



Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Budget and Other Measures) Bill 2010

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House: House of Representatives

Portfolio: Families, Housing, Community Services and Indigenous Affairs

Commencement: Schedules 1 and 2 commence on 1 January 2011, schedules 3 and 4 commence on the day after Royal Assent and schedules 5 to 7 commence on the day of Royal Assent.

Links: The links to the [Bill, its Explanatory Memorandum and second reading speech](#) can be found on the Bills home page, or through <http://www.aph.gov.au/bills/>. When bills have been passed they can be found at the ComLaw website, which is at <http://www.comlaw.gov.au/>.

Purpose

The Bill:

- amends the Special Disability Trust provisions,
- amends the residence requirements for Disability Support Pension,
- enables certain parcels of land to be granted to Aboriginal Land Trusts,¹
- allows the Minister to make guidelines for the Aboriginal Land Corporation,²
- amends the Family Assistance Law with regard to students studying overseas, and
- corrects minor anomalies arising from the pension reforms of 2009.

Committee consideration

Schedule 2 of the Bill which deals with residence requirements to qualify for Disability Support Pension has been referred to the Senate Community Affairs Legislation Committee for inquiry. The

¹ This schedule was removed from the Bill by a Government amendment in the House of Representatives.

² This schedule was removed from the Bill by a Government amendment in the House of Representatives.

report was issued on 22 November 2010. Details of the inquiry and report are at http://www.aph.gov.au/senate/committee/clac_ctte/fahscia_2/index.htm

Schedules 3 and 4 of the Bill which relate to indigenous land grants and the Aboriginal Land Corporation have been referred to the Senate Standing Committee on Legal and Constitutional Affairs inquiry and report by 8 February 2011. Details of the inquiry and report are at http://www.aph.gov.au/senate/committee/legcon_ctte/fachsia_4/index.htm

Background

Schedule 1 – Special Disability Trusts

Special Disability Trusts (SDTs) were introduced by the Howard Government in September 2006. Parents and immediate family members can use them to set aside money for the accommodation and care of a family member with a severe disability.

SDTs provide the following means test concessions:

- For the principal beneficiary, all assessable trust assets up to the concessional asset value limit are exempt from the social security and veterans' entitlements assets test. The limit was initially set at \$500 000 on 20 September 2006 and is indexed on 1 July each year to the CPI. The current limit is \$563 250. Assets above the concessional limit are included in the principal beneficiary's assessable assets. The primary residence is an exempt asset.
- No income of or distributions from the special disability trust are assessable under the social security or veterans' entitlements income tests.³

In October 2008 the Senate Community Affairs Committee completed an inquiry into the operation of the SDTs and came to the following conclusions:

Only a small number of SDTs have been established and there are substantial concerns about the effectiveness of the current arrangements. The eligibility requirements for SDTs are overly restrictive, such that many people with severe disabilities, including intellectual disabilities and disability resulting from mental illnesses, are not able to benefit from the trusts. The concessional limit on trust assets is too low and does not allow families and carers to effectively provide for the future.

³ Department of Families, Housing, Community Services and Indigenous Affairs (FAHCSIA), *Guide to the Social Security Law*, FAHCSIA, Canberra, 2010, section 4.14.3.40, viewed 16 November 2010, http://www.facs.gov.au/guides_acts/ssg/ssguide-4/pc_13802/pc_13812/pc_13817.html

The tax arrangements which currently apply to SDTs diminish their value for carers and people with disabilities. The application of capital gains tax to the sale of a beneficiary's primary residence and the high rate of tax applied to trust earnings are a particular disincentive to investing in the trusts.

The tight restriction on eligible uses of SDTs is a major shortcoming in the current arrangements. People see little point in setting aside funds if those funds cannot be used to provide the accommodation, care and support that their loved one needs to live as independently as possible.⁴

The Government response to the report has come in two parts. The 2009-10 Budget included the following changes:

- starting from the 2008-09 financial year unexpended income of a Special Disability Trust was taxed at the beneficiary's personal income tax rates, rather than the highest marginal tax rate; and
- from 1 July 2009 the capital gains tax main residence exemption was applied to a residence that is owned by a Special Disability Trust and used by the relevant beneficiary as their main residence.

