (including income streams (short term) and certain income streams (long term)).

OFFICIAL: Sensitive // Legal Privilege

(3) In working out that reduction, assume that the total value of the person's financial assets exceeded the person's deeming threshold (***deeming threshold*** is a term used in Division 1B).

1099M Application of Division

This Division applies in relation to a person who is a charge exempt resident at any time, whether before or after the commencement of the Division.

OFFICIAL: Sensitive // Legal Privilege

Division 2—Conversion of foreign currency amounts

1100 How value of a payment received in a foreign currency is to be determined

(1) If:

(a) the rate of a payment to be made to a person under this Act is being worked out for a calculation day; and

(b) an amount received by the person in a foreign currency needs to be taken into account in working out the rate;

the value in Australian currency of the amount received is to be determined in accordance with this section.

(2) Except in the case of:

(a) amounts received in a foreign currency in respect of which the Secretary determines that it is not appropriate for this subsection to apply; or

(b) a payment, or class or kind of payments, received in a foreign currency, being a payment or a class or kind of payments in respect of which the Secretary determines that it is not appropriate for this subsection to apply;

the value in Australian currency of the amount received is to be calculated using the appropriate market exchange rate for the foreign currency on the fifth business day before the calculation day.

(3) For the purposes of subsection (2), the ***appropriate market exchange rate*** on a particular day for a foreign currency to which subsection (2) applies is:

(a) if there is an on-demand airmail buying rate for the currency available at the Commonwealth Bank of Australia at the start of business in Sydney on that day and the Secretary determines it is appropriate to use that rate—that rate; or

(b) in any other case:

(i) if there is another rate of exchange for the currency, or there are other rates of exchange for the currency, available at the Commonwealth Bank of Australia at the

OFFICIAL: Sensitive // Legal Privilege

start of business in Sydney on that day and the Secretary determines it is appropriate to use the other rate or one of the other rates—the rate so determined; or

(ii) otherwise—a rate of exchange for the currency available from another source at the start of business in Sydney on that day that the Secretary determines it is appropriate to use.

(4) In the case of a foreign currency or a payment in a foreign currency in respect of which the Secretary has determined that it is not appropriate for subsection (2) to apply, the value in Australian currency of the amount received is to be calculated using a rate of exchange that the Secretary determines to be appropriate.

(5) The Secretary may make written determinations for the purposes of this section.

(6) In this section:

business day means a day other than:

(a) a Saturday; or

(b) a Sunday; or

(c) a day that is a public holiday or bank holiday in Canberra or Sydney.

calculation day means the first business day for each month.

month means one of the 12 months of the calendar year.

1100A Determining value of a payment originally denominated in a foreign currency but made in Australian currency

(1) This section applies if, for the purposes of working out for a calculation day the rate of a payment to be made to a person under this Act, it is necessary to take account of a payment (the ***foreign payment***):

(a) that the person received from a source overseas; and

(b) that was originally denominated in a foreign currency but was received by the person in Australian currency.

OFFICIAL: Sensitive // Legal Privilege

(2) For those purposes, the value in Australian currency of the foreign payment is taken to be the value that would have been determined under section 1100 had the person received the foreign payment in the foreign currency.

(3) Subsection (2) has effect regardless of the amount of the foreign payment actually received by the person in Australian currency.

(4) In this section:

calculation day has the same meaning as in section 1100.

OFFICIAL: Sensitive // Legal Privilege

Division 3—Disposal of ordinary income

1106 Disposal of ordinary income

(1) For the purposes of this Act, a person ***disposes of ordinary income*** of the person if:

(a) the person engages in a course of conduct that directly or indirectly:

(i) destroys the source of the income; or

(ii) disposes of the income or the source of the income; or

(iii) diminishes the income; and

(b) one of the following subparagraphs is satisfied:

(i) the person receives no consideration in money or money's worth for the destruction, disposal or diminution;

(ii) the person receives inadequate consideration in money or money's worth for the destruction, disposal or diminution;

(iii) the Secretary is satisfied that the person's purpose, or the person's dominant purpose, in engaging in that course of conduct was to obtain a social security advantage.

(2) For the purposes of subsection (1), a person has a purpose of obtaining a social security advantage if the person has a purpose of:

(a) obtaining, or enabling the person's partner to obtain, a social security pension, a social security benefit, a youth training allowance, a service pension, income support supplement or a veteran payment; or

(b) obtaining, or enabling the person's partner to obtain, a social security pension, a social security benefit, a youth training allowance, a service pension, income support supplement or a veteran payment at a higher rate than that which would otherwise have been payable; or

OFFICIAL: Sensitive // Legal Privilege

(c) ensuring that the person or the person's partner would be qualified for fringe benefits for the purposes of this Act or the Veterans' Entitlements Act.

(3) Paragraph (1)(a) does not apply if:

(a) the source of the income is a deprived asset, or

(b) the income is earned, derived or received from a transaction involving a deprived asset.

Note: For ***amount of disposition*** see section 1107.

1107 Amount of disposition

If a person disposes of ordinary income, the amount of the disposition is the amount that, in the Secretary's opinion, is:

(a) if the person receives no consideration for the destruction, disposal or diminution—the annual rate of the diminution of the income because of the destruction, disposal or diminution; or

(b) if the person receives consideration for the destruction, disposal or diminution—the annual rate of the diminution of the income because of the destruction, disposal or diminution less the part (if any) of the consideration that the Secretary considers to be fair and reasonable in all the circumstances of the case.

1108 Disposal of ordinary income—individuals

If a person who is not a member of a couple has disposed of ordinary income of the person, the amount of that disposition is to be included in the person's ordinary income for the purposes of this Act.

Note 1: For ***disposes of ordinary income*** see section 1106.

Note 2: For ***amount of disposition*** see section 1107.

Note 3: For ***ordinary income*** see subsection 8(1): ***ordinary income*** includes investment income but does not include maintenance income.

OFFICIAL: Sensitive // Legal Privilege

1109 Disposal of ordinary income—members of couples

(1) Subject to subsections (1A), (1B), (2), (3) and (4), if a person who is a member of a couple has disposed of ordinary income of the person:

(a) 50% of the amount of the disposition is to be included in the person's ordinary income; and

(b) 50% of the amount of the disposition is to be included in the person's partner's ordinary income.

Note 1: For ***disposes of ordinary income*** see section 1106.

Note 2: For ***amount of disposition*** see section 1107.

(1A) Subject to subsection (3), for the purposes of the application of this Act in relation to a person's rate of social security benefit, if:

(a) a person who is a member of a couple has disposed of ordinary income of the person; and

(b) the amount of the disposition is not greater than the least amount that, if added to the person's ordinary income (disregarding this section), would cause the person's rate of benefit to be reduced to nil;

the amount of the disposition is to be included in the person's ordinary income.

(1B) Subject to subsection (3), for the purposes of the application of this Act in relation to a person's rate of social security benefit, if:

(a) a person who is a member of a couple has disposed of ordinary income of the person; and

(b) the amount of the disposition is greater than the least amount that, if added to the person's ordinary income (disregarding this section), would cause the person's rate of benefit to be reduced to nil;

then:

(c) the second of the amounts referred to in paragraph (b) is to be included in the person's ordinary income; and

(d) the difference between the 2 amounts referred to in paragraph (b) is to be included in the person's partner's ordinary income.

OFFICIAL: Sensitive // Legal Privilege

(2) If:

(a) amounts are included under subsection (1) in the ordinary income of a person who is a member of a couple and in the person's partner's ordinary income because the person has disposed of ordinary income; and

(b) the person and the person's partner cease to be members of the same couple;

any amount that was included in the ordinary income of the person's former partner because of the disposition is to be included in the person's ordinary income.

(3) If:

(a) amounts are included under subsection (1) in the ordinary income of a person who is a member of a couple and in the person's partner's ordinary income because the person has disposed of ordinary income; and

(b) the person dies;

no amount is to be included in the ordinary income of the person's partner because of the disposition.

(4) If:

(a) an amount is included under subsection (1) in the ordinary income of a person who is a member of a couple and in the person's partner's ordinary income because the person has disposed of ordinary income; and

(b) the person's partner dies;

any amount that would, if the person's partner had not died, be included in the ordinary income of the person's partner because of the disposition is to be included in the person's ordinary income.

Note: For ***ordinary income*** see subsection 8(1): ***ordinary income*** includes investment income but does not include maintenance income.

1111 Dispositions more than 5 years old to be disregarded

This Division does not apply to a disposition of ordinary income that took place:

(a) more than 5 years before the time when:

OFFICIAL: Sensitive // Legal Privilege

(i) the person who disposed of the ordinary income; or

(ii) if the person who disposed of the ordinary income was, at the time of disposition, a member of a couple—the person's partner;

became qualified for a social security pension; or

(b) less than 5 years before the time referred to in paragraph (a) and before the time when the Secretary is satisfied that the person who disposed of the ordinary income could reasonably have expected that the person or the person's partner would become qualified for such a pension.

OFFICIAL: Sensitive // Legal Privilege

Part 3.12—General provisions relating to the assets test

Division 1—Value of person's assets

1118 Certain assets to be disregarded in calculating the value of a person's assets

(1) In calculating the value of a person's assets for the purposes of this Act (other than sections 198F to 198MA (inclusive), Division 1B of Part 3.10, Division 2 and sections 1133 and 1135A), disregard the following:

(a) if the person is not a member of a couple—the value of any right or interest of the person in the person's principal home that is a right or interest that gives the person reasonable security of tenure in the home;

(b) if the person is a member of a couple—the value of any right or interest of the person in one residence that is the principal home of the person, of the person's partner or of both of them that is a right or interest that gives the person or the person's partner reasonable security of tenure in the home;

(c) the value of any life interest of the person other than:

(i) a life interest in the principal home of the person, of the person's partner or of both of them; or

(ii) a life interest created by the person, by the person's partner or by both of them; or

(iii) a life interest created on the death of the person's partner;

(d) the value of any asset-test exempt income stream of the person, other than a partially asset-test exempt income stream;

(da) half of the value of any partially asset-test exempt income stream of the person;

(e) any amount that is:

OFFICIAL: Sensitive // Legal Privilege

(i) received by the person within the immediately preceding period of 90 days; and

(ii) is excluded from the definition of ***income*** in subsection 8(1) by subsection 8(4) or (5);

(f) the value of the person's investment in:

(i) a superannuation fund; or

(ii) an approved deposit fund; or

(iv) an ATO small superannuation account;

until the person:

(v) reaches pension age; or

(vi) starts to receive a pension or annuity out of the fund;

(g) if:

(i) the person has a granny flat interest in the person's principal home; and

(ii) the granny flat interest gives the person reasonable security of tenure in the home; and

(iii) the person acquired or retained the granny flat interest before 22 August 1990;

the value of the granny flat interest;

(ga) if:

(i) the person has a granny flat interest in the person's principal home; and

(ii) the person is a person to whom subsection 1150(2), 1151(2), 1152(2), 1152(5), 1153(2), 1154(2), 1155(2), 1156(2) or 1157(2) applies;

the value of the granny flat interest;

Note: A person described in subparagraph (ii) will have acquired or retained the granny flat interest on or after 22 August 1990 (see section 1145A).

(gb) if:

(i) the person is a sale leaseback resident; and

OFFICIAL: Sensitive // Legal Privilege

(ii) the person is a person to whom subsection 1150(2), 1151(2), 1152(2), 1152(5), 1153(2), 1154(2), 1155(2), 1156(2) or 1157(2) applies;

the value of any right or interest of the person in the sale leaseback home;

(h) the value of any contingent, remainder or reversionary interest of the person (other than an interest created by the person, by the person's partner or by both of them);

(j) the value of any assets (other than a contingent, remainder or reversionary interest) to which the person is entitled from the estate of a deceased person but which has not been, and is not able to be, received;

(k) the value of any medal or other decoration awarded (whether to the person or another person) for valour that is owned by the person otherwise than for the purposes of investment or a hobby;

(m) the value of:

(i) any cemetery plot acquired by the person for the burial of the person or the person's partner; and

(ii) any funeral expenses paid in advance by the person in respect of the funeral of the person or the person's partner;

(ma) an amount invested in an exempt funeral investment and any return on the investment;

(n) if:

(i) personal property of the person is designed for use by a disabled person; and

(ii) the person, the person's partner, a dependent child of the person or a dependent child of the person's partner is disabled;

the value of the property;

(p) if:

(i) personal property of the person is modified so that it can be used by a disabled person; and

OFFICIAL: Sensitive // Legal Privilege

(ii) the person, the person's partner, a dependent child of the person or a dependent child of the person's partner is disabled;

the part of the value of the property that is attributable to the modifications;

(q) if the person is provided with a motor vehicle under the scheme administered by the Commonwealth known as the gift car scheme—the value of that motor vehicle;

(r) if the person has sold a residence that was the principal home of the person on terms and has purchased, also on terms, another residence that is the principal home of the person—so much of the balance due to the person in respect of the sale as will be applied by the person in respect of the purchase of the other residence;

(s) the amount of any insurance or compensation payments received by the person because of the loss of or damage to buildings, plant or personal effects within the immediately preceding 12 months or such longer period as the Secretary determines for any special reason for a particular payment;

(sa) if subsection (1AB) applies (application of insurance etc. payments to rebuilding etc.)—the amount worked out under that subsection, during the period mentioned in subsection (1AC);

(sb) if a person has received an NDIS amount—the amount worked out under subsection (1AD);

(t) the value of any native title rights and interests of the person, or of a community or group of which the person is a member;

(u) the amount of any accommodation bond balance in respect of an accommodation bond paid by the person;

(v) the amount of any refundable deposit balance in respect of a refundable deposit paid by the person.

Note 1: For ***granny flat interest*** see subsection 12A(2).

Note 2: For ***principal home*** see section 11A.

Note 3: For ***reasonable security of tenure*** see subsection 11A(10).

Note 4: For ***exempt funeral investment*** see section 19E.

OFFICIAL: Sensitive // Legal Privilege

Application of insurance etc. payments to rebuilding etc.

(1AA) Subsection (1AB) applies if:

(a) a person receives any insurance or compensation payments because of loss of or damage to a building (including the person's principal home) or plant; and

(b) either:

(i) if the building or plant was lost—the person applies the whole or a part of those payments to build another building or plant to replace the building or plant that was lost; or

(ii) if the building or plant was damaged—the person applies the whole or a part of those payments to rebuild, repair or renovate the building or plant.

(1AB) For the purposes of paragraph (1)(sa), the amount that may be disregarded is:

(a) the value of the building or plant that is being built, rebuilt, repaired or renovated, to the extent that those payments are so applied; and

(b) if a building whose value is being disregarded under paragraph (a) of this subsection is to be the person's principal home:

(i) the value of the land on which the building is being built, rebuilt, repaired or renovated to the extent that, once the building becomes the person's principal home, the land will, under section 11A, be included in a reference to the ***principal home***; and

(ii) the value of any other structure, on that land, that is to be the person's principal home to the extent that the structure was built before the person began applying the payments.

(1AC) For the purposes of paragraph (1)(sa), the amount worked out under subsection (1AB) may be disregarded during the period:

(a) beginning when the payments are received; and

(b) ending at the earlier of the following times:

(i) 12 months, or such longer period as the Secretary determines for any special reason, after that time;

(ii) when the building, rebuilding, repair or renovation of the building or plant is complete.

NDIS amounts

(1AD) For the purposes of paragraph (1)(sb), the amount that may be disregarded is the value of the sum of:

(a) the NDIS amounts received by the person; and

(b) any return on those amounts that the person earns, derives or receives;

less the sum of the amounts spent by the person in accordance with an NDIS plan (whether in the person's capacity as an NDIS participant or as a person managing the funding under an NDIS plan for an NDIS participant).

Definitions

(1A) In this section:

native title rights and interests means:

(a) native title rights and interests within the meaning of section 223 of the *Native Title Act 1993*;

(b) any rights and interests of a similar nature under any law of a State, a Territory or a foreign country (whether or not the rights and interests relate to land or waters outside Australia);

but, to avoid any doubt, does not include any right or interest in a lease or licence, or in a freehold estate.

partially asset-test exempt income stream means:

(a) an asset-test exempt income stream that:

(i) is an income stream (other than a defined benefit income stream) covered by subsection 9A(1) or (1A), 9B(1) or 9BA(1); and

(ii) has a commencement day during the period from 20 September 2004 to 19 September 2007 (both dates inclusive); and

OFFICIAL: Sensitive // Legal Privilege

(iii) is not covered by principles (if any) determined for the purposes of this subparagraph, by legislative instrument, by the Secretary; or

(b) an income stream that:

(i) has a commencement day happening on or after 20 September 2007; and

(ii) is covered by principles determined for the purposes of this subparagraph, by legislative instrument, by the Secretary.

Application of proceeds of sale of principal home

(1B) Subsection (2) applies if:

(a) a person sells the person's principal home; and

(b) either:

(i) the person does not have a right or interest in a principal home; or

(ii) the person has a right or interest in a principal home that the Secretary is satisfied does not give the person reasonable security of tenure in the home; and

(c) before the end of 12 months, or any longer period determined under subsection (2B), after the sale, one or more of the following applies:

(i) the person intends to apply the whole or a part of the proceeds of the sale to build, rebuild, repair or renovate another residence that is to be the person's principal home;

(ii) the person applies the whole or a part of the proceeds of the sale to build, rebuild, repair or renovate another residence that is to be the person's principal home;

(iii) the person intends to apply the whole or a part of the proceeds of the sale to purchase another residence that is to be the person's principal home.

(2) For the purposes of this Act (other than Division 1B of Part 3.10):

(a) if subparagraph (1B)(c)(i) applies—disregard the proceeds, to the extent that the person intends to apply those proceeds to

OFFICIAL: Sensitive // Legal Privilege

build, rebuild, repair or renovate the other residence, until the earlier of the following times:

(i) the period mentioned in paragraph (1B)(c) ends;

(ii) the Secretary becomes satisfied that the person has ceased to have that intention; or

(b) if subparagraph (1B)(c)(ii) applies—disregard the value of the following, until the end of the period mentioned in paragraph (1B)(c), to the extent that the person applies those proceeds to build, rebuild, repair or renovate that other residence:

(i) the value of the other residence;

(ii) the value of the land on which the other residence is being built, rebuilt, repaired or renovated to the extent that, once the building becomes the person's principal home, the land will, under section 11A, be included in a reference to the ***principal home***;

(iii) the value of any other structure, on that land, that is to be the person's principal home to the extent that the structure was built before the person began applying those proceeds; or

(c) if subparagraph (1B)(c)(iii) applies—disregard the proceeds, to the extent that the person intends to apply those proceeds to purchase the other residence, until the earlier of the following times:

(i) the period mentioned in paragraph (1B)(c) ends;

(ii) the Secretary becomes satisfied that the person has ceased to have that intention.

(2A) Subsection (2) does not apply to the calculation of the value of a person's assets for the purposes of sections 198F to 198MA or 1123 to 1128 (disposal of assets).

(2B) For the purposes of subsection (1B), the Secretary may determine, in writing, a period of up to 24 months if:

(a) a person who has sold his or her principal home is making reasonable attempts to purchase, build, repair or renovate another residence; and

OFFICIAL: Sensitive // Legal Privilege

(b) the person has been making those attempts within a reasonable period after selling the principal home; and

(c) the person has experienced delays beyond his or her control in purchasing, building, repairing or renovating the other residence.

Value of certain personal effects of less than $10,000

(3) For the purposes of this section, if:

(a) the value of any assets of a person or, if the person is a member of a couple, of the person and the person's partner, that consists of the contents of a principal home and of other personal effects that are used primarily within the principal home does not exceed $10,000; and

(b) the assets are used primarily for private or domestic purposes;

the value of the assets is to be taken to be $10,000 unless the person satisfies the Secretary that the value of the assets is less than $10,000.

This section subject to sections 1145A to 1157

(4) This section has effect subject to sections 1145A to 1157 (special residences).

1118A Value of superannuation investments determined by Minister to be disregarded

(1) The value of a person's investment in a superannuation fund, an approved deposit fund or an ATO small superannuation account is to be disregarded in calculating the value of the person's assets for the purposes of this Act (other than section 198H, 198HA, 198HB, 198J, 198JA, 198JB, 198K or 198L, subparagraph 263(1)(d)(iv), Division 1B of Part 3.10, or section 1124A, 1125, 1125A, 1126, 1133 or 1135A) if the investment is specified in a determination made under subsection (2).

(2) The Minister may specify:

(a) a specified investment in a superannuation fund, an approved deposit fund or an ATO small superannuation account; or

(b) a specified class of investments in a superannuation fund, an approved deposit fund or an ATO small superannuation account;

in a determination for the purpose of subsection (1).

(3) A determination under subsection (2) must be in writing.

(4) A determination under subsection (2) takes effect on the day on which it is made or on such other day (whether earlier or later) as is specified in the determination.

1118AA Value of assets reduced by amounts received from Mark Fitzpatrick Trust

(1) In this section:

application day, in relation to a person who was a recipient of a social security payment immediately before 28 September 1995, means the day, on or after that date, on which the person applied or applies for review of the rate of that social security payment because of the expected enactment, or the operation, of this section.

(2) Subject to subsection (3), the value of a person's assets for the purposes of this Act (other than ~~subparagraph 501E(1)(d)(iv) and~~ sections 1124A, 1125, 1125A and 1126) is reduced by the sum of any amounts received by the person from the Mark Fitzpatrick Trust.

(3) Subsection (2) has effect, or is taken to have had effect, as the case may be:

(a) for a person who was a recipient of a social security pension immediately before 28 September 1995—on the first pension payday after the application day; or

(b) for a person who was a recipient of a social security payment other than a social security pension immediately before

OFFICIAL: Sensitive // Legal Privilege

28 September 1995—on the next day, after the application day, on which the person received or receives an instalment of the payment; or

(c) for a person who became or becomes a recipient of a social security payment on or after 28 September 1995—on the day on which the person received or receives the first instalment of the payment.

1118AB Value of person's assets reduced: certain transactions to do with aged care accommodation bonds

(1) This section applies to a person if Division 1D of Part 3.10 applies to the person.

(2) For the purposes of this Act (other than ~~subparagraph 501E(1)(d)(iv) and~~ sections 1124A, 1125, 1125A and 1126), the total value of the person's assets is reduced by the person's exempt bond amount (as defined by section 1099H).

1118AC Value of person's assets reduced: refunds to charge exempt residents

(1) This section applies to a person if Division 1E of Part 3.10 applies to the person.

(2) For the purposes of this Act (other than ~~subparagraph 501E(1)(d)(iv) and~~ sections 1124A, 1125, 1125A and 1126), the total value of the person's assets is reduced by the refunded amount (as defined by section 1099J).

1119 Value of asset-tested income streams that are not defined benefit income streams, asset-tested income streams (lifetime) or family law affected income streams

(1) This section applies to a person's asset-tested income stream if it is not a defined benefit income stream, it is not an asset-tested income stream (lifetime) and it is not a family law affected income stream.

Note: For ***defined benefit income streams***, see section 1120. For ***asset-tested income streams (lifetime)***, see sections 1120AA and 1120AB. For ***family law affected income streams***, see section 1120A.

(2) The value of the income stream is, for the purposes of the assets test, worked out:

(a) if the person receives payments from the income stream 2 or more times a year—in relation to each 6 month period of the income stream's term; and

(b) if the person receives a payment from the income stream only once a year—in relation to each 12 month period of the income stream's term.

(3) If the income stream has an account balance, the value of the income stream, for the purposes of the assets test, is the value of the account balance at the beginning of the 6 month or 12 month period (as the case requires) referred to in subsection (2).

(4) If the income stream does not have an account balance, the value of the income stream is, for the purposes of the assets test, worked out as follows:

$$\text{Purchase price} - \left[\left(\frac{\text{Purchase price} - \text{Residual capital value}}{\text{Relevant number}}\right) \times \text{Term elapsed}\right]$$

where:

purchase price has the meaning given by subsection 9(1).

relevant number has the meaning given by subsection 9(1).

residual capital value has the meaning given by subsection 9(1).

term elapsed is the number of years of the term that have elapsed since the commencement day of the income stream, rounded down:

(a) in the case of an income stream referred to in paragraph (2)(a)—to the nearest half-year; and

(b) in the case of an income stream referred to in paragraph (2)(b)—to the nearest whole year.

OFFICIAL: Sensitive // Legal Privilege

Example: Sally is 65 years old and single. She purchases a 10 year annuity for $150,000 with a residual capital value of $20,000. Her total annual annuity payment is $18,337. Monthly payments commence on 1 January. Her assessable asset for the first six months will be:

$$\$150{,}000 - \left[\left(\frac{\$150{,}000 - \$20{,}000}{10 \text{ years}}\right) \times 0 \text{ year}\right] = \$150{,}000$$

Her assessable asset after 30 June in that year will be:

$$\$150{,}000 - \left[\left(\frac{\$150{,}000 - \$20{,}000}{10 \text{ years}}\right) \times 0.5 \text{ year}\right] = \$143{,}500$$

1120 Value of asset-tested income streams that are defined benefit income streams

(1) This section applies to a person's asset-tested income stream if it is a defined benefit income stream and it is not a family law affected income stream.

Note: For ***family law affected income streams***, see section 1120A.

(2) The value of the income stream is, for the purposes of the assets test, worked out in relation to each 12 month period of the income stream's term.

(3) The value of the income stream is, for the purposes of the assets test, worked out as follows:

Annual payment × Pension valuation factor

where:

annual payment means the amount payable to the person for the relevant 12 month period under the income stream.

pension valuation factor means the pension valuation factor that applies to the person in accordance with the determination made, by legislative instrument, by the Minister for the purposes of this section.

OFFICIAL: Sensitive // Legal Privilege

1120AA Value of asset-tested income streams (lifetime) that are managed investments

(1) This section applies to a person's asset-tested income stream (lifetime), that does not arise under arrangements that are regulated by the *Superannuation Industry (Supervision) Act 1993*, in relation to a day that is before the person's assessment day (within the meaning of section 1120AB) for the income stream.

Note: For ***asset-tested income stream (lifetime)***, see subsection 9(1).

(2) However, this section does not apply to a family law affected income stream.

Note: For ***family law affected income streams***, see section 1120A.

Value of income stream

(3) Subject to this section, the value of the person's income stream is, for the purposes of the assets test, the purchase amount for the income stream.

Purchase amount

(4) For the purposes of this section, the ***purchase amount*** for the income stream is:

(a) subject to paragraph (b)—if one or more amounts have been paid for the income stream, the sum of each compounded amount in relation to an amount paid for the income stream, as worked out under subsection (5), less any commuted amounts; or

(b) if the circumstances determined in an instrument under subsection (7) apply in relation to the income stream—the amount worked out in accordance with that instrument.

(5) A ***compounded amount*** in relation to an amount paid for the income stream is worked out by applying the following formula for each relevant adjustment day (from the earliest to the latest):

OFFICIAL: Sensitive // Legal Privilege

$$\text{Compounded amount for the relevant adjustment day} \times \left(1 + \text{Relevant above threshold rate for the relevant adjustment day}\right)$$

where:

compounded amount for the relevant adjustment day means:

(a) for the earliest relevant adjustment day—the amount that was paid for the income stream; or

(b) for each later relevant adjustment day—the result of applying the formula for the most recent earlier relevant adjustment day.

relevant above threshold rate for the relevant adjustment day means the following:

(a) if the relevant adjustment day is the relevant payment day—zero;

(b) if the relevant adjustment day is a 12-month anniversary of the relevant payment day—the rate applicable under subsection 1082(2) for that relevant adjustment day, expressed as a decimal fraction.

relevant adjustment day means each of the following:

(a) the relevant payment day;

(b) each 12-month anniversary of the relevant payment day.

relevant payment day means the day that the amount was paid for the income stream.

(6) If the income stream is a joint income stream, then, for the purposes of applying subsections (4) and (5) to the person and to a day covered by subsection (1), an amount paid for the income stream is taken to be that amount multiplied by the proportion of the income stream attributable to the person on that day.

(7) The Secretary may make a legislative instrument for the purposes of paragraph (4)(b).

OFFICIAL: Sensitive // Legal Privilege

1120AB Value of asset-tested income streams (lifetime) that are not managed investments

(1) This section applies to a person's asset-tested income stream (lifetime) in relation to a day that is on or after the person's assessment day for the income stream.

Note 1: For ***asset-tested income stream (lifetime)***, see subsection 9(1). For ***assessment day***, see subsections (6) and (7) of this section.

Note 2: This section applies separately in relation to each asset-tested income stream (lifetime) of a person.

(2) However, this section does not apply to a family law affected income stream.

Note: For ***family law affected income streams***, see section 1120A.

Value of income stream

(3) Subject to this section, the value of the person's income stream is, for the purposes of the assets test, worked out as follows:

(a) for a day in the period beginning on the person's assessment day for the income stream and ending at the end of the person's threshold day for the income stream:

Purchase amount × 0.6

(b) for a day after the person's threshold day for the income stream:

Purchase amount × 0.3

Note: For ***threshold day***, see subsections (9) and (10). For ***purchase amount***, see subsection (12).

(4) The Secretary may, by legislative instrument, determine one or more methods for working out the value of an asset-tested income stream (lifetime) for persons to whom this section applies.

(5) If one or more amounts worked out in accordance with the instrument are higher than the amount under subsection (3), then the value of the person's income stream is, for the purposes of the assets test, the highest of those amounts.

OFFICIAL: Sensitive // Legal Privilege

Assessment day

(6) Subject to subsection (7), for the purposes of this section, a person's ***assessment day*** for an asset-tested income stream (lifetime) is:

(a) if the income stream arises under arrangements that are regulated by the *Superannuation Industry (Supervision) Act 1993*—the latest of the following:

(i) the day the person first satisfies a condition of release that is mentioned in regulations under the *Superannuation Industry (Supervision) Act 1993* and is of a kind determined in an instrument under subsection (8);

(ii) the day the first amount was paid for the income stream;

(iii) the day the person acquired the income stream (if no amount is identifiable as having been paid for the income stream); or

(b) otherwise:

(i) if the commencement day in relation to the income stream is before the day the person reaches pension age—the commencement day in relation to the income stream; or

(ii) in any other case—the latest of the day the first amount was paid for the income stream, the day the person reaches pension age and the day the person acquired the income stream (if no amount is identifiable as having been paid for the income stream).

Note: For ***commencement day***, see subsection 9(1).

(7) For the purposes of this section, a person's ***assessment day*** for an asset-tested income stream (lifetime) that reverted to the person as a reversionary beneficiary is:

(a) if the income stream reverted to the person on or after the commencement day in relation to the income stream—the day of the reversion; or

(b) if the income stream reverted to the person before the commencement day in relation to the income stream and the

OFFICIAL: Sensitive // Legal Privilege

income stream arises under arrangements that are regulated by the *Superannuation Industry (Supervision) Act 1993*:

(i) if the commencement day in relation to the income stream is before the day the person first satisfies a condition of release that is mentioned in regulations under the *Superannuation Industry (Supervision) Act 1993* and is of a kind determined in an instrument under subsection (8)—the commencement day in relation to the income stream; or

(ii) in any other case—the later of the day of the reversion and the day the person first satisfies a condition of release that is mentioned in regulations under the *Superannuation Industry (Supervision) Act 1993* and is of a kind determined in an instrument under subsection (8); or

(c) if the income stream reverted to the person before the commencement day in relation to the income stream and the income stream does not arise under arrangements that are regulated by the *Superannuation Industry (Supervision) Act 1993*:

(i) if the commencement day in relation to the income stream is before the day the person reaches pension age—the commencement day in relation to the income stream; or

(ii) in any other case—the later of the day of the reversion and the day the person reaches pension age.

Note: For ***commencement day***, see subsection 9(1).

(8) The Secretary may, by notifiable instrument, determine a kind of condition of release for the purposes of subparagraphs (6)(a)(i) and (7)(b)(i) and (ii).

Threshold day

(9) Subject to subsection (10), for the purposes of this section, a person's ***threshold day*** for an asset-tested income stream (lifetime) is worked out using the following method statement:

OFFICIAL: Sensitive // Legal Privilege

Method statement

Step 1. Work out, in relation to a man aged 65 on the person's assessment day for the income stream, the number of expected years remaining in the man's life, by reference to the instrument in force under subsection (11) on that assessment day, rounded down to the nearest whole number of years.

Note: The number of expected years remaining in a 65-year old man's life is used no matter how old the person is and whether the person is a man or a woman.

Step 2. Increase the number of years at step 1 by 65.

Step 3. Subject to step 4, the person's ***threshold day*** for the income stream is the later of the following days:

(a) the day before the person reaches the age in years worked out at step 2;

(b) the last day of the 5-year period beginning on the person's assessment day for the income stream.

Step 4. If the income stream is a joint income stream, the person's ***threshold day*** for the income stream is the later of the following days:

(a) the day before the oldest of the persons, to whom a proportion of the income stream is attributable on the person's assessment day for the income stream, reaches the age in years worked out at step 2;

(b) the last day of the 5-year period beginning on the person's assessment day for the income stream.

(10) If:

OFFICIAL: Sensitive // Legal Privilege

(a) an asset-tested income stream (lifetime) reverts to a person as a reversionary beneficiary on the death of another person; and

(b) before the death of the other person, the other person's assessment day for the income stream had occurred;

then:

(c) if, before the death of the other person, the other person's threshold day for the income stream had not occurred—the reversionary beneficiary's ***threshold day*** for the income stream is taken to be the day that would have been the other person's threshold day if the other person had not died; and

(d) if, before the death of the other person, the other person's threshold day for the income stream had occurred—the reversionary beneficiary's ***threshold day*** for the income stream is taken to be the other person's threshold day; and

(e) if the reversionary beneficiary's assessment day for the income stream worked out under subsection (7) is on or after the reversionary beneficiary's threshold day for the income stream worked out under paragraph (c) or (d) of this subsection:

(i) paragraph (3)(a) is taken not to apply to the reversionary beneficiary and the income stream; and

(ii) paragraph (3)(b) is taken to apply to the reversionary beneficiary and the income stream for a day that is on or after the reversionary beneficiary's assessment day for the income stream.

(11) The Secretary may make a notifiable instrument for the purposes of step 1 of the method statement in subsection (9). If there are Life Tables published by the Australian Government Actuary, the Secretary must be satisfied that the instrument is consistent with the latest of those Life Tables.

Purchase amount

(12) For the purposes of this section, the ***purchase amount*** for the income stream is:

OFFICIAL: Sensitive // Legal Privilege

(a) subject to paragraph (b)—if one or more amounts have been paid for the income stream—the sum of:

(i) each compounded amount in relation to an amount paid for the income stream before the person's assessment day for the income stream, as worked out under subsection (13); and

(ii) each amount paid for the income stream on or after that assessment day;

less any commuted amounts; or

(b) if the circumstances determined in an instrument under subsection (15) apply in relation to the income stream—the amount worked out in accordance with that instrument.

(13) A ***compounded amount*** in relation to an amount paid for the income stream before the person's assessment day for the income stream is worked out by applying the following formula for each relevant adjustment day (from the earliest to the latest):

$$\text{Compounded amount for the relevant adjustment day} \times \left(1 + \text{Relevant above threshold rate for the relevant adjustment day}\right)$$

where:

compounded amount for the relevant adjustment day means:

(a) for the earliest relevant adjustment day—the amount that was paid for the income stream; or

(b) for each later relevant adjustment day—the result of applying the formula for the most recent earlier relevant adjustment day.

relevant above threshold rate for the relevant adjustment day means:

(a) if the relevant adjustment day is a 12-month anniversary of the relevant payment day—the rate applicable under subsection 1082(2) for that relevant adjustment day, expressed as a decimal fraction; or

(b) if the relevant adjustment day is the assessment day—the amount worked out in accordance with the following formula:

$$\text{The rate applicable under subsection 1082(2) for that day, expressed as a decimal fraction} \times \frac{\text{Relevant number of days}}{365}$$

relevant adjustment day means each of the following:

(a) each 12-month anniversary of the relevant payment day that happens before the person's assessment day;

(b) the person's assessment day.

Note: For ***assessment day***, see subsections (6) and (7).

relevant number of days means the number of days in the period:

(a) beginning on the day after:

(i) if the assessment day is at least 12 months after the relevant payment day—the most recent 12-month anniversary of the relevant payment day; or

(ii) otherwise—the relevant payment day; and

(b) ending at the end of the assessment day.

relevant payment day means the day that the amount was paid for the income stream.

(14) If the income stream is a joint income stream, then, for the purposes of applying subsections (12) and (13) to the person and to a day covered by subsection (1), an amount paid for the income stream is taken to be that amount multiplied by the proportion of the income stream attributable to the person on that day.

(15) The Secretary may make a legislative instrument for the purposes of paragraph (12)(b).

1120A Value of asset-tested FLA income streams

(1) This section applies to family law affected income streams.

OFFICIAL: Sensitive // Legal Privilege

(2) The value of an income stream that is not a defined benefit income stream is, for the purposes of the assets test, determined by the Secretary.

(3) The value of an income stream that is a defined benefit income stream is, for the purposes of the assets test, determined by the Secretary.

(4) In making a determination under subsection (2) or (3), the Secretary must comply with any relevant decision-making principles in force under subsection (5).

(5) The Secretary may, by legislative instrument, formulate principles (***decision-making principles***) to be complied with by him or her in making decisions under:
  (a) subsection (2); or
  (b) subsection (3).

1120B Value of partially asset-test exempt income streams

(1) This section applies to income streams covered by paragraph 1118(1)(da).

(2) The value of such an income stream is, for the purposes of paragraph 1118(1)(da), worked out as follows:
  (a) if the income stream is a family law affected income stream—under section 1120A;
  (b) otherwise—under section 1119;

as if the income stream were an asset-tested income stream to which that section applied.

1120C Value of superannuation reserves for superannuation funds of 4 members or less

(1) This section applies in calculating the value of a person's investment in a superannuation fund if:
  (a) the fund has 4 or fewer members; and

OFFICIAL: Sensitive // Legal Privilege

(b) the fund has reserves (within the meaning of section 115 of the *Superannuation Industry (Supervision) Act 1993*).

Note: The value of a person's investment in a superannuation fund is only included in the value of the person's assets after the person reaches pension age or starts to receive a pension or annuity out of the fund (see paragraph 1118(1)(f)).

(2) Despite paragraph 1118(1)(h), the value of the person's investment in the superannuation fund includes the following amount:

$$\frac{\text{Person's interest in the fund}}{\text{Total interest in the fund}} \times \text{Value of the fund's reserves}$$

(3) However, if it is not possible to work out the person's interest in the superannuation fund, the value of the person's investment in the fund includes the following amount:

$$\frac{\text{Value of the fund's reserves}}{\text{Number of members in the fund}}$$

1121 Effect of charge or encumbrance on value of assets

(1) If there is a charge or encumbrance over a particular asset of the person, the value of the asset, for the purposes of calculating the value of the person's assets for the purposes of this Act (other than Division 1B of Part 3.10), is to be reduced by the value of that charge or encumbrance.

Note: This section does not apply to an asset to which section 1121A (primary production assets) applies.

(1A) Subsection (1) does not apply to a charge that arises under section 1138.

Note: See subsection (5) for a charge that arises under section 1138.

(2) Subsection (1) does not apply to a charge or encumbrance over an asset of a person to the extent that:

(a) the charge or encumbrance is a collateral security; or

OFFICIAL: Sensitive // Legal Privilege

(b) the charge or encumbrance was given for the benefit of a person other than the person or the person's partner.

(3) Subsection (1) does not apply to a charge or encumbrance over assets that are to be disregarded under section 1118.

(3A) Subsection (1) does not apply to an asset that is an asset-tested income stream (long-term).

(3B) Subsection (1) does not apply to an asset that is a partially asset-test exempt income stream (within the meaning of section 1118).

(3C) Subsection (1) does not apply to an asset that is an asset-tested income stream (lifetime).

(4) If:

(a) there is a charge or encumbrance over assets; and

(b) the charge does not arise under section 1138; and

(c) the assets consist of assets whose value is to be disregarded under section 1118 and other assets;

the amount to be deducted under subsection (1) is:

$$\frac{\text{value of the charge or encumbrance} \times \text{value of the other assets}}{\text{value of all the assets}}$$

(5) If:

(a) a person is or was participating in the pension loans scheme; and

(b) either:

(i) the person's real assets are subject to a charge under section 1138; or

(ii) if the person is a member of a couple—the couple's real assets are subject to a charge under section 1138;

then the value of those real assets, for the purposes of calculating the value of the person's assets for the purposes of this Act (other than Division 1B of Part 3.10), is to be reduced by the amount of

OFFICIAL: Sensitive // Legal Privilege

the debt owed by the person under section 1135 because of that participation.

Note: If there are other charges or encumbrances over any of those real assets, there may be a further reduction under subsection (1) in the value of those assets.

(6) This section has effect subject to sections 1145A to 1157 (special residences).

1121A Effect of certain liabilities on value of assets used in primary production

(1) For the purposes of working out the value of a person's assets under this Act, if:

(a) the person is:

(i) a primary producer; or

(ii) a family member of a primary producer; and

(b) the person has assets (including real property) that are, in the Secretary's opinion, used for the purposes of carrying on that primary production; and

(c) the person also has liabilities that are, in the Secretary's opinion, related to the carrying on of the primary production;

then:

(d) section 1121 does not apply in relation to the assets referred to in paragraph (b); and

(e) those assets are taken to be a single asset (in this section called the ***primary production asset***); and

(f) the value of that single asset is worked out under subsection (2).

Note: For ***family member*** see subsection 23(1).

(2) The value of a person's primary production asset is worked out in the following way:

OFFICIAL: Sensitive // Legal Privilege

Method statement

Step 1. Add together the value of the assets referred to in paragraph (1)(b): the result is called the ***unencumbered value***.

Step 2. Add together the value of the liabilities referred to in paragraph (1)(c): the result is called the ***total liability***.

Step 3. Take the total liability away from the unencumbered value: the result is the value of the person's primary production asset.

(3) If the result under Step 3 of the Method statement is less than nil, the value of the primary production asset is taken to be nil.

1121B Value of life policy

(1) This section applies in relation to a person and a day (the ***assessment day***) if:
  (a) the person has reached pension age; and
  (b) the person is the owner (within the meaning of subsection 10(2) of the *Life Insurance Act 1995*) of a life policy covered by paragraph 9(1)(a) or (b) of that Act; and
  (c) the person became the owner of the policy after the person reached pension age; and
  (d) the sum of each amount paid for the policy (regardless of who paid the amount) in any period of 12 months exceeds 15% of the maximum death benefit that would be payable in the event of the death of the person whose life is insured on the assessment day.

(2) The value of the life policy on the assessment day is, for the purposes of the assets test, the higher of the following:
  (a) the amount that would be payable to the person covered by paragraph (1)(b) if the policy were surrendered on that day;

OFFICIAL: Sensitive // Legal Privilege

(b) the sum of each amount paid for the policy by the person covered by paragraph (1)(b), less any commuted amounts.

1122 Loans

If a person lends an amount after 27 October 1986, the ***value of the assets*** of the person for the purposes of this Act includes so much of that amount as remains unpaid but does not include any amount payable by way of interest under the loan.

OFFICIAL: Sensitive // Legal Privilege

Division 2—Disposal of assets

1123 Disposal of assets

(1) For the purposes of this Act, a person ***disposes of assets*** of the person if:

(a) the person engages in a course of conduct that directly or indirectly:

(i) destroys all or some of the person's assets; or

(ii) disposes of all or some of the person's assets; or

(iii) diminishes the value of all or some of the person's assets; and

(b) one of the following subparagraphs is satisfied:

(i) the person receives no consideration in money or money's worth for the destruction, disposal or diminution;

(ii) the person receives inadequate consideration in money or money's worth for the destruction, disposal or diminution;

(iii) the Secretary is satisfied that the person's purpose, or the dominant purpose, in engaging in that course of conduct was to obtain a social security advantage.

Note: Under Division 4 of Part 3.18A, certain transfers of assets to special disability trusts can be taken not to be disposals of the assets (but this can be subject to a limit on the aggregate value of the transfers).

(2) For the purposes of subsection (1), a person has a purpose of obtaining a social security advantage if the person has a purpose of:

(a) obtaining a social security pension, a social security benefit, a parenting allowance, a service pension, income support supplement or a veteran payment or enabling the person's partner or someone else of whom the person is a family member to obtain such a pension, benefit, allowance, supplement or payment, or a youth training allowance; or

(b) obtaining a social security pension, a social security benefit, a parenting allowance, a service pension, income support

OFFICIAL: Sensitive // Legal Privilege

supplement or a veteran payment, or enabling the person's partner to obtain such a pension, benefit, allowance, supplement or payment, or a youth training allowance, at a higher rate than would have otherwise been payable; or

(c) ensuring that the person or the person's partner would be qualified for fringe benefits for the purposes of this Act or the Veterans' Entitlements Act.

(3) For the purposes of subsection (1), the value of a person's granny flat interest is to be taken not to be consideration received by the person if the interest was acquired or retained before 22 August 1990.

Note: For ***granny flat interest*** see subsection 11(9).

(4) If, under subsection 1147(1A), the value of a granny flat interest is less than the amount paid, or agreed to be paid, for the interest, then, for the purposes of this section, so much of the amount paid, or agreed to be paid, as exceeds the value of the interest is not consideration for the interest.

Note: For ***granny flat interest*** see subsection 11(9).

1124 Amount of disposal or disposition

If a person disposes of assets, the amount of the disposal or disposition is:

(a) if the person receives no consideration for the destruction, disposal or diminution—an amount equal to:
  (i) the value of the assets that are destroyed; or
  (ii) the value of the assets that are disposed of; or
  (iii) the amount of the diminution in the value of the assets whose value is diminished; or

(b) if the person receives consideration for the destruction, disposal or diminution—an amount equal to:
  (i) the value of the assets that are destroyed; or
  (ii) the value of the assets that are disposed of; or

OFFICIAL: Sensitive // Legal Privilege

(iii) the amount of the diminution in the value of the assets whose value is diminished;

less the amount of the consideration received by the person in respect of the destruction, disposal or diminution.

Note: If subsection 1209ZA(2) applies in relation to the transfer of an asset to a special disability trust, that subsection has the effect of reducing the amount of the disposal or disposition.

1124A Disposal of assets in pre-pension years—individuals

(1A) This section applies only to disposals of assets that took place before 1 July 2002.

(1) If:

(a) a person is not a member of a couple when the person claims a pension, benefit or payment of a kind referred to in subsection 11(10A); and

(b) the person has, during a pre-pension year of the person, disposed of an asset of the person; and

(c) the amount of that disposition, or the sum of that amount and of the amounts (if any) of other dispositions of assets previously made by the person during that pre-pension year, exceeds the disposal limit;

then, for the purposes of determining whether a pension, benefit or payment is payable to the person, there is to be included in the value of the person's assets for the period of 5 years that starts on the day on which the disposition took place:

(d) the amount by which the sum of the amount of the first-mentioned disposition of assets and of the amounts (if any) of other dispositions of assets previously made by the person during that pre-pension year exceeds the disposal limit; or

(e) the amount of the first-mentioned disposition;

whichever is the lesser amount.

Note 1: For ***disposes of assets*** see section 1123.

Note 2: For ***amount of disposition*** see section 1124.

OFFICIAL: Sensitive // Legal Privilege

Note 4: If a pension or benefit is payable to the person, section 1125 operates to determine the rate of payment and section 1124A ceases to apply to the person.

(3) In this section:

disposal limit means:

(a) in relation to assets disposed of on or after 1 March 1986 and before 1 March 1991—$2,000; and

(b) in relation to assets disposed of on or after 1 March 1991—$10,000.

1125 Disposal of assets in pension years—individuals

(1) If, on or after 1 March 1986 and before 1 July 2002:

(a) a person who is not a member of a couple has, during a pension year of the person, disposed of an asset of the person; and

(b) the amount of that disposition, or the sum of that amount and of the amounts (if any) of other dispositions of assets previously made by the person during that pension year, exceeds the disposal limit;

then, for the purposes of this Act, there is to be included in the value of the person's assets for the period of 5 years that starts on the day on which the disposition takes place:

(c) the amount by which the sum of the amount of the first-mentioned disposition of assets, and of the amounts (if any) of other dispositions of assets previously made by the person during that pension year, exceeds the disposal limit; or

(d) the amount of the first-mentioned disposition;

whichever is the lesser amount.

Note 1: For ***disposes of assets*** see section 1123.

Note 2: For ***amount of disposition*** see section 1124.

(3) In this section:

disposal limit means:

OFFICIAL: Sensitive // Legal Privilege

(a) in relation to assets disposed of on or after 1 March 1986 and before 1 March 1991—$2,000; and
(b) in relation to assets disposed of on or after 1 March 1991—$10,000.

1125A Disposal of assets in pre-pension years—members of couples

(1A) This section applies only to disposals of assets that took place before 1 July 2002.

(1) Subject to subsections (3), (4) and (5), if:
(a) a person has disposed of an asset; and
(b) the person is a member of a couple when the person or the person's partner claims a pension, benefit or payment of a kind referred to in subsection 11(10A) or when the person's partner claims a youth training allowance; and
(c) the person disposed of the asset:
(i) during a pre-pension year of the person; or
(ii) if the person has not claimed a pension, benefit or payment of a kind referred to in subsection 11(10A) but the person's partner has claimed such a pension, benefit or payment or has claimed a youth training allowance—during a pre-pension year of the person's partner; and
(d) the amount of that disposition, or the sum of that amount and the amounts (if any) of other dispositions of assets previously made by the person or the person's partner during that pre-pension year, exceeds the disposal limit;

then, for the purposes of determining whether a pension, benefit, payment or allowance is payable to the person:

(e) there is to be included in the value of the person's assets for the period of 5 years that starts on the day on which the disposition took place:
(i) 50% of the amount by which the sum of the amount of the first-mentioned disposition and of the amounts (if any) of other dispositions of assets previously made by the person or the person's partner during that pre-pension year exceeds the disposal limit; or

OFFICIAL: Sensitive // Legal Privilege

(ii) 50% of the amount of the first-mentioned disposition;

whichever is the lesser amount; and

(f) there is to be included in the value of the assets of the person's partner for the period of 5 years that starts on the day on which the disposition took place:

(i) 50% of the amount by which the sum of the amount of the first-mentioned disposition and of the amounts (if any) of other dispositions of assets previously made by the person or the person's partner during that pre-pension year exceeds the disposal limit; or

(ii) 50% of the amount of the first-mentioned disposition;

whichever is the lesser amount.

Note 1: For ***disposes of assets*** see section 1123.

Note 2: For ***amount of disposition*** see section 1124.

Note 4: If a pension or benefit is payable to the person, section 1126 operates to determine the rate of payment and section 1125A ceases to apply to the person.

(3) If:

(a) amounts are included under subsection (1) in the value of a person's assets who is a member of a couple and in the assets of the person's partner because of a disposition of an asset by the person; and

(b) the person and the person's partner cease to be members of the same couple;

any amount that was included in the value of the person's former partner's assets because of that disposition is to be included in the value of the person's assets.

(4) If:

(a) an amount is included under subsection (1) in the value of the assets of a person who is a member of a couple and the value of the assets of the person's partner because of a disposition of an asset by the person; and

OFFICIAL: Sensitive // Legal Privilege

(b) the person dies;

an amount is not to be included in the value of the assets of the person's partner because of that disposition.

(5) If:

(a) an amount is included under subsection (1) in the value of the assets of a person who is a member of a couple and the value of the assets of the person's partner because of a disposition of an asset by the person; and

(b) the partner dies;

any amount that would, if the partner had not died, be included in the value of the partner's assets because of the disposition is to be included in the value of the person's assets.

(6) In this section:

disposal limit means:

(a) in relation to assets disposed of on or after 1 March 1986 and before 1 March 1991—$4,000; and

(b) in relation to assets disposed of on or after 1 March 1991—$10,000.

1126 Disposal of assets in pension years—members of couples

(1) Subject to subsections (3) and (4), if, on or after 1 March 1986 and before 1 July 2002:

(a) a person who is a member of a couple has disposed of an asset of the person:

(i) during a pension year of the person; or

(ii) if the person is not receiving a pension, benefit or payment of a kind referred to in subsection 11(10) but the person's partner is receiving such a pension, benefit or payment or is receiving a youth training allowance—during a pension year of the person's partner; and

(b) the amount of that disposition, or the sum of that amount and the amounts (if any) of other dispositions of assets previously

OFFICIAL: Sensitive // Legal Privilege

made by the person or the person's partner during that pension year, exceeds disposal limit;

then, for the purposes of this Act:

(c) there is to be included in the value of the person's assets for the period of 5 years that starts on the day on which the disposition takes effect:

(i) 50% of the amount by which the sum of the amount of the first-mentioned disposition and of the amounts (if any) of other dispositions of assets previously made by the person or the person's partner during the pension year exceeds disposal limit; or

(ii) 50% of the amount of the first-mentioned disposition;

whichever is the lesser amount; and

(d) there is to be included in the value of the assets of the person's partner for the period of 5 years that starts on the day on which the disposition takes place:

(i) 50% of the amount by which the sum of the amount of the first-mentioned disposition and of the amounts (if any) of other dispositions of assets previously made by the person or the person's partner during the pension year exceeds disposal limit; or

(ii) 50% of the amount of the first-mentioned disposition;

whichever is the lesser amount.

Note 1: For ***disposes of assets*** see section 1123.

Note 2: For ***amount of disposition*** see section 1124.

(3) If:

(a) amounts are included under subsection (1) in the value of a person's assets who is a member of a couple and in the assets of the person's partner because of a disposition of an asset by the person; and

(b) the person and the person's partner cease to be members of the same couple;

any amount that was included in the value of the person's former partner's assets because of that disposition is to be included in the value of the person's assets.

OFFICIAL: Sensitive // Legal Privilege

(4) If:

(a) an amount is included under subsection (1) in the value of the assets of a person who is a member of a couple and the value of the assets of the person's partner because of a disposition of an asset by the person; and

(b) the person dies;

no amount is to be included in the value of the assets of the person's partner because of that disposition.

(5) If:

(a) an amount is included under subsection (1) in the value of the assets of a person who is a member of a couple and the value of the assets of the person's partner because of a disposition of an asset by the person; and

(b) the partner dies;

any amount that would, if the partner had not died, be included in the value of the partner's assets because of the disposition is to be included in the value of the person's assets.

(6) In this section:

disposal limit means:

(a) in relation to assets disposed on or after 1 March 1986 and before 1 March 1991—$4,000; and

(b) in relation to assets disposed of on or after 1 March 1991—$10,000.

1126AA Disposal of assets in income year—individuals

Disposals to which section applies

(1) This section applies to a disposal (the ***relevant disposal***) on or after 1 July 2002 of an asset by a person who is not a member of a couple at the time of the relevant disposal.

OFFICIAL: Sensitive // Legal Privilege

Increase in value of assets

(2) If the amount of the relevant disposal, or the sum of that amount and the amounts (if any) of other disposals of assets previously made by the person during the income year in which the relevant disposal took place, exceeds $10,000, then, for the purposes of this Act, the lesser of the following amounts is to be included in the value of the person's assets for the period of 5 years starting on the day on which the relevant disposal took place:

(a) the amount of the relevant disposal;

(b) the amount by which the sum of the amount of the relevant disposal and the amounts (if any) of other disposals of assets previously made by the person during the income year in which the relevant disposal took place, exceeds $10,000.

Note: See also section 1126E (about modification of this Division in respect of certain assets).

Previous joint disposals

(3) If, during the income year in which the relevant disposal took place but before the time of the relevant disposal, the person was a member of a couple who jointly disposed of an asset, a reference in subsection (2) to the amounts (if any) of other disposals of assets previously made by the person during that income year includes a reference to one-half of the amount of the joint disposal.

1126AB Disposals of assets in 5 year period—individuals

Disposal to which section applies

(1) This section also applies to a disposal (the ***relevant disposal***) on or after 1 July 2002 of an asset by a person who is not a member of a couple at the time of the relevant disposal.

OFFICIAL: Sensitive // Legal Privilege

Increase in value of assets

(2) If:

(a) the sum of the amount of the relevant disposal and the amounts of any previous disposals of assets made during the rolling period by the person;

less

(b) the sum of any amounts included in the value of the person's assets during the rolling period under section 1126AA, 1126AC or 1126AD or any previous application or applications of this section;

exceeds $30,000, then, for the purposes of this Act, the lesser of the following amounts is to be included in the value of the person's assets for the period of 5 years starting on the day on which the relevant disposal took place:

(c) an amount equal to the excess;

(d) the amount of the relevant disposal.

Note: See also section 1126E (about modification of this Division in respect of certain assets).

Previous joint disposals

(3) If, during the rolling period but before the time of the relevant disposal, the person was a member of a couple who jointly disposed of an asset, the reference in paragraph (2)(a) to the amounts of any previous disposals of assets made during the rolling period by the person includes a reference to one-half of the amount of the joint disposal.

Rolling period

(4) For the purposes of this section, the ***rolling period*** is the period comprising the income year in which the relevant disposal took place and such (if any) of the 4 previous income years as occurred after 30 June 2002.

OFFICIAL: Sensitive // Legal Privilege

1126AC Disposal of assets in income year—members of couples

Disposals to which section applies

(1) If there is a disposal (the ***relevant disposal***) on or after 1 July 2002 of an asset by:

(a) a person who, at the time of the relevant disposal, is a member of a couple; or

(b) the person referred to in paragraph (a) and the person who is, at that time, the partner of the person referred to in that paragraph;

subsection (2) has effect.

Increase in value of assets

(2) Subject to this section, if the amount of the relevant disposal, or the sum of that amount and the amounts (if any) of other disposals of assets previously made by the person, the person's partner, or the person and the person's partner, during the income year in which the relevant disposal took place (whether before or after they became members of the couple), exceeds $10,000, then, for the purposes of this Act, the lesser of the following amounts is to be included in the value of the assets of the person and in the value of the assets of the partner for the period of 5 years starting on the day on which the relevant disposal took place:

(a) one-half of the amount of the relevant disposal;

(b) one-half of the amount by which the sum of the amount of the relevant disposal, and the amounts (if any) of other disposals of assets previously made by the person, the partner, or the person and the partner, during the income year in which the relevant disposal took place, exceeds $10,000.

Note: See also section 1126E (about modification of this Division in respect of certain assets).

Effect of ceasing to be member of couple

(3) If, after the disposal referred to in paragraph (1)(a), the person and the person's partner cease to be members of the same couple:

OFFICIAL: Sensitive // Legal Privilege

(a) no amount is to be included after the cessation in the value of the assets of the former partner because of that disposal; and
(b) any amount that would, apart from this subsection, have been so included is to be included in the value of the assets of the person.

Effect of death of person

(4) If, after the disposal referred to in paragraph (1)(a), the person dies, no amount is to be included in the value of the assets of the person's partner because of that disposal.

Effect of death of partner

(5) If, after the disposal referred to in paragraph (1)(a), the person's partner dies, any amount that, if the partner had not died, would have been included in the value of the assets of the partner because of that disposal is to be included in the value of the assets of the person.

1126AD Disposal of assets in 5 year period—members of couples

Disposals to which section applies

(1) If there is a disposal (the ***relevant disposal***) on or after 1 July 2002 of an asset by:
(a) a person who, at the time of the relevant disposal, is a member of a couple; or
(b) the person referred to in paragraph (a) and the person who is, at that time, the partner of the person referred to in that paragraph;
subsection (2) has effect.

Increase in value of assets

(2) Subject to this section, if:
(a) the sum of the amount of the relevant disposal and the amounts of any previous disposals of assets made during the

OFFICIAL: Sensitive // Legal Privilege

rolling period by the person, the person's partner or the person and the person's partner;

less

(b) the sum of any amounts included in the value of the assets of the person or of the partner during the rolling period under section 1126AA, 1126AB or 1126AC or any previous application or applications of this section;

exceeds $30,000, then, for the purposes of this Act, the lesser of the following amounts is to be included in the value of the assets of the person and in the value of the assets of the partner for the period of 5 years starting on the day on which the relevant disposal took place:

(c) an amount equal to one-half of the excess;

(d) one-half of the amount of the relevant disposal.

Note: See also section 1126E (about modification of this Division in respect of certain assets).

Effect of ceasing to be member of couple

(3) If, after the disposal referred to in paragraph (1)(a), the person and the person's partner cease to be members of the same couple:

(a) no amount is to be included after the cessation in the value of the assets of the former partner because of that disposal; and

(b) any amount that would, apart from this subsection, have been so included is to be included in the value of the assets of the person.

Effect of death of person

(4) If, after the disposal referred to in paragraph (1)(a), the person dies, no amount is to be included in the value of the assets of the person's partner because of that disposal.

Effect of death of partner

(5) If, after the disposal referred to in paragraph (1)(a), the person's partner dies, any amount that, if the partner had not died, would have been included in the value of the assets of the partner because

OFFICIAL: Sensitive // Legal Privilege

of that disposal is to be included in the value of the assets of the person.

Rolling period

(6) For the purposes of this section, the ***rolling period*** is the period comprising the income year in which the relevant disposal took place and such (if any) of the 4 previous income years as occurred after 30 June 2002.

1126A Disposal of assets in pre-pension year—family members

(1A) This section applies only to disposals of assets that took place before 1 July 2002.

(1) Subject to this section, if:

(a) a person (the ***relevant person***) has disposed of an asset; and

(b) the relevant person is a family member of another person (the ***other person***) when the other person claims a youth allowance; and

(c) the relevant person disposed of the asset during a pre-pension year of the other person; and

(d) the amount of that disposition, or the sum of that amount and the amounts (if any) of other dispositions of assets previously made by the relevant person or the other person during that pre-pension year, exceeds $10,000;

then, for the purpose of determining whether a youth allowance is payable to the other person, there is to be included in the value of the other person's assets for the period of 5 years that starts on the day on which the disposition took place:

(e) the amount by which the sum of the amount of the first-mentioned disposition and of the amounts (if any) of other dispositions of assets previously made by the relevant person or the other person during that pre-pension year exceeds $10,000; or

(f) the amount of the first-mentioned disposition;

whichever is the lesser amount.

OFFICIAL: Sensitive // Legal Privilege

Note 1: For ***disposes of assets*** see section 1123.

Note 2: For ***amount of disposition*** see section 1124.

(2) If:

(a) amounts are included under subsection (1) in the value of the other person's assets because of a disposition of an asset by the relevant person; and

(b) the relevant person ceases to be a family member of the other person;

any amount that was included in the value of the other person's assets because of the disposition ceases to be included in the value of those assets.

(3) If:

(a) an amount is included under subsection (1) in the value of the assets of the other person because of a disposition of an asset by the relevant person; and

(b) the relevant person dies;

any amount that was included in the value of those assets because of the disposition ceases to be included in the value of those assets.

1126B Disposal of assets in pension year—family members

(1A) This section applies only to disposals of assets that took place before 1 July 2002.

(1) Subject to this section, if:

(a) a person (the ***relevant person***) has disposed of an asset during a pension year of another person (the ***other person***) of whom the relevant person is a family member; and

(b) the other person is receiving youth allowance; and

(c) the amount of that disposition, or the sum of that amount and the amounts (if any) of other dispositions of assets previously made by the relevant person or the other person during that pension year, exceeds $10,000;

OFFICIAL: Sensitive // Legal Privilege

then, for the purposes of this Act, there is to be included in the value of the other person's assets for the period of 5 years that starts on the day on which the disposition took place:

(d) the amount by which the sum of the amount of the first-mentioned disposition and of the amounts (if any) of other dispositions of assets previously made by the relevant person or the other person during the pension year exceeds $10,000; or

(e) the amount of the first-mentioned disposition;

whichever is the lesser amount.

Note 1: For ***disposes of assets*** see section 1123.

Note 2: For ***amount of disposition*** see section 1124.

(2) If:

(a) amounts are included under subsection (1) in the value of the other person's assets because of a disposition of an asset by the relevant person; and

(b) the relevant person ceases to be a family member of the other person;

any amount that was included in the value of the other person's assets because of the disposition ceases to be included in the value of those assets.

(3) If:

(a) an amount is included under subsection (1) in the value of the assets of the other person because of a disposition of an asset by the relevant person; and

(b) the relevant person dies;

any amount that was included in the value of those assets because of the disposition ceases to be included in the value of those assets.

1126C Disposal of assets in income year—family members

Disposals to which section applies

(1) This section applies to a disposal (the ***relevant disposal***) on or after 1 July 2002 of an asset by a person (the ***relevant person***) who is a

family member of another person (the ***other person***) who has claimed or is receiving a youth allowance.

Increase in value of assets

(2) Subject to this section, if the amount of the relevant disposal, or the sum of that amount and the amounts (if any) of other disposals of assets previously made by the relevant person or the other person during the income year in which the relevant disposal took place, exceeds $10,000, then, for the purpose of determining whether a youth allowance is payable to the other person, the lesser of the following amounts is to be included in the value of the other person's assets for the period of 5 years starting on the day on which the relevant disposal took place:

(a) the amount of the relevant disposal;

(b) the amount by which the sum of the amount of the relevant disposal, and the amounts (if any) of other disposals of assets previously made by the relevant person or the other person during the income year in which the relevant disposal took place, exceeds $10,000.

Note: See also section 1126E (about modification of this Division in respect of certain assets).

Effect of ceasing to be family member

(3) If:

(a) an amount is included under subsection (2) in the value of the other person's assets because of a disposal of an asset by the relevant person; and

(b) the relevant person ceases to be a family member of the other person;

any amount that was included in the value of those assets because of the disposal ceases to be included in the value of those assets.

Effect of death

(4) If:

OFFICIAL: Sensitive // Legal Privilege

(a) an amount is included under subsection (2) in the value of the other person's assets because of a disposal of an asset by the relevant person; and

(b) the relevant person dies;

any amount that was included in the value of those assets because of the disposal ceases to be included in the value of those assets.

1126D Disposals of assets in 5 year period—family members

Disposals to which section applies

(1) This section applies to a disposal (the ***relevant disposal***) on or after 1 July 2002 of an asset by a person (the ***relevant person***) who is a family member of another person (the ***other person***) who has claimed or is receiving youth allowance.

Increase in value of assets

(2) If:

(a) the amount of the relevant disposal, or the sum of that amount and the amounts (if any) of other disposals of assets made during the rolling period by the relevant person or the other person;

less

(b) the sum of any amounts included in the value of the other person's assets during the rolling period under section 1126C or any previous application or applications of this section;

exceeds $30,000, then, for the purposes of this Act, the lesser of the following amounts is to be included in the value of the other person's assets for the period of 5 years starting on the day on which the relevant disposal took place:

(c) an amount equal to the excess;

(d) the amount of the relevant disposal.

Note: See also section 1126E (about modification of this Division in respect of certain assets).

OFFICIAL: Sensitive // Legal Privilege

Effect of ceasing to be family member

(3) If:

(a) amounts are included under subsection (2) in the value of the other person's assets because of a disposal of an asset by the relevant person; and

(b) the relevant person ceases to be a family member of the other person;

any amount that was included in the value of those assets because of the disposal ceases to be included in the value of those assets.

Effect of death

(4) If:

(a) an amount is included under subsection (2) in the value of the other person's assets because of a disposal of an asset by the relevant person; and

(b) the relevant person dies;

any amount that was included in the value of those assets because of the disposal ceases to be included in the value of those assets.

Rolling period

(5) For the purposes of this section, the ***rolling period*** is the period comprising the income year in which the relevant disposal took place and such (if any) of the 4 previous income years as occurred after 30 June 2002.

1126E Modification of this Division in respect of certain assets

(1) This section applies if:

(a) in respect of a disposal (the ***relevant disposal***) of an asset, an amount (the ***current amount***) is being included under this Division (including because of this section) in the value of the assets of a person (the ***affected person***); and

(b) during the 5-year period referred to in subsection 1126AA(2), 1126AB(2), 1126AC(2), 1126AD(2), 1126C(2) or 1126D(2), one of the following events happens:

OFFICIAL: Sensitive // Legal Privilege

(i) in the case of section 1126AA or 1126AB—the person referred to in subsection 1126AA(1) or 1126AB(1) acquires the asset or receives consideration for the asset;

(ii) in the case of section 1126AC or 1126AD—the person referred to in paragraph 1126AC(1)(a) or 1126AD(1)(a), or the person's partner, acquires the asset or receives consideration for the asset or they jointly acquire the asset or jointly receive consideration for the asset;

(iii) in the case of section 1126C or 1126D—the relevant person referred to in subsection 1126C(1) or 1126D(1) acquires the asset or receives consideration for the asset; and

(c) during that 5-year period, the Secretary is notified in writing of the circumstances covered by paragraph (b).

(2) The Secretary may, having regard to the event, determine in writing that:

(a) from the start of the day on which the notification occurs, section 1126AA, 1126AB, 1126AC, 1126AD, 1126C or 1126D ceases to apply in respect of the relevant disposal; or

(b) both:

(i) from the start of the day on which the notification occurs, the current amount ceases to be included in the value of the affected person's assets; and

(ii) from the start of the day on which the notification occurs until the end of that 5-year period, an amount specified in the determination (being an amount less than the current amount) is to be included in the value of the affected person's assets in respect of the relevant disposal.

(3) The Secretary must give the affected person written notice of the determination.

(4) A determination under subsection (2) is not a legislative instrument.

OFFICIAL: Sensitive // Legal Privilege

1127 Disposition more than 5 years old to be disregarded

This Division does not apply to a disposition of an asset that took place:

(a) more than 5 years before the time when:

(i) the person who disposed of the asset; or

(ii) if that person was, at the time when the disposition took place, a member of a couple—the person's partner; or

(iii) if that person was, at that time, a family member of another person who is receiving or claiming youth allowance and is not independent—the other person;

became qualified for a social security pension or a social security benefit; or

(b) less than 5 years before the time referred to in paragraph (a) and before the time when the Secretary is satisfied that the person who disposed of the asset could reasonably have expected that the person, the person's partner or the other person, as the case may be, would become qualified for such a pension or benefit.

1127A Division does not apply for purposes of care receiver assets test

This Division does not apply for the purposes of the assets test set out in Subdivision A of Division 1 of Part 2.5 (care receiver assets test).

OFFICIAL: Sensitive // Legal Privilege

Division 3—Financial hardship

1129 Access to financial hardship rules—pensions

(1) If:

(a) either:

(i) a social security pension is not payable to a person because of the application of an assets test; or

(ii) a person's social security pension rate is determined by the application of an assets test; and

(b) either:

(i) sections 1108 and 1109 (disposal of income) and 1124A, 1125, 1125A, 1126, 1126AA, 1126AB, 1126AC, 1126AD and 1126E (so far as section 1126E relates to sections 1126AA, 1126AB, 1126AC and 1126AD) (disposal of assets) do not apply to the person; or

(ii) the Secretary determines that the application of those sections to the person should, for the purposes of this section, be disregarded; and

(c) the person, or the person's partner, has an unrealisable asset; and

(d) the person lodges with the Department, in a form approved by the Secretary, a request that this section apply to the person; and

(e) the Secretary is satisfied that the person would suffer severe financial hardship if this section did not apply to the person;

the Secretary must determine that this section applies to the person.

Note 1: For ***social security pension*** see subsection 23(1).

Note 2: For ***unrealisable asset*** see subsections 11(12) and (13).

(1A) In subsection (1):

social security pension does not include a pension PP (single).

Note: Financial hardship rules for pension PP (single) are contained in sections 1130B and 1130C.

OFFICIAL: Sensitive // Legal Privilege

(2) A decision under subsection (1) takes effect:
  (a) on the day on which the request under paragraph (1)(d) was lodged with the Department; or
  (b) if the Secretary so decides in the special circumstances of the case—on a day not more than 6 months before the day referred to in paragraph (a).

1130 Application of financial hardship rules—pensions

Value of unrealisable asset to be disregarded

(1) If section 1129 applies to a person, the value of:
  (a) any unrealisable asset of the person; and
  (b) any unrealisable asset of the person's partner;
is to be disregarded in working out the person's social security pension rate.

Deduction from social security pension maximum payment rate

(2) If section 1129 applies to a person, there is to be deducted from the person's social security pension maximum payment rate an amount equal to the person's adjusted annual rate of ordinary income.

Adjusted annual rate of ordinary income

(3) A person's ***adjusted annual rate of ordinary income*** is an amount per year equal to the sum of:
  (a) the person's annual rate of ordinary income (other than income from assets); and
  (b) the person's annual rate of ordinary income from assets that are not assets tested; and
  (c) either:
    (i) the person's annual rate of ordinary income from unrealisable assets; or
    (ii) the person's notional annual rate of ordinary income from unrealisable assets;
  whichever is the greater; and

OFFICIAL: Sensitive // Legal Privilege

(d) an amount per year equal to $19.50 for each $250 of the value of the person's assets (other than disregarded assets); and

(e) any amounts that are not income of the person because of paragraph 8(8)(zp).

Assets tested asset

(4) For the purposes of subsection (3), an asset is ***not assets tested*** if the value of the asset is to be disregarded under subsection 1118(1).

Notional annual rate of ordinary income from unrealisable assets

(5) A person's ***notional annual rate of ordinary income*** from unrealisable assets is:

(a) the amount per year equal to 2.5% of the value of the person's and the person's partner's unrealisable assets; or

(b) the amount per year that could reasonably be expected to be obtained from a purely commercial application of the person's and the person's partner's unrealisable assets;

whichever is the less.

Family farms

(6) If:

(a) an unrealisable asset is a farm; and

(b) the farm is operated by a person who is a family member of the person to whom this section applies; and

(c) it is not reasonable to expect the farm to be used for another purpose;

the Secretary, in working out the amount per year that could reasonably be expected to be obtained from a purely commercial application of the farm, is to have regard to the overall financial situation of the person operating the farm.

(6A) If:

(a) section 1129 applies to a person; and

OFFICIAL: Sensitive // Legal Privilege

(b) the person, or the person's partner, owns residential premises; and
(c) the premises are an unrealisable asset; and
(d) a family member of the person, or of the partner, lives at the premises; and
(e) one of the following conditions is satisfied:
(i) the family member previously provided substantial care for the person or the partner at the premises at a time when the premises were the principal home of the person or the partner;
(ii) the family member has resided at the premises for a period of, or periods that add up to, 10 years or more;
(iii) the family member is:
(A) a child of the person or the partner; and
(B) disabled;
and the person or the partner is promoting the independent living of the family member; and
(f) it is not reasonable to expect the premises to be sold or otherwise used to provide income support for the person;

the Secretary, in working out the amount per year that could reasonably be expected to be obtained from a purely commercial application of the premises, is to have regard to whether the family member is financially capable of obtaining suitable alternative accommodation.

Note: For ***family member*** see subsection 23(1).

(7) Subsections (6) and (6A) do not limit the matters to which the Secretary may have regard in exercising the powers under paragraph (5)(b).

(8) Subsection (2) applies:
(a) subject to subsection (10); and
(b) despite section 1064.

(9) If:

OFFICIAL: Sensitive // Legal Privilege

(a) a person has disposed of assets and section 1125, 1126, 1126AA, 1126AB, 1126AC, 1126AD or 1126E (so far as section 1126E relates to section 1126AA, 1126AB, 1126AC or 1126AD) applies to the disposition; and

(b) the Secretary has made a determination under subparagraph 1129(1)(b)(ii) in relation to the disposition;

this section applies to the person as if the person had not disposed of the assets.

(10) If the sum of the rate of pension that would, apart from this subsection, be payable to a person and the annual rate of ordinary income of the person exceeds the maximum payment rate, the rate so payable is to be reduced by the amount per annum of the excess.

1130A Division does not apply for purposes of care receiver assets test

This Division does not apply for the purposes of the assets test set out in Subdivision A of Division 1 of Part 2.5 (care receiver assets test).

1130B Access to financial hardship rules—pension PP (single)

(1) If:

(a) a pension PP (single) is not payable to a person because of the application of an assets test; and

(b) the person is not receiving and is not eligible to apply for acceptable alternative Commonwealth income support; and

(c) either:

(i) sections 1108 and 1109 (disposal of income) and 1124A, 1125, 1125A, 1126, 1126AA, 1126AB, 1126AC, 1126AD and 1126E (so far as section 1126E relates to sections 1126AA, 1126AB, 1126AC and 1126AD) (disposal of assets) do not apply to the person; or

OFFICIAL: Sensitive // Legal Privilege

(ii) the Secretary decides that the application of those sections to the person should, for the purposes of this section, be disregarded; and

(d) the person has an unrealisable asset; and

(e) the person lodges with the Department, in a form approved by the Secretary, a request that this section apply to the person; and

(f) the Secretary is satisfied that the person would suffer severe financial hardship if this section did not apply to the person;

the Secretary must determine that this section applies to the person.

Note: For ***unrealisable asset*** see subsections 11(12) and (13).

(2) A reference in subsection (1) to ***acceptable alternative Commonwealth income support*** in relation to a person is a reference to payments (other than payments under the *Farm Household Support Act 2014*):

(a) that are made available by the Commonwealth by way of income support; and

(b) the rate of which is not less than the rate of pension PP (single) that would be applicable to the person if pension PP (single) were payable to the person.

(3) A decision under subsection (1) takes effect:

(a) on the day on which the request under paragraph (1)(e) was lodged with the Department; or

(b) if the Secretary so decides in the special circumstances of the case—on a day not more than 6 months before the day on which the request under paragraph (1)(e) was lodged with the Department.

OFFICIAL: Sensitive // Legal Privilege

1130C Application of financial hardship rules—pension PP (single)

Value of unrealisable asset to be disregarded

(1) If section 1130B applies to a person, the value of any unrealisable asset of the person is to be disregarded in working out whether a pension PP (single) is payable to the person.

Deduction from pension PP (single) maximum payment rate

(2) If section 1130B applies to a person, there is to be deducted from the person's pension PP (single) maximum payment rate an amount equal to the person's adjusted annual rate of ordinary income.

Note: For ***maximum payment rate*** see Step 4 of the method statement in point 1068A-A1.

Adjusted annual rate of ordinary income

(3) The person's ***adjusted annual rate of ordinary income*** is an amount per year equal to the sum of:

(a) the person's annual rate of ordinary income (other than income from assets); and

(b) the person's annual rate of ordinary income from assets that are not assets tested; and

(c) either:

(i) the person's annual rate of ordinary income from unrealisable assets; or

(ii) the person's notional annual rate of ordinary income from unrealisable assets;

whichever is the greater; and

(d) an amount per year equal to $26.00 for each $250 of the value of the person's assets (other than disregarded assets); and

(e) any amounts that are not income of the person because of paragraph 8(8)(zp).

OFFICIAL: Sensitive // Legal Privilege

Assets tested asset

(5) For the purposes of paragraph (3)(b), an asset is ***not assets tested*** if the value of the asset is to be disregarded under subsection 1118(1).

Notional annual rate of ordinary income from unrealisable assets

(6) A person's ***notional annual rate of ordinary income*** from unrealisable assets is:

(a) the amount per year equal to 2.5 per cent of the value of the person's unrealisable assets; or

(b) the amount per year that could reasonably be expected to be obtained from a purely commercial application of the person's unrealisable assets;

whichever is the lesser.

(7) Subsection (2) applies:

(a) subject to subsection (9); and

(b) despite section 500Q.

