



Assistance for Carers Legislation Amendment Act 1999

No. 13, 1999



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**An Act to amend the *Social Security Act 1991* and
other Acts, and for related purposes**

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No. 13, 1999

An Act to amend the *Social Security Act 1991* and other Acts, and for related purposes

[Assented to 9 April 1999]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Assistance for Carers Legislation
Amendment Act 1999*.

2 Commencement

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (2) The following provisions:

-
- (a) Parts 1 and 4 of Schedule 1;
 - (b) Schedule 2 (other than items 1 and 3);
 - (c) Schedule 3 (other than item 1);

commence immediately after the commencement of Schedule 1 to the *Payment Processing Legislation Amendment (Social Security and Veterans' Entitlements) Act 1998*.

Note: Schedule 1 to the *Payment Processing Legislation Amendment (Social Security and Veterans' Entitlements) Act 1998* commences on 1 July 1999.

- (3) Part 2 of Schedule 1 is taken to have commenced immediately after Schedule 1 to the *Tax Law Improvement Act 1997*.

Note: Schedule 1 to the *Tax Law Improvement Act 1997* commenced on 1 July 1997, immediately after the commencement of the *Income Tax Assessment Act 1997*.

- (4) Part 3 of Schedule 1 is taken to have commenced on 1 July 1998.
- (5) Items 1 and 3 of Schedule 2 commence immediately after the commencement of Part 1 of Schedule 1.

3 Schedule(s)

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Carer payment

Part 1—Amendment of the Social Security Act

Social Security Act 1991

1 Section 3 (index)

Omit:

care	18A(1)
care receiver	23(1)
guardian	18A(1)
profoundly disabled child	18A(1)
severely handicapped person	18A(1)

2 Section 3 (index)

Insert in their appropriate alphabetical position, determined on a letter-by-letter basis:

Adult Disability Assessment Tool	197(1)
care	197(1)
care receiver	197(1)
disabled adult	197(1)
guardian	197(1)
higher ADAT score adult	197(1)
lower ADAT score adult	197(1)
profoundly disabled child	197(1)

3 Section 18A

Repeal the section.

4 Subsection 23(1) (definition of *care receiver*)

Repeal the definition.

5 After section 38B

Insert:

38C Adult Disability Assessment Tool

- (1) The Secretary may, by determination in writing:
 - (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*.
- (4) The determination is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

6 Before Division 1 of Part 2.5

Insert:

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 receiver has the meaning given by subsection 198(2).

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.

guardian, in relation to a profoundly disabled child or a disabled child, means a person who has been granted guardianship of the child under a law of the Commonwealth, a State or a Territory.

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 paragraph 198(2)(d) applies.

profoundly disabled child has the meaning given by subsection (2).

- (2) A child is a **profoundly disabled child** if:
- (a) the child has either:
 - (i) a severe multiple disability; or
 - (ii) a severe medical condition; and
 - (b) the child, because of that disability or condition, needs continuous personal care for:
 - (i) 6 months or more; or
 - (ii) if the child's condition is terminal and the child's life expectancy is less than 6 months—the remainder of the child's life; and
 - (c) the child's disability or condition includes 3 or more of the following circumstances:
 - (i) the child receives all food and fluids by nasogastric or percutaneous enterogastric tube;
 - (ii) the child has a tracheostomy;
 - (iii) the child must use a ventilator for at least 8 hours each day;
 - (iv) the child:
 - (A) has faecal incontinence day and night; and
 - (B) if under 3 years of age, is expected to have faecal incontinence day and night at the age of 3;
 - (v) the child:
 - (A) cannot stand without support; and
 - (B) if under 2 years of age, is expected to be unable to stand without support at the age of 2;
-

- (vi) a medical practitioner has certified that the child has a terminal condition for which palliative care has replaced active treatment;
 - (vii) the child:
 - (A) requires personal care on 2 or more occasions between 10 pm and 6 am each day; and
 - (B) if under 6 months of age, is expected to require care as described in sub-subparagraph (A) at the age of 6 months.
- (3) A reference in this Part to a *parent* includes a reference to a *guardian*.

7 Section 198

Repeal the section, substitute:

198 Qualification for carer payment

- (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 of disabled etc. persons

- (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, and given a score of at least 25, under the Adult Disability Assessment Tool; or
 - (ii) if not—a disabled adult (the *care receiver*) who has been assessed and rated, and given a score of at least 80, under the Adult Disability Assessment Tool; or
 - (b) a profoundly disabled child (the *care receiver*) aged under 16; or
 - (c) 2 or more disabled children (the *care receivers*) aged under 16; 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, and given a score of at least 20, under the Adult Disability Assessment Tool; 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.

Note 1: In a paragraph (c) case, subsection (8) contains an additional requirement about care that must be satisfied.

Note 2: 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.

Carer in Australia

- (4) The person must be in Australia, 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:
- (a) if the care receiver is a profoundly disabled child or the care receivers are 2 or more disabled children—require constant care; and
 - (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 or income support supplement; 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.

Level of care requirement for 2 or more disabled children

- (8) If the care receivers are the 2 or more disabled children mentioned in paragraph (2)(c), the Secretary must be of the opinion that the children require a level of care that is at least equivalent to the level of care required by a profoundly disabled child.

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.
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198AA Qualification for carer payment—hospitalisation

- (1) If:
- (a) a person (the *carer*) is participating in the care of a disabled adult, a profoundly disabled child, a disabled child, or a dependent child of a disabled adult, (the *hospitalised person*) in hospital; and
 - (b) it is reasonable to assume that, if the hospitalised person were not in hospital, the carer would qualify for carer payment for the hospitalised person or for the hospitalised person and another person or persons; and
 - (c) either:
 - (i) the hospitalised person is terminally ill; or
 - (ii) it is reasonable to expect that he or she will reside in his or her private home upon leaving hospital;
- then the carer qualifies for carer payment.

Limit on qualification under subsection (1)

- (2) However, the period, or the sum of the periods, for which the person can be qualified under subsection (1) is 63 days in any calendar year.

198AB Effect of certain absences from Australia on carer payment

Continuation of carer payment

- (1) Subject to subsection (2), if:
- (a) a person is qualified for carer payment because he or she is personally providing constant care for a care receiver or care receivers; and
 - (b) the care receiver or care receivers are temporarily absent from Australia for a period; and
 - (c) the person accompanies the care receiver or care receivers during their absence;
- then, for so much of the period as does not exceed 3 months, the person does not cease to be qualified for the carer payment merely because:
- (d) the person is not in Australia; or

- (e) constant care of the care receiver or care receivers is not provided in a private residence that is the home of the care receiver or care receivers.

Limit on subsection (1)

- (2) If, during a calendar year, the person has accompanied the care receiver or care receivers outside Australia on more than one occasion, the person ceases to be qualified for carer payment under subsection (1) in that calendar year after he or she has, during that calendar year, qualified for carer payment under that subsection for periods that together add up to 3 months.

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 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 for the care receiver or care receivers;the person does not cease to be qualified for the carer payment merely because of:
 - (c) that cessation; or
 - (d) the person not being in Australia during that cessation.

Continuation of payment after hospitalisation—section 198AA ceases to apply

- (2) Subject to subsection (3), if:
 - (a) a person is qualified for 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) the person would not cease to be qualified for carer payment if the person were providing constant care in Australia 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:

- (d) the lack of provision of the constant care; or
- (e) the person not being in Australia while that lack occurs.

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 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 20 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 20 hours per week;

the person does not cease to be qualified for the carer payment merely because of the cessation.

8 Section 198A

Repeal the section, substitute:

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.

9 Subsection 198B(1)

After “(1B),”, insert “(1BA),”.

10 Subsections 198B(1A) and (1B)

Repeal the subsections, substitute:

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 profoundly disabled child or disabled child

- (1B) If a care receiver is a profoundly disabled child, or a disabled 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 FA children—the FA children (other than any who are care receivers).