The measures in this bill are the second part. On passage of this bill, from 1 January 2011:

- people with disability who are the beneficiaries of a trust would be able to work up to seven hours a week in the open labour market and still qualify;
- the Trust would be able to pay for the beneficiary's medical expenses, including membership costs for private health funds, and the maintenance expenses of the Trust's assets and properties; and
- the Trust would be able to spend up to \$10 000 in a financial year on discretionary items not related to the care and accommodation needs of the beneficiary of the trust.⁵

Schedule 2 - Residence Requirement to Qualify for Disability Support Pension

Portability of social security payments

Almost all Australian social security payments allow for recipients to receive their payments while overseas under certain conditions and in certain circumstances. This is known as the portability of the payment. While some payment recipients, such as age pensioners, are given full exemption from the permanent residency requirements in the *Social Security Act 1991 (SSA)*, most are only able to leave Australia for a maximum 13-week period, during which they must continue to meet the other

⁴ Senate Standing Committee on Community Affairs, *Building Trust: Supporting Families Through Disability Trusts*, Commonwealth of Australia, Canberra, 16 October 2008, Executive Summary, viewed 16 November 2010.
http://www.aph.gov.au/senate/committee/clac_ctte/disability_trusts/report/b01.htm

⁵ Department of Families, Housing, Community Services and Indigenous Affairs (FAHCSIA), *Special Disability Trusts*, FAHCSIA, Canberra, 2010, viewed 16 November 2010,
<http://www.fahcsia.gov.au/sa/carers/progserv/Pages/SpecialDisabilityTrusts.aspx>

qualifying criteria for the payment. This limited portability is intended to allow payment recipients a short period of time to attend to any personal matters which they are required to deal with overseas. Age Pension recipients are allowed unlimited periods of absence from Australia, however, after a period of 26 weeks overseas, their payment may be reduced to a rate proportional with the recipient's residency in Australia during their working life. Newstart Allowance, Sickness Allowance, Special Benefit and Youth Allowance for unemployed jobseekers are generally not payable when the recipient is outside of Australia except in rare prescribed circumstances and then only for the amount of time required to deal with the crisis or issue.

Provisions allowing for indefinite portability for pensions were introduced in 1973. Since then, successive amendments have limited the portability period and eligibility requirements, deferring to the residency-based nature of the Australian social security system.⁶ Prior to 2004, most income support payments allowed for temporary absences for up to 26 weeks. The *Family and Community Services and Veterans' Affairs Legislation Amendment (2003 Budget and Other Measures) Act 2003* halved that period for most payments but did not alter the arrangements for Age Pension, entitled Wife Pension or entitled Widow B Pension.⁷ The reasons given for this change were that:

The Government believes that it is not appropriate for taxpayers to subsidise a person of workforce age to stay overseas for prolonged periods of time. Rather, the Government is committed to welfare reform and improving opportunities for all Australians of working age to engage in activities that will enable them to participate fully in the economic and social life of Australia.⁸

Centrelink retained discretionary power to grant extensions to the portability period under strictly defined conditions.

Portability of DSP

The *Family and Community Services and Veterans' Affairs Legislation Amendment (2003 Budget and Other Measures) Act 2003* extended the limited portability period to DSP recipients who had previously enjoyed the same unlimited period as those on the Age Pension. Prior to these changes, severely disabled DSP recipients could be paid for any length of absence from Australia for any reason. From 2004, only DSP recipients who are severely disabled and terminally ill can continue to receive their payment beyond the limited portability period and only if their absence is or will be

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6. Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA), 'Portability of Australian Income Support Payments', FaHCSIA website, 2006, viewed 2 November 2010, http://www.fahcsia.gov.au/sa/international/policy/Portability_Policy/Pages/default.aspx
 7. For further information on these changes see P Yeend, *Family and Community Services and Veteran Affairs Legislation Amendment (2003 Budget and Other Measures) Bill 2003*, Bills Digest, no. 43, 2003–04, Parliamentary Library, Canberra, 2003, viewed 2 November 2010, <http://www.aph.gov.au/library/pubs/bd/2003-04/04bd043.pdf>
 8. Department of Families and Community Services (FaCS), 'Portability of Australian Income Support Payments Factsheet', Department of Families and Community Services, 2006, viewed 2 November 2010, http://www.facs.gov.au/sa/international/policy/Portability_Policy/Pages/policy-portability_factsheet.aspx

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permanent and is in order to be with or near family or to return to the person's country of origin. Unlimited portability in these circumstances is only granted to those considered to be in the terminal phase of a terminal illness (where life expectancy is less than two years) and is decided on a case-by-case basis.