(8) If:

(a) a person has disposed of assets and section 1125, 1126, 1126AA, 1126AB, 1126AC, 1126AD or 1126E (so far as section 1126E relates to section 1126AA, 1126AB, 1126AC or 1126AD) applies to the disposition; and

(b) the Secretary has made a determination under paragraph 1130B(1)(c) in relation to the disposition;

this section applies to the person as if the person had not disposed of the assets.

(9) If the sum of the rate of pension PP (single) that would, apart from this subsection, be payable to a person and the annual rate of ordinary income of the person exceeds the maximum payment rate, the rate so payable is to be reduced by the amount per year of the excess.

OFFICIAL: Sensitive // Legal Privilege

1131 Access to financial hardship rules—benefits

(1) If:

(a) a social security benefit is not payable to a person because of the application of an assets test; and

(b) the person is not receiving and is not eligible to apply for acceptable alternative Commonwealth income support; and

(c) the person's partner is not receiving and is not eligible to apply for acceptable alternative Commonwealth income support; and

(d) either:

(i) sections 1108 and 1109 (disposal of income) and 1124A, 1125, 1125A, 1126, 1126AA, 1126AB, 1126AC, 1126AD and 1126E (so far as section 1126E relates to sections 1126AA, 1126AB, 1126AC and 1126AD) (disposal of assets) do not apply to the person; or

(ii) the Secretary decides that the application of those sections to the person should, for the purposes of this section, be disregarded; and

(e) the person, or the person's partner, has an unrealisable asset; and

(f) the person lodges with the Department, in a form approved by the Secretary, a request that this section apply to the person; and

(g) the Secretary is satisfied that the person would suffer severe financial hardship if this section did not apply to the person;

the Secretary must determine that this section applies to the person.

Note: For ***unrealisable asset*** see subsections 11(12) and (13).

(1A) In subsection (1):

assets test does not include the parental means test in section 1067G (Youth Allowance Rate Calculator).

(2) A reference in subsection (1) to ***acceptable alternative Commonwealth income support*** in relation to a person is a

OFFICIAL: Sensitive // Legal Privilege

reference to payments (other than payments under the *Farm Household Support Act 2014*):

(a) that are made available by the Commonwealth by way of income support; and

(b) the rate of which is not less than the rate of jobseeker payment, youth allowance or austudy payment that would be applicable to the person if that payment or allowance were payable to the person.

(3) A decision under subsection (1) takes effect:

(a) on the day on which the request under paragraph (1)(f) was lodged with the Department; or

(b) if the Secretary so decides in the special circumstances of the case—on a day not more than 6 months before the day on which the request under paragraph (1)(f) was lodged with the Department.

1132 Application of financial hardship rules—benefits

Value of unrealisable asset to be disregarded

(1) If section 1131 applies to a person, the value of:

(a) any unrealisable asset of the person; and

(b) any unrealisable asset of the person's partner;

is to be disregarded in working out whether a social security benefit is payable to the person.

Deduction from social security benefit maximum payment rate

(2) If section 1131 applies to a person, there is to be deducted from the person's social security benefit maximum payment rate an amount equal to the person's adjusted fortnightly rate of ordinary income.

Note: For ***maximum payment rate***, see, for example, Step 4 of the Method statement in point 1068-A1.

Adjusted fortnightly rate of ordinary income

(3) The person's ***adjusted fortnightly rate of ordinary income*** is an amount per fortnight equal to the sum of:

(a) the person's fortnightly rate of ordinary income (other than income from assets); and

(b) the person's fortnightly rate of ordinary income from assets that are not assets tested; and

(c) either:

(i) the person's fortnightly rate of ordinary income from unrealisable assets; or

(ii) the person's notional fortnightly rate of ordinary income from unrealisable assets;

whichever is the greater; and

(d) an amount per fortnight equal to $1 for each $250 of the value of the person's assets (other than disregarded assets); and

(e) any amounts that are not income of the person because of paragraph 8(8)(zp).

Assets tested asset

(4) For the purposes of paragraph (3)(b), an asset is not assets tested if the value of the asset is to be disregarded under subsection 1118(1).

Notional fortnightly rate of ordinary income from unrealisable assets

(5) A person's notional fortnightly rate of ordinary income from unrealisable assets is:

(a) the amount per fortnight equal to one twenty-sixth of 2.5% of the value of the person's and the person's partner's unrealisable assets; or

OFFICIAL: Sensitive // Legal Privilege

(b) the amount per fortnight that could reasonably be expected to be obtained from a purely commercial application of the person's and the person's partner's unrealisable assets;

whichever is the less.

(6) Subsection (2) applies:

(a) subject to subsection (8); and

(b) despite sections ~~601,~~ 733, 1067G, 1067L and 1068.

(7) If:

(a) a person has disposed of assets and section 1125, 1126, 1126AA, 1126AB, 1126AC, 1126AD or 1126E (so far as section 1126E relates to section 1126AA, 1126AB, 1126AC or 1126AD) applies to the disposition; and

(b) the Secretary has made a determination under paragraph 1131(1)(d) in relation to the disposition;

this section applies to the person as if the person had not disposed of the assets.

(8) If the sum of the rate of benefit that would, apart from this subsection, be payable to a person and the fortnightly rate of ordinary income of the person exceeds the maximum payment rate, the rate so payable is to be reduced by the amount per fortnight of the excess.

OFFICIAL: Sensitive // Legal Privilege

Division 4—Pension loans scheme

1133AA *Pension loans scheme* definitions

(1) In this Division, unless the contrary intention appears:

disposes of real assets has its ordinary meaning.

maximum payment rate means the rate worked out at Step 4 of the Method statement in Module A of the relevant Pension Rate Calculator.

nominated amount means the amount (if any) specified to be the nominated amount under paragraph 1136(1A)(b) or subsection 1137(1) (as the case may be).

real assets, in relation to a person or couple, means the real property (including the principal home) of the person or couple in Australia, but does not include any real property specified under paragraph 1136(1A)(a).

(2) For the purposes of this Division, a reference to a charge under section 1138 includes a reference to a charge continued in force by subsection 1138(3) or paragraph 1139(2A)(b).

1133 Qualification for participation in pension loans scheme

Person not member of a couple

(1) A person who is not a member of a couple is qualified to participate in the pension loans scheme if:
  (a) the person is receiving or is qualified for:
    (i) age pension; or
    (ii) disability support pension; or
    (iii) carer payment; and
  (c) the person has reached pension age; and
  (ca) the person is not bankrupt; and

(cb) the person is not subject to a personal insolvency agreement under Part X of the *Bankruptcy Act 1966*; and

(cc) the Secretary is satisfied that there is adequate and appropriate insurance in relation to the person's real assets; and

(d) either:

(i) the Secretary is satisfied that the value of the person's real assets (after deduction of any nominated amount) is sufficient to secure the payment of any debt that may become payable to the Commonwealth under this Division; or

(ii) subsection (3) applies to the person.

Note 2: For ***real assets*** see subsection 1133AA(1).

Note 3: For ***nominated amount***, see subsection 1133AA(1).

Note 4: For ***pension age*** see subsections 23(5A), (5B), (5C) and (5D).

Person member of a couple

(2) A person who is a member of a couple is qualified to participate in the pension loans scheme if:

(a) the person is receiving or is qualified for:

(i) an age pension; or

(ii) a disability support pension; or

(iv) a carer payment; and

(c) the person:

(i) has reached pension age; or

(ii) is the partner of a person who has reached pension age; and

(ca) the person is not bankrupt; and

(cb) the person is not subject to a personal insolvency agreement under Part X of the *Bankruptcy Act 1966*; and

(cc) the Secretary is satisfied that there is adequate and appropriate insurance in relation to the couple's real assets; and

OFFICIAL: Sensitive // Legal Privilege

(d) either:

(i) the Secretary is satisfied that the value of the couple's real assets (after deduction of any nominated amount) is sufficient to secure the payment of any debt that may become payable to the Commonwealth under this Division; or

(ii) subsection (3) applies to both of the members of the couple.

Note 2: For ***real assets*** see subsection 1133AA(1).

Note 3: For ***nominated amount***, see subsection 1133AA(1).

Note 4: For ***pension age*** see subsections 23(5A), (5B), (5C) and (5D).

(3) This subsection applies to a person if:

(a) either:

(i) the person is an attributable stakeholder of a company or trust (within the meaning of Part 3.18); or

(ii) the person is a member of a couple and the other member of the couple is an attributable stakeholder of a company or trust (within the meaning of Part 3.18); and

(b) the company or trustee has given the Commonwealth a guarantee that the company or trustee will pay any debt that may become payable to the Commonwealth by the person under this Division; and

(c) the company's or trustee's liability under the guarantee is secured by a charge against real property of the company or trust in Australia; and

(d) the Secretary is satisfied that the value of that real property is sufficient to secure the payment of any amount that may become payable by the company or trustee under the guarantee; and

(e) the Secretary has, by writing, approved the guarantee and the charge.

OFFICIAL: Sensitive // Legal Privilege

Value of real property

(4) In working out the value of real property for the purposes of subparagraph (1)(d)(i) or (2)(d)(i) or paragraph (3)(d):
  (a) disregard section 1121; and
  (b) the Secretary may take into account any charge or encumbrance over the property.

1134 Effect of participation in pension loans scheme—pension rate

(1) If:
  (a) a person is qualified to participate in the pension loans scheme; and
  (b) the person makes a request to participate under section 1136; and
  (d) the Secretary is satisfied that the amount of any debt that becomes payable by the person to the Commonwealth under this Division is readily recoverable;

then:

  (e) the rate of the pension payable to the person by operation of the scheme is to be:
    (i) 1.5 multiplied by the maximum payment rate; or
    (ia) if DFISA under Part VIIAB of the Veterans' Entitlements Act is payable to the person—1.5 multiplied by the maximum payment rate less the DFISA rate; or
    (ii) some other rate nominated by the person;

  whichever is the lowest.

Note: For ***maximum payment rate*** see subsection 1133AA(1).

(2) The pension is to commence to be paid at the rate payable by operation of the scheme in respect of the first instalment period for which an instalment is paid after the request is lodged.

OFFICIAL: Sensitive // Legal Privilege

1135 Effect of participation in pension loans scheme—creation of debt

(1) If the rate of the pension payable by operation of the pension loans scheme is more than the rate that would have been received by the person but for the operation of the scheme, the person owes a debt to the Commonwealth.

(3) This is how to work out the amount of the debt owed by the person from time to time:

Method statement

Step 1. Work out the sum of the amount of pension received by the person from time to time under the pension loans scheme: the result is the ***primary loan amount***.

Step 2. Add to the primary loan amount the amount of any registration costs payable by the person under subsection 1143(4): the result is the ***registration cost adjusted amount***.

Step 3. Take away from the registration cost adjusted amount the sum of the amount of pension (if any) that would have been received by the person but for the operation of the scheme: the result is the ***basic amount of debt***.

Step 4. Add to the basic amount of debt the amount of interest payable. The interest payable is compound interest at the rate fixed under subsection (4) and compounding fortnightly: the result is the ***total amount of debt***.

Step 5. From the total amount of debt take away any amount of the debt already paid to the Commonwealth: the result is the current amount of debt owed by the person.

OFFICIAL: Sensitive // Legal Privilege

(4) The rate at which compound interest is payable under subsection (3) is the rate fixed from time to time by the Minister by legislative instrument.

1135A Effect of participation in pension loans scheme—maximum loan available

(1) The maximum loan available to a person under the pension loans scheme is the amount worked out using the formula:

$$\text{age component amount} \times \frac{\text{value of real assets}}{10{,}000}$$

where:

age component amount means the amount that is specified in a determination under subsection (3) and that relates to:

(a) if the person is not a member of a couple—the age the person turned on his or her last birthday; or

(b) if the person is a member of a couple—the age the younger member of the couple turned on his or her last birthday.

value of real assets means:

(a) if neither subparagraph 1133(1)(d)(ii) nor subparagraph 1133(2)(d)(ii) applied to the person when the person made his or her request to participate in the pension loans scheme—the value of the real assets (after deduction of any nominated amount); or

(b) if subparagraph 1133(1)(d)(ii) or (2)(d)(ii) applied to the person when the person made his or her request to participate in the pension loans scheme—the value of the charge referred to in paragraph 1133(3)(c).

Note 1: For ***real assets*** see subsection 1133AA(1).

Note 2: For ***nominated amount*** see subsection 1133AA(1).

(2) For the purposes of subsection (1), the following provisions have effect:

OFFICIAL: Sensitive // Legal Privilege

(a) if, but for this paragraph, the value of real assets would be an amount that exceeds $10,000 but is not a multiple of $10,000, the value is to be taken to be the next lower amount that is a multiple of $10,000;
(b) if, but for this paragraph, the value of real assets would be less than $10,000, the value is to be taken to be nil.

(3) The Minister may, by legislative instrument, make a determination for the purposes of the following:
(a) the definition of ***age component amount*** in subsection (1) of this section;
(b) the definition of ***age component amount*** in subsection 52ZCA(1) of the *Veterans' Entitlements Act 1986*.

1136 Need for a request to participate

(1) A person who wants to participate in the pension loans scheme must make a request to participate in accordance with this section.

(1A) A request under subsection (1) must:
(a) specify any real property that is not to be included in working out the value of real assets for the purposes of sections 1133 and 1135A, or that is not to be subject to a charge under section 1138; and
(b) specify an amount (if any) to be the nominated amount for the purposes of this Division; and
(c) specify the rate of the pension (if any) nominated by the person for the purposes of subparagraph 1134(1)(e)(ii).

(1B) Paragraphs (1A)(a) and (b) do not apply if subparagraph 1133(1)(d)(ii) or (2)(d)(ii) applied to the person when the person made his or her request to participate in the pension loans scheme.

(2) The request must be signed:
(a) if the person is not a member of a couple—by the person; or
(b) if the person is a member of a couple—by both members of the couple.

OFFICIAL: Sensitive // Legal Privilege

(3) The request must be:
(a) in writing; and
(b) in a form approved by the Secretary; and
(c) lodged at an office of the Department.

1137 Need for a request to later nominate or change nominated amount or rate of pension

(1) A person who is participating in the pension loans scheme and who wants to:
(a) nominate an amount to be the nominated amount for the purposes of this Division; or
(b) nominate a rate of pension for the purposes of subparagraph 1134(1)(e)(ii); or
(c) change the nominated amount earlier specified; or
(d) change the rate of the pension earlier specified;
must make a request that specifies the nomination or change (as the case may be).

(1A) Paragraphs (1)(a) and (c) do not apply if subparagraph 1133(1)(d)(ii) or (2)(d)(ii) applied to the person when the person made his or her request to participate in the pension loans scheme.

(2) A request under subsection (1) must be signed:
(a) if the person is not a member of a couple—by the person; or
(b) if the person is a member of a couple—by both members of the couple.

(3) The request must:
(a) be in writing; and
(b) be lodged at an office of the Department.

OFFICIAL: Sensitive // Legal Privilege

1137A Non-receipt of social security pension or social security payment

(1) This section applies for the purposes of a provision (the ***relevant provision***) of this or another Act if:

(a) the relevant provision provides a benefit (whether the benefit is a pension, benefit, payment, supplement, subsidy, pensioner concession card, seniors health card or any other sort of benefit) to a person; and

(b) in relation to that benefit, it is necessary to work out whether:

(i) the person or another person is receiving or is not receiving a social security pension or social security payment or is receiving or is not receiving a particular kind of social security pension whose rate may be worked out under this Division; or

(ii) the person or another person is a recipient or is not a recipient of a social security pension or social security payment or is a recipient or is not a recipient of a particular kind of social security pension whose rate may be worked out under this Division; or

(iii) a social security pension or social security payment, or a particular kind of social security pension whose rate may be worked out under this Division, is payable to the person or another person.

(2) For the purposes of the relevant provision:

(a) a person is taken not to be receiving a social security pension or social security payment or the particular kind of social security pension; and

(b) a person is taken not to be a recipient of a social security pension or social security payment or the particular kind of social security pension; and

(c) a social security pension or social security payment, or the particular kind of social security pension, is taken not to be payable to the person;

merely because:

OFFICIAL: Sensitive // Legal Privilege

(d) the person receives a social security pension, or the kind of social security pension, at a rate worked out under this Division; or

(e) a social security pension, or the kind of social security pension, is payable to the person at a rate worked out under this Division.

(3) Subsection (2) does not apply in relation to a person and a day if on that day:

(a) the person is receiving a social security pension at a rate worked out under this Division; and

(b) but for the operation of this Division, the person would have been receiving that pension at a rate greater than nil.

1138 Existence of debt results in charge over real assets

Person not member of a couple

(1) If a person who is not a member of a couple is participating in the pension loans scheme, the person's real assets are subject to a charge in favour of the Commonwealth to secure the payment of the debt to the Commonwealth.

Person member of a couple

(2) If:

(a) a person who is a member of a couple is participating in the pension loans scheme; and

(b) the person's partner has signed the person's request under subsection 1136(2);

the couple's real assets are subject to a charge in favour of the Commonwealth to secure the payment of a debt to the Commonwealth.

(3) If:

(a) the pension loans scheme ceases to operate in relation to a person because of the effect of section 1141, 1141A or 1142; and

OFFICIAL: Sensitive // Legal Privilege

(b) at the time the scheme ceases to operate, the person owes a debt to the Commonwealth because of the person's participation in the scheme;

the charge in favour of the Commonwealth under subsection (1) or (2) of this section continues in relation to the real assets until the debt is repaid or recovered.

Note 1: Section 1141 provides that a person ceases to participate in the scheme if the debt owed by the person exceeds the maximum loan available.

Note 1A: Section 1141A provides that the scheme ceases to operate in relation to a person if the Secretary is satisfied that the person ceases to be qualified to participate in the scheme and the Secretary determines that the scheme ceases to operate in relation to the person.

Note 2: Section 1142 provides for a person to withdraw from the scheme.

(4) This section does not apply if subparagraph 1133(1)(d)(ii) or (2)(d)(ii) applied to the person when the person made his or her request to participate in the pension loans scheme.

1139 Debt not to be recovered until after death

(1) The Commonwealth is not entitled to recover a debt under section 1135 from a person until after the person's death.

(2) In the following circumstances, the Commonwealth is not entitled to recover the debt until after the person's death and after:

(a) if:

(i) the person was a member of a couple at the time of death; and

(ii) the person's partner survives the person; and

(iii) an amount of bereavement payment is payable to the partner because of the person's death;

the last instalment of bereavement payment has been paid; or

(b) if:

(i) the person was a member of a couple at the time of death; and

(ii) the person's partner survives the person; and

OFFICIAL: Sensitive // Legal Privilege

(iii) the person's partner has the use of the assets or part of the assets that are subject to a charge; and

(iv) the partner has reached pension age;

the death of the partner.

Note: For ***pension age*** see subsections 23(5A), (5B), (5C) and (5D).

(2A) In relation to the period between the person's death and the time of recovery of the debt by the Commonwealth:

(a) compound interest continues to accrue, and forms part of the debt, in accordance with Step 4 of the Method statement in subsection 1135(3); and

(b) the charge in favour of the Commonwealth under section 1138 continues in relation to the real assets until the debt is recovered.

(3) This section is subject to section 1140 (enforcement of charge if assets change hands).

(4) If the Secretary decides that the debt is to be recovered before the events referred to in subsection (1) or (2), the debt may be so recovered in spite of those subsections.

1140 Enforcement of charge

(1) If:

(a) real assets of a person are subject to a charge under section 1138; and

(b) any of those real assets cease to be real assets of the person; and

(c) the person receives proceeds from the sale or other disposal of the real assets;

the Secretary may recover from the person, out of those proceeds, the whole or part of the debt secured by the charge.

(2) If:

(a) real assets of a person are subject to a charge under section 1138; and

OFFICIAL: Sensitive // Legal Privilege

(b) any of those real assets are disposed of to another person (in this section called the ***new owner***);

the Secretary may, subject to subsection (3), enforce the charge against those real assets.

(2A) For the purposes of paragraph (2)(b), it does not matter whether:

(a) the disposal of the real assets is by way of sale, transfer, gift, will or otherwise; or

(b) the disposal is by the person referred to in paragraph (2)(a) or any other person.

(3) The Secretary may not enforce the charge against the assets if the new owner is a bona fide purchaser for value without notice.

1141 Person ceases to participate in pension loans scheme if debt exceeds maximum loan available

If:

(a) a person is participating in the pension loans scheme; and

(b) the debt owed by the person under section 1135 exceeds the maximum loan available to the person under the scheme;

the scheme ceases to operate in relation to the person at the beginning of the first instalment period for the pension being paid to the person that begins after the debt exceeds the maximum loan available.

Note 1: The maximum loan available is worked out by using the formula set out in subsection 1135A(1).

Note 2: For repayment or recovery of the debt owed by the person see sections 1139 and 1142A.

1141A Secretary may cease person's participation in pension loans scheme

(1) If:

(a) a person is participating in the pension loans scheme; and

(b) the Secretary is satisfied that the person ceases to be qualified to participate in the scheme;

OFFICIAL: Sensitive // Legal Privilege

the Secretary may determine that the scheme ceases to operate in relation to the person. The scheme ceases to operate in relation to the person at the beginning of the first instalment period for the social security pension being paid to the person that begins after the determination is made.

Note: For repayment or recovery of the debt owed by the person, see sections 1139 and 1142A.

(2) The Secretary must give the person notice of the determination.

(3) A determination under subsection (1) is not a legislative instrument.

1142 Person withdraws from pension loans scheme

(1) If a person who is participating in the pension loans scheme makes a request to withdraw from the scheme, the scheme ceases to operate in relation to the person at the beginning of the first instalment period for the pension being paid to the person that begins after the request is lodged.

Note: For repayment or recovery of the debt owed by the person, see sections 1139 and 1142A.

(2) A request under subsection (1) must be signed:
(a) if the person is not a member of a couple—by the person; or
(b) if the person is a member of a couple—by both members of the couple.

(3) The request must:
(a) be in writing; and
(b) be lodged at an office of the Department.

1142A Repayment or recovery of debt after pension loans scheme ceases to operate

(1) The debt owed by a person under section 1135, at the time the pension loans scheme ceases to operate in relation to the person by

OFFICIAL: Sensitive // Legal Privilege

operation of section 1141, 1141A or 1142, may be repaid by the person at any time.

Note 1: Section 1141 provides that a person ceases to participate in the scheme if the debt owed by the person exceeds the maximum loan available.

Note 1A: Section 1141A provides that the scheme ceases to operate in relation to a person if the Secretary is satisfied that the person ceases to be qualified to participate in the scheme and the Secretary determines that the scheme ceases to operate in relation to the person.

Note 2: Section 1142 provides for a person to withdraw from the scheme.

(2) If the debt owed by the person is not repaid by the person at the time the scheme ceases to operate in relation to the person, compound interest continues to accrue, and forms part of the debt, in accordance with Step 4 of the Method statement in subsection 1135(3), until the debt is repaid or recovered.

(3) If the debt is not repaid under subsection (1) of this section, subject to section 1139 the Commonwealth is entitled to recover the debt.

Note: Section 1139 provides that a debt cannot be recovered from a person until after the person's death.

1143 Registration of charge

(1) If real assets are subject to a charge under section 1138, the Secretary may lodge a notice in writing of the charge with the appropriate officer of the State or Territory in which the real assets are situated.

(2) The appropriate officer may register the charge as if the Secretary's notice were an instrument of charge or encumbrance duly executed under the laws in force in the State or Territory.

(3) The Secretary may require the person whose real assets are subject to the charge to execute an instrument relating to the registration of the charge.

(4) If the Commonwealth incurs costs associated with:
(a) the registration of the charge; or

OFFICIAL: Sensitive // Legal Privilege

(b) the registration of the discharge of the charge;

those costs are payable by the person whose real assets are subject to the charge.

1144 Manner of enforcement of charge

If a charge against real assets is enforceable under this Division, the Secretary may enforce the charge against those real assets or against part of those real assets in any manner that the Secretary decides.

1144A Division does not apply for purposes of care receiver assets test

(1) This Division does not apply for the purposes of the assets test set out in Subdivision A of Division 1 of Part 2.5 (care receiver assets test).

(2) This section is for the avoidance of doubt.

OFFICIAL: Sensitive // Legal Privilege

Division 5—Provisions relating to special residences and special residents

Subdivision A—General

1145A Application of Division to granny flat residents

This Division applies to a granny flat resident only if the resident acquired or retained the person's granny flat interest in the person's principal home on or after 22 August 1990.

1146 Basis for different treatment

This Division's operation on a special resident depends on:

(a) whether the resident is:
  (i) not a member of a couple; or
  (ii) a member of a couple; or
  (iii) a member of an illness separated couple; or
  (iv) a member of an ordinary couple with different principal homes; and
(b) the resident's entry contribution; and
(c) the resident's extra allowable amount.

Note 1: For ***member of an ordinary couple with different principal homes*** see subsection 12(2).

Note 2: For ***entry contribution*** see section 1147.

Note 3: For ***extra allowable amount*** see section 1148.

1147 Entry contribution

(1) A special resident's entry contribution is:
  (a) if the resident is not a member of a couple—the resident's individual residence contribution; or
  (b) if the resident is a member of a couple, shares the resident's principal home with the resident's partner and is not a member of an illness separated couple—an amount equal to

OFFICIAL: Sensitive // Legal Privilege

50% of the resident's individual residence contribution and of the partner's individual residence contribution; or

(c) if the resident is a member of an illness separated couple—the resident's individual residence contribution; or

(d) if:

(i) the resident is a member of an ordinary couple with different principal homes; and

(ii) the principal home of the resident's partner is not a special residence;

the resident's individual residence contribution; or

(e) if:

(i) the resident is a member of an ordinary couple with different principal homes; and

(ii) the principal home of the resident's partner is also a special residence;

an amount equal to 50% of the resident's individual residence contribution and of the partner's individual residence contribution.

(1A) A special resident's entry contribution is the resident's individual residence contribution plus the amount paid, or agreed to be paid, for the resident's current right (if any) to share the resident's principal home with a partner if:

(a) the resident was a member of a couple at the time when the resident took up residence in the retirement village or granny flat; and

(b) the resident has ceased to be a member of a couple.

(1B) A special resident's entry contribution is the resident's individual residence contribution if:

(a) the resident was a member of a couple at the time when the sale leaseback agreement was entered into; and

(b) the resident has ceased to be a member of a couple.

(1C) For the purposes of this Division, the individual residence contribution is:

OFFICIAL: Sensitive // Legal Privilege

(a) for a retirement village resident—the total amount paid, or agreed to be paid, for the resident's current right to live in the retirement village; and

(b) for a granny flat resident—the total amount paid, or agreed to be paid, for the resident's current right to live in the granny flat; and

(c) for a sale leaseback resident—the deferred payment amount.

Note: For ***deferred payment amount*** see section 12B.

(1D) For the purposes of paragraph (1C)(b):

(a) the total amount paid to obtain for a person his or her current right to live in a granny flat is the amount equal to the value of the person's granny flat interest; and

(b) the value of a person's granny flat interest is:

(i) unless subparagraph (ii) applies—the amount paid, or agreed to be paid, for the interest; or

(ii) if the Secretary considers that, for any special reason in any particular case, that value should be another amount—that other amount.

(2) An amount that is rent for the purposes of this Act is to be disregarded in applying subsections (1), (1A) and (1B).

1148 Extra allowable amount

Residence taken up before 13 June 1989

(1) If a retirement village resident became entitled to take up residence in the retirement village before 13 June 1989, the resident's ***extra allowable amount*** is:

(a) if the resident is not a member of a couple—$64,000; or

(b) if the resident is a member of an illness separated couple—$64,000; or

(c) in any other case—$32,000.

OFFICIAL: Sensitive // Legal Privilege

Residence taken up on or after 13 June 1989

(2) If a retirement village resident became entitled to take up residence in the retirement village on or after 13 June 1989, the resident's ***extra allowable amount*** is:

(a) if the resident is not a member of a couple—the amount that, as at the time when the resident becomes entitled to take up that residence, is the difference between the pension "single" homeowner AVL and the pension "single" non-homeowner AVL; or

(b) if the resident is a member of an illness separated couple—the amount that, as at the time when the resident becomes entitled to take up that residence, is the difference between the pension "single" homeowner AVL and the pension "single" non-homeowner AVL; or

(c) in any other case—the amount that, as at the time when the resident becomes entitled to take up that residence, is the difference between the pension "partnered" homeowner AVL and the pension "partnered" non-homeowner AVL.

(2A) A granny flat resident's ***extra allowable amount*** is:

(a) if the resident is not a member of a couple—the amount that, as at the time when the resident becomes entitled to the granny flat interest, is the difference between the pension "single" homeowner AVL and the pension "single" non-homeowner AVL; or

(b) if the resident is a member of an illness separated couple—the amount that, as at the time when the resident becomes entitled to the granny flat interest, is the difference between the pension "single" homeowner AVL and the pension "single" non-homeowner AVL; or

(c) in any other case—the amount that, as at the time when the resident becomes entitled to the granny flat interest, is the difference between the pension "partnered" homeowner AVL and the pension "partnered" non-homeowner AVL.

(2B) A sale leaseback resident's ***extra allowable amount*** is:

OFFICIAL: Sensitive // Legal Privilege

(a) if the resident is not a member of a couple—the amount that, as at the time when the sale leaseback agreement is entered into, is the difference between the pension "single" homeowner AVL and the pension "single" non-homeowner AVL; or

(b) if the resident is a member of an illness separated couple—the amount that, as at the time when the sale leaseback agreement is entered into, is the difference between the pension "single" homeowner AVL and the pension "single" non-homeowner AVL; or

(c) in any other case—the amount that, as at the time when the sale leaseback agreement is entered into, is the difference between the pension "partnered" homeowner AVL and the pension "partnered" non-homeowner AVL.

(3) For the purposes of this section, a person ***becomes entitled to take up residence*** in a retirement village when the person becomes entitled to take up residence in a retirement village pursuant to the agreement under which the person's current right to live in the retirement village arises.

(4) In this section, "pension 'single' homeowner AVL", "pension 'single' non-homeowner AVL", "pension 'partnered' homeowner AVL" and "pension 'partnered' non-homeowner AVL" have the same meaning as in Part 3.16 (Indexation).

1149 Renegotiation of retirement village agreement

If a person who has a right to live in a retirement village under an agreement enters into a new agreement under which the person obtains a right to live in the retirement village, then, for the purposes of this Division, the total amount paid, or agreed to be paid, for the person's current right to live in the retirement village is the sum of the following amounts:

(a) the total amount paid under the new agreement for that right; and

(b) so much (if any) of:

OFFICIAL: Sensitive // Legal Privilege

(i) any amount paid under an earlier agreement to obtain a right for the person to live in the retirement village; and

(ii) any amount that was, or would have been, payable to the person upon the termination of an earlier agreement;

as ought, in the Secretary's opinion, to be attributed to the cost of the person's current right to live in the retirement village.

Subdivision B—Residents who are not members of a couple

1150 Residents who are not members of a couple

(1) This section applies to a special resident who is not a member of a couple.

Entry contribution above extra allowable amount

(2) If:

(a) this section applies to a special resident; and

(b) the resident's entry contribution was more than the extra allowable amount;

the resident is to be taken, for the purposes of this Act, to be a homeowner.

Entry contribution equal to or below extra allowable amount

(3) If:

(a) this section applies to a special resident; and

(b) the resident's entry contribution was equal to or less than the extra allowable amount;

then, for the purposes of this Act:

(c) the resident is to be taken not to have a right or interest in relation to the resident's principal home; and

(d) the resident's assets are to be taken to include an asset the value of which is equal to the amount of the resident's entry contributions; and

OFFICIAL: Sensitive // Legal Privilege

(e) sections 198H, 198HA, 198HB, 198J, 198JA and 198JB, subsection 1118(1) and section 1125 do not apply to the asset that the resident is, because of paragraph (d) of this subsection, to be taken to have.

(4) Subsection (3) applies:
(a) whether or not the resident actually has any right or interest in the resident's principal home; and
(b) whatever the value of any right or interest that the resident does have in the resident's principal home.

Subdivision C—Residents who are members of couple and share principal home

1151 Members of couples

(1) This section applies to a special resident if:
(a) the resident is a member of a couple; and
(b) the resident shares the resident's principal home with the resident's partner.

Entry contribution above extra allowable amount

(2) If:
(a) this section applies to a special resident; and
(b) the resident's entry contribution was more than the extra allowable amount;
the resident is to be taken, for the purposes of this Act, to be a homeowner.

Entry contribution equal to or below extra allowable amount

(3) If:
(a) this section applies to a special resident; and
(b) the resident's entry contribution was equal to or less than the extra allowable amount;
then, for the purposes of this Act:

OFFICIAL: Sensitive // Legal Privilege

(c) the resident is to be taken not to have a right or interest in relation to the resident's principal home; and

(d) the resident's assets are to be taken to include an asset the value of which is equal to the amount of the resident's entry contribution; and

(e) sections 198K and 198L, subsection 1118(1) and section 1126 do not apply to the asset that the resident is, because of paragraph (d) of this subsection, to be taken to have.

(4) Subsection (3) applies:

(a) whether or not the resident actually has any right or interest in the resident's principal home; and

(b) whatever the value of any right or interest that the resident does have in the resident's principal home.

Subdivision D—Residents who are members of illness separated couple

1152 Members of illness separated couples (both in special residences)

(1) This section applies to a special resident if:

(a) the resident is a member of an illness separated couple; and

(b) the principal home of the resident's partner is also a special residence.

Both entry contributions above extra allowable amount

(2) If:

(a) this section applies to a special resident; and

(b) the resident's entry contribution, and the entry contribution of the resident's partner, were each more than the extra allowable amount concerned;

then, for the purposes of this Act:

(c) the resident is to be taken to be a homeowner; and

OFFICIAL: Sensitive // Legal Privilege

(d) any right or interest of the resident in the partner's principal home is to be disregarded in calculating the actual value of the resident's assets for the purposes of this Act; and

(e) any right or interest of the partner in his or her principal home, or in the resident's principal home, is to be disregarded in calculating the actual value of the partner's assets for the purposes of this Act.

Both entry contributions equal to or below extra allowable amount

(3) If:

(a) this section applies to a special resident; and

(b) the resident's entry contribution, and the entry contribution of the resident's partner, were each equal to or less than the extra allowable amount concerned;

then, for the purposes of this Act:

(c) the resident is to be taken not to have a right or interest in relation to the resident's principal home; and

(d) the resident's assets are to be taken to include an asset the value of which is equal to the amount of the resident's entry contribution; and

(e) sections 198K and 198L, subsection 1118(1) and section 1126 do not apply to the asset that the resident is, because of paragraph (d) of this subsection, taken to have.

(4) Subsection (3) applies:

(a) whether or not the resident actually has any right or interest in the resident's principal home; and

(b) whatever the value of any right or interest that the resident does have in the resident's principal home.

Person's entry contribution above extra allowable amount and partner's entry contribution equal to or below extra allowable amount

(5) If:

(a) this section applies to a special resident; and

OFFICIAL: Sensitive // Legal Privilege

(b) the resident's entry contribution was more than the extra allowable amount; and

(c) the resident's partner's entry contribution was equal to or less than the extra allowable amount;

the following provisions apply for the purposes of the application of this Act to the resident and to the partner:

(d) the resident is to be taken to be a homeowner;

(e) for the purposes of this Act:

(i) both the resident, and the partner, are to be taken not to have a right or interest in relation to the partner's principal home; and

(ii) the partner's assets are to be taken to include an asset whose value is equal to the amount of the partner's entry contribution; and

(iii) sections 198K and 198L, subsection 1118(1) and section 1126 do not apply to the asset that the partner is, because of subparagraph (ii) of this paragraph, to be taken to have;

(f) any right or interest of the partner in the resident's principal home is to be disregarded in calculating the actual value of the partner's assets for the purposes of this Act;

(g) the resident's assets value limit and the partner's assets value limit are both to be taken to be $237,500.

Note: The amount in paragraph (g) is adjusted annually: see section 1205.

(6) Subsection (5) applies:

(a) whether or not the resident's partner actually has any right or interest in the partner's principal home; and

(b) whatever the value of any right or interest that the partner does have in the partner's principal home.

1153 Members of illness separated couples (partner not in special residence and partner homeowner)

(1) This section applies to a special resident if:

(a) the resident is a member of an illness separated couple; and

OFFICIAL: Sensitive // Legal Privilege

(b) the principal home of the resident's partner is not a special residence; and
(c) the right or interest of the partner in the partner's principal home is to be disregarded because of paragraph 1118(1)(b).

Entry contribution above extra allowable amount

(2) If:
(a) this section applies to a special resident; and
(b) the resident's entry contribution was more than the extra allowable amount;
then:
(c) for the purposes of this Act, the resident is to be taken to be a homeowner; and
(d) any right or interest of the resident in the partner's principal home referred to in paragraph (1)(c) is to be disregarded in calculating the actual value of the resident's assets for the purposes of this Act; and
(e) any right or interest of the partner in the resident's principal home is also to be disregarded in calculating the actual value of the partner's assets for the purposes of this Act.

Entry contribution equal to or below extra allowable amount

(3) If:
(a) this section applies to a special resident; and
(b) the resident's entry contribution was equal to or less than the extra allowable amount;
the following provisions apply for the purposes of the application of this Act to the resident and to the resident's partner:
(c) for the purposes of this Act:
(i) the resident is to be taken not to be a homeowner; and
(ia) the partner is to be taken not to have a right or interest in relation to the resident's principal home; and

OFFICIAL: Sensitive // Legal Privilege

(ii) the resident's assets are to be taken to include an asset the value of which is equal to the amount of the resident's entry contribution; and

(iii) sections 198K and 198L, subsection 1118(1) and section 1126 do not apply to the asset that the resident is, because of subparagraph (ii) of this paragraph, to be taken to have;

(d) any right or interest of the resident in the partner's principal home referred to in paragraph (1)(c) is to be disregarded in calculating the actual value of the resident's assets for the purposes of this Act;

(e) the resident's assets value limit and the partner's assets value limit are both to be taken to be $237,500.

Note: The amount in paragraph (e) is adjusted annually: see section 1205.

(4) Subsection (3) applies:

(a) whether or not the resident actually has any right or interest in the resident's principal home; and

(b) whatever the value of any right or interest that the resident does have in the resident's principal home.

1154 Members of illness separated couples (partner not in special residence and partner not homeowner)

(1) This section applies to a special resident if:

(a) the resident is a member of an illness separated couple; and

(b) the principal home of the resident's partner is not a special residence; and

(c) the resident's partner does not have a right or interest in the partner's principal home that is to be disregarded because of paragraph 1118(1)(b).

Entry contribution above extra allowable amount

(2) If:

(a) this section applies to a special resident; and

OFFICIAL: Sensitive // Legal Privilege

(c) the resident's entry contribution was more than the extra allowable amount;

the following provisions apply for the purposes of the application of this Act to the resident and to the partner:

(d) for the purposes of this Act, the resident is to be taken to be a homeowner;

(e) any right or interest of the partner in the resident's principal home is to be disregarded in calculating the actual value of the partner's assets for the purposes of this Act;

(f) the resident's assets value limit and the partner's assets value limit are both to be taken to be $237,500.

Note: The amount in paragraph (f) is adjusted annually: see section 1205.

Entry contribution equal to or below extra allowable amount

(4) If:

(a) this section applies to a special resident; and

(b) the resident's entry contribution was equal to or less than the extra allowable amount;

then, the following provisions apply for the purposes of the application of this Act to the resident and to the resident's partner:

(c) both the resident, and the partner, are to be taken not to have a right or interest in relation to the resident's principal home;

(d) the resident's assets are to be taken to include an asset the value of which is equal to the amount of the resident's entry contribution;

(e) sections 198K and 198L, subsection 1118(1) and section 1126 do not apply to the asset that the resident is, because of paragraph (d) of this subsection, taken to have.

(5) Subsection (4) applies:

(a) whether or not the resident actually has any right or interest in the resident's principal home; and

(b) whatever the value of any right or interest that the resident does have in the resident's principal home.

OFFICIAL: Sensitive // Legal Privilege

Subdivision E—Residents who are members of ordinary couple with different principal homes

1155 Members of ordinary couple with different principal homes (both in special residences)

(1) This section applies to a special resident if:

(a) the resident is a member of an ordinary couple with different principal homes; and

(b) the principal home of the resident's partner is also a special residence.

Both entry contributions above extra allowable amount

(2) If:

(a) this section applies to a special resident; and

(b) the resident's entry contribution and the partner's entry contribution, were each more than the extra allowable amount concerned;

then, for the purposes of this Act:

(c) the resident and the partner are each to be taken to be home owners; and

(d) the value of the resident's principal home is taken to be the resident's individual residence contribution; and

(e) the value of the partner's principal home is taken to be the partner's individual residence contribution; and

(f) any right or interest of the resident in:

(i) the more valuable of the 2 principal homes; or

(ii) where the value of the 2 principal homes is the same—the principal home of the younger person;

(in this subsection called the ***more valuable principal home***) is to be disregarded in calculating the actual value of the resident's assets; and

(g) any right or interest of the partner in the more valuable principal home is to be disregarded in calculating the actual value of the partner's assets; and

OFFICIAL: Sensitive // Legal Privilege

(h) the assets of the person whose principal home is not the more valuable principal home are to be taken to include an asset the value of which is equivalent to the amount of that person's entry contribution.

Both entry contributions equal to or below extra allowable amount

(3) If:

(a) this section applies to a special resident; and

(b) the resident's entry contribution, and the partner's entry contribution, were each less than or equal to the extra allowable amount concerned;

then, for the purposes of this Act:

(c) the resident and the partner are each to be taken not to have a right or interest in relation to the resident's principal home or the partner's principal home; and

(d) the resident's assets are taken to include an amount equal to the resident's individual residence contribution; and

(e) the partner's assets are taken to include an amount equal to the partner's individual residence contribution.

(4) Subsection (3) applies:

(a) whether or not the resident actually has any right or interest in the resident's principal home; and

(b) whatever the value of any right or interest that the resident does have in the resident's principal home; and

(c) whether or not the partner actually has any right or interest in the partner's principal home; and

(d) whatever the value of any right or interest that the partner does have in the partner's principal home.

1156 Members of ordinary couple with different principal homes (partner not in special residence and partner homeowner)

(1) This section applies to a special resident if:

(a) the resident is a member of an ordinary couple with different principal homes; and

OFFICIAL: Sensitive // Legal Privilege

(b) the principal home of the resident's partner is not a special residence; and

(c) the right or interest of the partner in the partner's principal home would, but for this section, be disregarded because of paragraph 1118(1)(b).

(2) If this section applies to a special resident, then, for the purposes of this Act:

(a) the resident and the resident's partner are each to be taken to have a right or interest in a principal home to which paragraph 1118(1)(b) applies; and

(b) the value of the resident's principal home is to be taken to be the amount of the resident's entry contribution; and

(c) any right or interest of the resident in:

(i) the more valuable of the 2 principal homes; or

(ii) where the value of the 2 principal homes is the same—the principal home that is not a special residence;

(in this subsection called the ***more valuable principal home***) is to be disregarded in calculating the actual value of the resident's assets; and

(d) any right or interest of the partner in the more valuable principal home is to be disregarded in calculating the actual value of the partner's assets; and

(e) the assets of the person whose principal home is not the more valuable principal home are to be taken to include an asset whose value is equivalent to the value of the less valuable principal home.

1157 Members of ordinary couple with different principal homes (partner not in special residence and partner not homeowner)

(1) This section applies to a special resident if:

(a) the resident is a member of an ordinary couple with different principal homes; and

OFFICIAL: Sensitive // Legal Privilege

(b) the principal home of the resident's partner is not a special residence; and

(c) the partner does not have a right or interest in the partner's principal home that is to be disregarded because of paragraph 1118(1)(b).

Entry contribution above extra allowable amount

(2) If:

(a) this section applies to a special resident; and

(b) the resident's entry contribution was more than the amount that would be the extra allowable amount if the resident were not a member of a couple;

then, for the purposes of this Act, the resident and the partner are each to be taken to have a right or interest in a principal home to which paragraph 1118(1)(b) applies.

Entry contribution equal to or below extra allowable amount

(3) If:

(a) this section applies to a special resident; and

(b) the resident's entry contribution was equal to or less than the amount that would be the extra allowable amount if the resident were not a member of a couple;

then, the following provisions apply for the purposes of the application of this Act to the resident and to the resident's partner:

(c) both the resident, and the partner, are to be taken not to have a right or interest in relation to the resident's principal home; and

(d) the resident's assets are to be taken to include an asset whose value is equal to the amount of the resident's entry contribution.

(4) Subsection (3) applies:

(a) whether or not the resident actually has any right or interest in the resident's principal home; and

OFFICIAL: Sensitive // Legal Privilege

(b) whatever the value of any right or interest that the resident does have in the resident's principal home; and

(c) whether or not the partner actually has any right or interest in the resident's principal home; and

(d) whatever the value of any right or interest that the partner does have in the resident's principal home.

OFFICIAL: Sensitive // Legal Privilege

Part 3.12A—Provisions for carer allowance and seniors health card income test

Division 1—Purpose of this Part

1157A Purpose of Part

(1) Division 2 of this Part describes the kind of benefits that can be assessable fringe benefits. Divisions 3 to 9 tell you how to work out the value of the assessable fringe benefits received by a person in a tax year. Division 10 deals with foreign currency conversions.

These provisions are necessary for the purposes of the carer allowance income test and the Seniors Health Card Income Test Calculator.

Note 1: For ***assessable fringe benefit*** see section 10A.

Note 2: A fringe benefit is one that is provided by an employer to an employee in respect of the employee's employment (see section 10A).

(2) Section 10A contains many of the definitions that are relevant to the provisions of this Part.

OFFICIAL: Sensitive // Legal Privilege

Division 2—Benefits that may be assessable fringe benefits

1157B Benefits received in or outside Australia

This Part applies to a fringe benefit whether the benefit is received in or outside Australia.

1157C Car benefits

(1) A person (the ***employee***) receives a car benefit if:
  (a) a car held by another person (the ***provider***):
    (i) is applied to a private use by the employee or an associate of the employee; or
    (ii) is taken under subsection (2), (3) or (4) to be available for the private use of the employee or an associate of the employee; and
  (b) either:
    (i) the provider is the employer, or an associate of the employer, of the employee; or
    (ii) the car is applied or available in that way under an arrangement between:
      (A) the provider or another person; and
      (B) the employer or an associate of the employer.

(2) A car is taken, for the purposes of subsection (1), to be available at a particular time for the private use of the employee or an associate of the employee if:
  (a) the car is held by a person who is:
    (i) the employer; or
    (ii) an associate of the employer; or
    (iii) some other person with whom, or in respect of whom, the employer or associate has an arrangement relating to the use or availability of the car; and
  (b) the car is garaged or kept at or near a place of residence of the employee or of an associate of the employee.

OFFICIAL: Sensitive // Legal Privilege

(3) A car is taken, for the purposes of subsection (1), to be available at a particular time for the private use of the employee or an associate of the employee if:

(a) the car is held by a person who is:

(i) the employer; or

(ii) an associate of the employer; or

(iii) some other person with whom, or in respect of whom, the employer or associate has an arrangement relating to the use or availability of the car; and

(b) the car is not at business premises of:

(i) the employer; or

(ii) an associate of the employer; or

(iii) some other person with whom, or in respect of whom, the employer or associate has an arrangement relating to the use or availability of the car; and

(c) either:

(i) the employee is entitled to apply the car to a private use at that time; or

(ii) the employee is not performing the duties of his or her employment at that time and has custody or control of the car; or

(iii) an associate of the employee is entitled to use the car at that time; or

(iv) an associate of the employee has custody or control of the car at that time.

(4) For the purposes of subsection (3), if a prohibition on the use of a car, or on the application of a car for a private use, by a person is not consistently enforced, the person is taken to be entitled to use the car, or to apply the car to a private use, despite the prohibition.

(5) For the purposes of this section, a car that is let on hire to a person under a hire-purchase agreement is taken:

(a) to have been purchased by the person at the time when the person first took the car on hire; and

(b) to have been owned by the person at all material times.

(6) A reference in this Part to a car held by a person (the ***provider***) does not include a reference to:

(a) a taxi let on hire to the provider; or

(b) a car let on hire to the provider under an agreement of a kind that is ordinarily entered into by persons taking cars on hire intermittently as occasion requires on an hourly, daily, weekly or other short-term basis.

(7) Paragraph (6)(b) does not apply if the car has been or may reasonably be expected to be on hire under successive agreements of a kind that result in substantial continuity of the hiring of the car.

1157D Exempt car benefits

(1) Except in so far as section 1157C provides that the application or availability of a car held by a person is a car benefit, the application or availability of a car held by a person is exempt.

(2) A car benefit provided in respect of the employment of the employee is exempt if:

(a) the car is:

(i) a taxi, panel van or utility truck; or

(ii) any other road vehicle designed to carry a load of less than 1 tonne (other than a vehicle designed for the principal purpose of carrying passengers); and

(b) the only private use of the car at a time when the benefit was provided was:

(i) work-related travel of the employee; and

(ii) other minor, infrequent and irregular private use by the employee or an associate of the employee.

(3) A car benefit provided in respect of the employment of the employee is exempt if the car was unregistered at all times when the car was held by the person who provided the car.

OFFICIAL: Sensitive // Legal Privilege

1157E School fees benefits

Payment to recipient

(1) If:

(a) a person (the ***provider***) pays an amount to another person (the ***recipient***); and

(b) the amount is for fees for:

(i) tuition at primary or secondary level provided by a school; or

(ii) books or equipment provided by the school in relation to that tuition; and

(c) the tuition, books or equipment is provided to:

(i) a dependent child of the recipient or the recipient's partner; or

(ii) a person who would be a dependent child of the recipient or the recipient's partner if the person was not receiving a jobseeker payment or a youth allowance;

the payment constitutes a school fees benefit provided by the provider to the recipient.

Note: For ***school*** see section 10A.

Payment to or on behalf of the school

(2) If:

(a) a person (the ***provider***) pays an amount to or on behalf of a school; and

(b) the amount is for fees for:

(i) tuition at primary or secondary level provided by the school; or

(ii) books or equipment provided by the school in relation to that tuition; and

(c) the tuition, books or equipment is provided to:

(i) a dependent child of a person (the ***recipient***) or the recipient's partner; or

OFFICIAL: Sensitive // Legal Privilege

(ii) a person who would be a dependent child of the recipient or the recipient's partner if the person was not receiving a jobseeker payment;

the payment constitutes a school fees benefit provided by the provider to the recipient.

Note: For ***school*** see section 10A.

Boarding fees

(3) For the purposes of subsections (1) and (2), if:

(a) a school is providing tuition at primary or secondary level to a dependent child of a person; and

(b) the child is boarding at the school;

the fees that are payable for the child to board at the school are taken to be fees for the tuition provided by the school to the child.

1157F Health insurance benefits

Payment to recipient

(1) If:

(a) a person (the ***provider***) pays an amount to another person (the ***recipient***); and

(b) the amount is for the cost of health insurance; and

(c) the health insurance covers:

(i) the recipient; or

(ii) the recipient's partner; or

(iii) a dependent child of the recipient or the recipient's partner; or

(iv) a person who would be a dependent child of the recipient or the recipient's partner if the person was not receiving a jobseeker payment or a youth allowance;

the payment constitutes a health insurance benefit provided by the provider to the recipient.

OFFICIAL: Sensitive // Legal Privilege

Payment to the health insurance fund

(2) If:

(a) a person (the ***provider***) pays an amount to a health insurance fund; and

(b) the amount is for the cost of health insurance; and

(c) the health insurance covers:

(i) a person (the ***recipient***); or

(ii) the recipient's partner; or

(iii) a dependent child of the recipient or the recipient's partner; or

(iv) a person who would be a dependent child of the recipient or the recipient's partner if the person was not receiving a jobseeker payment;

the payment constitutes a health insurance benefit provided by the provider to the recipient.

1157G Loan benefits

(1) Subject to subsection (1A), if a person (the ***provider***) makes a loan to another person (the ***recipient***), the making of the loan constitutes a loan benefit provided by the provider to the recipient.

(1A) The making of the loan does not constitute a loan benefit provided by the provider to the recipient if:

(a) the provider is the Defence Force, or a body one of the objects or functions of which is making loans to employees of the Defence Force; and

(b) the recipient is an employee of the Defence Force.

Late payment of debt

(2) For the purposes of this section, if:

(a) a person (the ***debtor***) is under an obligation to pay or repay an amount (the ***principal amount***) to another person (the ***creditor***); and

(b) the principal amount is not the whole or a part of the amount of a loan; and

(c) after the due date for payment or repayment of the principal amount, the whole or part of the principal amount remains unpaid;

the following provisions have effect:

(d) the creditor is taken, immediately after the due date, to have made a loan (the ***deemed loan***) of the principal amount to the debtor;

(e) at any time when the debtor is under an obligation to repay any part of the principal amount, the debtor is taken to be under an obligation to repay that part of the deemed loan;

(f) the deemed loan is taken to have been made:

(i) if interest accrues on so much of the principal amount as remains from time to time unpaid—at the rate of interest at which that interest accrues; or

(ii) in any other case—at a nil rate of interest.

(3) Subject to subsection (4), a loan is a ***deferred interest loan*** if interest is payable on the loan at a rate that exceeds nil.

(4) A loan is not a deferred interest loan if:

(a) the whole of the interest is due for payment within 6 months after the loan is made; or

(b) all of the following conditions are satisfied:

(i) interest on the loan is payable by instalments;

(ii) the intervals between instalments do not exceed 6 months;

(iii) the first instalment is due for payment within 6 months after the loan is made.

(5) For the purposes of this section, if a person (the ***provider***) makes a deferred interest loan (the ***principal loan***) to another person (the ***recipient***), the following provisions apply:

(a) the provider is taken, at the end of:

(i) the period of 6 months starting on the day on which the principal loan was made; and

OFFICIAL: Sensitive // Legal Privilege

(ii) each subsequent period of 6 months;

to have made a loan (the ***deemed loan***) to the recipient;

(b) the amount of the loan is taken to be equal to the amount by which the interest (the ***accrued interest***) that has accrued on the principal loan in respect of the period exceeds the amount (if any) paid in respect of the accrued interest before the end of the period;

(c) if any part of the accrued interest becomes payable or is paid after the time when the deemed loan is taken to have been made, the deemed loan is to be reduced accordingly;

(d) the deemed loan is taken to have been made at a nil rate of interest.

(6) Paragraph (5)(a) only applies to a period of 6 months if the recipient is under an obligation during the whole of the period to repay the whole or a part of the principal loan.

(7) For the purposes of this Part, if no interest is payable in respect of a loan, a nil rate of interest is taken to be payable in respect of the loan.

1157H Exempt loan benefit

(3) The making of a loan is exempt if:

(a) the loan consists of an advance by the employer to the employee; and

(b) the loan is made for the sole purpose of enabling the employee to meet expenses incurred in performing the duties of his or her employment; and

(c) the amount of the loan is not substantially greater than the amount of those expenses that could reasonably be expected to be incurred by the employee; and

(d) the employee is required:

(i) to account to the employer for expenses met from the loan; and

(ii) to repay (whether by set-off or otherwise) any amount not so accounted for.

OFFICIAL: Sensitive // Legal Privilege

(4) The making of a loan is exempt if:

(a) the loan consists of an advance by the employer to the employee; and

(b) the sole purpose of the making of the loan is to enable the employee to pay any of the following amounts payable by the employee in respect of accommodation:

(i) a rental bond;

(ii) a security deposit in respect of electricity, gas or telephone services;

(iii) any similar amount; and

(c) the employee is required to repay (whether by set-off or otherwise) the loan amount of the advance.

1157I Housing benefits

(1) The subsistence of a housing right granted by a person (the ***provider***) to another person (the ***recipient***) constitutes a housing benefit provided by the provider to the recipient.

(2) The payment of money or other valuable consideration by an employer directly or indirectly to an employee (other than an employee of the Defence Force) to enable or assist the employee to meet costs associated with a loan to which subsection (4) applies constitutes a housing benefit provided by the employer to the employee.

Note: For ***employee*** and ***employer*** see section 10A.

(3) The payment of money or other valuable consideration by an employer directly or indirectly to an employee of the Defence Force to meet costs associated with a loan to which subsection (4) applies does not constitute a housing benefit provided by the employer to the employee.

(4) This subsection applies to a loan made to, or used by, a person (whether in his or her own right or jointly with his or her partner) wholly:

OFFICIAL: Sensitive // Legal Privilege

(a) to enable the person to acquire a prescribed interest in land on which a dwelling or a building containing a dwelling was subsequently to be constructed; or

(b) to enable the person to acquire a prescribed interest in land and construct, or complete the construction of, a dwelling or a building containing a dwelling on the land; or

(c) to enable the person to construct, or complete the construction of, a dwelling or a building containing a dwelling on land in which the person held a prescribed interest; or

(d) to enable the person to acquire a prescribed interest in land on which there was a dwelling or a building containing a dwelling; or

(e) to enable the person to acquire a prescribed interest in a stratum unit in relation to a dwelling; or

(f) to enable the person to extend a building that:

(i) is a dwelling or contains a dwelling; and

(ii) is constructed on land in which the person held a prescribed interest;

by adding a room or part of a room to the building or part of the building containing the dwelling, as the case may be; or

(g) if the person held a prescribed interest in a stratum unit in relation to a dwelling—to enable the person to extend the dwelling by adding a room or part of a room to the dwelling; or

(h) to enable the person to repay a loan that was made to, and used by, the person wholly for a purpose mentioned in paragraph (a) to (g).

Note 1: For ***dwelling*** see subsection 10A(7).

Note 2: For prescribed interest see subsections 10A(10) to (14).

Note 3: For ***stratum units*** see subsection 10A(8).

(5) The payment of money or other valuable consideration by an employer directly or indirectly to an employee to enable or assist the employee to meet costs associated with enjoying a housing

OFFICIAL: Sensitive // Legal Privilege

right constitutes a housing benefit provided by the employer to the employee.

Note: For ***employee***, ***employer*** and ***housing right*** see section 10A.

(6) For the avoidance of doubt, subsection (5) does not apply to payments to which subsection (2) or (3) applies.

1157J Exempt housing benefits—live-in residential care workers

(1) If, during a period:

(a) the employer of an employee is:

(i) a government body; or

(ii) a registered religious institution; or

(iii) a company that is registered under the *Australian Charities and Not-for-profits Commission Act 2012* and does not meet the description of the subtype of entity in column 2 of item 4of the table in subsection 25-5(5) of that Act; or

(iv) a company that is a not-for-profit entity and is not an ACNC type of entity;

whose activities consist of, or include, caring for mature persons or disadvantaged persons; and

(b) the duties of the employee's employment consist of, or consist principally of, caring for mature or disadvantaged persons; and

(c) in the performance of those duties, the employee lives, together with mature persons or disadvantaged persons, in residential premises of the employer; and

(d) the fact that the employee lives in those premises is directly related to the provision, in the course of the performance of the duties of the employee's employment, of care to the mature persons or disadvantaged persons living in those premises;

any benefit arising from the provision, during that period, of that accommodation to the employee or to the employee and a partner or dependent child of the employee who resides in those premises with the employee is exempt.

OFFICIAL: Sensitive // Legal Privilege

(2) In this section:

residential premises means a house or hostel used exclusively for the provision of residential accommodation to:

(a) mature persons or disadvantaged persons and dependent children of mature persons or disadvantaged persons; and

(b) persons the duties of whose employment consist of, or consist principally of, caring for persons referred to in paragraph (a); and

(c) partners and children of persons referred to in paragraph (b).

1157JA Expense benefits

(1) A person (the ***employee***) receives an expense benefit if an amount is paid to, or on behalf of, the employee or a person connected with the employee by:

(a) an employer of the employee; or

(b) an associate of the employer; or

(c) a person (the ***arranger***), other than the employer or an associate of the employer, under an arrangement between:

(i) the employer or an associate of the employer; and

(ii) the arranger or another person;

and is so paid in connection with an expense or expenses of a private nature that have been, or will or may be, incurred by the employee or person connected with the employee.

(2) The following are persons connected with the employee:

(a) a partner of the employee;

(b) a dependent child of the employee or of the employee's partner;

(c) a person who would be a dependent child of the employee or of the employee's partner if the person was not receiving a jobseeker payment.

OFFICIAL: Sensitive // Legal Privilege

1157JB Exempt expense benefit

An amount paid as mentioned in subsection 1157JA(1) is exempt if:

(a) the amount is paid to reimburse expenses incurred in connection with the employee's employment; or

(b) the employee requires the amount to be applied in paying expenses related to the employee's employment.

1157JC Financial investment benefit

(1) A person (the ***employee***) receives a ***financial investment benefit*** if:

(a) an employer of the employee; or

(b) an associate of the employer; or

(c) a person (the ***arranger***), other than the employer or an associate of the employer, under an arrangement between:

(i) the employer or an associate of the employer; or

(ii) the arranger or another person;

pays for, or reimburses the cost of, the acquisition of a financial investment by the employee or a person connected with the employee.

(2) The making by a person, for the benefit of another person, of contributions to a superannuation fund or an ATO small superannuation account does not constitute payment for the acquisition of a financial investment by the other person.

(3) The following are persons connected with the employee:

(a) a partner of the employee;

(b) a dependent child of the employee or of the employee's partner;

(c) a person who would be a dependent child of the employee or of the employee's partner if the person was not receiving a jobseeker payment.

OFFICIAL: Sensitive // Legal Privilege

Division 3—Value of car fringe benefits

1157K Method of valuing car fringe benefits

(1) Subject to subsection (2), the value of a car fringe benefit is to be worked out in accordance with section 1157L.

(2) If a determination is in force under section 1157M, the value of a car fringe benefit is to be worked out in accordance with the determination.

1157L Value of car fringe benefits

(1) This is how to work out the value of a car fringe benefit:

Method statement

Step 1. Work out the engine capacity of the car and go to the relevant Part of the Car Fringe Benefits Value Table.

Step 2. Work out how old the car is and go to the appropriate row in the Table.

Step 3. Work out how many complete months in the appropriate tax year the person had or will have the car fringe benefit and go to the appropriate column in the Table: the number where that row and column intersect is the ***value of the car fringe benefit***.

Note: If the person is a member of a couple, the value of the car fringe benefit is to be halved in certain circumstances (see subsection (3)).

(2) The following Table is to be used in working out the value of a car fringe benefit:

CAR FRINGE BENEFITS VALUE TABLE													
PART A—Car engine size up to 1600cc													
	car age	Period of use (completed months)											
item	(years)	1	2	3	4	5	6	7	8	9	10	11	12
1.	1	93.8	188	281	375	469	563	656	750	844	938	1031	1125
2.	2	83.6	168	252	336	420	504	588	672	756	840	923.8	1008
3.	3	74.2	148	223	297	371	445	520	594	668	742	816.4	890.6
4.	4	64.5	129	193	258	322	387	451	516	580	645	709	773.4
5.	5	54.7	109	164	219	273	328	383	438	492	547	601.6	656 3
6.	6	44.9	89.8	135	180	225	270	314	359	404	449	494.1	539.1
7.	7	35.2	70.3	105	141	176	211	246	281	316	352	386.7	421.9
8.	8	25.4	50.8	76 2	102	127	152	178	203	229	254	279.3	304.7
9.	9	15.6	31.3	46 9	62.5	78.1	93.8	109	125	141	156	171.9	187.5
10.	10+	5.86	11.7	17 6	23.4	29.3	35.2	41	46.9	52.7	58.6	64.45	70 31
PART B—Car engine size 1601cc to 2850cc													
11.	1	229	458	688	917	1146	1375	1604	1833	2063	2292	2521	2750
12.	2	210	422	633	844	1055	1266	1477	1688	1898	2109	2320	2531
13.	3	193	385	578	771	964	1156	1349	1542	1734	1927	2120	2313
14.	4	174	349	523	698	872	1047	1221	1396	1570	1745	1919	2094
15.	5	156	313	469	625	781	938	1094	1250	1406	1563	1719	1875
16.	6	138	276	414	552	690	828	966	1104	1242	1380	1518	1656
17.	7	120	240	359	479	599	719	839	958	1078	1198	1318	1438
18.	8	102	203	305	406	508	609	711	813	914	1016	1117	1219
19.	9	83 3	167	250	333	417	500	583	667	750	833	916.7	1000
20.	10+	65.1	130	195	260	326	391	456	521	586	651	716.1	781 3
PART C—Car engine size more than 2850cc													
21.	1	354	708	1063	1417	1771	2125	2479	2833	3188	3542	3896	4250
22.	2	327	656	984	1313	1641	1969	2297	2625	2953	3281	3609	3938
23.	3	302	604	906	1208	1510	1813	2115	2417	2719	3021	3323	3625
24.	4	276	552	828	1104	1380	1656	1932	2208	2484	2760	3036	3313
25.	5	250	500	750	1000	1250	1500	1750	2000	2250	2500	2750	3000
26.	6	224	448	672	896	1120	1344	1568	1792	2016	2240	2464	2688
27.	7	198	396	594	792	990	1188	1385	1583	1781	1979	2177	2375
28.	8	172	344	516	688	859	1031	1203	1375	1547	1719	1891	2063
29.	9	146	292	438	583	729	875	1021	1167	1313	1458	1604	1750
30.	10+	120	240	359	479	599	719	839	958	1078	1198	1318	1438

(3) If:

(a) the person is a member of a couple; and

(b) the person's partner receives a car fringe benefit in the appropriate tax year; and

OFFICIAL: Sensitive // Legal Privilege

(c) the person's and the partner's car fringe benefits relate to the same car;

the value of the car fringe benefit is to be halved.

1157M Minister may determine alternative method of valuing car fringe benefits

(1) The Minister may, by legislative instrument, determine an alternative method for valuing car fringe benefits.

(2) The determination:

(a) commences on the day after the day when it is registered in the Federal Register of Legislation under the *Legislation Act 2003*; and

(b) ceases to have effect 6 months after the day it commences, if it has not already been revoked.

OFFICIAL: Sensitive // Legal Privilege

Division 4—Value of school fees fringe benefits

1157N Value of school fees fringe benefits

The value of a school fees fringe benefit is the amount of the payment that constitutes the school fees benefit.

OFFICIAL: Sensitive // Legal Privilege

Division 5—Value of health insurance fringe benefits

1157O Value of health insurance fringe benefits

The value of a health insurance fringe benefit is the amount of the payment that constitutes the health insurance benefit.

OFFICIAL: Sensitive // Legal Privilege

Division 6—Value of loan fringe benefits

1157P Method of valuing loan fringe benefits

(1) Subject to subsection (2), the value of a loan fringe benefit is to be worked out in accordance with section 1157Q.

(2) If a determination is in force under section 1157R, the value of a loan fringe benefit is to be worked out in accordance with the determination.

1157Q Value of loan fringe benefits

(1) This is how to work out the value of a loan fringe benefit:

Method statement

Step 1. Work out whether the loan is a housing loan or another type of loan.

Note: For ***housing loan*** see subsection 10A(9).

Step 2. Work out the notional rate of interest for the loan using subsection (2), (3) or (4).

Step 3. Work out the actual rate of interest for the loan in the appropriate tax year using subsection (5).

Step 4. Work out whether the actual rate of interest exceeds the notional rate of interest.

Step 5. If the actual rate of interest is equal to or exceeds the notional rate of interest, the value of the loan fringe benefit is nil.

Note: If the value of the loan fringe benefit is nil, you do not have to go any further in the Method statement.

OFFICIAL: Sensitive // Legal Privilege

Step 6. If the actual rate of interest is less than the notional rate of interest, take the actual rate of interest away from the notional rate of interest.

Step 7. Work out the amount of the loan (both the principal and interest) that is outstanding in the appropriate tax year using subsection (6).

Step 8. Multiply the rate of interest obtained in Step 6 and the amount obtained in Step 7: the result is the ***interim value of the loan***.

Step 9. Work out how many complete weeks in the appropriate tax year the person had or will have the loan: the result is the ***number of allowable weeks***.

Step 10. Apply the formula:

$$\frac{\text{number of allowable weeks} \times \text{interim value of the loan}}{52}$$

Step 11. The amount obtained by applying the formula in Step 10 is the ***value of the loan fringe benefit***.

Note: If the person is a member of a couple, the value of the loan fringe benefit is to be halved in certain circumstances (see subsection (7)).

(2) The notional rate of interest for the tax year ending 30 June 1993 is:
  (a) 10% for a housing loan; and
  (b) 13.5% for any other loan.

(3) The notional rate of interest for the tax years ending 30 June 1994 and 30 June 1995 is:
  (a) 6.95% for a housing loan; and
  (b) 11.75% for any other loan.

OFFICIAL: Sensitive // Legal Privilege

(4) The notional rate of interest for any subsequent tax year is the market rate of interest for 1 April in the preceding tax year.

(4A) For the purposes of subsection (4):

market rate of interest, for a particular day, means:

(a) for a housing loan—the lowest variable rate of interest for a housing loan; or

(b) for any other loan—the lowest variable rate of interest for any other loan;

that is available on that day from a bank which is one of 4 banks specified in a determination made, by legislative instrument, by the Minister.

(5) The actual rate of interest for the loan is:

(a) if the loan starts after 1 July in the appropriate tax year—the rate of interest that is payable under the loan on the day on which the loan starts; and

(b) in any other case—the rate of interest that is payable under the loan on 1 July in the appropriate tax year.

(6) The amount of the loan that is outstanding is:

(a) if the loan starts after 1 July in the appropriate tax year—the amount that is outstanding on the day on which the loan starts; and

(b) in any other case—the amount that is outstanding on 1 July in the appropriate tax year.

(7) If:

(a) the person is a member of a couple; and

(b) the person's partner receives a loan fringe benefit in the appropriate tax year; and

(c) the person's and the partner's loan fringe benefits relate to the same loan;

the value of the loan fringe benefit obtained in Step 11 of the Method statement is to be halved.

OFFICIAL: Sensitive // Legal Privilege

1157R Minister may determine alternative method of valuing loan fringe benefits

(1) The Minister may, by legislative instrument, determine an alternative method for valuing loan fringe benefits.

(2) The determination:

(a) commences on the day after the day when it is registered in the Federal Register of Legislation under the *Legislation Act 2003*; and

(b) ceases to have effect 6 months after the day it commences, if it has not already been revoked.

OFFICIAL: Sensitive // Legal Privilege

Division 7—Value of housing fringe benefits

Subdivision A—Grants of housing rights

1157S Methods of valuing housing fringe benefits—grants of housing rights

(1) Subject to subsection (3), the value of a housing fringe benefit to which subsection 1157I(1) applies that is provided to a person who is not an employee of the Defence Force is to be worked out in accordance with section 1157T.

(2) Subject to subsection (3), the value of a housing fringe benefit to which subsection 1157I(1) applies that is provided to an employee of the Defence Force is to be worked out in accordance with section 1157TA.

(3) If:

(a) a determination is in force under section 1157U; and

(b) the determination applies to housing fringe benefits to which subsection 1157I(1) applies;

the value of a housing fringe benefit to which subsection 1157I(1) applies is to be worked out in accordance with the determination.

1157T Value of grants of housing rights—general

(1) This is how to work out the value of a housing fringe benefit to which subsection 1157I(1) applies that is provided to a person who is not an employee of the Defence Force:

Method statement	
Step 1.	Work out the location of the unit of accommodation and go to the appropriate row of the Housing Fringe Benefits Value Table.

OFFICIAL: Sensitive // Legal Privilege

Step 2.	Work out the type of accommodation and go to the appropriate column in the Table: the number where the row and column intersect is the ***weekly market rent*** of the unit of accommodation.
	Note: If the person is a member of a couple, the weekly market rent is to be halved in certain circumstances (see subsection (4)).
Step 3.	Work out how many complete weeks in the appropriate tax year the unit of accommodation was or will be available to the person.
Step 4.	Multiply the weekly market rent of the unit of accommodation and the number of weeks obtained in Step 3: the result is the ***provisional value of the housing fringe benefit***.
Step 5.	Work out the allowable rent for the unit of accommodation in the appropriate tax year using subsection (3).
	Note: If the person is a member of a couple, the allowable rent is to be halved in certain circumstances (see subsection (4)).
Step 6.	Take the allowable rent away from the provisional value of the housing fringe benefit: the result is the ***value of the housing fringe benefit***.

(2) The following Table is to be used in working out the value of a housing fringe benefit to which subsection 1157I(1) applies that is provided to a person who is not an employee of the Defence Force:

Housing fringe benefits value table

Location	Type of accommodation		
	House, flat or home unit		Any other unit of accommodation
	3 or more bedrooms	1-2 bedrooms	
Metropolitan	140	120	85
Non-metropolitan	100	90	70
Special housing	80	80	25
Outside Australia	140	120	85

Note 1: For ***unit of accommodation***, ***metropolitan location***, ***non-metropolitan location*** and ***special housing location*** see section 10A.

Note 2: A housing fringe benefit that is received outside Australia is to be valued (see section 1157B).

Note 3: For ***Australia*** see subsection 23(1).

(3) The allowable rent is the amount of rent that the Secretary is satisfied is payable for the unit of accommodation in the appropriate tax year by:

(a) if the person is not a member of a couple—the person; or

(b) if the person is a member of a couple—the person and the person's partner.

(4) If:

(a) the person is a member of a couple; and

(b) the person's partner receives a housing fringe benefit in the appropriate tax year; and

(c) the person's and the partner's housing fringe benefits relate to the same unit of accommodation;

the weekly market rent obtained in Step 2 of the Method statement and the allowable rent obtained in Step 5 of the Method statement are both to be halved.

OFFICIAL: Sensitive // Legal Privilege

1157TA Value of grants of housing rights—employees of the Defence Force

(1) This is how to work out the value of a housing fringe benefit to which subsection 1157I(1) applies that is provided to an employee of the Defence Force:

Method statement

Step 1. Work out the type of accommodation and go to the appropriate column in the Housing Fringe Benefits Value Table (Defence Force Employees): the number in the appropriate column is the ***weekly market rent*** of the unit of accommodation.

Note: If the person is a member of a couple, the weekly market rent is to be halved in certain circumstances (see subsection (4)).

Step 2. Work out how many complete weeks in the appropriate tax year the unit of accommodation was or will be available to the person.

Step 3. Multiply the weekly market rent of the unit of accommodation and the number of weeks obtained in Step 2: the result is the ***provisional value of the housing fringe benefit***.

Step 4. Work out the allowable rent for the unit of accommodation in the appropriate tax year using subsection (3).

Note: If a person is a member of a couple, the allowable rent is to be halved in certain circumstances (see subsection (4)).

Step 5. Take the allowable rent away from the provisional value of the housing fringe benefit: the result is the ***value of the housing fringe benefit***.

Note: For ***employee*** see section 10A.

OFFICIAL: Sensitive // Legal Privilege

(2) The following Table is to be used in working out the value of a housing fringe benefit to which subsection 1157I(1) applies that is provided to an employee of the Defence Force:

Housing Fringe Benefits Value Table (Defence Force Employees)		
Type of accommodation		
House, flat or home unit		**Any other unit of accommodation**
3 or more bedrooms	**1-2 bedrooms**	
80	80	25

Note 1: For ***employee*** see section 10A.

Note 2: For ***unit of accommodation*** see section 10A.

Note 3: A housing fringe benefit that is received outside Australia is to be valued (see section 1157B).

Note 4: For ***Australia*** see subsection 23(1).

(3) The allowable rent is the amount of rent that the Secretary is satisfied is payable for the unit of accommodation in the appropriate tax year by:

(a) if the person is not a member of a couple—the person; or

(b) if the person is a member of a couple—the person and the person's partner.

(4) If:

(a) the person is a member of a couple; and

(b) the person's partner receives a housing fringe benefit in the appropriate tax year; and

(c) the person's and the partner's housing fringe benefits relate to the same unit of accommodation;

the weekly market rent obtained in Step 1 of the Method statement and the allowable rent obtained in Step 4 of the Method statement are both to be halved.

OFFICIAL: Sensitive // Legal Privilege

Subdivision B—Payments associated with loans

1157TB Method of valuing housing fringe benefits—payments associated with loans

(1) Subject to subsection (2), the value of a housing fringe benefit to which subsection 1157I(2) applies is to be worked out in accordance with section 1157TC.

(2) If:

(a) a determination is in force under section 1157U; and

(b) the determination applies to housing fringe benefits to which subsection 1157I(2) applies;

the value of a housing fringe benefit to which subsection 1157I(2) applies is to be worked out in accordance with the determination.

1157TC Value of payments associated with loans

The value of a housing fringe benefit to which subsection 1157I(2) applies is the amount of the payment that constitutes the housing benefit.

Subdivision C—Payments associated with enjoying housing rights

1157TD Methods of valuing housing fringe benefits—payments associated with enjoying housing rights

(1) Subject to subsection (3), the value of a housing fringe benefit to which subsection 1157I(5) applies that is provided to a person who is not an employee of the Defence Force is to be worked out in accordance with section 1157TE.

(2) Subject to subsection (3), the value of a housing fringe benefit to which subsection 1157I(5) applies that is provided to an employee of the Defence Force is to be worked out in accordance with section 1157TF.

OFFICIAL: Sensitive // Legal Privilege

(3) If:

(a) a determination is in force under section 1157U; and

(b) the determination applies to housing fringe benefits to which subsection 1157I(5) applies;

the value of a housing fringe benefit to which subsection 1157I(5) applies is to be worked out in accordance with the determination.

1157TE Value of payments associated with enjoying housing rights—general

(1) This is how to work out the value of a housing fringe benefit to which subsection 1157I(5) applies that is provided to a person who is not an employee of the Defence Force:

Method statement

Step 1. Work out the location of the unit of accommodation and go to the appropriate row of the Housing Fringe Benefits Value Table.

Step 2. Work out the type of accommodation and go to the appropriate column in the Table: the number where the row and column intersect is the ***weekly market rent*** of the unit of accommodation.

Note: If the person is a member of a couple, the weekly market rent is to be halved in certain circumstances (see subsection (4)).

Step 3. Work out how many complete weeks in the appropriate tax year the unit of accommodation was or will be available to the person.

Step 4. Multiply the weekly market rent of the unit of accommodation and the number of weeks obtained in Step 3: the result is the ***provisional value of the housing fringe benefit***.

Step 5. Work out the allowable rent for the unit of accommodation in the appropriate tax year using subsection (3).

Note: If a person is a member of a couple, the allowable rent is to be halved in certain circumstances (see subsection (4)).

Step 6. Work out the amount the employer paid or will pay by way of the housing fringe benefits in respect of the unit of accommodation in the appropriate tax year: the result is the ***employer subsidy***.

Step 7. Work out the amount (if any) by which the allowable rent exceeds the employer subsidy: the result is the ***employee contribution***.

Note: If the employer subsidy equals or exceeds the allowable rent, the employee contribution is nil.

Step 8. Take the employee contribution away from the provisional value of the housing fringe benefit: the result is the ***value of the housing fringe benefit***.

(2) The following Table is to be used in working out the value of a housing fringe benefit to which subsection 1157I(5) applies that is provided to a person who is not an employee of the Defence Force:

Housing fringe benefits value table

Location	**Type of accommodation**		
	House, flat or home unit		**Any other unit of accommodation**
	3 or more bedrooms	**1-2 bedrooms**	
Metropolitan	140	120	85
Non-metropolitan	100	90	70
Special housing	80	80	25
Outside Australia	140	120	85

OFFICIAL: Sensitive // Legal Privilege

Note 1: For ***unit of accommodation***, ***metropolitan location***, ***non-metropolitan location*** and ***special housing location*** see section 10A.