However, if the care receiver is a disabled 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.

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 FA child (except the other care receiver) of the adult or of the partner;
 - (b) in any other case—any FA child (except the other care receiver) of the adult.

11 Subsection 198C(2)

Repeal the subsection, substitute:

- (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).

12 Paragraph 198C(3)(d)

Omit “care recipient’s”.

13 Paragraph 198C(3)(e)

Repeal the paragraph, substitute:

- (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;

14 Paragraphs 198C(4)(a) and (b)

Repeal the paragraphs, substitute:

- (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;

15 Subsection 198C(4) (note 2)

Omit “subsections 198B(1A) and (1B)”, substitute “section 198B”.

16 Subsection 198C(4) (note 4)

Omit “person mentioned in the subsection” (wherever occurring), substitute “care receiver or care receivers”.

17 Paragraphs 198C(5)(a), (b) and (c)

Repeal the paragraphs, substitute:

- (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;

18 Subsection 198C(5) (note 2)

Omit "subsections 198B(1A) and (1B)", substitute "section 198B".

19 Subsection 198D(1)

Omit "severely handicapped person", substitute "higher ADAT score adult".

Note: The heading to subsection 198D(1) is altered by omitting "*Severely handicapped person*" and substituting "*Higher ADAT score adult*".

20 Paragraph 198D(1)(c)

Omit "FP children" (wherever occurring), substitute "FA children".

21 Subsection 198D(1A)

Omit "\$406,000", substitute "\$410,000".

22 Subsection 198D(1A) (note)

Repeal the note.

23 Subsection 198D(1B)

After "Division", insert "(other than subsection (1A))".

24 After subsection 198D(1B)

Insert:

Disabled children passing the assets test

- (1C) Care receivers who are 2 or more disabled 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 disabled children;
 - (b) if any of the disabled 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 FA children—the assets of those FA children.

However, assets of the same person are not to be taken into account more than once.

- (1D) For the purposes of this Division (other than subsection (1C)), if any of the disabled children lives with his or her parent, the disabled 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 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 FA children—the FA children.

25 Subsections 198D(2) to (4)

Repeal the subsections.

26 Section 198E

Omit “198D(1) or (1A)”, substitute “198D(1), (1A), (1C) or (1E)”.

27 Subsection 198F(1A)

After “profoundly disabled child”, insert “, a disabled child or a dependent child”.

28 Subparagraphs 198F(1A)(a)(i), (ii) and (iii)

Omit “disabled”.

29 Subparagraph 198F(1A)(b)(iii)

Omit “disabled”.

30 Subsection 198F(1A) (note)

Repeal the note, substitute:

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.

31 Paragraph 198H(1)(a)

Omit “severely handicapped person”, substitute “higher ADAT score adult”.

Note: The heading to section 198H is altered by omitting “severely handicapped persons” and substituting “higher ADAT score adults”.

32 At the end of subsection 198HA(1)

Add “or care receivers each of whom is a disabled child”.

Note: The heading to section 198HA is altered by adding at the end “or disabled children”.

33 Subsection 198HA(2)

Omit “disabled” (wherever occurring).

34 Subsection 198HA(2) (note 3)

Repeal the note, substitute:

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.

35 At the end of section 198HA

Add:

(3) In this section:

pre-pension year, in relation to a carer, means:

- (a) the 12 months ending on the carer's provisional commencement day for carer payment; or
- (b) any preceding period of 12 months.

36 After section 198HA

Insert:

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.

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 FA child of the adult or of the partner;
 - (iv) if the adult is not a member of a couple—any FA 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 FA 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 FA children dies; and
 - (c) if the lower ADAT score adult is not a member of a couple—any of the FA 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 FA child of the partner and any disposition of their assets; or
- (e) in a subparagraph (b)(ii) or paragraph (c) case—the FA 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.

37 Paragraph 198J(1)(a)

Omit “severely handicapped person”, substitute “higher ADAT score adult”.

Note: The heading to section 198J is altered by omitting “severely handicapped persons” and substituting “higher ADAT score adults”.

38 Subsection 198JA(1)

After “child”, insert “or care receivers each of whom is a disabled child”.

Note: The heading to section 198JA is altered by adding at the end “or disabled children”.

39 Subsection 198JA(2)

Omit “disabled” (wherever occurring).

40 Subsection 198JA(2) (note 3)

Repeal the note, substitute:

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.

41 At the end of section 198JA

Add:

(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.

42 After section 198JA

Insert:

198JB Disposal of assets—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.

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 FA child of the adult or of the partner;
 - (iv) if the adult is not a member of a couple—any FA 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 FA 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 FA children dies; and
 - (c) if the lower ADAT score adult is not a member of a couple—any of the FA 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 FA child of the partner and any disposition of their assets; or
 - (e) in a subparagraph (b)(ii) or paragraph (c) case—the FA 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.

43 Subsection 198K(1)

Omit “severely handicapped person”, substitute “higher ADAT score adult”.

Note: The heading to section 198K is altered by omitting “severely handicapped persons” and substituting “higher ADAT score adults”.

44 Subsection 198L(1)

Omit “severely handicapped person”, substitute “higher ADAT score adult”.

Note: The heading to section 198L is altered by omitting “severely handicapped persons” and substituting “higher ADAT score adults”.

45 Subparagraphs 198M(a)(i) and (ii)

After “care receiver”, insert “or one of 2 or more care receivers”.

46 Section 198MA

After “profoundly disabled child”, insert “, a disabled child or a dependent child”.

47 Paragraph 198MA(a)

Repeal the paragraph, substitute:

- (a) more than 5 years before the carer became qualified for a carer payment because:
 - (i) the carer was providing care for the profoundly disabled child, and the child was a care receiver; or
 - (ii) the carer was providing care for the disabled child, and the child and one or more other disabled children were care receivers; or
 - (iii) the carer was providing care for the dependent child and a lower ADAT score adult and the dependent child and adult were care receivers; or

48 Paragraph 198MA(b)

Omit “disabled”.

49 Section 198MA (note)

Repeal the note, substitute:

Note: Subsections 198D(1B) and (1D) provide that if the profoundly disabled child or the disabled 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.

50 Paragraph 198N(1)(a)

Omit “198(1B)(f)(i)”, substitute “198(5)(d)(i)”.

51 Paragraph 198N(1)(a)

Omit “severely handicapped person”, substitute “higher ADAT score adult”.

Note: The heading to subsection 198N(1) is altered by omitting “*severely handicapped person*” and substituting “*higher ADAT score adult*”.

52 Paragraph 198N(1)(b)

Repeal the paragraph, substitute:

- (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

53 Paragraph 198N(1)(c)

Omit “handicapped person’s”, substitute “higher ADAT score adult’s”.

54 Subsection 198N(1)

Omit “(5), (6) and (7)”, substitute “(5) and (6)”.

55 Subsections 198N(1A), (2), (3) and (4)

Repeal the subsections, substitute:

Application by parent or carer of profoundly disabled child or disabled child

(1A) If:

- (a) subparagraph 198(5)(d)(i) would disqualify from carer payment a person caring for a care receiver who is a profoundly disabled child or care receivers each of whom is a disabled child; and
- (b) the parent or the carer of the profoundly disabled child or of any of the disabled children 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 profoundly disabled child, or written estimates of the taxable incomes of the disabled children, 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 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 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).

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 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).

56 Paragraph 198N(5)(a)

Omit “severely handicapped person”, substitute “higher ADAT score adult”.

57 Subparagraph 198N(5)(a)(iii)

Omit “FP children” (wherever occurring), substitute “FA children”.

58 Paragraphs 198N(5)(aa), (b) and (c)

Repeal the paragraphs, substitute:

- (aa) the value of the liquid assets of a care receiver who is a profoundly disabled child or a disabled 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 FA children—those FA children.