All other recipients of DSP are subject to the same general rules regarding limited portability. This means that payment will only be made for 13 weeks of either a temporary or permanent absence. Recipients undertaking study as part of a full time Australian course can be paid for the duration of their overseas study as can Australian apprentices who are working or training overseas as part of their apprenticeship.

An absence from Australia is considered temporary if a recipient permanently resides in Australia. Section 7 of the SSA lists the factors for determining whether or not a recipient does reside in Australia including: the nature of the accommodation used by the person in Australia, the nature and extent of the family relationships the person has in Australia and the frequency and duration of the person's travel outside Australia. The Department of Families, Housing, Community Services and Indigenous Affairs' (FaHCSIA) *Guide to Social Security Law* explicitly states in its explanation in regards to temporary absences that 'recipients in receipt of payments that have a limited portability period who frequently travel overseas and return to Australia only to renew their portability period MAY NOT satisfy the qualifying residence criteria for the payment'. The issue that the proposals in this Bill are targeting is in regards to the qualifying residence criteria for DSP. Part 2.3 of the SSA outlines the qualifying criteria for DSP including the residency criteria. These include:

- that they are an Australian resident at the time when the person first satisfies the disability criteria for DSP; or
- has ten years qualifying Australian residence, or has a qualifying residence exemption for a disability support pension; or
- is born outside Australia and, at the time when the person first satisfies the disability criteria for DSP, the person:
 - is not an Australian resident; and
 - is a dependent child of an Australian resident; and
- the person becomes an Australian resident while a dependent child of an Australian resident.

Thus, under the current provisions of the SSA, a payment recipient could continue to meet the qualifying residence criteria for the payment despite frequent travels to and from Australia as the current residency criteria are concerned with residency status at the time when a person first meets the disability criteria. The proposed amendments in this Bill will make Australian residency an ongoing requirement for DSP qualification.

The proposals contained in this Bill do not amend the portability rules for DSP recipients. Rather, they introduce an ongoing residency requirement which will affect the ability of certain DSP recipients to live overseas and still qualify for the payment. The residency criteria for DSP are currently anomalous with other payments that have limited portability. While the proposed

amendments will restrict the ability of some DSP recipients to move overseas permanently, the amendments fit within the framework of Australia's residency-based income support system (as opposed to contribution-based or social insurance models).

Who will be affected?

It is not clear how many current DSP recipients are residing permanently overseas and returning to Australia every 13 weeks to continue qualifying for the payment. The Minister for Families, Housing, Community Services and Indigenous Affairs, Jenny Macklin, stated in a media release marking the introduction of this Bill that:

Analysis of data from the 2007–08 financial year shows that of DSP recipients who undertook more than three overseas trips, 154 spent less than eight weeks in Australia over the year. Of these 71 spent less than four weeks in Australia and eight spent less than a week here.⁹

In 2009–10, there were 792 581 DSP recipients.¹⁰ As such, the proposed amendments will affect only a very small percentage of DSP recipients who are spending the majority of their time outside of Australia. The proposed amendments will not affect DSP recipients who only travel overseas temporarily as the existing 13 week portability period will remain. It will also not affect those who have portability under an international social security agreement, those who are grandfathered from previous changes to portability rules and those entitled to reside permanently overseas under existing criteria.

The Senate Community Affairs Legislation Committee Inquiry into Schedule 2 of this Bill received a number of submissions from individuals concerned as to the possible adverse effects of the proposed amendments. These included an individual who is residing overseas with his family and returning to Australia every 13 weeks in order to remain eligible for DSP. Another was concerned with the issue of severely disabled DSP recipients who move overseas with a guardian who has taken up employment in another country and who will also be affected by the amendments in this Bill by not having the option to return home every 13 weeks to continue to qualify.¹¹ In their submission to the inquiry, FaHCSIA argued that 'if portability for DSP recipients with a severe disability and a legal guardian was included in the Bill before the Committee it is estimated that none of the 1000 DSP

9. J Macklin (Minister for Families, Housing, Community Services and Indigenous Affairs) and J McLucas (Parliamentary Secretary for Disabilities and Carers), *Introduction of legislation for new residency rules for Disability Support Pensioners*, media release, 20 October 2010, viewed 2 November 2010, http://www.jennymacklin.fahcsia.gov.au/mediareleases/2010/Pages/jm_m_dsp_res_20october2010.aspx

10. Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA), *Annual Report 2009–10*, FaHCSIA, Canberra, 2010, p. 93.