Note 2: A housing fringe benefit that is received outside Australia is to be valued (see section 1157B).

Note 3: For ***Australia*** see subsection 23(1).

(3) The allowable rent is the amount of rent that the Secretary is satisfied is payable for the unit of accommodation in the appropriate tax year by:

(a) if the person is not a member of a couple—the person; or

(b) if the person is a member of a couple—the person and the person's partner.

(4) If:

(a) the person is a member of a couple; and

(b) the person's partner receives a housing fringe benefit in the appropriate tax year; and

(c) the person's and the partner's housing fringe benefits relate to the same unit of accommodation;

the weekly market rent obtained in Step 2 of the Method statement and the allowable rent obtained in Step 5 of the Method statement are both to be halved.

1157TF Value of payments associated with enjoying housing rights—employees of the Defence Force

(1) This is how to work out the value of a housing fringe benefit to which subsection 1157I(5) applies that is provided to an employee of the Defence Force:

Method statement

Step 1. Work out the type of accommodation and go to the appropriate column in the Housing Fringe Benefits Value Table (Defence Force Employees): the number in the appropriate column is the ***weekly market rent*** of the unit of accommodation.

OFFICIAL: Sensitive // Legal Privilege

Note: If the person is a member of a couple, the weekly market rent is to be halved in certain circumstances (see subsection (4)).

Step 2. Work out how many complete weeks in the appropriate tax year the unit of accommodation was or will be available to the person.

Step 3. Multiply the weekly market rent of the unit of accommodation and the number of weeks obtained in Step 2: the result is the ***provisional value of the housing fringe benefit***.

Step 4. Work out the allowable rent for the unit of accommodation in the appropriate tax year using subsection (3).

Note: If a person is a member of a couple, the allowable rent is to be halved in certain circumstances (see subsection (4)).

Step 5. Work out the amount the employer paid or will pay by way of the housing fringe benefits in respect of the unit of accommodation in the appropriate tax year: the result is the ***employer subsidy***.

Step 6. Work out the amount (if any) by which the allowable rent exceeds the employer subsidy: the result is the employee contribution.

Note: If the employer subsidy equals or exceeds the allowable rent, the employee contribution is nil.

Step 7. Take the employee contribution away from the provisional value of the housing fringe benefit: the result is the ***value of the housing fringe benefit***.

(2) The following Table is to be used in working out the value of a housing fringe benefit to which subsection 1157I(5) applies that is provided to an employee of the Defence Force:

Housing Fringe Benefits Value Table (Defence Force Employees)		
Type of accommodation		
House, flat or home unit		Any other unit of accommodation
3 or more bedrooms	1-2 bedrooms	
80	80	25

Note 1: For ***employee*** see section 10A.

Note 2: For ***unit of accommodation*** see section 10A.

Note 3: A housing fringe benefit that is received outside Australia is to be valued (see section 1157B).

Note 4: For ***Australia*** see subsection 23(1).

(3) The allowable rent is the amount of rent that the Secretary is satisfied is payable for the unit of accommodation in the appropriate tax year by:

(a) if the person is not a member of a couple—the person; or

(b) if the person is a member of a couple—the person and the person's partner.

(4) If:

(a) the person is a member of a couple; and

(b) the person's partner receives a housing fringe benefit in the appropriate tax year; and

(c) the person's and the partner's housing fringe benefits relate to the same unit of accommodation;

the weekly market rent obtained in Step 1 of the Method statement and the allowable rent obtained in Step 4 of the Method statement are both to be halved.

OFFICIAL: Sensitive // Legal Privilege

Subdivision D—Alternative methods of valuing housing fringe benefits

1157U Minister may determine alternative method of valuing housing fringe benefits

(1) The Minister may, by legislative instrument, determine an alternative method for valuing housing fringe benefits.

(1A) A determination under subsection (1) may apply to all housing fringe benefits or only to specified kinds of housing fringe benefits.

(2) The determination:

(a) commences on the day after the day when it is registered in the Federal Register of Legislation under the *Legislation Act 2003*; and

(b) ceases to have effect 6 months after the day it commences, if it has not already been revoked.

OFFICIAL: Sensitive // Legal Privilege

Division 8—Value of expense fringe benefit

1157UA Value of expense fringe benefits

The value of an expense fringe benefit is the amount of the payment that constitutes the expense benefit.

OFFICIAL: Sensitive // Legal Privilege

Division 9—Value of financial investment fringe benefit

1157UB Value of financial investment fringe benefit

The value of a financial investment fringe benefit is the value of the financial investment benefit that constitutes the financial investment fringe benefit when the financial investment benefit is received.

OFFICIAL: Sensitive // Legal Privilege

Division 10—Foreign currency rates

1157V Foreign currency rates

(1) If:

(a) it is necessary, for the purposes of this Part, to work out an amount or value of a fringe benefit; and

(b) the amount or value of the benefit is expressed in a foreign currency;

the amount or value in Australian currency is to be worked out using the market exchange rate for 1 July in the appropriate tax year.

(2) If there is no market exchange rate for 1 July in the appropriate tax year (for example, because of a national public holiday), the market exchange rate to be used is the market exchange rate that applied on the last working day immediately before that 1 July.

(3) For the purposes of this section, the market exchange rate of a foreign currency is the on-demand airmail buying rate for that currency available at the Commonwealth Bank of Australia.

OFFICIAL: Sensitive // Legal Privilege

Part 3.13—Imprisonment

1158 Some social security payments not payable during period in gaol or in psychiatric confinement following criminal charge

An instalment of a social security pension, a social security benefit, a parenting payment, a carer allowance, a mobility allowance or a pensioner education supplement is not payable to a person in respect of a day on which the person is:

(a) in gaol; or

(b) undergoing psychiatric confinement because the person has been charged with an offence.

Note 1: For ***in gaol*** see subsection 23(5).

Note 2: For ***psychiatric confinement*** see subsections 23(8) and (9).

1159 Payment may be redirected to dependent partner or child

(1) If:

(a) a social security pension (other than pension PP (single)) is not payable to a person on a pension payday because of section 1158; and

(b) the person's partner is dependent on the person;

the Secretary may authorise the payment of all or some of the instalment that would otherwise have been payable to the person to be paid to:

(c) the partner; or

(d) someone else for the benefit of the partner.

(2) If:

(a) a social security pension (other than pension PP (single)) is not payable to a person on a pension payday because of section 1158; and

(b) a young person is dependent on the person;

the Secretary may authorise the payment of all or some of the instalment that would otherwise have been payable to the person to be paid to:

(c) the young person; or

(d) someone else for the benefit of the young person.

1159A Person not qualified for some concession cards when in gaol or in psychiatric confinement following criminal charge

(1) A person is not qualified under section 1061ZG or 1061ZO for a seniors health card or health care card on a day on which the person is:

(a) in gaol; or

(b) undergoing psychiatric confinement because the person has been charged with an offence.

Note 1: For ***in gaol*** see subsection 23(5).

Note 2: For ***psychiatric confinement*** see subsections 23(8) and (9).

(2) This section has effect despite sections 1061ZG and 1061ZO.

OFFICIAL: Sensitive // Legal Privilege

Part 3.14—Compensation recovery

Division 1—General

1160 General effect of Part

(1) This Part operates in certain specified circumstances to do one or more of the following:

(a) reduce a person's compensation affected payment;

(b) render a person's compensation affected payment not payable;

(c) require the repayment of some or all of a person's compensation affected payment;

because of the receipt of compensation by the person or the person's partner.

(2) This Part applies whether or not there is any connection between the circumstances that give rise to the person's qualification for the compensation affected payment and the circumstances that give rise to the receipt of compensation by the person or the person's partner.

1161 Application of Part

(1) Subject to subsections (2) to (6A), payments of a compensation affected payment are affected under this Part if:

(a) whether the compensation was received before or after the commencement of this Part, the compensation affected payment is:

~~(i) a jobseeker payment in relation to which, under Subdivision BA of Division 1 of Part 2.12, the recipient of the payment is not required to satisfy the activity test; or~~

(i) a jobseeker payment in relation to which the recipient of the payment is not required to satisfy the employment pathway plan requirements because of a determination that is in effect under section 40L of the Administration

OFFICIAL: Sensitive // Legal Privilege

Act and that has been made because of the circumstance referred to in paragraph 40L(5)(a) of that Act; or

(iii) a sickness benefit under the 1947 Act; or

(iv) a rehabilitation allowance under the 1947 Act payable in place of sickness benefit under the 1947 Act; or

(b) in the case of any other kind of compensation affected payment, the compensation was received on or after 1 May 1987 and the claim for the compensation affected payment was made on or after 1 May 1987.

(2) This Part applies to a pension PP (single) if:

(a) the compensation was received on or after 20 March 1992; and

(b) the claim for the pension was made on or after 20 March 1992.

(3) This Part applies to carer payment if:

(a) the compensation was received on or after 1 January 1993; and

(b) the claim for the carer payment was made on or after 1 January 1993.

(5) This Part applies to partner allowance if:

(a) the compensation was received on or after 20 September 1994; and

(b) the claim for the allowance was made on or after 20 September 1994.

(6) This Part applies to age pension if:

(a) the compensation was received on or after 20 March 1997; and

(b) the person's provisional commencement day or start day for the age pension is on or after 20 March 1997.

(6A) Subject to section 1161A, this Part applies to a compensation affected payment to which paragraph (l), (m) or (n) of the definition of that expression in subsection 17(1) applies if:

(a) the compensation is received on or after 1 July 2004; and

OFFICIAL: Sensitive // Legal Privilege

(b) either:

(i) if the compensation affected payment to which that paragraph applies is one in respect of which a claim must be made for a person to be qualified for the payment—a claim is made for the payment on or after 1 July 2004; or

(ii) if the compensation affected payment to which that paragraph applies is not one in respect of which a claim must be made for a person to be qualified for the payment—the compensation affected payment is received on or after 1 July 2004.

1161A Application of Part to supplementary compensation affected payments

(1) For the purposes of this section:

(a) a reference to a supplementary compensation affected payment is a reference to a compensation affected payment to which paragraph (l), (m) or (n) of the definition of ***compensation affected payment*** in subsection 17(1) applies; and

(b) a supplementary compensation affected payment relates to any allowance, supplement, pension or payment of a kind that, in the applicable paragraph of the definition of ***compensation affected payment*** in subsection 17(1), is labelled as the underlying compensation affected payment.

(2) Except as mentioned in this section, this Part does not apply to a supplementary compensation affected payment.

(3) If:

(a) as a result of the operation of section 1169, any underlying compensation affected payment to which a supplementary compensation affected payment relates was not payable in relation to the day on which the supplementary compensation affected payment was received; or

(b) as a result of the operation of section 1173 or 1174, the rate of any underlying compensation affected payment to which a

OFFICIAL: Sensitive // Legal Privilege

supplementary compensation affected payment relates was reduced to nil in relation to the day on which the supplementary compensation affected payment was received; or

(c) the following conditions are satisfied:

(i) the rate of any of the compensation affected payments that would have been made as mentioned in subparagraph 1181(1)(b)(ii) or (2)(d)(ii) or 1184A(2)(c)(ii) or (3)(d)(ii) is nil;

(ii) the compensation affected payment is an underlying compensation affected payment to which a supplementary compensation affected payment relates;

(iii) the underlying compensation affected payment was made in relation to the day on which the supplementary compensation affected payment was received; or

(d) an adverse determination mentioned in subsection 1184I(1) has the effect that:

(i) any underlying compensation affected payment to which a supplementary compensation affected payment relates is cancelled or suspended in relation to the day on which the supplementary compensation affected payment was received; or

(ii) the rate of any underlying compensation affected payment to which a supplementary compensation affected payment relates is reduced to nil in relation to the day on which the supplementary compensation affected payment was received;

then:

(e) in any case—the supplementary compensation affected payment is not payable; and

(f) if paragraph (d) applies—for the purposes of subsection 1184I(1), the amount of the supplementary compensation affected payment is taken to be an amount that the person in relation to whom it was made is liable to pay to the Commonwealth because of the determination.

OFFICIAL: Sensitive // Legal Privilege

(4) If:

(a) any of:

(i) the payments of the compensation affected payment mentioned in paragraph 1179(b); or

(ii) the compensation affected payments mentioned in paragraph 1184A(1)(a);

is an underlying compensation affected payment to which a supplementary compensation affected payment relates; and

(b) the underlying compensation affected payment was made in relation to the day on which the supplementary compensation affected payment was received;

then the sum mentioned in that paragraph is increased by the amount of the supplementary compensation affected payment.

(5) If:

(a) the rate of any of the compensation affected payments that would have been made as mentioned in subparagraph 1181(1)(b)(ii) or (2)(d)(ii) or 1184A(2)(c)(ii) or (3)(d)(ii) is nil; and

(b) the compensation affected payment is an underlying compensation affected payment to which a supplementary compensation affected payment relates; and

(c) the underlying compensation affected payment was made in relation to the day on which the supplementary compensation affected payment was received;

then the difference mentioned in paragraph 1181(1)(b) or (2)(d) or 1184A(2)(c) or (3)(d) is increased by the amount of the supplementary compensation affected payment.

(6) If a compensation affected payment that would have been reduced as mentioned in subsection 1184A(4):

(a) would have been reduced to nil; and

(b) is an underlying compensation affected payment to which a supplementary compensation affected payment relates; and

(c) was received in relation to the day on which the supplementary compensation affected payment was received;

OFFICIAL: Sensitive // Legal Privilege

then the recoverable amount mentioned in subsection 1184A(4) is increased by the amount of the supplementary compensation affected payment, but only to the extent that the sum of all increases under this subsection in relation to the periodic compensation payments does not exceed the sum of the amounts of those payments.

1162 Part to bind Crown

This Part binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory and of the Northern Territory.

1163 Interpretation

(1) In a provision of this Part (other than section 1164), a reference to the payment or receipt of periodic compensation payments includes a reference to the payment or receipt, as the case may be, of arrears of periodic compensation payments.

(2) A reference in this Part to periodic compensation payments is a reference to:
  (a) a periodic compensation payment; or
  (b) if 2 or more periodic compensation payments relate to the same period, those payments.

(3) In this Part, a reference to a person's partner receiving or claiming a compensation affected payment includes a reference to the partner receiving or claiming a compensation affected pension within the meaning of the Veterans' Entitlements Act.

1164 Certain lump sums to be treated as though they were received as periodic compensation payments

If:
  (a) a person was entitled to periodic compensation payments under a law of a State or Territory; and

OFFICIAL: Sensitive // Legal Privilege

(b) the person's entitlement to the periodic payments was converted under the law of the State or Territory into an entitlement to a lump sum; and

(c) the lump sum was calculated by reference to a period;

this Part applies to the person as if:

(d) the person had not received:

(i) the lump sum; or

(ii) if the lump sum was to be paid in instalments—any of the instalments; and

(e) the person had received in each fortnight during the period a periodic compensation payment equal to:

$$\frac{\text{Lump sum amount}}{\text{Number of fortnights in the period}}$$

where:

lump sum amount is the amount of the lump sum referred to in paragraph (b);

number of fortnights in the period is the number of whole fortnights in the period referred to in paragraph (c).

1165 Effect of certain State and Territory laws

If:

(a) a law of a State or Territory provides for the payment of compensation; and

(b) the law includes a provision to the effect that a person's compensation under the law is to be or may be reduced or cancelled if the person is qualified for or receives payments under this Act;

this Act applies as if the person had received under the law the compensation that the person would have received under the law if the provision referred to in paragraph (b) had not been enacted.

OFFICIAL: Sensitive // Legal Privilege

Division 2—Enforcement of compensation rights

1166 Secretary may require person to take action to obtain compensation

(1) If:

(a) a person receives or claims a compensation affected payment; and

(b) the person or the person's partner is, or, in the Secretary's opinion, may be, entitled to compensation; and

(c) the person or the partner:

(i) has taken no action to claim or obtain the compensation; or

(ii) has taken no action that the Secretary considers reasonable to claim or obtain the compensation;

the Secretary may require the person or the partner to take the action specified by the Secretary.

(2) The action specified by the Secretary is to be the action that the Secretary considers reasonable to enable the person to claim or obtain the compensation.

(3) Even though a person has entered into an agreement to give up the person's right to compensation, the Secretary may form the opinion that the person may be entitled to compensation if the Secretary is satisfied that the agreement is void, ineffective or unenforceable.

(4) For the purposes of subsection (3), a person enters into an agreement to give up the person's right to compensation if the person:

(a) enters into an agreement to waive the person's right to compensation; or

(b) enters into an agreement to withdraw the person's claim for compensation.

OFFICIAL: Sensitive // Legal Privilege

1167 Failure to comply with a requirement to take action to obtain compensation

(1) If the Secretary, under section 1166, requires a person who receives or claims a compensation affected payment to take action to claim or obtain compensation, the compensation affected payment is not payable to the person or is not to be granted, as the case may be, unless the person complies with the requirement.

(2) If the Secretary requires the partner of a person who receives or claims a compensation affected payment to take action to claim or obtain compensation, the compensation affected payment is not payable to the person or is not to be granted, as the case may be, unless the partner complies with the requirement.

OFFICIAL: Sensitive // Legal Privilege

Division 3—Receipt of compensation

1168 Application

A provision of this Division that refers to a person receiving or claiming a compensation affected payment and receiving a lump sum compensation payment has effect regardless of whether the lump sum compensation payment was received before or after the person received or claimed the compensation affected payment.

1169 Compensation affected payment not payable during lump sum preclusion period

(1) If:

(a) a person receives or claims a compensation affected payment; and

(b) the person receives a lump sum compensation payment;

the compensation affected payment is not payable to the person in relation to any day or days in the lump sum preclusion period.

(2) In this section:

lump sum compensation payment does not include a lump sum payment:

(a) to which section 1164 applies; or

(b) that relates only to arrears of periodic compensation payments.

1170 Lump sum preclusion period

(1) Subject to subsection (2), if a person receives both periodic compensation payments and a lump sum compensation payment, the lump sum preclusion period is the period that:

(a) begins on the day following the last day of the periodic payments period or, where there is more than one periodic payments period, the day following the last day of the last periodic payments period; and

OFFICIAL: Sensitive // Legal Privilege

(b) ends at the end of the number of weeks worked out under subsections (4) and (5).

(2) If a person chooses to receive part of an entitlement to periodic compensation payments in the form of a lump sum, the lump sum preclusion period is the period that:

(a) begins on the first day on which the person's periodic compensation payment is a reduced payment because of that choice; and

(b) ends at the end of the number of weeks worked out under subsections (4) and (5).

(3) If neither of subsections (1) and (2) applies, the lump sum preclusion period is the period that:

(a) begins on the day on which the loss of earnings or loss of capacity to earn began; and

(b) ends at the end of the number of weeks worked out under subsections (4) and (5).

(4) The number of weeks in the lump sum preclusion period in relation to a person is the number worked out using the formula:

$$\frac{\text{Compensation part of lump sum}}{\text{Income cut-out amount}}$$

(5) If the number worked out under subsection (4) is not a whole number, the number is to be rounded down to the nearest whole number.

1171 Deemed lump sum payment arising from separate payments

(1) If:

(a) a person receives 2 or more lump sum payments in relation to the same event that gave rise to an entitlement of the person to compensation (the ***multiple payments***); and

(b) at least one of the multiple payments is made wholly or partly in respect of lost earnings or lost capacity to earn;

OFFICIAL: Sensitive // Legal Privilege

the following paragraphs have effect for the purposes of this Act and the Administration Act:

(c) the person is taken to have received one lump sum compensation payment (the ***single payment***) of an amount equal to the sum of the multiple payments;

(d) the single payment is taken to have been received by the person:

(i) on the day on which he or she received the last of the multiple payments; or

(ii) if the multiple payments were all received on the same day, on that day.

(2) A payment is not a lump sum payment for the purposes of paragraph (1)(a) if it relates exclusively to arrears of periodic compensation.

1172 Lump sum compensation not counted as ordinary income

If an amount of a compensation affected payment is not payable to a person under section 1169 because the person has received a lump sum compensation payment, that lump sum compensation payment is not to be regarded as ordinary income of either the person or the person's partner (if any) for the purposes of a provision of this Act, other than point 1071A-4.

1173 Effect of periodic compensation payments on rate of person's compensation affected payment

(1) If:

(a) a person receives periodic compensation payments; and

(b) the person was not, at the time of the event that gave rise to the entitlement of the person to the compensation, qualified for, and receiving, a compensation affected payment; and

(c) the person receives or claims a compensation affected payment in relation to a day or days in the periodic payments period;

OFFICIAL: Sensitive // Legal Privilege

the rate of the person's compensation affected payment in relation to that day or those days is reduced in accordance with subsection (2).

(2) The person's daily rate of compensation affected payment is reduced by the amount of the person's daily rate of periodic compensation.

(3) The reference in subsection (2) to a daily rate of periodic compensation is a reference to the amount worked out by dividing the total amount of the periodic compensation payments referred to in paragraph (1)(a) by the number of days in the periodic payments period.

(4) If:

(a) a person receives periodic compensation payments; and

(b) at the time of the event that gave rise to the entitlement of the person to compensation, the person was qualified for, and was receiving, a compensation affected payment; and

(c) the person receives or claims a compensation affected payment in relation to a day or days in the periodic payments period;

the periodic compensation payments are to be treated as ordinary income of the person for the purposes of this Act.

1174 Effect of periodic compensation payments on rate of partner's compensation affected payment

(1) If:

(a) a person receives periodic compensation payments; and

(b) the person is a member of a couple; and

(c) the person was not, at the time of the event that gave rise to the entitlement of the person to the compensation, qualified for, and receiving, a compensation affected payment; and

(d) the person is qualified for a compensation affected payment in relation to a day or days in the periodic payments period but, solely because of the operation of this Part, does not, or would not, receive the payment; and

OFFICIAL: Sensitive // Legal Privilege

(e) the person's partner receives or claims a compensation affected payment in relation to a day or days in the periodic payments period;

the amount (if any) by which the daily rate of periodic compensation payable to the person exceeds the daily rate of the compensation affected payment for which the person is qualified in relation to a day or days in the periodic payments period (the ***excess amount***) is to be treated as ordinary income of the person's partner for the purpose of the calculation of the amount of the compensation affected payment referred to in paragraph (e).

(2) The reference in subsection (1) to a daily rate of periodic compensation is a reference to the amount worked out by dividing the total amount of the periodic compensation payments referred to in paragraph (1)(a) by the number of days in the periodic payments period.

(3) For the purposes of subsection (1):

(a) the amount that would, apart from this section, be the amount of the partner's ordinary income in relation to the day or days referred to in paragraph (1)(e) is to be increased by the excess amount; and

(b) the increased amount is to be taken to be the amount of the partner's ordinary income in relation to that day or those days, as the case may be.

1175 Rate reduction under both income/assets test and this Part

If the rate of a person's compensation affected payment is reduced under this Part, the reduction applies to the person's rate as reduced under the ordinary income test Module or the assets test Module of the relevant Rate Calculator.

1176 Periodic compensation not counted as ordinary income

If an instalment of a compensation affected payment payable to a person is reduced under section 1173 because of the receipt of periodic compensation payments, those payments are not to be

OFFICIAL: Sensitive // Legal Privilege

regarded as ordinary income of the person for the purposes of a provision of this Act, other than point 1071A-4.

OFFICIAL: Sensitive // Legal Privilege

Division 4—Recoverable amounts

Subdivision A—Preliminary

1177 Interpretation

If:

(a) a person is liable to make a compensation payment to another person; or

(b) an authority of a State or Territory has determined that it will make a compensation payment to another person, whether or not it is liable to make the payment;

then, for the purposes of this Division, in relation to the person to whom the compensation is payable or is to be paid, the following paragraphs have effect:

(c) a reference to the lump sum preclusion period is a reference to the period that would represent the lump sum preclusion period if the compensation were paid in accordance with the liability or determination;

(d) a reference to the periodic payments period is a reference to the period that would represent the periodic payments period if the compensation were paid in accordance with the liability or determination.

Subdivision B—Recovery from recipient of compensation affected payment

1178 Repayment of amount where both lump sum and payments of compensation affected payment have been received

(1) If:

(a) a person receives a lump sum compensation payment; and

(b) the person receives payments of a compensation affected payment in relation to a day or days in the lump sum preclusion period;

OFFICIAL: Sensitive // Legal Privilege

the Secretary may, by written notice to the person, determine that the person is liable to pay to the Commonwealth the amount specified in the notice.

(2) The amount to be specified in the notice is the recoverable amount under section 1179.

1179 The section 1178 recoverable amount

The recoverable amount under this section is equal to the smaller of the following amounts:

(a) the compensation part of the lump sum compensation payment;

(b) the sum of the payments of the compensation affected payment made to the person in relation to a day or days in the lump sum preclusion period.

1180 Repayment where both periodic compensation payments and payments of compensation affected payment have been received

(1) If:

(a) a person receives periodic compensation payments; and

(b) the person was not, at the time of the event that gave rise to the entitlement of the person to the compensation, qualified for, and receiving, a compensation affected payment; and

(c) the person receives payments of a compensation affected payment in relation to a day or days in the periodic payments period; and

(d) the payments referred to in paragraph (c) have not been reduced to nil as a result of the operation of section 1173;

the Secretary may, by written notice to the person, determine that the person is liable to pay to the Commonwealth the amount specified in the notice.

(2) The amount to be specified in a notice for the purpose of subsection (1) is the recoverable amount under section 1181.

OFFICIAL: Sensitive // Legal Privilege

1181 The section 1180 recoverable amount

(1) Subject to subsection (2), the recoverable amount under this section is equal to the smaller of the following amounts:

(a) the sum of the periodic compensation payments;

(b) the difference between:

(i) the sum of the compensation affected payments made to the person in relation to a day or days in the periodic payments period; and

(ii) the sum of the compensation affected payments that would have been made to the person in relation to any such day or days had those payments been made at the rate to which the payments were reduced as a result of the operation of section 1173.

(2) If:

(a) a person is a member of a couple; and

(b) the person's partner receives a compensation affected payment in relation to a day or days in the periodic payments period;

the recoverable amount under this section is equal to the smaller of the following amounts:

(c) the sum of the periodic compensation payments;

(d) the difference between:

(i) the sum of the compensation affected payments made to the person and the person's partner in relation to a day or days in the periodic payments period; and

(ii) the sum of the compensation affected payments that would have been made to the person and the person's partner in relation to any such day or days had those payments been made at the rates to which the payments were reduced as a result of the operation of sections 1173 and 1174.

OFFICIAL: Sensitive // Legal Privilege

Subdivision C—Recovery from compensation payers and insurers

1182 Secretary may send preliminary notice to potential compensation payer or insurer

(1) If:

(a) a person (the ***claimant***) makes a claim against another person (the ***potential compensation payer***) for compensation; and

(b) the claimant claims a compensation affected payment in relation to a day or days in the periodic payments period or the lump sum preclusion period, as the case may be;

the Secretary may give written notice to the potential compensation payer that the Secretary may wish to recover an amount from the potential compensation payer.

(2) If:

(a) a person (the ***claimant***) makes a claim against a person (the ***potential compensation payer***) for compensation; and

(b) the claimant claims a compensation affected payment for a day or days in the periodic payments period or the lump sum preclusion period, as the case may be; and

(c) an insurer, under a contract of insurance, may be liable to indemnify the potential compensation payer against any liability arising from the claim for compensation;

the Secretary may give written notice to the insurer that the Secretary may wish to recover an amount from the insurer.

(3) A notice must contain:

(a) a statement of the potential compensation payer's or insurer's obligation under section 1183; and

(b) a statement of the effect of section 1184D so far as it relates to the notice.

OFFICIAL: Sensitive // Legal Privilege

1183 Potential compensation payer or insurer must notify Secretary of liability

(1) If a person (the ***potential compensation payer***):

(a) is given a notice under subsection 1182(1) in relation to a person; and

(b) whether before or after receiving the notice, the potential compensation payer becomes liable to pay compensation to the person;

the potential compensation payer must give written notice to the Secretary of the liability within 7 days after:

(c) becoming liable; or

(d) receiving the notice;

whichever happens later.

Penalty: Imprisonment for 12 months.

(2) If an insurer:

(a) is given a notice under subsection 1182(2) in relation to a claim by a person; and

(b) whether before or after receiving the notice, the insurer becomes liable to indemnify the potential compensation payer, either wholly or partly, in relation to the claim;

the insurer must give written notice to the Secretary of the liability within 7 days after:

(c) becoming liable; or

(d) receiving the notice;

whichever happens later.

Penalty: Imprisonment for 12 months.

(3) Strict liability applies to:

(a) an element of an offence against subsection (1) that a notice is a notice under subsection 1182(1); and

(b) an element of an offence against subsection (2) that a notice is a notice under subsection 1182(2).

OFFICIAL: Sensitive // Legal Privilege

1184 Secretary may send recovery notice to compensation payer or insurer

(1) If:

(a) a person (the ***compensation payer***):

(i) is liable to pay compensation to a person (a ***claimant***); or

(ii) where the compensation payer is an authority of a State or Territory, has determined that a payment by way of compensation is to be made to a claimant; and

(b) the claimant has received a compensation affected payment in relation to a day or days in the periodic payments period or the lump sum preclusion period, as the case may be;

the Secretary may give written notice to the compensation payer that the Secretary proposes to recover from the compensation payer the amount specified in the notice.

(2) If:

(a) an insurer is liable, under a contract of insurance, to indemnify a compensation payer against any liability arising from a person's claim for compensation; and

(b) the person has received a compensation affected payment in relation to a day or days in the periodic payments period or the lump sum preclusion period, as the case may be;

the Secretary may give written notice to the insurer that the Secretary proposes to recover from the insurer the amount specified in the notice.

(3) If a compensation payer or insurer is given notice under subsection (1) or (2), as the case may be, the compensation payer or insurer is liable to pay to the Commonwealth the amount specified in the notice.

(4) The amount to be specified in the notice is the recoverable amount under section 1184A.

(5) A notice under this section must contain a statement of the effect of section 1184D so far as it relates to such a notice.

OFFICIAL: Sensitive // Legal Privilege

(6) This section applies to an amount payable by way of compensation in spite of any law of a State or Territory (however expressed) under which the compensation is inalienable.

1184A The section 1184 recoverable amount

(1) If a person receives compensation affected payments in relation to a day or days in a lump sum preclusion period, the recoverable amount under this section is equal to the smallest of the following amounts:

(a) the sum of all compensation affected payments made to the person that relate to a day or days in a lump sum preclusion period;

(b) the compensation part of the lump sum payment;

(c) in the case of a compensation payer—the maximum amount that the compensation payer is liable to pay to the person in relation to the matter at any time after receiving:

(i) a notice under section 1182 in relation to the matter; or

(ii) if the compensation payer has not received a notice under section 1182—the notice under section 1184 in relation to the matter;

(d) in the case of an insurer—the maximum amount for which the insurer is liable to indemnify the compensation payer in relation to the matter at any time after receiving:

(i) a notice under section 1182 in relation to the matter; or

(ii) if the insurer has not received a notice under section 1182—the notice under section 1184 in relation to the matter.

(2) Subject to subsection (4), if:

(a) a person receives compensation affected payments in relation to a day or days in a periodic payments period; and

(b) either:

(i) the person is not a member of a couple; or

(ii) the person's partner neither receives nor claims a compensation affected payment in relation to any day in the periodic payments period;

OFFICIAL: Sensitive // Legal Privilege

the recoverable amount under this section is equal to the smallest of the following amounts:

(c) the difference between:

(i) the sum of all compensation affected payments made to the person that relate to a day or days in a periodic payments period; and

(ii) the sum of all compensation affected payments that would have been made to the person in relation to any such day or days had those payments been reduced in accordance with section 1173;

(d) the sum of the amounts of the periodic compensation payments;

(e) in the case of a compensation payer—the maximum amount that the compensation payer is liable to pay to the person in relation to the matter at any time after receiving:

(i) a notice under section 1182 in relation to the matter; or

(ii) if the compensation payer has not received a notice under section 1182—the notice under section 1184 in relation to the matter;

(f) in the case of an insurer—the maximum amount for which the insurer is liable to indemnify the compensation payer in relation to the matter at any time after receiving:

(i) a notice under section 1182 in relation to the matter; or

(ii) if the insurer has not received a notice under section 1182—the notice under section 1184 in relation to the matter.

(3) Subject to subsection (4), if:

(a) the person claiming compensation is a member of a couple; and

(b) compensation affected payments received by the person were received in relation to a day or days in a periodic payments period; and

(c) the person's partner receives a compensation affected payment in relation to a day or days in the periodic payments period;

OFFICIAL: Sensitive // Legal Privilege

the recoverable amount under this section is equal to the smallest of the following amounts:

(d) the difference between:

(i) the sum of all compensation affected payments made to the person and the person's partner in relation to a day or days in the periodic payments period; and

(ii) the sum of all compensation affected payments that would have been made to the person and the person's partner in relation to any such day or days had those payments been reduced as a result of the operation of section 1173 or 1174;

(e) the sum of the amounts of the periodic compensation payments;

(f) in the case of a compensation payer—the maximum amount that the compensation payer is liable to pay to the person in relation to the matter at any time after receiving:

(i) a notice under section 1182 in relation to the matter; or

(ii) if the compensation payer has not received a notice under section 1182—the notice under section 1184 in relation to the matter;

(g) in the case of an insurer—the maximum amount for which the insurer is liable to indemnify the compensation payer in relation to the matter at any time after receiving:

(i) a notice under section 1182 in relation to the matter; or

(ii) if the insurer has not received a notice under section 1182—the notice under section 1184 in relation to the matter.

(4) If:

(a) at the time of the event that gave rise to the entitlement of a person to compensation, the person was qualified for, and was receiving, a compensation affected payment; and

(b) the person or the person's partner received or claimed a compensation affected payment in relation to a day or days in the periodic payments period;

OFFICIAL: Sensitive // Legal Privilege

the recoverable amount is the amount determined by the Secretary to be the total amount by which the person's, or the person's partner's, compensation affected payment in relation to a day or days in the periodic payments period would have been reduced if a determination had been made under Division 7 of Part 3 of the Administration Act because of point 1064-E3, 1066A-F2A, 1067G-H25, 1067L-D24, 1068-G8A, 1068A-E13 or 1068B-D21 of this Act.

1184B Preliminary notice or recovery notice suspends liability to pay compensation

(1) If a compensation payer has been given a notice under section 1182 or 1184 in relation to the compensation payer's liability, or possible liability, to pay compensation, the compensation payer is not liable to pay that compensation while the notice has effect.

(2) If an insurer has been given a notice under section 1182 or 1184 in relation to the insurer's liability, or possible liability, to indemnify a compensation payer against a liability arising from a claim for compensation:

(a) the insurer is not liable to so indemnify the compensation payer; and

(b) the compensation payer is not liable to pay that compensation;

while the notice has effect.

1184C Compensation payer's or insurer's payment to Commonwealth discharges liability to compensation claimant

(1) Payment to the Commonwealth of an amount that a compensation payer is liable to pay under section 1184 in relation to a person operates, to the extent of the payment, as a discharge of the compensation payer's liability to pay compensation to the person.

OFFICIAL: Sensitive // Legal Privilege

(2) Payment to the Commonwealth of an amount that an insurer is liable to pay under section 1184 in relation to a person operates, to the extent of the payment, as a discharge of:

(a) the insurer's liability to the compensation payer; and

(b) the compensation payer's liability to pay compensation to the person.

1184D Offence to make compensation payment after receiving preliminary notice or recovery notice

(1) If a person (the ***potential compensation payer***) has been given a notice under section 1182 or 1184 in relation to the payment of compensation to a person, the potential compensation payer must not make the compensation payment to the person.

Penalty: Imprisonment for 12 months.

(1A) Subsection (1) does not apply if:

(a) in the case of a notice under section 1182—the Secretary has given the potential compensation payer written notice that the notice under section 1182 is revoked; or

(b) in the case of a notice under section 1184—the potential compensation payer has paid to the Commonwealth the amount specified in the notice; or

(c) the Secretary has given the potential compensation payer written permission to pay the compensation.

(2) If an insurer has been given a notice under section 1182 or 1184 in relation to the insurer's liability to indemnify a compensation payer, the insurer must not make any payment to the compensation payer in relation to that liability.

Penalty: Imprisonment for 12 months.

(2A) Subsection (2) does not apply if:

(a) in the case of a notice under section 1182—the Secretary has given the insurer written notice that the notice under section 1182 is revoked; or

OFFICIAL: Sensitive // Legal Privilege

(b) in the case of a notice under section 1184—the insurer has paid to the Commonwealth the amount specified in the notice; or

(c) the Secretary has given the insurer written permission to pay the amount.

(3) Strict liability applies to an element of an offence against subsection (1) or (2) that:

(a) a notice is a notice under section 1182; or

(b) a notice is a notice under section 1184.

1184E Liability of compensation payer or insurer to pay the Commonwealth if there is a contravention of section 1184D

(1) A compensation payer or insurer who contravenes section 1184D is, in addition to being liable under that section, liable to pay to the Commonwealth:

(a) if the contravention relates to a notice under section 1182—an amount determined by the Secretary; or

(b) if the contravention relates to a notice under section 1184—the recoverable amount specified in the notice.

(2) The amount determined by the Secretary under paragraph (1)(a) must not be more than the smallest of the amounts worked out:

(a) if the person is not a member of a couple—under subsection 1184A(1), (2) or (4), as the case requires; or

(b) if the person is a member of a couple—under subsection 1184A(1), (2), (3) or (4), as the case requires.

(3) This section applies in relation to a payment by way of compensation in spite of any law of a State or Territory (however expressed) under which the compensation is inalienable.

OFFICIAL: Sensitive // Legal Privilege

Division 5—Recoverable debts

1184F Debts resulting from notices under section 1178 or 1180

If the Secretary gives a person a notice under section 1178 or 1180 determining that the person is liable to pay to the Commonwealth the amount specified in the notice, the amount so specified is a debt due by the person to the Commonwealth.

1184G Debts resulting from notices under section 1184

If the Secretary gives a person a notice under section 1184 that the Secretary proposes to recover a specified amount from the person, the specified amount is a debt due by the person to the Commonwealth.

1184H Debts resulting from contravention of section 1184D

(1) An amount payable by a compensation payer under section 1184E is a debt due by the compensation payer to the Commonwealth.

(2) An amount payable by an insurer under section 1184E is a debt due by the insurer to the Commonwealth.

1184I Compensation arrears debts

(1) If an adverse determination is made in relation to a person because of point 1064-E3, 1066A-F2A, 1067G-H25, 1067L-D24, 1068-G8A, 1068A-E13 or 1068B-D21, the amount that the person is liable to pay to the Commonwealth because of the determination is a debt due by the person to the Commonwealth.

(2) In this section:

adverse determination means a determination under section 79, 80, 81 or 82 of the Administration Act.

OFFICIAL: Sensitive // Legal Privilege

Division 6—Miscellaneous

1184J Secretary may give recovery notice either to compensation payer or to insurer but not to both

(1) The Secretary is not to give a notice to an insurer under section 1184 about a matter if there is a notice to a compensation payer under section 1184 in force in relation to the same matter.

(2) The Secretary is not to give a notice to a compensation payer under section 1184 about a matter if there is a notice to an insurer under section 1184 in force in relation to the same matter.

1184K Secretary may disregard some payments

(1) For the purposes of this Part, the Secretary may treat the whole or part of a compensation payment as:

(a) not having been made; or

(b) not liable to be made;

if the Secretary thinks it is appropriate to do so in the special circumstances of the case.

(2) If:

(a) a person or a person's partner receives or claims a compensation affected payment; and

(b) the person receives compensation; and

(c) the set of circumstances that gave rise to the claim for compensation is not related to the set of circumstances that gave rise to the person's or the person's partner's receipt of, or claim for, the compensation affected payment;

the fact that those 2 sets of circumstances are unrelated does not alone constitute special circumstances for the purposes of subsection (1).

OFFICIAL: Sensitive // Legal Privilege

1184L Application to review compensation decision—disability support pension

(1) This section applies if a person claims a disability support pension and:

(a) the Secretary decides under section 1167 that the pension is not to be granted or is not payable; or

(b) the Secretary decides under section 1169 that the pension is not payable; or

(c) the Secretary decides that, if the person were qualified for the pension, the rate of the pension would be reduced to nil under section 1173.

(2) If:

(a) an application referred to in section 142 of the Administration Act is made for AAT first review of that decision; and

(b) at the time of the application, the Secretary has not taken the necessary steps to satisfy himself or herself whether the person is qualified for the disability support pension; and

(c) the person who claimed the disability support pension requests the Secretary, in writing, to take those steps;

the Secretary must take those steps as soon as practicable after the request is made.

1185 Special provision for certain recipients of dependency-based payments

(1) This section applies to a person if:

(a) the person is a member of a couple; and

(b) the person was a member of the same couple immediately before 20 September 2001; and

(c) the person's partner was receiving a compensation affected payment immediately before 20 September 2001; and

(d) the person was receiving a dependency-based payment immediately before 20 September 2001; and

(e) the person was born on or before 1 July 1955.

OFFICIAL: Sensitive // Legal Privilege

(2) If this section applies to a person, the following paragraphs have effect:

(a) the dependency-based payment does not cease to be payable to the person only because the person's partner receives periodic compensation payments;

(b) in spite of Division 3, the person continues to be qualified for the dependency-based payment to the same extent as he or she would have if the person's partner had not received the payments of compensation.

(3) Paragraph (2)(b) does not prevent a dependency-based payment being cancelled, or ceasing to be payable, under a provision of the social security law, other than a provision of this Part.

(4) Paragraph (2)(b) does not prevent the rate of a dependency-based payment being reduced or cancelled under the social security law because of the operation of section 1174.

(5) In this section:

dependency-based payment means:

(b) mature age partner allowance; or

(c) partner allowance.

OFFICIAL: Sensitive // Legal Privilege

Part 3.15—New Enterprise Incentive Scheme

1186 General effect of Part

This Part adjusts the social security pension or benefit rate of a person who is receiving or whose partner is receiving, payments under the scheme known as the New Enterprise Incentive Scheme (NEIS).

1187 Reduction in rate of payments under this Act if recipient or partner also receiving payments under New Enterprise Incentive Scheme (NEIS)

(1) If:

(a) an instalment of:

(ia) age pension; or

(i) disability support pension; or

(iii) carer payment; or

(iv) parenting payment; or

(vi) special needs pension;

is payable to a person during an instalment period; and

(b) NEIS is payable to the person during that instalment period;

the rate of the payment referred to in paragraph (a) is to be reduced under this Part.

(1A) If:

(a) a payment of:

(ia) widow allowance; or

(ii) jobseeker payment; or

(iv) special benefit; or

(iva) partner allowance; or

(va) mature age allowance under Part 2.12B;

is payable to a person during an instalment period; and

OFFICIAL: Sensitive // Legal Privilege

(b) NEIS is payable to the person, or in respect of the person, during that instalment period;

the rate of the payment referred to in paragraph (a) is to be reduced under this Part.

(2) If:

(a) an instalment of:

(ia) age pension; or

(i) disability support pension;

is payable to a person during an instalment period; and

(b) NEIS is payable to the person during that instalment period; and

(c) an instalment of carer payment in respect of the person is payable to the person's partner during an instalment period;

the rate of the partner's payment is to be reduced under this Part.

1188 Rate reduction under this Part

(1) Subject to subsection (2), if a person's rate of payment under this Act is to be reduced under this Part because of a NEIS payment, the amount of rate reduction is to be equal to the amount of the NEIS payment.

(2) If:

(a) a person's rate of payment under this Act is to be reduced under this Part because of a NEIS payment; and

(b) the person's partner's rate of payment under this Act is also to be reduced under this Part (see subsection 1187(2)) because of the NEIS payment;

the amount of rate reduction for both the person and the person's partner is to be equal to 50% of the amount of the NEIS payment.

(3) A person's rate of payment under this Act is not to be reduced below nil under subsection (1) or (2).

OFFICIAL: Sensitive // Legal Privilege

Part 3.15A—Community Development Employment Projects Scheme

Division 1—Preliminary

1188A General effect of Part

(1) This Part has the effect, in certain circumstances, of reducing a person's social security entitlement in respect of a period in respect of which the person is a CDEP Scheme participant.

(2) This Part also provides, in certain circumstances, a supplement for a person for a period in respect of which the person is a CDEP Scheme participant.

1188B CDEP Scheme participants

(1) If immediately before 1 July 2009 a person was entitled to receive a CDEP Scheme payment under an agreement of the kind referred to in the definition of ***CDEP Scheme provider*** in subsection 23(1), the person is a ***CDEP Scheme participant*** in respect of a day on or after 1 July 2009 if the person is entitled, on that day, to receive such a payment under such an agreement.

Note: For ***CDEP Scheme payment*** see subsection 23(1).

(2A) Without limiting persons who are not CDEP Scheme participants, a person who is undertaking an activity approved by the Secretary under section 1188BA as a Northern Territory CDEP transitional activity is not a ***CDEP Scheme participant***.

1188BA Approval of Northern Territory CDEP transitional activities

(1) The Secretary may, in writing, approve an activity as a Northern Territory CDEP transitional activity for the purposes of this Act.

(2) An approval under subsection (1) is not a legislative instrument.

OFFICIAL: Sensitive // Legal Privilege

1188BB Effect of undertaking Northern Territory CDEP transitional activities

A person is not taken to be:

(a) a worker carrying out work in any capacity for the Commonwealth, or an employee of the Commonwealth, for the purposes of the *Work Health and Safety Act 2011*; or

(b) an employee within the meaning of section 5 of the *Safety, Rehabilitation and Compensation Act 1988*; or

(c) an employee for the purposes of the *Superannuation Guarantee (Administration) Act 1992*; or

(d) an employee for the purposes of the *Fair Work Act 2009*;

merely by undertaking an activity approved by the Secretary under section 1188BA as a Northern Territory CDEP transitional activity for the purposes of this Act.

OFFICIAL: Sensitive // Legal Privilege

Division 2—Reduction in rate of pension or allowance

1188C Reductions in rate of payments under this Act if recipient or partner also receiving payments under CDEP Scheme

(1) If:

(a) an instalment of any of the following:

(i) age pension;

(ii) disability support pension;

(iv) carer payment;

(v) parenting payment at the rate applicable for a person who is not a member of a couple;

(ix) special needs pension;

is payable to a person in respect of a payment period or in respect of a pension payday; and

(b) a CDEP Scheme payment is payable to the person or the person's partner in respect of the whole or a part of that payment period or in respect of that pension payday, as the case may be;

the following provisions have effect:

(c) if a CDEP Scheme payment referred to in paragraph (b) that is payable to the person exceeds the person's threshold:

(i) the amount of the instalment is reduced by the part of the CDEP Scheme payment that does not exceed the person's threshold; and

(ii) the ordinary income of the person includes the part of the CDEP Scheme payment that exceeds the person's threshold;

(d) if a CDEP Scheme payment referred to in paragraph (b) that is payable to the person does not exceed the person's threshold:

(i) the amount of the instalment is reduced by the amount of the CDEP Scheme payment; and

(ii) the CDEP Scheme payment is not ordinary income of the person;

OFFICIAL: Sensitive // Legal Privilege

(e) if a CDEP Scheme payment referred to in paragraph (b) that is payable to the person's partner exceeds the partner's threshold:

(i) the part of the CDEP Scheme payment that does not exceed the partner's threshold is not ordinary income of the person or of the person's partner; and

(ii) the ordinary income of the person's partner includes the part of the CDEP Scheme payment that exceeds the partner's threshold;

(f) if a CDEP Scheme payment referred to in paragraph (b) that is payable to the person's partner does not exceed the partner's threshold, the CDEP Scheme payment is not ordinary income of the person or of the person's partner.

(2) If a person who had been receiving instalments of a pension payment, allowance or benefit referred to in paragraph (1)(a) dies, then, in calculating any bereavement payment in respect of the person, any deductions made from the amounts of the instalments under subparagraph (1)(c)(i), (d)(i) or (e)(i) are to be disregarded.

(3) If:

(a) a payment of any of the following:

(i) widow allowance;

(ii) jobseeker payment;

(iii) youth allowance;

(iv) parenting payment at the rate applicable for a person who is a member of a couple;

(v) partner allowance;

(vii) special benefit;

is payable to a person in respect of a payment period; and

(b) a CDEP Scheme payment is payable to the person in respect of the whole or a part of that period;

the following provisions have effect:

(c) if the CDEP Scheme payment referred to in paragraph (b) exceeds the person's threshold, the ordinary income of the

OFFICIAL: Sensitive // Legal Privilege

person includes the part of the CDEP Scheme payment that exceeds the person's threshold;

(d) if the CDEP Scheme payment referred to in paragraph (b) does not exceed the person's threshold, the CDEP Scheme payment is not ordinary income of the person;

(e) if a payment of a social security benefit referred to in paragraph (a) is payable to the person's partner in respect of the payment period, the ordinary income of the person, for the purposes of working out the rate of the person's partner's social security benefit, includes an amount equal to the person's CDEP payment.

(4) This section applies in respect of payment periods beginning on or after 20 March 2000.

(5) In this section:

threshold:

(a) in relation to a person, means the amount referred to in column 4 of Table A in this subsection that is applicable in relation to the person having regard to the type of pension, allowance, benefit or payment referred to in column 2 of that table that would be payable to the person if the person were not a CDEP Scheme participant and the situation (if any) referred to in column 3 of that table that is applicable to the person; or

(b) in relation to the partner of a person, means:

(i) if the partner is not receiving any pension, allowance, benefit or other payment under this Act—the amount specified in item 7 of column 3B of Table B in point 1068-B1; or

(ii) if the partner is receiving a pension, allowance, benefit or other payment under this Act—the amount that would be applicable under the appropriate item in Table A in this subsection if that table applied to the partner, having regard to the type of pension, allowance, benefit or other payment referred to in column 2 of that table that is payable to the partner and the situation (if any)

OFFICIAL: Sensitive // Legal Privilege

referred to in column 3 of that table that is applicable to the partner.

Table A—Threshold amounts

Column 1 Item	Column 2 Type of pension, allowance, benefit or payment	Column 3 Situation	Column 4 Person's threshold
1	Age pension	Not member of a couple	The amount specified in column 3B of item 4A of Table B in point 1068-B1
2	Age pension	Member of a couple	The amount specified in column 3B of item 7 of Table B in point 1068-B1
3	Disability support pension	Not member of a couple	The amount specified in column 3B of item 4A of Table B in point 1068-B1 or the amount specified in column 4 of the item of Table B in point 1066A-B1 (including any amount required to be added by point 1066A-C1) that would apply to the person if the person were not a CDEP Scheme participant, whichever is the lesser

OFFICIAL: Sensitive // Legal Privilege

Table A—Threshold amounts

Column 1 Item	Column 2 Type of pension, allowance, benefit or payment	Column 3 Situation	Column 4 Person's threshold
4	Disability support pension	Member of a couple	The amount specified in column 3B of item 7 of Table B in point 1068-B1 or the amount specified in column 4 of the item in Table B in point 1066A-B1 (including any amount required to be added by point 1066A-C1) that would apply to the person if the person were not a CDEP Scheme participant, whichever is the lesser
6	Carer payment	Not member of a couple	The amount specified in column 3B of item 4A of Table B in point 1068-B1
7	Carer payment	Member of a couple	The amount specified in column 3B of item 7 of Table B in point 1068-B1
11	Special needs pension	Not member of a couple	The amount specified in column 3B of item 4A of Table B in point 1068-B1
12	Special needs pension	Member of a couple	The amount specified in column 3B of item 7 of Table B in point 1068-B1
16	Jobseeker payment	Not member of a couple and is under the age of 60	The amount specified in column 3B of item 4A of Table B in point 1068-B1 or the maximum basic rate that would apply to the person if the person were not a CDEP Scheme participant, whichever is the lesser

Table A—Threshold amounts

Column 1 Item	Column 2 Type of pension, allowance, benefit or payment	Column 3 Situation	Column 4 Person's threshold
17	Jobseeker payment	Not member of a couple, is over the age of 60, and has been receiving for a continuous period of at least 9 months one or more of a social security pension, a social security benefit, a service pension, income support supplement or a veteran payment	The amount specified in column 3B of item 5 of Table B in point 1068-B1
18	Jobseeker payment	Not member of a couple, is over the age of 60, and has not been receiving for a continuous period of at least 9 months one or more of a social security pension, a social security benefit, a service pension, income support supplement or a veteran payment	The amount specified in column 3B of item 4B of Table B in point 1068-B1

OFFICIAL: Sensitive // Legal Privilege

Table A—Threshold amounts

Column 1 Item	Column 2 Type of pension, allowance, benefit or payment	Column 3 Situation	Column 4 Person's threshold
19	Jobseeker payment	Not member of a couple and has a dependent child	The amount specified in column 3A of item 4A of Table B in point 1068-B1
19A	Jobseeker payment	Not member of a couple and not required to satisfy the activity test because of a determination in relation to the person under subsection 602C(3) or (3A)	The amount worked out under point 1068-B5
20	Jobseeker payment	Member of illness separated couple, whether or not the person has a dependent child	The amount specified in column 3B of item 9 of Table B in point 1068-B1 or the maximum basic rate that would apply to the person if the person were not a CDEP Scheme participant, whichever is the lesser
21	Jobseeker payment	Member of a couple whether or not the person has a dependent child	The amount specified in column 3B of item 7 of Table B in point 1068-B1 or the maximum basic rate that would apply to the person if the person were not a CDEP Scheme participant, whichever is the lesser

OFFICIAL: Sensitive // Legal Privilege

Table A—Threshold amounts

Column 1 Item	Column 2 Type of pension, allowance, benefit or payment	Column 3 Situation	Column 4 Person's threshold
22	Jobseeker payment	Member of a couple but partner in gaol	The amount specified in column 3B of item 11 of Table B in point 1068-B1 or the maximum basic rate that would apply to the person if the person were not a CDEP Scheme participant, whichever is the lesser
23	Widow allowance	Under the age of 60	The amount specified in column 3B of item 4A of Table B in point 1068-B1
24	Widow allowance	Over the age of 60 and has been receiving for a continuous period of at least 9 months one or more of a social security pension, a social security benefit, a service pension, income support supplement or a veteran payment	The amount specified in column 3B of item 5 of Table B in point 1068-B1

OFFICIAL: Sensitive // Legal Privilege

Table A—Threshold amounts

Column 1 Item	Column 2 Type of pension, allowance, benefit or payment	Column 3 Situation	Column 4 Person's threshold
25	Widow allowance	Over the age of 60 and has not been receiving for a continuous period of at least 9 months one or more of a social security pension, a social security benefit, a service pension, income support supplement or a veteran payment	The amount specified in column 3B of item 4B of Table B in point 1068-B1
26	Special benefit	Not member of a couple	The amount specified in column 3B of item 4A of Table B in point 1068-B1 or the maximum basic rate that would apply to the person if the person were not a CDEP Scheme participant, whichever is the lesser
27	Special benefit	Member of a couple	The amount specified in column 3B of item 7 of Table B in point 1068-B1 or the maximum basic rate that would apply to the person if the person were not a CDEP Scheme participant, whichever is the lesser

OFFICIAL: Sensitive // Legal Privilege

Table A—Threshold amounts

Column 1 Item	Column 2 Type of pension, allowance, benefit or payment	Column 3 Situation	Column 4 Person's threshold
28	Partner allowance		The amount specified in column 3B of item 7 of Table B in point 1068-B1 or the maximum basic rate that would apply to the person if the person were not a CDEP Scheme participant, whichever is the lesser
31	Parenting payment	Not member of a couple	The amount specified in column 3B of item 4A of Table B in point 1068-B1
32	Parenting payment	Member of a couple	The amount specified in column 3B of item 7 of Table B in point 1068-B1 or the maximum basic rate that would apply to the person if the person were not a CDEP Scheme participant, whichever is the lesser
33	Youth allowance	Not independent	The amount specified in column 3 of the item of Table BA in point 1067G-B2 that would apply to the person if the person were not a CDEP Scheme participant
34	Youth allowance	Independent	The amount specified in column 3 of the item of Table BB in point 1067G-B3 that would apply to the person if the person were not a CDEP Scheme participant

OFFICIAL: Sensitive // Legal Privilege

Table A—Threshold amounts

Column 1 Item	Column 2 Type of pension, allowance, benefit or payment	Column 3 Situation	Column 4 Person's threshold
35	Youth allowance	Independent, not long term income support student, not member of a couple and has an exemption under section 542FA because of a determination in relation to the person under subsection 542FA (3) or (3A)	The amount worked out under point 1067G-B3A

Note: For ***CDEP Scheme payment*** see subsection 23(1).

(5A) To avoid doubt, for the purposes of item 19 of Table A in subsection (5), a person is taken to have a dependent child if point 1068-B1B has the effect that the person's maximum basic rate of jobseeker payment is worked out as if the person had a dependent child.

(5B) Subsection (5A) does not limit the circumstances in which a person has a dependent child for the purposes of the item mentioned in that subsection.

(6) In items 26 and 27 of Table A in subsection (5), a reference to the maximum basic rate that would apply to a person is a reference to the amount that would be the person's maximum basic rate if the person were receiving the appropriate payment.

(7) For the purpose of subsection (6), the appropriate payment is the social security payment, other than special benefit, that, in the opinion of the Secretary, is the social security payment that it is

OFFICIAL: Sensitive // Legal Privilege

equitable to take into account for the purposes of subsection (6), having regard to the circumstances of the person concerned.

(8) To avoid doubt, for the purposes of item 34 of Table A in subsection (5), a person is taken to have a dependent child if point 1067G-B3AA has the effect that the person's maximum basic rate of youth allowance is worked out as if the person had a dependent child.

(9) Subsection (8) does not limit the circumstances in which a person has a dependent child for the purposes of the item mentioned in that subsection.

OFFICIAL: Sensitive // Legal Privilege

Division 3—CDEP Scheme Participant Supplement

1188D Entitlement to Supplement: people receiving pension-type payments on or after 20 March 1999

(1) This section applies in respect of:
  (a) payment periods beginning on or after 20 March 1999; and
  (b) pension paydays occurring on or after that date.

(2) This section applies to a person in respect of a payment period (the ***relevant payment period***) or in respect of a pension payday (the ***relevant pension payday***) if:
  (a) an instalment of any of the following:
    (i) age pension;
    (ii) disability support pension;
    (iv) carer payment;
    (v) parenting payment at the rate applicable for a person who is not a member of a couple;
    (viii) special needs pension;
  is payable to a person in respect of the relevant payment period or the relevant pension payday; and
  (b) the person meets the requirements of subsection (3) or (4).

(3) The requirements of this subsection are:
  (a) that the person is a CDEP Scheme participant in respect of the relevant payment period or the relevant pension payday; and
  (b) that a CDEP Scheme payment is payable to the person in respect of the relevant payment period or the relevant pension payday.

(4) The requirements of this subsection are:
  (a) that the person is a CDEP Scheme participant in respect of the relevant payment period or the relevant pension payday; and
  (b) that a CDEP Scheme payment was payable to the person:

OFFICIAL: Sensitive // Legal Privilege

(i) in respect of a payment period the whole or a part of which occurred within the 3 payment periods immediately before the relevant payment period; or

(ii) in respect of the 3 pension paydays immediately before the relevant pension payday.

(5) If this section applies to the person in respect of the relevant payment period or the relevant pension payday, then, subject to subsection (6), a CDEP Scheme Participant Supplement of $20.80 is payable to the person in respect of that period or payday.

Note: For ***CDEP Scheme payment*** see subsection 23(1).

(6) A person cannot receive more than one payment of CDEP Scheme Participant Supplement in respect of a fortnightly period.

1188E Entitlement to Supplement between 20 March 1999 and 19 March 2000: people not covered by section 1188D

(1) This section applies in respect of:

(a) payment periods beginning on or after 20 March 1999 and not later than 19 March 2000; or

(b) pension paydays occurring on or after 20 March 1999 and not later than 19 March 2000.

(2) This section applies to a person in respect of a payment period (the ***relevant payment period***) or in respect of a pension payday (the ***relevant pension payday***) if the person meets the requirements of subsections (3) and (4).

(3) The requirements of this subsection are:

(a) that the person is a CDEP Scheme participant in respect of the relevant payment period or the relevant pension payday; and

(b) that a CDEP Scheme payment was payable to the person:

(i) in respect of a payment period the whole or a part of which occurred within the 3 payment periods immediately before the relevant payment period; or

OFFICIAL: Sensitive // Legal Privilege

(ii) in respect of the 3 pension paydays immediately before the relevant pension payday.

(4) The requirement of this subsection is that the person satisfies the CDEP Scheme Participant Supplement income test in respect of the relevant payment period, or in respect of the payment period in which the relevant pension payday occurs, as mentioned in subsection (5) or (6), as the case requires.

(5) This is how to work out whether a person who is not a member of a couple satisfies the CDEP Scheme Participant Supplement income test in respect of a payment period.

Method statement

Step 1. If Benefit Rate Calculator B does not apply to the person, assume that it applies.

Step 2. Work out the total amount of any CDEP Scheme payments payable to the person in respect of the period.

Step 3. Assume that the person's ordinary income worked out on a fortnightly basis is increased by that total amount.

Step 4. Assume that the person's maximum basic rate is the sum of:

(a) the amount specified in column 3B of item 4A of Table B in point 1068-B1; and

(b) the amount specified in column 4 of item 1 of Table F in point 1068-F15.

Step 5. Work out the person's provisional payment rate for the period under Benefit Rate Calculator B on the assumptions referred to in Steps 3 and 4.

OFFICIAL: Sensitive // Legal Privilege

Step 6.	The person satisfies the CDEP Scheme Participant Supplement income test in respect of the period if the person's provisional payment rate worked out under Step 5 is greater than zero.

(6) This is how to work out whether a person who is a member of a couple satisfies the CDEP Scheme Participant Supplement income test in respect of a payment period.

Method statement

Step 1. If Benefit Rate Calculator B does not apply to the person, assume that it applies.

Step 2. Work out the total amount of any CDEP Scheme payments payable to the person in respect of the period.

Step 3. Assume that the person's ordinary income worked out on a fortnightly basis is increased by that total amount.

Step 4. Work out the total amount of any CDEP Scheme payments payable to the person's partner in respect of the period.

Step 5. Assume that the person's partner's ordinary income worked out on a fortnightly basis is increased by the total amount worked out under Step 4.

Step 6. Assume that the person's maximum basic rate is the sum of:

(a) the amount specified in column 3B of item 7 of Table B in point 1068-B1; and

(b) the amount specified in column 4 of item 2 of Table F in point 1068-F15.

OFFICIAL: Sensitive // Legal Privilege

Step 7.	Work out the person's provisional payment rate for the period under Benefit Rate Calculator B on the assumptions referred to in Steps 3, 5 and 6.
Step 8.	The person satisfies the CDEP Scheme Participant Supplement income test in respect of the period if the person's provisional payment rate worked out under Step 7 is greater than zero.

(7) If this section applies to the person in respect of the relevant payment period or the relevant pension payday then, subject to subsections (8) and (9), a CDEP Scheme Participant Supplement of $20 is payable to the person in respect of that period or payday.

(8) A CDEP Scheme Participant Supplement is not payable to a person under subsection (7) if:

(a) the Secretary has made a request of the person in respect of the tax file number of the person or of his or her partner; and

(b) the person has failed to satisfy the request; and

(c) the Secretary has not exempted the person from having to satisfy the request.

Note 1: ***CDEP Scheme participant*** see subsection 23(1).

Note 2: For ***CDEP Scheme payment*** see subsection 23(1).

(9) A person cannot receive more than one payment of CDEP Scheme Participant Supplement in respect of a fortnightly period.

1188F Entitlement to Supplement on or after 20 March 2000: people not covered by section 1188D

(1) This section applies in respect of payment periods beginning on or after 20 March 2000.

(2) Subject to subsection (3), this section applies to a person:

(a) in respect of a payment period (the ***relevant payment period***) if the person is qualified in respect of that period for any of the following:

OFFICIAL: Sensitive // Legal Privilege

(i) widow allowance;
(ii) jobseeker payment;
(iii) youth allowance;
(iv) special benefit;
(v) parenting payment at the rate applicable for a person who is a member of a couple;
(vi) partner allowance;
(vii) mature age allowance under Part 2.12B; or

(b) in respect of a payment period (also the ***relevant payment period***) if the person is qualified in respect of that period for any of the following:
(i) age pension;
(ii) disability support pension;
(iv) carer payment;
(v) parenting payment at the rate applicable for a person who is not a member of a couple;
(viii) special needs pension;

but the pension, payment or allowance for which the person is qualified under this paragraph is not payable to the person in respect of that period.

(3) This section does not apply to a person in respect of the relevant payment period unless the person meets the requirements of subsections (4), (5), (6) and (7) in respect of the relevant payment period.

(4) The requirements of this subsection are:
(a) that the person is a CDEP Scheme participant in respect of the relevant payment period; and
(b) that a CDEP Scheme payment was payable to the person in respect of a payment period the whole or a part of which occurred within the 3 payment periods immediately before the relevant payment period.

(5) The requirement of this subsection is that the person satisfies the CDEP Scheme Participant Supplement income test in respect of

OFFICIAL: Sensitive // Legal Privilege

the relevant payment period as mentioned in subsection (8) or (9), as the case requires.

(6) The requirement of this subsection is that the relevant payment period does not fall within:
  (a) a waiting period; or
  (b) a liquid assets test waiting period; or
  (c) a lump sum preclusion period; or
  (d) a compensation preclusion period (see Part 3.14).

(7) The requirement of this subsection is that the relevant payment period does not fall within a period in respect of which the relevant allowance, benefit or payment referred to in paragraph (2)(a) or the relevant pension, payment or allowance referred to in paragraph (2)(b) is not payable to the person because of the operation of a provision of this Act relating to:
  (a) seasonal or intermittent workers; or
  (b) the value of the assets of the person or of his or her partner.

(8) This is how to work out whether a person who is not a member of a couple satisfies the CDEP Scheme Participant Supplement income test in respect of a payment period.

Method statement

Step 1. If Benefit Rate Calculator B does not apply to the person, assume that it applies.

Step 2. Work out the total amount of any CDEP Scheme payments payable to the person in respect of the period.

Step 3. Assume that the person's ordinary income worked out on a fortnightly basis is increased by that total amount.

Step 4. Assume that the person's maximum basic rate is the sum of:

OFFICIAL: Sensitive // Legal Privilege

(a) the amount specified in column 3B of item 4A of Table B in point 1068-B1; and

(b) the amount specified in column 4 of item 1 of the table in section 1070Q.

Step 5. Work out the person's provisional payment rate for the period under Benefit Rate Calculator B on the assumptions referred to in Steps 3 and 4.

Step 6. The person satisfies the CDEP Scheme Participant Supplement income test in respect of the period if the person's provisional payment rate worked out under Step 5 is greater than zero.

(9) This is how to work out whether a person who is a member of a couple satisfies the CDEP Scheme Participant Supplement income test in respect of a payment period.

Method statement

Step 1. If Benefit Rate Calculator B does not apply to the person, assume that it applies.

Step 2. Work out the total amount of any CDEP Scheme payments payable to the person in respect of the period.

Step 3. Assume that the person's ordinary income worked out on a fortnightly basis is increased by that total amount.

Step 4. Work out the total amount of any CDEP Scheme payments payable to the person's partner in respect of the period.

Step 5. Assume that the person's partner's ordinary income worked out on a fortnightly basis is increased by the total amount worked out under Step 4.

OFFICIAL: Sensitive // Legal Privilege

Step 6.	Assume that the person's maximum basic rate is the sum of: (a) the amount specified in column 3B of item 7 of Table B in point 1068-B1; and (b) the amount specified in column 4 of item 2 of the table in section 1070Q.
Step 7.	Work out the person's provisional payment rate for the period under Benefit Rate Calculator B on the assumptions referred to in Steps 3, 5 and 6.
Step 8.	The person satisfies the CDEP Scheme Participant Supplement income test in respect of the period if the person's provisional payment rate worked out under Step 7 is greater than zero.

(10) If this section applies to the person in respect of the relevant payment period, then, subject to subsections (11) and (12), a CDEP Scheme Participant Supplement of $20.80 is payable to the person in respect of that period.

(11) A CDEP Scheme Participant Supplement is not payable to a person under subsection (10) if:

(a) the Secretary has made a request of the person in respect of the tax file number of the person or of his or her partner; and

(b) the person has failed to satisfy the request; and

(c) the Secretary has not exempted the person from having to satisfy the request.

Note 1: ***CDEP Scheme participant*** see subsection 23(1).

Note 2: For ***CDEP Scheme payment*** see subsection 23(1).

(12) A person cannot receive more than one payment of CDEP Scheme Participant Supplement in respect of a fortnightly period.

OFFICIAL: Sensitive // Legal Privilege

1188G Notification of periods in respect of which a CDEP Scheme payment is not payable

If:

(a) section 1188F applies to a person; and

(b) a CDEP Scheme payment is payable to the person in respect of a payment period beginning on or after 20 March 2000; and

(c) a CDEP Scheme payment is not payable to the person in respect of the next following payment period;

the person must notify the Secretary, as soon as practicable after section 1188F ceases to apply to the person, that a CDEP Scheme payment is not payable to the person in respect of that following payment period.

1188H Person receiving CDEP Scheme Participant Supplement to be taken to be in receipt of social security benefit or pension

A person who receives a CDEP Scheme Participant Supplement in respect of a payment period beginning on or after 20 March 2000 is taken, for the purposes of this Act, to be in receipt of the social security benefit or social security pension for which the person is qualified in respect of that period.

1188J CDEP Scheme participant may accumulate supplement

(1) A person who is a CDEP Scheme participant, and is not in receipt of a social security pension, in respect of the whole or a part of a quarter beginning on or after 20 March 2000 may, by written notice given to the Secretary, choose to accumulate the amounts of any supplement that:

(a) became or become payable to the person in respect of that quarter, or any later quarter in respect of the whole or a part of which the person is a CDEP Scheme participant and is not in receipt of a social security pension; and

(b) have not already been paid.

OFFICIAL: Sensitive // Legal Privilege

(2) A person who is or was a CDEP Scheme participant in respect of the whole or a part of a quarter ending before 20 March 2000 is taken to have chosen under this subsection to accumulate the amounts of any supplement that became payable to the person in respect of that quarter.

(3) If a person makes a choice under subsection (1), the sum of the accumulated amounts payable to the person in respect of a quarter is to be paid on, or as soon as practicable after:

(a) unless paragraph (b) applies—the last day of the quarter or 19 March 2000, whichever is the later; or

(b) if the person ceases to be a CDEP Scheme participant before the end of the quarter—the day on which the person so ceases or 19 March 2000, whichever is the later.

(4) Any accumulated amounts payable to a person to whom subsection (2) applies are to be paid at such times (not later than 19 March 2000) as the Secretary determines.

(5) In this section:

quarter means a CDEP Scheme quarter.

Note 1: For ***CDEP Scheme participant*** see section 1188B.

Note 2: For ***CDEP Scheme quarter*** see subsection 23(1).

1188K Need for a claim

(1) A person who wants to be granted a CDEP Scheme Participant Supplement must make a proper claim for the supplement.

(2) To be a proper claim, a claim must be made in such manner, and within such period, as the Secretary determines.

1188KA CDEP Scheme Participant Supplement not payable in certain circumstances

A CDEP Scheme Participant Supplement is not payable to a person in respect of a fortnight if a training supplement or a National

OFFICIAL: Sensitive // Legal Privilege

Section 1188KA

Green Jobs Corps supplement is payable to the person in respect of the fortnight.

OFFICIAL: Sensitive // Legal Privilege

Division 4—Transitional

1188L Existing CDEP Scheme participants to be treated as long-term social security recipients

A person who, if this Part had been in force on 19 March 2000, would have been a CDEP Scheme participant in respect of that day for the purposes of this Part is taken, for the purposes of the definition of ***long-term social security recipient*** in subsection 23(1), to have had social security recipient status continuously for the period of 52 weeks ending on that day.

1188M Certain people receiving CDEP Scheme Participant Supplement to be taken to have been receiving social security benefit for 9 months

A person who receives CDEP Scheme Participant Supplement:

(a) in respect of both 19 March 2000 (the ***first qualifying day***) and the following day (the ***second qualifying day***); or

(b) in respect of both the payment period in which the first qualifying day occurs and the payment period in which the second qualifying day occurs;

is taken, for the purposes of the definition of ***pensioner*** in subsection 4(1) of the *National Health Act 1953*, to have been receiving the social security benefit on the first qualifying day for a continuous period of 9 months.

OFFICIAL: Sensitive // Legal Privilege

Part 3.16—Indexation and adjustment of amounts

Division 1—Preliminary

1189 Analysis of Part

This Part provides for:

(a) the indexation, in line with CPI (Consumer Price Index) increases, of the amounts in column 2 of the CPI Indexation Table at the end of section 1191; and

(aa) the indexation of the maximum basic rates for certain social security pensions using the Pensioner and Beneficiary Living Cost Index; and

(c) the adjustment of other amounts in line with the increases in the amounts indexed.

1190 Indexed and adjusted amounts

The following table sets out:

(a) each amount that is to be indexed or adjusted under this Part; and

(b) the abbreviation used in this Part for referring to that amount; and

(c) the provision or provisions in which that amount is to be found.