However, if the care receiver is one of 2 or more care receivers each of whom is a disabled 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 FA child (except the dependent child who is the other care receiver) of the care receiver or the care receiver’s partner;
 - (iii) if the care receiver is not a member of a couple—any FA child (except the dependent child who is the other care receiver); and

Note: The value of the liquid assets of the dependent child who is the other care receiver 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.

59 Subsection 198N(5) (notes 2 and 3)

Repeal the notes, substitute:

- Note 2: Subsections 198D(1B) and (1D) provide that if a profoundly disabled or a disabled child lives with a parent, the assets listed in subsection 198D(1A) and paragraph (1C)(b) are taken to be assets of the child.

60 Subsection 198N(6) (paragraph (a) of the definition of *FPC*)

Omit “severely handicapped person”, substitute “higher ADAT score adult”.

61 Subsection 198N(6) (at the end of the definition of *FPC*)

Add:

- ; or (d) in the case of care receivers who are 2 or more disabled children:
 - (i) if any of the children lives with his or her parent—the sum of the number of FA 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 a dependent child—the number of FA children of the care receiver or the care receiver’s partner (if the care receiver has a partner).

62 Subsection 198N(6) (note 1)

Omit “Note 1”, substitute “Note”.

63 Subsection 198N(6) (note 2)

Repeal the note.

64 Subsection 198N(7)

Repeal the subsection.

65 Subsection 198P(1)

Repeal the subsection, substitute:

Date of effect

- (1) If the Secretary decides under subsection 198N(2), (3) or (4) that subparagraph 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.

66 Paragraph 198P(3)(a)

After “care receiver”, insert “or care receivers”.

67 Subparagraph 198P(3)(b)(i)

Repeal the subparagraph, substitute:

- (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

68 Subparagraph 198P(3)(b)(ii)

Omit “and”.

69 At the end of paragraph 198P(3)(b)

Add:

- or (iii) in the case of care receivers who are 2 or more disabled children—to the carer of the children or to the parent of any of the children; 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

70 Paragraph 198P(3)(d)

After “care receiver”, insert “or care receivers”.

71 Subsection 198P(3) (note)

Repeal the note.

72 Paragraph 198P(4)(a)

After “care receiver”, insert “or care receivers”.

73 Subparagraph 198P(4)(b)(i)

Repeal the subparagraph, substitute:

- (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

74 Subparagraph 198P(4)(b)(ii)

Omit “and”.

75 At the end of paragraph 198P(4)(b)

Add:

- or (iii) in the case of care receivers who are 2 or more disabled children—to the carer of the children or to the parent of any of the children; 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

76 Paragraph 198P(4)(d)

After “care receiver”, insert “or care receivers”.

77 Subsection 198P(4) (note)

Repeal the note.

78 Paragraphs 198P(5)(a) and (d)

After “care receiver”, insert “or care receivers”.

79 Section 198Q

Repeal the section, substitute:

198Q Date of effect of adverse decision under section 198N

If the Secretary decides under subsection 198N(2), (3) or (4) that subparagraph 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.

80 Subsection 222(1A)

Repeal the subsection, substitute:

- (1A) If a person is being paid a carer payment because he or she is providing constant care for a care receiver (other than one to whom subsection 198(7) applies) or care receivers, the Secretary may give a notice to:
- (a) any care receiver who is 16 or more; or
 - (b) a parent of any care receiver who is under 16;
- that requires the care receiver or parent, as the case may be, to inform the Department if:
- (c) a specified event or change of circumstances occurs; or
 - (d) he or she becomes aware that a specified event or change of circumstances is likely to occur.

81 Subsection 225AA(1)

Repeal the subsection, substitute:

- (1) This section applies if:
- (a) carer payment is payable to a person who has ordinarily been providing constant care for a care receiver or care receivers; and
 - (b) the person ceases to be qualified for the payment because he or she ceases to provide constant 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.

82 Subsection 225AA(2)

Omit “carer” (second and third occurring), substitute “person”.

83 Paragraph 226(a)

Repeal the paragraph, substitute:

- (a) a person is given a notice under subsection 222(1) or (1A); and

84 Section 226 (note)

Repeal the note.

85 Paragraph 227(a)

Repeal the paragraph, substitute:

- (a) a person is given a notice under subsection 222(1) or (1A); and

86 Section 227 (note)

Repeal the note.

87 Subsections 234(8) to (11)

Repeal the subsections, substitute:

- (8) If:
 - (a) the Secretary makes a determination (the *earlier determination*) that a person (the *carer*) is entitled to carer payment because the carer is providing care for a care receiver or care receivers; and
 - (b) the determination is based on an assessment of the taxable income of the care receiver, or any of the care receivers, for a tax year; and
 - (c) the assessment is subsequently amended by the Commissioner of Taxation, a tribunal or a court; and
 - (d) as a result of the amendment of the assessment, the taxable income of the care receiver, or the sum of the taxable

- incomes of the care receivers, is more than the income ceiling (under section 198A); and
- (e) the Secretary makes a determination under section 231 cancelling or suspending the pension;
- the adverse determination takes effect on the day on which the earlier determination took effect.
- (9) If:
- (a) the Secretary makes a determination (the *earlier determination*) that a person (the *carer*) is entitled to carer payment because the carer is providing care for a care receiver or care receivers; and
 - (b) in making the determination, the Secretary had regard to the taxable income of the care receiver, or the sum of the taxable incomes of the care receivers, for a tax year; and
 - (c) the taxable income of the care receiver or any of the care receivers is or includes an amount estimated by:
 - (i) in the case of a care receiver who is a higher ADAT score adult—the care receiver or the care receiver’s partner; or
 - (ii) in the case of a care receiver who is a profoundly disabled child or a disabled child—the parent of the care receiver, the parent’s partner (if the parent is a member of a couple), or the carer; or
 - (iii) in the case of a care receiver who is a lower ADAT score adult—the care receiver or the care receiver’s partner; or
 - (iv) in the case of a care receiver who is a dependent child of a lower ADAT score adult—the carer or the care receiver’s parent; and
 - (d) the Commissioner of Taxation subsequently makes an assessment of that taxable income; and
 - (e) as a result of the assessment, the taxable income of the care receiver or the sum of the taxable incomes of the care receivers is more than the income ceiling (under section 198A); and
 - (f) the Secretary makes a determination under section 231 cancelling or suspending the carer payment;
-

the adverse determination takes effect on the day on which the earlier determination took effect.

(10) If:

- (a) on the basis of the taxable income for a tax year of a care receiver who is a higher ADAT score adult, the Secretary makes a determination that a person (the *carer*) is entitled to carer payment because the carer is providing care for the care receiver; and
- (b) the care receiver's taxable income for a later tax year exceeds the income ceiling (under section 198A); and
- (c) the Secretary makes a determination under section 231 cancelling or suspending the carer's carer payment;

the adverse determination takes effect:

- (d) if the Secretary made the determination under section 231 after the carer or care receiver informed the Department that the care receiver's taxable income exceeded the income ceiling—on the day on which the carer or care receiver informed the Department; or
- (e) if the Department has not been informed by the carer or the care receiver that the care receiver's taxable income exceeded the income ceiling when the Secretary made the determination under section 231—on the day on which the care receiver's income exceeded the income ceiling.

(11) If:

- (a) on the basis of the taxable income for a tax year of a care receiver who is a profoundly disabled child, the Secretary makes a determination that a person (the *carer*) is entitled to carer payment because the carer is providing care for the care receiver; and
- (b) the care receiver's taxable income for a later tax year exceeds the income ceiling (under section 198A); and
- (c) the Secretary makes a determination under section 231 cancelling or suspending the carer's carer payment;

the adverse determination takes effect:

- (d) if the Secretary made the determination under section 231 after the parent or carer of the disabled child informed the Department that the care receiver's taxable income exceeded
-

the income ceiling—on the day on which the parent or carer informed the Department; or

- (e) if the Department has not been informed by the parent or carer that the care receiver's taxable income exceeded the income ceiling when the Secretary made the determination under section 231—on the day on which the care receiver's income exceeded the income ceiling.