11. These submissions are available from the website of the Senate Community Affairs Legislation Committee, *Inquiry into Schedule 2 of Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Budget and Other Measures) Bill 2010 (Changes to Disability Support Pension)*, viewed 17 November 2010, http://www.aph.gov.au/senate/committee/clac_ctte/fahcsia_2/submissions.htm

recipients who travel overseas regularly would benefit'.¹² FaHCSIA's submission did not respond directly to the situation of the individual living overseas with a family and who returned to Australia every 13 weeks to qualify. The department's submission stated:

The main purpose of DSP is to assist people with the cost of living in Australia and support their social and economic participation. If a DSP recipient is living overseas then the DSP payments funded by Australian taxpayers are not helping them in this way ... The 13 week portability rules allow DSP recipients sufficient time to attend to personal business that might arise from time to time overseas or on holiday. Current exemptions provide a sound basis for ensuring that the social security system is fair and equitable for all.¹³

The proposed measure is expected to save around \$3 million a year if enacted with FaHCSIA stating that these savings will derive from some individuals choosing to reside permanently overseas, forfeiting their DSP eligibility.¹⁴ In calculating this saving, FaHCSIA assumes that 150 DSP recipients (or 15 per cent of the DSP population who travel overseas regularly each year) will choose to remain overseas and have their payment cancelled.¹⁵ It is estimated that a further 15 DSP recipients in each year over the forward estimates will choose to remain overseas and lose their payment.¹⁶ A number of witnesses at the hearing held as part of the Senate Community Affairs Committee inquiry into Schedule 2 of this Bill suggested that the savings could be considerably more if expenditure across government is taken into account.¹⁷ A previous cost/benefit analysis of portability policy in Australia by the Department of Families and Community Services identified significant savings resulting from pension recipients having long-term or permanent absences, primarily in terms of reduced costs on health and social welfare infrastructure. However, that study did not examine DSP specifically and instead looked at the portability of all pensions.

FaHCSIA has stated that it did not include any other government programs or add-on costs outside of their portfolio in the costing model used for the proposed measures in this Schedule of the Bill.¹⁸

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12. Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA), Submission to the Senate Community Affairs Legislation Committee, *Inquiry into Schedule 2 of Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Budget and Other Measures) Bill 2010 (Changes to Disability Support Pension)*, November 2010, p. 6, viewed 16 November 2010, http://www.aph.gov.au/senate/committee/clac_ctte/fahscia_2/submissions.htm
 13. Ibid.
 14. Senate Community Affairs Legislation Committee, Reference: Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Budget and Other Measures) Bill 2010, *Hansard*, 15 November 2010, p. 27, viewed 17 November 2010, <http://www.aph.gov.au/hansard/senate/commttee/S13355.pdf>
 15. Senate Community Affairs Legislation Committee, *Inquiry into Provisions of Schedule 2 and 3 of the Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Budget and Other Measures) Bill 2010*, The Senate, Canberra, November 2010, viewed 23 November 2010, http://www.aph.gov.au/senate/committee/clac_ctte/fahscia_2/report/index.htm
 16. Ibid
 17. Ibid.
 18. Ibid, p. 27.

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The stated reason for the proposed amendments is not to produce savings, rather it is to 'close a loophole' and bring DSP into line with other workforce-age payments.¹⁹

Schedule 3 – Scheduling of land

The bill adds parcels of land near Borroloola and the Port Patterson Islands to the *Aboriginal Land Rights (Northern Territory) Act 1976*'s Schedule 1, thus enabling them to be granted to relevant Aboriginal Land Trusts and help resolve two long-running and complex land claims.