Indexed and adjusted amounts table

Column 1 Item	Column 2 Description of amount	Column 3 Abbreviation	Column 4 Provisions in which amount specified
	Maximum basic rates		
1.	Maximum basic rates for a social security pension payable to a person who is partnered or for pension PP (single) (except disability support pension payable to a person who is under 21 and has no dependent children)	pension MBR	[Pension Rate Calculator A—point 1064-B1—Table B—item 2—column 3] [Pension Rate Calculator B—point 1065-B1—Table B—item 2—column 3] [Pension PP (Single) Rate Calculator—point 1068A-B1]
1AAA.	Maximum basic rates for a social security pension that are to be worked out by reference to the maximum basic rates for a social security pension payable to a person who is partnered	single pension rate MBR	[Pension Rate Calculator A—point 1064-B1—Table B—items 1, 3, 4 and 5—column 3] [Pension Rate Calculator B—point 1065-B1—Table B—items 1, 3, 4 and 5—column 3]
1AA.	Combined couple rate of pension supplement	PS rate	[subsection 20A(1)]
1AB.	Combined couple rate of minimum pension supplement	PS minimum rate	[subsection 20A(2)]

OFFICIAL: Sensitive // Legal Privilege

Indexed and adjusted amounts table

Column 1 Item	Column 2 Description of amount	Column 3 Abbreviation	Column 4 Provisions in which amount specified
1AC.	Pension supplement basic amount	PS basic rate	[each item of the table in subsection 20A(5)]
1B.	Maximum basic rates for disability support pension payable to person who is under 21 and has no dependent children	DSP (under 21 and no child) MBR	[Pension Rate Calculator D—point 1066A-B1—Table B—column 3—all amounts] [Pension Rate Calculator E—point 1066B-B1—Table B—column 3—all amounts]
2.	Maximum basic rates for a social security benefit payable to a person who is over 21, is a member of a couple or has a dependent child	benefit MBR (ordinary)	[Benefit Rate Calculator B—point 1068-B1—Table B—column 3A—all amounts] [Benefit Rate Calculator B—point 1068-B1—Table B—column 3B—items 4A, 4B, 5, 7 and 9] [Benefit PP (Partnered) Rate Calculator—point 1068B-C2—Table C—column 3—all amounts]
3A.	Maximum basic rate for youth allowance	YA MBR	[Youth Allowance Rate Calculator—point 1067G-B2—Table BA—column 3—all amounts] [Youth Allowance Rate Calculator—point 1067G-B3—Table BB—column 3—all amounts] [Youth Allowance Rate Calculator—point 1067G-B4—Table BC—column 3—all amounts]

Indexed and adjusted amounts table

Column 1 Item	Column 2 Description of amount	Column 3 Abbreviation	Column 4 Provisions in which amount specified
3B.	Maximum basic rate for austudy payment	AP MBR	[Austudy Payment Rate Calculator—point 1067L-B2—Table BA—column 3—all amounts] [Austudy Payment Rate Calculator—point 1067L-B3]
4.	Additional child amounts (for dependent children for calculating a person's international agreement portability rate)	additional child amounts	Section 14A of the *Social Security (International Agreements) Act 1999*
	Youth disability supplement		
4A.	Youth disability supplement payable to a disability support pensioner who is under 21 or to a recipient of youth allowance who is under 22	youth disability supplement	[Pension Rate Calculator D—point 1066A-C1—the annual rate] [Pension Rate Calculator E—point 1066B-C1—the annual rate] [Youth Allowance Rate Calculator—point 1067G-D1—the fortnightly rate]
	Child amounts		
15.	Rate of carer allowance	CA rate	[subsection 974(2)]
16.	Rate of double orphan pension calculated under subsection 1010(1)	DOP rate	[section 1010]

OFFICIAL: Sensitive // Legal Privilege

Indexed and adjusted amounts table

Column 1 Item	Column 2 Description of amount	Column 3 Abbreviation	Column 4 Provisions in which amount specified
17.	**Rent assistance** Maximum rent assistance for social security payments	MRA	[Part 3.7—section 1070L—Table—column 4—items 1, 2, 5, 6, 7, 8, 9 and 10] [Part 3.7—section 1070M—Table—column 3—amount] [Part 3.7—sections 1070N and 1070P—Table—column 4—items 1, 2, 5, 6, 7, 8, 9 and 10] [Part 3.7—section 1070Q—Table—column 4—items 1, 2, 4, 5, 6 and 7] [Part 3.7—section 1070R—Table—column 4—items 1, 3, 4, 5 and 6]
18.	Rent threshold amount	RTA	[Part 3.7—sections 1070L and 1070N to 1070R—Table—formulas in column 3—all amounts deducted from fortnightly rent] [Part 3.7—section 1070M—Table—formula in column 2—amount deducted from fortnightly rent] [Part 3.7—subsection 1070T(1)—amount]

OFFICIAL: Sensitive // Legal Privilege

Indexed and adjusted amounts table

Column 1 Item	Column 2 Description of amount	Column 3 Abbreviation	Column 4 Provisions in which amount specified
	Income free area		
20.	Ordinary income free area for social security pension	pension free area	[Pension Rate Calculator A—point 1064-E4—Table E-1—column 3—all amounts] [Pension Rate Calculator D—point 1066A-F3—Table F-1—column 3—all amounts] [Pension PP (Single) Rate Calculator—point 1068A-E14—Table E—column 2]
20AA.	Ordinary income free area for youth allowance and austudy payment	YA and austudy ordinary income free area	[Youth Allowance Rate Calculator—paragraphs 1067G-H29(a) and (aa)] [Austudy Payment Rate Calculator—point 1067L-D28]
	YA and austudy range reduction boundary		
20AB.	Dollar amount of boundary between lower and upper range reduction for ordinary income reduction	YA and austudy range reduction boundary	[Youth Allowance Rate Calculator—paragraphs 1067G-H32(a) and (b) and 1067G-H33(a) and (b)] [Austudy Payment Rate Calculator—points 1067L-D31 and 1067L-D32]
20A.	Income ceiling for care receiver	CP income ceiling	[Subsection 198A(1)]
	Student income bank balance limit		

OFFICIAL: Sensitive // Legal Privilege

Indexed and adjusted amounts table

Column 1 Item	Column 2 Description of amount	Column 3 Abbreviation	Column 4 Provisions in which amount specified
21.	Student income bank balance limit	student income bank balance limit	[Youth Allowance Rate Calculator—point 1067G-J3—method statement—step 3—paragraph (a)] [Austudy Payment Rate Calculator—point 1067L-E2—method statement—step 3—paragraph (a)]
	Assets value limits		
24.	Assets value limit for social security pension (other than pension PP (single)) for homeowner who is not a member of a couple	pension "single" homeowner AVL	[Pension Rate Calculator A—point 1064-G3—Table G-1—column 3A—item 1] [Pension Rate Calculator D—point 1066A-H3—Table H-1—column 3A—item 1]
25.	assets value limit for social security pension (other than pension PP (single)) for non-homeowner who is not a member of a couple	pension "single" non-homeowner AVL	[Pension Rate Calculator A—point 1064-G3—Table G-1—column 3B—item 1] [Pension Rate Calculator D—point 1066A-H3—Table H-1—column 3B—item 1]
26.	assets value limit for social security pension for homeowner who is a member of a couple	pension "partnered" homeowner AVL	[Pension Rate Calculator A—point 1064-G3—Table G-1—column 3A—items 2 and 3] [Pension Rate Calculator D—point 1066A-H3—Table H-1—column 3A—items 2 and 3]

OFFICIAL: Sensitive // Legal Privilege

Indexed and adjusted amounts table

Column 1 Item	Column 2 Description of amount	Column 3 Abbreviation	Column 4 Provisions in which amount specified
27.	assets value limit for social security pension for non-homeowner who is a member of a couple	pension "partnered" non-homeowner AVL	[Pension Rate Calculator A—point 1064-G3—Table G-1—column 3B—items 2 and 3] [Pension Rate Calculator D—point 1066A-H3—Table H-1—column 3B—items 2 and 3]
27A.	Assets value limit for care receiver	CP AVL	[Subsections 198D(1), (1A), (1C), (1DA) and (1E)]
27B.	Assets value hardship limits for care receiver	CP HAVL	[Subsections 198N(2), (3) and (4)—all amounts]
28.	Assets value limit for pension PP (single) and social security benefit for homeowner who is not a member of a couple	benefit "single" homeowner AVL	[subsection 408CE(2)—Table—column 3—item 1] [paragraph 547C(b)] [paragraph 573B(a)] [subsection 611(2)—Table—column 3A—item 1] [subsection 733(3)—Table—column 3A—item 1] [subsection 500Q(2)—table—column 3—item 1]
29.	Assets value limit for pension PP (single) and social security benefit for non-homeowner who is not a member of a couple	benefit "single" non-homeowner AVL	[subsection 408CE(2)—Table—column 3—item 2] [paragraph 547C(c)] [paragraph 573B(b)] [subsection 611(2)—Table—column 3B—item 1] [subsection 733(3)—Table—column 3B—item 1] subsection 500Q(2)—table—column 3—item 2]

OFFICIAL: Sensitive // Legal Privilege

Indexed and adjusted amounts table

Column 1 Item	Column 2 Description of amount	Column 3 Abbreviation	Column 4 Provisions in which amount specified
30.	Assets value limit for social security benefit for homeowner who is partnered (partner getting neither pension nor benefit)	benefit "partnered" (item 2) homeowner AVL	[paragraph 547C(d)] [paragraph 573B(c)] [subsection 611(2)—Table—column 3A—item 2] [subsection 733(3)—Table—column 3A—item 2] [subsection 500Q(3)—Table—Column 3A—item 1]
31.	Assets value limit for social security benefit for non-homeowner who is partnered (partner getting neither pension nor benefit)	benefit "partnered" (item 2) non-homeowner AVL	[paragraph 547C(e)] [paragraph 573B(d)] [subsection 611(2)—Table—column 3B—item 2] [subsection 733(3)—Table—column 3B—item 2] [subsection 500Q(3)—Table—Column 3B—item 1]
32.	Assets value limit for social security benefit for homeowner who is partnered (partner getting pension or benefit)	benefit "partnered" (item 3) homeowner AVL	[subsection 611(2)—Table—column 3A—item 3] [subsection 733(3)—Table—column 3A—item 3] [subsection 771HF(2)—Table—column 3—item 1] [subsection 500Q(3)—Table—Column 3A—item 2]
33.	Assets value limit for social security benefit for non-homeowner who is partnered (partner getting pension or benefit)	benefit "partnered" (item 3) non-homeowner AVL	[subsection 611(2)—Table—column 3B—item 3] [subsection 733(3)—Table—column 3B—item 3] [subsection 771HF(2)—Table—column 3—item 2] [subsection 500Q(3)—Table—Column 3B—item 2]

Indexed and adjusted amounts table

Column 1 Item	Column 2 Description of amount	Column 3 Abbreviation	Column 4 Provisions in which amount specified
34.	Assets value limit for some illness separated special residents	special illness separated special resident AVL	[paragraph 1152(5)(g)] [paragraph 1153(3)(e)] [paragraph 1154(2)(f)]
35.	Assets value limit of special disability trust (see section 1209Y)	special disability trust AVL	[subsection 1209Y(3)]
36.	exempt funeral investment threshold	exempt funeral investment threshold	[paragraph 19E(1)(b)]
	Income limits		
36A.	seniors health card income limit	seniors health card income limit	[Point 1071-12—table—column 3—all amounts]
	Pension bonus		
37.	Pension supplement component for pension bonus	Pension supplement component for pension bonus	[subsection 93H(4)—all amounts]
	Permissible child earnings		
40.	Amount that child who is not in full-time education and under 16 can earn from employment without ceasing to be a dependent child	permissible child earnings limit (child aged under 16 years)	[paragraph 5(3)(c)]

Indexed and adjusted amounts table

Column 1 Item	Column 2 Description of amount	Column 3 Abbreviation	Column 4 Provisions in which amount specified
40A.	Amount that a young person who has turned 16, but not 22, can earn in a financial year without ceasing to be a student child, dependent child or secondary pupil child	Permissible child earnings limit (child aged 16 to 21 years)	[paragraphs 5(1A)(b) and (4)(b) and 5F(b)]
44.	**Pharmaceutical allowance** Rate of pharmaceutical allowance for a person who is receiving a social security pension and is not a member of a couple	Pension PA "single" rate	[Pension Rate Calculator D—point 1066A-D8—Table—column 3—item 1] [Pension Rate Calculator E—point 1066B-D8—Table—column 3—item 1] [Pension PP (Single) Rate Calculator—point 1068A-C7]
45.	Rate of pharmaceutical allowance for a person who is receiving a social security benefit and is not a member of a couple	Benefit PA "single" rate	[Benefit Rate Calculator B—point 1068-D10—Table—column 3—item 1]
46.	Rate of pharmaceutical allowance for a person who is receiving a social	Pension PA "partnered" (item 2) rate	[Pension Rate Calculator D—point 1066A-D8—Table—column 3—item 2]

OFFICIAL: Sensitive // Legal Privilege

Indexed and adjusted amounts table

Column 1 Item	Column 2 Description of amount	Column 3 Abbreviation	Column 4 Provisions in which amount specified
	security pension and has a partner		[Pension Rate Calculator E—point 1066B-D8—Table—column 3—item 2]
47.	Rate of pharmaceutical allowance for a person who is receiving a social security benefit and who has a partner	Benefit PA "partnered" (item 2) rate	[Benefit Rate Calculator B—point 1068-D10—Table—column 3—item 2] [Benefit PP (Partnered) Rate Calculator—point 1068B-E8—Table E—column 3—item 1]
48.	Rate of pharmaceutical allowance for a person who is receiving a social security pension and is a member of an illness separated or respite care couple	Pension PA "illness separated or respite care" rate	[Pension Rate Calculator D—point 1066A-D8—Table—column 3—items 3 and 4] [Pension Rate Calculator E—point 1066B-D8—Table—column 3—items 3 and 4]
49.	Rate of pharmaceutical allowance for a person who is receiving a social security benefit and is a member of an illness separated or respite care couple	Benefit PA "illness separated or respite care" rate	[Benefit Rate Calculator B—point 1068-D10—Table—column 3—items 4 and 5] [Benefit PP (Partnered) Rate Calculator—point 1068B-E8—Table E—column 3—items 2 and 3]

OFFICIAL: Sensitive // Legal Privilege

Indexed and adjusted amounts table

Column 1 Item	Column 2 Description of amount	Column 3 Abbreviation	Column 4 Provisions in which amount specified
49A.	Rate of pharmaceutical allowance for a person who is receiving a social security pension and has a partner who is getting a service pension	Pension PA "partnered" (item 5) rate	[Pension Rate Calculator D—point 1066A-D8—Table—column 3—item 5] [Pension Rate Calculator E—point 1066B-D8—Table—column 3—item 5]
49B.	Rate of pharmaceutical allowance for a person who is receiving a social security benefit and has a partner who is getting a service pension	Benefit PA "Partnered (partner getting service pension)" rate	[Benefit Rate Calculator B—point 1068-D10—Table—column 3—item 6] [Benefit PP (Partnered) Rate Calculator—point 1068B-E8—Table—column 3—item 4]
49C.	Rate of pharmaceutical allowance for a person: (a) who is receiving a social security pension; and (b) is a member of a couple; and (c) whose partner is in gaol	Pension PA "partnered" (item 6) rate	[Pension Rate Calculator D—point 1066A-D8—Table—column 3—item 6] [Pension Rate Calculator E—point 1066B-D8—Table—column 3—item 6]

OFFICIAL: Sensitive // Legal Privilege

Indexed and adjusted amounts table

Column 1 Item	Column 2 Description of amount	Column 3 Abbreviation	Column 4 Provisions in which amount specified
49D.	Rate of pharmaceutical allowance for a person who is receiving a social security benefit and has a partner who is in gaol	Benefit PA "partnered" (item 7) rate	[Benefit Rate Calculator B—point 1068-D10—Table—column 3—item 7] [Benefit PP (Partnered) Rate Calculator—point 1068B-E8—Table E—column 3—item 5]
49E.	Rate of pharmaceutical allowance for a person who: (a) is receiving a youth allowance or an austudy payment; and (b) is not a member of a couple	PA (YA/AP) single rate	[Youth Allowance Rate Calculator—point 1067G-C3—Table C—item 1—column 3] [Austudy Payment Rate Calculator—point 1067L-C3—Table C—item 1—column 3]
49F.	Rate of pharmaceutical allowance for a person who: (a) is receiving a youth allowance or an austudy payment; and (b) is partnered	PA (YA/AP) partnered (item 49F) rate	[Youth Allowance Rate Calculator—point 1067G-C3—Table C—item 2—column 3] [Austudy Payment Rate Calculator—point 1067L-C3—Table C—item 2—column 3]

OFFICIAL: Sensitive // Legal Privilege

Indexed and adjusted amounts table

Column 1 Item	Column 2 Description of amount	Column 3 Abbreviation	Column 4 Provisions in which amount specified
49G.	Rate of pharmaceutical allowance for a person who: (a) is receiving a youth allowance or an austudy payment; and (b) is a member of an illness separated couple or a respite care couple	PA (YA/AP) (item 49G) rate	[Youth Allowance Rate Calculator—point 1067G-C3—Table C—items 3 and 4—column 3] [Austudy Payment Rate Calculator—point 1067L-C3—Table C—items 3 and 4—column 3]
49H.	Rate of pharmaceutical allowance for a person who: (a) is receiving a youth allowance or an austudy payment; and (b) is partnered (partner getting service pension)	PA (YA/AP) (item 49H) rate	[Youth Allowance Rate Calculator—point 1067G-C3—Table C—item 5—column 3] [Austudy Payment Rate Calculator—point 1067L-C3—Table C—item 5—column 3]

Indexed and adjusted amounts table

Column 1 Item	Column 2 Description of amount	Column 3 Abbreviation	Column 4 Provisions in which amount specified
49J.	Rate of pharmaceutical allowance for a person who: (a) is receiving a youth allowance or an austudy payment; and (b) is partnered (partner in gaol)	PA (YA/AP) (item 49J) rate	[Youth Allowance Rate Calculator—point 1067G-C3—Table C—item 6—column 3] [Austudy Payment Rate Calculator—point 1067L-C3—Table C—item 6—column 3]
50.	Rate of telephone allowance for a person who is not a member of a couple	TA "single" rate	[section 1061S—Table—column 3—item 1]
51.	Rate of telephone allowance for a person with a partner where the partner is getting neither pension nor benefit	TA "partnered" (item 3) rate	[section 1061S—Table—column 3—item 3]
52.	Rate of telephone allowance for a person with a partner where the partner is getting pension or benefit but not getting telephone allowance	TA "partnered" (item 4) rate	[section 1061S—Table—column 3—item 4]

OFFICIAL: Sensitive // Legal Privilege

Indexed and adjusted amounts table

Column 1 Item	Column 2 Description of amount	Column 3 Abbreviation	Column 4 Provisions in which amount specified
53.	Rate of telephone allowance for a person with a partner where the partner is getting pension or benefit and getting telephone allowance	TA "partnered" (item 5) rate	[section 1061S—Table—column 3—item 5]
54.	Rate of telephone allowance for a member of an illness separated or respite care couple	TA "partnered" (item 6) rate	[section 1061S—Table—column 3—item 6]
55.	Rate of telephone allowance for a person with a partner where the partner is not getting veterans supplement or MRCA supplement	TA "partnered" (item 7) rate	section 1061S—Table—column 3—item 7
56.	Rate of telephone allowance for a person with a partner where the partner is getting veterans supplement or MRCA supplement	TA "partnered" (item 8) rate	section 1061S—Table—column 3—item 8

OFFICIAL: Sensitive // Legal Privilege

Indexed and adjusted amounts table

Column 1 Item	Column 2 Description of amount	Column 3 Abbreviation	Column 4 Provisions in which amount specified
56AA.	Rate of telephone allowance for a person with a partner where the partner is in gaol	TA "partnered" (item 9) rate	section 1061S—Table—column 3—item 9
56AB.	Increased rate of telephone allowance for a person who is not a member of a couple and has home internet	TA (internet) "single" rate	section 1061SA—Table—column 3—item 1
56AC.	Increased rate of telephone allowance for a person with a partner where the partner is getting neither pension nor benefit and the person has home internet	TA (internet) "partnered" (item 3) rate	section 1061SA—Table—column 3—item 3
56AD.	Increased rate of telephone allowance for a person with a partner where the partner is getting pension or benefit but not getting telephone allowance and the person has home internet	TA (internet) "partnered" (item 4) rate	section 1061SA—Table—column 3—item 4

OFFICIAL: Sensitive // Legal Privilege

Indexed and adjusted amounts table

Column 1 Item	Column 2 Description of amount	Column 3 Abbreviation	Column 4 Provisions in which amount specified
56AE.	Increased rate of telephone allowance for a person with a partner where the partner is getting pension or benefit and getting telephone allowance at the increased rate and the person has home internet	TA (internet) "partnered" (item 5) rate	section 1061SA—Table—column 3—item 5
56AF.	Increased rate of telephone allowance for a member of an illness separated or respite care couple and the person has home internet	TA (internet) "partnered" (item 6) rate	section 1061SA—Table—column 3—item 6
56AG.	Increased rate of telephone allowance for a person with a partner where the partner is not getting veterans supplement or MRCA supplement and the person has home internet	TA (internet) "partnered" (item 7) rate	section 1061SA—Table—column 3—item 7

Indexed and adjusted amounts table

Column 1 Item	Column 2 Description of amount	Column 3 Abbreviation	Column 4 Provisions in which amount specified
56AH.	Increased rate of telephone allowance for a person with a partner where the partner is getting veterans supplement or MRCA supplement and the person has home internet	TA (internet) "partnered" (item 8) rate	section 1061SA—Table—column 3—item 8
56AI.	Increased rate of telephone allowance for a person with a partner where the partner is in gaol and the person has home internet	TA (internet) "partnered" (item 9) rate	section 1061SA—Table—column 3—item 9
56AJ.	Increased rate of telephone allowance for a person with a partner where the partner is getting pension or benefit and getting telephone allowance at the standard rate and the person has home internet	TA (internet) "partnered" (item 10) rate	section 1061SA—Table—column 3—item 10

OFFICIAL: Sensitive // Legal Privilege

Indexed and adjusted amounts table

Column 1 Item	Column 2 Description of amount	Column 3 Abbreviation	Column 4 Provisions in which amount specified
56A.	Rate of utilities allowance for a person who is not a member of a couple	UA "single" rate	[section 1061TB—Table—column 3—item 1]
56B.	Rate of utilities allowance for a member of an illness separated couple	UA "partnered" (item 2) rate	[section 1061TB—Table—column 3—item 2]
56C.	Rate of utilities allowance for a member of a respite care couple	UA "partnered" (item 3) rate	[section 1061TB—Table—column 3—item 3]
56D.	Rate of utilities allowance for a member of a temporarily separated couple	UA "partnered" (item 4) rate	[section 1061TB—Table—column 3—item 4]
	Mobility allowance		
57.	mobility allowance for a person qualified under section 1035	MA rate (standard)	[subsection 1044(1)]
58.	mobility allowance for a person qualified under section 1035A	MA rate (increased)	[subsection 1044(1A)]

OFFICIAL: Sensitive // Legal Privilege

Indexed and adjusted amounts table

Column 1 Item	Column 2 Description of amount	Column 3 Abbreviation	Column 4 Provisions in which amount specified
	Deeming thresholds		
63.	Deeming threshold for a person who is not a member of a couple	Deeming threshold individual	Subsection 1081(1)
64.	Deeming threshold for a pensioner couple	Deeming threshold pensioner couple	Subsection 1081(2)
	Attribution threshold		
65.	Primary production attribution threshold	Primary production attribution threshold	Section 1208U
	Maximum transitional pension rates		
66.	Maximum transitional pension rates	Maximum transitional pension rates	Subparagraph 146(4)(a)(i) of Schedule 1A
	Amounts related to scholarships		
67.	threshold amount	scholarship threshold amount	subsection 8(8AB)
69.	relocation scholarship payment amount	relocation scholarship payment amount	subsections 592L(1), (3) and (4)
	Student start-up loans		
69A.	student start-up loan amount	student start-up loan amount	section 1061ZVBD

OFFICIAL: Sensitive // Legal Privilege

Indexed and adjusted amounts table

Column 1 Item	Column 2 Description of amount	Column 3 Abbreviation	Column 4 Provisions in which amount specified
	Essential medical equipment payment		
70.	essential medical equipment payment	EMEP	section 917G

Note: Indexing the PS minimum rate will also result in the indexation of the rate of quarterly pension supplement (see section 1061VB).

OFFICIAL: Sensitive // Legal Privilege

Division 2—CPI indexation

1191 CPI Indexation Table

(1) An amount referred to in the following CPI Indexation Table below is to be indexed under this Division on each indexation day for the amount, using the reference quarter and base quarter for the amount and indexation day and rounding off to the nearest multiple of the rounding amount:

CPI Indexation Table

Column 1 Item	Column 2 Amount	Column 3 Indexation day(s)	Column 4 Reference quarter (most recent before indexation day)	Column 5 Base quarter	Column 6 Rounding base
	Maximum basic rates				
1.	pension MBR	(a) 20 March (b) 20 September	(a) December (b) June	highest June or December quarter before reference quarter (but not earlier than June quarter 1979)	$2.60
1A.	PS rate	(a) 20 March (b) 20 September	(a) December (b) June	highest June or December quarter before reference quarter (but not earlier than June quarter 2009)	$5.20

OFFICIAL: Sensitive // Legal Privilege

CPI Indexation Table

Column 1 Item	Column 2 Amount	Column 3 Indexation day(s)	Column 4 Reference quarter (most recent before indexation day)	Column 5 Base quarter	Column 6 Rounding base
1B.	PS minimum rate	(a) 20 March (b) 20 September	(a) December (b) June	highest June or December quarter before reference quarter (but not earlier than June quarter 2009)	$5.20
1C.	PS basic rate	(a) 20 March (b) 20 September	(a) December (b) June	highest June or December quarter before reference quarter (but not earlier than December quarter 2008)	$2.60
2.	benefit MBR (ordinary)	(a) 20 March (b) 20 September	(a) December (b) June	highest June or December quarter before reference quarter (but not earlier than June quarter 1979)	$0.10

CPI Indexation Table

Column 1 Item	Column 2 Amount	Column 3 Indexation day(s)	Column 4 Reference quarter (most recent before indexation day)	Column 5 Base quarter	Column 6 Rounding base
3.	benefit MBR (junior or intermediate)	1 January	June	highest June quarter before reference quarter (but not earlier than June quarter 1986)	$0.10
3A.	YA MBR	1 January	June	highest June quarter before reference quarter (but not earlier than June quarter 1997)	$0.10
3B.	AP MBR	1 January	June	highest June quarter before reference quarter (but not earlier than June quarter 1997)	$0.10

CPI Indexation Table

Column 1 Item	Column 2 Amount	Column 3 Indexation day(s)	Column 4 Reference quarter (most recent before indexation day)	Column 5 Base quarter	Column 6 Rounding base
	Child amounts				
4.	additional child amounts	1 January	June	highest June quarter before reference quarter (but not earlier than June quarter 1999)	$2.60
9.	CA rate	1 January	June	highest June quarter before reference quarter (but not earlier than June quarter 1988)	$0.10
10.	DOP rate	1 January	June	highest June quarter before reference quarter (but not earlier than June quarter 1988)	$0.10

CPI Indexation Table

Column 1 Item	Column 2 Amount	Column 3 Indexation day(s)	Column 4 Reference quarter (most recent before indexation day)	Column 5 Base quarter	Column 6 Rounding base
11.	**Rent assistance** MRA	(a) 20 March (b) 20 September	(a) December (b) June	highest June or December quarter before reference quarter (but not earlier than June quarter 1979)	$0.20
12.	RTA	(a) 20 March (b) 20 September	(a) December (b) June	highest June or December quarter before reference quarter (but not earlier than June quarter 1979)	$0.20
	Income free areas				
14.	pension free area	1 July	March	most recent March quarter before reference quarter	$52.00

CPI Indexation Table

Column 1 Item	Column 2 Amount	Column 3 Indexation day(s)	Column 4 Reference quarter (most recent before indexation day)	Column 5 Base quarter	Column 6 Rounding base
14AA.	YA and austudy ordinary income free area	1 January	June	highest June quarter before reference quarter (but not earlier than June quarter 2011)	$1.00
	YA and austudy range reduction boundary				
14AB.	YA and austudy range reduction boundary	1 January	June	highest June quarter before reference quarter (but not earlier than June quarter 2011)	$1.00
14A.	CP income ceiling	1 January	June	most recent June quarter before reference quarter	not applicable —see subsection 1194(3A)

CPI Indexation Table

Column 1 Item	Column 2 Amount	Column 3 Indexation day(s)	Column 4 Reference quarter (most recent before indexation day)	Column 5 Base quarter	Column 6 Rounding base
15.	student income bank balance limit	1 January	June	highest June quarter before reference quarter (but not earlier than June quarter 2011)	$100.00
	Assets value limits				
18.	pension "single" homeowner AVL	1 July	December	most recent December quarter before reference quarter	$250.00
19.	pension "partnered" homeowner AVL	1 July	December	most recent December quarter before reference quarter	$250.00
20.	pension "partnered" non-homeowner AVL	1 July	December	most recent December quarter before reference quarter	$250.00

CPI Indexation Table

Column 1 Item	Column 2 Amount	Column 3 Indexation day(s)	Column 4 Reference quarter (most recent before indexation day)	Column 5 Base quarter	Column 6 Rounding base
20A.	CP AVL	1 January	June	most recent June quarter before reference quarter	$250.00
20B.	CP HAVL	1 January	June	most recent June quarter before reference quarter	$250.00
21.	benefit "single" homeowner AVL	1 July	December	most recent December quarter before reference quarter	$250.00
22.	benefit "partnered" (item 3) homeowner AVL	1 July	December	most recent December quarter before reference quarter	$250.00
23.	benefit "partnered" (item 3) non-homeowner AVL	1 July	December	most recent December quarter before reference quarter	$250.00

CPI Indexation Table

Column 1 Item	Column 2 Amount	Column 3 Indexation day(s)	Column 4 Reference quarter (most recent before indexation day)	Column 5 Base quarter	Column 6 Rounding base
25.	special disability trust AVL	1 July	December	most recent December quarter before reference quarter	$250.00
26.	exempt funeral investment threshold	1 July	December	most recent December quarter before reference quarter	$250.00
	Income limits				
26A.	seniors health card income limit	20 September	June	highest June quarter before reference quarter (but not earlier than June quarter 2013)	$1.00

OFFICIAL: Sensitive // Legal Privilege

CPI Indexation Table

Column 1 Item	Column 2 Amount	Column 3 Indexation day(s)	Column 4 Reference quarter (most recent before indexation day)	Column 5 Base quarter	Column 6 Rounding base
	Pension bonus				
27.	Pension supplement component for pension bonus	(a) 20 March (b) 20 September	(a) December (b) June	highest June or December quarter before reference quarter (but not earlier than June quarter 2008)	$2.60
	Permissible child earnings				
28.	permissible child earnings limit (child aged under 16 years)	1 January	June	highest June quarter before reference quarter (but not earlier than June quarter 1986)	$0.05
28A.	Permissible child earnings limit (child aged 16 to 21 years)	1 January	June	highest June quarter before reference quarter (but not earlier than June quarter 1986)	$0.05

CPI Indexation Table

Column 1 Item	Column 2 Amount	Column 3 Indexation day(s)	Column 4 Reference quarter (most recent before indexation day)	Column 5 Base quarter	Column 6 Rounding base
	Pharmaceutical allowance				
31.	Benefit PA "partnered" (item 2) rate	1 January	September	highest September quarter before reference quarter (but not earlier than September quarter 1991)	$0.10
32.	Benefit PA "Partnered (partner getting service pension)" rate	1 January	September	highest September quarter before reference quarter (but not earlier than September quarter 1991)	$0.10
33.	TA "single" rate	20 September	June	most recent June quarter before reference quarter	$0.80

CPI Indexation Table

Column 1 Item	Column 2 Amount	Column 3 Indexation day(s)	Column 4 Reference quarter (most recent before indexation day)	Column 5 Base quarter	Column 6 Rounding base
33AAA.	TA (internet) "single" rate	20 September	June	most recent June quarter before reference quarter	$0.80
33AAB.	TA (internet) "partnered" (item 10) rate	20 September	June	most recent June quarter before reference quarter	$0.80
33AA.	UA "single" rate	(a) 20 March (b) 20 September	(a) December (b) June	highest June or December quarter before reference quarter (but not earlier than June quarter 1991)	$0.40
33AB.	UA "partnered" (item 2) rate	(a) 20 March (b) 20 September	(a) December (b) June	highest June or December quarter before reference quarter (but not earlier than June quarter 1991)	$0.40

CPI Indexation Table

Column 1 Item	Column 2 Amount	Column 3 Indexation day(s)	Column 4 Reference quarter (most recent before indexation day)	Column 5 Base quarter	Column 6 Rounding base
33AC.	UA "partnered" (item 3) rate	(a) 20 March (b) 20 September	(a) December (b) June	highest June or December quarter before reference quarter (but not earlier than June quarter 1991)	$0.40
33AD.	UA "partnered" (item 4) rate	(a) 20 March (b) 20 September	(a) December (b) June	highest June or December quarter before reference quarter (but not earlier than June quarter 1991)	$0.40
33A.	PA (YA/AP) partnered (item 49F) rate PA (YA/AP) (item 49H) rate	1 January	September	highest September quarter before reference quarter (but not earlier than Sept quarter 1997)	$0.10

CPI Indexation Table

Column 1 Item	Column 2 Amount	Column 3 Indexation day(s)	Column 4 Reference quarter (most recent before indexation day)	Column 5 Base quarter	Column 6 Rounding base
	Mobility allowance				
34.	MA rate (standard)	1 January	June	highest June quarter before the reference quarter (but not earlier than June 1991 quarter)	$0.10
34A.	MA rate (increased)	1 January	June	highest June quarter before the reference quarter (but not earlier than June 2006 quarter)	$0.10
	Deeming thresholds				
35.	Deeming threshold individual	1 July	March	highest March quarter before reference quarter (but not earlier than March 1994 quarter)	$200.00

CPI Indexation Table

Column 1 Item	Column 2 Amount	Column 3 Indexation day(s)	Column 4 Reference quarter (most recent before indexation day)	Column 5 Base quarter	Column 6 Rounding base
36.	Deeming threshold pensioner couple	1 July	March	highest March quarter before reference quarter (but not earlier than March 1994 quarter)	$200.00
	Primary production attribution threshold				
37.	Primary production attribution threshold	1 July	December	Most recent December quarter before reference quarter	$250.00
	Maximum transitional pension rates				
38.	Maximum transitional pension rates	(a) 20 March (b) 20 September	(a) December (b) June	highest June or December quarter before reference quarter (but not earlier than June quarter 2008)	$2.60

CPI Indexation Table

Column 1 Item	Column 2 Amount	Column 3 Indexation day(s)	Column 4 Reference quarter (most recent before indexation day)	Column 5 Base quarter	Column 6 Rounding base
	Amounts related to scholarships				
39.	scholarship threshold amount	1 January	June	highest June quarter before reference quarter (but not earlier than June quarter 2009)	$1.00
41.	relocation scholarship payment amount	1 January	June	highest June quarter before reference quarter (but not earlier than June quarter 2009)	$1.00
	Student start-up loans				
41A.	student start-up loan amount	1 January	June	highest June quarter before reference quarter (but not earlier than June quarter 2016)	$1.00

CPI Indexation Table

Column 1 Item	Column 2 Amount	Column 3 Indexation day(s)	Column 4 Reference quarter (most recent before indexation day)	Column 5 Base quarter	Column 6 Rounding base
	Essential medical equipment payment				
42.	EMEP	1 July	December	highest December quarter before reference quarter (but not earlier than the December quarter of 2011)	$1.00

Highest quarter

(2) A reference in the CPI Indexation Table to the highest of a group of quarters is a reference to the quarter in that group that has the highest index number.

1192 Indexation of amounts

(1) If an amount is to be indexed under this Division on an indexation day, this Act has effect as if the indexed amount were substituted for that amount on that day.

(2) This is how to work out the indexed amount for an amount that is to be indexed under this Division on an indexation day:

OFFICIAL: Sensitive // Legal Privilege

Section 1192

Method statement

Step 1. Use section 1193 to work out the indexation factor for the amount on the indexation day.

Step 2. Work out the current figure for the amount immediately before the indexation day.

Step 3. Multiply the current figure by the indexation factor: the result is the ***provisional indexed amount***.

Step 4. Use section 1194 to round off the provisional indexed amount: subject to Division 3, the result is the indexed amount. (The indexed amount (including one replaced under Division 3) may be increased under section 1195 in certain cases.)

Note: For ***current figure*** see subsection 20(1).

(4AB) The first indexation of the amounts to which item 14AAA of the CPI Indexation Table in subsection 1191(1) relates is to take place on 1 July 2015.

(4AC) Amounts under item 14AAA of the CPI Indexation Table in subsection 1191(1) are not to be indexed on 1 July of the first financial year beginning on or after the day this subsection commences and on 1 July of the next 2 financial years.

(5) The first indexation of rent assistance under items 11 and 12 of the CPI Indexation Table in subsection 1191(1) (being those items as substituted by the *Social Security Amendment (Further Simplification) Act 2004*) is to take place on 20 September 2004.

(5AAA) The amount under item 14 of the CPI Indexation Table in subsection 1191(1), to the extent to which that item relates to the amount in column 2 of Table E in point 1068A-E14 of the Pension PP (Single) Rate Calculator, is not to be indexed on 1 July of the first financial year beginning on or after the day this subsection commences and on 1 July of the next 2 financial years.

OFFICIAL: Sensitive // Legal Privilege

(5AAB) Amounts under items 14AA, 14AB and 15 of the CPI Indexation Table in subsection 1191(1) are not to be indexed on 1 January of the first calendar year beginning on or after the day this subsection commences and on 1 January of the next 2 calendar years.

(5AB) Amounts under items 21, 22 and 23 of the CPI Indexation Table in subsection 1191(1) are not to be indexed on 1 July 2015 and 1 July 2016.

(5A) The first indexation of an amount under item 25 of the CPI Indexation Table in subsection 1191(1) is to take place on 1 July 2007.

(5B) The first indexation of amounts under item 26A of the CPI Indexation Table in subsection 1191(1) is to take place on 20 September 2014.

(5C) For the purposes of working out the indexed amount for pension "single" homeowner AVL on 1 July 2017, the current figure for pension "single" homeowner AVL immediately before that day is taken to be $250,000.

(5D) For the purposes of working out the indexed amount for pension "partnered" homeowner AVL on 1 July 2017, the current figure for pension "partnered" homeowner AVL immediately before that day is taken to be $187,500.

(5E) For the purposes of working out the indexed amount for pension "partnered" non-homeowner AVL on 1 July 2017, the current figure for pension "partnered" non-homeowner AVL immediately before that day is taken to be $287,500.

(5F) For the purposes of working out the indexed amount for benefit "single" homeowner AVL on 1 July 2017, the current figure for benefit "single" homeowner AVL immediately before that day is taken to be $250,000.

(5G) For the purposes of working out the indexed amount for benefit "partnered" (item 3) homeowner AVL on 1 July 2017, the current

OFFICIAL: Sensitive // Legal Privilege

figure for benefit "partnered" (item 3) homeowner AVL immediately before that day is taken to be $187,500.

(5H) For the purposes of working out the indexed amount for benefit "partnered" (item 3) non-homeowner AVL on 1 July 2017, the current figure for benefit "partnered" (item 3) non-homeowner AVL immediately before that day is taken to be $287,500.

(7) The first indexation of amounts under items 35 and 36 of the CPI Indexation Table in subsection 1191(1) is to take place on 1 July 1997.

(8B) The student start-up loan amount (see item 41A of the CPI Indexation Table in subsection 1191(1)) is not to be indexed on 1 January 2016.

1193 Indexation factor

(1) Subject to subsections (2) and (3), the indexation factor for an amount that is to be indexed under this Division on an indexation day is:

$$\frac{\text{index number for most recent reference quarter}}{\text{index number for base quarter}}$$

worked out to 3 decimal places.

Note: For ***reference quarter*** and ***base quarter*** see the CPI Indexation Table in section 1191.

(2) If an indexation factor worked out under subsection (1) would, if it were worked out to 4 decimal places, end in a number that is greater than 4, the indexation factor is to be increased by 0.001.

(3) If an indexation factor worked out under subsections (1) and (2) would be less than 1, the indexation factor is to be increased to 1.

1194 Rounding off indexed amounts

(1) If a provisional indexed amount is a multiple of the rounding base, the provisional indexed amount becomes the indexed amount.

OFFICIAL: Sensitive // Legal Privilege

Note 1: For ***provisional indexed amount*** see Step 3 in subsection 1192(2).

Note 2: For ***rounding base*** see the CPI Indexation Table in section 1191.

(2) Subject to subsections (3), (6) and (7) if a provisional indexed amount is not a multiple of the rounding base, the indexed amount is the provisional indexed amount rounded up or down to the nearest multiple of the rounding base.

(3) Subject to subsections (3A), (6) and (7), if a provisional indexed amount is not a multiple of the rounding base but is a multiple of half the rounding base, the indexed amount is the provisional indexed amount rounded up to the nearest multiple of the rounding base.

(3A) If a provisional indexed amount for CP income ceiling is not a multiple of $1.00, the indexed amount is the provisional indexed amount rounded up to the nearest multiple of $1.00.

(6) If a provisional indexed amount for a pharmaceutical allowance rate is not a multiple of 10 cents, the indexed amount is the provisional indexed amount rounded down to the nearest multiple of 10 cents.

(7) If a provisional indexed amount for a telephone allowance rate is not a multiple of 80 cents, the indexed amount is the provisional indexed amount rounded up to the nearest multiple of 80 cents.

1195 Certain indexed amounts to be increased in line with increases in Male Total Average Weekly Earnings

(1) For the purposes of this section:

(a) a ***category A amount*** is the annual rate specified in point 1068A-B1; and

(b) a ***category B amount*** is an amount specified as set out below:

(i) point 1064-B1—Table B—item 2—column 3;

(ii) point 1065-B1—Table B—item 2—column 3.

OFFICIAL: Sensitive // Legal Privilege

(2) If:

(a) a category A amount is to be indexed under this Division on an indexation day; and

(b) 25% of the annualised MTAWE figure for whichever of the following quarters is applicable:

(i) if the indexation day is a 20 March—the most recent December quarter;

(ii) if the indexation day is a 20 September—the most recent June quarter;

exceeds the indexed amount for the category A amount;

then:

(c) the indexed amount for the category A amount is to be increased by an amount equal to the excess; and

(d) if the indexed amount for the category A amount (as increased under paragraph (c)) is not a multiple of $2.60, the indexed amount (as increased under paragraph (c)) is to be further increased by rounding up to the next highest multiple of $2.60.

(2A) If:

(a) a category B amount is to be indexed under this Division on an indexation day; and

(b) 50% of the combined couple benchmark for that indexation day exceeds the indexed amount for the category B amount;

then:

(c) the indexed amount for the category B amount is to be increased by an amount equal to the excess; and

(d) if the indexed amount for the category B amount (as increased under paragraph (c)) is not a multiple of $2.60, the indexed amount (as increased under paragraph (c)) is to be further increased by rounding up to the next highest multiple of $2.60.

(2B) For the purposes of this section, the ***combined couple benchmark***, for an indexation day, is 41.76% of the annualised MTAWE figure for whichever of the following quarters is applicable:

OFFICIAL: Sensitive // Legal Privilege

(a) if the indexation day is a 20 March—the most recent December quarter;
(b) if the indexation day is a 20 September—the most recent June quarter.

(3) For the purposes of this section, the ***annualised MTAWE figure*** for a quarter is 52 times the amount set out for the reference period in the quarter under the headings "Average Weekly Earnings of Employees, Australia—Males—All males—Total earnings—ORIGINAL" in a document published by the Australian Statistician entitled "Average Weekly Earnings, States and Australia".

(4) If at any time (whether before or after the commencement of this section), the Australian Statistician publishes the amount referred to in subsection (3):
(a) under differently described headings (the ***new headings***); or
(b) in a document entitled otherwise than as described in subsection (3) (the ***new document***);
then the ***annualised MTAWE figure*** is to be calculated in accordance with subsection (3) as if the references to:
(c) "Average Weekly Earnings of Employees, Australia—Males—All males—Total earnings—ORIGINAL"; or
(d) "Average Weekly Earnings, States and Australia";
were references to the new headings and/or the new document, as the case requires.

(5) For the purposes of this section, the ***reference period*** in a particular quarter is the period described by the Australian Statistician as the pay period ending on or before a specified day that is the third Friday of the middle month of that quarter.

(6) If at any time (whether before or after the commencement of this section), the Australian Statistician publishes an amount in substitution for a particular amount previously published by the Australian Statistician, the publication of the later amount is to be disregarded for the purposes of this section.

OFFICIAL: Sensitive // Legal Privilege

(7) In this section:

December quarter means a quarter ending on 31 December.

June quarter means a quarter ending on 30 June.

OFFICIAL: Sensitive // Legal Privilege

Division 3—Social security pension indexation using Pensioner and Beneficiary Living Cost Index

1196 Social security pension indexation using Pensioner and Beneficiary Living Cost Index

(1) This section applies to the amount (the ***starting amount***) referred to in column 2 of item 1 of the table in subsection 1191(1), except to the extent that it covers the maximum basic rate for pension PP (single).

(2) If the indexed amount for the starting amount, worked out under section 1192 on an indexation day and disregarding section 1195 and this Division, is less than the living cost amount worked out on that indexation day using the following method statement, then that indexed amount is taken to be an amount equal to that living cost amount:

Method statement

Step 1. Use section 1197 to work out the living cost indexation factor on that indexation day.

Step 2. Work out the current figure for the starting amount immediately before that indexation day.

Note: For ***current figure*** see subsection 20(1).

Step 3. Multiply the current figure by the living cost indexation factor: the result is the ***provisional living cost amount***.

Step 4. Use section 1198 to round off the provisional living cost amount: the result is the ***living cost amount***.

Note 1: If the indexed amount for the starting amount, worked out under section 1192, is taken to be an amount equal to that living cost amount, there may be a further increase of that replaced indexed amount under section 1195.

OFFICIAL: Sensitive // Legal Privilege

Note 2: On and after 20 March 2013, the indexation of certain amounts may be affected by Division 8.

1197 Living cost indexation factor

(1) Subject to subsections (5) and (6), the living cost indexation factor on an indexation day is:

$$\frac{\text{Living cost index number for reference quarter}}{\text{Living cost index number for base quarter}}$$

worked out to 3 decimal places.

Definitions

(2) For the purposes of this section, the ***living cost index number***, in relation to a quarter, is the All Groups Pensioner and Beneficiary Living Cost Index number that is the weighted average of the 8 capital cities and is published by the Australian Statistician in respect of that quarter.

(3) For the purposes of this section, the ***reference quarter*** is:
(a) if the indexation day is a 20 March—the most recent December quarter before the indexation day; and
(b) if the indexation day is a 20 September—the most recent June quarter before the indexation day.

(4) For the purposes of this section, the ***base quarter*** is the June or December quarter that:
(a) is a quarter before the reference quarter; and
(b) has the highest living cost index number.

Rounding

(5) If a living cost indexation factor worked out under subsection (1) would, if it were worked out to 4 decimal places, end in a number that is greater than 4, that indexation factor is to be increased by 0.001.

OFFICIAL: Sensitive // Legal Privilege

(6) If a living cost indexation factor worked out under subsections (1) and (5) would be less than 1, that indexation factor is to be increased to 1.

Publication of substituted living cost index numbers

(7) Subject to subsection (8), if at any time (whether before or after the commencement of this section) the Australian Statistician publishes a living cost index number for a quarter in substitution for a living cost index number previously published by the Australian Statistician for that quarter, the publication of the later living cost index number is to be disregarded for the purposes of this section.

Change to index reference period

(8) If at any time (whether before or after the commencement of this section) the Australian Statistician changes the index reference period for the Pensioner and Beneficiary Living Cost Index, regard is to be had, for the purposes of applying this section after the change takes place, only to living cost index numbers published in terms of the new index reference period.

1198 Rounding off amounts

(1) If a provisional living cost amount is a multiple of $2.60, the provisional living cost amount becomes the living cost amount.

(2) Subject to subsection (3), if a provisional living cost amount is not a multiple of $2.60, the living cost amount is the provisional living cost amount rounded up or down to the nearest multiple of $2.60.

(3) If a provisional living cost amount is not a multiple of $2.60 but is a multiple of $1.30, the living cost amount is the provisional living cost amount rounded up to the nearest multiple of $2.60.

OFFICIAL: Sensitive // Legal Privilege

Division 4—Adjustment of other rates

1198A Adjustment of single pension rate MBR amounts

(1) This Act has effect as if, on 20 March (an ***indexation day***) and 20 September (an ***indexation day***) each year, the adjusted single pension amount were substituted for each single pension rate MBR amount (see item 1AAA of the table in section 1190).

(2) For the purposes of this section, the adjusted single pension amount is worked out as follows:

Method statement

Step 1. Work out the amount substituted for the amount specified in column 3 of item 2 of Table B in point 1064-B1 on that indexation day under section 1192.

Step 2. Multiply the amount worked out at step 1 by 2.

Step 3. Work out 66.33% of the amount worked out at step 2.

Step 4. Round the amount worked out at step 3 to the nearest multiple of $2.60 (rounding up if necessary): the result is the ***adjusted single pension amount***.

1198B Adjustment of disability support pension (under 21) MBRs

This Act (and any other Act that refers to this Act) has effect as if, on 1 January each year, the amount worked out by applying the formula:

$$\text{YA MBR} \times 26$$

to an amount identified in column 2 of an item in the following table were substituted for the amount identified in column 3 of the item.

Adjustment of DSP (under 21) MBR table		
Column 1 **Item**	**Column 2** **YA MBR amount**	**Column 3** **corresponding DSP (under 21) MBR amount**
	Youth Allowance Rate Calculator—point 1067G-B3—Table BB	**Pension Rate Calculator D—point 1066A-B1—Table B and Pension Rate Calculator E—Point 1066B-B1—Table B**
3	column 3—item 1	column 3—item 1
4	column 3—item 5	column 3—items 2, 4, 5 and 6
5	column 3—item 2	column 3—item 3

1198C Adjustment of youth disability supplement

(1) This Act (and any other Act that refers to this Act) has effect as if, on 1 January each year, the amount worked out using the following formula was substituted for the amount of the rate of the youth disability supplement under Module C of Pension Rate Calculator D or Module C of Pension Rate Calculator E:

$$\text{CA rate} \times 26$$

where:

CA rate is the current figure, as at that 1 January, for the CA rate.

Note: For ***current figure*** see subsection 20(1).

(2) This Act (and any other Act that refers to this Act) has effect as if, on 1 January each year, the current figure, as at that 1 January, was substituted for the amount of the rate of the youth disability supplement under Module D of the Youth Allowance Rate Calculator.

Note: For ***current figure*** see subsection 20(1).

1203 Adjustment of pension "single non-homeowner" AVL

This Act has effect as if, on 1 July each year, the amount worked out in accordance with the following formula were substituted for the pension "single" non-homeowner AVL:

$$\text{"single" homeowner AVL} + 2 \times \left[\text{"partnered" non-homeowner AVL} - \text{"partnered" homeowner AVL} \right]$$

where:

"partnered" homeowner AVL is the current figure, as at that 1 July, for the pension "partnered" homeowner AVL.

"partnered" non-homeowner AVL is the current figure, as at that 1 July, for the pension "partnered" non-homeowner AVL.

"single" homeowner AVL is the current figure, as at that 1 July, for the pension "single" homeowner AVL.

1204 Adjustment of benefit AVLs

(1) This Act has effect as if, on 1 July each year, the amount worked out in accordance with the following formula were substituted for the benefit "single" non-homeowner AVL:

$$\text{Benefit "single" homeowner AVL} + 2 \times \left[\text{Benefit "partnered" (item 3) non-homeowner AVL} - \text{Benefit "partnered" (item 3) homeowner AVL} \right]$$

where:

benefit "partnered" (item 3) homeowner AVL is the current figure, as at that 1 July, for the benefit "partnered" (item 3) homeowner AVL.

benefit "partnered" (item 3) non-homeowner AVL is the current figure, as at that 1 July, for the benefit "partnered" (item 3) non-homeowner AVL.

benefit "single" homeowner AVL is the current figure, as at that 1 July, for the benefit "single" homeowner AVL.

(2) This Act has effect as if, on 1 July each year, the amount worked out in accordance with the following formula were substituted for the benefit "partnered" (item 2) homeowner AVL:

$$2 \times \text{Benefit "partnered" (item 3) homeowner AVL}$$

where:

benefit "partnered" (item 3) homeowner AVL is the current figure, as at that 1 July, for the benefit "partnered" (item 3) homeowner AVL.

(3) This Act has effect as if, on 1 July each year, the amount worked out in accordance with the following formula were substituted for the benefit "partnered" (item 2) non-homeowner AVL:

$$2 \times \text{Benefit "partnered" (item 3) non-homeowner AVL}$$

where:

benefit "partnered" (item 3) non-homeowner AVL is the current figure, as at that 1 July, for the benefit "partnered" (item 3) non-homeowner AVL.

1205 Adjustment of special illness separated special resident AVL

This Act has effect as if, on 1 July each year, the amount worked out in accordance with the following formula were substituted for each special illness separated special resident AVL:

$$\frac{\text{pension "partnered" homeowner AVL} + \text{pension "partnered" non-homeowner AVL}}{2}$$

where:

pension "partnered" homeowner AVL is the current figure, as at that 1 July, for the pension "partnered" homeowner AVL.

OFFICIAL: Sensitive // Legal Privilege

pension "partnered" non-homeowner AVL is the current figure, as at that 1 July, for the pension "partnered" non-homeowner AVL.

1206A Adjustment of certain pharmaceutical allowance rates

(1) This Act has effect as if, on 1 January each year, there were substituted for:

(a) the Pension PA "partnered" (item 2) rate; and

(b) the Pension PA "partnered" (item 5) rate;

the amount worked out by using the formula:

$$\text{Benefit PA "partnered" (item 2) rate} \times 26$$

where:

Benefit PA "partnered" (item 2) rate is the current figure, as at that 1 January, for the Benefit PA "partnered" (item 2) rate.

Note 1: For ***current figure*** see subsection 20(1).

Note 2: The Benefit PA "partnered" (item 2) rate is indexed on each 1 January (see the CPI Indexation Table in section 1191—item 31).

(2) This Act has effect as if, on 1 January each year, there were substituted for:

(a) the Pension PA "single" rate; and

(b) the Pension PA "illness separated or respite care" rate; and

(c) the Pension PA "partnered" (item 6) rate;

the amount worked out by using the formula:

$$\text{Benefit PA "partnered" (item 2) rate} \times 52$$

where:

Benefit PA "partnered" (item 2) rate is the current figure, as at that 1 January, for the Benefit PA "partnered" (item 2) rate.

Note 1: The formula reflects the Benefit PA "partnered" (item 2) rate being multiplied by 26 to convert to a yearly amount and then being multiplied by 2 to convert from "partnered" to "single rate".

Note 2: For ***current figure*** see subsection 20(1).

OFFICIAL: Sensitive // Legal Privilege

Note 3: The Benefit PA "partnered" (item 2) rate is indexed on each 1 January (see the CPI Indexation Table in section 1191—item 31).

(3) This Act has effect as if, on 1 January each year, there were substituted for:

(a) the Benefit PA "single" rate; and

(b) the Benefit PA "partnered" (item 7) rate; and

(c) the Benefit PA "illness separated or respite care" rate;

the amount worked out by using the formula:

$$\text{Benefit PA "partnered" (item 2) rate} \times 2$$

where:

Benefit PA "partnered" (item 2) rate is the current figure, as at that 1 January, for the Benefit PA "partnered" (item 2) rate.

Note 1: For ***current figure*** see subsection 20(1).

Note 2: The Benefit PA "partnered" (item 2) rate is indexed on each 1 January (see the CPI Indexation Table in section 1191—item 31).

(4) This Act has effect as if, on 1 January each year, there were substituted for:

(a) the PA (YA/AP) single rate; and

(b) the PA (YA/AP) (item 49G) rate; and

(c) the PA (YA/AP) (item 49J) rate;

the amount worked out by using the formula:

$$\text{PA (YA/AP) partnered (item 49F) rate} \times 2$$

where:

PA (YA/AP) partnered (item 49F) rate means the current figure, as at that 1 January, for the PA (YA/AP) partnered (item 49F) rate.

Note 1: For ***current figure*** see subsection 20(1).

Note 2: The PA (YA/AP) partnered (item 49F) rate is indexed on each 1 January (see the CPI Indexation Table in section 1191—item 33A).

OFFICIAL: Sensitive // Legal Privilege

1206B Adjustment of certain telephone allowance rates

(1) This Act has effect as if, on 20 September each year, there were substituted for:

(a) the TA "partnered" (item 4) rate; and

(b) the TA "partnered" (item 6) rate; and

(c) the TA "partnered" (item 7) rate; and

(d) TA "partnered" (item 9) rate;

the amount of the current figure, as at 20 September, for the TA "single rate".

Note 1: For ***TA "partnered" (item 4) rate***, ***TA "partnered" (item 6) rate***, ***TA "partnered" (item 7) rate*** and ***TA "partnered" (item 9) rate*** see items 52, 54, 55 and 56AA of the Indexed and Adjusted Amounts Table in section 1190.

Note 2: For ***current figure*** see subsection 20(1).

Note 3: For ***TA "single" rate*** see item 50 of the Indexed and Adjusted Amounts Table in section 1190.

(2) This Act has effect as if, on 20 September each year, there were substituted for:

(a) the TA "partnered" (item 3) rate; and

(b) the TA "partnered" (item 5) rate; and

(c) the TA "partnered" (item 8) rate;

the amount worked out using the following formula:

$$\frac{\text{TA "single" rate}}{2}$$

where:

TA "single" rate is the current figure, as at 20 September, for the TA "single" rate.

Note 1: For ***TA "partnered" (item 4) rate***, ***TA "partnered" (item 6) rate*** and ***TA "partnered" (item 7) rate*** see items 52, 54 and 55 of the Indexed and Adjusted Amounts Table in section 1190.

Note 2: For ***TA "single" rate*** see item 50 of the Indexed and Adjusted Amounts Table in section 1190.

Note 3: For ***current figure*** see subsection 20(1).

(3) This Act has effect as if, on 20 September each year, there were substituted for:

(a) the TA (internet) "partnered" (item 4) rate; and

(b) the TA (internet) "partnered" (item 6) rate; and

(c) the TA (internet) "partnered" (item 7) rate; and

(d) the TA (internet) "partnered" (item 9) rate; and

the amount of the current figure, as at 20 September, for the TA (internet) "single" rate.

Note 1: For ***TA (internet) "partnered" (item 4) rate***, ***TA (internet) "partnered" (item 6) rate***, ***TA (internet) "partnered" (item 7) rate*** and ***TA (internet) "partnered" (item 9) rate*** see items 56AD, 56AF, 56AG and 56AI of the Indexed and Adjusted Amounts Table in section 1190.

Note 2: For ***current figure*** see subsection 20(1).

Note 3: For ***TA (internet) "single" rate*** see item 56AB of the Indexed and Adjusted Amounts Table in section 1190.

(4) This Act has effect as if, on 20 September each year, there were substituted for:

(a) the TA (internet) "partnered" (item 3) rate; and

(b) the TA (internet) "partnered" (item 5) rate; and

(c) the TA (internet) "partnered" (item 8) rate;

the amount worked out using the following formula:

$$\frac{\text{TA (internet) "single" rate}}{2}$$

where:

TA (internet) "single" rate is the current figure, as at 20 September, for the TA (internet) "single" rate.

Note 1: For ***TA (internet) "partnered" (item 3) rate***, ***TA (internet) "partnered" (item 5) rate*** and ***TA (internet) "partnered" (item 8) rate*** see items 56AC, 56AE and 56AH of the Indexed and Adjusted Amounts Table in section 1190.

Note 2: For ***TA (internet) "single" rate*** see item 56AB of the Indexed and Adjusted Amounts Table in section 1190.

OFFICIAL: Sensitive // Legal Privilege

Note 3: For ***current figure*** see subsection 20(1).

OFFICIAL: Sensitive // Legal Privilege

Part 3.16A—Advance payment deductions

1206H Advance payment deduction

(1) Subject to subsection (2) and section 1206L, an advance payment deduction is to be made from the rate of a social security entitlement that is payable to a person if:

(a) the person has received an advance payment, or an instalment of an advance payment, of that social security entitlement or of another social security entitlement that was previously payable to the person; and

(b) the person has not yet repaid the whole of the advance payment or instalment; and

(c) the amount of the advance payment or instalment that has not been repaid is not a debt under subsection 1224E(1).

Note: For ***social security entitlement*** see subsection 23(1).

(2) An advance payment deduction is not to be made from a person's rate on:

(a) the payday on which the advance payment is paid; or

(b) the payday on which the first instalment of the advance payment is paid;

as the case requires.

1206J Amount of advance payment deduction—basic calculation

Subject to sections 1206K, 1206L, 1206M and 1206N, the advance payment deduction for an advance payment of a social security entitlement is worked out by dividing the full amount of the advance payment by 13.

OFFICIAL: Sensitive // Legal Privilege

1206K Person may request larger advance payment deduction

(1) Subject to subsection (2) and sections 1206L, 1206M and 1206N, a person's advance payment deduction is increased to a larger amount if the person asks the Secretary in writing for the advance payment deduction to be the larger amount.

(2) Subsection (1) does not apply if the Secretary is satisfied that the person would suffer severe financial hardship if the advance payment deduction were the larger amount.

1206L Reduction of advance payment deduction in cases of severe financial hardship

Reduction

(1) Subject to subsection (2) and sections 1206M and 1206N, if:
   (a) the person applies in writing to the Secretary for an advance payment deduction to be decreased, or to be stopped, because of severe financial hardship; and
   (b) the Secretary is satisfied that:
      (i) the person's circumstances are exceptional and could not reasonably have been foreseen at the time of the person's application for the advance payment; and
      (ii) the person would suffer severe financial hardship if the advance payment deduction that would otherwise apply were to continue;

the Secretary may determine in writing that, for the period specified in the determination, the advance payment deduction is to be a lesser amount (which may be a nil amount) specified in the determination.

Review of reduction

(2) At any time while the determination is in force, the Secretary may:
   (a) vary the determination so as to require to be deducted from the person's rate an advance payment deduction larger than the deduction (if any) previously applying under the

OFFICIAL: Sensitive // Legal Privilege

determination, but smaller than the deduction applying immediately prior to the determination; or

(b) revoke the determination;

but only if the Secretary is satisfied that the person would not suffer severe financial hardship because of the variation or revocation.

Variation or revocation in writing

(3) A variation or revocation of a determination must be in writing.

1206M The final advance payment deduction

Final advance payment deduction not to exceed unpaid amount

(1) If an advance payment deduction that would otherwise be deducted from a person's rate exceeds the part of the advance payment that the person has not yet repaid (by previous deductions under this Part or otherwise), the amount of that advance payment deduction equals the part that the person has not yet repaid.

Example:

Facts: Assume that, in the example at the end of section 1206J, Anne has requested that the advance payment deduction be the larger amount of $55 (see section 1206K), so that the advance payment of $450 will be repaid sooner.

Application: If $55 is deducted from Anne's fortnightly rate of benefit, $440 will have been repaid after 8 successive fortnights, leaving $10 unpaid. Under section 1206M, the final advance payment deduction will be $10.

This section subject to section 1206N

(2) This section has effect subject to section 1206N.

1206N Provisional payment rate insufficient to cover advance payment deduction

(1) If the provisional payment rate referred to in the relevant Rate Calculator is less than the advance payment deduction would be

OFFICIAL: Sensitive // Legal Privilege

apart from this subsection, the advance payment deduction is taken to be equal to the provisional payment rate.

(2) If:

(a) a person's rate of pension is the notional income/assets tested rate referred to in the Method statement in point 1065-A1 in Pension Rate Calculator B; and

(b) the provisional payment rate worked out for the person using Pension Rate Calculator A in accordance with Step 1 of the Method statement in point 1065-A1 in Pension Rate Calculator B is less than the advance payment deduction would be apart from this subsection;

the advance payment deduction is taken to be equal to the provisional payment rate referred to in paragraph (b).

(3) If:

(a) a person's rate of pension is the non-income/assets tested rate referred to in the Method statement in point 1065-A1 in Pension Rate Calculator B; and

(b) the maximum payment rate for the person worked out in Step 4 of that Method statement is less than the advance payment deduction would be apart from this subsection;

the advance payment deduction is taken to be equal to the maximum payment rate referred to in paragraph (b).

(4) If:

(a) a person's rate of pension is the notional income/assets tested rate referred to in the Method statement in point 1066B-A1 in Pension Rate Calculator E; and

(b) the provisional payment rate worked out for the person using Pension Rate Calculator D in accordance with Step 1 of the Method statement in point 1066B-A1 in Pension Rate Calculator E is less than the advance payment deduction would be apart from this subsection;

the advance payment deduction is taken to be equal to the provisional payment rate referred to in paragraph (b).

OFFICIAL: Sensitive // Legal Privilege

(5) If:

(a) a person's rate of pension is the non-income/assets tested rate referred to in the Method statement in point 1066B-A1 in Pension Rate Calculator E; and

(b) the maximum payment rate for the person worked out in Step 5 of that Method statement is less than the advance payment deduction would be apart from this subsection;

the advance payment deduction is taken to be equal to the maximum payment rate referred to in paragraph (b).

1206P Rounding of amounts

Amounts worked out under this Part must be rounded to the nearest cent (rounding 0.5 cents upwards).

OFFICIAL: Sensitive // Legal Privilege

Part 3.16B—Special employment advance deductions

1206Q Special employment advance deduction

(1) Subject to subsection (2) and section 1206T, a special employment advance deduction is to be made from the rate of a social security entitlement that is payable to a person if:

(a) the person has received a special employment advance or an instalment of a special employment advance; and

(b) the person has not yet repaid the whole of the special employment advance or instalment; and

(c) the amount of the special employment advance or instalment that has not been repaid is not a debt under section 1224EA.

Note: For ***social security entitlement*** see subsection 23(1).

(2) A special employment advance deduction may be made from a person's rate on:

(a) if the special employment advance is paid as a lump sum—the payday next following the day on which the lump sum is paid; or

(b) if the special employment advance is paid by instalments—the payday next following the day on which the last instalment of the special employment advance is paid;

or on any later payday.

1206R Amount of special employment advance deduction—basic calculation

Subject to sections 1206S, 1206T, 1206U and 1206V, a special employment advance deduction is such amount as the Secretary determines.

OFFICIAL: Sensitive // Legal Privilege

1206S Person may request larger special employment advance deduction

(1) Subject to subsection (2) and sections 1206T, 1206U and 1206V, a person's special employment advance deduction is increased to a larger amount if the person asks the Secretary in writing for the special employment advance deduction to be the larger amount.

(2) Subsection (1) does not apply if the Secretary is satisfied that the person would suffer severe financial hardship if the special employment advance deduction were the larger amount.

1206T Reduction of special employment advance deduction in cases of severe financial hardship

(1) Subject to subsection (2) and sections 1206U and 1206V, if:

(a) a person applies in writing to the Secretary for a special employment advance deduction to be decreased, or to be stopped, because of severe financial hardship; and

(b) the Secretary is satisfied that:

(i) the person's circumstances are exceptional and could not reasonably have been foreseen at the time of the person's claim for the special employment advance; and

(ii) the person would suffer severe financial hardship if the special employment advance deduction that would otherwise apply were to continue;

the Secretary may determine in writing that, for the period stated in the determination, the special employment advance deduction is to be a lesser amount (which may be a nil amount) stated in the determination.

(2) At any time while the determination is in force, the Secretary may:

(a) vary the determination so as to require to be deducted from the person's rate a special employment advance deduction larger than the deduction (if any) previously applying under the determination, but smaller than the deduction applying immediately before the determination; or

(b) revoke the determination;

OFFICIAL: Sensitive // Legal Privilege

but only if the Secretary is satisfied that the person would not suffer severe financial hardship because of the variation or revocation.

(3) A variation or revocation of a determination must be in writing.

1206U The final special employment advance deduction

(1) If a special employment advance deduction that would otherwise be deducted from a person's rate exceeds the part of the special employment advance that the person has not yet repaid (by previous deductions under this Part or otherwise), the amount of that special employment advance deduction is to be equal to the part that the person has not yet repaid.

(2) This section has effect subject to section 1206V.

1206V Provisional payment rate insufficient to cover special employment advance deduction

(1) If the provisional payment rate referred to in the relevant Rate Calculator is less than the special employment advance deduction would be apart from this subsection, the special employment advance deduction is taken to be equal to the provisional payment rate.

(2) If:

(a) a person's rate of pension is the notional income/assets tested rate referred to in the Method statement in point 1065-A1 in Pension Rate Calculator B; and

(b) the provisional payment rate worked out for the person using Pension Rate Calculator A in accordance with Step 1 of the Method statement in point 1065-A1 in Pension Rate Calculator B is less than the special employment advance deduction would be apart from this subsection;

the special employment advance deduction is taken to be equal to the provisional payment rate referred to in paragraph (b).

(3) If:

OFFICIAL: Sensitive // Legal Privilege

(a) a person's rate of pension is the non-income/assets tested rate referred to in the Method statement in point 1065-A1 in Pension Rate Calculator B; and

(b) the maximum payment rate for the person worked out in Step 4 of that Method statement is less than the special employment advance deduction would be apart from this subsection;

the special employment advance deduction is taken to be equal to the maximum payment rate referred to in paragraph (b).

(4) If:

(a) a person's rate of pension is the notional income/assets tested rate referred to in the Method statement in point 1066B-A1 in Pension Rate Calculator E; and

(b) the provisional payment rate worked out for the person using Pension Rate Calculator D in accordance with Step 1 in the Method statement in point 1066B-A1 in Pension Rate Calculator E is less than the special employment advance deduction would be apart from this subsection;

the special employment advance deduction is taken to be equal to the provisional payment rate referred to in paragraph (b).

(5) If:

(a) a person's rate of pension is the non-income/assets tested rate referred to in the Method statement in point 1066B-A1 in Pension Rate Calculator E; and

(b) the maximum payment rate for the person worked out in Step 5 of that Method statement is less than the special employment advance deduction would be apart from this subsection;

the special employment advance deduction is taken to be equal to the maximum payment rate referred to in paragraph (b).

1206W Rounding of amounts

Amounts worked out under this Part must be rounded to the nearest cent (rounding 0.5 cent upwards).

OFFICIAL: Sensitive // Legal Privilege

Part 3.18—Means test treatment of private companies and private trusts

Division 1—Introduction

1207 Simplified outline

The following is a simplified outline of this Part:

- This Part sets up a system for the attribution to individuals of the assets and income of private companies and private trusts (sections 1207Y and 1208E).
- Attribution starts on 1 January 2002.
- For an asset or income to be attributed to an individual:
  - (a) the company must be a designated private company or the trust must be a designated private trust (sections 1207N and 1207P); and
  - (b) the company must be a controlled private company in relation to the individual or the trust must be a controlled private trust in relation to the individual (sections 1207Q and 1207V); and
  - (c) the individual must be an attributable stakeholder of the company or trust (section 1207X).
- A company or trust will be a controlled private trust or a controlled private company if the individual passes a control test or a source test.

OFFICIAL: Sensitive // Legal Privilege

- An individual will not be an attributable stakeholder of a trust if the trust is a concessional primary production trust in relation to the individual.
- The asset deprivation rules and the income deprivation rules are modified if attribution happens.

1207A Definitions

In this Part, unless the contrary intention appears:

actively involved with a primary production enterprise has the meaning given by section 1207J.

actual transfer, in relation to property or services, means a transfer of the property or services other than a transfer that is taken to have been made because of subsection 1207H(1), (3) or (4).

adjusted net primary production income (in Division 11) has the meaning given by section 1209.

adjusted net value (in Division 11) has the meaning given by section 1208Z.

arm's length amount, in relation to an actual transfer of property or services to a company or a trust, means the amount that the company or trust could reasonably be expected to have been required to pay to obtain the property or the services concerned from the transferor under a transaction where the parties to the transaction are dealing with each other at arm's length in relation to the transaction.

asset attribution percentage has the meaning given by section 1207X.

associate has the meaning given by section 1207C.

attributable stakeholder has the meaning given by section 1207X.

attribution period has the meaning given by section 1208D.

OFFICIAL: Sensitive // Legal Privilege

business partnership means a partnership within the meaning of the *Income Tax Assessment Act 1997*.

child: without limiting who is a child of a person for the purposes of this Part, each of the following is the ***child*** of a person:

(a) an adopted child, step-child or foster-child of the person;

(b) someone who is a child of the person within the meaning of the *Family Law Act 1975*.

company has the same meaning as in the *Income Tax Assessment Act 1997*.

concessional primary production trust has the meaning given by section 1208U.

constituent document, in relation to a company, means:

(a) the memorandum and articles of association of the company; or

(b) any rules or other documents constituting the company or governing its activities.

control includes control as a result of, or by means of, trusts, agreements, arrangements, understandings and practices, whether or not having legal or equitable force and whether or not based on legal or equitable rights.

controlled private company has the meaning given by section 1207Q.

controlled private trust has the meaning given by section 1207V.

decision-making principles means decision-making principles under section 1209E.

derivation period has the meaning given by section 1208C.

designated private company has the meaning given by section 1207N.

designated private trust has the meaning given by section 1207P.

OFFICIAL: Sensitive // Legal Privilege

director includes any person (by whatever name called) occupying the position of a director of a company.

entity means any of the following:

(a) an individual;
(b) a company;
(c) a trust;
(d) a business partnership;
(e) a corporation sole;
(f) a body politic.

group includes:

(a) one entity alone; or
(b) a number of entities, even if they are not in any way associated with each other or acting together.

income attribution percentage has the meaning given by section 1207X.

interest in a share has the meaning given by section 1207U.

majority voting interest, in relation to a company, has the meaning given by section 1207E.

primary production enterprise means a business in Australia that consists of primary production.

property includes money.

relative, in relation to a person, has the meaning given by section 1207B.

scheme means:

(a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings; or

OFFICIAL: Sensitive // Legal Privilege

(b) any scheme, plan, proposal, action, course of action or course of conduct, whether there are 2 or more parties or only one party involved.

services includes any benefit, right (including a right in relation to, and an interest in, real or personal property), privilege or facility and, without limiting the generality of the foregoing, includes a benefit, right, privilege, service or facility that is, or is to be, provided under:

(a) an arrangement for or in relation to:
  (i) the performance of work (including work of a professional nature), whether with or without the provision of property; or
  (ii) the provision of, or of the use of facilities for, entertainment, recreation or instruction; or
  (iii) the conferring of benefits, rights or privileges for which remuneration is payable in the form of a royalty, tribute, levy or similar exaction; or
(b) a contract of insurance; or
(c) an arrangement for or in relation to the lending of money.

share includes stock.

spouse includes, in relation to a person who is a member of a couple (as defined by section 4), the other member of the couple.

subsidiary has the same meaning as in the *Corporations Act 2001*.

sufficiently influenced, in relation to a company, has the meaning given by section 1207D.

transfer:

(a) in relation to property—includes dispose of (whether by assignment, declaration of trust or otherwise) or provide; and
(b) in relation to services—includes allow, confer, give, grant, perform or provide.

trust means a person in the capacity of trustee or, as the case requires, a trust estate.

OFFICIAL: Sensitive // Legal Privilege

trustee has the same meaning as in the *Income Tax Assessment Act 1997*.

underlying transfer, in relation to a transfer of property or services to an entity, means:

(a) if that transfer was an actual transfer—the actual transfer; or

(b) if that transfer was taken to have been made because of subsection 1207H(1)—the actual transfer referred to in that subsection; or

(c) if that transfer was taken to have been made because of subsection 1207H(3)—the actual transfer referred to in paragraph 1207H(3)(b); or

(d) if that transfer was taken to have been made because of subsection 1207H(4)—the actual transfer referred to in paragraph 1207H(4)(c).

voting power has the meaning given by section 1207S.

1207B Relatives

(1) For the purposes of this Part, a ***relative***, in relation to a person (the ***first person***), means any of the following:

(a) the spouse of the first person;

(b) a parent, grandparent, brother, sister, uncle, aunt, nephew, niece, first cousin, second cousin or lineal descendant of the first person;

(c) the spouse of a person covered by paragraph (b);

(d) a parent, grandparent, brother, sister, uncle, aunt, nephew, niece, first cousin, second cousin or lineal descendant of the spouse of the first person;

(e) the spouse of a person covered by paragraph (d);

(f) a child of a person covered by any of the preceding paragraphs.

(2) For the purposes of this section, if one person is the child of another person because of the definition of ***child*** in section 1207A,

OFFICIAL: Sensitive // Legal Privilege

relationships traced to or through the person are to be determined on the basis that the person is the child of the other person.

1207C Associates

(1) For the purposes of this Part, in determining:

(a) whether a trust is a designated private trust; or

(b) whether a company is a controlled private company in relation to an individual; or

(c) whether a trust is a controlled private trust in relation to an individual; or

(d) whether a trust is a concessional primary production trust in relation to an individual;

the following are ***associates*** of an individual:

(e) a relative of the individual;

(f) an entity who, in matters relating to the trust or company:

(i) acts, or is accustomed to act; or

(ii) under a contract or an arrangement or understanding (whether formal or informal), is intended or expected to act;

in accordance with the directions, instructions or wishes of:

(iii) the individual; or

(iv) the individual and another entity who is an associate of the individual because of another paragraph of this subsection;

(g) an entity that is a declared associate of the individual (see subsection (2));

(h) a business partner of the individual or a business partnership in which the individual is a business partner;

(i) if a business partner of the individual is an individual—the spouse or a child of that business partner;

(j) a trustee of a trust, where:

(i) the individual; or

(ii) another entity that is an associate of the individual because of another paragraph of this subsection;

benefits or is capable (whether by the exercise of a power of appointment or otherwise) of benefiting under the trust, either directly or through any interposed companies, business partnerships or trusts;

(k) a company, where the company is sufficiently influenced by:
  (i) the individual; or
  (ii) another entity that is an associate of the individual because of another paragraph of this subsection; or
  (iii) another company that is an associate of the individual because of another application of this paragraph; or
  (iv) 2 or more entities covered by the preceding subparagraphs;

(l) a company, where a majority voting interest in the company is held by:
  (i) the individual; or
  (ii) the entities that are associates of the individual because of any of the preceding paragraphs of this subsection; or
  (iii) the individual and the entities that are associates of the individual because of any of the preceding paragraphs of this subsection.

Declared associate

(2) The Secretary may, by legislative instrument, determine that each entity included in a specified class of entities is taken to be a ***declared associate*** of an individual for the purposes of this section.

(3) A determination under subsection (2) has effect accordingly.

1207D When a company is sufficiently influenced by an entity

For the purposes of this Part, a company is ***sufficiently influenced*** by an entity or entities if the company, or its directors:

(a) are accustomed or under an obligation (whether formal or informal); or

(b) might reasonably be expected;

OFFICIAL: Sensitive // Legal Privilege

to act in accordance with the directions, instructions or wishes of the entity or entities.

1207E Majority voting interest in a company

For the purposes of this Part, an entity or entities hold a ***majority voting interest*** in a company if the entity or entities are in a position to cast, or control the casting of, more than 50% of the maximum number of votes that might be cast at a general meeting of the company.

1207F Entitled to acquire

For the purposes of this Part, an entity is ***entitled to acquire*** anything that the entity is absolutely or contingently entitled to acquire, whether because of any constituent document of a company, the exercise of any right or option or for any other reason.

1207G Transfer of property or services

(1) A reference in this Part to the ***transfer of property or services to a trust*** includes a reference to the transfer of such property or services by way of the creation of the trust.

(2) For the purposes of this Part, if an entity acquires property that did not previously exist, the property is taken to have existed immediately before the acquisition and to have been transferred by the entity who created the property.

(3) For the purposes of this Part, property or services are taken to have been transferred to an entity if the property or services have been applied for the benefit of, or in accordance with the directions of, the entity.

(4) Without limiting the generality of subsection (3), a reference in that subsection to the ***application of property or services for the benefit of an entity*** includes a reference to the application of

OFFICIAL: Sensitive // Legal Privilege

property or services in the discharge, in whole or in part, of a debt due by the entity.

1207H Constructive transfers of property or services to an entity

(1) For the purposes of this Part, if an entity (the ***prime entity***) causes another entity to actually transfer property or services to a third entity, the prime entity is taken to have transferred the property or services (instead of the other entity).

(2) Subsection (1) does not limit the operation of subsection (3).

(3) If, under a scheme:

(a) an entity (the ***scheme entity***) actually transfers property or services to another entity; and

(b) property or services are actually transferred to a third entity at a particular time otherwise than by the scheme entity;

the Secretary may, for the purposes of this Part, treat the property or services mentioned in paragraph (b) as having been transferred by the scheme entity to the third entity (instead of by any other entity) at that time to such extent as the Secretary considers reasonable.

(4) If:

(a) an individual transfers property or services to an entity (the ***interposed entity***), being a company, a business partnership or a trust; and

(b) a winding-up event occurs in relation to the interposed entity; and

(c) an actual transfer of property or services is made to another entity (the ***ultimate transferee***) at a particular time as a consequence of the interposed entity being wound-up or ceasing to exist;

the Secretary may, for the purposes of this Part, treat the property or services mentioned in paragraph (c) as having been transferred by the individual to the ultimate transferee (instead of by any other entity) at that time to such extent as the Secretary considers reasonable.

OFFICIAL: Sensitive // Legal Privilege

(5) For the purposes of this section, each of the following events is a ***winding-up event*** in relation to a company:
  (a) the company passes a resolution for its winding-up;
  (b) an order is made for the winding-up of the company;
  (c) any similar event.

(6) For the purposes of this section, a ***winding-up event*** occurs in relation to a business partnership if the business partnership ceases to exist for the purposes of the *Income Tax Assessment Act 1997*.

(7) For the purposes of this section, a ***winding-up event*** occurs in relation to a trust if:
  (a) the trust commences to be wound-up; or
  (b) the trust ceases to exist for the purposes of the *Income Tax Assessment Act 1997*.

1207J Active involvement with a primary production enterprise

For the purposes of this Part, an individual is taken to have been ***actively involved with a primary production enterprise*** if, and only if, the individual:
  (a) has contributed a significant part of his or her labour to the development of the enterprise; or
  (b) has undertaken educational studies or training in a field that, in the opinion of the Secretary, is relevant to the development or management of the enterprise.

1207K Power to veto decisions of a trustee

For the purposes of this Part, if the decisions of a trustee are subject to the consent of an entity, the entity is taken to be able to veto the decisions of the trustee.

1207L Extra-territorial operation

(1) This Part extends to acts, omissions, matters and things outside Australia.

OFFICIAL: Sensitive // Legal Privilege

(2) Disregard subsection (1) in determining whether a provision of this Act (other than this Part) extends to acts, omissions, matters and things outside Australia.

1207M Application to things happening before commencement

The use of the present tense in a provision of this Part does not imply that the provision does not apply to things happening before the commencement of this Part.

OFFICIAL: Sensitive // Legal Privilege

Division 2—Designated private companies

1207N Designated private companies

(1) For the purposes of this Part, a company is a ***designated private company*** at a particular time if:

(a) the company satisfies at least 2 of the following conditions in relation to the last financial year that ended before that time:

(i) the consolidated revenue for the financial year of the company and its subsidiaries is less than $25 million, or any other amount prescribed by regulations made for the purposes of paragraph 45A(2)(a) of the *Corporations Act 2001*;

(ii) the value of the consolidated gross assets at the end of the financial year of the company and its subsidiaries is less than $12.5 million, or any other amount prescribed by regulations made for the purposes of paragraph 45A(2)(b) of the *Corporations Act 2001*;

(iii) the company and its subsidiaries have fewer than 50, or any other number prescribed by regulations made for the purposes of paragraph 45A(2)(c) of the *Corporations Act 2001*, employees at the end of the financial year; or

(b) the company came into existence after the end of the last financial year that ended before that time; or

(c) the company is a declared private company (see subsection (2));

and the company is not an excluded company (see subsection (5)).

Declared private company

(2) The Secretary may, by legislative instrument, determine that each company included in a specified class of companies is a ***declared private company*** for the purposes of this section.

(3) A determination under subsection (2) has effect accordingly.

OFFICIAL: Sensitive // Legal Privilege

Excluded companies

(5) The Secretary may, by legislative instrument, declare that each company included in a specified class of companies is an ***excluded company*** for the purposes of this section.

(6) A declaration under subsection (5) has effect accordingly.

Definitions

(8) In this section:

consolidated revenue has the same meaning as in section 45A of the *Corporations Act 2001*.

financial year, in relation to a company, means:

(a) a period of 12 months beginning on 1 July; or

(b) if some other period is the company's tax year—that other period.

value of consolidated gross assets has the same meaning as in section 45A of the *Corporations Act 2001*.