(12) If:

- (a) on the basis of the sum of the taxable incomes for a tax year of care receivers who are disabled children, the Secretary makes a determination that a person (the *carer*) is entitled to carer payment because the carer is providing care to the care receivers; and
- (b) the sum of the taxable incomes of the care receivers for a later tax year exceeds the income ceiling (under section 198A); and
- (c) the Secretary makes a determination under section 231 cancelling or suspending the carer's carer payment;

the adverse determination takes effect:

- (d) if the Secretary made the determination under section 231 after the parent or carer of any of the disabled children informed the Department that the sum of the taxable incomes exceeded the income ceiling—on the day on which the parent or carer informed the Department; or
- (e) if the Department has not been informed by the parent or carer that the sum of the taxable incomes exceeded the income ceiling when the Secretary made the determination under section 231—on the day on which the sum of the taxable incomes of the care receivers exceeded the income ceiling.

(13) If:

- (a) on the basis of the sum of the taxable incomes for a tax year of care receivers who are a lower ADAT score adult and a dependent child, the Secretary makes a determination that a person (the *carer*) is entitled to carer payment because the carer is providing care to the care receivers; and

- (b) the sum of the taxable incomes of the care receivers for a later tax year exceeds the income ceiling (under section 198A); and
 - (c) the Secretary makes a determination under section 231 cancelling or suspending the carer's carer payment;
- the adverse determination takes effect:
- (d) if the Secretary made the determination under section 231 after the carer, the lower ADAT score adult or a parent of the dependent child informed the Department that the sum of the taxable incomes exceeded the income ceiling—on the day on which the Department was so informed; or
 - (e) if the Department has not been informed by the carer, the lower ADAT score adult or a parent of the dependent child that the sum of the taxable incomes exceeded the income ceiling when the Secretary made the determination under section 231—on the day on which the sum of the taxable incomes of the care receivers exceeded the income ceiling.
- (14) In any other case, an adverse determination takes effect:
- (a) on the day on which it is made; or
 - (b) if a later day is specified in the determination, on that day.

88 Subsection 235(1)

Repeal the subsection, substitute:

(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
 - (ii) the person or any of the persons for whom the constant 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.

89 Subsection 236A(1)

Repeal the subsection, substitute:

- (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 or income support supplement.

Note: If the partner of the person who died was receiving a social security pension or benefit or a service pension, the partner would receive bereavement payments in respect of the death of the person.

- (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.

90 Subsection 236A(3) (definition of *partnered MBR*)

Omit "being cared for".

91 Subsection 236A(4) (definition of *carer's current instalment*)

Omit “cared for”.

92 After section 236A

Insert:

236B Subdivision not to apply in certain cases involving simultaneous death

If:

- (a) 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;
- 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.

93 Subdivision B of Division 9 of Part 2.5 (heading)

Repeal the heading, substitute:

Subdivision B—Death of partner

94 Paragraph 237(1)(d)

Repeal the paragraph, substitute:

- (d) immediately before the partner died, the partner:
 - (i) was receiving a social security pension; or
 - (ii) was receiving a service pension or income support supplement; or
 - (iii) was a long-term social security recipient; and

95 Paragraph 237(1)(e)

Omit “pension” (first occurring), substitute “person’s”.

96 After subsection 237(1A)

Insert:

- (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.

97 At the end of section 237

Add:

- (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 or income support supplement.
- (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.

98 Paragraph 238(1)(a)

After "social security pension", insert "or social security benefit".

99 At the end of subsection 238(1)

Add:

Note: For *bereavement rate continuation period* see section 21.

100 Section 239 (Lump Sum Calculator, step 3)

Omit “*pensioner couple*”.

101 Section 239 (Lump Sum Calculator, step 5)

Omit “pensioner couple”.

102 Section 241 (Lump Sum Calculator, step 3)

Omit “*pensioner couple*”.

103 Section 241 (Lump Sum Calculator, step 5)

Omit “pensioner couple”.

104 Section 241 (Lump Sum Calculator, step 7)

Omit “Step 4”, substitute “Step 6”.

105 After section 242

Insert:

243 Subdivision not to apply in certain cases involving simultaneous death

If:

- (a) 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.

106 Subsection 1118(1)

Omit “sections 198J and 198L”, substitute “sections 198H, 198HA, 198HB, 198J, 198JA, 198JB, 198K and 198L”.

107 Subsection 1118A(2)

Omit “198J or 198L”, substitute “198H, 198HA, 198HB, 198J, 198JA, 198JB, 198K or 198L”.

108 Subsection 1118B(1)

Omit “198J or 198L”, substitute “198H, 198HA, 198HB, 198J, 198JA, 198JB, 198K or 198L”.

109 Paragraph 1150(3)(e)

Omit “section 198J”, substitute “sections 198H, 198HA, 198HB, 198J, 198JA and 198JB”.

110 Paragraph 1151(3)(e)

Omit “section 198L”, substitute “sections 198K and 198L”.

111 Paragraph 1152(3)(e)

Omit “section 198L”, substitute “sections 198K and 198L”.

112 Subparagraph 1152(5)(e)(iii)

Omit “section 198L”, substitute “sections 198K and 198L”.

113 Subparagraph 1153(3)(c)(iii)

Omit “section 198L”, substitute “sections 198K and 198L”.

114 Paragraph 1154(4)(e)

Omit “section 198L”, substitute “sections 198K and 198L”.

115 Section 1190 (table item 27A)

Omit “[Subsections 198D(1) and (1A)]”, substitute “[Subsections 198D(1), (1A), (1C) and (1E)]”.

116 Paragraph 1223(1B)(a)

After “care receiver”, insert “or care receivers (as defined in subsection 197(1))”.

117 Subparagraphs 1223(1B)(b)(i) and (ii)

Omit “care receiver’s income”, substitute “income of the care receiver or any of the care receivers”.

118 Subparagraph 1223(1B)(b)(iii)

Repeal the subparagraph, substitute:

- (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 subsection 222(1A);

119 Paragraph 1223(1C)(a)

Omit “care receiver’s”.

120 Paragraph 1223(1C)(b)

Omit “of the care receiver’s income”.

121 Paragraph 1223(1C)(c)

Repeal the paragraph, substitute:

- (c) the Department should have been informed in respect of the event in accordance with the requirement in the notice.

Part 2—Technical amendments of the income tax law commencing on 1 July 1997

Income Tax Assessment Act 1997

122 Section 52-10 (table items 4.1, 4.2, 4.3 and 4.4)

Repeal the items, substitute:

4.1	Carer payment: you are pension age or over	Supplementary amount is exempt (see section 52-15)	Supplementary amount, and tax-free amount, are exempt (see sections 52-15 and 52-20)	Exempt, but if it is made under section 236A of the <i>Social Security Act 1991</i> , exempt only up to the tax-free amount (see section 52-35)	Exempt up to the tax-free amount if it is made under section 239 of the <i>Social Security Act 1991</i> (see section 52-25)
4.2	Carer payment: the severely handicapped person is pension age or over	Supplementary amount is exempt (see section 52-15)	Supplementary amount, and tax-free amount, are exempt (see sections 52-15 and 52-20)	Exempt, but if it is made under section 236A of the <i>Social Security Act 1991</i> , exempt only up to the tax-free amount (see section 52-35)	Exempt up to the tax-free amount if it is made under section 239 of the <i>Social Security Act 1991</i> (see section 52-25)
4.3	Carer payment: both you and the severely handicapped person are under pension age	Exempt	Exempt	Exempt, but if it is made under section 236A of the <i>Social Security Act 1991</i> , exempt only up to the tax-free amount (see section 52-35)	Exempt up to the tax-free amount if it is made under section 239 of the <i>Social Security Act 1991</i> (see section 52-25)

Schedule 1 Carer payment

Part 2 Technical amendments of the income tax law commencing on 1 July 1997

4.4	Carer payment: you are under pension age and the severely handicapped person has died	Exempt	Exempt	Exempt, but if it is made under section 236A of the <i>Social Security Act 1991</i> , exempt only up to the tax-free amount (see section 52-35)	Exempt up to the tax-free amount if it is made under section 239 of the <i>Social Security Act 1991</i> (see section 52-25)
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123 Section 52-15 (table item 1)

Omit “Carer pension”, substitute “Carer payment”.