This schedule was removed from the bill by a Government amendment in the House of Representatives. The reasons for this are set out in the Supplementary Explanatory Memorandum for the Bill.

Schedule 4 – Indigenous Land Corporation

The bill amends the *Aboriginal and Torres Strait Islander Act 2005* (the ATSI Act) to provide for the Minister to make guidelines that the Indigenous Land Corporation (ILC) needs to take into account when supporting native title settlements.

This schedule was removed from the bill by a Government amendment in the House of Representatives. The reasons for this are set out in the Supplementary Explanatory Memorandum for the Bill.

Schedule 5 - Family tax benefit

Family Tax Benefit-A (FTB-A) is an income supplement payment aimed at helping families with the cost of raising children. It is usually paid in regards to dependent children and dependent full time students aged less than 25 years who do not qualify for payments such as Youth Allowance, ABSTUDY or Veterans' Children Education Supplement. FTB-A can be paid to a parent, guardian or an approved care organisation. Eligibility is dependent on level of income, which varies depending on the number and age of children that FTB-A is claimed in regards to.

The *Family Assistance Legislation Amendment (Participation Requirement) Act 2009* introduced a new activity test for young people aged 16 to 20 which precludes access to FTB-A for the parent/carer where the young person is an early school leaver and not in education or training. However, young people who were undertaking education or training overseas (and who were not

19. J Macklin, 'Second reading speech: Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Budget and Other Measures) Bill 2010', House of Representatives, *Debates*, 20 October 2010, p. 3, viewed 4 November 2010, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansard%2F2010-10-20%2F0017%22>

doing so through an approved course at an Australian institution) were excluded from the definition of FTB child and their parents/carers were thus precluded from claiming FTB-A in respect to these young people. The amendments in this schedule are aimed at allowing parents/carers to claim FTB-A for young people who are studying overseas and for children aged five to 16 studying overseas who are earning over the taxable income cut-off amount of \$11 233.

Students studying overseas and eligibility for family tax benefit

The *Family Assistance Legislation Amendment (Participation Requirement) Act 2009* inserted a new section into the *A New Tax System (Family Assistance) Act 1999* (FAA) describing activity test requirements for FTB as well as exemptions from the activity test. This activity test required young people aged 16 to 20 to have either completed year 12, or its equivalent, or be undertaking full time study that would assist or allow them to attain this level of education. Individuals aged 21 to 24 were already required to be in full time study to be considered an 'FTB child' (a child for which their parent or carer is eligible to receive FTB in regards to). The meaning of the term 'undertaking full-time study' is defined in the existing subsection 3(1) of the FAA by reference to the SSA (specifically section 541B). The definitions in the FAA and in the SSA do not specifically refer to students studying overseas. Portability provisions allow for FTB recipients and for their qualifying children to be overseas for up to three years before losing their eligibility for payments if they continue to meet other qualifying criteria. These include the participation requirements introduced in 2009 which must continue to be met during a period overseas in order for such children to retain their status in regards to their parent/carer's family tax benefit eligibility. Children and young people undertaking full time study abroad who are not doing so through an approved course of study with an Australian institution are excluded from the current definition of FTB child and the criteria in the current activity test and could affect the eligibility or the rate of their parent or carer's FTB. The proposed amendments in this Bill aim to include such children and young people in the definition of FTB child, and include full time study abroad in the criteria of the activity test.

It is unclear how many students will be affected by the proposed amendments. The Explanatory Memorandum to the Bill states that the proposed changes to family assistance legislation will have no financial impact indicating that only a very small number of individuals will benefit and that the proposed measures are aimed primarily at clarification of the existing rules.

Schedule 6 – Pension Reform Measures

In September 2009 changes were made to the rate of pension, the taper rate used in the pension income test and the treatment of employment income under the income test.

This schedule contains measures that correct two minor anomalies produced by the 2009 changes that have given rise to unintended results.

The current definition of employment income excludes income from paid leave. This can affect the eligibility of that income to be tested with the benefit of the Work Bonus which was introduced in

September 2009. It can also affect eligibility for the transitional income testing arrangement in cases where a lump sum leave payment is treated in such a way that the pensioner is better off under the standard income test. This means that they would no longer have access to the transitional arrangements once this one off leave payment was no longer a factor in their pension rate calculations. This could work to their detriment. This measure adds leave payments to the definition of employment income.