OFFICIAL: Sensitive // Legal Privilege

Division 3—Designated private trusts

1207P Designated private trusts

(1) For the purposes of this Part, a trust is a ***designated private trust*** unless:

(a) all of the following conditions are satisfied:

(i) the trust is a fixed trust;

(ii) the units in the trust are held by 50 or more persons;

(iii) the trust was not created, continued in existence or operated under a scheme that was entered into or carried out for the sole or dominant purpose of enabling any individual or individuals to avoid the application of this Part and/or Division 11A of Part IIIB of the Veterans' Entitlements Act; or

(b) the trust is a complying superannuation fund (see subsection (3)); or

(c) the trust is an excluded trust (see subsection (4)).

(2) For the purposes of subparagraph (1)(a)(ii), an individual and his or her associates are taken to be one person.

Complying superannuation funds

(3) For the purposes of this section, a fund is a ***complying superannuation fund*** at a particular time if:

(a) that time occurs during a particular tax year of the fund; and

(b) under section 45 of the *Superannuation Industry (Supervision) Act 1993*, the fund is a complying superannuation fund for the purposes of the *Income Tax Assessment Act 1997* in relation to that tax year.

Excluded trusts

(4) The Secretary may, by legislative instrument, declare that each trust included in a specified class of trusts is an ***excluded trust*** for the purposes of this section.

OFFICIAL: Sensitive // Legal Privilege

(5) The declaration has effect accordingly.

Definitions

(7) In this section:

fixed trust means a trust where persons have fixed entitlements to all of the income and corpus of the trust.

income means income within the ordinary meaning of that expression.

unit, in relation to a trust, includes a beneficial interest, however described, in the property or income of the trust.

OFFICIAL: Sensitive // Legal Privilege

Division 4—Controlled private companies

1207Q Controlled private companies

(1) For the purposes of this Part, a company is a ***controlled private company*** in relation to an individual if the company is a designated private company and:

(a) the individual passes the ***control test*** set out in subsection (2); or

(b) the individual passes the ***source test*** set out in subsection (3).

Control test

(2) For the purposes of this section, an individual ***passes the control test*** in relation to a company if:

(a) the aggregate of:

(i) the direct voting interests in the company that the individual holds; and

(ii) the direct voting interests in the company held by associates of the individual;

is 50% or more; or

(b) the aggregate of:

(i) the direct control interests in the company that the individual holds; and

(ii) the direct control interests in the company held by associates of the individual;

is 15% or more; or

(c) the company is sufficiently influenced by:

(i) the individual; or

(ii) an associate of the individual; or

(iii) 2 or more entities covered by the preceding subparagraphs; or

(d) the individual (either alone or together with associates) is in a position to exercise control over the company.

Source test

(3) For the purposes of this section, an individual ***passes the source test*** in relation to a company if:

(a) the individual has transferred property or services to the company after 7.30 pm, by standard time in the Australian Capital Territory, on 9 May 2000; and

(b) the underlying transfer was made for no consideration or for a consideration less than the arm's length amount in relation to the underlying transfer.

No double counting

(4) In calculating the aggregate referred to in paragraph (2)(a), a direct voting interest held because of subsection 1207R(2) is not to be counted under subparagraph (2)(a)(i) to the extent to which it is calculated by reference to a direct voting interest in the company that is taken into account under subparagraph (2)(a)(ii).

(5) In calculating the aggregate referred to in paragraph (2)(b), a direct control interest held because of subsection 1207T(4) is not to be counted under subparagraph (2)(b)(i) to the extent to which it is calculated by reference to a direct control interest in the company that is taken into account under subparagraph (2)(b)(ii).

1207R Direct voting interest in a company

(1) An entity holds a ***direct voting interest*** in a company at a particular time equal to the percentage of the voting power in the company that the entity is in a position to control at that time.

(2) If:

(a) an entity holds a direct voting interest (including a direct voting interest that is taken to be held because of one or more previous applications of this subsection) in a company (the ***first level company***); and

(b) the first level company holds a direct voting interest in another company (the ***second level company***);

OFFICIAL: Sensitive // Legal Privilege

the entity is taken to hold a direct voting interest in the second level company equal to the percentage worked out using the formula:

First level percentage × Second level percentage

where:

first level percentage means the percentage of the direct voting interest held by the entity in the first level company.

second level percentage means the percentage of the direct voting interest held by the first level company in the second level company.

1207S Voting power

(1) A reference in this Division to the ***voting power*** in a company is a reference to the total rights of shareholders to vote, or participate in any decision-making, concerning any of the following:
  (a) the making of distributions of capital or profits of the company to its shareholders;
  (b) the constituent document of the company;
  (c) any variation of the share capital of the company;
  (d) any appointment of a director of the company.

(2) A reference in this Division to ***control of the voting power*** in a company is a reference to control that is direct or indirect, including control that is exercisable as a result of or by means of arrangements or practices:
  (a) whether or not having legal or equitable force; and
  (b) whether or not based on legal or equitable rights.

(3) If the percentage of total rights to vote or participate in decision-making differs as between different types of voting or decision-making, the highest of those percentages applies for the purposes of this section.

(4) If a company:
  (a) is limited both by shares and by guarantee; or

OFFICIAL: Sensitive // Legal Privilege

(b) does not have a share capital;

this section has effect as if the members or policy holders of the company were shareholders in the company.

1207T Direct control interest in a company

(1) An entity holds a ***direct control interest*** in a company at a particular time equal to the percentage of the total paid-up share capital of the company in which the entity holds an interest at that time.

(2) An entity also holds a ***direct control interest*** in a company at a particular time equal to the percentage that the entity holds, or is entitled to acquire, at that time of the total rights to distributions of capital or profits of the company to its shareholders on winding-up.

(3) An entity also holds a ***direct control interest*** in a company at a particular time equal to the percentage that the entity holds, or is entitled to acquire, at that time of the total rights to distributions of capital or profits of the company to its shareholders, otherwise than on winding-up.

(4) If:

(a) an entity holds a particular type of direct control interest (including a direct control interest that is taken to be held because of one or more previous applications of this subsection) in a company (the ***first level company***); and

(b) the first level company holds the same type of direct control interest in another company (the ***second level company***);

the entity is taken to hold that type of direct control interest in the second level company equal to the percentage worked out using the formula:

First level percentage × Second level percentage

where:

first level percentage means the percentage of the direct control interest held by the entity in the first level company.

OFFICIAL: Sensitive // Legal Privilege

second level percentage means the percentage of the direct control interest held by the first level company in the second level company.

1207U Interest in a share

(1) This section applies for the purpose of working out the percentage of a company's total paid-up share capital in which an entity holds an interest.

(2) Subject to this section, for the purposes of this Division, an entity holds an ***interest in a share*** if the entity has any legal or equitable interest in the share.

(3) For the purposes of this Division, an entity is taken to hold an ***interest in a share*** if:

(a) the entity has entered into a contract to purchase the share; or

(b) the entity has a right (otherwise than because of having an interest under a trust) to have the share transferred to the entity or to the entity's order (whether the right is exercisable presently or in the future and whether or not on the fulfilment of a condition); or

(c) the entity has a right to acquire the share, or an interest in the share, under an option (whether the right is exercisable presently or in the future and whether or not on the fulfilment of a condition); or

(d) the entity is otherwise entitled to acquire the share or an interest in the share; or

(e) the entity is entitled (otherwise than because of having been appointed as a proxy or representative to vote at a meeting of members of the company or of a class of its members) to exercise or control the exercise of a right attached to the share.

(4) Subsection (3) does not, by implication, limit subsection (2).

(5) An entity is taken to hold an ***interest in a share*** even if the entity holds the interest in the share jointly with another entity.

OFFICIAL: Sensitive // Legal Privilege

(6) For the purpose of determining whether an entity holds an interest in a share, it is immaterial that the interest cannot be related to a particular share.

(7) An interest in a share is not to be disregarded only because of:
  (a) its remoteness; or
  (b) the manner in which it arose; or
  (c) the fact that the exercise of a right conferred by the interest is, or is capable of being made, subject to restraint or restriction.

OFFICIAL: Sensitive // Legal Privilege

Division 5—Controlled private trusts

1207V Controlled private trusts

(1) For the purposes of this Part, a trust is a ***controlled private trust*** in relation to an individual if the trust is a designated private trust and:

(a) the individual passes the ***control test*** set out in subsection (2); or

(b) the individual passes the ***source test*** set out in subsection (3).

Control test

(2) For the purposes of this section, the individual ***passes the control test*** in relation to a trust if:

(a) the individual, or an associate of the individual (other than an associate covered by paragraph 1207C(1)(j)), is the trustee, or any of the trustees, of the trust; or

(b) a group in relation to the individual was able to remove or appoint the trustee, or any of the trustees, of the trust; or

(c) a group in relation to the individual was able to vary the trust deed or to veto the decisions of the trustee; or

(ca) it could reasonably be expected that the trustee of the trust would make an application of the corpus or income of the trust to the individual if the individual could not meet his or her reasonable costs of living (within the meaning of subsection 19C(5)); or

(d) the aggregate of:

(i) the beneficial interests in the corpus or income of the trust held by the individual (whether directly or indirectly); and

(ii) the beneficial interests in the corpus or income of the trust held by associates of the individual (whether directly or indirectly);

is 50% or more; or

(da) either or both of the following apply:

OFFICIAL: Sensitive // Legal Privilege

(i) the individual is eligible to receive an application of the corpus or income of the trust;

(ii) one or more of the individual's associates are eligible to receive an application of the corpus or income of the trust;

and the aggregate number of entities covered by subparagraphs (i) and (ii) is 50% or more of the total number of entities eligible to receive an application of the corpus or income of the trust; or

(e) a group in relation to the individual had the power (by means of the exercise by the group of any power of appointment or revocation or otherwise) to obtain, with or without the consent of any other entity, the beneficial enjoyment of the corpus or income of the trust; or

(f) a group in relation to the individual was able in any manner whatsoever, whether directly or indirectly, to control the application of the corpus or income of the trust; or

(g) a group in relation to the individual was capable under a scheme of gaining the enjoyment or the control referred to in paragraph (e) or (f); or

(h) a trustee of the trust was accustomed or under an obligation (whether formally or informally) or might reasonably be expected to act in accordance with the directions, instructions or wishes of a group in relation to the individual.

(2A) For the purposes of paragraph (2)(da), an entity is eligible to receive an application of the corpus or income of the trust if the trustee of the trust has a discretion to make an application of the corpus or income of the trust to the entity.

(2B) For the purposes of applying paragraph (2)(da) at a particular time, subparagraph (2)(da)(i) is taken to apply at that particular time to the individual if the individual was eligible to receive an application of the corpus or income of the trust at any time during:

(a) the period beginning at the start of the financial year in which that particular time occurs and ending at that particular time; or

OFFICIAL: Sensitive // Legal Privilege

(b) the preceding financial year.

(2C) For the purposes of applying paragraph (2)(da) at a particular time, subparagraph (2)(da)(ii) is taken to apply at that particular time to an entity that is an associate of the individual at that particular time if:

(a) the entity was eligible to receive an application of the corpus or income of the trust at any time during:

(i) the period beginning at the start of the financial year in which that particular time occurs and ending at that particular time; or

(ii) the preceding financial year; and

(b) the entity was an associate of the individual at the time the entity was so eligible.

(2D) For the purposes of applying paragraph (2)(da) at a particular time, in working out the total number of entities eligible to receive an application of the corpus or income of the trust, take into account an entity that was eligible to receive an application of the corpus or income of the trust at any time during:

(a) the period beginning at the start of the financial year in which that particular time occurs and ending at that particular time; or

(b) the preceding financial year.

(2E) No paragraph of subsection (2) limits any other paragraph of that subsection.

Source test

(3) For the purposes of this section, an individual ***passes the source test*** in relation to a trust if:

(a) the individual has transferred property or services to the trust after 7.30 pm, by standard time in the Australian Capital Territory, on 9 May 2000; and

(b) the underlying transfer was made for no consideration or for a consideration less than the arm's length amount in relation to the underlying transfer.

OFFICIAL: Sensitive // Legal Privilege

Group

(4) A reference in this section to a ***group*** in relation to an individual is a reference to:

(a) the individual acting alone; or

(b) an associate of the individual acting alone; or

(c) the individual and one or more associates of the individual acting together; or

(d) 2 or more associates of the individual acting together.

Income

(5) In this section:

income means income within the ordinary meaning of that expression.

1207W Interest in a trust

(1) For the purposes of this Division, if an entity:

(a) has entered into a contract to purchase a beneficial interest in the corpus or income of a trust; or

(b) has a right, otherwise than by reason of holding an interest in a trust, to have such an interest transferred to the entity or to the entity's order (whether the right is exercisable presently or in the future) and whether on the fulfilment of a condition or not; or

(c) has the right to acquire such an interest under an option (whether the right is exercisable presently or in the future) and whether on the fulfilment of a condition or not; or

(d) is otherwise entitled to acquire such an interest;

the entity is taken to hold that interest in the trust.

(2) An entity is taken to hold an interest in the corpus or income of a trust even if the entity holds the interest jointly with another entity.

(3) An interest in the corpus or income of a trust is not to be disregarded only because of:

OFFICIAL: Sensitive // Legal Privilege

(a) its remoteness; or
(b) the manner in which it arose; or
(c) the fact that the exercise of a right conferred by the interest is, or is capable of being made, subject to restraint or restriction.

(4) In this section:

income means income within the ordinary meaning of that expression.

OFFICIAL: Sensitive // Legal Privilege

Division 6—Attributable stakeholders and attribution percentages

1207X Attributable stakeholder, asset attribution percentage and income attribution percentage

Company

(1) For the purposes of this Part, if a company is a controlled private company in relation to an individual:

(a) the individual is an ***attributable stakeholder*** of the company unless the Secretary otherwise determines; and

(b) if the individual is an attributable stakeholder of the company—the individual's ***asset attribution percentage*** in relation to the company is:

(i) 100%; or

(ii) if the Secretary determines a lower percentage in relation to the individual and the company—that lower percentage; and

(c) if the individual is an attributable stakeholder of the company—the individual's ***income attribution percentage*** in relation to the company is:

(i) 100%; or

(ii) if the Secretary determines a lower percentage in relation to the individual and the company—that lower percentage.

Trust

(2) For the purposes of this Part, if:

(a) a trust is a controlled private trust in relation to an individual; and

(b) the trust is not a concessional primary production trust in relation to the individual (see section 1208U);

then:

OFFICIAL: Sensitive // Legal Privilege

(c) the individual is an ***attributable stakeholder*** of the trust unless the Secretary otherwise determines; and

(d) if the individual is an attributable stakeholder of the trust—the individual's ***asset attribution percentage*** in relation to the trust is:

(i) 100%; or

(ii) if the Secretary determines a lower percentage in relation to the individual and the trust—that lower percentage; and

(e) if the individual is an attributable stakeholder of the trust—the individual's ***income attribution percentage*** in relation to the trust is:

(i) 100%; or

(ii) if the Secretary determines a lower percentage in relation to the individual and the trust—that lower percentage.

(2A) The only ***attributable stakeholder*** of a special disability trust is the principal beneficiary of the trust.

Note 1: For ***special disability trust***, see section 1209L.

Note 2: For ***principal beneficiary*** of a special disability trust, see subsection 1209M(1).

Determinations

(3) A determination under this section is to be in writing.

(4) A determination under this section has effect accordingly.

(5) In making a determination under this section, the Secretary must comply with any relevant decision-making principles.

OFFICIAL: Sensitive // Legal Privilege

Division 7—Attribution of income of controlled private companies and controlled private trusts

1207Y Attribution of income

(1) For the purposes of this Act, if:

(a) during a particular derivation period of a company or trust, the company or trust derives an amount that is ordinary income; and

(b) an individual is an attributable stakeholder of the company or a trust throughout the attribution period that relates to the derivation period of the company or trust; and

(c) the attribution period begins on or after 1 January 2002; and

(d) if that amount:

(i) had been derived by the individual instead of by the company or trust; and

(ii) in the case of income accounted for on an accrual basis as mentioned in subsection (5)—had been so derived by the individual on a cash basis;

that amount would have been ordinary income of the individual; and

(e) that amount is not excluded income (see subsection (2));

then, in addition to any other ordinary income of the individual, the individual is taken to receive, during that attribution period, ordinary income at an annual rate equal to the individual's income attribution percentage of the amount worked out using the formula:

$$\frac{\text{Amount referred to in paragraph (a)}}{\text{Number of days in the derivation period}} \times 365$$

Note: For attribution of the income of a special disability trust, see section 1209V.

OFFICIAL: Sensitive // Legal Privilege

Excluded income

(2) The Secretary may, by writing, determine that, for the purposes of the application of subsection (1) to a specified individual and a specified company or trust, a specified amount is ***excluded income***.

(3) A determination under subsection (2) has effect accordingly.

(4) In making a determination under subsection (2), the Secretary must comply with any relevant decision-making principles.

Accrual v. cash accounting

(5) If the income of a company or trust is accounted for on an accrual basis for the purposes of section 6-5 of the *Income Tax Assessment Act 1997*, the ordinary income of the company or trust is accounted for on an accrual basis for the purposes of this section.

(6) If the income of a company or trust is accounted for on a cash basis for the purposes of section 6-5 of the *Income Tax Assessment Act 1997*, the ordinary income of the company or trust is accounted for on a cash basis for the purposes of this section.

1207Z No double counting of attributed income

(1) If:

(a) a company makes a distribution of capital or profits of the company to a particular shareholder of the company; and

(b) the shareholder is an individual; and

(c) the individual is an attributable stakeholder of the company;

the Secretary may, by writing:

(d) determine that, for the purposes of this Act, the ordinary income of the individual does not include the amount or value distributed to the individual; or

(e) determine that, for the purposes of this Act, the ordinary income of the individual does not include so much of the amount or value distributed to the individual as is specified in the determination.

OFFICIAL: Sensitive // Legal Privilege

(2) If:

(a) a trust:

(i) makes a distribution (whether in money or in other property) to a particular beneficiary of the trust; or

(ii) credits an amount to a particular beneficiary of the trust; and

(b) the beneficiary is an individual; and

(c) the individual is an attributable stakeholder of the trust;

the Secretary may, by writing:

(d) determine that, for the purposes of this Act, the ordinary income of the individual does not include the amount distributed or credited to the individual; or

(e) determine that, for the purposes of this Act, the ordinary income of the individual does not include so much of the amount distributed or credited to the individual as is specified in the determination.

(3) In making a determination under this section, the Secretary must comply with any relevant decision-making principles.

(4) This section is to be disregarded for the purposes of paragraph 1207Y(1)(d).

1208 Ordinary income of a company or trust

(1) For the purposes of this Division, the ordinary income of a company or trust is to be worked out as if:

(a) exempt lump sums were not excluded from the definition of ***ordinary income*** in subsection 8(1); and

(b) each reference in section 8 to a person included a reference to a company or trust; and

(c) the following provisions had not been enacted:

(i) subsection 8(7A);

(ii) subsection 8(8);

(iii) subsection 8(11);

(iv) Part 3.10.

OFFICIAL: Sensitive // Legal Privilege

(2) Paragraphs (1)(a) and (c) have effect subject to paragraph 1207Y(1)(d).

(3) A reference in this Division to the ordinary income of a company or trust is a reference to the company's or trust's gross ordinary income from all sources calculated without any reduction, other than a reduction under section 1208A or 1208B.

1208A Ordinary income from a business—treatment of trading stock

(1) For the purposes of this Division, if:

(a) a company or trust carries on a business; and

(b) the value of all the trading stock on hand at the end of a derivation period is greater than the value of all the trading stock on hand at the beginning of that derivation period;

the company's or trust's ordinary income for that derivation period in the form of profits from the business is to include the amount of the difference in values.

(2) For the purposes of this Division, if:

(a) a company or trust carries on a business; and

(b) the value of all the trading stock on hand at the end of a derivation period is less than the value of all the trading stock on hand at the beginning of that derivation period;

the company's or trust's ordinary income for that derivation period in the form of profits from the business is to be reduced by the amount of the difference in values.

1208B Permissible reductions of business and investment income

(1) For the purposes of this Division, if a company or trust carries on a business or holds an investment, the company's or trust's ordinary income from the business or investment is to be reduced by:

(a) losses and outgoings that relate to the business or investment and are allowable deductions for the purposes of section 8-1 of the *Income Tax Assessment Act 1997*; and

OFFICIAL: Sensitive // Legal Privilege

(b) amounts that relate to the business or investment and can be deducted in respect of plant (within the meaning of the *Income Tax Assessment Act 1997*) under Division 40 of that Act; and

(c) amounts that relate to the business or investment and are allowable deductions under any other provision of the *Income Tax Assessment Act 1936* or the *Income Tax Assessment Act 1997*.

(2) However, the rule in subsection (1) does not apply to:

(a) an ineligible deduction (see subsection (3)); or

(b) an ineligible amount (see subsection (4)); or

(c) an ineligible part of a deduction (see subsection (5)).

(3) The Secretary may, by legislative instrument, determine that a specified deduction is an ***ineligible deduction*** for the purposes of this section.

(4) The Secretary may, by legislative instrument, determine that a specified amount is an ***ineligible amount*** for the purposes of this section.

(5) The Secretary may, by legislative instrument, determine that a specified part of a specified deduction is an ***ineligible part*** of the deduction for the purposes of this section.

(6) A determination under subsection (3), (4) or (5) has effect accordingly.

1208C Derivation periods

(1) For the purposes of this Part:

(a) if a company or trust was in existence throughout a tax year of the company or trust—the tax year is a ***derivation period*** of the company or trust; and

(b) if a company or trust was in existence during a part of a tax year of the company or trust—that part of the tax year is a ***derivation period*** of the company or trust.

OFFICIAL: Sensitive // Legal Privilege

(2) Subsection (1) has effect subject to subsection (3).

(3) The Secretary may, by writing, determine that, for the purposes of the application of this Division to a specified individual and a specified company or trust, a specified period is a ***derivation period*** of the company or trust.

(4) A determination under subsection (3) has effect accordingly.

(5) In making a determination under subsection (3), the Secretary must comply with any relevant decision-making principles.

(6) To avoid doubt, for the purposes of the application of this Division to a particular individual and a particular company or trust, it is not necessary that the individual be an attributable stakeholder of the company or trust throughout a derivation period of the company or trust.

(7) A derivation period may begin or end before the commencement of this Part.

1208D Attribution periods

(1) The Secretary may, by writing, determine that, in the event that a specified individual is an attributable stakeholder of a specified company or trust at a specified time (the ***start time***):

(a) a period beginning at the start time and ending at whichever is the earlier of the following times:

(i) the later time specified in the determination;

(ii) the time when the individual ceases to be an attributable stakeholder of the company or trust;

is an attribution period for the purposes of the application of this Part to the individual and the company or trust; and

(b) that attribution period relates to a specified derivation period of the company or trust.

(2) A determination under subsection (1) has effect accordingly.

(3) The Secretary must ensure that, if an individual is an attributable stakeholder of a company or of a trust at a particular time on or after 1 January 2002, that time is included in an attribution period.

(4) An attribution period may, but is not required to, overlap (in whole or in part) the derivation period to which it relates.

(5) An attribution period does not have to be of the same length as the derivation period to which it relates.

(6) Attribution periods do not have to be of the same length.

(7) In making a determination under this section, the Secretary must comply with any relevant decision-making principles.

OFFICIAL: Sensitive // Legal Privilege

Division 8—Attribution of assets of controlled private companies and controlled private trusts

1208E Attribution of assets

(1) For the purposes of this Act, if:

(a) an individual is an attributable stakeholder of a company or trust at a particular time on or after 1 January 2002; and

(b) at that time, the company or trust owns a particular asset (whether alone or jointly or in common with another entity or entities); and

(c) if, at that time, that asset had been owned by the individual instead of by the company or trust, the value of the asset would not be required to be disregarded by any express provision of this Act; and

(d) at that time, the asset is not an excluded asset (see subsection (2));

there is to be included in the value of the individual's assets an amount equal to the individual's asset attribution percentage of the value of the asset referred to in paragraph (b).

Note: For attribution of the assets of a special disability trust, see section 1209Y.

Excluded assets

(2) The Secretary may, by writing, determine that, for the purposes of the application of subsection (1) to a specified individual and a particular company or trust, a specified asset is an ***excluded asset***.

(3) A determination under subsection (2) has effect accordingly.

(4) In making a determination under subsection (2), the Secretary must comply with any relevant decision-making principles.

1208F When attributed asset is unrealisable

(1) For the purposes of this Act, if:

OFFICIAL: Sensitive // Legal Privilege

(a) an individual is an attributable stakeholder of a company or trust at a particular time on or after 1 January 2002; and

(b) at that time, the company or trust owns a particular asset (whether alone or jointly or in common with another entity or entities); and

(c) under section 1208E, there is included in the value of the individual's assets an amount equal to the individual's asset attribution percentage of the value of the asset held by the company or trust;

the amount referred to in paragraph (c) is taken not to be an unrealisable asset of the individual unless the asset referred to in paragraph (b) is an unrealisable asset of the company or trust.

(2) For the purposes of this section, in determining whether an asset is an unrealisable asset of a company or trust, ignore any limitation or restriction:

(a) in the constituent document of the company or the trust deed of the trust, as the case requires; or

(b) under a scheme that was entered into or carried out for the sole or dominant purpose of enabling any individual or individuals to avoid the application of this section and/or section 52ZZS of the Veterans' Entitlements Act.

(3) For the purposes of this section, in determining whether an asset is an unrealisable asset of a company or trust, subsections 11(12) and (13) have effect as if each reference in those subsections to a person included a reference to a company or trust.

1208G Effect of charge or encumbrance on value of assets

Charge or encumbrance relating to a single asset

(1) For the purposes of the application of this Division (other than this section) to a particular individual and a particular company or trust, if:

(a) there is a charge or encumbrance over a particular asset of the company or trust; and

OFFICIAL: Sensitive // Legal Privilege

(b) the charge or encumbrance relates exclusively to that asset;

the value of the asset is to be reduced by the value of the charge or encumbrance.

(2) Subsection (1) does not apply to a charge or encumbrance over an asset of a company or trust to the extent that:

(a) the charge or encumbrance is a collateral security; or

(b) the charge or encumbrance was given for the benefit of an entity other than the company or trust; or

(c) the value of the charge or encumbrance is excluded under subsection (6).

Charge or encumbrance relating to 2 or more assets

(3) For the purposes of the application of this Division (other than this section) to a particular individual and a particular company or trust, if:

(a) there is a charge or encumbrance over a particular asset (the ***first asset***) of the company or trust; and

(b) the charge or encumbrance relates to the first asset and one or more other assets of the company or trust;

the value of the first asset is to be reduced by the amount worked out using the formula:

$$\text{Value of the charge or encumbrance} \times \frac{\text{Value of the first asset}}{\text{Total value of the first asset and the other assets}} \times \frac{\text{Total value of attributable assets subject to the charge or encumbrance}}{\text{Total value of assets subject to the charge or encumbrance}}$$

(4) Subsection (3) does not apply to a charge or encumbrance over an asset of the company or trust to the extent that:

(a) the charge or encumbrance was given for the benefit of an entity other than the company or trust; or

(b) the value of the charge or encumbrance is excluded under subsection (6).

OFFICIAL: Sensitive // Legal Privilege

(5) If (apart from this section), under section 1208E, there is included in the value of the individual's assets an amount equal to the individual's asset attribution percentage of the value of an asset held by the company or trust, the asset held by the company or trust is an ***attributable asset*** for the purposes of subsection (3).

Exclusion

(6) The Secretary may, by writing, determine that, for the purposes of the application of this section to a specified individual and a specified company or trust, the whole or a specified part of a specified charge or encumbrance over one or more of the assets of the company or trust is excluded for the purposes of paragraphs (2)(c) and (4)(b).

(7) A determination under subsection (6) has effect accordingly.

(8) In making a determination under subsection (6), the Secretary must comply with any relevant decision-making principles.

1208H Effect of unsecured loan on value of assets

(1) For the purposes of the application of this Division to a particular individual and a particular company or trust, if:

(a) the company or trust is the borrower under a loan; and

(b) the loan is not secured by a charge or encumbrance over one or more of the assets of the company or trust;

the Secretary may, by writing, determine that the value of a specified asset of the company or trust is to be reduced by the whole, or a specified part, of the amount of the loan.

(2) A determination under subsection (1) has effect accordingly.

(3) In making a determination under subsection (1), the Secretary must comply with any relevant decision-making principles.

OFFICIAL: Sensitive // Legal Privilege

1208J Value of company's or trust's assets etc.

(1) For the purposes of this Division, the value of a company's or trust's assets, or of a charge or encumbrance on such assets, is to be worked out as if:

(a) each reference in sections 11 and 11A to a person included a reference to a company or trust; and

(b) Division 1 of Part 3.12 (other than section 1122) had not been enacted.

(2) Paragraph (1)(b) has effect subject to paragraph 1208E(1)(c).

OFFICIAL: Sensitive // Legal Privilege

Division 9—Modification of asset deprivation rules

1208K Individual disposes of asset to company or trust

(1) If:

(a) an individual transfers property to a company or trust on or after 1 January 2002; and

(b) either:

(i) as a result of the transfer, the individual became an attributable stakeholder of the company or trust; or

(ii) at the time of the transfer, the individual was an attributable stakeholder of the company or trust; and

(c) the transfer amounts to a disposal by the individual of an asset of the individual;

the Secretary may, by writing, determine that Division 2 of Part 3.12 and sections 93U, 93UA and 198F to 198MA (inclusive) apply to that disposal as if:

(d) the amount of the disposition were nil; or

(e) the amount of the disposition were reduced by the amount specified in the determination.

(2) In making a decision under this section, the Secretary must comply with any relevant decision-making principles.

1208L Disposal of asset by company or trust

(1) If:

(a) an individual is an attributable stakeholder of a company or trust; and

(b) the company or trust disposes of an asset of the company or trust;

Division 2 of Part 3.12 and sections 93U, 93UA and 198F to 198MA (inclusive) apply, and are taken to have applied, as if:

(c) the individual had disposed of an asset of the individual; and

OFFICIAL: Sensitive // Legal Privilege

(d) the amount of the disposition referred to in paragraph (c) were equal to the individual's asset attribution percentage of the amount of the disposition referred to in paragraph (b).

(2) Subsection (1) has effect subject to subsection (3).

Secretarial determinations

(3) The Secretary may, by writing:
(a) determine that the disposal of a specified asset is exempt from subsection (1); or
(b) determine that subsection (1) has effect, in relation to the disposal of a specified asset, as if the reference in paragraph (1)(d) to the individual's asset attribution percentage were a reference to such lower percentage as is specified in the determination.

(4) A determination under subsection (3) has effect accordingly.

(5) In making a determination under subsection (3), the Secretary must comply with any relevant decision-making principles.

General disposal

(6) For the purposes of subsection (1), a company or trust ***disposes*** of assets of the company or trust if:
(a) on or after 1 January 2002, the company or trust, or an attributable stakeholder of the company or trust, engages in a course of conduct that directly or indirectly:
(i) destroys all or some of the company's or trust's assets; or
(ii) disposes of all or some of the company's or trust's assets; or
(iii) diminishes the value of all or some of the company's or trust's assets; and
(b) one of the following subparagraphs is satisfied:

OFFICIAL: Sensitive // Legal Privilege

(i) the company or trust receives no consideration in money or money's worth for the destruction, disposal or diminution;

(ii) the company or trust receives inadequate consideration in money or money's worth for the destruction, disposal or diminution;

(iii) the Secretary is satisfied that the purpose, or the dominant purpose, of the company, trust or stakeholder in engaging in that course of conduct was to obtain a social security advantage for an attributable stakeholder of the company or trust (who may be the first-mentioned stakeholder) or for a relative of an attributable stakeholder of the company or trust; and

(c) in the case of a company—the disposal is not by way of making a distribution of capital or profits of the company to a shareholder of the company; and

(d) in the case of a trust—the disposal is not by way of:

(i) making a distribution (whether in money or in other property) to a beneficiary of the trust; or

(ii) crediting an amount to a beneficiary of the trust.

(7) If a company or trust disposes of assets as mentioned in subsection (6), the amount of the disposition is:

(a) if the company or trust receives no consideration for the destruction, disposal or diminution—an amount equal to:

(i) the value of the assets that are destroyed; or

(ii) the value of the assets that are disposed of; or

(iii) the amount of the diminution in the value of the assets whose value is diminished; or

(b) if the company or trust receives consideration for the destruction, disposal or diminution—an amount equal to:

(i) the value of the assets that are destroyed; or

(ii) the value of the assets that are disposed of; or

OFFICIAL: Sensitive // Legal Privilege

(iii) the amount of the diminution in the value of the assets whose value is diminished;

less the amount of the consideration received by the company or trust in respect of the destruction, disposal or diminution.

Disposal by way of distribution

(8) For the purposes of subsection (1), if a company makes a distribution of capital or profits of the company to a shareholder of the company on or after 1 July 2000:

(a) the company is taken to have disposed of an asset of the company; and

(b) the amount of the disposition is equal to the amount or value distributed to the shareholder.

(9) For the purposes of subsection (1), if a trust:

(a) makes a distribution (whether in money or in other property) to a beneficiary of the trust on or after 1 July 2000; or

(b) credits an amount to a beneficiary of the trust on or after 1 July 2000;

then:

(c) the trust is taken to have disposed of an asset of the trust; and

(d) the amount of the disposition is equal to the amount or value distributed or credited to the beneficiary.

Obtaining a social security advantage

(10) For the purposes of this section, an entity has a purpose of obtaining a social security advantage for an individual (who may be the entity) if the entity has a purpose of:

(a) enabling the individual to obtain any of the following:

(i) a social security pension;

(ii) a social security benefit;

(iii) a service pension;

(iv) income support supplement;

(v) a veteran payment; or

OFFICIAL: Sensitive // Legal Privilege

(b) enabling the individual to obtain any of the following at a higher rate than would otherwise have been payable:
  (i) a social security pension;
  (ii) a social security benefit;
  (iii) a service pension;
  (iv) income support supplement;
  (v) a veteran payment; or
(c) ensuring that the individual would be qualified for fringe benefits for the purposes of this Act or the Veterans' Entitlements Act.

1208M Individual ceases to be an attributable stakeholder of a company or trust

If:
(a) an individual ceases to be an attributable stakeholder of a company or trust on or after 1 January 2002; and
(b) immediately before the cessation, the company or trust owned a particular asset (whether alone or jointly or in common with another entity or entities);

Division 2 of Part 3.12 and sections 93U, 93UA and 198F to 198MA (inclusive) have effect as if:
(c) the individual had disposed of an asset of the individual; and
(d) the amount of the disposition referred to in paragraph (c) were equal to the individual's asset attribution percentage of the value of the asset referred to in paragraph (b), worked out immediately before the cessation.

1208N Individual disposes of asset to company or trust before 1 January 2002—individual is attributable stakeholder

(1) If:
(a) an individual has transferred property to a company or trust before 1 January 2002; and
(b) the transfer amounts to a disposal by the individual of an asset of the individual; and

OFFICIAL: Sensitive // Legal Privilege

(c) apart from this section:

(i) under Division 2 of Part 3.12 or sections 198F to 198MA (inclusive), as a result of the disposition, a particular amount is included in the value of the individual's assets for the period of 5 years that starts on the day on which the disposition took place; and

(ii) that 5-year period ends after 1 January 2002; and

(d) the individual is an attributable stakeholder of the company or trust on 1 January 2002;

the Secretary may, by writing, determine that:

(e) in a case where the individual's asset attribution percentage is 100%—Division 2 of Part 3.12 and sections 93U, 93UA and 198F to 198MA (inclusive) have effect, in relation to the disposal of the asset referred to in paragraph (b), as if a reference in that Division or those sections to the period of 5 years that starts on the day on which the disposition took place were a reference to the period:

(i) beginning on the day on which the disposition took place; and

(ii) ending immediately before 1 January 2002; or

(f) in a case where the individual's asset attribution percentage is less than 100%—Division 2 of Part 3.12 and sections 93U, 93UA and 198F to 198MA (inclusive) have effect on and after 1 January 2002, in relation to the disposal of the asset referred to in paragraph (b), as if the amount of the disposition were reduced by:

(i) the individual's asset attribution percentage as at 1 January 2002; or

(ii) if a higher percentage is specified in the determination—that higher percentage.

(2) A determination under subsection (1) has effect accordingly.

(3) In making a determination under subsection (1), the Secretary must comply with any relevant decision-making principles.

OFFICIAL: Sensitive // Legal Privilege

1208P Individual disposes of asset to company or trust before 1 January 2002—individual's spouse is attributable stakeholder

(1) If:

(a) an individual has transferred property to a company or trust before 1 January 2002; and

(b) the transfer amounts to a disposal by the individual of an asset of the individual; and

(c) apart from this section:

(i) under Division 2 of Part 3.12 or sections 198F to 198MA (inclusive), as a result of the disposition, a particular amount is included in the value of the individual's assets for the period of 5 years that starts on the day on which the disposition took place; and

(ii) that 5-year period ends after 1 January 2002; and

(d) the individual's spouse is an attributable stakeholder of the company or trust on 1 January 2002;

the Secretary may, by writing, determine that:

(e) in a case where the spouse's asset attribution percentage is 100%—Division 2 of Part 3.12 and sections 93U, 93UA and 198F to 198MA (inclusive) have effect, in relation to the disposal of the asset referred to in paragraph (b), as if a reference in that Division or those sections to the period of 5 years that starts on the day on which the disposition took place were a reference to the period:

(i) beginning on the day on which the disposition took place; and

(ii) ending immediately before 1 January 2002; or

(f) in a case where the spouse's asset attribution percentage is less than 100%—Division 2 of Part 3.12 and sections 93U, 93UA and 198F to 198MA (inclusive) have effect on and after 1 January 2002, in relation to the disposal of the asset referred to in paragraph (b), as if the amount of the disposition were reduced by the spouse's asset attribution percentage as at 1 January 2002.

OFFICIAL: Sensitive // Legal Privilege

(2) A determination under subsection (1) has effect accordingly.

(3) In making a determination under subsection (1), the Secretary must comply with any relevant decision-making principles.

OFFICIAL: Sensitive // Legal Privilege

Division 10—Modification of income deprivation rules

1208Q Individual disposes of ordinary income to company or trust

(1) If:

(a) an individual transfers property to a company or trust on or after 1 January 2002; and

(b) either:

(i) as a result of the transfer, the individual became an attributable stakeholder of the company or trust; or

(ii) at the time of the transfer, the individual was an attributable stakeholder of the company or trust; and

(c) the transfer amounts to a disposal by the individual of ordinary income of the individual; and

(d) if the ordinary income is income from an asset—the course of conduct that constituted the disposition of the income did not also constitute a disposition of the asset;

the Secretary may, by writing, determine that Division 3 of Part 3.10 applies, and is taken to have applied, to the disposal referred to in paragraph (c) as if:

(e) the amount of the disposition were nil; or

(f) the amount of the disposition were reduced by the amount specified in the determination.

(2) In making a decision under this section, the Secretary must comply with any relevant decision-making principles.

1208R Disposal of income by company or trust

(1) If:

(a) an individual is an attributable stakeholder of a company or trust; and

(b) the company or trust disposes of ordinary income of the company or trust; and

OFFICIAL: Sensitive // Legal Privilege

(c) if that income had been income of the individual instead of the company or trust, the income would have been ordinary income of the individual; and

(d) if the ordinary income is income from an asset—the course of conduct that constituted the disposition of the income did not also constitute a disposition of the asset;

Division 3 of Part 3.10 applies, and is taken to have applied, as if:

(e) the individual had disposed of ordinary income of the individual; and

(f) the amount of the disposition referred to in paragraph (e) were equal to the individual's income attribution percentage of the amount of the disposition referred to in paragraph (b).

(2) Subsection (1) has effect subject to subsection (3).

Secretarial determinations

(3) The Secretary may, by writing:

(a) determine that the disposal of specified ordinary income is exempt from subsection (1); or

(b) determine that subsection (1) has effect, in relation to the disposal of specified ordinary income, as if the reference in paragraph (1)(f) to the individual's income attribution percentage were a reference to such lower percentage as is specified in the determination.

(4) A determination under subsection (3) has effect accordingly.

(5) In making a determination under subsection (3), the Secretary must comply with any relevant decision-making principles.

General disposal

(6) For the purposes of subsection (1), a company or trust ***disposes*** of ordinary income of the company or trust if:

(a) on or after 1 January 2002, the company or trust, or an attributable stakeholder of the company or trust, engages in a course of conduct that directly or indirectly:

OFFICIAL: Sensitive // Legal Privilege

(i) destroys the source of the income; or

(ii) disposes of the income or the source of the income; or

(iii) diminishes the income; and

(b) one of the following subparagraphs is satisfied:

(i) the company or trust receives no consideration in money or money's worth for the destruction, disposal or diminution;

(ii) the company or trust receives inadequate consideration in money or money's worth for the destruction, disposal or diminution;

(iii) the Secretary is satisfied that the purpose, or the dominant purpose, of the company, trust or stakeholder in engaging in that course of conduct was to obtain a social security advantage for an attributable stakeholder of the company or trust (who may be the first-mentioned stakeholder) or for a relative of an attributable stakeholder of the company or trust; and

(c) in the case of a company—the disposal is not by way of making a distribution of capital or profits of the company to a shareholder of the company; and

(d) in the case of a trust—the disposal is not by way of:

(i) making a distribution (whether in money or in other property) to a beneficiary of the trust; or

(ii) crediting an amount to a beneficiary of the trust.

(7) If a company or trust disposes of ordinary income as mentioned in subsection (6), the amount of the disposition is:

(a) if the company or trust receives no consideration for the destruction, disposal or diminution—the annual rate of the diminution of the income because of the destruction, disposal or diminution; or

(b) if the company or trust receives consideration for the destruction, disposal or diminution—the annual rate of the diminution of the income because of the destruction, disposal or diminution less the part (if any) of the consideration that

OFFICIAL: Sensitive // Legal Privilege

the Secretary considers to be fair and reasonable in all the circumstances of the case.

Obtaining a social security advantage

(8) For the purposes of this section, an entity has a purpose of obtaining a social security advantage for an individual (who may be the entity) if the entity has a purpose of:

(a) enabling the individual to obtain any of the following:
(i) a social security pension;
(ii) a social security benefit;
(iii) a service pension;
(iv) income support supplement;
(v) a veteran payment; or

(b) enabling the individual to obtain any of the following at a higher rate than would otherwise have been payable:
(i) a social security pension;
(ii) a social security benefit;
(iii) a service pension;
(iv) income support supplement;
(v) a veteran payment; or

(c) ensuring that the individual would be qualified for fringe benefits for the purposes of this Act or the Veterans' Entitlements Act.

Ordinary income

(9) In this section:

ordinary income, in relation to a company or trust, has the same meaning as in Division 7.

1208S Individual disposes of income to company or trust before 1 January 2002—individual is attributable stakeholder

(1) If:

OFFICIAL: Sensitive // Legal Privilege

(a) an individual has transferred property to a company or trust before 1 January 2002; and

(b) the transfer amounts to a disposal by the individual of ordinary income of the individual; and

(c) apart from this section, under Division 3 of Part 3.10, as a result of the disposition referred to in paragraph (b), a particular amount is included in the individual's ordinary income; and

(d) the individual is an attributable stakeholder of the company or trust on 1 January 2002;

the Secretary may, by writing, determine that:

(e) in a case where the individual's income attribution percentage is 100%—Division 3 of Part 3.10 has effect on or after 1 January 2002, in relation to the disposal of the income referred to in paragraph (b), as if the amount of the disposition were nil; or

(f) in a case where the individual's income attribution percentage is less than 100%—Division 3 of Part 3.10 has effect on and after 1 January 2002, in relation to the disposal of the income referred to in paragraph (b), as if the amount of the disposition were reduced by:

(i) the individual's income attribution percentage as at 1 January 2002; or

(ii) if a higher percentage is specified in the determination—that higher percentage.

(2) A determination under subsection (1) has effect accordingly.

(3) In making a determination under subsection (1), the Secretary must comply with any relevant decision-making principles.

1208T Individual disposes of income to company or trust before 1 January 2002—individual's spouse is attributable stakeholder

(1) If:

OFFICIAL: Sensitive // Legal Privilege

(a) an individual has transferred property to a company or trust before 1 January 2002; and

(b) the transfer amounts to a disposal by the individual of ordinary income of the individual; and

(c) apart from this section, under Division 3 of Part 3.10, as a result of the disposition referred to in paragraph (b), a particular amount is included in the individual's ordinary income; and

(d) the individual's spouse is an attributable stakeholder of the company or trust on 1 January 2002;

the Secretary may, by writing, determine that:

(e) in a case where the spouse's income attribution percentage is 100%—Division 3 of Part 3.10 has effect on or after 1 January 2002, in relation to the disposal of the income referred to in paragraph (b), as if the amount of the disposition were nil; or

(f) in a case where the spouse's income attribution percentage is less than 100%—Division 3 of Part 3.10 has effect on and after 1 January 2002, in relation to the disposal of the income referred to in paragraph (b), as if the amount of the disposition were reduced by the spouse's income attribution percentage as at 1 January 2002.

(2) A determination under subsection (1) has effect accordingly.

(3) In making a determination under subsection (1), the Secretary must comply with any relevant decision-making principles.

OFFICIAL: Sensitive // Legal Privilege

Division 11—Concessional primary production trusts

1208U Concessional primary production trusts

(1) For the purposes of this Part, a trust is a ***concessional primary production trust*** in relation to an individual at a particular time (the ***test time***), if:

(a) at the test time, the trust is a controlled private trust in relation to the individual; and

(b) at the test time, either:

(i) the trust carries on a primary production enterprise (the ***first primary production enterprise***); or

(ii) the trust makes an asset available to another entity, the other entity carries on a primary production enterprise (the ***first primary production enterprise***), and the asset is used by the other entity wholly or principally for the purposes of carrying on the first primary production enterprise; and

(c) at the test time, more than 70% of the net value of the assets of the trust (excluding the net value of the principal home of the individual if that principal home is owned by the trust) relates to assets used wholly or principally for the purposes of carrying on a primary production enterprise; and

(d) at the test time, the sum of:

(i) the total adjusted net value of assets that are owned or controlled by the individual and used wholly or principally for the purposes of carrying on a primary production enterprise; and

(ii) the total adjusted net value of assets that are owned or controlled by the individual's spouse and used wholly or principally for the purposes of carrying on a primary production enterprise;

is less than the primary production attribution threshold (as defined by subsection (6)); and

(e) if:

OFFICIAL: Sensitive // Legal Privilege

(i) the individual or the individual's spouse had adjusted net primary production income for the last tax year that ended before the test time; and

(ii) the individual or the individual's spouse had adjusted net primary production income for the tax year that preceded the tax year first referred to in subparagraph (i); and

(iii) the individual or the individual's spouse had adjusted net primary production income for the tax year that preceded the tax year first referred to in subparagraph (ii);

the average of the following amounts is less than the amount specified in clause 38N of Schedule 1 to the *A New Tax System (Family Assistance) Act 1999* (subject to any indexation under Schedule 4 to that Act):

(iv) the total adjusted net primary production income of the individual and the individual's spouse for the tax year referred to in subparagraph (i);

(v) the total adjusted net primary production income of the individual and the individual's spouse for the tax year first referred to in subparagraph (ii);

(vi) the total adjusted net primary production income of the individual and the individual's spouse for the tax year first referred to in subparagraph (iii); and

(f) if:

(i) neither the individual nor the individual's spouse had adjusted net primary production income for the last tax year that ended before the test time; or

(ii) neither the individual nor the individual's spouse had adjusted net primary production income for the tax year that preceded the tax year referred to in subparagraph (i); or

(iii) neither the individual nor the individual's spouse had adjusted net primary production income for the tax year that preceded the tax year referred to in subparagraph (ii);

OFFICIAL: Sensitive // Legal Privilege

the Secretary, by writing, determines that this paragraph applies to the individual and the trust; and

(g) at the test time, the individual is not actively involved with the first primary production enterprise; and

(h) at the test time, an eligible descendant of the individual is actively involved with the first primary production enterprise; and

(i) if, at the test time, the individual is able to appoint the trustee, or any of the trustees, of the trust—there is a provision of the trust deed to the effect that that ability may only be exercised:

(i) if the trustee concerned dies, resigns or becomes subject to a legal disability; or

(ii) in accordance with a statutory law relating to the appointment of trustees; and

(j) if, at the test time, the individual is able to veto or direct the decisions of the trustee—there is a provision of the trust deed to the effect that that ability may only be exercised:

(i) in relation to the sale of land used for the purposes of carrying on the first primary production enterprise; or

(ii) in relation to the sale of fishing rights or timber rights used for the purposes of carrying on the first primary production enterprise; or

(iii) in accordance with a statutory law relating to the appointment of trustees; and

(k) at the test time, there is a provision of the trust deed to the effect that neither the individual, nor the individual's spouse, is, or is capable of becoming, the trustee, or any of the trustees, of the trust; and

(l) at the test time, a group in relation to the individual is not able to vary a provision covered by paragraph (i), (j) or (k); and

(m) at the test time, neither the individual, nor the individual's spouse, is able to vary the trust deed; and

(n) at the test time, neither the individual, nor the individual's spouse:

OFFICIAL: Sensitive // Legal Privilege

(i) benefits or is capable (whether by the exercise of a power of appointment or otherwise) of benefiting under the trust, either directly or through any interposed companies, business partnerships or trusts; or

(ii) receives any remuneration or other benefits from the trust otherwise than in the capacity of beneficiary of the trust.

(2) For the purposes of the application of paragraphs (1)(e) and (f) to a particular tax year, a person is the ***individual's spouse*** if, and only if:

(a) the person was the spouse of the individual at any time during the tax year; and

(b) the person is the spouse of the individual at the test time.

(3) In making a determination under paragraph (1)(f), the Secretary must comply with any relevant decision-making principles.

(3A) For the purposes of paragraph (1)(h), an ***eligible descendant***, in relation to a person, is:

(a) a child, step-child or adopted child of the person or of a partner of the person; or

(b) a descendant in direct line of a child described in paragraph (a); or

(c) any other person who, in the opinion of the Secretary, should be treated for the purposes of this definition as a person described in paragraph (a) or (b).

(4) Paragraph (1)(n) does not apply to any of the following benefits:

(a) food that:

(i) is derived from the first primary production enterprise; and

(ii) is for the personal consumption of the individual or the individual's spouse;

(b) residential accommodation for the individual or the individual's spouse, where that accommodation is the principal home of the individual;

OFFICIAL: Sensitive // Legal Privilege

(c) if paragraph (b) applies—water, fuel, gas or electricity for use in that residential accommodation;

(d) any other non-cash benefit that is minor and provided on a basis that is infrequent and irregular.

(5) Subparagraph (1)(n)(ii) has effect subject to section 1208V.

(6) For the purposes of this section, the ***primary production attribution threshold*** is $750,000.

(7) A reference in this section to a ***group*** in relation to an individual is a reference to:

(a) the individual acting alone; or

(b) an associate of the individual acting alone; or

(c) the individual and one or more associates of the individual acting together; or

(d) 2 or more associates of the individual acting together.

1208V Individual ceases to be an attributable stakeholder of trust—receipt of remuneration or other benefits from trust during asset deprivation period

(1) For the purposes of this section, if:

(a) an individual ceases to be an attributable stakeholder of a trust on or after 1 January 2002; and

(b) immediately after the cessation, the trust was a concessional primary production trust in relation to the individual; and

(c) under section 1208M, as a result of the cessation, Division 2 of Part 3.12 and sections 198F to 198MA (inclusive) have effect as if the individual had disposed of an asset of the individual; and

(d) under Division 2 of Part 3.12 or sections 198F to 198MA (inclusive), as a result of the disposition, a particular amount is included in the value of the individual's assets for the period of 5 years that starts on the day on which the disposition took place;

then:

OFFICIAL: Sensitive // Legal Privilege

(e) the period referred to in paragraph (d) is the ***asset deprivation period*** in relation to the individual and the trust; and

(f) throughout the asset deprivation period, the trust is a ***special primary production trust*** in relation to the individual; and

(g) each one of the 5 years that constitutes the asset deprivation period is an ***asset deprivation year*** in relation to the individual and the trust.

(2) If:

(a) a trust (the ***first trust***) is a special primary production trust in relation to an individual; and

(b) the individual and/or the individual's spouse received one or more benefits (the ***first benefits***) from the trust during a period that is an asset deprivation year (the ***first asset deprivation year***) in relation to the individual and the trust;

subparagraph 1208U(1)(n)(ii) does not apply to the first benefits, so long as the sum of the following amounts is less than the amount specified in clause 38N of Schedule 1 to the *A New Tax System (Family Assistance) Act 1999* (subject to any indexation under Schedule 4 to that Act):

(c) the total of the amount or value of the first benefits;

(d) if:

(i) another trust is a special primary production trust in relation to the individual; and

(ii) the asset deprivation period in relation to the individual and that other trust overlaps, in whole or in part, the first asset deprivation year; and

(iii) the individual and/or the individual's spouse received one or more benefits (the ***second benefits***) from that other trust during the period of the overlap;

the total of the amount or value of the second benefits;

(e) if:

(i) another trust is a special primary production trust in relation to the individual's spouse; and

OFFICIAL: Sensitive // Legal Privilege

(ii) the asset deprivation period in relation to the individual's spouse and that other trust overlaps, in whole or in part, the first asset deprivation year; and

(iii) the individual's spouse and/or the individual received one or more benefits (the ***third benefits***) from that other trust during the period of the overlap;

the total of the amount or value of the third benefits.

(3) Subsection (2) does not apply to any of the following benefits:

(a) food that:

(i) is derived from the first primary production enterprise referred to in section 1208U; and

(ii) is for the personal consumption of the individual or the individual's spouse;

(b) residential accommodation for the individual or the individual's spouse, where that accommodation is the principal home of the individual;

(c) if paragraph (b) applies—water, fuel, gas or electricity for use in that residential accommodation;

(d) any other non-cash benefit that is minor and provided on a basis that is infrequent and irregular.

(4) In this section:

benefit, in relation to a trust, means any remuneration or other benefit received from the trust otherwise than in the capacity of beneficiary of the trust.

1208W Net value of asset

(1) For the purposes of this Division, the ***net value*** of an asset is the value of the asset, without any reduction other than a reduction under subsection (2).

(2) The Secretary may, by writing, determine that the value of a specified asset is to be reduced by the whole or a specified part of a specified liability.

OFFICIAL: Sensitive // Legal Privilege

(3) A determination under this section has effect accordingly.

(4) In making a determination under this section, the Secretary must comply with any relevant decision-making principles.

1208X Value of entity's assets

For the purposes of this Division, the value of an entity's assets is to be worked out as if:

(a) each reference in sections 11 and 11A to a person included a reference to an entity; and

(b) Division 1 of Part 3.12 (other than section 1122) had not been enacted.

1208Y When asset is controlled by an individual

(1) For the purposes of this Division, an asset is ***controlled*** by an individual if, and only if:

(a) all of the following conditions are satisfied:

(i) the asset is owned by a company;

(ii) the company is a controlled private company in relation to the individual;

(iii) no determination is in force under subsection (2) in relation to the asset and the individual; or

(b) all of the following conditions are satisfied:

(i) the asset is owned by a trust;

(ii) the trust is a controlled private trust in relation to the individual;

(iii) no determination is in force under subsection (2) in relation to the asset and the individual; or

(c) both:

(i) the asset is owned by a business partnership; and

(ii) the individual is a partner in the partnership.

(2) If the asset is owned by a company or trust, the Secretary may, by writing, determine that, for the purposes of this Division, the asset is taken not to be controlled by the individual.

OFFICIAL: Sensitive // Legal Privilege

(3) In making a determination under subsection (2), the Secretary must comply with any relevant decision-making principles.

1208Z Adjusted net value of asset

(1) For the purposes of this Division, the ***adjusted net value*** of an asset owned by an individual is 100% of the net value of the asset.

(2) For the purposes of this Division, the ***adjusted net value*** of an asset controlled by an individual is:

(a) if the entity that owns the asset is a company and the company is a controlled private company in relation to the individual:

(i) 100% of the net value of the asset; or

(ii) if the Secretary, by writing, determines a lower percentage in relation to the individual and the asset—that lower percentage of the net value of the asset; or

(b) if the entity that owns the asset is a trust and the trust is a controlled private trust in relation to the individual:

(i) 100% of the net value of the asset; or

(ii) if the Secretary, by writing, determines a lower percentage in relation to the individual and the asset—that lower percentage of the net value of the asset; or

(c) if the entity that owns the asset is a business partnership—the individual's share of the net value of the asset.

(3) In making a determination under this section, the Secretary must comply with any relevant decision-making principles.

1209 Adjusted net primary production income

(1) For the purposes of this Division, the ***adjusted net primary production income*** of an individual for a particular tax year is the sum of:

(a) if the individual carried on a primary production enterprise throughout that tax year—100% of the net income of that primary production enterprise for that tax year; and

OFFICIAL: Sensitive // Legal Privilege

(b) if a company carried on a primary production enterprise throughout that tax year and the company was a controlled private company in relation to the individual throughout that tax year:
  (i) 100% of the net income of that primary production enterprise for that tax year; or
  (ii) if the Secretary, by writing, determines a lower percentage in relation to the individual and the enterprise—that lower percentage of the net income of that primary production enterprise for that tax year; and

(c) if a trust carried on a primary production enterprise throughout that tax year and the trust was a controlled private trust in relation to the individual throughout that tax year:
  (i) 100% of the net income of that primary production enterprise for that tax year; or
  (ii) if the Secretary, by writing, determines a lower percentage in relation to the individual and the enterprise—that lower percentage of the net income of that primary production enterprise for that tax year; and

(d) if:
  (i) a business partnership carried on a primary production enterprise throughout that tax year; and
  (ii) the individual was a partner in the partnership throughout that tax year;

the individual's share of the net income of that primary production enterprise for that tax year.

(2) In making a determination under this section, the Secretary must comply with any relevant decision-making principles.

1209A Net income of a primary production enterprise

(1) For the purposes of this Division, if an entity carries on a primary production enterprise during a tax year of the entity, the ***net income*** of that primary production enterprise for that tax year is the entity's gross ordinary income from the carrying on of that

OFFICIAL: Sensitive // Legal Privilege

enterprise calculated without any reduction, other than a reduction under section 1209B or 1209C.

(2) For the purposes of this Division, the net income of a primary production enterprise is to be worked out as if:

(a) exempt lump sums were not excluded from the definition of ***ordinary income*** in subsection 8(1); and

(b) each reference in section 8 to a person included a reference to an entity; and

(c) the following provisions had not been enacted:

(i) subsection 8(7A);

(ii) subsection 8(8);

(iii) subsection 8(11);

(iv) Part 3.10.

1209B Net income from a primary production enterprise—treatment of trading stock

(1) For the purposes of this Division, if:

(a) an entity carries on a primary production enterprise; and

(b) the value of all the trading stock on hand at the end of a tax year is greater than the value of all the trading stock on hand at the beginning of that tax year;

the entity's income for that tax year in the form of profits from the enterprise is to include the amount of the difference in values.

(2) For the purposes of this Division, if:

(a) an entity carries on a primary production enterprise; and

(b) the value of all the trading stock on hand at the end of a tax year is less than the value of all the trading stock on hand at the beginning of that tax year;

the entity's income for that tax year in the form of profits from the enterprise is to be reduced by the amount of the difference in values.

OFFICIAL: Sensitive // Legal Privilege

1209C Permissible reductions of income from carrying on a primary production enterprise

(1) For the purposes of this Division, if an entity carries on a primary production enterprise, the entity's income from the primary production enterprise is to be reduced by:

(a) losses and outgoings that relate to the primary production enterprise and are allowable deductions for the purposes of section 8-1 of the *Income Tax Assessment Act 1997*; and

(b) amounts that relate to the primary production enterprise and can be deducted in respect of plant (within the meaning of the *Income Tax Assessment Act 1997*) under Division 40 of that Act; and

(c) amounts that relate to the primary production enterprise and are allowable deductions under any other provision of the *Income Tax Assessment Act 1936* or the *Income Tax Assessment Act 1997*.

(2) However, the rule in subsection (1) does not apply to:

(a) an ineligible deduction (see subsection (3)); or

(b) an ineligible amount (see subsection (4)); or

(c) an ineligible part of a deduction (see subsection (5)).

(3) The Secretary may, by legislative instrument, determine a specified deduction is an ***ineligible deduction*** for the purposes of this section.

(4) The Secretary may, by legislative instrument, determine that a specified amount is an ***ineligible amount*** for the purposes of this section.

(5) The Secretary may, by legislative instrument, determine that a specified part of a specified deduction is an ***ineligible part*** of the deduction for the purposes of this section.

(6) A determination under subsection (3), (4) or (5) has effect accordingly.

OFFICIAL: Sensitive // Legal Privilege

Division 12—Anti-avoidance

1209D Anti-avoidance

(1) If:

(a) one or more entities enter into, commence to carry out, or carry out, a scheme; and

(b) it would be concluded that the entity, or any of the entities, who entered into, commenced to carry out, or carried out, the scheme did so for the sole or dominant purpose of obtaining a social security advantage for an individual (who may be the entity or one of the entities);

the Secretary may, by writing, make any or all of the following determinations:

(c) a determination that this Part has, and is taken always to have had, effect as if the individual were an attributable stakeholder of a specified company or trust at a specified time or during a specified period;

(d) a determination that this Part has, and is taken always to have had, effect as if a specified asset were owned by a specified company or trust at a specified time or during a specified period;

(e) a determination that this Part has, and is taken always to have had, effect as if specified income had been derived by a specified company or trust at a specified time or during a specified period.

(2) A determination under subsection (1) has effect accordingly.

Obtaining a social security advantage

(3) For the purposes of this section, an entity has a purpose of obtaining a social security advantage for an individual (who may be the entity) if the entity has a purpose of:

(a) enabling the individual to obtain any of the following:

(i) a social security pension;

(ii) a social security benefit;

OFFICIAL: Sensitive // Legal Privilege

(iii) a service pension;
(iv) income support supplement;
(v) a veteran payment; or

(b) enabling the individual to obtain any of the following at a higher rate than would otherwise have been payable:
(i) a social security pension;
(ii) a social security benefit;
(iii) a service pension;
(iv) income support supplement;
(v) a veteran payment; or

(c) ensuring that the individual would be qualified for fringe benefits for the purposes of this Act or the Veterans' Entitlements Act.

OFFICIAL: Sensitive // Legal Privilege

Division 13—Decision-making principles

1209E Decision-making principles

The Secretary may, by legislative instrument, formulate principles (***decision-making principles***) to be complied with by him or her in making decisions under:

(a) section 1207X; or
(b) subsection 1207Y(2); or
(c) section 1207Z, 1208C or 1208D; or
(d) subsection 1208E(2); or
(e) subsection 1208G(6) or 1208H(1); or
(f) section 1208K; or
(g) subsection 1208L(3), 1208N(1) or 1208P(1); or
(h) section 1208Q; or
(i) subsection 1208R(3), 1208S(1) or 1208T(1); or
(j) paragraph 1208U(1)(f); or
(k) section 1208W; or
(l) subsection 1208Y(2); or
(m) section 1208Z or 1209.

OFFICIAL: Sensitive // Legal Privilege

Division 14—Information management

1209F Transitional period

For the purposes of this Division, the ***transitional period*** is the period:

(a) beginning on the commencement of this Part; and

(b) ending immediately before 1 January 2002.

1209G Information-gathering powers

In determining the scope of the power conferred on the Secretary during the transitional period by section 192 of the *Social Security (Administration) Act 1999* to require the giving of information, or the production of a document, it is to be assumed that:

(a) section 1207 (simplified outline) had effect as if the reference in that section to 1 January 2002 were a reference to the first day of the transitional period; and

(b) section 1207Y (attribution of income) had effect, in relation to a particular individual and a particular company or trust, as if:

(i) a tax year of the company or trust, being a tax year specified in the notice imposing the requirement, were a derivation period of the company or trust; and

(ii) a period specified in the notice imposing the requirement were an attribution period of the company or trust, and that attribution period related to a specified derivation period of the company or trust; and

(iii) the reference in paragraph 1207Y(1)(c) to 1 January 2002 were a reference to the first day of the transitional period; and

(iv) sections 1208C and 1208D had not been enacted; and

(c) section 1208E (attribution of assets) had effect as if the reference in paragraph 1208E(1)(a) to 1 January 2002 were a reference to the first day of the transitional period.

OFFICIAL: Sensitive // Legal Privilege

1209H Secretary may obtain tax information

(1) If the Secretary has reason to believe that the Commissioner of Taxation has information (other than a tax file number) that may be relevant to the operation of this Part, the Secretary may, by written notice given to the Commissioner of Taxation, require the Commissioner of Taxation to give to the Secretary any such information.

(2) If the Secretary has reason to believe that the relationship (whether direct or indirect) between:

(a) a particular trust; and

(b) a particular individual or an associate of a particular individual;

may be relevant to the operation of this Part, the Secretary may, by written notice given to the Commissioner of Taxation, require the Commissioner of Taxation to give to the Secretary the tax file number of the trust.

(3) The Commissioner of Taxation must comply with a requirement under subsection (1) or (2).

(4) Subsections (1) and (2) do not, by implication, limit a power conferred by:

(a) paragraph 16(4)(e) or (eb) of the *Income Tax Assessment Act 1936*; or

(b) section 192 or 195 of the *Social Security (Administration) Act 1999*.

(5) A tax file number provided to the Secretary under subsection (2) may only be used for the following purposes:

(a) to detect cases in which amounts of social security payments have been paid when they should not have been paid;

(b) to verify, in respect of persons who have made claims for social security payments, the qualification of those persons for those payments;

(c) to establish whether the rates at which social security payments are being, or have been, paid are, or were, correct.

OFFICIAL: Sensitive // Legal Privilege

(6) In determining the scope of a power conferred during the transitional period by subsection (1), (2) or (5), it is to be assumed that:

(a) section 1207 (simplified outline) had effect as if the reference in that section to 1 January 2002 were a reference to the first day of the transitional period; and

(b) section 1207Y (attribution of income) had effect, in relation to a particular individual and a particular company or trust, as if:

(i) a tax year of the company or trust, being a tax year specified in a written notice given to the Commissioner of Taxation by the Secretary, were a derivation period of the company or trust; and

(ii) a period specified in a written notice given to the Commissioner of Taxation by the Secretary were an attribution period of the company or trust, and that attribution period related to a specified derivation period of the company or trust; and

(iii) the reference in paragraph 1207Y(1)(c) to 1 January 2002 were a reference to the first day of the transitional period; and

(iv) sections 1208C and 1208D had not been enacted; and

(c) section 1208E (attribution of assets) had effect as if the reference in paragraph 1208E(1)(a) to 1 January 2002 were a reference to the first day of the transitional period.

1209J Disclosure of tax information

In determining the scope of the power conferred on a person (the ***tax official***) during the transitional period by paragraph 16(4)(e) or (eb) of the *Income Tax Assessment Act 1936* to communicate information for the purpose of the administration of any law of the Commonwealth relating to pensions, allowances or benefits, it is to be assumed that:

(a) section 1207 (simplified outline) had effect as if the reference in that section to 1 January 2002 were a reference to the first day of the transitional period; and

OFFICIAL: Sensitive // Legal Privilege

(b) section 1207Y (attribution of income) had effect, in relation to a particular individual and a particular company or trust, as if:

(i) a tax year of the company or trust, being a tax year specified in a written notice given to the tax official by the Secretary, were a derivation period of the company or trust; and

(ii) a period specified in a written notice given to the tax official by the Secretary were an attribution period of the company or trust, and that attribution period related to a specified derivation period of the company or trust; and

(iii) the reference in paragraph 1207Y(1)(c) to 1 January 2002 were a reference to the first day of the transitional period; and

(iv) sections 1208C and 1208D had not been enacted; and

(c) section 1208E (attribution of assets) had effect as if the reference in paragraph 1208E(1)(a) to 1 January 2002 were a reference to the first day of the transitional period.

1209K Disclosure of tax file number information

In determining the scope of paragraph 202(hb) of the *Income Tax Assessment Act 1936*, and sections 8WA and 8WB of the *Taxation Administration Act 1953*, during the transitional period, it is to be assumed that:

(a) section 1207 (simplified outline) had effect as if the reference in that section to 1 January 2002 were a reference to the first day of the transitional period; and

(b) section 1207Y (attribution of income) had effect, in relation to a particular individual and a particular company or trust, as if:

(i) a tax year of the company or trust, being a tax year specified in a written notice given to the Commissioner of Taxation by the Secretary, were a derivation period of the company or trust; and

OFFICIAL: Sensitive // Legal Privilege

(ii) a period specified in a written notice given to the Commissioner of Taxation by the Secretary were an attribution period of the company or trust, and that attribution period related to a specified derivation period of the company or trust; and

(iii) the reference in paragraph 1207Y(1)(c) to 1 January 2002 were a reference to the first day of the transitional period; and

(iv) sections 1208C and 1208D had not been enacted; and

(c) section 1208E (attribution of assets) had effect as if the reference in paragraph 1208E(1)(a) to 1 January 2002 were a reference to the first day of the transitional period.

OFFICIAL: Sensitive // Legal Privilege

Part 3.18A—Private financial provision for certain people with disabilities

Division 1—Special disability trusts

1209L What is a *special disability trust*?

A trust is a ***special disability trust*** if the following requirements of this Division are complied with:

(a) the beneficiary requirements (see section 1209M);
(b) the trust purpose requirements (see section 1209N);
(c) the trust deed requirements (see section 1209P);
(d) the trustee requirements (see section 1209Q);
(e) the trust property requirements (see section 1209R);
(ea) the trust expenditure requirements, if any (see section 1209RA);
(f) the reporting requirements (see section 1209S);
(g) the audit requirements (see section 1209T).

Note: The Secretary may waive one or more requirements in certain circumstances (see section 1209U).

1209M Beneficiary requirements

Single beneficiary rule

(1) The trust must have no more than one beneficiary (the ***principal beneficiary***), not including any residuary beneficiary.

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

OFFICIAL: Sensitive // Legal Privilege

(ii) be receiving invalidity service pension under Part III of the Veterans' Entitlements Act; or

(iii) be receiving income support supplement under the Veterans' Entitlements Act on the grounds of permanent incapacity; 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 either:

(i) he or she is not working, and has no likelihood of working, for more than 7 hours a week for a wage that is at or above the relevant minimum wage; or

(ii) he or she is working for wages set in accordance with the program administered by the Commonwealth known as the supported wage system.

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, subsection (4A) must apply to him or her.

(4A) This subsection applies if:

(a) the principal beneficiary is a person with a severe disability or a severe medical condition; and

(b) another person (the ***carer***) has been given a qualifying rating of intense under the Disability Care Load Assessment (Child) Determination for caring for the principal beneficiary; and

OFFICIAL: Sensitive // Legal Privilege

(c) a treating health professional has certified in writing that, because of that disability or condition:
  (i) the principal beneficiary will need personal care for 6 months or more; and
  (ii) the personal care is required to be provided by a specified number of persons; and
(d) the carer has certified in writing that the principal beneficiary will require the same care, or an increased level of care, to be provided to him or her in the future.

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:
  (a) a special disability trust; or
  (b) a special disability trust within the meaning of the Veterans' Entitlements Act.

1209N Trust purpose requirements

Primary purpose—care and accommodation for principal beneficiary

(1) Subject to this section, the primary purpose of the trust during the lifetime of the principal beneficiary, as provided by the trust deed for the trust, must be to meet reasonable care and accommodation needs of the beneficiary.

Note: The provision of care and accommodation for the principal beneficiary is also dealt with at section 1209R.

OFFICIAL: Sensitive // Legal Privilege

Other purposes

(2) The trust may have other purposes that are:

(a) both ancillary to the primary purpose and necessary or desirable to facilitate the achievement of that purpose; or

(b) primarily for the benefit of the principal beneficiary.

Note 1: A particular purpose may be covered by both of paragraphs (2)(a) and (b).

Note 2: The application of the income and assets of the trust for purposes (other than the primary purpose) that are primarily for the benefit of the principal beneficiary is dealt with by section 1209RA.

Guidelines relating to purposes

(3) If guidelines are made under subsection (4) then, for the purposes of this section:

(a) the reasonable care and accommodation needs of a principal beneficiary of a special disability trust must be decided in accordance with the guidelines if they deal with those needs; and

(b) purposes, other than the primary purpose of a special disability trust, that are primarily for the benefit of the principal beneficiary of a trust must be decided in accordance with the guidelines if they deal with those other purposes.

(4) The Secretary may, by legislative instrument, make guidelines for deciding either or both of the following for the purposes of this section:

(a) what are, and what are not, reasonable care and accommodation needs for beneficiaries of trusts;

(b) what are, and what are not, trusts' purposes, other than the primary purpose described in subsection (1), that are primarily for the benefit of beneficiaries of the trusts.

OFFICIAL: Sensitive // Legal Privilege

1209P Trust deed requirements

Compliance with determination

(1) If a determination is made under subsection (2), the trust deed for the trust must comply with the determination.

(2) The Secretary may, by legislative instrument, determine one or more of the following:
   (a) the form of the trust deed required for a special disability trust;
   (b) provisions which must be included in the trust deed;
   (c) the form of those provisions;
   (d) provisions which cannot be included in the trust deed.

Contravention of trust deed

(3) A person must not contravene a provision of the trust deed that is required by this section to be included in the deed (whether or not the provision is required to be included in any particular form).

1209Q Trustee requirements

(1) A trustee of the trust who is an individual must:
   (a) be an Australian resident; and
   (b) not have been convicted at any time (including a time before the commencement of this section) of any of the following offences:
      (i) an offence of dishonest conduct against, or arising out of, a law of the Commonwealth, a State, a Territory or a foreign country;
      (ii) an offence against, or arising out of, this Act, the Administration Act or the Veterans' Entitlements Act; and
   (c) not have been disqualified at any time (including a time before the commencement of this section) from managing corporations under the *Corporations Act 2001*.

OFFICIAL: Sensitive // Legal Privilege

(2) In addition, if a trustee of the trust is a corporation, subsection (1) applies to each director of the trustee.

1209R Trust property requirements

(1) The assets of the trust must not include any asset transferred to the trust by the principal beneficiary of the trust, or the principal beneficiary's partner, unless:
  (a) the transferred asset is all or part of a bequest, or of a superannuation death benefit; and
  (b) the transferor received the bequest or superannuation death benefit not more than 3 years before transferring the transferred asset.

(2) The assets of the trust must not include any compensation received by or on behalf of the principal beneficiary.

(3) The trust must not be used to pay an immediate family member, or a child, of the principal beneficiary for the provision to the beneficiary of:
  (a) care services; or
  (b) services for the repair or maintenance of the beneficiary's accommodation.

Note: For ***immediate family member***, see subsection 23(1).

(4) The trust must not be used to purchase or lease property from an immediate family member, or a child, of the principal beneficiary, even if the property is to be used for the beneficiary's accommodation.

Note: For ***immediate family member***, see subsection 23(1).

(5) In this section:

child of a principal beneficiary means:
  (a) a natural child, adopted child or step-child of the beneficiary; or
  (b) someone who is a child of the beneficiary within the meaning of the *Family Law Act 1975*.

OFFICIAL: Sensitive // Legal Privilege

property includes:

(a) a right to accommodation for life in a residence; and

(b) a life interest in a residence.

1209RA Trust expenditure requirements

Limit on expenditure for purposes other than primary purpose

(1) If:

(a) a determination has been made under subsection (3); and

(b) the trust has one or more purposes, other than its primary purpose described in subsection 1209N(1), that are primarily for the benefit of the principal beneficiary;

the total value of the income and assets of the trust applied for those other purposes in a financial year must not exceed the value specified in the determination for that year.

Instruments fixing limits and purposes to be taken into account

(2) If guidelines are made under paragraph 1209N(4)(b), the question whether a purpose for which income and assets of a trust have been applied is one of the other purposes described in subsection (1) must be decided in accordance with the guidelines.

Note: Paragraph 1209N(4)(b) provides for guidelines for deciding what are, and what are not, trusts' purposes, other than the primary purpose described in subsection 1209N(1), that are primarily for the benefit of beneficiaries of the trusts.

(3) The Secretary may, by legislative instrument, determine the total value of income and assets of a special disability trust that may be applied in a specified financial year for purposes, other than the primary purpose described in subsection 1209N(1), that are primarily for the benefit of the principal beneficiary of the trust.

1209S Reporting requirements

(1) The trustees of the trust must, on or before 31 March each year, give the Secretary written financial statements about the trust in

OFFICIAL: Sensitive // Legal Privilege

relation to the financial year ending on 30 June in the previous year.

(2) The financial statements must be prepared by:
  (a) if a determination is made under subsection (4) that requires such financial statements to be prepared by a person with stated qualifications—such a person; or
  (b) whether or not such a determination is made—a person approved by the Secretary for the purpose.

(3) If a determination is made under subsection (4) that requires financial statements to include information of a stated kind, the financial statements must include information of that kind.

(4) The Secretary may, by legislative instrument, make determinations for the purposes of this section.

1209T Audit requirements

Trustee duties

(1) The trustees of the trust must, within a reasonable time after receiving a request under subsection (3):
  (a) cause an audit of the trust to be carried out in relation to the period mentioned in subsection (2); or
  (b) if, at the time of the request for the audit, an audit (the ***earlier requested audit***) of the trust had already been carried out, or was being carried out, for the purpose of this section in relation to that period—give a copy of the report of the earlier requested audit to the person making the request.

Audit period

(2) The audit must relate to:
  (a) the financial year ending on the 30 June last preceding the request; or
  (b) if a determination is made under subsection (7) that provides for a different period—that period.

OFFICIAL: Sensitive // Legal Privilege

Who may request audit

(3) The following persons may request an audit of the trust for the purposes of this section:
  (a) the principal beneficiary;
  (b) an immediate family member of the principal beneficiary;
  (c) a person who is, under the law of the Commonwealth, a State or a Territory, the legal guardian or financial administrator of the principal beneficiary;
  (d) a person who is otherwise acting as the principal beneficiary's guardian on a long-term basis;
  (e) the Secretary.

Note: For ***immediate family member***, see subsection 23(1).

Copies of audit report

(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:
  (a) the person requesting the audit; and
  (b) if the guardian or administrator mentioned in paragraph (3)(c) did not request the audit—the guardian or administrator; and
  (c) if the Secretary did not request the audit—the Secretary.

Auditor qualifications and required information

(5) The audit must be prepared by:
  (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
  (b) whether or not such a determination is made—a person approved by the Secretary for the purpose.

(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.

OFFICIAL: Sensitive // Legal Privilege

(7) The Secretary may, by legislative instrument, make determinations for the purposes of this section.

1209U Waiver of contravention of this Division

(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:
  (a) the Secretary, by written notice (a ***waiver notice***) to the trustees, waives the requirement as it concerns that matter; and
  (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.

(2) A waiver notice has effect, subject to any conditions mentioned in paragraph (1)(b):
  (a) from:
    (i) the time of the contravention; or
    (ii) if the waiver notice states a time for the start of its period of effect that is after the time of the contravention—the stated time; and
  (b) if the waiver notice states a time for the end of its period of effect—until the stated time.