124 Subsection 52-25(1) (table)

Omit “Carer pension”, substitute “Carer payment”.

125 Section 52-40 (table item 4)

Repeal the item, substitute:

4	Carer payment	Part 2.5	Sections 236A, 238, 241 and 246	Section 239
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Income Tax Assessment Act 1936

126 Paragraph 202EA(5)(d)

Omit “carer pension”, substitute “carer payment”.

127 Subparagraph 202EB(5)(a)(iv)

Omit “carer pension”, substitute “carer payment”.

128 Application

The amendments made by this Part apply to assessments for the 1997-98 income year and later years.

Part 3—Amendments of the income tax law relating to carer payment for disabled children

Income Tax Assessment Act 1997

129 Section 52-10 (table items 4.2, 4.3 and 4.4)

Repeal the items, substitute:

4.2	Carer payment: the person being constantly cared for is a severely handicapped person who is pension age or over	Supplementary amount is exempt (see section 52-15)	Supplementary amount, and tax-free amount, are exempt (see sections 52-15 and 52-20)	Exempt, but if it is made under section 236A of the <i>Social Security Act 1991</i> , exempt only up to the tax-free amount (see section 52-35)	Exempt up to the tax-free amount if it is made under section 239 of the <i>Social Security Act 1991</i> (see section 52-25)
4.3	Carer payment: you are under pension age and: (a) the person being constantly cared for is a severely handicapped person who is under pension age; or (b) the person being constantly cared for is a profoundly disabled child; or (c) the persons being constantly cared for are 2 or more disabled children	Exempt	Exempt	Exempt, but if it is made under section 236A of the <i>Social Security Act 1991</i> , exempt only up to the tax-free amount (see section 52-35)	Exempt up to the tax-free amount if it is made under section 239 of the <i>Social Security Act 1991</i> (see section 52-25)

Schedule 1 Carer payment

Part 3 Amendments of the income tax law relating to carer payment for disabled children

4.4	Carer payment: you are under pension age and the severely handicapped person, the profoundly disabled child or any of the 2 or more disabled children constantly being cared for has died	Exempt	Exempt	Exempt, but if it is made under section 236A of the <i>Social Security Act 1991</i> , exempt only up to the tax-free amount (see section 52-35)	Exempt up to the tax-free amount if it is made under section 239 of the <i>Social Security Act 1991</i> (see section 52-25)
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130 Subsection 52-35(1)

After “severely handicapped person”, insert “, profoundly disabled child or any of the 2 or more disabled children”.

131 Subsection 52-35(3) (paragraphs (a) and (b) of step 1 of the method statement)

After “severely handicapped person”, insert “, profoundly disabled child or disabled child”.

132 Subsection 52-35(3) (step 3 of the method statement)

After “severely handicapped person”, insert “, profoundly disabled child or disabled child”.

133 Application

The amendments made by this Part apply to assessments for the 1998-99 income year.

Part 4—Amendments of the income tax law relating to carer payment for disabled adult and dependent child

Income Tax Assessment Act 1997

134 Section 52-10 (table items 4.2, 4.3 and 4.4)

Repeal the items, substitute:

4.2	Carer payment: the care receiver or any of the care receivers is pension age or over	Supplementary amount is exempt (see section 52-15)	Supplementary amount, and tax-free amount, are exempt (see sections 52-15 and 52-20)	Exempt, but if it is made under section 236A of the <i>Social Security Act 1991</i> , exempt only up to the tax-free amount (see section 52-35)	Exempt up to the tax-free amount if it is made under section 239 of the <i>Social Security Act 1991</i> (see section 52-25)
4.3	Carer payment: both you and the care receiver or all of the care receivers are under pension age	Exempt	Exempt	Exempt, but if it is made under section 236A of the <i>Social Security Act 1991</i> , exempt only up to the tax-free amount (see section 52-35)	Exempt up to the tax-free amount if it is made under section 239 of the <i>Social Security Act 1991</i> (see section 52-25)
4.4	Carer payment: you are under pension age and any of the care receivers has died	Exempt	Exempt	Exempt, but if it is made under section 236A of the <i>Social Security Act 1991</i> , exempt only up to the tax-free amount (see section 52-35)	Exempt up to the tax-free amount if it is made under section 239 of the <i>Social Security Act 1991</i> (see section 52-25)

Schedule 1 Carer payment

Part 4 Amendments of the income tax law relating to carer payment for disabled adult and dependent child

135 Subsection 52-35(1)

Repeal the subsection, substitute:

- (1) This section applies if a lump sum payment becomes due to you under section 236A of the *Social Security Act 1991* because of the death of the care receiver or any of the care receivers.

136 Subsection 52-35(3)

Repeal the subsection, substitute:

- (3) This is how to work out the *tax-free amount*:

Method statement

Step 1. Work out the payments under the *Social Security Act 1991* that would have become due to you during the bereavement lump sum period if:

- (a) the care receiver had not died; and
- (b) the care receiver had been under pension age.

Step 2. Work out how much of those payments would have been exempt in those circumstances.

Step 3. Work out the payments under the *Social Security Act 1991* that would have become due to the care receiver during the bereavement lump sum period if the care receiver had not died, even if the payments would not have been exempt.

Step 4. Total the payments worked out at Steps 2 and 3: the result is the *tax-free amount*.

137 Application

The amendments made by this Part apply to assessments for the 1999-2000 income year and later years.

Schedule 2—Carer allowance

Part 1—Amendments to include new carer allowance Part in the Social Security Act

Social Security Act 1991

1 Section 3 (index)

Omit:

care receiver 197(1)

substitute:

care receiver 197(1), 952

2 Section 3 (index)

Omit:

Child Disability Assessment Tool 23(1)

substitute:

Child Disability Assessment Tool 952

3 Section 3 (index)

Omit:

disabled adult 197(1)

substitute:

disabled adult 197(1), 952

4 Section 3 (index)

Insert in its appropriate alphabetical position, determined on a letter-by-letter basis:

disabled child 952

5 Subsection 23(1) (definition of *Child Disability Assessment Tool*)

Repeal the definition.

6 Before the heading to Part 1.4

Insert:

38D Child Disability Assessment Tool

- (1) The Secretary may, by determination in writing:
 - (a) devise a test for assessing the functional ability, behaviour and special care needs of a person aged under 16; 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 negative and positive scores and under which:
 - (a) a negative score indicates an absence of a physical, intellectual or psychiatric disability at a significant level; and
 - (b) a positive score indicates the presence of a physical, intellectual or psychiatric disability at a significant level.
- (3) The 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.
- (4) The determination, in so far as it provides (in accordance with subsections (1) and (2)) for a test for assessing, and a method for rating, the functional ability, behaviour and special care needs of a person aged under 16 is, in this Act, referred to as the *Child Disability Assessment Tool*.
- (5) The determination is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

7 Part 2.19

Repeal the Part, substitute:

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) and 954(1).

Child Disability Assessment Tool has the meaning given by subsection 38D(4).

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.

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:

Schedule 2 Carer allowance

Part 1 Amendments to include new carer allowance Part in the Social Security Act

- (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
- (c) either of the following applies:
 - (i) the disability from which the care receiver is suffering is declared, under subsection 38D(3), to be a recognised disability for the purposes of this section;
 - (ii) the care receiver has been assessed and rated, and been given a positive score of not less than 1, under the Child Disability Assessment Tool; 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) the person is in Australia; and
- (f) the person is an Australian resident.