A further measure ensures that where one person in a couple is paid a veterans pension and the other is paid a social security pension they receive the full benefit of the Work Bonus.

Schedule 7 – Minor Corrections

The measures in this schedule make minor technical changes that have no policy import.

Financial implications

The changes to Special Disability Trusts are estimated to cost \$1 million over the years 2010-2014. The changes to residence requirements for Disability Support pension are estimated to save \$8.4 million over the years 2010-2014

Key provisions

Special Disability Trusts

Item 2 of Schedule 1 substitutes a new **paragraph 1209M(2)(c)** of the *Social Security Act 1991* which allows a person with a disability to be the beneficiary of a SDT if their disability results in them being unable to work for more than 7 hours per week or results in them working under the supported wage system.

Item 3 amends **subsection 1209N(1)** so that the 'primary' rather than the 'sole' purpose of the SDT is to meet the reasonable care and accommodation needs of the beneficiary. This allows some of the SDT proceeds to be used for other purposes for the benefit of the beneficiary.

Item 4 repeals **subsections 1209N(2), (3) and (4)** and substitutes a new set of subsections providing for other purposes for the SDT than the primary purpose. The Secretary's pre-existing power to make guidelines, by legislative instrument, is continued, but broadened to enable them to determine what are reasonable care and accommodation needs and what are purposes that are primarily for the benefit of the beneficiary of the SDT.

Item 5 inserts **new section 1209RA** which provides for the Secretary to make guidelines, by legislative instrument, which set out how much income or assets of the SDT may be used each year

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for purposes, other than the primary purpose. When they are made, the limits set in these determinations must be met by the trust.

Items 6 to 10 amend the *Veterans' Entitlements Act 1986*, to give effect to the same set of changes as are described above for the *Social Security Act 1991*.

Residence Requirement to Qualify for Disability Support Pension

Paragraph 94(1)(e) of the *Social Security Act 1991* sets out the residency criteria for DSP. **Item 1** proposes an additional subparagraph (ea) requiring Australian residency for a person to qualify for DSP. This is in addition to the existing criteria which require Australian residency at the time a person satisfies the disability criteria in paragraphs 94(1)(a), (b) and (c) in order for them to qualify for DSP. The proposed subparagraph (ea) allows for an exception to the Australian residency requirement for those who meet the criteria set out in the existing paragraphs 1218AA(1)(a), (b), (c), (d), (e) which allow for unlimited portability to be granted to those who are severely disabled, terminally ill and moving permanently from Australia in order to be with family members or in the person's country of origin.

Item 2 inserts an identical subparagraph as Item 1 after paragraph 94A(1)(j) which sets out the qualifying criteria for those transferring to DSP from another social security benefit or entitlement. That is, it requires those transferring to DSP to be Australian residents unless they are severely disabled, terminally ill and moving permanently from Australia in order to be with family members or in the person's country of origin.

Item 4 inserts an identical subparagraph as Items 1 and 2 to subsection 95(1) which sets out the qualifying criteria for DSP-permanent blindness.

Item 5 inserts a proposed definition of *Australian resident disability support pensioner* to Part 4.2 of the Act which covers overseas portability. The definition covers those who qualify for DSP only because they are an Australian resident.

Item 6 inserts a proposed definition of *terminally ill overseas disability support pensioner* to Part 4.2 of the Act which covers overseas portability. Persons who meet this definition are those who qualify for DSP because of all the circumstances outlined in existing paragraphs 1218AA(1)(a), (b), (c), (d), (e) of the Act.

Item 7 proposes to replace Section 1217 (table item 3) which sets out the portability of DSP in relation to other payments and insert new table items reflecting the amendments proposed in the Bill. Proposed table item 2 sets out that the portability of DSP is for persons who are 'Australian resident disability support pensioners' and allows for 'any temporary absence' (rather than the existing 'any absence'). Proposed table item 3 sets out the portability for 'terminally ill overseas disability support pensioners' allowing for any absence for an unlimited period.

Item 8 proposes a new clause 150 at the end of Part 3 of Schedule 1A of the Act. This clause will grant an exemption from the proposed new Australian residency requirements for DSP for those who were grandfathered or exempted following previous amendments to portability requirements—persons to whom subclause 128(1) apply or who are covered by a determination under clause 135.