(3) If guidelines are made under subsection (4), a decision in relation to giving a waiver notice to the trustees of the trust must be made in accordance with the guidelines.

(4) The Secretary may, by legislative instrument, make guidelines for deciding any or all of the following:
  (a) whether or not to give waiver notices to trustees of trusts;
  (b) what conditions to include in waiver notices;
  (c) the periods during which waiver notices are to have effect.

OFFICIAL: Sensitive // Legal Privilege

Division 2—Income of special disability trusts

1209V Attribution of income

(1) For the purposes of this Act, an amount of income that a special disability trust derives is taken not to be income received by any individual.

Note: For ***special disability trust***, see section 1209L.

(2) This section has effect despite Division 7 of Part 3.18 and any other provisions of this Act.

1209X Income amounts from special disability trusts

An income amount that the principal beneficiary of a special disability trust receives is not income of the beneficiary for the purposes of this Act to the extent that consideration for the income amount was provided by a distribution from the trust.

Note 1: For ***income amount***, see section 8.

Note 2: For ***special disability trust***, see section 1209L.

OFFICIAL: Sensitive // Legal Privilege

Division 3—Assets of special disability trusts

1209Y Attribution of assets

(1) For the purposes of this Act, the assets of a special disability trust are not to be included in the assets of the principal beneficiary of the trust.

Note: For ***special disability trust***, see section 1209L.

(2) However, this section does not apply to the extent that the value of the assets owned by the trust exceeds the trust's asset value limit.

(3) The ***asset value limit*** of a special disability trust is $500,000.

Note: This amount is indexed annually on 1 July (see sections 1191 to 1194).

(4) For the purposes of subsection (2), disregard the value of any right or interest of the trust in the principal home of the principal beneficiary of the trust.

Note: For ***principal home***, see subsections 11(5) to (7).

(5) This section has effect despite Division 8 of Part 3.18 and any other provisions of this Act.

OFFICIAL: Sensitive // Legal Privilege

Division 4—Transfers to special disability trusts

1209Z Effect of certain transfers to special disability trusts

(1) If a person transfers an asset (the ***transferred asset***) to a special disability trust, the transfer is taken not to be a disposal of the asset (within the meaning of section 1123) if:

(a) the person is an immediate family member of the principal beneficiary of the trust; and

(b) the person, or the person's partner:

(i) is receiving a social security pension and has reached pension age; or

(ii) is receiving a service pension and has reached pension age within the meaning of the Veterans' Entitlements Act; or

(iii) is receiving income support supplement and has reached qualifying age within the meaning of section 5Q of the Veterans' Entitlements Act; or

(iv) is receiving a veteran payment and has reached pension age; and

(c) the person receives no consideration, and is not entitled to any consideration, for the transfer; and

(d) the transfer is unconditional; and

(e) the value of the transferred asset does not exceed $500,000; and

(f) in a case where there has already been a transfer to which this section has applied (an ***exempt transfer***), by that person or any other person, to the trust or any other special disability trust that had the same principal beneficiary—the sum of:

(i) the values of all of the assets transferred, by exempt transfers that have already been made, to the trust or any other special disability trust that had the same principal beneficiary; and

(ii) the value of the transferred asset;

does not exceed $500,000.

OFFICIAL: Sensitive // Legal Privilege

Note 1: For ***special disability trust***, see section 1209L.

Note 2: For ***immediate family member***, see subsection 23(1).

Note 3: For ***pension age*** (except for the purposes of subparagraph (1)(b)(ii) of this section), see subsections 23(5A) to (5D).

Note 4: For ***social security pension***, ***service pension*** and ***income support supplement***, see subsection 23(1).

(2) This section has effect subject to sections 1209ZA and 1209ZD.

(3) In this section:

other special disability trust includes a special disability trust within the meaning of the Veterans' Entitlements Act.

value, of an asset transferred to a special disability trust, means the market value of the asset at the time of the transfer.

1209ZA The effect of exceeding the $500,000 limit

(1) If section 1209Z would apply to a transfer of an asset except for the fact that the value of the transferred asset exceeds $500,000, that section does not prevent the transfer from being a disposal or disposition of the asset, but the amount of the disposal or disposition is taken to be the amount of the excess.

(2) If:

(a) section 1209Z would apply to a transfer of an asset but for the fact that the sum of:

(i) the values of all of the exempt transfers that have already been made to the trust or any other special disability trust that had the same principal beneficiary; and

(ii) the value of the transferred asset;

exceeds $500,000; and

(b) that sum would not exceed $500,000 if the value of the transferred asset were disregarded;

OFFICIAL: Sensitive // Legal Privilege

that section does not prevent the transfer from being a disposal of the asset, but the amount of the disposal or disposition is taken to be the amount of the excess referred to in paragraph (a).

(3) This section has effect subject to section 1209ZD.

(4) In this section:

other special disability trust includes a special disability trust within the meaning of the Veterans' Entitlements Act.

value, of an asset transferred to a special disability trust, means the market value of the asset at the time of the transfer.

1209ZB Transfers by the immediate family members prior to reaching pension age etc.

(1) If:

(a) an immediate family member of the principal beneficiary of a special disability trust transfers an asset to the trust; and

(b) at the time of the transfer, neither the immediate family member nor the partner of the immediate family member is a person who:

(i) is receiving a social security pension and has reached pension age; or

(ii) is receiving a service pension and has reached pension age within the meaning of the Veterans' Entitlements Act; or

(iii) is receiving income support supplement and has reached qualifying age within the meaning of section 5Q of the Veterans' Entitlements Act; or

(iv) is receiving a veteran payment and has reached pension age;

the immediate family member is taken for the purposes of this Division only to transfer the asset to the trust at the earliest time at which subparagraph (b)(i), (ii), (iii) or (iv) applies to the immediate family member or partner.

Note 1: For ***immediate family member***, see subsection 23(1).

OFFICIAL: Sensitive // Legal Privilege

Note 2: For ***special disability trust***, see section 1209L.

Note 3: For ***pension age*** (except for the purposes of subparagraph (1)(b)(ii) of this section), see subsections 23(5A) to (5D).

Note 4: For ***social security pension***, ***service pension*** and ***income support supplement***, see subsection 23(1).

(2) However, if under subsection (1) transfers of assets to the trust by different immediate family members are taken to have been made on the same day, the transfers are taken to have been made on that day in the order in which they would have been taken to be made but for this Division.

Note: For ***immediate family member***, see subsection 23(1).

(3) This section does not affect the operation of Part 3.12 or any other provision of this Act outside of this Division.

1209ZC Transfers by principal beneficiaries or partners

(1) If a person transfers an asset to a special disability trust, the transfer is taken not to be a disposal of the asset (within the meaning of section 1123) if:

(a) the person is the principal beneficiary of the trust, or the principal beneficiary's partner; and

(b) the person receives no consideration, and is not entitled to any consideration, for the transfer; and

(c) the transfer is unconditional.

Note 1: For ***special disability trust*** see section 1209L.

Note 2: Section 1209R limits the circumstances in which the principal beneficiary or the principal beneficiary's partner can transfer assets to the trust.

(2) This section has effect subject to section 1209ZD.

1209ZD Cessation of special disability trusts

(1) If:

(a) a special disability trust ceases to exist or ceases to be a special disability trust; and

OFFICIAL: Sensitive // Legal Privilege

(b) a person had transferred an asset to the trust during the period of 5 years immediately preceding the cessation; and

(c) section 1209Z, 1209ZA or 1209ZC applied to the transfer;

then the transfer is taken, after the cessation, to be a disposal or disposition of the asset that occurred at the time of the transfer.

(2) The amount of the disposal or disposition is taken to be the amount worked out using the formula:

$$\left(\text{Asset value} \times \frac{\text{Final value of trust assets}}{\text{Initial value of trust assets}} \right) + \text{Subsection 1209ZA(2) amount}$$

where:

asset value means:

(a) if section 1209Z or 1209ZC applied to the transfer—the value of the asset at the time of the transfer; or

(b) if subsection 1209ZA(1) applied to the transfer—$500,000; or

(c) if subsection 1209ZA(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.

final value of trust assets means the value of all of the assets of the trust at the time of the cessation.

initial value of trust assets means the value of all of the assets of the trust at the time of the transfer.

subsection 1209ZA(2) amount means the amount (if any) that was taken under subsection 1209ZA(2) to be the amount of the disposal or disposition of the asset.

(3) If the special disability trust ceases to exist, or ceases to be a special disability trust, because the principal beneficiary dies, the value of the asset at the time of the transfer is taken for the purposes of this section to be the value of so much (if any) of the

OFFICIAL: Sensitive // Legal Privilege

asset as has not been returned to the person who had transferred the asset to the trust.

(4) This section does not affect the application of section 1209Z, 1209ZA or 1209ZC to the transfer prior to the cessation.

1209ZE Effect of this Division

This Division (other than section 1209ZB) has effect despite Division 2 of Part 3.12 and any other provisions of this Act.

OFFICIAL: Sensitive // Legal Privilege

Part 3.19—Miscellaneous

1210 Application of income and assets test reductions and of compensation reductions for income tax purposes

(1) If:

(a) the rate of a person's social security payment is increased under Part 3.7 (rent assistance) and/or one or more of the following Modules of the Rate Calculator:

(i) the pension supplement Module (the ***PS Module***) (if any);

(ia) the energy supplement Module (the ***ES Module***);

(ii) the pharmaceutical allowance Module (the ***PA Module***) (if any); and

(b) that rate is to be reduced under:

(i) the income test Module or the assets test Module of the Rate Calculator; or

(ii) section 1173 (compensation reductions);

the reduction is to be applied as follows (in descending order):

Item	Component of the rate
1	all of the rate apart from any increase mentioned in paragraph (a)
2	the portion of the person's pension supplement amount (if any) equal to: (a) if the Rate Calculator produces an annual rate—the person's pension supplement basic amount; and (b) if the Rate Calculator produces a fortnightly rate—1/26 of the person's pension supplement basic amount
3	(a) if an election by the person under subsection 1061VA(1) is in force—any remaining portion of the person's pension supplement amount; or (b) otherwise—any remaining portion of the person's pension supplement amount to the extent to which it exceeds the person's minimum pension supplement amount
4	the amount of any increase under Part 3.7
4A	the amount of any increase under the ES Module

Item	Component of the rate
5	the person's minimum pension supplement amount
6	the amount of any increase under the PA Module

Note 1: For table item 4A, the amount will be nil if quarterly energy supplement is payable to the person (for example, see point 1064-C2). See also subsection (2A).

Note 2: Table item 5 will not apply if an election by the person under subsection 1061VA(1) is in force, as the rate would have already been reduced to nil.

(2) For the purposes of subsection (1):

(a) disregard table items 2, 3 and 5 if the person's rate is increased under the PA Module (if any) of the Rate Calculator; and

(b) disregard table item 6 if the person's rate is increased under the PS Module (if any) of the Rate Calculator.

(2A) If:

(a) quarterly energy supplement is payable to a person; and

(b) if quarterly energy supplement were not payable to the person:

(i) the rate (the ***main rate***) of the person's social security payment would be increased under the ES Module of the Rate Calculator; and

(ii) the main rate would be reduced as described in paragraph (1)(b); and

(c) the social security payment:

(i) is not a social security pension; or

(ii) is a disability support pension to which subsection 1066A(1) or 1066B(1) applies; or

(iii) if the person has not reached pension age—is a pension PP (single);

the reduction is to be applied to the components mentioned in items 5 and 6 of the table in subsection (1) only to the extent that the amount of the reduction (after it is applied to the components

OFFICIAL: Sensitive // Legal Privilege

mentioned in items 1 to 4) exceeds the amount of the increase mentioned in subparagraph (b)(i) of this subsection.

(3) If:

(a) the rate (the ***main rate***) of a person's social security payment is increased under the PS Module of the Rate Calculator; and

(b) that rate is to be reduced as described in paragraph (1)(b); and

(c) an election by the person under subsection 1061VA(1) is in force;

the person's quarterly pension supplement is reduced to the same extent (if any) that the component of the main rate that would correspond to the person's minimum pension supplement amount would be reduced under subsection (1) were the election not in force.

Note: The reduction will be disregarded unless the person's quarterly pension supplement is reduced to nil (see subsection 43(5A) of the Administration Act).

(3A) If:

(a) quarterly energy supplement is payable to a person; and

(b) if quarterly energy supplement were not payable to the person:

(i) the rate (the ***main rate***) of the person's social security payment would be increased under the ES Module of the Rate Calculator; and

(ii) the main rate would be reduced as described in paragraph (1)(b);

the person's quarterly energy supplement is reduced to the same extent (if any) that the component of the main rate that would correspond to the person's energy supplement would be reduced under subsection (1) were quarterly energy supplement not payable to the person.

Note: The reduction may be disregarded unless the main rate would be reduced to nil (see subsection 43(5B) of the Administration Act).

OFFICIAL: Sensitive // Legal Privilege

(4) The following table sets out details of the Modules relevant to subsection (1):

Relevant Modules						
	Pension Rate Calculator	**PS Module**	**PA Module**	**ES Module**	**Income test Module**	**Assets test Module**
1	Pension Rate Calculator A, section 1064	BA	none	C	E	G
3	Pension Rate Calculator D, section 1066A	none	D	BA	F	H
4	Youth Allowance Rate Calculator, section 1067G	none	C	BA	H	none
5	Austudy Payment Rate Calculator, section 1067L	BA	C	BB	D	none
6	Benefit Rate Calculator B, section 1068	BA	D	C	G	none
7	Pension PP (Single) Rate Calculator, section 1068A	BA	C	BB	E	none
8	Benefit PP (partnered) Rate Calculator, section 1068B	DA	E	DB	D	none

1210A Effect of nil rate of pension etc.

(1) If, in relation to a day:

(a) a person is qualified for a social security pension or benefit; and

OFFICIAL: Sensitive // Legal Privilege

(b) the pension or benefit rate in relation to that day would be nil;

then, for the purposes of Part 2A.1, the person is not to be taken to be receiving the pension or benefit on that day.

(2) The circumstance that a person is qualified for a social security pension or benefit in relation to a day is not to be taken into account for the purpose of determining the qualification of the person for a concession card if the pension or benefit is not payable to the person in relation to that day.

OFFICIAL: Sensitive // Legal Privilege

Chapter 4—International agreements and portability

Part 4.2—Overseas portability

Division 1—Preliminary

1211 Social Security (International Agreements) Act overrides Part

If the *Social Security (International Agreements) Act 1999* applies to the payment of a social security payment to a person, this Part does not apply to the payment to the person.

1212 Meaning of terms used in this Part

In this Part:

allegation authority means:

(a) the Greek Australian Workers' Welfare Association of NSW; or

(b) the Commission of Enquiry established by Letters Patent of 9 February 1984 and 16 August 1984 to investigate matters known as the Greek conspiracy.

Australian resident disability support pensioner means a person who qualifies for disability support pension only because he or she is an Australian resident.

claim, in relation to a social security payment, includes a claim that is taken to have been made under a provision of the *Social Security (Administration) Act 1999*.

eligible medical treatment, in relation to a person, means medical treatment of a kind that is not available to the person in Australia.

Reserve service means attending a training camp as a member of any of the following:

(a) the Naval Reserve; or
(b) the Army Reserve; or
(c) the Air Force Reserve.

severely impaired disability support pensioner means a person in respect of whom the Secretary has made a determination under subsection 1218AAA(1).

terminally ill overseas disability support pensioner means a person who qualifies for disability support pension because all the circumstances described in paragraphs 1218AA(1)(a), (b), (c), (d) and (e) exist in relation to the person.

1212A Meaning of *acute family crisis*

For the purposes of this Part, a person's absence is for the purpose of attending to an ***acute family crisis*** at a particular time if the Secretary is satisfied that the absence is, at that time:

(a) for the purpose of visiting a family member who is critically ill; or
(b) for the purpose of visiting a family member who is hospitalised with a serious illness; or
(c) for a purpose relating to the death of a family member; or
(d) for a purpose relating to a life-threatening situation (other than an illness referred to in paragraph (a) or (b)) that:
    (i) is facing a family member; and
    (ii) is beyond the control of the family member.

1212B Meaning of *humanitarian purpose*

For the purposes of this Part, a person's absence is for a ***humanitarian purpose*** at a particular time if the Secretary is satisfied that the absence is, at that time:

(a) for the purpose of involvement in custody proceedings, criminal proceedings (other than criminal proceedings in respect of a crime alleged to have been committed by the person) or other legal proceedings; or

OFFICIAL: Sensitive // Legal Privilege

(b) for purposes relating to the adoption of a child by the person; or

(c) for a purpose specified in the regulations for the purposes of this paragraph.

1212C Meaning of *temporary absence*

For the purposes of this Part, a person's absence from Australia is temporary if, throughout the absence, the person does not cease to reside in Australia (within the meaning of subsection 7(3)).

1212D Part does not affect need for qualification

For the avoidance of doubt, nothing in this Part confers a right on a person to continue to be paid a social security payment if the person is not qualified for the payment (even if the person's failure to qualify is related to the absence).

OFFICIAL: Sensitive // Legal Privilege

Division 2—Portability of social security payments

Subdivision A—Basic portability provisions

1213 Persons to whom Division applies

This Division applies to a person during a period (the ***period of absence***) throughout which the person is continuously absent from Australia, if:

(a) immediately before the period of absence commenced, the person was receiving a social security payment (the ***payment***) mentioned in column 2 of the table at the end of section 1217; or

(b) during the period of absence, the person's claim for such a payment is granted under the *Social Security (Administration) Act 1999*.

1214 Some payments generally portable with no time limit

(1) If the person's maximum portability period for the payment is an unlimited period, the person's right to continue to be paid the payment throughout the period of absence is not affected merely by the absence.

Note 1: Section 1217 defines the person's ***maximum portability period*** for the payment.

Note 2: However, the person's rate of payment may be affected after 26 weeks—see Division 3.

(2) This section is subject to section 1220.

1215 Some payments generally portable with time limit

(1) If the person's maximum portability period for the payment is not an unlimited period, the following rules apply:

(a) throughout the person's portability period for the payment, the person's right to continue to be paid the payment is not affected merely by the absence;

OFFICIAL: Sensitive // Legal Privilege

(b) throughout so much (if any) of the period of absence as occurs after the end of the person's portability period for the payment, the payment is not payable to the person.

Note: Section 1217 defines the person's ***maximum portability period*** and ***portability period*** for the payment.

(2) This section is subject to Subdivision B of this Division (which contains exceptions) and section 1220.

1216 Amounts added to rate

(1) During the period of absence, rent assistance, incentive allowance and pharmaceutical allowance are not to be added to the person's rate under Chapter 3 after whichever of the following times applies:

(a) if the person's maximum portability period for the payment is an unlimited period—26 weeks after the period of absence commenced;

(b) otherwise—the end of the person's portability period for the payment.

(2) If:

(a) the 26 weeks mentioned in paragraph (1)(a) ends on or after 11 March 2020; and

(b) the Secretary is satisfied that the person's absence from Australia is temporary; and

(c) the Secretary is satisfied that the person is unable to return to Australia before the end of that 26-week period because of the impact of the coronavirus known as COVID-19;

the Secretary may, in relation to the person, determine that a reference to 26 weeks in paragraph (1)(a) is taken to be a reference to another number of weeks. However, the Secretary must ensure that the determination does not result in a period referred to in that paragraph that ends after 30 June 2021.

(3) Despite Subdivision B of Division 9 of Part 3 of the Administration Act, a favourable determination (within the meaning of section 108 of that Act) that is made as a result of a

OFFICIAL: Sensitive // Legal Privilege

determination referred to in subsection (2) of this section may be expressed to take effect on a day earlier than otherwise permitted by that Subdivision.

1217 Meaning of *maximum portability period*, *allowable absence* and *portability period*

Meaning of maximum portability period

(1) The person's ***maximum portability period*** for the payment is the period referred to in column 5 of the table at the end of this section (the ***table***) that is applicable to:
  (a) the payment (as specified in column 2 of the table); and
  (b) the class of persons to which the person belongs (as specified in column 3 of the table).

Meaning of allowable absence

(2) The person's absence is an allowable absence in relation to the payment at a particular time if, at that time:
  (a) it is an absence specified in column 4 of the item in the table at the end of this section that is applicable to the payment and the person; and
  (b) except where an unlimited absence is specified in column 5 of the item or a provision of Subdivision B applies, the absence does not:
    (i) exceed the period specified in column 5 of that item; or
    (ii) in the case of item 2—cause the total number of days (whether consecutive or not) of the person's temporary absence from Australia in the last 12 months to exceed 28, ignoring days in accordance with that item.

Meaning of portability period if unlimited maximum portability period

(3) If the person's maximum portability period for the payment is an unlimited period, the person's ***portability period*** for the payment,

OFFICIAL: Sensitive // Legal Privilege

in relation to the period of absence, is an unlimited period beginning at the commencement of the period of absence.

Meaning of portability period if maximum portability period limited

(4) If the person's maximum portability period for the payment is not an unlimited period, the person's ***portability period*** for the payment, in relation to the period of absence, is the period:

(a) beginning at the commencement of the period of absence; and

(b) ending at the earlier of the following times:

(i) the first time during the period of absence at which the absence is not an allowable absence in relation to the payment;

(ii) the end of the period that is the person's maximum portability period for the payment.

Note: People will be required (under the *Social Security (Administration) Act 1999*) to notify changes in circumstance.

Portability of social security payments

Column 1 Item	Column 2 Payment	Column 3 Person	Column 4 Absence	Column 5 Maximum portability period
1	Age pension	All persons	Any absence	Unlimited period

OFFICIAL: Sensitive // Legal Privilege

Portability of social security payments

Column 1 Item	Column 2 Payment	Column 3 Person	Column 4 Absence	Column 5 Maximum portability period
2	Disability support pension	Australian resident disability support pensioner	Any temporary absence, except for any of the following purposes: (a) to seek eligible medical treatment; (b) to attend to an acute family crisis; (c) for a humanitarian purpose	A total of 28 days (whether consecutive or not) of temporary absence from Australia for any purpose in the last 12 months, ignoring days on which the person was not receiving disability support pension (but see also sections 1218AAA, 1218AA, 1218AB, 1218, 1218C and 1218D)
2AA	Disability support pension	Australian resident disability support pensioner	Temporary absence for any of the following purposes: (a) to seek eligible medical treatment; (b) to attend to an acute family crisis; (c) for a humanitarian purpose	4 weeks (but see also sections 1218AAA, 1218AA, 1218AB, 1218, 1218C and 1218D)

OFFICIAL: Sensitive // Legal Privilege

Section 1217

Portability of social security payments

Column 1 Item	Column 2 Payment	Column 3 Person	Column 4 Absence	Column 5 Maximum portability period
2A	Disability support pension	Severely impaired disability support pensioner	Any absence	Unlimited period
3	Disability support pension	Terminally ill overseas disability support pensioner	Any absence	Unlimited period
6	Carer payment	All persons	Any temporary absence	6 weeks (but see also section 1218)
10	Widow allowance	All persons	Any temporary absence	6 weeks (but see also section 1218)
11	Parenting payment	All persons	Any temporary absence	6 weeks (but see also sections 1218 and 1218B)
12	Youth allowance	Person other than person undertaking full-time study	A temporary absence for any of the following purposes: (a) to seek eligible medical treatment; (b) to attend to an acute family crisis; (c) for a humanitarian purpose.	6 weeks (but see also section 1218BA)

OFFICIAL: Sensitive // Legal Privilege

Portability of social security payments

Column 1 Item	Column 2 Payment	Column 3 Person	Column 4 Absence	Column 5 Maximum portability period
13	Youth allowance	Person undertaking full-time study	A temporary absence for either of the following purposes: (a) to seek eligible medical treatment; (b) to attend to an acute family crisis	6 weeks (but see also section 1218)
14	Austudy payment	All persons	A temporary absence for either of the following purposes: (a) to seek eligible medical treatment; (b) to attend to an acute family crisis	6 weeks (but see also sections 1218 and 1218BA)
15	Jobseeker payment	All persons	A temporary absence for any of the following purposes: (a) to seek eligible medical treatment; (b) to attend to an acute family crisis; (c) for a humanitarian purpose.	6 weeks

OFFICIAL: Sensitive // Legal Privilege

Portability of social security payments				
Column 1 **Item**	**Column 2** **Payment**	**Column 3** **Person**	**Column 4** **Absence**	**Column 5** **Maximum portability period**
19	Special benefit	All persons	A temporary absence for any of the following purposes: (a) to seek eligible medical treatment; (b) to attend to an acute family crisis; (c) for a humanitarian purpose.	6 weeks
20	Partner allowance	All persons	Any temporary absence	6 weeks (but see also section 1218)
21	Carer allowance	All persons	Any temporary absence	6 weeks
22	Mobility allowance	All persons	Any temporary absence	6 weeks
23	Telephone allowance	All persons	Any temporary absence	6 weeks

Subdivision B—Exceptions to Subdivision A rules

1218AAA Unlimited portability period for disability support pension—severely impaired disability support pensioner

(1) The Secretary may make a written determination that a particular person's maximum portability period for disability support pension is an unlimited period, if all of the following circumstances (the ***qualifying circumstances***) exist:

(a) the person is receiving disability support pension;

OFFICIAL: Sensitive // Legal Privilege

(b) the Secretary is satisfied that the person's impairment is a severe impairment (within the meaning of subsection 94(3B));

(c) the Secretary is satisfied that the person will have that severe impairment for at least the next 5 years;

(d) the Secretary is satisfied that, if the person were in Australia, the severe impairment would prevent the person from performing any work independently of a program of support (within the meaning of subsection 94(4)) within the next 5 years.

(2) The Secretary must not make a determination under subsection (1) in relation to a person who is outside Australia unless the Secretary is satisfied that:

(a) the person is unable to return to Australia because of either of the following events:

(i) a serious accident involving the person;

(ii) the hospitalisation of the person; and

(b) the person's portability period for disability support pension had not ended at the time the event occurred.

(3) The Secretary may revoke the determination if any of the qualifying circumstances ceases to exist.

(4) A determination under subsection (1) is not a legislative instrument.

(5) In this section:

work means work:

(a) that is on wages that are at or above the relevant minimum wage; and

(b) that exists in Australia, even if not within the person's locally accessible labour market.

OFFICIAL: Sensitive // Legal Privilege

1218AA Unlimited portability period for disability support pension—terminally ill overseas disability support pensioner

(1) The Secretary may determine that a particular person's maximum portability period for disability support pension is an unlimited period, if all of the following circumstances (the ***qualifying circumstances***) exist:

(a) the person is severely disabled (see subsection 23(4B)); and

(b) the person is receiving disability support pension; and

(c) the person is terminally ill; and

(d) the person's absence from Australia is or will be permanent; and

(e) the purpose of the person's absence is:

(i) to be with or near a family member of the person (see subsection 23(14)); or

(ii) to return to the person's country of origin.

(2) The Secretary may revoke the determination if any of the qualifying circumstances ceases to exist.

(3) If the Secretary revokes the determination, this Part has effect after the revocation as if:

(a) the person's maximum portability period for the pension were worked out under whichever one of items 2, 2AA and 2A of the table in section 1217 applies; and

(b) if the person was absent from Australia at the time of the revocation—the person's absence started on the revocation; and

(c) if item 2 of the table in section 1217 applies—the person had not been absent from Australia at any time in the 12 months before the revocation.

OFFICIAL: Sensitive // Legal Privilege

1218AB Extended portability period for disability support pension

(1) The Secretary may, by written determination, extend the person's portability period for disability support pension if all of the following circumstances (the ***qualifying circumstances***) exist:

(a) the person is severely disabled (see subsection 23(4B));

(b) the person is receiving disability support pension;

(c) the person is wholly or substantially dependent on a family member of the person (see subsection 23(14));

(d) the Secretary is satisfied that the person will be living with the family member of the person throughout the period of absence;

(e) the family member of the person is engaged in employment in Australia for an employer immediately before the start of the period of absence;

(f) the Secretary is satisfied that the family member of the person will be engaged in employment outside Australia for that employer throughout the period of absence.

(2) If the Secretary extends a person's portability period under subsection (1), the person's portability period for disability support pension, for the purposes of this Part, is the extended period.

(3) The Secretary may revoke the determination if any of the qualifying circumstances ceases to exist.

(4) A determination under subsection (1) is not a legislative instrument.

1218 Exception—full-time students outside Australia for purposes of Australian course

(1) This section applies if, immediately before the period of absence commenced:

(a) the person was undertaking full-time study as part of a course of education at an educational institution; and

OFFICIAL: Sensitive // Legal Privilege

(b) the person was receiving disability support pension, carer payment, widow allowance, parenting payment, youth allowance, austudy payment or partner allowance.

(2) The person's right to continue to be paid disability support pension, carer payment, widow allowance, parenting payment, youth allowance, austudy payment or partner allowance is not affected merely by the person's absence throughout so much of the period of absence as is for the purpose of undertaking studies that form part of the course of education.

(3) If the person returns to Australia for a period of 6 weeks or less, the return is taken not to affect the continuity of the period of absence.

(4) The Secretary may, by legislative instrument, make principles that must be complied with when deciding how much of a period of absence is for the purpose of undertaking studies that form part of a course of education.

1218A Exception—Reserve service

(1) This section applies if, immediately before the period of absence commenced, the person was receiving parenting payment, youth allowance, austudy payment or jobseeker payment.

(2) The person's right to continue to be paid the payment is not affected merely by the person's absence throughout so much of the period of absence as is for the purpose of undertaking Reserve service.

1218B Exception—waiting period in Australia before parenting payment is portable

(1) If:

(a) immediately before the period of absence commenced, the person was receiving parenting payment; and

OFFICIAL: Sensitive // Legal Privilege

(b) at a time not more than 6 weeks before the period of absence commenced, parenting payment had ceased to be payable to the person because:

(i) the person's portability period for parenting payment in relation to another period of absence ended; or

(ii) another absence had ceased to be an allowable absence for parenting payment;

parenting payment is not payable to the person during the period of absence.

(2) This section is subject to section 1218.

1218BA Exception—new apprentices

(1) This section applies if, immediately before the period of absence commenced, the person was receiving youth allowance on the basis of section 540AA applying (about new apprentices) or austudy payment on the basis of section 568AA applying (about new apprentices).

(2) The person's right to continue to be paid youth allowance or austudy payment is not affected merely by the person's absence throughout so much of the period of absence as is for the purpose of undertaking the person's full-time apprenticeship, traineeship or trainee apprenticeship.

(3) The Secretary may, by legislative instrument, make principles that must be complied with when deciding how much of a period of absence is for the purpose of undertaking a full-time apprenticeship, traineeship or trainee apprenticeship.

1218C Extension of person's portability period—general

(1) The Secretary may extend the person's portability period for the payment if the Secretary is satisfied that the person is unable to return to Australia because of any of the following events:

(a) a serious accident involving the person or a family member of the person;

OFFICIAL: Sensitive // Legal Privilege

(b) a serious illness of the person or a family member of the person;
(c) the hospitalisation of the person or a family member of the person;
(d) the death of a family member of the person;
(e) the person's involvement in custody proceedings in the country in which the person is located;
(f) a legal requirement for the person to remain outside Australia in connection with criminal proceedings (other than criminal proceedings in respect of a crime alleged to have been committed by the person);
(g) robbery or serious crime committed against the person or a family member of the person;
(h) a natural disaster in the country in which the person is located;
(i) political or social unrest in the country in which the person is located;
(j) industrial action in the country in which the person is located;
(k) a war in the country in which the person is located.

(2) The Secretary must not extend the person's portability period under subsection (1) unless:
(a) the event occurred or began during the period of absence; and
(b) if the event is political or social unrest, industrial action or war—the person is not willingly involved in, or willingly participating in the event.

(3) If the Secretary extends a person's portability period under subsection (1), the person's portability period for the payment, for the purposes of this Part, is the extended period.

1218D Extension of person's portability period—life-saving medical treatment overseas

(1) The Secretary may extend the person's portability period for the payment if the Secretary is satisfied that, under the Medical Treatment Overseas Program administered by the Minister who

OFFICIAL: Sensitive // Legal Privilege

administers the *National Health Act 1953*, financial assistance is payable in respect of the person's absence from Australia.

(2) If the Secretary extends a person's portability period under subsection (1), the person's portability period for the payment, for the purposes of this Part, is the extended period.

1220 No portability where claim based on short residence

(1) If:

(a) a person is an Australian resident; and

(b) the person ceases to be an Australian resident; and

(c) the person again becomes an Australian resident; and

(d) within the period of 2 years after the person again becomes an Australian resident, the person is granted, or is transferred to:

(i) an age pension; or

(ii) a disability support pension; and

(e) after the pension is granted, or the person is transferred to the pension, but before the end of that period of 2 years, the person leaves Australia; and

(f) financial assistance is not payable in respect of the person's absence from Australia under the Medical Treatment Overseas Program administered by the Minister who administers the *National Health Act 1953*;

a pension based on that claim is not payable to the person during any period during which the person is outside Australia.

(2) If:

(a) a person resides in an area that is, at the time of residence, an external Territory; and

(b) the person has never before resided in Australia; and

(c) the person then arrives in Australia; and

(d) within the period of 2 years after the person arrives in Australia, the person is granted, or is transferred to:

(i) an age pension; or

OFFICIAL: Sensitive // Legal Privilege

(ii) a disability support pension; and

(e) after the pension is granted, or the person is transferred to the pension, but before the end of that period of 2 years, the person leaves Australia; and

(f) financial assistance is not payable in respect of the person's absence from Australia under the Medical Treatment Overseas Program administered by the Minister who administers the *National Health Act 1953*;

a pension based on that claim is not payable to the person during any period during which the person is outside Australia.

(4) For the purposes of the application of this section in relation to a particular social security payment, a person who has a qualifying residence exemption for that payment is taken:

(a) to be an Australian resident; or

(b) to reside in an area that is, at the time of residence, an external Territory;

as the context requires.

OFFICIAL: Sensitive // Legal Privilege

Division 3—Rate of portable pensions

1220A Proportionality—age pension rate

(1) A person's rate of age pension is to be calculated using the Pension Portability Rate Calculator at the end of section 1221 if:

(a) the person has been continuously absent from Australia, throughout a period (the ***period of absence***) of more than 26 weeks; and

(b) either:

(i) immediately before the period of absence commenced, the person was receiving the age pension; or

(ii) during the period of absence, the person's claim for the age pension is granted under the *Social Security (Administration) Act 1999*.

(2) Subsection (1) does not apply to a woman if, immediately before 20 March 2020, subsection 1221(1) did not apply to the woman because of subsection 1221(2).

(3) Subsection (1) does not apply to a woman if, immediately before 20 March 2020, subsection 796(2) did not apply to the woman because of subsection 796(4).

(4) Subsection (1) does not apply to a woman if:

(a) immediately before 20 March 2020, the woman was receiving a widow B pension mentioned in subclause 128A(2) of Schedule 1A; and

(b) immediately before 20 March 2020, subclause 128A(5) of Schedule 1A applied to the woman in relation to that pension.

(5) Subsection (1) does not apply to a woman if:

(a) immediately before 20 March 2020, the woman was receiving a wife pension under Part 2.4; and

(b) immediately before 20 March 2020, clause 128 of Schedule 1A applied to the woman in relation to that pension.

OFFICIAL: Sensitive // Legal Privilege

(6) If:

(a) the 26 weeks mentioned in paragraph (1)(a) ends on or after 11 March 2020; and

(b) the Secretary is satisfied that the person's absence from Australia is temporary; and

(c) the Secretary is satisfied that the person is unable to return to Australia before the end of that 26-week period because of the impact of the coronavirus known as COVID-19;

the Secretary may, in relation to the person, determine that a reference to 26 weeks in paragraph (1)(a) is taken to be a reference to another number of weeks. However, the Secretary must ensure that the determination does not result in a period referred to in that paragraph that ends after 30 June 2021.

(7) Despite Subdivision B of Division 9 of Part 3 of the Administration Act, a favourable determination (within the meaning of section 108 of that Act) that is made as a result of a determination referred to in subsection (6) of this section may be expressed to take effect on a day earlier than otherwise permitted by that Subdivision.

1220B Proportionality—disability support pension rate for a severely disabled person

(1) The rate of disability support pension for a person for whom an unlimited maximum portability period for the pension has been determined under section 1218AAA or 1218AA is to be calculated using the Pension Portability Rate Calculator at the end of section 1221 if:

(a) the person has been continuously absent from Australia, throughout a period (the ***period of absence***) of more than 26 weeks; and

(b) either:

(i) immediately before the period of absence commenced, the person was receiving the disability support pension; or

OFFICIAL: Sensitive // Legal Privilege

(ii) during the period of absence, the person's claim for the disability support pension is granted under the *Social Security (Administration) Act 1999*.

(2) Subsection (1) does not apply to a person if the person became qualified to receive the disability support pension because the person became unable to work or permanently blind while the person was an Australian resident.

(3) If:

(a) the 26 weeks mentioned in paragraph (1)(a) ends on or after 11 March 2020; and

(b) the Secretary is satisfied that the person's absence from Australia is temporary; and

(c) the Secretary is satisfied that the person is unable to return to Australia before the end of that 26-week period because of the impact of the coronavirus known as COVID-19;

the Secretary may, in relation to the person, determine that a reference to 26 weeks in paragraph (1)(a) is taken to be a reference to another number of weeks. However, the Secretary must ensure that the determination does not result in a period referred to in that paragraph that ends after 30 June 2021.

(4) Despite Subdivision B of Division 9 of Part 3 of the Administration Act, a favourable determination (within the meaning of section 108 of that Act) that is made as a result of a determination referred to in subsection (3) of this section may be expressed to take effect on a day earlier than otherwise permitted by that Subdivision.

1221 Pension Portability Rate Calculator

This section sets out the Pension Portability Rate Calculator for the purposes of this Part.

Pension Portability Rate Calculator

OFFICIAL: Sensitive // Legal Privilege

Module A—Overall rate calculation process

Overall rate calculation process

1221-A1 This is how to calculate a person's portability rate:

Method statement	
Step 1.	Work out the period of the person's Australian working life residence using Module B: the result is called the ***residence period***.
Step 2.	Use the person's residence period to work out the person's ***residence factor*** using Module C below.
Step 3.	Work out the rate that would be the person's pension or allowance rate if this Rate Calculator did not apply to the person: the result is called the person's ***notional domestic rate***.
Step 4.	Multiply the person's notional domestic rate by the person's residence factor: the result is the person's portability rate.

Limit in portability rate

1221-A2 If a person's portability rate as calculated under point 1221-A1 would exceed the rate (the ***notional rate***) that would be the person's notional domestic rate under that point if the person had a residence factor of 1, the person's portability rate is the rate that equals the notional rate.

Former recipients of widow B pension

1221-A3 If:

(a) immediately before 20 March 2020, a woman was receiving a widow B pension under Part 2.8; and

OFFICIAL: Sensitive // Legal Privilege

(b) the woman had become qualified for the widow B pension because of the woman's partner's death; and

(c) on a day on or after 20 March 2020, the woman's rate of age pension is worked out as mentioned in section 1220A; and

(d) on that day, that partner's period of Australian working life residence (immediately before that partner's death) exceeds the woman's period of Australian working life residence on that day; and

(e) on that day, the woman is not a member of a couple;

then, for the purposes of working out that rate of age pension, the woman's period of Australian working life residence is taken to be equal to that partner's period of Australian working life residence (immediately before that partner's death).

Former recipients of wife pension

1221-A4 If immediately before 20 March 2020:

(a) either:

(i) a woman was receiving a wife pension under Part 2.4; or

(ii) a woman was receiving a wife pension under a scheduled international social security agreement; and

(b) the woman was a member of a couple; and

(c) the rate of the woman's wife pension was required to be worked out having regard to the woman's period of Australian working life residence; and

(d) the woman's period of Australian working life residence was taken to be equal to the period of Australian working life residence of the woman's partner;

then, for a day on or after 20 March 2020, the woman's period of Australian working life residence is taken to be equal to the period of Australian working life residence of the woman's partner if the following apply on that day:

(e) the woman is a member of that same couple;

(f) the woman's rate of age pension is worked out as mentioned in section 1220A.

OFFICIAL: Sensitive // Legal Privilege

Module B—Australian working life residence

Working life

1221-B1 For the purposes of this Module, a person's working life is the period beginning when the person turns 16 and ending when the person reaches pension age.

Note: For ***pension age*** see subsections 23(5A), (5B), (5C) and (5D).

Australian working life residence (general)

1221-B2 Subject to points 1221-B3 and 1221-B4, a person's ***period of Australian working life residence*** as at a particular time is the number of months in the period, or the aggregate of the periods, during the person's working life during which the person has, up to that time, been an Australian resident.

Note: For the method of calculating the number of months in the period see points 1221-B3 and 1221-B4 below.

Calculation of number of months

1221-B3 If a person's period of Australian working life residence would, apart from this point, be a number of whole months, the period is to be increased by one month.

1221-B4 If a person's period of Australian working life residence would, apart from this point, be a number of whole months and a day or days, the period is to be increased so that it is equal to the number of months plus one month.

Module C—Residence factor

Residence factor (period of Australian working life residence 35 years or more)

1221-C1 If a person's period of Australian working life residence is 420 months (35 years) or more, the person's residence factor is 1.

Note: If a person's residence factor is 1, the person's pension will be payable outside Australia at the full domestic rate.

OFFICIAL: Sensitive // Legal Privilege

Residence factor (period of Australian working life residence under 35 years)

1221-C2 If a person's period of Australian working life residence is less than 420 months (35 years), the person's residence factor is:

$$\frac{\text{Person's period of Australian working life residence}}{420}$$

OFFICIAL: Sensitive // Legal Privilege

Division 4—Other portability rules

1221A Other portability rules

(1) If:

(a) the 26 weeks mentioned in paragraph 6(3)(d) or (4)(d) or 14(3)(d) or (4)(d) of Schedule 4 to the *Social Services and Other Legislation Amendment Act 2014* ends on or after 11 March 2020; and

(b) the Secretary is satisfied that the person's return to Australia is temporary; and

(c) the Secretary is satisfied that the person is unable to leave Australia before the end of that 26-week period because of the impact of the coronavirus known as COVID-19;

the Secretary may, in relation to the person, determine that a reference to 26 weeks in paragraph 6(3)(d) or (4)(d) or 14(3)(d) or (4)(d) of Schedule 4 to the *Social Services and Other Legislation Amendment Act 2014* is taken to be a reference to another number of weeks. However, the Secretary must ensure that the determination does not result in a period referred to in that paragraph that ends after 30 June 2021.

(2) Despite Subdivision B of Division 9 of Part 3 of the Administration Act, a favourable determination (within the meaning of section 108 of that Act) that is made as a result of a determination referred to in subsection (1) of this section may be expressed to take effect on a day earlier than otherwise permitted by that Subdivision.

OFFICIAL: Sensitive // Legal Privilege

Chapter 5—Overpayments and debt recovery

Part 5.1—Effect of Chapter

1222 General effect of Chapter

(1) This Chapter provides the methods for recovery by the Commonwealth of:

(a) debts owed to the Commonwealth under Part 5.2; and

(b) debts owed to the Commonwealth under section 1135; and

(ba) debts owed to the Commonwealth under Parts 3B and 3D of the Administration Act; and

(c) overpayments under certain other Acts or schemes; and

(ca) debts incurred under other Acts for failing to repay part or all of overpayments referred to in paragraph (c); and

(d) debts under subsection 11(6) of the *Data-matching Program (Assistance and Tax) Act 1990*.

(2) The methods of recovery available for the various types of debt are set out in the following table:

Recovery methods table

Column 1 Item	Column 2 Debt	Column 3 Means	Column 4 Provision
1	1135 (pension loan debt)	deductions legal proceedings garnishee notice repayment by instalments	1231, 1234A 1232 1233 1234
2	1223 (debt arising under this Act)	deductions legal proceedings garnishee notice repayment by instalments	1231, 1234A 1232 1233 1234

Section 1222

Recovery methods table

Column 1 Item	Column 2 Debt	Column 3 Means	Column 4 Provision
3	1223AA (debt arising from prepayment)	deductions legal proceedings garnishee notice repayment by instalments	1231, 1234A 1232 1233 1234
4	1223AB (debt arising from AAT stay order)	deductions legal proceedings garnishee notice repayment by instalments	1231, 1234A 1232 1233 1234
4A	1223ABB (debts in respect of child disability assistance)	deductions legal proceedings garnishee notice repayment by instalments	1231, 1234A 1232 1233 1234
4B	1223ABC (debts in respect of carer supplement for 2009)	deductions legal proceedings garnishee notice repayment by instalments	1231, 1234A 1232 1233 1234
4C	1223ABD (debts in respect of carer supplement for 2010 and later years)	deductions legal proceedings garnishee notice repayment by instalments	1231, 1234A 1232 1233 1234
4D	1223ABE (debts in respect of relocation scholarship payments)	deductions legal proceedings garnishee notice repayment by instalments	1231, 1234A 1232 1233 1234
4E	1223ABF (debts in respect of student start-up loans)	deductions legal proceedings garnishee notice repayment by instalments	1231, 1234A 1232 1233 1234
4F	1223ABG (debts in respect of one-off energy assistance payments)	deductions legal proceedings garnishee notice repayment by instalments	1231, 1234A 1232 1233 1234

Recovery methods table

Column 1 Item	Column 2 Debt	Column 3 Means	Column 4 Provision
4G	1223ABH (debts in respect of 2019 one-off energy assistance payments)	deductions legal proceedings garnishee notice repayment by instalments	1231, 1234A 1232 1233 1234
4H	1223ABI (debts in respect of first 2020 economic support payments)	deductions legal proceedings garnishee notice repayment by instalments	1231, 1234A 1232 1233 1234
4J	1223ABJ (debts in respect of second 2020 economic support payments)	deductions legal proceedings garnishee notice repayment by instalments	1231, 1234A 1232 1233 1234
4K	1223ABK (debts in respect of additional economic support payment 2020)	deductions legal proceedings garnishee notice repayment by instalments	1231, 1234A 1232 1233 1234
4L	1223ABL (debts in respect of additional economic support payment 2021)	deductions legal proceedings garnishee notice repayment by instalments	1231, 1234A 1232 1233 1234
5	1224AA	deductions legal proceedings garnishee notice repayment by instalments	1231, 1234A 1232 1233 1234
6	1224AB (conviction of person for involvement in offence by debtor)	deductions legal proceedings garnishee notice repayment by instalments	1231, 1234A 1232 1233 1234
7	1224B (education entry payment)	deductions legal proceedings garnishee notice repayment by instalments	1231, 1234A 1232 1233 1234

OFFICIAL: Sensitive // Legal Privilege

Section 1222

Recovery methods table

Column 1 Item	Column 2 Debt	Column 3 Means	Column 4 Provision
8	1224C (Data-matching program debts)	deductions legal proceedings garnishee notice repayment by instalments	1231, 1234A 1232 1233 1234
9	1224D (mobility allowance advance debt)	deductions legal proceedings garnishee notice repayment by instalments	1231, 1234A 1232 1233 1234
10	1224E (debt arising from advance payments of social security entitlements)	deductions legal proceedings garnishee notice repayment by instalments	1231, 1234A 1232 1233 1234
11	1225 (compensation debt)	deductions legal proceedings garnishee notice repayment by instalments	1231, 1234A 1232 1233 1234
12	1226 (compensation payer and insurer debts)	legal proceedings	1232
13	1226A (compensation arrears debt)	deductions legal proceedings garnishee notice repayment by instalments	1231, 1234A 1232 1233 1234
14	1227 (assurance of support debt)	enforcement of security deductions legal proceedings garnishee notice repayment by instalments	1230C 1231, 1234A 1232 1233 1234
15	1227B (youth training allowance debts)	deductions legal proceedings garnishee notice repayment by instalments	1231, 1234A 1232 1233 1234

OFFICIAL: Sensitive // Legal Privilege

Recovery methods table

Column 1 Item	Column 2 Debt	Column 3 Means	Column 4 Provision
15A	1228A (comparable foreign payment debts)	deductions legal proceedings garnishee notice repayment by instalments	1231, 1234A 1232 1233 1234
16	1229C (interest on debt)	deductions legal proceedings garnishee notice repayment by instalments	1231, 1234A 1232 1233 1234
18	1230 (garnishee notice debt)	legal proceedings garnishee notice	1232 1233
19	1230A (garnishee notice debt under 1947 Act)	legal proceedings garnishee notice	1232 1233
20	Parts 3B and 3D of the Administration Act	deductions legal proceedings garnishee notice repayment by instalments	1231, 1234A 1232 1233 1234

Note: An additional 10% penalty is payable in some cases: see section 1228B.

(3) If a person:

(a) has received an overpayment under certain other Acts or schemes; or

(b) has incurred a debt under another Act (whether before or after the commencement of this paragraph) for failing to repay part or all of such an overpayment;

the amount of the overpayment or debt may be recoverable by means of deductions from the person's social security payment.

Note: For deductions see section 1231.

OFFICIAL: Sensitive // Legal Privilege

Part 5.2—Amounts recoverable under this Act

1222A Debts due to the Commonwealth

If an amount has been paid by way of social security payment, or by way of fares allowance under the *Social Security (Fares Allowance) Rules 1998*, the amount is a debt due to the Commonwealth if, and only if:

(a) a provision of this Act, the 1947 Act, the *Social Security (Fares Allowance) Rules 1998* or the *Data-matching Program (Assistance and Tax) Act 1990* expressly provided that it was or expressly provides that it is, as the case may be; or; or

(b) the amount:

(i) should not have been paid; and

(ii) was paid before 1 January 1991; and

(iii) was not an amount to which subsection 245B(2) of the 1947 Act applied.

1223 Debts arising from lack of qualification, overpayment etc.

(1) Subject to this section, if:

(a) a social security payment is made; and

(b) a person who obtains the benefit of the payment was not entitled for any reason to obtain that benefit;

the amount of the payment is a debt due to the Commonwealth by the person and the debt is taken to arise when the person obtains the benefit of the payment.

(1AA) If a social security payment is made to, or as directed or authorised by, the person who is entitled to obtain the benefit of the payment, subsection (1) does not apply to any other person who afterwards obtains the benefit of the payment unless the other person obtained the benefit because of a mistake made by the first person in connection with the giving of the direction or authorisation.

OFFICIAL: Sensitive // Legal Privilege

(1AB) Without limiting by implication the circumstances to which paragraph (1)(b) applies apart from this subsection, a person who obtained the benefit of a social security payment is taken not to have been entitled to obtain the benefit if the payment should not have been made for any one or more of the following reasons:

(a) the payment was made to the person by mistake as a result of a computer error or an administrative error;

(b) the person for whose benefit the payment was intended to be made was not qualified to receive the payment;

(c) the payment was not payable;

(d) the payment was made as a result of a contravention of the social security law, a false statement or a misrepresentation;

(e) the payment was made in purported compliance with a direction or authority given by the person who was entitled to obtain the benefit of the payment but the direction or authority had been revoked or withdrawn before the payment was made;

(f) the payment was intended to be made for the benefit of someone else who died before the payment was made.

(1AC) If a social security payment was made by mistake as a result of a computer error or an administrative error, subsection (1) applies:

(a) whether or not the payment was made under a determination that had effect at the time when the payment was made; and

(b) whether or not a determination in relation to the payment could be made after that time with effect from and including that time.

(1AD) Subsection (1AC) does not apply if the social security payment was made when it should not have been made because of the occurrence of an event or a change in circumstances where the event or change had not been notified to the Secretary but no valid requirement for notification had been made under the social security law.

(1AE) If subsection (1AC) applies in respect of a social security payment:

OFFICIAL: Sensitive // Legal Privilege

(a) Divisions 8, 9 and 10 of Part 3 of the *Social Security (Administration) Act 1999* are to be disregarded; and

(b) any determination made under section 79 or 80 of that Act to correct the error in the payment takes effect from the date stated in the determination; and

(c) the date so stated may be a date earlier than the date on which the determination is made.

(1AF) Except in the circumstances referred to in subsection (1AG), subsection (1) does not apply to a payment made under subsection 47(2) or 51(2) of the Administration Act.

(1AG) Subsection (1) applies to a payment made to a person under subsection 47(2) or 51(2) of the Administration Act if the person is released from gaol or psychiatric confinement on a day after the day that is the person's expected release day for the purposes of section 35 of the Administration Act.

Some carer payment overpayments are not debts

(1B) If:

(a) an amount has been paid to a person (the ***carer***) by way of carer payment because the carer was providing care for a care receiver or care receivers (as defined in subsection 197(1)); and

(b) the amount was paid on the basis that the carer was qualified for carer payment when the carer was not qualified:

(i) because an estimate of the income of the care receiver or any of the care receivers was an underestimate; or

(ii) because an assessment or amended assessment of the income of the care receiver or any of the care receivers had been amended as described in paragraph 198B(2)(b), (c) or (d); or

(iii) because of the occurrence, or the likelihood of the occurrence, of an event in respect of which the Department had not been informed in accordance with a requirement in a notice under section 70 of the Administration Act;

the amount is not a debt due to the Commonwealth.

Some carer payment overpayments are debts if carer knew about care receiver's affairs

(1C) Despite subsection (1B), an amount described in subsection (1B) is a debt due to the Commonwealth if it was reasonable for the carer to know that:

(a) the estimate of the income was incorrect; or

(b) the assessment or amended assessment had been amended; or

(c) the Department should have been informed in respect of the event in accordance with the requirement in the notice;

as the case requires.

Some parenting payment overpayments are not debts

(2) If:

(a) an amount has been paid to a person by way of parenting payment; and

(b) the person is someone to whom paragraph 500(1)(ca) applies; and

(c) the amount was paid on the basis that the person was qualified for parenting payment when the person was not qualified only because the person failed to ~~meet one or more participation requirements that applied to the person under section 500A~~satisfy the employment pathway plan requirements that applied to the person;

the amount is not a debt due to the Commonwealth.

Amount calculated using non-income/assets tested add-on amount—no add-on amount payable

(7) If:

(a) an amount has been paid to a person by way of social security payment; and

(b) when the amount was calculated:

(i) an amount of remote area allowance was added to the rate of the person's social security payment when no such amount should have been added; or

(ia) the rate of the person's social security benefit payment was increased by an amount of language, literacy and numeracy supplement when that rate should not have been so increased; or

(ii) if the person was receiving a job search allowance—the rate of the person's job search allowance was increased by an amount of job search training supplement when that rate should not have been so increased; or

~~(iii) if the person was receiving a parenting payment or newstart allowance—the rate of the person's parenting payment or newstart allowance was increased by an amount of training supplement when that rate should not have been so increased; or~~

(iv) if the person was receiving disability support pension, parenting payment, youth allowance or jobseeker payment—the rate of the person's disability support pension, parenting payment, youth allowance or jobseeker payment was increased by an approved program of work supplement when that rate should not have been so increased;~~ or~~

~~(v) if the person was receiving a parenting payment, youth allowance or newstart allowance—the rate of the person's parenting payment, youth allowance or newstart allowance was increased by an amount of National Green Jobs Corps supplement when that rate should not have been so increased;~~

each of the following amounts is a debt due to the Commonwealth:

(c) the amount of remote area allowance;

(ca) the amount of language, literacy and numeracy supplement;

~~(e) the amount of training supplement;~~

(f) the amount of approved program of work ~~supplement;~~supplement.

~~(g) the amount of National Green Jobs Corps supplement.~~

OFFICIAL: Sensitive // Legal Privilege

Some parenting payment supplements are not debts

(7A) Despite subsection (7), if:

(a) an amount has been paid to a person by way of parenting payment; and

(b) the person is someone to whom paragraph 500(1)(ca) applies; and

~~(c) when the amount was calculated, the rate of the person's parenting payment was increased by an amount (a ***supplement amount***) of any of the following:~~

~~(i) approved program of work supplement;~~

~~(ii) training supplement;~~

~~(iii) National Green Jobs Corps supplement; and~~

(c) when the amount was calculated, the rate of the person's parenting payment was increased by an amount (a ***supplement amount***) of approved program of work supplement; and

(d) the amount of parenting payment was paid on the basis that the person was qualified for parenting payment when the person was not qualified only because the person failed to ~~meet one or more participation requirements that applied to the person under section 500A~~satisfy the employment pathway plan requirements that applied to the person;

the supplement amount is not a debt due to the Commonwealth.

Amount calculated using incorrect non-income/assets tested add-on amount—add-on amount payable

(8) If:

(a) an amount (the ***received amount***) has been paid to a person by way of social security payment; and

(b) when the received amount was calculated:

(i) an amount of remote area allowance was added to the rate of the person's social security payment that was greater than the amount that should have been added; or

(ii) if the person was receiving a job search allowance—the rate of the person's job search allowance was increased

OFFICIAL: Sensitive // Legal Privilege

by an amount of job search training supplement that was greater than the amount by which it should have been so increased; or

(iii) if the person was receiving a newstart allowance—the rate of the person's newstart allowance was increased by an amount of newstart training allowance that was greater than the amount by which it should have been so increased;

the difference between the received amount and the amount of social security payment that would have been paid to the person if the amount had been calculated by using the correct amount of remote area allowance, job search training supplement or newstart training supplement (as the case may be) is a debt due to the Commonwealth.

(9) In this section, unless the contrary intention appears, a reference to a social security payment includes a reference to a part of a social security payment.

1223A Debt resulting from commutation of asset-test exempt income stream contrary to subsection 9A(2), 9B(2) or 9BA(2)

(1) If:

(a) a person is provided with an asset-test exempt income stream for a period beginning on the first day in respect of which an income stream payment was made to the person and ending on the last day in respect of which an income stream payment was made to the person; and

(b) during the whole or any part of that period an amount has been paid to the person by way of an income support payment; and

(c) the whole or any part of the income stream is commuted contrary to the contract or governing rules under which the income stream was provided on the commencement day of the income stream; and

(d) the amount that has been paid to the person by way of a social security income support payment for that period is

OFFICIAL: Sensitive // Legal Privilege

more than the amount that would have been payable to the person for that period had the income stream not been an asset-test exempt income stream for the purposes of this Act for that period;

an amount worked out under subsection (2) is a debt due to the Commonwealth.

(2) The amount for the purposes of subsection (1) is an amount equal to the difference between the amount that has been paid to the person by way of a social security income support payment during the period worked out under subsection (3) and the amount that would have been paid to the person by way of social security income support payment had the income stream not been an asset-test exempt income stream for the purposes of this Act for that period.

(3) The period for the purposes of subsection (2) is the period that:

(a) began on:

(i) the day 5 years before the income stream was commuted; or

(ii) the commencement day of the income stream; or

(iii) 20 September 2001;

whichever is the latest; and

(b) ended when the income stream was commuted.

(4) For the purpose of working out the asset value of the income stream had the income stream not been an asset-test exempt income stream for the period referred to in subsection (2), it is to be assumed that the income stream was asset tested from the commencement day and the asset value of the income stream is depleted in accordance with the formula specified in subsection 1119(4).

(5) This section does not apply to an income stream in relation to which a determination under subsection 9A(5), 9B(4) or 9BA(11) is in force.

(6) Subject to subsection (7), if:

OFFICIAL: Sensitive // Legal Privilege

(a) an asset-test exempt income stream (the ***old income stream***) is commuted, in whole or in part; and

(b) part, but not the whole, of the payment resulting from the commutation of the old income stream (the ***commutation payment***) is transferred directly to the purchase of another asset-test exempt income stream (the ***new income stream***);

the following paragraphs have effect for the purposes of this section:

(c) the new income stream is taken to have the same commencement day as:

(i) the old income stream; or

(ii) if the old income stream was one of a succession of asset-test exempt income streams—the first income stream in that succession;

(d) if the old income stream was not one of a succession of asset-test exempt income streams, income stream payments made under the old income stream are taken to have been made under the new income stream;

(e) if the old income stream was one of a succession of asset-test exempt income streams, income stream payments made under any of the income streams in that succession are taken to have been, at the time when they were made, payments under the new income stream.

(7) Subsection (6) does not apply if the amount used in the purchase of the new income stream represents the whole of the commutation payment remaining after the use of part of the commutation payment in the payment of:

(a) a hardship amount; or

(b) superannuation contributions surcharge that the person is liable to pay in his or her capacity as purchaser of the old income stream.

(8) Subject to subsection (9), if:

(a) the whole of an asset-test exempt income stream is commuted; and

OFFICIAL: Sensitive // Legal Privilege

(b) no part of the payment resulting from the commutation of the income stream is transferred directly to the purchase of another asset-test exempt income stream; and

(c) the commuted income stream was one of a succession of asset-test exempt income streams;

the following paragraphs have effect for the purposes of this section:

(d) the commuted income stream is taken to have had the same commencement day as the first income stream in that succession;

(e) income stream payments made under any of the income streams in that succession (other than the commuted income stream) are taken to have been, at the time when they were made, payments under the commuted income stream.

(9) Subsection (8) does not apply if the whole of the payment resulting from the commutation of the income stream referred to in paragraph (8)(a) is used in the payment of:

(a) a hardship amount; or

(b) superannuation contributions surcharge that the person is liable to pay in his or her capacity as purchaser of that income stream.

(10) For the purposes of this section:

(a) 2 or more asset-test exempt income streams constitute a succession of asset-test exempt income streams if each income stream (other than the first of those income streams to be provided) has been funded by means of the payment, or part of the payment, resulting from the commutation of another of those income streams; and

(b) an income stream is the first income stream in a succession of income streams if it is the first of those income streams to be provided.

(11) In this section:

hardship amount has the same meaning as in section 9A.

OFFICIAL: Sensitive // Legal Privilege

1223AA Debts arising from prepayments and certain other payments

(1) If:

(a) a person has received a prepayment of a social security payment (other than partner allowance) for a period; and

(b) the person fails to provide a statement under section 67 of the Administration Act in respect of the period;

the amount of the prepayment is a debt due to the Commonwealth.

(1AA) If:

(a) a person has received a prepayment of partner allowance in respect of a period; and

(b) the person or the person's partner fails to provide a statement under section 67 of the Administration Act in respect of the period;

the amount of the prepayment is a debt due to the Commonwealth.

(1A) If the Secretary is satisfied that, in the special circumstances of the case, it is appropriate to do so, the Secretary may determine in writing that subsection (1) or (1AA) does not apply to the prepayment.

(1B) If:

(a) a person has received a prepayment of a social security payment for a period; and

(b) the amount of prepayment is more than the amount (if any) (the ***correct amount***) of social security payment that was payable to the person for the period; and

(c) subsection (1) or (1AA) does not apply to the prepayment;

the difference between the prepayment and the correct amount is a debt due to the Commonwealth.

(1BA) If:

(a) a person has, whether before or after the commencement of this subsection, received a payment (the ***received amount***) of a social security payment (other than parenting allowance) in respect of a period; and

OFFICIAL: Sensitive // Legal Privilege

(b) the received amount was calculated having regard to estimated income or anticipated changes of circumstances set out in a statement made in response to a notice under section 67, 68 or 69 of the Administration Act in respect of the period; and

(c) the person's actual income or the circumstances that actually occur are different from those estimated or anticipated; and

(d) the received amount is more than the amount (if any) of the social security payment (the ***correct amount***) that would have been paid to the person in respect of the period if the income or circumstances set out in the statement had been the person's actual income or the circumstances that actually occurred;

the difference between the received amount and the correct amount is a debt due to the Commonwealth.

Note: For ***recipient statement notice*** see subsection 23(1).

(1C) If:

(a) a payment has been made to a person under subsection 47(2) of the Administration Act; and

(b) immediately after the release of the person from gaol or psychiatric confinement:

(i) the person was not qualified for a crisis payment; or

(ii) although the person was qualified for a crisis payment, the payment was not payable to the person;

the amount of the payment is a debt due to the Commonwealth.

(1D) If:

(a) a payment has been made to a person under subsection 51(2) of the Administration Act; and

(b) immediately after the release of the person from gaol or psychiatric confinement:

(i) the person was not qualified for the social security pension or benefit claimed; or

OFFICIAL: Sensitive // Legal Privilege

(ii) although the person was qualified for the pension or benefit, the pension or benefit was not payable to the person;

the amount of the payment is a debt due to the Commonwealth.

(2) In this section:

prepayment means:

(a) a payment under section 408GG, 652, 722, 755 or 771KL of this Act as in force immediately before 20 March 2000; or

(b) a payment made in accordance with section 57 of the Administration Act.

1223AB Debts arising from AAT stay orders

If:

(a) a person applies for AAT second review of a decision; and

(b) the AAT makes an order under subsection 41(2) of the AAT Act; and

(c) as a result of the order, the amount that has in fact been paid to the person by way of social security payment is greater than the amount that was payable to the person;

the difference between the amount that was in fact paid to the person and the amount that was payable to the person is a debt due to the Commonwealth.

1223ABAA Debts arising in respect of one-off payments to older Australians

(1) This section applies in relation to an individual who has been paid a payment (the ***relevant payment***) of:

(a) 2006 one-off payment to older Australians under Division 2 of Part 2.2B; or

(b) 2007 one-off payment to older Australians under Division 3 of Part 2.2B; or

(c) 2008 one-off payment to older Australians under Division 4 of Part 2.2B.

(2) If the individual qualified for the relevant payment because of subsection 93Y(2), 93ZA(2) or 93ZC(2), a ***relevant determination*** is a determination made under Part 3 of the Administration Act because of which the individual was receiving the payment referred to in paragraph 93Y(2)(b), 93ZA(2)(b) or 93ZC(2)(b).

(3) If the individual qualified for the relevant payment because of subsection 93Y(3), 93ZA(3) or 93ZC(3) and because of holding or having held a seniors health card, a ***relevant determination*** is a determination made under Part 3 of the Administration Act because of which the person was granted the seniors health card.

(4) If the individual qualified for the relevant payment because of subsection 93Y(4), 93ZA(4) or 93ZC(4), a ***relevant determination*** is a determination made under Part 3 of the Administration Act because of which the individual was receiving the allowance referred to in paragraph 93Y(4)(a), 93ZA(4)(a) or 93ZC(4)(a).

(4A) For the purposes of this section, the ***relevant day*** in respect of a relevant payment is:

(a) for a payment of 2006 one-off payment to older Australians—9 May 2006; or

(b) for a payment of 2007 one-off payment to older Australians—8 May 2007; or

(c) for a payment of 2008 one-off payment to older Australians—13 May 2008.

(5) If:

(a) after the relevant payment was made to the individual, a relevant determination in relation to the individual, at least so far as it relates to the relevant day or to a period that includes that day, is or was (however described) changed, revoked, set aside, or superseded by another determination; and

(b) the decision to change, revoke, set aside or supersede the relevant determination is or was made for the reason, or for reasons including the reason, that the individual knowingly made a false or misleading statement, or knowingly provided false information; and

OFFICIAL: Sensitive // Legal Privilege

(c) had the change, revocation, setting aside or superseding occurred on or before the relevant day, the relevant payment would not have been made;

the amount of the relevant payment is a debt due to the Commonwealth by the individual.

(6) If:

(a) an individual qualified for the relevant payment because of subsection 93Y(3), 93ZA(3) or 93ZC(3) and because of having claimed a seniors health card; and

(b) the individual knowingly made a false or misleading statement, or knowingly provided false information, in relation to the claim; and

(c) but for that statement or information, the relevant payment would not have been paid to the individual;

the amount of the relevant payment is a debt due to the Commonwealth by the individual.

(7) Apart from section 1224AA, the other provisions of this Part under which debts arise do not apply in relation to payments to which this section applies.

1223ABA Debts arising in respect of one-off payments to carers

(1) This section applies in relation to an individual (the ***recipient***) who has been paid a payment (the ***relevant payment***) of:

(a) one-off payment to carers (carer payment related); or

(b) one-off payment to carers (carer allowance related); or

(c) 2005 one-off payment to carers (carer payment related); or

(d) 2005 one-off payment to carers (carer service pension related); or

(e) 2005 one-off payment to carers (carer allowance related); or

(f) 2006 one-off payment to carers (carer payment related); or

(g) 2006 one-off payment to carers (wife pension related); or

(h) 2006 one-off payment to carers (partner service pension related); or

(i) 2006 one-off payment to carers (carer service pension related); or
(j) 2006 one-off payment to carers (carer allowance related); or
(k) 2007 one-off payment to carers (carer payment related); or
(l) 2007 one-off payment to carers (wife pension related); or
(m) 2007 one-off payment to carers (partner service pension related); or
(n) 2007 one-off payment to carers (carer service pension related); or
(o) 2007 one-off payment to carers (carer allowance related); or
(p) 2008 one-off payment to carers (carer payment related); or
(q) 2008 one-off payment to carers (wife pension related); or
(r) 2008 one-off payment to carers (partner service pension related); or
(s) 2008 one-off payment to carers (carer service pension related); or
(t) 2008 one-off payment to carers (carer allowance related).

What determinations are relevant?

(2) If the relevant payment is a payment of one-off payment to carers (carer payment related), a ***relevant determination*** is a determination made under Part 3 of the *Social Security (Administration) Act 1999* because of which the instalment referred to in section 247 was paid.

(3) If the relevant payment is a payment of one-off payment to carers (carer allowance related), a ***relevant determination*** is a determination made under Part 3 of the *Social Security (Administration) Act 1999* because of which the, or an, instalment that satisfied paragraphs 992N(1)(a) and (b) was paid.

(3A) If the relevant payment is a payment of 2005 one-off payment to carers (carer payment related), a ***relevant determination*** is a determination made under Part 3 of the *Social Security (Administration) Act 1999* because of which the instalment referred to in section 249 of this Act was paid.

OFFICIAL: Sensitive // Legal Privilege

(3B) If the relevant payment is a payment of 2005 one-off payment to carers (carer service pension related), a ***relevant determination*** is a determination made under the *Veterans' Entitlements Act 1986* because of which the instalment referred to in section 251 of this Act was paid.

(3C) If the relevant payment is a payment of 2005 one-off payment to carers (carer allowance related), a ***relevant determination*** is a determination made under Part 3 of the *Social Security (Administration) Act 1999* because of which the, or an, instalment that satisfied paragraphs 992Q(1)(a) and (b) of this Act was paid.

(3CA) If the relevant payment is a payment of 2006 one-off payment to carers (carer payment related), a ***relevant determination*** is a determination made under Part 3 of the Administration Act because of which the instalment of carer payment referred to in section 253 of this Act was paid.

(3CB) If the relevant payment is a payment of 2006 one-off payment to carers (wife pension related), a ***relevant determination*** is:

(a) a determination made under Part 3 of the Administration Act because of which the instalment of wife pension referred to in section 255 of this Act was paid; or

(b) a determination made under Part 3 of the Administration Act because of which the, or an, instalment of carer allowance referred to in section 255 of this Act was paid.

(3CC) If the relevant payment is a payment of 2006 one-off payment to carers (partner service pension related), a ***relevant determination*** is:

(a) a determination made under the Veterans' Entitlements Act because of which the instalment of partner service pension referred to in section 257 of this Act was paid; or

(b) a determination made under Part 3 of the Administration Act because of which the, or an, instalment of carer allowance referred to in section 257 of this Act was paid.

(3CD) If the relevant payment is a payment of 2006 one-off payment to carers (carer service pension related), a ***relevant determination*** is a

OFFICIAL: Sensitive // Legal Privilege

determination made under the Veterans' Entitlements Act because of which the instalment of carer service pension referred to in section 259 of this Act was paid.

(3CE) If the relevant payment is a payment of 2006 one-off payment to carers (carer allowance related), a ***relevant determination*** is a determination made under Part 3 of the Administration Act because of which the, or an, instalment of carer allowance referred to in section 992T of this Act was paid.

(3CF) If the relevant payment is a payment of 2007 one-off payment to carers (carer payment related), a ***relevant determination*** is a determination made under Part 3 of the Administration Act because of which the instalment of carer payment referred to in section 261 of this Act was paid.

(3CG) If the relevant payment is a payment of 2007 one-off payment to carers (wife pension related), a ***relevant determination*** is:

(a) a determination made under Part 3 of the Administration Act because of which the instalment of wife pension referred to in section 263 of this Act was paid; or

(b) a determination made under Part 3 of the Administration Act because of which the, or an, instalment of carer allowance referred to in section 263 of this Act was paid.

(3CH) If the relevant payment is a payment of 2007 one-off payment to carers (partner service pension related), a ***relevant determination*** is:

(a) a determination made under the Veterans' Entitlements Act because of which the instalment of partner service pension referred to in section 265 of this Act was paid; or

(b) a determination made under Part 3 of the Administration Act because of which the, or an, instalment of carer allowance referred to in section 265 of this Act was paid.

(3CI) If the relevant payment is a payment of 2007 one-off payment to carers (carer service pension related), a ***relevant determination*** is a determination made under the Veterans' Entitlements Act because

OFFICIAL: Sensitive // Legal Privilege

of which the instalment of carer service pension referred to in section 267 of this Act was paid.

(3CJ) If the relevant payment is a payment of 2007 one-off payment to carers (carer allowance related), a ***relevant determination*** is a determination made under Part 3 of the Administration Act because of which the, or an, instalment of carer allowance referred to in section 992WA of this Act was paid.

(3CK) If the relevant payment is a payment of 2008 one-off payment to carers (carer payment related), a ***relevant determination*** is a determination made under Part 3 of the Administration Act because of which the instalment of carer payment referred to in section 269 of this Act was paid.

(3CL) If the relevant payment is a payment of 2008 one-off payment to carers (wife pension related), a ***relevant determination*** is:

(a) a determination made under Part 3 of the Administration Act because of which the instalment of wife pension referred to in section 271 of this Act was paid; or

(b) a determination made under Part 3 of the Administration Act because of which the, or an, instalment of carer allowance referred to in section 271 of this Act was paid.

(3CM) If the relevant payment is a payment of 2008 one-off payment to carers (partner service pension related), a ***relevant determination*** is:

(a) a determination made under the Veterans' Entitlements Act because of which the instalment of partner service pension referred to in section 273 of this Act was paid; or

(b) a determination made under Part 3 of the Administration Act because of which the, or an, instalment of carer allowance referred to in section 273 of this Act was paid.

(3CN) If the relevant payment is a payment of 2008 one-off payment to carers (carer service pension related), a ***relevant determination*** is a determination made under the Veterans' Entitlements Act because of which the instalment of carer service pension referred to in section 275 of this Act was paid.

OFFICIAL: Sensitive // Legal Privilege

(3CO) If the relevant payment is a payment of 2008 one-off payment to carers (carer allowance related), a ***relevant determination*** is a determination made under Part 3 of the Administration Act because of which the, or an, instalment of carer allowance referred to in section 992WD of this Act was paid.

What is the relevant date?

(3D) The ***relevant date*** is:

(a) 11 May 2004, if the relevant payment is a payment of:
  (i) one-off payment to carers (carer payment related); or
  (ii) one-off payment to carers (carer allowance related); or

(b) 10 May 2005, if the relevant payment is a payment of:
  (i) 2005 one-off payment to carers (carer payment related); or
  (ii) 2005 one-off payment to carers (carer service pension related); or
  (iii) 2005 one-off payment to carers (carer allowance related); or

(c) 9 May 2006, if the relevant payment is a payment of:
  (i) 2006 one-off payment to carers (carer payment related); or
  (ii) 2006 one-off payment to carers (wife pension related); or
  (iii) 2006 one-off payment to carers (partner service pension related); or
  (iv) 2006 one-off payment to carers (carer service pension related); or
  (v) 2006 one-off payment to carers (carer allowance related); or

(d) 8 May 2007, if the relevant payment is a payment of:
  (i) 2007 one-off payment to carers (carer payment related); or
  (ii) 2007 one-off payment to carers (wife pension related); or

OFFICIAL: Sensitive // Legal Privilege

(iii) 2007 one-off payment to carers (partner service pension related); or

(iv) 2007 one-off payment to carers (carer service pension related); or

(v) 2007 one-off payment to carers (carer allowance related); or

(e) 13 May 2008, if the relevant payment is a payment of:

(i) 2008 one-off payment to carers (carer payment related); or

(ii) 2008 one-off payment to carers (wife pension related); or

(iii) 2008 one-off payment to carers (partner service pension related); or

(iv) 2008 one-off payment to carers (carer service pension related); or

(v) 2008 one-off payment to carers (carer allowance related).

Situation in which whole amount is a debt

(4) If:

(a) after the relevant payment was made to the recipient, a relevant determination in relation to the recipient, at least so far as it relates to the relevant date or a period that includes the relevant date, is or was (however described) changed, revoked, set aside, or superseded by another determination; and

(b) the decision to change, revoke, set aside or supersede the relevant determination is or was made for the reason, or for reasons including the reason, that the recipient knowingly made a false or misleading statement, or knowingly provided false information; and

(c) had the change, revocation, setting aside or superseding occurred on or before the relevant date, the relevant payment would not have been made;

the amount of the relevant payment is a debt due to the Commonwealth by the recipient.

Situation in which part of amount is a debt

(5) If:

(a) after the relevant payment was made to the recipient, a relevant determination in relation to the recipient, at least so far as it relates to the relevant date or a period that includes the relevant date, is or was (however described) changed, revoked, set aside, or superseded by another determination; and

(b) the decision to change, revoke, set aside or supersede the relevant determination is or was made for the reason, or for reasons including the reason, that the recipient knowingly made a false or misleading statement, or knowingly provided false information; and

(c) had the change, revocation, setting aside or superseding occurred on or before the relevant date, the amount of the relevant payment would have been reduced;

the amount by which the relevant payment would have been reduced is a debt due to the Commonwealth by the recipient.

Other provisions under which debts arise generally do not apply in relation to one-off payment to carers

(6) Apart from section 1224AA, the other provisions of this Part under which debts arise do not apply in relation to payments to which this section applies.

1223ABAAA Debts arising in respect of economic security strategy payments

(1) If:

(a) an individual has been paid an economic security strategy payment; and

(b) after the payment was made to the individual, a determination in relation to the individual, at least so far as it

OFFICIAL: Sensitive // Legal Privilege

relates to 14 October 2008 or to a period that includes that day, is or was (however described) changed, revoked, set aside, or superseded by another determination; and

(c) the determination is one to which subsection (3) applies in relation to the payment; and

(d) the decision to change, revoke, set aside or supersede the determination is or was made for the reason, or for reasons including the reason, that the individual knowingly made a false or misleading statement, or knowingly provided false information; and

(e) had the change, revocation, setting aside or superseding occurred on or before 14 October 2008, the payment would not have been made;

the amount of the payment is a debt due to the Commonwealth by the individual.

(2) If:

(a) an individual has been paid an economic security strategy payment; and

(b) after the payment was made to the individual, a determination in relation to the individual, at least so far as it relates to 14 October 2008 or to a period that includes that day, is or was (however described) changed, revoked, set aside, or superseded by another determination; and

(c) the determination is one to which subsection (3) applies in relation to the payment; and

(d) the decision to change, revoke, set aside or supersede the determination is or was made for the reason, or for reasons including the reason, that the individual knowingly made a false or misleading statement, or knowingly provided false information; and

(e) had the change, revocation, setting aside or superseding occurred on or before 14 October 2008, the payment would have been reduced;

the amount by which the payment would have been reduced is a debt due to the Commonwealth by the individual.