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
 - (c) each care receiver has been assessed and rated, and been given a positive score of less than 1, under the Child Disability Assessment Tool and the sum of their scores is 1 or more; 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 is in Australia; and
- (f) the person is an Australian resident.

- Note 1: For *Australian resident* see section 7.
- Note 2: For qualification for carer allowance in circumstances of hospitalisation, see section 955.
- Note 3: For the effect of certain absences from Australia on carer allowance, see section 956.
- 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.

954 Qualification for carer allowance—caring for a disabled adult

- (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, and been given a score of not less than 30, under the Adult Disability Assessment Tool; 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
 - (e) the person is in Australia; and
 - (f) the person is an Australian resident.

Schedule 2 Carer allowance

Part 1 Amendments to include new carer allowance Part in the Social Security Act

- 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 3: For the effect of certain absences from Australia on carer allowance, see section 956.
- 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 for 2, but no more than 2, disabled adults.

955 Qualification for carer allowance—hospitalisation

- (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 for carer allowance for the hospitalised person or for the hospitalised person and another person; and
 - (c) either:
 - (i) the hospitalised person is terminally ill; or
 - (ii) 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;
- the one or more persons who would qualify for carer allowance as mentioned in paragraph (b) qualify for carer allowance.
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Limit on qualification under subsection (1)

- (2) However, the period, or the sum of the periods, for which the one or more persons can be qualified under subsection (1) is 63 days in any calendar year.

956 Effect of certain absences from Australia on carer allowance

Continuation of carer allowance

- (1) Subject to subsection (2), if:
- (a) a person is qualified for carer allowance; and
 - (b) either:
 - (i) the person is absent from Australia for a period; or
 - (ii) the care receiver or care receivers are absent from Australia for a period; and
 - (c) but for the absence from Australia, the person would continue to qualify for carer allowance during the period;
- then, for so much of the period as does not exceed 26 weeks, the person does not cease to be qualified for carer allowance merely because of:
- (d) that absence from Australia; or
 - (e) care and attention of the care receiver or care receivers not being provided in a private home that is the residence of the person and the care receiver or care receivers.

Loss of carer allowance

- (2) If:
- (a) subsection (1) applies in relation to a person in respect of a period of absence from Australia that exceeds 26 weeks; or
 - (b) this subsection prevents subsection (1) from applying in relation to a person in respect of a period of absence from Australia;
- subsection (1) does not apply in relation to the person in respect of any later period of absence that begins less than 26 weeks after the period of absence mentioned in paragraph (a) or (b).

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 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:
- (c) that cessation; or
 - (d) the person not being in Australia during 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 person were in Australia and 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:
- (d) the lack of receipt of that care and attention; or
 - (e) the person not being in Australia while that lack occurs.

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:
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- (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 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).

Subdivision B—Payability

958 Carer allowance not payable in some circumstances

- (1) Even though a person is qualified for carer allowance, the allowance may not be payable to the person because:
- (a) the allowance has not yet commenced to be payable (see sections 959 and 975); or
 - (b) another person is receiving carer allowance for the care receiver or care receivers (see section 964); or
 - (c) the person's partner is receiving carer allowance for the care receiver or care receivers (see section 965); or
 - (d) the person has not nominated a bank account, credit union account or building society account for payment of the allowance (see section 978).

- (2) Carer allowance is not payable to a person if the person's carer allowance rate would be nil.

959 Carer allowance generally not payable before claim

Subject to sections 961 and 962, carer allowance is not payable to a person before the person's provisional commencement day (identified under section 960).

960 Provisional commencement day

A person's *provisional commencement day* is the day on which the person claims carer allowance.

961 Backdating—claim for 1 or 2 disabled children

Claim within 12 months of becoming qualified

- (1) If:
- (a) a person is qualified for carer allowance for a care receiver who is a disabled child or for care receivers who are 2 disabled children; and
 - (b) the person's provisional commencement day is within 12 months after the day on which the person became qualified for carer allowance;

the allowance can become payable before the provisional commencement day but cannot become payable to the person before the first day on which the person is qualified.

Note 1: For *provisional commencement day* see section 960.

Note 2: The carer allowance will not necessarily be backdated to the day on which the person becomes qualified—some other factor may make the allowance not payable at the time.

Claim after 12 months of becoming qualified

- (2) If:
- (a) a person is qualified for carer allowance for a care receiver who is a disabled child or for care receivers who are 2 disabled children; and

- (b) the person's provisional commencement day is more than 12 months after the day on which the person became qualified for carer allowance;

the allowance can become payable before the provisional commencement day, but cannot become payable before the day occurring 12 months before the person's provisional commencement day.

Note 1: For *provisional commencement day* see section 960.

Note 2: The carer allowance will not necessarily be backdated to the day occurring 12 months before the person's provisional commencement day—some other factor may make the allowance not payable at that time.

962 Backdating—claim for a disabled adult

Claim within 6 months of becoming qualified

(1) If:

- (a) a person is qualified for carer allowance for a care receiver who is a disabled adult in circumstances where the disability from which the adult is suffering was due to an acute onset; and
- (b) the person's provisional commencement day is within 6 months after the day on which the person became qualified for carer allowance in the circumstances mentioned in paragraph (a);

the allowance can become payable before the provisional commencement day but cannot become payable to the person before the first day on which the person became qualified for carer allowance in the circumstances mentioned in paragraph (a).

Note 1: For *provisional commencement day* see section 960.

Note 2: The carer allowance will not necessarily be backdated to the day on which the person becomes qualified—some other factor may make the allowance not payable at the time.

Claim after 6 months of becoming qualified

(2) If:

- (a) a person is qualified for carer allowance for a care receiver who is a disabled adult in circumstances where the disability

from which the adult is suffering was due to an acute onset;
and

- (b) the person's provisional commencement day is more than 6 months after the day on which the person became qualified for carer allowance in the circumstances mentioned in paragraph (a);

the allowance can become payable before the provisional commencement day, but cannot become payable before the day occurring 6 months before the person's provisional commencement day.

Note 1: For *provisional commencement day* see section 960.

Note 2: The carer allowance will not necessarily be backdated to the day occurring 6 months before the person's provisional commencement day—some other factor may make the allowance not payable at that time.

963 Claims by telephone, facsimile or computer

- (1) This section applies to a person if:
 - (a) the Department is contacted by or on behalf of the person by telephone, or by the transmission of a message by use of facsimile or computer equipment, in relation to the making of a claim by the person for carer allowance; and
 - (b) on the day the Department was contacted, the person was qualified for carer allowance; and
 - (c) the Secretary gives the person a written notice acknowledging that the Department has been contacted in relation to the making of the claim; and
 - (d) the person lodges a claim for carer allowance within the period stated in subsection (2); and
 - (e) either:
 - (i) the person gives the Secretary the notice referred to in paragraph (c) when lodging the claim; or
 - (ii) the Department has a written record that the notice referred to in paragraph (c) has been sent to the person.
 - (2) Subject to subsection (3), for the purposes of paragraph (1)(d) the period is 21 days after the day on which the Department was contacted (the *21 day period*).
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- (3) The Secretary may determine, by written notice given to the person:
 - (a) within the 21 day period; or
 - (b) within the period of any extension under this subsection; that the period for the purposes of paragraph (1)(d) is extended to a period that is not longer than 3 months after the day on which the Department was contacted.
- (4) If this section applies to a person, the person is taken to have lodged a claim in accordance with section 968 on the day on which the Department was contacted.
- (5) For the purposes of this Act, a person who contacts the Department by transmitting a message by the use of facsimile or computer equipment is taken to have done so when the message is received in the Department.

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
 - (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) each of them 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.