Scheduling of Land

Schedule 3 inserts items relating to Borroloola and Port Patterson Islands into **Part 4 of schedule 1** of the *Aboriginal Land Rights (Northern Territory) Act 1976*.

Indigenous Land Corporation

Schedule 4 makes four provisions for amending the Aboriginal and Torres Strait Islander Act 2005 in such a way as to make it necessary for the ILC to take Ministerial guidelines into account when supporting native title claims. The main two changes insert a **new subsection 191F(2)** that says 'To the extent that the Indigenous Land Corporation performs its functions in supporting native title settlements, the Indigenous Land Corporation must have regard to any guidelines in force under section 191HA, and the second inserts a **new section 191HA** stating 'The Minister may, by legislative instrument, make guidelines for the purposes of subsection 191F(2A)'.

Family Tax Benefit

Item 1 of schedule 5 inserts into the *A New Tax System (Family Assistance) Act 1999* a definition of the new term 'studying overseas full-time' into subsection 3(1) of the existing Act (which refers to section 3C). **Item 2** proposes to insert the new **section 3C** which sets out that the meaning of this new term will be provided in a legislative instrument to be made by the Minister for this purpose.

Item 3 inserts a new paragraph 17B(1)(c) in section 17B of the existing Act which sets out the FTB activity test. The proposed new paragraph will mean that an individual satisfies the activity test if they have completed the final year of secondary school or its equivalent or if they are studying full time towards such educational attainment, including overseas. Such study must, in the Secretary's opinion, assist or allow the individual to complete the final year of secondary school or its equivalent.

Item 5 amends paragraph 17B(4)(a) to allow the Secretary to set guidelines, by legislative instrument, for the exercise of discretion in relation to the new paragraph inserted by Item 3. **Item 6** amends subsection 17B(5) to require the Secretary to have regard to any such guidelines.

Item 7 inserts the word 'and is studying overseas full-time' to the end of paragraph 22(6)(d) which defines the criteria for an individual aged 21–24 to be considered an FTB-child. This will extend the definition of an FTB-child aged 21-24 studying full time to those who are undertaking such study

overseas. The note to this item alters the heading of subsection 22(6) to reflect the inclusion of those undertaking full-time study overseas in the definition.

Section 22A of the current Act contains a table detailing exceptions to the definitions of FTB-child detailed in section 22. Paragraph (a) in the existing table item 1 excludes individuals aged between five and 16 earning an adjusted taxable income equal to or over the cut out amount of \$11 233 from being considered an FTB-child unless they are in full-time study or primary education. **Item 8** repeals and substitutes paragraph (a) of table item 1. The substitute paragraph allows for an individual in this age group, who is studying overseas full time, but who has an adjusted taxable income that equals or exceeds the cut out amount to be considered an FTB-child. This will allow all children in that age bracket to be considered an FTB-child.

Section 34 of the current Act sets out when an approved care organisation is eligible for FTB in respect of an individual. **Item 10** inserts the words 'or studying full-time' at the end of subparagraph 34(1)(a)(iii) to allow approved care organisations to be eligible for FTB in respect of individuals aged 21 to 25 who are undertaking full time study overseas.

Section 35 of the current Act contains a table detailing circumstances when an approved care organisation is not eligible for FTB in respect of certain individuals despite them meeting the criteria set out in section 34. **Item 11** in a manner similar to item 8, substitutes paragraph (a) of table item 1 at section 35 with the effect that approved care organisations remain eligible for FTB in respect of individuals aged between five and 16 who earn over the cut-out amount of \$11 233 and who are studying overseas full time.

Pension Reform Measures

Item 1 of Schedule 6 amends paragraph 8(1A)(b) of the *Social Security Act 1991* to explicitly include leave payments in the definition of employment income.

Item 8 adds **new paragraphs 1073AA(7) and (8)** which ensure that where one member of a couple receives an income support payment under the *Veterans Entitlement's Act 1986*, any Work Bonus income concession they receive is considered when determining the couples ordinary income for income testing purposes.

Item 12 and 13 amend the *Veterans' Entitlements Act 1986* to make the same changes as are made in items 1 and 8 for the *Social Security Act 1991*.

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