(3) This subsection applies to:
  (a) if the individual qualified for the payment because of subsection 900(2)—a determination made under Part 3 of the Administration Act because of which the individual was receiving a payment of a kind referred to in paragraph 900(2)(a); and
  (b) if the individual qualified for the payment because of subsection 900(3)—a determination made under Part 3 of the Administration Act because of which the individual was receiving a payment of a kind referred to in paragraph 900(3)(b).

(4) If:
  (a) an individual has been paid an economic security strategy payment; and
  (b) the individual qualified for the payment because of subsection 900(4) in relation to having claimed a seniors health card; and
  (c) the individual knowingly made a false or misleading statement, or knowingly provided false information, in relation to the claim; and
  (d) but for that statement or information, the payment would not have been paid to the individual;

the amount of the relevant payment is a debt due to the Commonwealth by the individual.

(5) Apart from section 1224AA, the other provisions of this Part under which debts arise do not apply in relation to payments to which this section applies.

1223ABAAB Debts arising in respect of training and learning bonuses etc.

(1) If:
  (a) an individual has been paid a training and learning bonus or an education entry payment supplement; and

OFFICIAL: Sensitive // Legal Privilege

(b) after the payment was made to the individual, a determination in relation to the individual, at least so far as it relates to 3 February 2009 or to a period that includes that day, is or was (however described) changed, revoked, set aside, or superseded by another determination; and

(c) the determination is one to which subsection (2) applies in relation to the payment; and

(d) the decision to change, revoke, set aside or supersede the determination is or was made for the reason, or for reasons including the reason, that the individual knowingly made a false or misleading statement, or knowingly provided false information; and

(e) had the change, revocation, setting aside or superseding occurred on or before 3 February 2009, the payment would not have been made;

the amount of the payment is a debt due to the Commonwealth by the individual.

(2) This subsection applies to:

(a) if the individual qualified for the payment because of paragraph 910(2)(a), (b), (c) or (d) of this Act—a determination made under Part 3 of the Administration Act because of which the individual was receiving a payment of a kind referred to in that paragraph; and

(b) if the individual qualified for the payment because of paragraph 910(2)(e) of this Act—a determination (however described) made under the ABSTUDY Scheme because of which the individual was receiving a payment of a kind referred to in that paragraph; and

(c) if the individual qualified for the payment because of paragraph 910(2)(f) of this Act—a determination (however described) made under the Veterans' Children Education Scheme because of which the individual was receiving a payment of a kind referred to in that paragraph; and

(d) if the individual qualified for the payment because of paragraph 910(2)(g) of this Act—a determination (however described) made under the Military Rehabilitation and

Compensation Act Education and Training Scheme because of which the individual was receiving a payment of a kind referred to in that paragraph; and

(e) if the individual qualified for the payment because of subsection 910(4) of this Act—a determination made under Part 3 of the Family Assistance Administration Act because of which the individual was entitled to family tax benefit; and

(h) if the individual qualified for the payment because of section 665ZZA of this Act—a determination made under Part 3 of the Administration Act because of which the individual was qualified for an education entry payment.

(3) If:

(a) the Secretary has paid a person's training and learning bonus to another person (the ***recipient***) under subsection 47C(3) or (4) of the Administration Act; and

(b) the reason why, or one of the reasons why, the Secretary decided to pay the bonus to the recipient was that the recipient made a particular statement or provided particular information; and

(c) after the payment is made, the Secretary becomes satisfied that:

(i) the statement or information is false or misleading; and

(ii) the recipient made the statement, or provided the information, knowing that it was false or misleading; and

(iii) the bonus should have been paid to a person other than the recipient;

the amount of the payment is a debt due to the Commonwealth by the recipient.

(4) Apart from section 1224AA, the other provisions of this Part under which debts arise do not apply in relation to payments to which this section applies.

1223ABB Debts in respect of child disability assistance

(1) If:

(a) child disability assistance is paid to a person; and

(b) the assistance is paid because the person was paid an instalment of carer allowance in respect of a period that included a particular 1 July; and

(c) the 1 July component of the instalment, or any part of the 1 July component, becomes a debt due to the Commonwealth;

then:

(d) the amount of child disability assistance determined under subsection (2) or (3) is a debt due to the Commonwealth; and

(e) the debt is taken to have arisen when the amount was paid to the person.

(2) If all of the 1 July component of the instalment becomes a debt due to the Commonwealth, the amount of child disability assistance that is a debt due to the Commonwealth is the amount of assistance that was paid in respect of the eligible care receiver to whose care the instalment relates.

(3) If only part of the 1 July component of the instalment becomes a debt due to the Commonwealth, the amount of child disability assistance that is a debt due to the Commonwealth is the difference between:

(a) the amount paid in respect of the eligible care receiver to whose care the instalment relates; and

(b) the amount applicable under subsection 992MD(2) for the eligible care receiver to whose care the instalment relates, based on the determination under subsection 981(1) that had effect in respect of the 1 July at the time the part of the 1 July component became a debt.

(4) In this section:

1 July component, of an instalment of carer allowance in respect of a period that includes a particular 1 July, means the amount of

OFFICIAL: Sensitive // Legal Privilege

carer allowance in respect of that period that is applicable to the 1 July.

1223ABC Debts in respect of carer supplement for 2009

(1) This section applies if:

(a) carer supplement for 2009 is paid to a person; and

(b) after it is paid, a determination under Part 3 of the Administration Act or under the Veterans' Entitlements Act because of which any of the following instalments was paid is or was (however described) changed, revoked, set aside, or superseded by another determination:

(i) a qualifying instalment (see section 992X);

(iii) an instalment of partner service pension under the Veterans' Entitlements Act affecting the amount of the carer supplement paid; and

(c) the decision to change, revoke, set aside or supersede the earlier determination is or was made for the reason, or for reasons including the reason, that the person knowingly made a false or misleading statement, or knowingly provided false information.

When the whole payment is a debt

(2) The amount of the carer supplement paid to the person is a debt due to the Commonwealth by the person if carer supplement for 2009 would not have been paid to the person had the change, revocation, setting aside or superseding occurred on or before 12 May 2009.

When part of the payment is a debt

(3) If the amount of carer supplement for 2009 paid to the person would have been reduced had the change, revocation, setting aside or superseding occurred on or before 12 May 2009, the amount by which the carer supplement paid to the person would have been reduced is a debt due to the Commonwealth by the person.

OFFICIAL: Sensitive // Legal Privilege

Limit on debts under this section

(4) The total of debts arising under this section in relation to the carer supplement paid to the person cannot exceed the amount of the carer supplement.

Most other provisions under which debts arise do not apply

(5) Apart from section 1224AA, the other provisions of this Part under which debts arise do not apply in relation to payments of carer supplement for 2009.

1223ABD Debts in respect of carer supplement for 2010 and later years

(1) This section applies if:

(a) carer supplement for 2010 or a later year is paid to a person; and

(b) a debt (the ***primary debt***) due to the Commonwealth by the person arises (under this Act or the Veterans' Entitlements Act) in connection with any of the following instalments that is equal to all of the instalment or, if the instalment is of carer allowance, all or part of the instalment:

(i) a qualifying instalment (see section 992X);

(iii) an instalment of partner service pension under the Veterans' Entitlements Act affecting the amount of the carer supplement paid; and

(c) the carer supplement would not have been paid, or less carer supplement would have been paid, had the circumstances that gave rise to the primary debt not occurred.

(2) If the primary debt is equal to all of the instalment, an amount, equal to so much of the carer supplement as would not have been paid if the instalment had not been paid, is a debt due to the Commonwealth by the person.

Note: If the instalment is the only qualifying instalment, the debt will equal the amount of the carer supplement, because none of it would have been paid if the qualifying instalment had not been paid.

OFFICIAL: Sensitive // Legal Privilege

(3) If:

(a) the primary debt arises in connection with an instalment of carer allowance because of a failure to take account, or an error in taking account, of a determination under subsection 981(1); and

(b) the primary debt is equal to part of the instalment;

an amount, equal to so much of the carer supplement as would not have been paid if the failure or error had not occurred, is a debt due to the Commonwealth by the person.

Consolidation of debts under this section

(4) If, apart from this subsection, 2 or more debts would arise under either or both of subsections (2) and (3) in relation to the carer supplement, then, instead of those debts arising, there is a single debt that:

(a) is due to the Commonwealth by the person; and

(b) is equal to the lesser of:

(i) the sum of the debts that would arise apart from this subsection; and

(ii) the amount of the carer supplement.

When debt is taken to arise under this section

(5) A debt is taken to have arisen under this section when the carer supplement was paid to the person.

1223ABE Debts in respect of relocation scholarship payments

Person does not start to undertake a course

(1) If a person:

(a) has received a relocation scholarship payment because the person is proposing to undertake an approved scholarship course; and

(b) does not start to undertake full-time study in an approved scholarship course;

OFFICIAL: Sensitive // Legal Privilege

then:

(c) the amount of the payment is a debt due to the Commonwealth; and

(d) the debt is taken to have arisen when the person received the payment.

However, this subsection does not apply if, in the Secretary's opinion, the person does not start to undertake full-time study in an approved scholarship course because of exceptional circumstances beyond the person's control.

Note: For ***approved scholarship course***, see section 592M.

Person not continuing to undertake a course

(2) If a person:

(a) has received a relocation scholarship payment because the person is proposing to undertake an approved scholarship course (the ***qualifying course***); and

(b) starts to undertake an approved scholarship course; and

(c) is not undertaking full-time study in an approved scholarship course at the end of 35 days after the qualifying course commences;

then:

(d) the amount of the payment is a debt due to the Commonwealth; and

(e) the debt is taken to have arisen when the person received the payment.

Note: For ***approved scholarship course***, see section 592M.

(3) If a person:

(a) has received a relocation scholarship payment because the person is undertaking an approved scholarship course; and

(b) is not undertaking full-time study in an approved scholarship course at the end of 35 days after qualifying for the payment;

then:

(c) the amount of the payment is a debt due to the Commonwealth; and

OFFICIAL: Sensitive // Legal Privilege

(d) the debt is taken to have arisen when the person received the payment.

Note: For ***approved scholarship course***, see section 592M.

(4) Subsections (2) and (3) do not apply if, in the Secretary's opinion, the person is not undertaking full-time study in an approved scholarship course because of exceptional circumstances beyond the person's control.

1223ABF Debts in respect of student start-up loans

(1) If:

(a) a person is paid a student start-up loan for a qualification period; and

(b) the circumstances determined under subsection (2) apply to the person;

then:

(c) the amount of the loan is a debt due to the Commonwealth; and

(d) the debt is taken to have arisen when the person was paid the loan.

(2) The Minister may, by legislative instrument, determine circumstances in which subsection (1) applies to a person who has not met, or who has ceased to meet, the condition in subparagraph 1061ZVBB(1)(a)(iii) or (2)(a)(iii).

(3) Subsection (1) does not apply to a person if, in the Secretary's opinion, the person did not meet, or ceased to meet, the condition in subparagraph 1061ZVBB(1)(a)(iii) or (2)(a)(iii) because of exceptional circumstances beyond the person's control.

1223ABG Debts in respect of one-off energy assistance payments

(1) If:

(a) after a one-off energy assistance payment under Part 2.6 is paid to a person, an underlying determination in relation to the person, at least so far as it relates to 20 June 2017 or to a

OFFICIAL: Sensitive // Legal Privilege

period that includes that day, is or was (however described) changed, revoked, set aside, or superseded by another determination; and

(b) the decision to change, revoke, set aside or supersede the underlying determination is or was made for the reason, or for reasons including the reason, that the person knowingly made a false or misleading statement, or knowingly provided false information; and

(c) had the change, revocation, setting aside or superseding occurred on or before 20 June 2017, the one-off energy assistance payment would not have been paid;

the amount of the one-off energy assistance payment is a debt due to the Commonwealth by the person.

(2) For the purposes of this section, an ***underlying determination*** in relation to a person is a determination made under Part 3 of the Administration Act because of which age pension, disability support pension or pension PP (single) was payable to the person.

(3) Apart from section 1224AA, the other provisions of this Part under which debts arise do not apply in relation to one-off energy assistance payments under Part 2.6.

1223ABH Debts in respect of 2019 one-off energy assistance payments

(1) If:

(a) after a one-off energy assistance payment under Part 2.6A is paid to a person, an underlying determination in relation to the person, at least so far as it relates to 2 April 2019 or to a period that includes that day, is or was (however described) changed, revoked, set aside, or superseded by another determination; and

(b) the decision to change, revoke, set aside or supersede the underlying determination is or was made for the reason, or for reasons including the reason, that the person knowingly made a false or misleading statement, or knowingly provided false information; and

OFFICIAL: Sensitive // Legal Privilege

(c) had the change, revocation, setting aside or superseding occurred on or before 2 April 2019, the one-off energy assistance payment would not have been paid;

the amount of the one-off energy assistance payment is a debt due to the Commonwealth by the person.

(2) For the purposes of this section, an ***underlying determination*** in relation to a person is a determination made under Part 3 of the Administration Act because of which a benefit mentioned in subsection 302(2) of this Act was payable to the person.

(3) Apart from section 1224AA, the other provisions of this Part under which debts arise do not apply in relation to one-off energy assistance payments under Part 2.6A.

1223ABI Debts in respect of first 2020 economic support payments

(1) If:

(a) a first 2020 economic support payment under Division 1 of Part 2.6B is paid to a person; and

(b) after the first 2020 economic support payment is paid to the person, an underlying determination in relation to the person, at least so far as it relates to:

(i) a day included in the period mentioned in subsection 304(1); or

(ii) a period that includes such a day;

is or was (however described) changed, revoked, set aside, or superseded by another determination; and

(c) the decision to change, revoke, set aside or supersede the underlying determination is or was made for the reason, or for reasons including the reason, that the person knowingly made a false or misleading statement, or knowingly provided false information; and

(d) had the change, revocation, setting aside or superseding occurred on or before that day, the first 2020 economic support payment would not have been paid;

OFFICIAL: Sensitive // Legal Privilege

the amount of the first 2020 economic support payment is a debt due to the Commonwealth by the person.

(2) For the purposes of this section, an ***underlying determination*** in relation to a person is a determination made under Part 3 of the Administration Act because of which a benefit mentioned in subsection 308(2) of this Act was payable to the person.

(3) If:

(a) a first 2020 economic support payment under Division 1 of Part 2.6B is paid to a person; and

(b) the person qualified for the payment because of subsection 308(3) applying to the person in relation to having made a claim for a seniors health card; and

(c) the person knowingly made a false or misleading statement, or knowingly provided false information, in relation to the claim; and

(d) the first 2020 economic support payment would not have been paid to the person but for that statement or information;

the amount of the first 2020 economic support payment is a debt due to the Commonwealth by the person.

(4) Apart from section 1224AA, the other provisions of this Part under which debts arise do not apply in relation to first 2020 economic support payments under Division 1 of Part 2.6B.

1223ABJ Debts in respect of second 2020 economic support payments

(1) If:

(a) a second 2020 economic support payment under Division 2 of Part 2.6B is paid to a person; and

(b) after the second 2020 economic support payment is paid to the person, an underlying determination in relation to the person, at least so far as it relates to:

(i) 10 July 2020; or

(ii) a period that includes 10 July 2020;

is or was (however described) changed, revoked, set aside, or superseded by another determination; and

(c) the decision to change, revoke, set aside or supersede the underlying determination is or was made for the reason, or for reasons including the reason, that the person knowingly made a false or misleading statement, or knowingly provided false information; and

(d) had the change, revocation, setting aside or superseding occurred on or before 10 July 2020, the second 2020 economic support payment would not have been paid;

the amount of the second 2020 economic support payment is a debt due to the Commonwealth by the person.

(2) For the purposes of this section, an ***underlying determination*** in relation to a person is a determination made under Part 3 of the Administration Act because of which a benefit mentioned in subsection 308(2) of this Act was payable to the person.

(3) If:

(a) a second 2020 economic support payment under Division 2 of Part 2.6B is paid to a person; and

(b) the person qualified for the payment because of subsection 308(3) applying to the person in relation to having made a claim for a seniors health card; and

(c) the person knowingly made a false or misleading statement, or knowingly provided false information, in relation to the claim; and

(d) the second 2020 economic support payment would not have been paid to the person but for that statement or information;

the amount of the second 2020 economic support payment is a debt due to the Commonwealth by the person.

(4) Apart from section 1224AA, the other provisions of this Part under which debts arise do not apply in relation to second 2020 economic support payments under Division 2 of Part 2.6B.

OFFICIAL: Sensitive // Legal Privilege

1223ABK Debts in respect of additional economic support payment 2020

(1) If:

(a) an additional economic support payment 2020 under Division 1 of Part 2.6C is paid to a person; and

(b) after the payment is paid to the person, an underlying determination in relation to the person, at least so far as it relates to:

(i) 27 November 2020; or

(ii) a period that includes 27 November 2020;

is or was (however described) changed, revoked, set aside or superseded by another determination; and

(c) the decision to change, revoke, set aside or supersede the underlying determination is or was made for the reason, or for reasons including the reason, that the person knowingly made a false or misleading statement, or knowingly provided false information; and

(d) had the change, revocation, setting aside or superseding occurred on or before 27 November 2020, the additional economic support payment 2020 would not have been paid;

the amount of the additional economic support payment 2020 is a debt due to the Commonwealth by the person.

(2) For the purposes of this section, an ***underlying determination*** in relation to a person is a determination made under Part 3 of the Administration Act because of which a payment mentioned in subsection 313(2) of this Act was payable to the person.

(3) If:

(a) an additional economic support payment 2020 under Division 1 of Part 2.6C is paid to a person; and

(b) the person qualified for the payment because of subsection 313(3) applying to the person in relation to having made a claim for a seniors health card; and

OFFICIAL: Sensitive // Legal Privilege

(c) the person knowingly made a false or misleading statement, or knowingly provided false information, in relation to the claim; and

(d) the additional economic support payment 2020 would not have been paid to the person but for that statement or information;

the amount of the additional economic support payment 2020 is a debt due to the Commonwealth by the person.

(4) Apart from section 1224AA, the other provisions of this Part under which debts arise do not apply in relation to an additional economic support payment 2020 under Division 1 of Part 2.6C.

1223ABL Debts in respect of additional economic support payment 2021

(1) If:

(a) an additional economic support payment 2021 under Division 2 of Part 2.6C is paid to a person; and

(b) after the payment is paid to the person, an underlying determination in relation to the person, at least so far as it relates to:

(i) 26 February 2021; or

(ii) a period that includes 26 February 2021;

is or was (however described) changed, revoked, set aside or superseded by another determination; and

(c) the decision to change, revoke, set aside or supersede the underlying determination is or was made for the reason, or for reasons including the reason, that the person knowingly made a false or misleading statement, or knowingly provided false information; and

(d) had the change, revocation, setting aside or superseding occurred on or before 26 February 2021, the additional economic support payment 2021 would not have been paid;

the amount of the additional economic support payment 2021 is a debt due to the Commonwealth by the person.

OFFICIAL: Sensitive // Legal Privilege

(2) For the purposes of this section, an ***underlying determination*** in relation to a person is a determination made under Part 3 of the Administration Act because of which a payment mentioned in subsection 313(2) of this Act was payable to the person.

(3) If:

(a) an additional economic support payment 2021 under Division 2 of Part 2.6C is paid to a person; and

(b) the person qualified for the payment because of subsection 313(3) applying to the person in relation to having made a claim for a seniors health card; and

(c) the person knowingly made a false or misleading statement, or knowingly provided false information, in relation to the claim; and

(d) the additional economic support payment 2021 would not have been paid to the person but for that statement or information;

the amount of the additional economic support payment 2021 is a debt due to the Commonwealth by the person.

(4) Apart from section 1224AA, the other provisions of this Part under which debts arise do not apply in relation to an additional economic support payment 2021 under Division 2 of Part 2.6C.

1224 Debts relating to clean energy advances

(1) This section applies if:

(a) an individual is paid a clean energy advance; and

(b) after the advance is paid, one of the following events happens to a determination that directly or indirectly affects the payability or amount of the advance paid to the individual:

(i) the determination is changed, revoked or set aside;

(ii) the determination is superseded by another determination; and

(c) the event happens wholly or partly because the individual knowingly made a false or misleading statement or knowingly provided false information; and

(d) had the event happened on or before the day the advance was paid:

(i) the advance would not have been paid; or

(ii) the advance would have been reduced.

Note 1: Examples of determinations directly affecting the payability or amount of the clean energy advance are as follows:

(a) a determination relating to the person's qualification for the clean energy qualifying payment to which the advance related;

(b) the determination of the person's qualification for the clean energy advance.

Note 2: An example of a determination indirectly affecting the amount of the advance is a determination relating to a change in circumstances that results in the person qualifying for a further payment of the advance under an instrument made under section 914G.

Creation and amount of debt

(2) The advance is a debt due to the Commonwealth by the individual if subparagraph (1)(d)(i) applies.

(3) The amount by which the advance would have been reduced is a debt due to the Commonwealth by the individual if subparagraph (1)(d)(ii) applies.

Relationship with other sections

(4) Apart from section 1224AA, the other provisions of this Part under which debts arise do not apply in relation to clean energy advances.

1224A Debts relating to essential medical equipment payments

(1) This section applies if:

(a) an individual has been paid an essential medical equipment payment because of a determination made under Part 3 of the Administration Act; and

(b) after the payment was made to the individual, the determination is or was (however described) changed, revoked, set aside, or superseded by another determination; and

OFFICIAL: Sensitive // Legal Privilege

(c) the decision to change, revoke, set aside or supersede the determination is or was made wholly or partly because the individual knowingly made a false or misleading statement, or knowingly provided false information; and
(d) apart from that statement or information, the payment would not have been paid.

(2) An amount equal to the payment is a debt due to the Commonwealth by the individual.

(3) Apart from section 1224AA, the other provisions of this Part under which debts arise do not apply in relation to payments to which this section applies.

1224AA Person other than payee obtaining payment of a cheque

If:
(a) an amount of a social security payment or an amount of fares allowance is paid by cheque; and
(b) a person other than the payee obtains possession of the cheque from the payee; and
(c) the cheque is not endorsed by the payee to the person; and
(d) the person obtains value for the cheque;

the amount of the cheque is a debt due by the person to the Commonwealth.

1224AB Joint and several liability for persons involved in contravention of Act

If:
(a) a person is liable to pay a debt because the person contravened a provision of this Act as in force immediately before 20 March 2000, or a provision of the social security law; and
(b) another person is convicted of an offence under section 11.2, 11.2A, 11.4 or 11.5 of the *Criminal Code* in relation to the contravention;

OFFICIAL: Sensitive // Legal Privilege

the persons referred to in paragraphs (a) and (b) are jointly and severally liable to pay the debt.

1224B Education entry payment debt

(1) If:

(a) an education entry payment is made to a person; and

(b) the person does not pay the enrolment fees for the course in relation to which the education entry payment was made in the calendar year in respect of which the education entry payment was made;

the amount of the education entry payment so made is a debt due to the Commonwealth.

(2) Subsection (1) does not apply to a person who is not required to pay the enrolment fees mentioned in paragraph (1)(b).

1224C Data-matching Program (Assistance and Tax) Acts debts

If:

(a) an amount has been paid to a person by way of a social security payment; and

(b) the amount is a debt due to the Commonwealth under subsection 11(6) of the *Data-matching Program (Assistance and Tax) Act 1990*;

the amount so paid is recoverable by the Commonwealth.

1224D Mobility allowance advance debts

(1) If:

(a) a person (the ***recipient***) has received mobility allowance advance; and

(b) the advance was paid because the recipient or another person:

(i) made a false statement or a false representation; or

(ii) failed or omitted to comply with a provision of the social security law or this Act as in force immediately before 20 March 2000; and

OFFICIAL: Sensitive // Legal Privilege

(c) the Secretary determines that the recipient's qualification for mobility allowance ceased on a particular day during the recipient's advance payment period;

the amount worked out under subsection (2) is a debt due to the Commonwealth.

(2) For the purposes of subsection (1), the amount of the recipient's debt is:

$$\frac{\text{amount of advance}}{13} \times \text{number of paydays}$$

where:

amount of advance means the amount of mobility allowance advance paid to the recipient under section 1045.

number of paydays means the number of whole paydays in the period that starts on the day determined by the Secretary under paragraph (1)(c) and ends at the end of the recipient's advance payment period.

(3) In this section:

advance payment period for mobility allowance advance is the period of 26 weeks starting on the first payday for which it is practicable to pay the advance and adjust the mobility allowance payments of the recipient.

Note: Any reduction in the advance payment period under section 1044A is not taken into account for the purposes of this definition.

1224E Debts arising from advance payments of social security entitlements

(1) If:

(a) a person has received an advance payment of a social security entitlement (the ***first entitlement***) or an instalment of such an advance payment; and

(b) the first entitlement ceases to be payable to the person; and

OFFICIAL: Sensitive // Legal Privilege

(c) when the first entitlement ceases to be payable, the person has not repaid the whole of the advance payment or instalment; and

(d) the person does not receive another social security entitlement immediately after the first entitlement ceases to be payable;

the amount that has not been repaid is a debt due to the Commonwealth.

Note: For ***social security entitlement*** see subsection 23(1).

1224EA Debts arising from special employment advances of special employment advance qualifying entitlements

If:

(a) a person has received a special employment advance of a special employment advance qualifying entitlement (the ***first entitlement***) or an instalment of such an advance; and

(b) the first entitlement ceases to be payable to the person; and

(c) when the first entitlement ceases to be payable, the person has not repaid the whole of the advance or instalment; and

(d) the person does not receive another special employment advance qualifying entitlement or benefit PP (partnered) immediately after the first entitlement ceases to be payable;

the amount that has not been repaid is a debt due to the Commonwealth.

1227 Assurance of support debt

(1) If a person is liable to pay an assurance of support debt, the debt is a debt due to the Commonwealth.

(2) In this Chapter:

assurance of support debt means:

(a) a debt due and payable by a person to the Commonwealth, or a liability of a person to the Commonwealth, because of the operation of:

OFFICIAL: Sensitive // Legal Privilege

(i) subregulation 165(1) of the Migration (1989) Regulations as in force on or before 19 December 1991; or

(ii) regulation 164C of the Migration (1989) Regulations as in force after 19 December 1991 and before 1 February 1993; or

(iii) Part 5 of the Migration (1993) Regulations as in force on or after 1 February 1993; or

(iv) Division 2.7 of the *Migration Regulations 1994* as in force on or after 1 September 1994;

in respect of the payment to another person of a social security payment of a kind mentioned in subregulation 2.38(1) of the *Migration Regulations 1994*; or

(b) a liability of a person to the Commonwealth because of the operation of section 1061ZZGG.

1227B Debts arising under Part 8 of the *Student Assistance Act 1973* as in force before 1 July 1998

If an amount that was a debt due to the Commonwealth under Part 8 of the *Student Assistance Act 1973* (as in force immediately before 1 July 1998) remained still due immediately before that day, that amount is a debt that is due to the Commonwealth under this Act.

1228 Overpayments arising under other Acts and schemes

(1) If:

(a) an amount has been paid to a person by way of a payment or payments to which subsection (2) applies; and

(b) the amount should not have been paid; and

(c) the person to whom the amount was paid is receiving a social security payment; and

OFFICIAL: Sensitive // Legal Privilege

(d) the person is qualified for the social security payment under this Act and the social security payment is payable to the person;

the amount is an overpayment that is recoverable by the Commonwealth by means of deductions.

Note: For ***deductions*** see section 1231.

(2) This subsection applies to:

(a) a payment of pension, veteran payment or allowance under the Veterans' Entitlements Act; or

(aa) a payment of family assistance within the meaning of the *A New Tax System (Family Assistance) Act 1999*; or

(ab) a payment of compensation (within the meaning of the Military Rehabilitation and Compensation Act) under that Act; or

(b) a payment of pension or allowance under the *Seamen's War Pensions and Allowances Act 1940*; or

(c) a payment under:

(i) the AUSTUDY Scheme, being the scheme under Part 2 of the *Student Assistance Act 1973* as previously in force; or

(ii) the ABSTUDY Schooling Scheme; or

(iii) the ABSTUDY Tertiary Scheme (to the extent that it applies to full-time students); or

(iv) the Assistance for Isolated Children Scheme; or

(v) the Veterans' Children Education Scheme; or

(vi) the Post-Graduate Awards Scheme; or

(vii) the Adult Migrant Education Program Living Allowance; or

(viii) the Maintenance Allowance for Refugees; or

(ix) the English as a Second Language Allowance (to the extent that it applies to full-time students); or

(ca) an instalment of parental leave pay; or

(cb) dad and partner pay; or

OFFICIAL: Sensitive // Legal Privilege

(d) if the amount was paid to the person on or after 12 August 1988—a program included in the programs known as Labour Market Programs.

(2A) A debt referred to in paragraph (b) of the definition of ***student assistance overpayment*** in subsection 3(1) of the *Student Assistance Act 1973* is an overpayment that is recoverable by the Commonwealth by means of deductions.

(2B) A debt referred to in section 79 of the *Child Support (Registration and Collection) Act 1988* is an overpayment that is recoverable by the Commonwealth by means of deductions.

(3) If:

(a) an amount was paid under the scheme administered by the Commonwealth known as Financial Case Management to, or for the benefit of, a person; and

(b) the amount should not have been paid; and

(c) the person is receiving a social security payment; and

(d) the person is qualified for the social security payment under this Act and the social security payment is payable to him or her;

the amount is an overpayment that is recoverable from the person by the Commonwealth by means of deductions.

Note: For ***deductions*** see section 1231.

1228A Comparable foreign payment debt recovery

(1) This section applies if:

(a) an amount (the ***social security amount***) was paid to a person by way of a social security payment in respect of a particular period; and

(b) another amount (the ***lump sum***) was paid as a lump sum:

(i) to the person; or

(ii) to the person's partner, if the person is a member of a couple;

by way of a payment of arrears of a comparable foreign payment in respect of that period; and

(c) assuming that the lump sum had been paid by way of periodical payments of the comparable foreign payment in respect of the period, the social security amount would have been reduced.

(2) The amount by which the social security amount would have been reduced is a debt due to the Commonwealth.

(3) Sections 1072A and 1073 do not apply to the person in respect of the lump sum.

1228B Additional 10% penalty for understatement etc. of income

(1) An amount by way of penalty is added to a debt due to the Commonwealth under this Chapter by a person in relation to a social security payment if:

(a) at the time the payment was made, the person:

(i) had attained the minimum age for youth allowance as defined by section 543A; and

(ii) had not reached pension age; and

Note: For ***pension age*** see subsections 23(5A), (5B), (5C) and (5D).

(b) the payment was:

(i) a social security benefit; or

(ii) a disability support pension; or

(v) a pension PP (single); and

(c) the debt arose wholly or partly because the person had:

(i) refused or failed to provide information in relation to the person's income from personal exertion; or

(ii) knowingly or recklessly provided false or misleading information in relation to the person's income from personal exertion;

when required, under a provision of the social security law, to provide information in relation to the person's income from personal exertion.

OFFICIAL: Sensitive // Legal Privilege

Note: For ***income from personal exertion*** see subsection 8(1).

(2) The amount added by way of penalty is an amount equal to 10% of so much of the debt as arose because the person refused or failed to provide the information or provided the false or misleading information.

(2A) To avoid doubt, the amount added by way of penalty is part of the debt.

(3) An amount worked out under subsection (2) must be rounded down to the nearest 5 cents.

(4) This section does not apply if the Secretary is satisfied that the person had a reasonable excuse for refusing or failing to provide the information.

(5) This section does not apply in relation to a debt due to the Commonwealth under section 1229C.

1229 Notices in respect of debt

(1) If a debt by a person to the Commonwealth under the social security law has not been wholly paid, the Secretary must give the person a notice specifying:

(a) the date on which it was issued (the ***date of the notice***); and

(b) the reason the debt was incurred, including a brief explanation of the circumstances that led to the debt being incurred; and

(c) the period to which the debt relates; and

(d) the outstanding amount of the debt at the date of the notice; and

(e) the day on which the outstanding amount is due and payable; and

(ea) the effect of sections 1229A and 1229B; and

(f) that a range of options is available for repayment of the debt; and

(g) the contact details for inquiries concerning the debt.

OFFICIAL: Sensitive // Legal Privilege

(2) The outstanding amount of the debt is due and payable on the 28th day after the date of the notice.

(3) The Secretary may give more than one notice under subsection (1) in relation to a person and a debt of the person.

1229A Interest charge—no repayment arrangement in effect

(1) If:

(a) a notice is given to a person under subsection 1229(1) in relation to a debt; and

(b) an amount (the ***unpaid amount***) of the debt remains unpaid at the end of the day (the ***due day***) on which the debt is due to be paid; and

(c) at the end of the due day, there is no arrangement in effect under section 1234 in relation to the debt;

then the person is liable to pay, by way of penalty, interest charge, worked out under subsection (3), for each day in the period described in subsection (2).

Note: For exemptions, see sections 1229E and 1229F.

(2) The period starts at the beginning of the day after the due day and ends at the end of the earlier of the following days:

(a) the last day at the end of which any of the following remains unpaid:

(i) the unpaid amount;

(ii) interest charge on any of the unpaid amount;

(b) the day before the first day, after the due day, on which the person makes a payment under an arrangement under section 1234 in relation to the debt.

(3) The interest charge for a day in the period described in subsection (2) is worked out by multiplying the interest charge rate for that day by the sum of so much of the following amounts as remains unpaid:

(a) the unpaid amount;

(b) the interest charge from previous days.

OFFICIAL: Sensitive // Legal Privilege

Note 1: For ***interest charge rate*** see section 1229D.

Note 2: The interest charge for a day is due and payable to the Commonwealth at the end of that day and is a debt due to the Commonwealth: see section 1229C.

1229B Interest charge—failure to comply with or termination of repayment arrangement

(1) If:

(a) an arrangement is in effect under section 1234 in relation to a person and a debt; and

(b) the person fails to make a payment under the arrangement;

then the person is liable to pay, by way of penalty, interest charge, worked out under subsection (3), for each day in the period described in subsection (2).

Note: For exemptions, see sections 1229E and 1229F.

(2) The period starts at the beginning of the day after the day (the ***due day***) on which the payment was required to be made under the arrangement and ends at the end of the earliest of the following days:

(a) the last day at the end of which any of the following remains unpaid:

(i) the outstanding amount of the debt;

(ii) interest charge on any of the outstanding amount of the debt;

(b) the day before the first day, after the due day, on which the person has paid all the payments that have so far become due and payable under the arrangement;

(c) the day before the day the arrangement is terminated under section 1234.

(3) The interest charge for a day in the period described in subsection (2) is worked out by multiplying the interest charge rate for that day by the sum of so much of the following amounts as remains unpaid:

(a) the outstanding amount of the debt;

OFFICIAL: Sensitive // Legal Privilege

(b) the interest charge from previous days.

Note 1: For ***interest charge rate*** see section 1229D.

Note 2: The interest charge for a day is due and payable to the Commonwealth at the end of that day and is a debt due to the Commonwealth: see section 1229C.

Repayment arrangement is terminated

(4) If:

(a) an arrangement is in effect under section 1234 in relation to a person and a debt; and

(b) the arrangement is then terminated under section 1234 on a day (the ***termination day***);

then:

(c) the following amounts (if any) are due and payable on the 14th day after the termination day:

(i) the outstanding amount of the debt;

(ii) interest charge on any of the outstanding amount of the debt; and

(d) if, at the end of that 14th day, any of those amounts remains unpaid, the person is liable to pay, by way of penalty, interest charge, worked out under subsection (6), for each day in the period described in subsection (5).

Note: For exemptions, see sections 1229E and 1229F.

(5) The period starts at the beginning of the day after that 14th day and ends at the end of the earlier of the following days:

(a) the last day at the end of which any of the following remains unpaid:

(i) the outstanding amount of the debt;

(ii) interest charge on any of the outstanding amount of the debt;

(b) the day before the first day, after that 14th day, on which the person makes a payment under another arrangement under section 1234 in relation to the debt.

OFFICIAL: Sensitive // Legal Privilege

(6) The interest charge for a day in the period described in subsection (5) is worked out by multiplying the interest charge rate for that day by the sum of so much of the following amounts as remains unpaid:

(a) the outstanding amount of the debt;

(b) the interest charge from previous days.

Note 1: For ***interest charge rate*** see section 1229D.

Note 2: The interest charge for a day is due and payable to the Commonwealth at the end of that day and is a debt due to the Commonwealth: see section 1229C.

1229C Other rules for interest charge

When interest charge is due and payable

(1) The interest charge under section 1229A or 1229B for a day is due and payable to the Commonwealth at the end of that day.

Interest charge is a debt

(2) The interest charge under section 1229A or 1229B for a day is a debt due to the Commonwealth by the person.

Provisions that do not apply to interest charge debt

(3) Subsection 1229(1) does not apply in relation to the debt referred to in subsection (2) of this section.

1229D What is the *interest charge rate*?

(1) For the purposes of sections 1229A and 1229B, the ***interest charge rate*** for a day is the rate worked out by adding 7 percentage points to the base interest rate for that day, and dividing that total by the number of days in the calendar year.

(2) The ***base interest rate*** for a day depends on which quarter of the year the day is in. For each day in a quarter in column 1 of the table, it is the monthly average yield of 90-day Bank Accepted

Bills published by the Reserve Bank of Australia for the month in column 2 of the table.

Base interest rate

Item	Column 1 For days in this quarter:	Column 2 the monthly average yield of 90-day Bank Accepted Bills for this month applies:
1	1 January to 31 March	the preceding November
2	1 April to 30 June	the preceding February
3	1 July to 30 September	the preceding May
4	1 October to 31 December	the preceding August

(3) If the monthly average yield of 90-day Bank Accepted Bills for a particular month in column 2 of the table in subsection (2) is not published by the Reserve Bank of Australia before the beginning of the relevant quarter, assume that it is the same as the last monthly average yield of 90-day Bank Accepted Bills published by the Reserve Bank of Australia before that month.

(4) The base interest rate must be rounded to the second decimal place (rounding .005 upwards).

1229E Exemption from interest charge—general

(1) A person is not liable to pay interest charge under section 1229A or 1229B if on the day before the start of the period in respect of which the person would otherwise have been liable to pay that charge:

(a) the person is receiving a social security payment; or

(b) the person is receiving a payment of pension, veteran payment or allowance under the Veterans' Entitlements Act; or

(c) the person is receiving instalments of family tax benefit; or

(d) the person is receiving instalments under the ABSTUDY scheme (also known as the Aboriginal Study Assistance

OFFICIAL: Sensitive // Legal Privilege

Scheme) that includes an amount identified as living allowance; or

(e) the person is receiving instalments under the Assistance for Isolated Children Scheme; or

(f) the circumstances determined in an instrument under subsection (2) apply in relation to the person.

(2) The Minister may, by legislative instrument, determine circumstances for the purposes of paragraph (1)(f).

1229F Exemption from interest charge—Secretary's determination

(1) The Secretary may determine that interest charge is not payable, or is not payable in respect of a particular period, by a person on the outstanding amount of a debt.

(2) The Secretary may make a determination under this section in circumstances that include (but are not limited to) the Secretary being satisfied that the person has a reasonable excuse for:

(a) failing to enter into an arrangement under section 1234 to pay the outstanding amount of the debt; or

(b) having entered an arrangement, failing to make a payment in accordance with that arrangement.

(3) The determination may relate to a period before, or to a period that includes a period before, the making of the determination.

(4) The determination may be expressed to be subject to the person complying with one or more specified conditions.

(5) If the determination is expressed to be subject to the person complying with one or more specified conditions, the Secretary must give written notice of the determination to the person as soon as practicable after the determination is made.

(6) If:

(a) the determination is expressed to be subject to the person complying with one or more specified conditions; and

OFFICIAL: Sensitive // Legal Privilege

(b) the person contravenes a condition or conditions without reasonable excuse;

the determination ceases to have effect from and including the day on which the contravention or the earliest of the contraventions occurred.

(7) The Secretary may cancel or vary the determination by written notice given to the person.

1229G Guidelines on interest charge provisions

The Minister may, by legislative instrument, determine guidelines relating to the operation of the provisions of this Part dealing with interest charge.

1230 Debt from failure to comply with garnishee notice

(1) If:

(a) a person (in this section called the ***garnishee debtor***) is given a notice under section 1233 in respect of a debt due by another person (in this section called the ***original debtor***) under this Act or Part 3B or 3D of the Administration Act; and

(b) the garnishee debtor fails to comply with the notice to the extent that he or she is capable of complying with it;

then the amount of the debt outstanding (worked out under subsection (2)) is recoverable from the garnishee debtor by the Commonwealth by means of:

(c) legal proceedings; or

(d) garnishee notice.

Note 1: For ***legal proceedings*** see section 1232.

Note 2: For ***garnishee notice*** see section 1233.

(2) The ***amount of the debt outstanding*** is the amount equal to:

(a) as much of the amount required by the notice under section 1233 to be paid by the garnishee debtor as the garnishee debtor was able to pay; or

OFFICIAL: Sensitive // Legal Privilege

(b) as much of the debt due by the original debtor at the time when the notice was given as remains due from time to time;

whichever is the lesser.

(3) If the Commonwealth recovers:

(a) the whole or part of the debt due by the garnishee debtor under subsection (1); or

(b) the whole or part of the debt due by the original debtor;

then:

(c) both debts are reduced by the amount that the Commonwealth has so recovered; and

(d) the amount specified in the notice under section 1233 is to be taken to be reduced by the amount so recovered.

(3A) This section applies to an amount in spite of any law of a State or Territory (however expressed) under which the amount is inalienable.

(4) In this section, ***person*** includes:

(a) the Commonwealth; and

(b) a State; and

(c) a Territory; and

(d) any authority of the Commonwealth or of a State or Territory.

1230A Debt from failure before 1 July 1991 to comply with garnishee notice under the 1947 Act

(1) If:

(a) a person (in this section called the ***garnishee debtor***) was given a notice under section 162 of the 1947 Act in respect of a debt due by another person (in this section called the ***original debtor***) under the 1947 Act; and

OFFICIAL: Sensitive // Legal Privilege

(b) the garnishee debtor failed to comply with the notice before 1 July 1991 to the extent that he or she was capable of complying with it;

then the amount of the debt outstanding (worked out under subsection (2)) is recoverable from the garnishee debtor by the Commonwealth by means of:

(c) legal proceedings; or

(d) garnishee notice.

Note 1: For ***legal proceedings*** see section 1232.

Note 2: For ***garnishee notice*** see section 1233.

(2) The amount of the debt outstanding is the amount equal to:

(a) as much of the amount required by the notice under section 162 of the 1947 Act to be paid by the garnishee debtor as the garnishee debtor was able to pay; or

(b) as much of the debt due by the original debtor at the time when the notice was given as remains due from time to time;

whichever is the lesser.

(3) If the Commonwealth recovers:

(a) the whole or a part of the debt due by the garnishee debtor under subsection (1); or

(b) the whole or a part of the debt due by the original debtor;

then:

(c) both debts are reduced by the amount that the Commonwealth has so recovered; and

(d) the amount specified in the notice under section 162 of the 1947 Act is to be taken to be reduced by the amount so recovered.

(4) A reference in subsection (3) to the Commonwealth recovering the whole or a part of a debt includes a reference to the Commonwealth recovering, under the 1947 Act, the whole or a part of the debt.

OFFICIAL: Sensitive // Legal Privilege

(5) In this section:

person includes:

(a) the Commonwealth; and

(b) a State; and

(c) a Territory; and

(d) any authority of the Commonwealth, a State or Territory.

1230B Overseas application of provisions

Sections 1184F, 1184I, 1223, 1224AA, 1224AB, 1224D, 1227, 1227B, 1228 and 1228B extend to:

(a) acts, omissions, matters and things outside Australia, whether in a foreign country or not; and

(b) all persons irrespective of nationality or citizenship.

1230C Methods of recovery of debt

(1) Subject to subsection (2), a debt due to the Commonwealth under this Act or Part 3B or 3D of the Administration Act is recoverable by the Commonwealth by means of one or more of the following methods:

(a) if the person who owes the debt is receiving a social security payment—deductions from that person's social security payment;

(b) if, in respect of the debt, section 1234A applies to another person who is receiving a social security payment—deductions from that other person's social security payment;

(c) repayment by instalments under an arrangement entered into under section 1234;

(d) legal proceedings;

(e) garnishee notice.

(2) Subject to subsection (3), a debt due to the Commonwealth under this Act or Part 3B or 3D of the Administration Act is recoverable by means of a method mentioned in paragraph (1)(d) or (e) only if the Commonwealth:

OFFICIAL: Sensitive // Legal Privilege

(a) has first sought to recover the debt by means of a method mentioned in paragraph (1)(a), (b) or (c); and

(b) can establish that the person who owes the debt:

(i) has failed to enter into a reasonable arrangement to repay the debt; or

(ii) after having entered into such an arrangement, has failed to make a particular payment in accordance with the arrangement.

(3) If the Secretary determines that the recovery of the debt by means of a method mentioned in paragraph (1)(a), (b) or (c) is not appropriate having regard to the circumstances of the case, paragraph (2)(a) does not apply in respect of the recovery of the debt.

(4) A debt due to the Commonwealth under section 1184G is recoverable by the Commonwealth by means of legal proceedings.

(5) This section does not prevent the recovery of an assurance of support debt by the enforcement at any time of a security given in connection with the relevant assurance of support. It does not matter:

(a) whether or not the enforcement involves legal proceedings; or

(b) whether the enforcement occurs before or after seeking to recover the debt by means of another method described in this section.

OFFICIAL: Sensitive // Legal Privilege

Part 5.3—Methods of recovery

1231AA Application of sections dealing with deductions

Sections 1231 and 1234A provide for debt recovery by deductions in the following situations:

(a) section 1231—debt recovery from person who incurred the debt;

(b) section 1234A—debt recovery by consent from person other than debtor.

1231 Deductions from debtor's pension, benefit or allowance

(1) Subject to subsection (2), each of the following:

(a) a debt under this Act as in force immediately before 20 March 2000;

(aaa) a debt under the social security law;

(b) an overpayment arising under an Act or scheme referred to in subsection 1228(2);

(ba) a debt incurred under another Act (whether before or after the commencement of this paragraph) for failing to repay part or all of an overpayment referred to in paragraph (b);

(bb) a debt described in subsection 1228(2A) or (2B);

(bc) an overpayment described in subsection 1228(3);

(c) a debt under subsection 11(6) of the *Data-matching Program (Assistance and Tax) Act 1990*;

(d) a debt or overpayment under the 1947 Act;

may be recovered by making deductions of amounts determined under subsection (1A):

(e) from any social security payments; or

(f) from any payments of arrears of social security payments; or

(g) partly from any social security payments and partly from any payments of arrears of social security payments.

OFFICIAL: Sensitive // Legal Privilege

(1A) The Secretary is to determine the amount of a deduction that is to be made from a particular payment, and may determine an amount that would reduce the payment to nil if:

(a) the deduction is to be made from a social security payment that is pension bonus or from a payment of arrears of social security payments; or

(b) the deduction is to be made from a social security payment that is not pension bonus and the person to whom the payment would, apart from the deduction, be made has consented to the amount of the deduction being an amount that would reduce the payment to nil.

(1AA) However, the Secretary:

(a) must not make a determination that would reduce a payment to nil if the reduction to nil would result in the person being in severe financial hardship; and

(b) must not make a determination that would reduce (including reduce to nil) an economic security strategy payment, essential medical equipment payment or training and learning bonus, unless the person to whom the payment or bonus:

(i) is to be made; or

(ii) would, apart from the deduction, be made;

has requested that the Secretary determine under this section the amount of a deduction that is to be made from the payment or bonus; and

(c) must not make a determination that would reduce (including reduce to nil) a payment of a student start-up loan.

(1B) If the person concerned elects in writing that this subsection is to apply in relation to him or her, the Secretary may decide under subsection (1A) that the amount by which each payment of the person's social security payment is to be reduced is such amount as results in reducing the payment to nil.

(2) The debt or overpayment must be deducted unless:

(a) the Secretary takes action under Part 5.4 (write off and waiver) in relation to the amount; or

OFFICIAL: Sensitive // Legal Privilege

(b) the amount is recovered by the Commonwealth under:
(i) another provision of this Chapter; or
(ii) Part 4 of the *A New Tax System (Family Assistance) (Administration) Act 1999*.

1232 Legal proceedings

If a debt is recoverable by the Commonwealth by means of legal proceedings under:
(a) Part 5.2 of this Act; or
(b) the 1947 Act; or
(c) the *Social Security (Fares Allowance) Rules 1998*;
the debt is recoverable by the Commonwealth in a court of competent jurisdiction.

1233 Garnishee notice

(1) If a debt is recoverable from a person (in this section called the ***debtor***) by the Commonwealth under section 1230C of this Act, under the 1947 Act or under the *Social Security (Fares Allowance) Rules 1998*, the Secretary may by written notice given to another person:
(a) by whom any money is due or accruing, or may become due, to the debtor; or
(b) who holds or may subsequently hold money for or on account of the debtor; or
(c) who holds or may subsequently hold money on account of some other person for payment to the debtor; or
(d) who has authority from some other person to pay money to the debtor;
require the person to whom the notice is given to pay the Commonwealth:
(e) an amount specified in the notice, not exceeding the amount of the debt or the amount of the money referred to in the preceding paragraph that is applicable; or

(f) such amount as is specified in the notice out of each payment that the person becomes liable from time to time to make to the debtor until that debt is satisfied; or

(g) such percentage as is specified in the notice of each payment that the person becomes liable from time to time to make to the debtor until that debt is satisfied.

(2) The time for making a payment in compliance with a notice under subsection (1) is such time as is specified in the notice, not being a time before the money concerned becomes due or is held or before the end of the period of 14 days after the notice is given.

(3) A person who fails to comply with a notice under subsection (1) commits an offence.

Penalty: Imprisonment for 12 months.

Note 1: Subsection 4B(2) of the *Crimes Act 1914* allows a court that convicts an individual of an offence to impose a fine instead of, or in addition to, a term of imprisonment. The maximum fine that a court can impose on the individual is worked out by multiplying the maximum term of imprisonment (in months) by 5, and then multiplying the resulting number by the amount of a penalty unit. The amount of a penalty unit is stated in section 4AA of that Act.

Note 1A: If a body corporate is convicted of the offence, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a maximum fine of an amount that is 5 times the maximum fine that could be imposed on an individual convicted of the same offence.

Note 2: See also section 1230 (consequence of failure to comply with notice under this section).

(3A) Subsection (3) applies only to the extent to which the person is capable of complying with the notice.

(3B) Strict liability applies to the element of an offence against subsection (3) that a notice is a notice under subsection (1).

(4) If the Secretary gives a notice to a person under subsection (1), the Secretary must give a copy of the notice to the debtor.

(5) A person who makes a payment to the Commonwealth in compliance with a notice under subsection (1) is to be taken to

OFFICIAL: Sensitive // Legal Privilege

have made the payment under the authority of the debtor and of any other person concerned.

(6) If:

(a) a notice is given to a person under subsection (1) in respect of a debt due; and

(b) an amount is paid by another person in reduction or in satisfaction of the debt;

the Secretary must notify the first-mentioned person accordingly, and the amount specified in the notice is to be taken to be reduced by the amount so paid.

(7) If, apart from this subsection, money is not due or repayable on demand to a person unless a condition is fulfilled, the money is to be taken, for the purposes of this section, to be due or repayable on demand, as the case may be, even though the condition has not been fulfilled.

(7F) This section applies to money in spite of any law of a State or Territory (however expressed) under which the amount is inalienable.

(8) In this section, ***person*** includes:

(a) the Commonwealth; and

(b) a State; and

(c) a Territory; and

(d) any authority of the Commonwealth or of a State or Territory.

1234 Arrangement for payment of debt

(1) The Secretary may, on behalf of the Commonwealth, enter into an arrangement with a person under which the person is to pay a debt, owed by the person to the Commonwealth, or the outstanding amount of such a debt, in a way set out in the arrangement.

OFFICIAL: Sensitive // Legal Privilege

(1A) If a person is required to make a payment under an arrangement entered into under subsection (1) before the end of a particular day, the person must make that payment before the end of that day.

(2) An arrangement entered into under subsection (1) has effect, or is taken to have had effect, on and after the day specified in the arrangement as the day on which the arrangement commences (whether that day is the day on which the arrangement is entered into or an earlier or later day).

(3) If an arrangement entered into under subsection (1) does not specify a day as mentioned in subsection (2), it has effect on and after the day on which it is entered into.

(4) The Secretary may terminate or alter an arrangement entered into under subsection (1):

(a) at the debtor's request; or

(b) after giving 28 days' notice to the debtor of the proposed termination or alteration; or

(c) without notice, if the Secretary is satisfied that the person has failed to disclose material information about his or her true capacity to repay the debt.

(5) In subsection (1):

debt means:

(a) a debt recoverable by the Commonwealth under Part 5.2; or

(b) a debt under the 1947 Act.

1234AA Recovery of amounts from financial institutions

(1) If:

(a) a social security payment or social security payments are made to a financial institution for the credit of an account kept with the institution; and

(b) the Secretary is satisfied that the payment or payments were intended to be made for the benefit of someone who was not

OFFICIAL: Sensitive // Legal Privilege

the person or one of the persons in whose name or names the account was kept;

the Secretary may give a written notice to the institution setting out the matters mentioned in paragraphs (a) and (b) and requiring the institution to pay to the Commonwealth, within a period (being a reasonable period) stated in the notice, the lesser of the following amounts:

(c) an amount specified in the notice, being the amount, or the sum of the amounts, of the social security payment or social security payments;

(d) the amount standing to the credit of the account when the notice is received by the institution.

(2) If:

(a) a social security payment or social security payments that are intended for the benefit of a person are made to a financial institution for the credit of an account that was kept with the institution by the person or by the person and one or more other persons; and

(b) the person died before the payment or payments were made;

the Secretary may give a written notice to the institution setting out the matters mentioned in paragraphs (a) and (b) and requiring the institution to pay to the Commonwealth, within a period (being a reasonable period) stated in the notice, the lesser of the following amounts:

(c) an amount specified in the notice, being the amount, or the sum of the amounts, of the social security payment or social security payments;

(d) the amount standing to the credit of the account when the notice is received by the institution.

(2A) As soon as possible after issuing a notice under subsection (2), the Secretary must inform the deceased estate in writing of:

(a) the amount sought to be recovered from the deceased person's account; and

(b) the reasons for the recovery action.

OFFICIAL: Sensitive // Legal Privilege

(3) A financial institution must comply with a notice given to it under subsection (1) or (2).

Penalty: 300 penalty units.

(4) It is a defence to a prosecution of a financial institution for failing to comply with a notice given to it under subsection (1) or (2) if the financial institution proves that it was incapable of complying with the notice.

(5) If a notice is given to a financial institution under subsection (1) (payment made to wrong account) or under subsection (2) (death of person in whose name the account was kept) in respect of a social security payment or social security payments, any amount recovered by the Commonwealth from the institution in respect of the debt reduces any debt owed to the Commonwealth by any other person in respect of the social security payment or social security payments.

1234A Deductions by consent from social security payment of person who is not a debtor

(1) If:

(a) a person (in this section called the ***debtor***) incurs a debt under this Act, Part 3B or 3D of the Administration Act, the *Student Assistance Act 1973* as in force before 1 July 1998, the *Data-matching Program (Assistance and Tax) Act 1990*, the 1947 Act, the *A New Tax System (Family Assistance) (Administration) Act 1999*, the *Farm Household Support Act 2014*, the *Paid Parental Leave Act 2010* or the *Social Security (Fares Allowance) Rules 1998* or incurred a debt under Part 8 of the *Student Assistance Act 1973* as in force before 1 July 1998; and

(b) another person (in this section called the ***consenting person***) is receiving, or is about to receive, a social security payment (other than a student start-up loan) under this Act; and

OFFICIAL: Sensitive // Legal Privilege

(c) for the purpose of the recovery of the debt, the consenting person consents to the deduction of an amount from the consenting person's social security payment;

the Secretary may deduct the amount from the consenting person's social security payment.

(2) The debtor's debt is reduced by an amount equal to the amount deducted from the consenting person's social security payment.

(3) The consenting person may revoke the consent at any time.

1234B No time limit on debt recovery action

For the purposes of this Chapter, legal proceedings, or any action under a provision of this Chapter, for the recovery of a debt or overpayment may be commenced or taken at any time.

OFFICIAL: Sensitive // Legal Privilege

Part 5.4—Non-recovery of debts

1235 Meaning of *debt*

In this Part, ***debt*** means:

(a) a debt recoverable by the Commonwealth under Part 5.2; or

(b) a debt under the 1947 Act; or

(c) a debt due to the Commonwealth under a scheduled international social security agreement; or

(d) a debt under the *Social Security (Fares Allowance) Rules 1998*.

Note: Overpayments under section 1228 are not debts for the purposes of Part 5.2.

1236 Secretary may write off debt

(1) Subject to subsection (1A), the Secretary may, on behalf of the Commonwealth, decide to write off a debt, for a stated period or otherwise.

(1A) The Secretary may decide to write off a debt under subsection (1) if, and only if:

(a) the debt is irrecoverable at law; or

(b) the debtor has no capacity to repay the debt; or

(c) the debtor's whereabouts are unknown after all reasonable efforts have been made to locate the debtor; or

(d) it is not cost effective for the Commonwealth to take action to recover the debt.

(1B) For the purposes of paragraph (1A)(a), a debt is taken to be irrecoverable at law if, and only if:

(b) there is no proof of the debt capable of sustaining legal proceedings for its recovery; or

(c) the debtor is discharged from bankruptcy and the debt was incurred before the debtor became bankrupt and was not incurred by fraud; or

OFFICIAL: Sensitive // Legal Privilege

(d) the debtor has died leaving no estate or insufficient funds in the debtor's estate to repay the debt.

(1C) For the purposes of paragraph (1A)(b), if a debt is recoverable by means of:

(a) deductions from the debtor's social security payment; or

(b) deductions under section 84 of the *A New Tax System (Family Assistance) (Administration) Act 1999*; or

(c) setting off under section 84A of that Act;

the debtor is taken to have a capacity to repay the debt unless recovery by those means would result in the debtor being in severe financial hardship.

(2) A decision made under subsection (1) takes effect:

(a) if no day is specified in the decision—on the day on which the decision is made; or

(b) if a day is specified in the decision—on the day so specified (whether that day is before, after or on the day on which the decision is made).

(3) Nothing in this section prevents anything being done at any time to recover a debt that has been written off under this section.

1236A Application

(1) Sections 1237, 1237A, 1237AA, 1237AAA, 1237AAB, 1237AAC, 1237AAD and 1237AAE apply to:

(a) debts arising on or after 1 January 1996; and

(b) the amounts of debts arising before 1 January 1996 that were outstanding at the start of that day.

(2) Section 1237AB applies to all debts, whenever incurred, owed to the Commonwealth and arising under this Act or under the *Social Security Act 1947*.

OFFICIAL: Sensitive // Legal Privilege

1237 Power to waive Commonwealth's right to recover debt

Secretary's limited power to waive

(1) On behalf of the Commonwealth, the Secretary may waive the Commonwealth's right to recover the whole or a part of a debt from a debtor only in the circumstances described in section 1237A, 1237AA, 1237AAA, 1237AAB, 1237AAC, 1237AAD or 1237AB and, if the debt is an assurance of support debt, subject to section 1237AAE.

When waiver takes effect

(2) A waiver takes effect:
  (a) on the day specified in the waiver (whether that day is before, after or on the day on which the decision to waive is made); or
  (b) if the waiver does not specify when it takes effect—on the day on which the decision to waive is made.

Note: If the Secretary waives the Commonwealth's right to recover all or part of a debt, this is a permanent bar to recovery of the debt or part of the debt—the debt or part of the debt effectively ceases to exist.

1237A Waiver of debt arising from error

Administrative error

(1) Subject to subsection (1A), the Secretary must waive the right to recover the proportion of a debt that is attributable solely to an administrative error made by the Commonwealth if the debtor received in good faith the payment or payments that gave rise to that proportion of the debt.

Note: Subsection (1) does not allow waiver of a part of a debt that was caused partly by administrative error and partly by one or more other factors (such as error by the debtor).

(1A) Subsection (1) only applies if:
  (a) the debt is not raised within a period of 6 weeks from the first payment that caused the debt; or

OFFICIAL: Sensitive // Legal Privilege

(b) if the debt arose because a person has complied with a notification obligation, the debt is not raised within a period of 6 weeks from the end of the notification period;

whichever is the later.

Underestimating value of property

(2) If:

(a) a debt arose because the debtor or the debtor's partner underestimated the value of particular property of the debtor or partner; and

(b) the estimate was made in good faith; and

(c) the value of the property was not able to be easily determined when the estimate was made;

the Secretary must waive the right to recover the proportion of the debt attributable to the underestimate.

Proportion of a debt

(3) For the purposes of this section, a proportion of a debt may be 100% of the debt.

1237AA Waiver of debt relating to an offence

(1) If:

(a) a debtor has been convicted of an offence that gave rise to a proportion of a debt; and

(b) the court indicated in sentencing the debtor that it imposed a longer custodial sentence on the debtor because he or she was unable or unwilling to pay the debt;

the Secretary must waive the right to recover the proportion of the debt that arose in connection with the offence.

(2) For the purposes of this section, a proportion of a debt may be 100% of the debt.

OFFICIAL: Sensitive // Legal Privilege

1237AAA Waiver of small debt

(1) The Secretary must waive the right to recover a debt if:
  (a) the debt is, or is likely to be, less than $200; and
  (b) it is not cost effective for the Commonwealth to take action to recover the debt.

(2) Subsection (1) does not apply if the debt is at least $50 and could be recovered by deductions under section 1231 from a social security payment of the debtor.

Note: Section 1237AAE limits the circumstances in which an assurance of support debt may be waived under this section, and the amount of the debt that may be waived.

1237AAB Waiver in relation to settlements

Settlement of civil action

(1) If the Commonwealth has agreed to settle a civil action against a debtor for recovery of a debt for less than the full amount of the debt, the Secretary must waive the right to recover the difference between the debt and the amount that is the subject of the settlement.

Settlement of proceedings before the AAT

(2) If the Secretary has agreed to settle proceedings before the AAT relating to recovery of a debt on the basis that the debtor will pay less than the full amount of the debt, the Secretary must waive the right to recover the difference between the debt and the amount that is the subject of the settlement.

Waiver where at least 80% of debt recovered and debtor cannot pay more

(3) If:
  (a) the Commonwealth has recovered at least 80% of the original value of a debt from a debtor; and

OFFICIAL: Sensitive // Legal Privilege

(b) the Commonwealth and the debtor agree that the recovery is in full satisfaction for the whole of the debt; and

(c) the debtor cannot repay a greater proportion of the debt;

the Secretary must waive the remaining 20% or less of the value of the original debt.

Agreement for part-payment in satisfaction of outstanding debt

(4) If the Secretary and a debtor agree that the debtor's debt will be fully satisfied if the debtor pays the Commonwealth an agreed amount less than the amount of the debt outstanding at the time of the agreement (the ***unpaid amount***), the Secretary must waive the right to recover the difference between the unpaid amount and the agreed amount.

Limits on agreement to accept part-payment in satisfaction of outstanding debt

(5) The Secretary must not make an agreement described in subsection (4) unless the Secretary is satisfied that the agreed amount is at least the present value of the unpaid amount if it is repaid in instalments of amounts, and at times, determined by the Secretary.

Formula for working out present value of unpaid amount

(6) For the purposes of subsection (5), the ***present value of the unpaid amount*** is the amount worked out in accordance with the following formula:

$$\frac{\text{annual repayment}}{\text{interest}} \times \left[1 - \frac{1}{\left(1 + \text{interest}\right)^{\text{repayment period}}} \right]$$

where:

annual repayment is the amount of the debt that the Secretary believes would be recovered under Part 5.3 in a year if subsection (4) did not apply in relation to the debt.

interest is the annual rate of interest specified by the Minister by legislative instrument.

repayment period is the number of years needed to repay the unpaid amount if repayments equal to the annual repayment were made each year.

Example:

Facts: Bill owed a debt of $35,000 to the Commonwealth. After repaying $5,000 (leaving an unpaid amount of $30,000), he offers to make an immediate payment of a further $20,000 in full satisfaction of the debt. The Secretary is satisfied that Bill cannot repay a larger amount of the debt than this. The Secretary believes that $1,500 of the debt would be recovered under Part 5.3 in a year, at which rate it would take 20 years to repay the debt. The Minister has specified an interest rate of 5% a year for the purposes of subsection (6).

Application: The Secretary can accept Bill's offer and make an agreement with him as described in subsection (4), because the $20,000 is more than the present value of $30,000 repaid over 20 years at a 5% interest rate (which is

$$\$18,693.33 = (\$1{,}500 \div 0.05) \times \left(1 - \left(1 \div (1 + 0.05)^{20}\right)\right)$$

If the Secretary makes the agreement, the Secretary must waive $10,000 of the debt (the difference between the unpaid amount of $30,000 and the agreed amount of $20,000).

Note: Section 1237AAE limits the circumstances in which an assurance of support debt may be waived under this section, and the amount of the debt that may be waived.

1237AAC Waiver where debtor or debtor's partner would have been entitled to an allowance

Waiver if there was an unclaimed entitlement to family payment or family allowance

(1) If:

(a) a debt arises from overpayments made to the debtor; and

(b) the debtor or the debtor's partner does not claim family payment or family allowance for the period when the overpayments were made; and

OFFICIAL: Sensitive // Legal Privilege

(c) an amount of family payment or family allowance would have been payable for the period when the overpayments were made if the debtor or the debtor's partner had lodged a claim;

the Secretary must waive the right to recover the debt to the extent set out in subsection (2).

(1A) If:

(a) a debt arises from overpayments to a youth allowance recipient (the ***debtor***); and

(b) the debtor would have been an FA child of another person for the period when the overpayments were made if the debtor had not been a youth allowance recipient; and

(c) an amount of family allowance would have been payable to the other person in respect of the debtor for the period when the overpayments were made if:

(i) the debtor had been an FA child of the other person for that period; and

(ii) the other person had lodged a claim;

the Secretary must waive the debt to the extent set out in subsection (2A).

Amount of debt Secretary must waive

(2) The Secretary must waive under subsection (1) the right to recover the amount of debt equal to the amount of family payment or family allowance that would have been payable to the debtor or the debtor's partner in the 3-year period ending on the day the overpayment is stopped if:

(a) the overpayments had not been made to the debtor; and

(b) the debtor or the debtor's partner had lodged a claim for the payment.

(2A) The Secretary must waive under subsection (1A) the right to recover the amount of debt equal to the amount of family allowance that would have been payable to the other person in the 3-year period ending on the day on which the overpayment is stopped if:

OFFICIAL: Sensitive // Legal Privilege

(a) the debtor had been an FA child of the person; and
(b) the other person had lodged a claim for family allowance.

Reference to amount of family allowance is a reference to minimum rate plus guardian allowance and large family supplement

(3) For the purposes of subsections (2) and (2A):
(a) an amount of family allowance is the minimum standard family allowance rate plus any guardian allowance that is payable plus any large family supplement that is payable; and
(b) an amount of family allowance does not include multiple birth allowance.

Waiver if there was an unclaimed entitlement to parenting allowance or parenting payment

(4) If:
(a) a debt arises from overpayments to the debtor; and
(b) the Secretary is satisfied that the overpayments did not result wholly or partly from the debtor or another person knowingly:
(i) making a false statement or false representation; or
(ii) failing or omitting to comply with a provision of this Act or the 1947 Act; and
(c) the debtor or the debtor's partner did not claim parenting allowance or parenting payment for the period (the ***overpayment period***) when the overpayments were made; and
(d) an amount of parenting allowance or parenting payment would have been payable for that period if the debtor or the debtor's partner had lodged a claim;

the Secretary must waive the right to recover the debt to the extent set out in subsection (5).

OFFICIAL: Sensitive // Legal Privilege

Waiver of amount equal to notional entitlement to parenting allowance or parenting payment (as the case requires)

(5) The Secretary must waive under subsection (4) the right to recover the amount of debt equal to the amount of parenting allowance or parenting payment (as the case requires) that would have been payable to the debtor or the debtor's partner during so much of the overpayment period as was not earlier than 3 years before the day on which the overpayment is stopped if:

(a) the overpayments had not been made to the debtor; and

(b) the debtor or the debtor's partner had lodged a claim for the allowance or payment (as the case requires).

Calculating the amount equal to notional entitlement to parenting allowance

(6) For the purposes of working out the amount of parenting allowance or parenting payment that would have been payable to the debtor or the debtor's partner, the rate of parenting allowance or parenting payment for the debtor or the debtor's partner:

(a) if the Secretary is satisfied that the rate would have been greater than the maximum basic component if parenting allowance or parenting payment had been claimed—is taken to have been that greater rate; or

(b) in any other case—is taken not to have exceeded the maximum basic component of parenting allowance specified at the relevant time in the Parenting Allowance Rate Calculator or the PP (Partnered) Rate Calculator (as the case requires).

1237AAD Waiver in special circumstances

The Secretary may waive the right to recover all or part of a debt if the Secretary is satisfied that:

(a) the debt did not result wholly or partly from the debtor or another person knowingly:

(i) making a false statement or a false representation; or

OFFICIAL: Sensitive // Legal Privilege

(ii) failing or omitting to comply with a provision of this Act, the Administration Act or the 1947 Act; and

(b) there are special circumstances (other than financial hardship alone) that make it desirable to waive; and

(c) it is more appropriate to waive than to write off the debt or part of the debt.

Note 1: Section 1236 allows the Secretary to write off a debt on behalf of the Commonwealth.

Note 2: This section has effect subject to section 1237AAE in relation to an assurance of support debt.

1237AAE Extra rules for waiver of assurance of support debts

(1) This section affects waiver under some other provisions of this Part of an assurance of support debt in connection with an assurance of support given by one or more persons (the ***assurers***), by setting out extra rules limiting the circumstances in which waiver may occur and the extent of waiver.

(2) The Secretary may waive under section 1237AAD the right to recover all or part of the debt only if the Secretary is satisfied that the waiver is justified on grounds other than one or more of the assurers being unaware of the effect of section 1061ZZGG, or of regulations made under the *Migration Act 1958*, in connection with the assurance.

(3) If the Secretary has been given a security that meets the requirements of subsection 1061ZZGD(3) in connection with the assurance, the Secretary may waive under section 1237AAA, 1237AAB or 1237AAD the right to recover an amount of the debt that is not greater than the difference (if any) between:

(a) the debt; and

(b) the amount that can be:

(i) obtained by enforcing the security; and

(ii) applied to reduce the debt.

Note: An amount that can be obtained by enforcing the security cannot be applied to reduce the debt if it is applied to reduce another assurance of support debt connected with the assurance of support.

OFFICIAL: Sensitive // Legal Privilege

(4) If 2 or more assurers are jointly and severally liable for the debt, the Secretary may waive under section 1237AAD the right to recover an amount of the debt that is not greater than the amount (which may be a nil amount) of the debt that the Secretary is satisfied cannot be recovered from any of the assurers.

(5) If subsections (3) and (4) apply, the Secretary may waive under section 1237AAD the right to recover an amount of the debt that is not greater than the amount (if any) of the debt that may be waived taking into account both of those subsections.

1237AB Secretary may waive debts of a particular class

(1) The Secretary may, on behalf of the Commonwealth, decide to waive the Commonwealth's right to recover debts arising under or as a result of this Act or Part 3B or 3D of the Administration Act that are included in a class of debts specified, by legislative instrument, by the Minister.

(2) A decision under subsection (1) takes effect:
  (a) if no day is specified in the decision—on the day on which the decision is made; or
  (b) if a day is specified in the decision—on the day so specified (whether that day is before, after or on the day on which the decision is made).

(3) A legislative instrument under subsection (1) does not commence before the end of the period for disallowing the instrument.

OFFICIAL: Sensitive // Legal Privilege

Part 5.5—Departure prohibition orders

Division 1—Secretary may make departure prohibition orders

1240 Secretary may make departure prohibition orders

(1) The Secretary may make an order (a ***departure prohibition order***) prohibiting a person from departing from Australia for a foreign country if:

(a) the person has one or more debts to the Commonwealth under the social security law; and

(b) there are not arrangements satisfactory to the Secretary for the one or more debts to be wholly paid; and

(c) the Secretary believes on reasonable grounds that it is desirable to make the order for the purpose of ensuring that the person does not depart from Australia for a foreign country without:

(i) having wholly paid the one or more debts; or

(ii) there being arrangements satisfactory to the Secretary for the one or more debts to be wholly paid.

Matters to be taken into account in making order

(2) Before making an order under this section, the Secretary must have regard to the following matters:

(a) the capacity of the person to pay the one or more debts;

(b) whether any action has been taken to recover any such debt, and the outcome of the recovery action;

(c) the length of time for which any such debt has remained unpaid after the day on which it became due and payable;

(d) such other matters as the Secretary considers appropriate.

OFFICIAL: Sensitive // Legal Privilege

Form of order

(3) A departure prohibition order must be in a form approved by the Secretary.

OFFICIAL: Sensitive // Legal Privilege

Division 2—Departure from Australia of debtors prohibited

1241 Departure from Australia of debtors prohibited

A person must not depart from Australia for a foreign country if:

(a) a departure prohibition order in respect of the person is in force, and the person knows that the order is in force, or is reckless as to whether the order is in force; and

(b) the person's departure is not authorised by a departure authorisation certificate, and the person knows that the departure is not authorised by such a certificate, or is reckless as to whether the departure is authorised by such a certificate.

Penalty: Imprisonment for 12 months.

OFFICIAL: Sensitive // Legal Privilege

Division 3—Other rules for departure prohibition orders

1242 Notification requirements for departure prohibition orders

(1) This section applies if the Secretary makes a departure prohibition order in respect of a person.

Notifying person of order

(2) The Secretary must notify the person that the order has been made.

(3) The notice must be in a form approved by the Secretary and must be given as soon as practicable after making the order.

Notifying other persons of order

(4) Unless the Secretary is satisfied that the person is an Australian citizen, the Secretary must give the Secretary of the Department administered by the Minister administering the *Migration Act 1958* a copy of the order, and information likely to facilitate identification of the person, for the purposes of administering that Act.

(5) The Secretary must also give a copy of the order, and information likely to facilitate identification of the person for the purposes of this Part, to such other persons as the Secretary considers appropriate in the circumstances, being persons declared in an instrument under subsection (6).

(6) The Secretary may, by legislative instrument, declare persons for the purposes of subsection (5).

(7) The Secretary must give a copy of the order or information under subsection (4) or (5) as soon as practicable after making the order.

1243 Operation of departure prohibition order

(1) A departure prohibition order comes into force when it is made, and continues in force until it is revoked, or until it is set aside by a court.

OFFICIAL: Sensitive // Legal Privilege

Note: Division 5 deals with appeals to the Federal Court of Australia or the Federal Circuit Court of Australia against the making of departure prohibition orders.

(2) However, a departure prohibition order in respect of a person is not in force during any period when a deportation order in respect of the person is in force under the *Migration Act 1958*.

1244 Revocation and variation of departure prohibition orders

(1) The Secretary must revoke a departure prohibition order in respect of a person if:

(a) the person no longer has any debts to the Commonwealth under the social security law; or

(b) there are arrangements satisfactory to the Secretary for the one or more debts the person has to the Commonwealth under the social security law to be wholly paid; or

(c) the Secretary is satisfied that the one or more debts the person has to the Commonwealth under the social security law are completely irrecoverable.

(2) The Secretary may revoke or vary a departure prohibition order in respect of a person if the Secretary considers it desirable to do so.

(3) A revocation or variation, under this section, of a departure prohibition order may be:

(a) on application by the person in a form approved by the Secretary; or

(b) on the Secretary's own initiative.

1245 Notification requirements for revocations and variations

(1) If the Secretary revokes or varies a departure prohibition order in respect of a person, the Secretary must give notice of the revocation or variation to:

(a) the person; and

(b) each person to whom a copy of the departure prohibition order was given under subsection 1242(4) or (5).

OFFICIAL: Sensitive // Legal Privilege

(2) If:

(a) a person makes an application under paragraph 1244(3)(a) for the revocation or variation of a departure prohibition order; and

(b) the Secretary refuses to revoke or vary the order;

the Secretary must give notice of the refusal to the person.

(3) A notice under this section must be in a form approved by the Secretary and must be given as soon as practicable after the decision concerned is made.

OFFICIAL: Sensitive // Legal Privilege

Division 4—Departure authorisation certificates

1246 Application for departure authorisation certificate

(1) A person in respect of whom a departure prohibition order is in force may apply for a certificate (a ***departure authorisation certificate***) authorising the person to depart from Australia for a foreign country.

(2) The application must be in a form approved by the Secretary.

1247 When Secretary must issue departure authorisation certificate

(1) This section applies if a person makes an application under section 1246 for a departure authorisation certificate.

(2) The Secretary must issue the departure authorisation certificate if the Secretary is satisfied:

(a) that, if the certificate is issued:

(i) it is likely that the person will depart from Australia and return to Australia within a period that the Secretary considers appropriate; and

(ii) it is likely that, within a period that the Secretary considers appropriate, the Secretary will be required by subsection 1244(1) to revoke the departure prohibition order in respect of the person; and

(b) that it is not necessary for the person to give security under section 1248 for the person's return to Australia.

(3) If the Secretary is not satisfied as mentioned in subsection (2), the Secretary must issue the departure authorisation certificate if:

(a) the person has given security under section 1248 for the person's return to Australia; or

(b) if the person is unable to give such security, the Secretary is satisfied:

(i) that the certificate should be issued on humanitarian grounds; or

OFFICIAL: Sensitive // Legal Privilege

(ii) that refusing to issue the certificate will be detrimental to Australia's interests.

1248 Security for person's return to Australia

(1) A person may give such security as the Secretary considers appropriate by bond, deposit or any other means, for the person's return to Australia by such day as is agreed by the person and the Secretary and is specified in the departure authorisation certificate.

(2) The Secretary may substitute a later day for the day mentioned in subsection (1):

(a) on application by the person in a form approved by the Secretary; or

(b) on the Secretary's own initiative.

(3) The Secretary may refuse an application by a person to substitute a later day if:

(a) the person refuses to increase the value of the security already given to a level that the Secretary considers appropriate; or

(b) the person refuses to give such further security as the Secretary considers appropriate; or

(c) the Secretary considers that it would not be appropriate to substitute the later day.

1249 What departure authorisation certificate must authorise

(1) A departure authorisation certificate in respect of a person must authorise the departure of the person on or before the seventh day after a day specified in the certificate.

(2) The day specified in the certificate must be a day that is after the day on which the certificate is issued, but not more than 7 days after that day.

OFFICIAL: Sensitive // Legal Privilege

1250 Notification requirements for departure authorisation certificates

(1) If the Secretary issues a departure authorisation certificate in respect of a person, the Secretary must, as soon as practicable, give a copy of the certificate to:

(a) the person; and

(b) each person to whom a copy of the departure prohibition order in respect of the person was given under subsection 1242(4) or (5).

(2) If:

(a) a person makes an application under section 1246 for a departure authorisation certificate; and

(b) the Secretary refuses to issue the certificate;

the Secretary must give notice of the refusal to the person.

(3) The notice must be in a form approved by the Secretary and must be given as soon as practicable after the refusal.