Division 3—Claim for carer allowance

966 Need for a claim

- (1) A person who wants to be granted carer allowance must make a proper claim for that allowance.
- Note: Sections 967 (form), 968 (manner of lodgment) and 969 (residency) deal with the making of a proper claim.
- (2) For the purposes of subsection (1), if:
- (a) a claim for carer allowance is made by or on behalf of a person; and

(b) at the time the claim is made, the claim cannot be granted because the person is not qualified for carer allowance; the claim is taken to have not been made.

967 Form of claim

To be a proper claim, a claim must be made in writing and must be in accordance with a form approved by the Secretary.

968 Lodgment of claim

- (1) To be a proper claim, a claim 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.

969 Residency

A claim by a person is not a proper claim unless the person:

- (a) is an Australian resident; and
 - (b) is in Australia;
- on the day on which the claim is lodged.

Note: For *Australian resident* see section 7.

970 Claim may be withdrawn

- (1) A claimant for carer allowance or a person on behalf of a claimant may withdraw a claim that has not been determined.
- (2) A claim that is withdrawn is taken to have not been made.
- (3) A withdrawal may be made orally or in writing.

Division 4—Determination of claim

971 Secretary to determine claim

The Secretary must, in accordance with this Act, determine the claim.

972 Grant of claim

The Secretary is to determine that the claim is to be granted if the Secretary is satisfied that:

- (a) the person is qualified for carer allowance; and
- (b) the allowance is payable.

973 Date of effect of determination

- (1) Subject to subsections (2), (3) and (4), a determination under section 972 takes effect on the day on which the determination is made or on such later day or earlier day as is specified in the determination.

Notified decision—review sought within 3 months

- (2) If:
 - (a) a decision (the *previous decision*) is made rejecting a person's claim for carer allowance; and
 - (b) a notice is given to the person advising the person of the making of the previous decision; and
 - (c) the person applies to the Secretary under section 1240, within 3 months after the notice is given, for review of the previous decision; and
 - (d) a determination granting the claim is made as a result of the application for review;the determination takes effect on the day on which the previous decision took effect.

Notified decision—review sought after 3 months

- (3) If:
-

- (a) a decision (the *previous decision*) is made rejecting a person's claim for carer allowance; and
 - (b) a notice is given to the person advising the person of the making of the previous decision; and
 - (c) the person applies to the Secretary under section 1240, more than 3 months after the notice is given, for review of the previous decision; and
 - (d) a determination granting the claim is made as a result of the application for review;
- the determination takes effect on the day on which the person sought the review.

Decision not notified

- (4) If:
- (a) a decision (the *previous decision*) is made rejecting a person's claim for carer allowance; and
 - (b) no notice is given to the person advising the person of the making of the previous decision; and
 - (c) the person applies to the Secretary under section 1240 for review of the previous decision; and
 - (d) a determination granting the claim is made as a result of the application for review;
- the determination takes effect on the day on which the previous decision took effect.

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.

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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 for carer allowance 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:

Number of training days × $\frac{\text{Daily rate of carer allowance}}{\text{applicable to each training day}}$

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.

Division 6—Payment of carer allowance

975 Commencement of carer allowance

Carer allowance becomes payable to a person on the first day on which:

- (a) the person is qualified for the allowance; and
- (b) no provision of this Act makes the allowance not payable to the person.

- Note 1: For qualification for carer allowance, see Subdivision A of Division 2 of this Part.
- Note 2: For the circumstances in which carer allowance is not payable, see Subdivision B of Division 2 of this Part.

976 Payment by instalments

- (1) Carer allowance is to be paid:
 - (a) in arrears; and
 - (b) by instalments relating to such periods (not exceeding 14 days) as the Secretary determines.
- (2) Instalments of carer allowance are to be paid at such times as the Secretary determines.
- (3) The amount that is to be paid to a person as an instalment of carer allowance in relation to a period is the total of the amounts of carer allowance (calculated by reference to the daily rate of allowance applicable to each day) payable to the person for the days in that period on which carer allowance was payable to the person.
- (4) If the person is outside Australia, the instalments referred to in subsection (1) are to be paid to the person at such times as the Secretary determines for the purposes of this subsection.
- (5) Each of the periods determined by the Secretary under subsection (1) is an instalment period in relation to carer allowance.

977 Instalments to be paid to person or nominee

- (1) Subject to subsection (3), instalments of a person's carer allowance are to be paid to that person.
- (2) The Secretary may direct that the whole or part of the instalments of a person's carer allowance are to be paid to someone else on behalf of the person.
- (3) If the Secretary makes a direction under subsection (2), the instalments are to be paid in accordance with the direction.

978 Payment into bank account etc.

- (1) An amount that is to be paid to a person under section 977 is to be paid in the manner set out in this section.
- (2) Subject to this section, the amount is to be paid to the credit of a bank account, credit union account or building society 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) 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).
- (5) If the Secretary gives a direction under subsection (4), the amount is to be paid in accordance with the direction.
- (6) If, at the end of the period (the *preliminary period*) of 28 days starting on the day on which the carer allowance became payable to the person:
 - (a) the person has not nominated an account for the purposes of subsection (2); and
 - (b) the Secretary has not given a direction under subsection (4) in relation to payments of the allowance to the person;the allowance ceases to be payable to the person.
- (7) If the person nominates an account for the purposes of subsection (2) after the end of the preliminary period, then, subject to this Part, the carer allowance again becomes payable to the person and is so payable:
 - (a) if the nomination was made within 3 months after the end of the preliminary period—on and from the first day after the end of that period; or
 - (b) otherwise—on and from the day on which the nomination was made.

979 Where carer allowance payday would fall on public holiday etc.

If the Secretary is satisfied that an amount of carer allowance that would normally be paid on a particular day cannot reasonably be paid on that day (because, for example, it is a public holiday or a bank holiday), the Secretary may direct that the amount be paid on an earlier day.

980 Payment of allowance after death

- (1) If:
- (a) carer allowance is payable to a person; and
 - (b) the person dies; and
 - (c) at the date of the person's death the person had not received an amount of carer allowance payable to him or her; and
 - (d) another person applies to receive that amount; and
 - (e) the application is made:
 - (i) within 6 months after the death; or
 - (ii) within a further period allowed by the Secretary in special circumstances;
- the Secretary may pay the amount to the person who, in the Secretary's opinion, is best entitled to it.
- (2) If the Secretary pays an amount of carer allowance under subsection (1), the Commonwealth has no further liability to any person in respect of that amount of carer allowance.

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).

Division 7—Protection of carer allowance

982 Carer allowance to be absolutely inalienable

- (1) Subject to subsections (2) and (3) and section 1359, carer allowance is absolutely inalienable, whether by way of, or in consequence of, sale, assignment, charge, execution, bankruptcy or otherwise.

Payments to Commissioner of Taxation at recipient's request

- (2) The Secretary may make deductions from the instalments of carer allowance payable to a person where the recipient asks the Secretary:
 - (a) to make the deductions; and
 - (b) to pay the amounts to be deducted to the Commissioner of Taxation.

Note: The Secretary must make deductions from a person's social security payment if requested by the Commissioner of Taxation—see section 1359.

Deductions from instalments with recipient's consent

- (3) The Secretary may make deductions from the instalments of carer allowance payable to a person 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.

983 Effect of garnishee or attachment order

- (1) If:
- (a) a person has an account with a financial institution; and
 - (b) instalments of carer allowance payable to the person (whether on the person's own behalf or not) are being paid to the credit of that account; and
 - (c) a court order in the nature of a garnishee order comes into force in respect of the account;
- 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 total amount of carer allowance payable to the person that has been paid to the credit of the account during the 4 week period immediately before the court order came into force.

Step 2. Subtract from that amount the total amount withdrawn from the account during the same 4 week period: 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.