1251 Notification requirements for substituted days

(1) If, under section 1248, the Secretary substitutes a later day for a person's return to Australia, the Secretary must give notice of that decision to:

(a) the person; and

(b) each person to whom a copy of the departure prohibition order in respect of the person was given under subsection 1242(4) or (5).

(2) If:

(a) a person makes an application under paragraph 1248(2)(a) to substitute a later day for the person's return to Australia; and

(b) the Secretary refuses the application;

the Secretary must give notice of the refusal to the person.

OFFICIAL: Sensitive // Legal Privilege

(3) A notice under this section must be in a form approved by the Secretary and must be given as soon as practicable after the decision concerned is made.

OFFICIAL: Sensitive // Legal Privilege

Division 5—Appeals and review in relation to departure prohibition orders and departure authorisation certificates

1252 Appeals to courts against making of departure prohibition orders

(1) A person aggrieved by the making of a departure prohibition order may appeal to the Federal Court of Australia or the Federal Circuit Court of Australia against the making of the order.

(2) This section has effect subject to Chapter III of the Constitution.

1253 Jurisdiction of courts

The jurisdiction of a court under section 1252 must be exercised by a single Judge.

1254 Orders of court on appeal

A court hearing an appeal under section 1252 against the making of a departure prohibition order may, in its discretion:

(a) make an order setting aside the order; or

(b) dismiss the appeal.

1255 Review of decisions

(1) Applications may be made to the Administrative Appeals Tribunal for review of a decision of the Secretary under section 1244, 1247 or 1248.

(2) Despite any provision of Parts 4 and 4A of the Administration Act, those Parts do not apply in relation to any decision of the Secretary under this Part.

OFFICIAL: Sensitive // Legal Privilege

Division 6—Enforcement

1256 Powers of officers of Customs and members of the Australian Federal Police

(1) This section applies if an officer (within the meaning of the *Customs Act 1901*), or a member of the Australian Federal Police, believes on reasonable grounds that:

(a) a person is about to depart from Australia for a foreign country; and

(b) a departure prohibition order in respect of the person is in force; and

(c) the person's departure is not authorised by a departure authorisation certificate.

(2) The officer or member may:

(a) take such steps as are reasonably necessary to prevent the person's departure, including, but not limited to, steps to prevent the person going on board, or to remove the person from, a vessel or aircraft in which the officer or member believes on reasonable grounds the departure will take place; and

(b) require the person to answer questions or produce documents to the officer or member for the purposes of working out whether:

(i) a departure prohibition order in respect of the person is in force; and

(ii) if such an order in respect of the person is in force—whether the person's departure is authorised by a departure authorisation certificate.

(3) A person commits an offence if:

(a) the person is subject to a requirement under paragraph (2)(b); and

(b) the person refuses or fails to comply with the requirement.

Penalty: 30 penalty units.

OFFICIAL: Sensitive // Legal Privilege

(4) Subsection (3) does not apply if the person answers the question or produces the document to the extent that the person is capable of answering the question or producing the document.

Note: A defendant bears an evidential burden in relation to the matters mentioned in subsection (4): see subsection 13.3(3) of the *Criminal Code*.

1257 Privilege against self-incrimination

(1) An individual is not excused from answering a question, or producing a document, under paragraph 1256(2)(b) on the ground that the answer to the question or the production of the document might tend to incriminate the individual or expose the individual to a penalty.

(2) However:

(a) the answer given or document produced; and

(b) answering the question or producing the document; and

(c) any information, document or thing obtained as a direct or indirect consequence of the answering of the question or producing the document;

are not admissible in evidence against the individual in any criminal proceedings, other than proceedings under section 137.1 or 137.2 of the *Criminal Code* in relation to answering the question or producing the document.

1258 Production of authority to depart

(1) If:

(a) a departure prohibition order in respect of a person is in force; and

(b) the person is about to depart from Australia for a foreign country; and

(c) the person's departure is authorised by a departure authorisation certificate;

an officer (within the meaning of the *Customs Act 1901*), or a member of the Australian Federal Police, may request the person to

OFFICIAL: Sensitive // Legal Privilege

give a copy of the certificate to the officer or member for inspection.

(2) A person commits an offence of strict liability if:

(a) an officer (within the meaning of the *Customs Act 1901*), or a member of the Australian Federal Police, has made a request of the person under subsection (1); and

(b) the person refuses or fails to comply with the request.

Penalty for contravention of this subsection: 5 penalty units.

OFFICIAL: Sensitive // Legal Privilege

Division 7—Interpretation

1259 Interpretation—departure from Australia for foreign country

A reference in this Part to the departure of a person from Australia for a foreign country is a reference to the departure of the person from Australia for a foreign country, whether or not the person intends to return to Australia.

1260 Meaning of *Australia*

(1) For the purposes of this Part, ***Australia***, when used in a geographical sense, includes the external Territories.

(2) For the purposes of this section:

(a) the definition of ***external Territory*** in subsection 23(1) does not apply; and

(b) ***external Territory*** has the meaning given by section 2B of the *Acts Interpretation Act 1901*.

Chapter 6—Modification of social security law

1261 Simplified outline of this Chapter

The Minister may determine temporary modifications of the social security law in response to circumstances relating to the coronavirus known as COVID-19.

1262 Minister may determine modifications of social security law

(1) For any provision of the social security law covered by subsection (2), the Minister may, by legislative instrument, determine:

(a) that the provision is varied as specified in the determination; or

(b) that the provision does not apply; or

(c) that the provision does not apply and that another provision specified in the determination applies instead.

Note: Section 1263 deals with the period the determination is in force.

Provisions able to be modified

(2) For the purposes of subsection (1), the provisions are the following:

(a) subsection 23(4A) or (4AA);

(b) paragraph 500(1)(d) and subsections 500(3) and (4);

(c) section 500WA;

(d) section 500WB;

(e) section 500X;

(f) section 500Y;

(g) section 500Z;

(h) subsection 540BA(4);

(i) section 549CA;
(j) section 549CB;
(k) section 549D;
(l) section 549E;
(m) section 553C;
(n) section 575D;
(o) section 575E;
(p) section 575EA;
(q) Part 2.12, in relation to working out whether a person is a member of a couple;
(r) subsection 593(8);
(s) section 620;
(t) section 621;
(u) section 623A;
(v) section 623B;
(w) section 633;
(x) subsection 654(3);
(y) section 739A;
(z) section 745M;
(za) section 1046;
(zb) Module H of the Youth Allowance Rate Calculator in section 1067G, in relation to working out the rate of youth allowance where neither section 540AA (about new apprentices) nor paragraph 541(1)(a) (about full-time study) applies;
(zc) Part 3.6, in relation to working out whether a person is a member of a couple for the purposes of working out the rate of jobseeker payment;
(zd) Module G of Benefit Rate Calculator B in section 1068, in relation to working out the rate of jobseeker payment;
(ze) section 1216;
(zf) Division 3 of Part 4.2;
(zg) clause 128 of Schedule 1A.

Determination to be in response to COVID-19

(3) The Minister must be satisfied that a determination under subsection (1) is in response to circumstances relating to the coronavirus known as COVID-19.

Application of determination

(4) A determination under subsection (1) must be expressed to:
  (a) apply to all persons; or
  (b) apply to a specified class or specified classes of persons.

Determination may provide for things to have been done before commencement

(5) A determination under subsection (1) may provide that a person is taken to have done a specified thing on a day before the determination commences.

Determination has effect accordingly

(6) A determination under subsection (1) has effect accordingly.

Definitions

(7) In this section:

Minister means the Minister administering the *Social Security (International Agreements) Act 1999*.

1263 Period that determination is in force and variation and revocation

(1) Subject to subsection (5), a determination under subsection 1262(1) is in force for the period specified in the determination. That period must not end after:
  (a) 31 March 2021, unless paragraph (b) applies; or
  (b) if the determination modifies a provision covered by paragraph 1262(2)(a)—16 April 2021.

(2) The period specified in a determination under subsection 1262(1) may be a period that starts before the day the determination is made.

Variation of determination

(3) The Minister may, by legislative instrument, vary a determination under subsection 1262(1).

(4) A variation may be expressed to commence on a day before the day the variation is made.

Revocation of determination

(5) The Minister may, by legislative instrument, revoke a determination under subsection 1262(1).

(6) A revocation takes effect on the day specified in the instrument of revocation, which must not be earlier than the day that instrument is made.

Definitions

(7) In this section:

Minister means the Minister administering the *Social Security (International Agreements) Act 1999*.

Schedule 1A—Savings and transitional provisions

Part 1—General

1 Correspondence of pensions, benefits and allowances

(1) Subject to paragraph (2)(k), for the purposes of this Schedule, a pension, benefit or allowance under this Act and a pension, benefit or allowance under the 1947 Act that have the same name correspond to each other.

(2) For the purposes of this Schedule:

(a) a wife's pension under the 1947 Act and a wife pension under this Act correspond to each other; and

(b) a carer's pension under the 1947 Act and a carer pension under this Act correspond to each other; and

(c) a sole parent's pension under the 1947 Act and a sole parent pension under this Act correspond to each other; and

(e) a class B widow's pension under the 1947 Act and a widow B pension under this Act correspond to each other; and

(f) an age pension under the 1947 Act payable because of section 26 of that Act and a special needs age pension under this Act correspond to each other; and

(g) an invalid pension under the 1947 Act payable because of section 29 of that Act and a special needs invalid pension under this Act correspond to each other; and

(h) a wife's pension under the 1947 Act payable because of subsection 37(2) of that Act and a special needs wife pension under this Act correspond to each other; and

(i) a sole parent's pension under the 1947 Act payable because of subsection 46(1) of that Act and a special needs sole parent pension under this Act correspond to each other; and

(j) a class B widow's pension under the 1947 Act payable because of subclause 4(1) of Schedule 1B to that Act and a

special needs widow B pension under this Act correspond to each other; and

(k) a job search allowance under the 1947 Act and a job search allowance under this Act in respect of a person who has not turned 18 correspond to each other; and

(l) an unemployment benefit under the 1947 Act in respect of a person who has not been in receipt of an old benefit or old benefits for longer than 12 months and a job search allowance under this Act correspond to each other; and

(m) an unemployment benefit under the 1947 Act in respect of a person who has been in receipt of an old benefit or old benefits for longer than 12 months and a newstart allowance under this Act correspond to each other; and

(n) a widowed person allowance under the 1947 Act and a bereavement allowance under this Act correspond to each other.

(3) In paragraphs (2)(l) and (m):

old benefit, in relation to a person, means:

(a) an unemployment benefit under the 1947 Act; or

(b) a job search allowance under the 1947 Act; or

(c) in the case of a person who, but for the abolition of the allowance formerly paid by the Department of Employment, Education and Training and known as the Formal Training Allowance, would have paid that allowance on 1 July 1991—

that allowance.

2 Correspondence of provisions

(1) If one provision of the 1947 Act and one provision of this Act have the same legal effect, the 2 provisions correspond to each other.

(2) If:

(a) one provision of the 1947 Act has a particular legal effect in relation to a number of payment types; and

(b) a provision of this Act has that legal effect in relation to only one of those payment types;

the provisions correspond to each other for the purposes of applying this Schedule to that payment type.

(3) In this clause:

legal effect includes conferring the power to issue an instrument.

payment type means a pension, benefit or allowance.

2A References in other Acts and instruments to provisions of the 1947 Act

A reference in:

(a) a provision of a law of the Commonwealth or a Territory enacted before 1 July 1991 (whether or not the provision has come into operation); or

(b) an instrument or document;

to a provision of the 1947 Act is to be construed as a reference to the corresponding provision of the 1991 Act.

Part 2—Savings and Transitional Provisions Applicable on the Transition from the 1947 Act to this Act

Division 4—Continuation of earlier savings provisions

28 Rent assistance—retirement village residents (changes introduced on 13 June 1989)

(1) If:

(a) immediately before 3 November 1988:

(i) a person was receiving a social security pension, social security benefit or family allowance supplement; and

(ii) the person's pension, benefit or allowance rate included an amount by way of rent assistance under the 1947 Act; and

(b) at all times since 3 November 1988:

(i) the person has been entitled to a social security pension, social security benefit or family allowance supplement; and

(ii) the person's principal home has been in a retirement village;

the person is to be taken not to be an ineligible homeowner or excluded homeowner for the purposes of this Act.

(2) If:

(a) immediately after 13 June 1989:

(i) a person was receiving a service pension; and

(ii) the person's pension rate included an amount by way of rent assistance because of the operation of subsection 31(1) of the *Social Security and Veterans' Affairs Legislation Amendment Act 1988*; and

(b) after 13 June 1989, the person began to receive a social security pension, social security benefit or family allowance supplement under the 1947 Act or this Act; and

Clause 28

(c) subsection 31(1) of the *Social Security and Veterans' Affairs Legislation Amendment Act 1988* applied to the person at all times between 13 June 1989 and the person's commencing to receive the social security pension, social security benefit or family allowance supplement or would have applied to the person at all those times if the subsection had not been repealed; and

(d) at all times since the person commenced to receive the social security pension, social security benefit or family allowance supplement:

(i) the person has continued to receive a social security pension, social security benefit or family allowance supplement; and

(ii) the person's principal home has continued to be in the retirement village;

the person is to be taken not to be an ineligible homeowner or excluded homeowner for the purposes of this Act.

(3) If subclause (1) or (2) ceases to apply to the person, that subclause does not apply to the person again.

(4) If a person is entitled to rent assistance because of subclause (1) or (2), any amount that would (apart from this subclause) be payable to the person by way of rent assistance is to be reduced by the sum of the increases in the amount of the maximum fortnightly rate of any of the following payments to the person after 19 March 1996 (whether or not the type or amount of payment payable to the person varies after that day because the person's circumstances change):

(a) a social security benefit;

(b) a social security pension;

(c) family payment under this Act as previously in force;

(ca) family allowance;

(d) non-benefit parenting allowance;

(e) child disability allowance;

(ea) carer allowance;

(f) double orphan pension;

(g) mobility allowance;
(h) youth training allowance.

(5) Subclause (4) does not apply if:
(a) the person is entitled to rent assistance because of subclause (1) or (2); and
(b) the amount of rent assistance payable is worked out under clause 63.

(6) This clause ceases to apply (and cannot re-apply later) to a person if, as a result of the reduction required by subclause (4), no amount would be payable to the person by way of rent assistance.

Clause 36

Part 3—Saving and Transitional Provisions Applicable after the Commencement of this Act

36 Incentive allowance (changes introduced on 12 November 1991)

(1) If:

(a) a person is qualified for incentive allowance immediately before 12 November 1991; and

(b) the person is receiving disability support pension on 12 November 1991 because of a determination referred to in clause 33;

the following provisions as in force immediately before 12 November 1991 continue to apply to the person:

(c) points 1064-J1 to 1064-J3 (Pension Rate Calculator A); and

(d) points 1065-F1 to 1065-F3 (Pension Rate Calculator B).

(2) If:

(a) a person was receiving incentive allowance immediately before 12 November 1991; and

(b) on or after 12 November 1991 the person ceases to be qualified for incentive allowance because the person undertakes vocational training or a rehabilitation program or obtains work; and

(c) within 2 years after so ceasing to be qualified, the person undertakes an activity that would have qualified him or her for incentive allowance had it been undertaken immediately before 12 November 1991;

the following provisions as in force immediately before 12 November 1991 apply to the person:

(d) points 1064-J1 to 1064-J3 (Pension Rate Calculator A); and

(e) points 1065-F1 to 1065-F3 (Pension Rate Calculator B).

(3) If a person's rate of disability support pension includes an amount for incentive allowance because of subclause (1) or (2) the person's

rate of disability support pension cannot include an amount for rent assistance.

(4) A person whose rate of disability support pension includes an amount for incentive allowance because of subclause (1) or (2) may elect, by written notice to the Secretary, to have the amount for incentive allowance excluded from the person's rate.

(4A) If:

(a) a person is a member of a couple; and

(b) the person's partner is living with the person in their home; and

(c) the person's partner's rate of disability support pension includes an amount for incentive allowance because of subclause (1) or (2);

the person's rate of disability support pension cannot include an amount for rent assistance.

(5) If a person referred to in subclause (1) ceases to be qualified for incentive allowance on or after 12 November 1991, subclause (1) ceases to apply to the person and cannot apply to the person again.

63 Rent assistance (changes introduced on 20 March 1993)

(1) This clause applies to a person if:

(a) immediately before 20 March 1993:

(i) the person was receiving a social security pension, a social security benefit or additional family payment; and

(ii) the person's pension, benefit or payment rate included an amount by way of rent assistance; and

(b) this subclause has continued to apply to the person.

(2) If:

(a) a decision is made on or after 20 March 1993 that a person is entitled to rent assistance in respect of a period; and

(b) the period starts before 20 March 1993; and

Clause 63

(c) the period continued until at least 19 March 1993;

the person is taken, for the purposes of this clause, to have been receiving rent assistance under this Act immediately before 20 March 1993.

(3) This clause applies to a person if:

(a) immediately before 20 March 1993, the person was receiving rent assistance under or because of the Veterans' Entitlements Act; and

(b) after that date, the person becomes entitled to be paid a social security pension, a social security benefit or additional family payment; and

(c) this subclause has continued to apply to the person.

(3A) Subject to subclauses (7), (8) and (9), if this clause applies to a person, the amount by way of rent assistance to be used to calculate the person's pension, benefit or payment rate is the amount (the ***floor amount***) worked out using the formula:

preserved rent assistance – post-1995 increase

where:

preserved rent assistance is the amount worked out under subclause (4).

post-1995 increase is the sum of the increases in the amount of the maximum fortnightly rate of any of the following payments to the person after 19 March 1996 or the later day (the ***application day***) this clause first applied to the person (whether or not the type or amount of payment payable to the person varies after 19 March 1996 or the application day because the person's circumstances change):

(a) a social security benefit;

(b) a social security pension;

(c) family payment under this Act as previously in force;

(ca) family allowance;

(d) non-benefit parenting allowance;

(e) child disability allowance;

(ea) carer allowance;
(f) double orphan pension;
(g) mobility allowance;
(h) youth training allowance.

(4) For the purposes of subclause (3A), the ***preserved rent assistance*** is the amount by way of rent assistance that would be included in the person's pension, benefit or payment rate if:
(a) the person's pension, benefit or payment rate were neither income reduced nor assets reduced; and
(b) the amount by way of rent assistance were calculated under this Act as in force immediately before 20 March 1993.

(5) Subject to subclause (6), subclause (1) or (3) ceases to apply to a person if:
(a) the person ceases to receive a social security pension, social security benefit or additional family payment; or
(b) the person ceases to be qualified for rent assistance; or
(c) the Secretary considers that there is a significant change in the person's circumstances that would affect the amount of rent assistance that is payable to the person apart from this clause; or
(d) the amount of rent assistance that would be payable to the person if this clause applied is less than (or equal to) the amount of rent assistance that would otherwise be payable.

(6) If:
(a) subclause (1) or (3) ceases to apply to a person; and
(b) within 42 days, or such longer period as the Secretary determines, of that subclause ceasing to apply to the person, there is a change in the person's circumstances; and
(c) the Secretary considers that the change in the person's circumstances is so significant that subclause (1) or (3) should apply to the person;

the Secretary may determine that subclause (1) or (3) is to apply to the person from a specified date.

Clause 63

(7) If:

(a) subclause (1) or (3) applies to a person; and

(b) the person becomes a member of a couple; and

(c) the person's partner is a person to whom subclause (1) or (3) applies;

the amount by way of rent assistance to be used to calculate the person's pension, benefit or payment rate and the amount by way of rent assistance to be used to calculate the person's partner's pension, benefit or payment rate is not to fall below one-half of the person's floor amount or one-half of the person's partner's floor amount, whichever is the greater.

(8) If:

(a) subclause (1) or (3) applies to a person; and

(b) the person becomes a member of a couple; and

(c) the person's partner is a person to whom section 111 of the *Veterans' Affairs Legislation Amendment Act (No. 2) 1992* applies or would apply if it had not been repealed;

the amount by way of rent assistance to be used to calculate the person's pension, benefit or payment rate is not to fall below one-half of the person's floor amount or one-half of the person's partner's floor amount, whichever is the greater.

(9) If:

(a) subclause (1) or (3) applies to a person; and

(b) the person becomes a member of a couple; and

(c) the person's partner is not a person to whom subclause (1) or (3) applies; and

(d) the person's partner is not a person to whom section 111 of the *Veterans' Affairs Legislation Amendment Act (No. 2) 1992* applies or would apply if it had not been repealed; and

(e) the person's partner is a person who is receiving a pension, benefit or additional family payment or a pension under Part III of the *Veterans' Entitlements Act 1986*;

the amount by way of rent assistance to be used to calculate the person's pension, benefit or additional family payment rate and the

amount by way of rent assistance to be used to calculate the rate of the person's partner's pension, benefit or additional family payment is not to fall below the person's floor amount.

(10) If:

(a) a person is receiving a social security pension or a social security benefit; and

(b) neither subclause (1) nor (3) applies to the person; and

(c) the person has become or becomes a member of a couple; and

(d) the person's partner is receiving a pension under the *Veterans' Entitlements Act 1986* and is a person to whom clause 5 of Schedule 5 to that Act applies;

the amount by way of rent assistance to be used to calculate the rate of the person's social security pension or social security benefit is not to fall below one-half of the amount that would be the person's partner's floor amount if subclause (1) or (3) applied to the partner.

74 Partner allowance for persons born on or before 1 July 1955 (changes made on 1 July 1995)

(1) If:

(a) a person was receiving partner allowance immediately before 1 July 1995; and

(b) the person was born on or before 1 July 1955;

the person need not satisfy paragraph 771HA(1)(h) in order to be qualified for partner allowance.

(2) If partner allowance ceases to be payable to a person referred to in subclause (1):

(a) that subclause ceases to apply to the person; and

(b) cannot apply to the person again.

Clause 86

86 Transitional and saving provisions applicable to the amendments relating to the pension loans scheme

(1) If:

(a) a person has made a request to participate in the previous pension loans scheme; and

(b) Schedule 7 to the Amending Act commences before the first pension payday after the lodging of the request;

for the purposes of this clause, the person is to be treated as a person who is participating in the previous pension loans scheme.

(2) Subject to subclause (3), in relation to a person who is participating in the previous pension loans scheme, subsection 11(1), paragraph 23(11)(b), subsection 1118(1) and Division 4 of Part 3.12 of this Act, as in force immediately before the commencement of Schedule 7 to the Amending Act, continue to have effect as if the Amending Act had not been enacted.

(3) If a person who is participating in the previous pension loans scheme:

(a) is qualified to participate in the current pension loans scheme; and

(b) makes a request to participate in the current scheme;

and the Secretary is satisfied that the amount of any debt that would become payable by the person to the Commonwealth under the current scheme would be readily recoverable, the current scheme applies to the person on and after the first pension payday after the request is lodged.

(4) The debt owed by a person who was participating in the previous pension loans scheme and who is participating in the current pension loans scheme by operation of subclause (3) is, for the purposes of working out the debt owed by the person under the current scheme, to be added to the basic amount of debt accrued under the current scheme.

(5) In this clause:

Amending Act means the *Social Security and Veterans' Affairs Legislation Amendment Act 1995*.

current pension loans scheme means the pension loans scheme in operation under the provisions of this Act, as amended by the Amending Act.

previous pension loans scheme means the pension loans scheme in operation under the provisions of this Act, as in force immediately before the commencement of Schedule 7 to the Amending Act.

88 Saving: Determinations under repealed sections 1099E and 1099L

A determination in force under section 1099E or 1099L immediately before the commencement of this clause continues to have effect after that commencement as if:

(a) section 1084 of this Act, as in force immediately after the commencement of this clause, had been in force when the determination was made; and

(b) the determination had been made under that section as so in force; and

(c) any reference in the determination to section 1099B, 1099J or 1099K were a reference to sections 1076 to 1078 of this Act.

96A Application of revised Schedule 1B

(1) Subject to subclause (2), this Act, as amended by items 1, 2 and 4 of Schedule 16 of the amending Act, applies to claims lodged on or after the date of commencement of those items.

(2) Despite section 8 of the *Acts Interpretation Act 1901*, the amendments made by items 1, 2 and 4 of Schedule 16 to the amending Act, apply in relation to:

(a) all medical, psychiatric or psychological examinations attended, or reports required, under subsection 105(1) on or after the date of commencement of those items; and

(b) all legal proceedings, applications for review of decisions, or determinations, to the extent that the proceedings, applications or determinations relate to, or involve, a medical, psychiatric or psychological examination referred to in paragraph (a).

(3) In this clause:

amending Act means the *Social Security and Veterans' Affairs Legislation Amendment (Family and Other Measures) Act 1997*.

103 Application provision: income maintenance periods

(1) This Act, as amended by Part 1 of Schedule 7 to the amending Act, applies in relation to leave payments that are received on or after 20 September 1997.

(2) For the purposes of this section, a person (the ***first person***) is taken to receive a leave payment if the payment is made to another person:

(a) at the direction of the first person or a court; or

(b) on behalf of the first person; or

(c) for the benefit of the first person; or

the first person waives or assigns the first person's right to receive the payment.

(3) In this section:

amending Act means the *Social Security Legislation Amendment (Budget and Other Measures) Act 1996.*

leave payment includes payments in respect of sick leave, annual leave, maternity leave, and long service leave.

Clause 105

105 Application and saving provisions: debts due to the Commonwealth and their recovery

(1) For the avoidance of doubt, and without affecting the operation of section 8 of the *Acts Interpretation Act 1901*, Part 2 of Schedule 18 to the amending Act does not:

(a) affect the operation of Part 5.2 or 5.3 of this Act before 1 October 1997; or

(b) extinguish the amount of any debt due to the Commonwealth arising before 1 October 1997 that was outstanding at the start of that day; or

(c) prevent the recovery, on or after 1 October 1997, of any such outstanding amount.

(2) Sections 1230C and 1236 of this Act, as amended by the amending Act, apply in relation to:

(a) debts arising on or after 1 October 1997; and

(b) the amounts of debts arising before that day that were outstanding at the start of that day.

(3) Section 1237A of this Act, as amended by the amending Act, applies in relation to debts arising before, on or after 1 October 1997.

(4) Despite section 8 of the *Acts Interpretation Act 1901*, if a legal proceeding or an application for review of a decision:

(a) relates to, or otherwise involves, a provision of Part 5.2, 5.3 or 5.4 of this Act; and

(b) is not finally determined before 1 October 1997;

the proceeding or application must, if continued, be determined as if it had been instituted on that day, and this Act, as amended by Schedule 18 to the amending Act, applies to the proceeding or application accordingly.

(5) In this clause:

amending Act means the *Social Security Legislation Amendment (Budget and Other Measures) Act 1996*.

Clause 105A

105A Parenting payment (changes introduced 20 March 1998)

Continuing effect of determinations etc. in force or effective before 20 March 1998

(1) If a determination, notice, statement or other instrument relating to sole parent pension or to parenting allowance was in force or had effect immediately before 20 March 1998, it continues in force on and after that date as if it had been made or given under this Act in relation to parenting payment.

Pending claims for sole parent pension or parenting allowance

(2) If:

(a) a person lodged a claim for sole parent pension or parenting allowance under this Act before 20 March 1998; and

(b) the claim was not determined before that date;

the claim has effect on and after that date as if it were a claim for parenting payment.

Claims made on or after 20 March 1998 in respect of periods before 20 March 1998—sole parent pension and parenting allowance

(3) If:

(a) a person lodges a claim for sole parent pension or parenting allowance on or after 20 March 1998; and

(b) the claim is made in respect of a period commencing before 20 March 1998;

the claim has effect as if it had been made immediately before 20 March 1998.

Claims made on or after 20 March 1998 in respect of periods before 20 March 1998—parenting payment

(4) If:

(a) a person lodges a claim for parenting payment on or after 20 March 1998; and

(b) the claim is made in respect of a period commencing before 20 March 1998;

the claim has effect:

(c) as if it had been made immediately before 20 March 1998; and

(d) in the case of a person who was not a member of a couple at the beginning of the period in respect of which the claim is made—as if it were a claim for sole parent pension; and

(e) in the case of a person who was a member of a couple at the beginning of the period in respect of which the claim is made—as if it were a claim for parenting allowance.

Sole parent pension bereavement payment in respect of death of child

(5) If, immediately before 20 March 1998:

(a) a person was qualified for a payment under Subdivision A of Division 9 of Part 2.6; and

(b) the period for which the person was qualified had not yet ended;

then:

(c) the person remains qualified for that payment on and after 20 March 1998 as if Parts 2.6 and 3.4 as in force immediately before that date were still in force; and

(d) subclause (1) (dealing with continuing effect of determinations) does not apply to the person.

Sole parent pension bereavement payment in respect of death of pensioner partner

(6) If, immediately before 20 March 1998:

(a) a person was qualified for a payment under Subdivision B of Division 9 of Part 2.6; and

(b) the period for which the person was qualified had not yet ended;

then:

(c) the person remains qualified for that payment on and after 20 March 1998 as if Parts 2.6 and 3.2 as in force immediately before that date were still in force; and

(d) subclause (1) (dealing with continuing effect of determinations) does not apply to the person; and

(e) on the day after the end of the period referred to in paragraph (b), the person is taken to have made a claim for parenting payment.

Parenting allowance bereavement payment in respect of death of child

(7) If, immediately before 20 March 1998:

(a) a person was qualified for a payment under Subdivision B of Division 10 of Part 2.18; and

(b) the period for which the person was qualified had not yet ended;

then:

(c) the person remains qualified for that payment on and after 20 March 1998 as if Parts 2.18 and 3.6A as in force immediately before that date were still in force; and

(d) subclause (1) (dealing with continuing effect of determinations) does not apply to the person.

Parenting allowance bereavement payment in respect of death of partner

(8) If, immediately before 20 March 1998:

(a) a person was qualified for a payment under Subdivision D or E of Division 10 of Part 2.18; and

(b) the period for which the person was qualified had not yet ended;

then:

(c) the person remains qualified for that payment on and after 20 March 1998 as if Parts 2.18 and 3.6A as in force immediately before that date were still in force; and

(d) subclause (1) (dealing with the continuing effect of determinations) does not apply to the person; and

(e) on the day after the end of the period referred to in paragraph (b), the person is taken to have made a claim for parenting payment.

Pending application for advance payment of sole parent pension

(9) If:

(a) a person lodged an application for an advance payment of sole parent pension under Part 2.22 before 20 March 1998; and

(b) the application was not determined before that date;

the application is taken, on and after that date, to be an application for an advance payment of pension PP (single).

Saving of certain SPP children

(10) If:

(a) sole parent pension was payable to a person who was not in Australia immediately before 20 March 1998 in relation to an SPP child; and

(b) parenting payment would, but for the operation of section 500F, 500G or 500H, be payable to the person on that date in relation to that child;

those sections do not apply to the person in relation to that child until one of the following events occurs:

(c) the child ceases to be a PP child of the person because of the operation of a provision other than section 500F, 500G or 500H;

(d) parenting payment ceases to be payable to the person;

(e) the person becomes a member of a couple;

(f) if the person was not an Australian resident on 20 March 1998—the person becomes an Australian resident;

(g) if the person was an Australian resident on 20 March 1998—the person returns to Australia.

Clause 105A

Application: income maintenance period rules

(11) The following provisions (dealing with income maintenance periods in relation to continuing employment) as in force on 20 March 1998 apply to a person in respect of a leave period commencing on or after 20 March 1998:

(a) point 1067-H5G;

(b) point 1067E-G6G;

(c) point 1068-G7AG.

(12) Subject to subclause (13), point 1068A-E4 (dealing with income maintenance periods in relation to terminated employment) as in force on 20 March 1998 applies to a person in respect of any leave payment received by the person on or after 20 March 1998.

(13) If:

(a) a determination applying an income maintenance period in relation to a person's claim for, or payment of, parenting allowance, a social security benefit or youth training allowance was in force on or after 20 September 1997; and

(b) pension PP (single) is payable to the person on or after 20 March 1998;

point 1068A-E4 applies to the person in respect of any leave payment received by the person on or after 20 September 1997.

Saving of certain recipients of sole parent pension and parenting allowance

(14) If:

(a) sole parent pension or parenting allowance was payable to a person immediately before 20 March 1998; and

(b) on 20 March 1998 the person would not, apart from this subclause, qualify for parenting payment because the person does not satisfy the requirements of paragraph 500(1)(d);

the person is taken, on and after 20 March 1998, to satisfy the requirements of paragraph 500(1)(d) until:

(c) parenting payment ceases to be payable to the person; or

(d) the person satisfies the requirements of paragraph 500(1)(d) otherwise than by reason of this subclause.

Saving of certain other recipients of sole parent pension

(15) If:

(a) sole parent pension was payable to a person who was not in Australia immediately before 20 March 1998; and

(b) on or after 20 March 1998, the person would not, apart from this subclause, qualify for parenting payment because the person does not satisfy the requirements of either or both of paragraphs 500(1)(b) and (c);

the person is taken, on and after 20 March 1998, to satisfy the requirements of both those paragraphs until:

(c) parenting payment ceases to be payable to the person; or

(d) the person becomes a member of a couple; or

(e) if the person was not an Australian resident on 20 March 1998—the person becomes an Australian resident; or

(f) if the person was an Australian resident on 20 March 1998—the person returns to Australia.

(16) In relation to a person who is receiving parenting payment because of the application of subclause (15) and Part 4.2 of this Act, as in force immediately before 20 March 1998, apply to the person on and after 20 March 1998. These provisions apply to the person as if references to sole parent pension were references to pension PP (single).

Saving of persons receiving sole parent pension under scheduled international social security agreement

(17) If:

(a) a sole parent pension was payable to a person immediately before 20 March 1998 under a scheduled international social security agreement; and

(b) the person is not a member of a couple; and

(c) on 20 March 1998, the person would qualify for parenting payment but for the operation of any of the following:

(i) paragraph 500(1)(b) or (c);

(ii) subparagraph 500(1)(d)(ii) to the extent it requires a person to have been in Australia for the period specified in that subparagraph;

(iii) section 500F, 500G or 500H;

then, on and after 20 March 1998:

(d) the provisions referred to in paragraph (c) do not apply to the person; and

(e) if parenting payment is payable to the person, it is taken to be payable to the person under the scheduled international social security agreement.

(18) Subclause (17) applies to a person until:

(a) parenting payment ceases to be payable to the person; or

(b) the person satisfies the provisions referred to in paragraph (17)(c).

115 Persons under 21 receiving newstart allowance or sickness allowance on 17 June 1997

(1) If:

(a) a person was, on 17 June 1997, under 21 years of age and a recipient of newstart allowance or sickness allowance; and

(b) the person did not cease to be, and was immediately before 1 July 1998, a recipient of newstart allowance or sickness allowance; and

(c) the person was, immediately before 1 July 1998, under 21 years of age;

then:

(e) the person is to continue to receive the newstart allowance or sickness allowance on and after that day; and

(f) subject to subclauses (2) and (3), Part 2.12 or 2.14 (as the case may be) as in force immediately before that day continues to apply to the person.

(2) If, on or after 1 July 1998, the Secretary cancels or suspends:

(a) a person's newstart allowance under section 660I or 660IA; or

(b) a person's sickness allowance under section 728L or 728M;

a determination by the Secretary under section 660J or 728P (as the case may be) that the allowance is payable to the person does not have effect unless the determination is made within 6 weeks after the Secretary's decision to cancel or suspend the allowance.

(3) Newstart allowance or sickness allowance ceases to be payable to a person who has been receiving it because of subclause (1) if the person makes a claim for youth allowance and the claim is granted.

126 Application and transitional provisions relating to fares allowance

(1) Part 2.26 applies only in respect of claims for fares allowance made after the commencement of that Part for journeys made after that commencement.

(2) The *Social Security (Fares Allowance) Rules 1998* made under section 1061ZAAA as in force immediately before the commencement of Part 2.26 continue in force as if that section were still in force but apply only in respect of claims made, whether before or after that commencement, for journeys made before that commencement.

(3) If:

(a) a person has, before the commencement of Part 2.26, made a journey in a study year; and

(b) the person is eligible, under the Rules referred to in subclause (2), as they continue in force under that subclause (the ***continuing Rules***) for fares allowance in respect of the journey; and

(c) the person makes a claim under Part 2.26 for fares allowance in respect of a journey made, or to be made, after the commencement of that Part in the same study year;

the claim is not to be determined until the person has made a claim under the continuing Rules in respect of the journey referred to in paragraph (a) and the claim has been finally dealt with in accordance with those Rules.

128 Saving provision—portability rules relating to rates of pension

(1) Despite the amendments of sections 1213A, 1215, 1216, 1220A, 1220B and 1221 of this Act made by the *Social Security and Veterans' Entitlements Legislation Amendment (Miscellaneous Matters) Act 2000*, if:

(a) a person was absent from Australia immediately before 20 September 2000; and

(b) at a time (the ***post-start time***) after 20 September 2000, the person had not returned to Australia for a continuous period of 26 weeks or more since 20 September 2000;

those provisions continue to apply to the person at the post-start time as if those amendments had not been made.

(2) However, the following provisions (as in force as if the amendments described in subclause (1) had not been made) do not continue to apply to the person at or after the first time the person is in Australia after the commencement of Schedule 6 to the *Family and Community Services and Veterans' Affairs Legislation Amendment (2003 Budget and Other Measures) Act 2003*:

(a) section 1213A;

(b) section 1215;

(c) section 1216;

(d) section 1220B, so far as it relates to a pension other than age pension or bereavement allowance.

Note: If those provisions (as in force as if the amendments described in subclause (1) had not been made) do not continue to apply to the person at a particular time, the person is covered at that time by this Act as in force at that time.

(3) To avoid doubt, Schedule 6 to the *Family and Community Services and Veterans' Affairs Legislation Amendment (2003 Budget and Other Measures) Act 2003* does not affect section 1220B (as in

force as if the amendments described in subclause (1) had not been made) so far as that section continues to apply because of that subclause.

(4) If:

(a) the 26 weeks mentioned in paragraph (1)(b) ends on or after 11 March 2020; and

(b) the Secretary is satisfied that the person's return to Australia is temporary; and

(c) the Secretary is satisfied that the person is unable to leave Australia before the end of that 26-week period because of the impact of the coronavirus known as COVID-19;

the Secretary may, in relation to the person, determine that a reference to 26 weeks in paragraph (1)(b) is taken to be a reference to another number of weeks. However, the Secretary must ensure that the determination does not result in a period referred to in that paragraph that ends after 30 June 2021.

(5) Despite Subdivision B of Division 9 of Part 3 of the Administration Act, a favourable determination (within the meaning of section 108 of that Act) that is made as a result of a determination referred to in subclause (4) of this clause may be expressed to take effect on a day earlier than otherwise permitted by that Subdivision.

128A Saving of certain pensions payable under 1986 Agreement between Australia and Italy

(1) In this clause:

1986 Agreement means the agreement made between the Government of Australia and the Government of the Republic of Italy on 23 April 1986.

(2) This subclause applies to a person if:

(a) the person has become qualified to receive a disability support pension because of the 1986 Agreement; and

Clause 128A

(b) the person became qualified to receive the pension because he or she became unable to work or became permanently blind, as the case may be, while he or she was in Australia or was temporarily absent from Australia.

(3) Subject to subclause (4), this subclause applies to a person if:

(a) on 8 May 1985, the person was either:

(i) an Australian resident; or

(ii) an absent resident within the meaning of the 1986 Agreement; and

(b) the person left Australia before 1 January 1996; and

(c) while absent from Australia, the person became eligible to receive a social security payment by virtue of the 1986 Agreement; and

(d) the person commenced to receive that social security payment before 1 January 1996; and

(e) immediately before 1 October 2000, the rate at which that social security payment was payable was worked out under subparagraph 1(b) of Article 8 of the 1986 Agreement; and

(f) the person has not returned to Australia on or after 1 October 2000 for a continuous period of 26 weeks.

(4) Subclause (3) ceases to apply to a person if the rate at which the social security payment would be payable to the person apart from this clause exceeds the rate at which the social security payment is payable to the person as a person to whom subclause (3) applies.

(5) In spite of any other provision of the social security law relating to the rate at which a disability support pension is payable, the rate at which such a pension is payable to a person to whom subclause (2) applies is the rate at which the pension would be payable to the person if:

(a) the person were an Australian resident; and

(b) the person were not entitled to have included in the rate of the pension:

(i) any amount representing:

(A) pharmaceutical allowance; or

(B) remote area allowance; or

(C) rent assistance; or

(ii) any amount similar to the amounts referred to in subparagraph (i).

(6) In spite of any other provision of the social security law relating to the rate at which a social security payment is payable, the rate at which such a payment is payable to a person to whom subclause (3) applies is the rate worked out according to subparagraph 1(b) of Article 8 of the 1986 Agreement.

130 Saving provision—other portability rules

Despite the amendments of this Act made by Part 1 of Schedule 1 to the *Social Security and Veterans' Entitlements Legislation Amendment (Miscellaneous Matters) Act 2000*, other than:

(a) the amendments mentioned in clause 128 of this Schedule; and

(b) the amendments of sections 1216B, 1218, 1218A, 1218B, 1218C and 1219; and

(c) the amendment of Module A of the Rate Calculator at the end of section 1221;

if:

(d) a person was absent from Australia immediately before 20 September 2000; and

(e) at a time (the ***post-start time***) after 20 September 2000, the person had not returned to Australia since 20 September 2000;

this Act continues to apply to the person at the post-start time as if the amendments (other than those mentioned in paragraphs (a) to (c)) had not been made.

131 Certain payments not recoverable

An amount paid to a person under this Act is not recoverable from the person if:

(a) the amount was not payable because the person, or the person's partner, had received a comparable foreign payment; and

(b) during the period beginning on 20 September 2000 and ending on 19 January 2001, the person gave notice to the Secretary of any comparable foreign payment which he or she had received or was receiving; and

(c) the amount was paid before the person gave notice as mentioned in paragraph (b); and

(d) before receiving that notice, the Secretary was unaware that the person, or the person's partner, had received or was receiving the comparable foreign payment.

132 Saving—ABSTUDY recipients

(1) If, immediately before 1 January 2001, a person was receiving:

(a) a relevant pension; and

(b) a payment under a provision of the ABSTUDY Scheme made on the basis that the person was a full-time student;

this clause applies to the person.

(2) In spite of the amendments of this Act made by Schedule 1 to the *Family and Community Services (2000 Budget and Related Measures) Act 2000*:

(a) the person does not cease to be qualified for the relevant pension by reason only of those amendments; and

(b) if the person continues, on and after 1 January 2001, to receive the same payment under the ABSTUDY Scheme, that payment (except where it is a payment of a pensioner education supplement) is to be taken, for the purposes of this Act, to be income paid to, or on behalf of, the person.

(3) In this clause:

relevant pension means:

(a) age pension; or

(b) bereavement allowance; or

(c) carer payment; or
(d) disability support pension; or
(e) pension PP (single); or
(f) widow B pension; or
(g) wife pension.

133 Meaning of *Australian resident*

For the purposes of determining whether a person was an Australian resident at a time, or throughout a period, occurring before the commencement of item 2 of Schedule 1 to the *Family and Community Services Legislation Amendment (New Zealand Citizens) Act 2001*:

(a) the definition of ***Australian resident*** at that time, or throughout that period, applies; and
(b) that definition, as amended by the *Family and Community Services Legislation Amendment (New Zealand Citizens) Act 2001*, does not apply.

134 Transitional and saving provisions—substitution of Part 3.14

(1) In this clause:

2001 amending Act means the *Family and Community Services Legislation (Simplification and Other Measures) Act 2001*.

new Act means this Act, as amended by the 2001 amending Act.

old Act means this Act, as in force immediately before 20 September 2001.

old lump sum preclusion period has the same meaning as in the old Act.

(2) Part 3.14 of the new Act has effect subject to this clause.

(3) Subject to subclause (9), if:
(a) before 20 September 2001, because of the operation of subsection 1165(1A) or (2AA) of the old Act, a social

security payment had ceased to be payable to a person for a period; and

(b) if the provisions of the old Act had continued in force on and after 20 September 2001, the payment would not have become payable again until a time on or after that date;

then, on and after 20 September 2001, the new Act has effect as if:

(c) the new Act had been in operation when the social security payment ceased to be payable for the period; and

(d) the social security payment had so ceased because of the operation of subsection 1169(1) of the new Act.

(4) Subject to subclause (9), if:

(a) before 20 September 2001, because of the operation of a provision of the old Act specified in the table in subclause (8), the rate at which a social security payment was payable to a person was reduced for a period; and

(b) if the provisions of the old Act had continued in force on and after 20 September 2001, the payment would have continued to be payable at the reduced rate until a time on or after that date;

then, on and after 20 September 2001, the new Act has effect as if:

(c) the new Act had been in operation when the social security payment became payable at the reduced rate; and

(d) the social security payment had become so payable because of the operation of the corresponding provision of the new Act.

(5) If a notice to which this subclause applies was in effect immediately before 20 September 2001, the new Act has effect, on and after 20 September 2001, as if:

(a) the new Act had been in operation when the notice was given; and

(b) the notice had been given under the provision of the new Act that corresponds to the provision of the old Act under which the notice was given.

(6) Subclause (5) applies to the following notices:

(a) a notice under subsection 1166(1) of the old Act in relation to a recoverable amount calculated under subsection 1166(3), (4) or (4C) of that Act;

(b) a notice under subsection 1170(1) of the old Act in relation to a recoverable amount calculated under subsection 1170(3) or (4) of that Act;

(c) a notice under subsection 1172(1) of the old Act;

(d) a notice under subsection 1174(1) of the old Act in relation to a recoverable amount calculated under subsection 1174(6) of that Act;

(e) a notice under subsection 1177(1) of the old Act;

(f) a notice under subsection 1179(1) of the old Act in relation to a recoverable amount calculated under subsection 1179(6) of that Act.

(7) If:

(a) before 20 September 2001, a person applied, under section 129, 142 or 179 of the Administration Act, for review of a decision made as a result of the operation of a provision of the old Act specified in column 2 of an item in the table in subclause (8); and

(b) the review was not determined before 20 September 2001;

then, on and after 20 September 2001, the review is to be determined in accordance with this Act, as in force when the decision was made.

(8) The provision of the new Act that corresponds, for the purposes of this clause, to the provision of the old Act specified in column 2 of an item of the following table is the provision specified in column 3 of the item.

Corresponding provisions

Column 1 Item	Column 2 Old Act provision	Column 3 Corresponding new Act provision
1	Subsection 1165(1A)	Subsection 1169(1)

Clause 134

Corresponding provisions		
Column 1 **Item**	**Column 2** **Old Act provision**	**Column 3** **Corresponding new Act provision**
2	Subsection 1165(2AA)	Subsection 1169(1)
3	Subsection 1166(1)	Subsection 1178(1)
4	Subsection 1168(1) (except to the extent that it operated in relation to a person's social security payment where the person's partner, but not the person, had received compensation)	Subsection 1173(1)
5	Subsection 1170(1)	Subsection 1180(1)
6	Subsection 1172(1)	Subsection 1182(1)
7	Subsection 1174(1)	Subsection 1184(1)
8	Subsection 1177(1)	Subsection 1182(2)
9	Subsection 1179(1)	Subsection 1184(2)
10	Section 1184	Section 1184K

(9) On and after 20 September 2001:

(a) the new Act has effect as if:

(i) it included provisions in the same terms as subsection 17(1) of the old Act to the extent that it defines ***average weekly earnings*** and subsections 1165(1) and (2), 1166(4A), 1174(4) and (5), and 1179(4) and (5) of the old Act; and

(ii) section 1169 of the new Act did not apply where the lump sum compensation payment was received before 20 March 1997; and

(b) for the purposes of the operation of paragraph (a), ***old lump sum preclusion period*** is taken to have the same meaning in the new Act as in the old Act; and

(c) for the purposes of the operation of paragraph (a), the lump sum preclusion period, for the purposes of the new Act, is the period that corresponds to the old lump sum preclusion period.

(10) If:

(a) a person received compensation before 1 January 1993; and

(b) the person's partner (the ***partner***) claimed or received carer pension before that date because the partner was caring for the person;

this Act, as it applied in relation to carer payment being received by the partner immediately before 20 September 2001, continues to apply in relation to carer payment received by the partner before, on or after 20 September 2001 because the partner was or is caring for the person.

(11) If:

(a) before 20 September 2001, a person was given a notice under Subdivision B of Division 6 of Part 3, or Division 1 of Part 5, of the Administration Act; and

(b) the notice required the person:

(i) to inform the Department whether a specified event or change of circumstances had occurred; or

(ii) to give the Department a statement about a matter; or

(iii) to give information or produce a document; and

(c) the notice required the information or statement to be given within a specified period; and

(d) the person has failed to comply with the requirement of the notice;

any determination made under the Administration Act on or after 20 September 2001 as a result of the occurrence of an event or change of circumstances, or in connection with a matter, to which the notice related must be made in accordance with this Act as in force immediately before the end of the period referred to in paragraph (c).

Clause 135

135 Unlimited maximum portability period for disability support pension

(1) The Secretary may determine that a person's maximum portability period for disability support pension is an unlimited period if:

(a) at the commencement of this clause, the person is absent from Australia and receiving disability support pension; and

(b) under this Act as in force immediately before the commencement, that absence could not affect the person's right to continue to be paid the disability support pension throughout the period of that absence; and

(c) after the commencement, the person enters Australia but does not become an Australian resident again.

Note: The condition in paragraph (1)(b) may be met:

(a) because the person was severely disabled (see subsection 1214(1) and item 2 of the table in subsection 1217(5) as those subsections were in force just before the commencement); or

(b) because clause 128 (as in force just before the commencement) applied to the person section 1213A as in force before its repeal by the *Social Security and Veterans' Entitlements Legislation Amendment (Miscellaneous Matters) Act 2000*.

(2) The determination has effect for the purposes of Part 4.2 of this Act as it applies in relation to an absence after the person's entry, despite the repeal and substitution of items 2 and 3 of the table in section 1217 of this Act by the *Family and Community Services and Veterans' Affairs Legislation Amendment (2003 Budget and Other Measures) Act 2003*.

136 Transitional definition of *deductible amount* (commencing 1 July 2007)

(1) This clause applies if:

(a) a person has received at least one payment from a defined benefit income stream before 1 July 2007, and is still receiving payments from the income stream; and

(b) the person receives income support payment in respect of a continuous period starting before, and ending on or after, the person's trigger day (see subsection (5)); and

(c) the amount of the income support payment received before the person's trigger day was affected by the deduction of a deductible amount (within the meaning of this Act or the Veterans' Entitlements Act, as the case requires, apart from this clause) from the amount of the payments payable to the person for a year under the income stream; and

(d) if the person's trigger day is after 1 July 2007—the income stream has not been partially commuted on or after 1 July 2007 and before the person's trigger day.

Note 1: If the income stream is wholly commuted, this clause will stop applying because the person will no longer be receiving payments from the income stream (see paragraphs (1)(a) and (d)).

Note 2: For the deduction of a deductible amount from amounts payable under certain defined benefit income streams, see sections 1099A and 1099D of this Act and sections 46V and 46Y of the Veterans' Entitlements Act.

(2) Despite the amendment of this Act by Part 2 of Schedule 8 to the *Tax Laws Amendment (Simplified Superannuation) Act 2007*, for the purposes of working out the amount of any income support payment (other than a service pension or income support supplement) received by the person on or after the trigger day in respect of the remaining part of the period mentioned in paragraph (1)(b), the ***deductible amount***, in relation to the income stream for a year, is the greater of the following amounts:

(a) the deductible amount mentioned in paragraph (1)(c);

(b) the sum of the amounts that are the tax free components (worked out under subsections 307-125(4) to (7) of the *Income Tax (Transitional Provisions) Act 1997*) of the payments received from the income stream during the year.

(3) However, this clause stops applying to an income stream immediately after the time (if any) that the deductible amount in relation to the income stream is, under subclause (2), the amount mentioned in paragraph (2)(b).

(3A) If:

(a) this clause applies; and

(b) an amount (the ***transitional amount***) is worked out under subclause (2) in relation to a defined benefit income stream for a year starting on or after 1 January 2016; and

(c) that income stream is not a military defined benefit income stream; and

(d) that amount is worked out in relation to the operation of section 1099A or 1099D;

then, for the purposes of the operation of paragraph 1099A(2)(b) or 1099D(2)(b), the transitional amount is taken to be the deductible amount under subsection 1099A(1) or 1099D(1) in relation to that income stream for that year.

Note: The effect of this subclause is that the cap on the deductible amount under subsection 1099A(2) or 1099D(2) might apply.

(4) For the purposes of this clause, without limiting paragraph (1)(b), if the form of a person's income support payment mentioned in paragraph (1)(b) changes during a period, the continuity of the period is not broken by the change.

Example: The form of a person's income support payment may change from one kind of payment (for instance, a service pension under the Veterans' Entitlements Act) to another (for instance, a social security pension under this Act).

(5) In this clause:

trigger day, for a person, means:

(a) if the person is under 60 years at the end of 30 June 2007—the day the person turns 60; or

(b) if the person is 60 years or over at the end of 30 June 2007—1 July 2007.

137 Application—general

Subject to clauses 138 and 140, the amendments made by items 1 to 16 of Schedule 1 to the *Social Security Legislation Amendment (Improved Support for Carers) Act 2009* apply to claims for a carer payment made on or after the commencement of this clause.

138 Application—subsections 198AA(1) and (3)

Subsections 198AA(1) and (3) of this Act as amended by the *Social Security Legislation Amendment (Improved Support for Carers) Act 2009* apply to a person who:

(a) is receiving a carer payment immediately before 1 July 2009; or

(b) makes a claim for a carer payment on or after 1 July 2009.

139 Application—subsection 955(2)

Subsection 955(2) of this Act as amended by the *Social Security Legislation Amendment (Improved Support for Carers) Act 2009* applies to a person who:

(a) is receiving carer allowance immediately before 1 July 2009; or

(b) makes a claim for a carer allowance on or after 1 July 2009.

139A Application—general

(1) Subject to clauses 139B and 141, the amendments made by items 1 to 68 and 76 to 77 of Schedule 1 to the *Social Security Legislation Amendment (Improved Support for Carers) (Consequential and Transitional) Act 2009* apply to claims for a carer payment made on or after the commencement of this clause.

(2) Subject to clauses 139C and 143, the amendments made by items 69 to 75 of Schedule 1 to the *Social Security Legislation Amendment (Improved Support for Carers) (Consequential and Transitional) Act 2009* apply to claims for special benefit made on or after the commencement of this clause.

139B Application—sections 198AAA and 198AB

The amendments made by items 9 and 10 of Schedule 1 to the *Social Security Legislation Amendment (Improved Support for Carers) (Consequential and Transitional) Act 2009* apply to a person who:

(a) is receiving a carer payment immediately before 1 July 2009; or

(b) makes a claim for a carer payment on or after 1 July 2009.

139C Application—subsections 731J(2) and (6)

(1) Subsection 731J(2) of this Act as amended by Schedule 1 to the *Social Security Legislation Amendment (Improved Support for Carers) (Consequential and Transitional) Act 2009* applies to a person who:

(a) is taken to satisfy the activity test under subsection 731J(1) of this Act immediately before 1 July 2009; or

(b) makes a claim for special benefit on or after 1 July 2009.

(2) Subsection 731J(6) of this Act as amended by Schedule 1 to the *Social Security Legislation Amendment (Improved Support for Carers) (Consequential and Transitional) Act 2009* applies to a person who:

(a) is taken to satisfy the activity test under subsection 731J(4) of this Act immediately before 1 July 2009; or

(b) makes a claim for special benefit on or after 1 July 2009.

139D Saving—principal beneficiary of a special disability trust

Despite the amendment made by item 79 of Schedule 1 to the *Social Security Legislation Amendment (Improved Support for Carers) (Consequential and Transitional) Act 2009*, this Act as in force immediately before the commencement of this clause continues to apply to a person who was a principal beneficiary (within the meaning of section 1209M of this Act) under 16 years of age immediately before that time.

140 Person whose carer payment was cancelled on or after 1 July 2008 and before 1 July 2010

Circumstances in which clause applies

(1) This clause applies if:

(a) a person (the ***carer***) received or receives a carer payment on or after 1 July 2008 for caring for one or more persons aged under 16; and

(b) the carer was or is qualified for the payment under paragraph 198(2)(b) or (c) of this Act (whether or not because of clause 141); and

(c) the payment was cancelled:

(i) with effect before the commencement of this clause; or

(ii) with effect on or after that commencement and before 1 July 2010; and

(d) on or after 1 July 2009 and before 1 July 2010, the carer makes a claim for a carer payment for caring for the same person or persons aged under 16.

Claim may be assessed as if paragraphs 198(2)(b) and (c) had not been repealed

(2) In addition to being assessed against this Act as in force after the commencement of this clause, the carer's claim may be assessed as if paragraphs 198(2)(b) and (c) of this Act had not been repealed.

Note: The effect of subclause (2) is that the person may qualify for a carer payment under paragraph 198(2)(b) or (c) or section 197B, 197C or 197E.

(3) Subject to clause 141, if, because of subclause (2), the person is qualified for a carer payment under paragraph 198(2)(b) or (c) of this Act, this Act (as in force immediately before 1 July 2009) applies in relation to the person.

141 Saving—profoundly disabled child and disabled child

Profoundly disabled child and disabled child

(1) Subject to this clause, if a person was receiving a carer payment immediately before 1 July 2009 because the person was qualified for that payment under paragraph 198(2)(b) or (c) of this Act, this Act (as in force immediately before that time) continues to apply in relation to the person.

Clause 141

Remaining qualified for up to 3 months after child turns 16

(2) Despite the repeal of paragraphs 198(2)(b) and (c) of this Act by the *Social Security Legislation Amendment (Improved Support for Carers) Act 2009*, paragraph 197K(1)(a) of this Act applies to a person as if that paragraph included a reference to a person:

(a) who was qualified for a carer payment under either of the repealed paragraphs; and

(b) who:

(i) remains qualified for a carer payment because of subclause (1); or

(ii) becomes qualified for a carer payment because of subclause 140(3).

Unlimited hospitalisation

(3) Despite the repeal of paragraphs 198(2)(b) and (c) of this Act by the *Social Security Legislation Amendment (Improved Support for Carers) Act 2009*, subsection 198AA(1) of this Act applies to a person as if that subsection included a reference to a person:

(a) who was qualified for a carer payment under either of the repealed paragraphs; and

(b) who:

(i) remains qualified for a carer payment because of subclause (1); or

(ii) becomes qualified for a carer payment because of subclause 140(3).

Automatic qualification for carer allowance

(4) Despite the repeal of paragraphs 198(2)(b) and (c) of this Act by the *Social Security Legislation Amendment (Improved Support for Carers) Act 2009*, section 954B of this Act applies to a person as if paragraph 954B(a) included a reference to a person:

(a) who was qualified for a carer payment under either of the repealed paragraphs; and

(b) who:

(i) remains qualified for a carer payment because of subclause (1); or

(ii) becomes qualified for a carer payment because of subclause 140(3).

142 Person whose special benefit was cancelled on or after 1 July 2008 and before 1 July 2010

Circumstances in which clause applies

(1) This clause applies if:

(a) a person received or receives special benefit on or after 1 July 2008; and

(b) while the person received or receives special benefit, the person was or is taken to satisfy the activity test under subsection 731J(1) of this Act because the person was or is caring for a child or children referred to in paragraph 198(2)(b) or (c) of this Act (whether or not because of clause 143); and

(c) the special benefit was cancelled:

(i) with effect before the commencement of this clause; or

(ii) with effect on or after that commencement and before 1 July 2010; and

(d) on or after 1 July 2009 and before 1 July 2010, the carer makes a claim for special benefit; and

(e) the person is caring for the same child or children aged under 16.

Claim may be assessed as if paragraphs 198(2)(b) and (c) had not been repealed

(2) In addition to being assessed against this Act as in force after the commencement of this clause, the person's claim may be assessed as if paragraphs 198(2)(b) and (c) of this Act had not been repealed.

Note: The effect of subclause (2) is that the person may be taken to satisfy the activity test under section 731HA, 731HB or 731J of this Act because the person is caring for the child or children.

(3) Subject to clause 143, if, because of subclause (2), the person is taken to satisfy the activity test under section 731J of this Act because the person is caring for the child or children, this Act (as in force immediately before 1 July 2009) applies in relation to the person.

143 Saving—profoundly disabled child and disabled child

Profoundly disabled child and disabled child

(1) Subject to this clause, if, immediately before 1 July 2009, a person was taken, under section 731J of this Act, to satisfy the activity test because the person met the qualification conditions for a carer payment for caring for a child or children referred to in paragraph 198(2)(b) or (c) of this Act, this Act (as in force immediately before that time) continues to apply in relation to the person.

Taken to satisfy the activity test for up to 3 months after child turns 16

(2) If:
  (a) either:
    (i) a person continues to be taken to satisfy the activity test in section 731J of this Act because of subclause (1) for caring for a child or children; or
    (ii) a person starts to become taken to satisfy the activity test because of subclause 142(3) for caring for a child or children; and
  (b) the child, or one of the children, turns 16; and
  (c) the child has not been assessed and rated and given a score under the Adult Disability Assessment Tool; and
  (d) apart from the child turning 16, the person would remain taken to satisfy the activity test;

the person continues to be taken to satisfy the activity test for 3 months after the child turns 16.

Unlimited hospitalisation—profoundly disabled child or disabled child

(3) Subsection 731J(2) of this Act as amended by Schedule 1 to the *Social Security Legislation Amendment (Improved Support for Carers) (Consequential and Transitional) Act 2009* applies to a person who:

(a) continues to be taken to satisfy the activity test in section 731J of this Act because of subclause (1) for caring for a child or children; or

(b) starts to become taken to satisfy the activity test because of subclause 142(3) for caring for a child or children.

144 Saving and transitional provisions for section 93H

Saving provision

(1) Section 93H, as in force before 20 September 2009, continues to apply to set a person's annual pension rate for the purposes of Division 6 of Part 2.2A if the start day for the age pension was before 20 September 2009.

Indexation of subsection 93H(4) amounts on 20 September 2009

(2) Part 3.16, as amended by Part 3 of Schedule 1 to the *Social Security and Other Legislation Amendment (Pension Reform and Other 2009 Budget Measures) Act 2009*, applies to the indexation on 20 September 2009, and later indexation days, of the amounts in subsection 93H(4).

145 Saving provision for income test taper rate for disability support pensioners under 21 without dependent children

(1) Point 1066A-F9, as in force before 20 September 2009, continues to apply to working out a person's rate of disability support pension under Pension Rate Calculator D in section 1066A if:

(a) the person was receiving disability support pension immediately before that day at a rate worked out under that Calculator; and

(b) the rate was worked out taking account of an ordinary income excess under point 1066A-F10 that was more than nil.

Note: This clause is relevant only if Pension Rate Calculator D in section 1066A continues to apply to working out the person's rate of disability support pension.

(2) Subclause (1) ceases to apply, and does not apply ever again, in relation to the person if:

(a) the person's rate of disability support pension under Pension Rate Calculator D in section 1066A for a day on or after 20 September 2009 is worked out taking account of an ordinary income excess under point 1066A-F10 that is nil or less; or

(b) Pension Rate Calculator D in section 1066A ceases to apply for working out the person's rate of disability support pension for a day on or after 20 September 2009; or

(c) the person ceases to receive disability support pension on or after 20 September 2009.

146 Transitional provision for rates of certain social security pensions on and after 20 September 2009

Application

(1) This clause applies if:

(a) on 19 September 2009 a person was receiving one of the following payments:

(i) age pension;

(ii) disability support pension;

(iv) carer payment;

(vii) special needs pension;

(viii) service pension (except carer service pension);

(ix) income support supplement; and

(b) either:

(i) the person continues (without a break) to receive one of those payments (whether or not of the same sort as the one the person received on that day); or

(ii) subclause (1A) applies to the person.

(1A) This subclause applies to a person if:

(a) a payment by the Thalidomide Australia Fixed Trust:

(i) is made to, or applied for the benefit of, the person as a beneficiary of the Trust; or

(ii) is made to, or applied for the benefit of, the person's partner as a beneficiary of the Trust; or

(iii) is made to the person or the person's partner in respect of a beneficiary of the Trust; and

(b) subparagraph (1)(b)(i) applies to the person immediately before the payment is made; and

(c) the person receives any of the payments mentioned in paragraph (1)(a) at the commencement of item 4 of Schedule 4 to the *Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Election Commitments and Other Measures) Act 2011*; and

(d) after that commencement, the person continues (without a break) to receive that payment, or any of the other payments referred to in paragraph (1)(a).

Purpose

(2) This clause has effect for the purposes of working out the rate of one of the social security pensions described in paragraph (1)(a) for the person for a day (the ***relevant day***) after 19 September 2009 under point 1064-A1 or 1065-A1, or under section 796 so far as one or more of those points are relevant because of that section.

Note: This clause does not make a person entitled to receive a social security pension if the person is not otherwise entitled to receive it.

Clause 146

Provisional annual payment rate

(3) The person's provisional annual payment rate is taken to be the amount worked out under subclause (4) if the total of:

(a) 1/364 of that amount; and

(b) the amount (if any) of DFISA that would be payable to the person on the relevant day assuming that:

(i) the person's provisional annual payment rate were the amount worked out under subclause (4); and

(ii) the amendments made by Schedules 6 and 7 to the *Social Security and Other Legislation Amendment (Pension Reform and Other 2009 Budget Measures) Act 2009* had not been made;

is greater than the total of:

(c) 1/364 of the person's provisional annual payment rate apart from this clause; and

(d) the amount (if any) of DFISA that would be payable to the person on the relevant day apart from this clause.

Note: The provisional annual payment rate is an amount worked out under the method statement in point 1064-A1. Point 1064-A1 may be relevant of its own force or because of point 1065-A1 or section 796.

(4) The amount is the one that would be the provisional annual payment rate under the relevant point if:

(a) the maximum payment rate for the person were the total of:

(i) the amount worked out under whichever of subclauses 147(1), (2), (3) and (4) is relevant to the person; and

(ia) the person's energy supplement (if any) (see subclause 149(5)); and

(ii) the amount (if any) per year calculated for the person under paragraph 1070A(b) (for rent assistance);

reduced, if subclause 147(1) or (2) is relevant to the person and an election by the person under subsection 1061VA(1) is in force, by the minimum pension supplement amount; and

(b) the amendments made by Schedules 6 and 7 to the *Social Security and Other Legislation Amendment (Pension Reform*

and Other 2009 Budget Measures) Act 2009 had not been made.

Note 1: The maximum payment rate is an amount used in point 1064-A1.

Note 2: Subclause 147(1) deals with a person in Australia who is not a member of a couple or is a member of an illness separated couple or respite care couple, or is partnered (partner in gaol).

Note 3: Subclause 147(2) deals with a person in Australia who is a member of a couple (but not a member of an illness separated couple or respite care couple, and not partnered (partner in gaol)).

Note 4: Subclause 147(3) deals with a person who has been outside Australia for more than 6 weeks and is not a member of a couple or is a member of an illness separated couple or respite care couple, or is partnered (partner in gaol).

Note 5: Subclause 147(4) deals with a person who has been outside Australia for more than 6 weeks and is a member of a couple (but not a member of an illness separated couple or respite care couple, and not partnered (partner in gaol)).

Note 6: The amount described in subparagraph (4)(a)(i) is indexed under sections 1191 to 1194 (CPI indexation) on and after 20 March 2010.

Limit on application of subclause (3)

(5) Subclause (3) does not apply for working out the rate of a social security pension of the person for the relevant day if the relevant day is after a day for which one of the following conditions was met:

(a) the amount worked out for the day under subclause (4) (in a previous application of this clause) was less than or equal to the person's provisional annual payment rate, apart from this clause, for a social security pension described in paragraph (1)(a);

(b) the amount worked out for the day under subclause 30(4) of Schedule 5 to the Veterans' Entitlements Act was less than or equal to the person's provisional payment rate for service pension (except carer service pension) apart from clause 30 of that Schedule;

(c) the amount worked out for the day under subclause 30(6) of Schedule 5 to the Veterans' Entitlements Act was less than or

equal to the person's provisional payment rate for income support supplement apart from clause 30 of that Schedule.

(5A) However, subclause (5) does not prevent subclause (3) from applying for working out the rate of a social security pension of the person for the relevant day if:

(a) on the relevant day the person is a member of a couple, but not a member of an illness separated couple or respite care couple and not partnered (partner in gaol); and

(b) on each day for which a condition in paragraph (5)(a), (b) or (c) was met, the person was a member of a respite care couple; and

(c) on a day before all the days described in paragraph (b):

(i) the person was a member of a couple, but not a member of an illness separated couple or respite care couple and not partnered (partner in gaol); and

(ii) either subclause (3) affected the rate at which a social security pension was payable to the person or clause 30 of Schedule 5 to the Veterans' Entitlements Act affected the rate at which service pension or income support supplement was payable to the person.

Note: For ***member of a couple***, ***illness separated couple***, ***respite care couple*** and ***partnered (partner in gaol)*** see section 4.

Relationship with DFISA provisions

(6) This clause does not affect the operation of Part VIIAB (Defence Force Income Support Allowance and related payments) of the *Veterans' Entitlements Act 1986* for the purposes of working out amounts of payments under that Part after working out the provisional annual payment rate for a social security pension taking account of this clause.

147 Amounts for subparagraph 146(4)(a)(i)

Single Australian resident in Australia

(1) For the purposes of subparagraph 146(4)(a)(i), work out the amount as follows, if, on the relevant day:

(a) the person's family situation is any of the following:

(i) not a member of a couple;

(ii) member of an illness separated couple;

(iii) member of a respite care couple;

(iv) partnered (partner in gaol); and

(b) the person is residing in Australia; and

(c) the person either:

(i) is in Australia; or

(ii) is temporarily absent from Australia and has been so for a continuous period not exceeding 6 weeks.

Method statement

Step 1. Work out what each of the following amounts (described using the abbreviation used in Part 3.16 for the amount) would be on 20 September 2009, taking account of indexation (if any) under that Part on that day, if the *Social Security and Other Legislation Amendment (Pension Reform and Other 2009 Budget Measures) Act 2009* had not been enacted:

(a) the amount that would be the pension MBR for a person who is not a member of a couple assuming that section 1195 did not apply on 20 September 2009;

(b) pension supplement for a person who is not (and was not on 1 July 2000) a member of a couple;

(c) pension PA "single" rate;

Clause 147

(d) TA (internet) "single" rate;

(e) UA "single" rate.

Step 2. Identify the greater of the amount described in paragraph (e) of step 1 and $525.20 (or either of them if they are the same).

Step 3. Add up all the amounts worked out under step 1 and the amount identified under step 2.

Step 4. If the result of step 3 is not a multiple of $2.60, round that result up to the next multiple of $2.60.

Note 1: For ***member of a couple***, ***illness separated couple***, ***respite care couple*** and ***partnered (partner in gaol)*** see section 4.

Note 2: Subsection 7(3) is relevant to determining whether a person is residing in Australia.

Note 3: Section 1190 explains the abbreviations used in Part 3.16.

Partnered Australian resident in Australia

(2) For the purposes of subparagraph 146(4)(a)(i), work out the amount as follows, if, on the relevant day:

(a) the person is a member of a couple, but not a member of an illness separated couple or respite care couple and not partnered (partner in gaol); and

(b) the person is residing in Australia; and

(c) the person either:

(i) is in Australia; or

(ii) is temporarily absent from Australia and has been so for a continuous period not exceeding 6 weeks.

Method statement

Step 1. Work out what each of the following amounts (described using the abbreviation used in Part 3.16 for the amount)

would be on 20 September 2009, taking account of indexation (if any) under that Part on that day, if the *Social Security and Other Legislation Amendment (Pension Reform and Other 2009 Budget Measures) Act 2009* had not been enacted:

(a) the amount that would be the pension MBR for a person who is a member of a couple (but not a member of an illness separated couple or respite care couple and not partnered (partner in gaol)) assuming that section 1195 did not apply on 20 September 2009;

(b) pension supplement for a person who is (and was on 1 July 2000) a member of a couple (but not a member of an illness separated couple or respite care couple and not partnered (partner in gaol));

(c) Pension PA "partnered" (item 2) rate;

(d) TA (internet) "partnered" (item 5) rate;

(e) half the UA "single" rate.

Step 2. Identify the greater of the amount described in paragraph (e) of step 1 and $262.60 (or either of them if they are the same).

Step 3. Add up all the amounts worked out under step 1 and the amount identified under step 2.

Step 4. If the result of step 3 is not a multiple of $2.60, round that result up to the next multiple of $2.60.

Note 1: For ***member of a couple***, ***partnered***, ***illness separated couple***, ***respite care couple*** and ***partnered (partner in gaol)*** see section 4.

Note 2: Subsection 7(3) is relevant to determining whether a person is residing in Australia.

Clause 147

Note 3: Section 1190 explains the abbreviations used in Part 3.16.

Single person not covered by subclause (1)

(3) For the purposes of subparagraph 146(4)(a)(i), work out the amount as follows, if, on the relevant day:

(a) the person's family situation is any of the following:

(i) not a member of a couple;

(ii) member of an illness separated couple;

(iii) member of a respite care couple;

(iv) partnered (partner in gaol); and

(b) the person either:

(i) is not residing in Australia; or

(ii) is absent from Australia and has been so for a continuous period exceeding 6 weeks.

Method statement

Step 1. Work out what each of the following amounts (described using the abbreviation used in Part 3.16 for the amount) would be on 20 September 2009, taking account of indexation under that Part on that day, if the *Social Security and Other Legislation Amendment (Pension Reform and Other 2009 Budget Measures) Act 2009* had not been enacted:

(a) the amount that would be the pension MBR for a person who is not a member of a couple assuming that section 1195 did not apply on 20 September 2009;

(b) pension supplement for a person who is not (and was not on 1 July 2000) a member of a couple.

Step 2. Add up the amounts worked out under step 1.

Note 1: For ***member of a couple***, ***illness separated couple***, ***respite care couple*** and ***partnered (partner in gaol)*** see section 4.

Note 2: Subsection 7(3) is relevant to determining whether a person is residing in Australia.

Note 3: Section 1190 explains the abbreviations used in Part 3.16.

Partnered person not covered by subclause (2)

(4) For the purposes of subparagraph 146(4)(a)(i), work out the amount as follows, if, on the relevant day:

(a) the person is a member of a couple, but not a member of an illness separated couple or respite care couple and not partnered (partner in gaol); and

(b) the person either:

(i) is not residing in Australia; or

(ii) is absent from Australia and has been so for a continuous period exceeding 6 weeks.

Method statement

Step 1. Work out what each of the following amounts (described using the abbreviation used in Part 3.16 for the amount) would be on 20 September 2009, taking account of indexation under that Part on that day, if the *Social Security and Other Legislation Amendment (Pension Reform and Other 2009 Budget Measures) Act 2009* had not been enacted:

(a) the amount that would be the pension MBR for a person who is a member of a couple (but not a member of an illness separated couple or respite care couple and not partnered (partner in gaol)) assuming that section 1195 did not apply on 20 September 2009;

(b) pension supplement for a person who is (and was on 1 July 2000) a member of a couple (but not a member of an illness separated couple or respite care couple and not partnered (partner in gaol)).

Step 2.	Add up the amounts worked out under step 1.

Note 1: For ***member of a couple***, ***partnered***, ***illness separated couple***, ***respite care couple*** and ***partnered (partner in gaol)*** see section 4.

Note 2: Subsection 7(3) is relevant to determining whether a person is residing in Australia.

Note 3: Section 1190 explains the abbreviations used in Part 3.16.

148 Rate of social security payments to partners of persons affected by clause 146

(1) This clause applies if clause 146 applies to a person who is a member of a couple and that clause affects the rate at which a social security pension is payable to the person.

(2) In working out the amount of a social security payment payable to a partner of the person, assume that the social security pension payable to the person is payable at the rate at which it would be payable if clause 146 had not been enacted.

149 Payment and income tax consequences of receiving social security pension at rate affected by clause 146

Application

(1) This clause applies if clause 146 affects the rate at which a social security pension is payable to a person.

Purpose

(2) The purpose of this clause is to ensure that the person is treated appropriately in relation to the payment, and income taxation, of the pension by modifying the operation of the social security law (and thus affecting the related income tax law) in relation to the person and the pension.

Note: This clause does not modify the operation of subsection 20A(4), which provides for working out the person's minimum pension supplement amount.

Pension supplement amount

(3) The social security law applies in relation to the person's pension as if the amount described in subparagraph 146(4)(a)(i), as affected by any indexation and any relevant reduction described in paragraph 146(4)(a), were an amount added under the pension supplement Module of the relevant Pension Rate Calculator (and therefore used to work out the rate of the pension).

Note 1: One effect of subclause (3) is that the amount is the person's pension supplement amount (as defined in subsection 23(1)).

Note 2: If that amount exceeds the person's pension supplement basic amount (as affected by subclause (4)), other effects of subclause (3) include the following:

(a) the excess being tax-exempt pension supplement under subsection 20A(6) of this Act;

(b) Part 2.25C (Quarterly pension supplement) of this Act applying, which may affect timing of payment of some of the pension under the Administration Act;

(c) the possibility of the minimum amount of fortnightly instalments of the pension being affected under section 43 of the Administration Act;

(d) telephone allowance not being payable because of section 1061R of this Act;

(e) utilities allowance not being payable because of section 1061T of this Act.

Note 3: Yet another effect of subclause (3) is that section 1210 will affect the operation of reductions of the maximum payment rate because of the income test and assets test.

Pension supplement basic amount

(4) The social security law applies in relation to the person's pension as if:

(a) each reference in the table in subsection 20A(5) to $507 were a reference to $14,814.80; and

(b) the reference in the table in subsection 20A(5) to $423.80 were a reference to $12,373.40.

Note 1: This affects the person's pension supplement basic amount.

Note 2: The provisions for indexing amounts in the table in subsection 20A(5) apply to the higher figures mentioned in this subclause.

Energy supplement

(5) If subclause 147(1) or (2) is relevant to the person, the social security law applies in relation to the person's pension as if:

(a) the energy supplement Module of the relevant Pension Rate Calculator were the same as Module C of Pension Rate Calculator A; and

(b) the person's energy supplement (if any) resulting from that Module were used to work out the rate of the person's pension.

Note 1: This energy supplement is included in the total worked out under paragraph 146(4)(a) (see subparagraph 146(4)(a)(ia)).

Note 2: This subclause causes Division 2 of Part 2.18A (Quarterly energy supplement) of this Act to apply. If quarterly energy supplement is payable, then no energy supplement will be available to be included in the total worked out under paragraph 146(4)(a) (see point 1064-C1 of this Act).

Note 3: Other effects of this subclause include:

(a) the possibility of the minimum amount of fortnightly instalments of the pension being affected under section 43 of the Administration Act; and

(b) that section 1210 will affect the operation of reductions of the maximum payment rate because of the income test and assets test.

150 Persons exempt from requirement to be Australian residents to qualify for disability support pension

Paragraphs 94(1)(ea), 94A(1)(ja) and 95(1)(d) do not affect the qualification for disability support pension of:

(a) a person to whom the provisions mentioned in subclause 128(1) continue to apply as described in that subclause; or

(b) a person who is covered by a determination under clause 135.

Note: Those paragraphs are in Subdivision A of Division 1 of Part 2.3, which is about qualification for disability support pension.