Division 8—Recipient obligations

984 Secretary may require notice of the happening of an event or a change in circumstances

- (1) The Secretary may give a person to whom carer allowance is being paid a notice that requires the person to inform the Department if:
 - (a) a specified event or change of circumstances occurs; or
 - (b) the person becomes aware that a specified event or change of circumstances is likely to occur.
- (2) An event or change of circumstances is not to be specified in a notice under subsection (1) unless the occurrence of the event or change of circumstances might affect the payment of the allowance.
- (3) Subject to subsection (4), a notice under subsection (1):
 - (a) must be in writing; and
 - (b) may be given personally or by post; and
 - (c) must specify how the person is to give the information to the Department; and
 - (d) must specify the period within which the person is to give the information to the Department; and
 - (e) must specify that the notice is a recipient notification notice given under this Act.
- (4) A notice under subsection (1) is not invalid merely because it fails to comply with paragraph (3)(c) or (e).
- (5) Subject to subsections (6), (7) and (8), the period specified under paragraph (3)(d) must be the period of 14 days after:
 - (a) the day on which the event or change of circumstances occurs; or
 - (b) the day on which the person becomes aware that the event or change of circumstances is likely to occur.
- (6) If the Secretary is satisfied that there are special circumstances related to the person to whom the notice under subsection (1) is to be given, the period to be specified under paragraph (3)(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 occurs; or
 - (b) the day on which the person becomes aware that the event or change of circumstances is likely to occur.
- (7) If a notice specifies an event consisting of the death of a person, the period to be specified under paragraph (3)(d) is a period of 28 days after the day on which the event occurs.
- (8) If a notice requires the person to inform the Department of any proposal by the person to leave Australia, subsection (5) does not apply to that requirement.
- (9) A person must not, without reasonable excuse, refuse or fail to comply with a notice under subsection (1) to the extent that the person is capable of complying with the notice.

Penalty: Imprisonment for 6 months.

Note: 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.

- (10) This section extends to:
- (a) acts, omissions, matters and things outside Australia whether or not in a foreign country; and
 - (b) all persons irrespective of their nationality or citizenship.

985 Secretary may require recipient to give particular information relevant to payment of carer allowance

- (1) The Secretary may give a person to whom carer allowance is being paid a notice that requires the person to give the Department a statement about a matter that might affect the payment of the allowance to the person.
- (2) Subject to subsection (3), a notice under subsection (1):

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- (a) must be in writing; and
 - (b) may be given personally or by post; and
 - (c) must specify how the statement is to be given to the Department; and
 - (d) must specify the period within which the person is to give the statement to the Department; and
 - (e) must specify that the notice is a recipient statement notice given under this Act.
- (3) A notice under subsection (1) is not invalid merely because it fails to comply with paragraph (2)(c) or (e).
- (4) The period specified under paragraph (2)(d) must end at least 14 days after the day on which the notice is given.
- (5) A statement given in response to a notice under subsection (1) must be in writing and in accordance with a form approved by the Secretary.
- (6) A person must not, without reasonable excuse, refuse or fail to comply with a notice under subsection (1) to the extent that the person is capable of complying with the notice.

Penalty: Imprisonment for 6 months.

Note: 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.

- (7) This section extends to:
- (a) acts, omissions, matters and things outside Australia whether or not in a foreign country; and
 - (b) all persons irrespective of their nationality or citizenship.

Division 9—Continuation, variation and termination

Subdivision A—General

986 Continuing effect of determination

Entitlement determination

- (1) A determination that:
- (a) a person's claim for carer allowance is to be granted; or
 - (b) carer allowance is payable to a person;
- continues in effect until:
- (c) the allowance ceases to be payable under section 987 or 988;
or
 - (d) a further determination in relation to the allowance under section 992C or 992D has taken effect.

Note 1: For paragraph (a) see section 972.

Note 2: For paragraph (b) see section 992F—this paragraph is relevant where the determination reverses an earlier cancellation or suspension.

Note 3: For paragraph (d) see also section 992E.

Rate determination

- (2) A determination of the rate of carer allowance continues in effect until:
- (a) the allowance becomes payable at a lower rate under section 990 or 991; or
 - (b) a further determination in relation to the allowance under section 992A or 992B has taken effect.

Note: For paragraph (b) see also section 992E.

Subdivision B—Automatic termination

987 Automatic termination—recipient complying with section 984 notification obligations

If:

- (a) a person who is receiving carer allowance is given a notice under section 984; and
- (b) the notice requires the person to inform the Department of the occurrence of an event or change in circumstances within a specified period (the *notification period*); and
- (c) the event or change in circumstances occurs; and
- (d) the person informs the Department of the occurrence of the event or change in circumstances within the notification period in accordance with the notice; and
- (e) because of the occurrence of the event or change in circumstances:
 - (i) the person ceases to be qualified for the allowance; or
 - (ii) the allowance would, but for this section, cease to be payable to the person; and
- (f) the allowance is not cancelled before the end of the instalment period for the person that is current when the event or change in circumstances occurs;

the following rules have effect:

- (g) if the allowance is cancelled during the instalment period (the *first period*) following the instalment period in which the event or change in circumstances occurs, the allowance continues to be payable to the person until the end of the instalment period in which the event or change occurs, and then ceases to be payable to the person;
- (h) if the allowance is not cancelled during the first period, the allowance continues to be payable to the person until the end of the notification period, and then ceases to be payable to the person.

988 Automatic termination—recipient not complying with section 984 notification obligations

If:

- (a) a person who is receiving carer allowance is given a notice under section 984; and
 - (b) the notice requires the person to inform the Department of the occurrence of an event or change in circumstances within a specified period (the *notification period*); and
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- (c) the event or change in circumstances occurs; and
 - (d) the person does not inform the Department of the occurrence of the event or change in circumstances within the notification period in accordance with the notice; and
 - (e) because of the occurrence of the event or the change in circumstances:
 - (i) the person ceases to be qualified for the allowance; or
 - (ii) the allowance ceases to be payable to the person;
- the allowance ceases to be payable to the person on the day on which the event or change in circumstances occurs.

989 Changes to payments by computer following automatic termination

If:

- (a) a person is receiving carer allowance on the basis of data in a computer; and
- (b) the allowance is automatically terminated by the operation of a provision of this Act; and
- (c) the automatic termination is given effect to by the operation of a computer program approved by the Secretary stopping payment of the allowance;

there is taken to be a decision by the Secretary that the automatic termination provision applies to the person's allowance.

Note: The decision that is taken to have been made is a decision of an officer for the purposes of review by the Secretary (see sections 1239 and 1240) and the Social Security Appeals Tribunal (see section 1247).

Subdivision C—Automatic rate reduction

990 Automatic rate reduction—recipient complying with section 984 notification obligations

If:

- (a) a person who is receiving carer allowance is given a notice under section 984; and
 - (b) the notice requires the person to inform the Department of the occurrence of an event or change in circumstances within a specified period (the *notification period*); and
-

- (c) the event or change in circumstances occurs; and
- (d) the person informs the Department of the occurrence of the event or change in circumstances within the notification period in accordance with the notice; and
- (e) because of the occurrence of the event or change in circumstances, the person's rate of allowance is to be reduced; and
- (f) the person's rate of allowance is not reduced before the end of the instalment period for the person that is current when the event or change in circumstances occurs;

the following rules have effect:

- (g) if the person's rate of allowance is reduced during the instalment period (the *first period*) following the instalment period in which the event or change in circumstances occurs, the allowance becomes payable to the person at the reduced rate at the end of the instalment period in which the event or change occurs;
- (h) if the person's rate of allowance is not reduced during the first period, the allowance becomes payable to the person at the reduced rate at the end of the notification period.

991 Automatic rate reduction—recipient not complying with section 984 notification obligations

If:

- (a) a person who is receiving carer allowance is given a notice under section 984; and
- (b) the notice requires the person to inform the Department of the occurrence of an event or change in circumstances within a specified period (the *notification period*); and
- (c) the event or change in circumstances occurs; and
- (d) the person does not inform the Department of the occurrence of the event or change in circumstances within the notification period in accordance with the notice; and

- (e) because of the occurrence of the event or change in circumstances, the person's rate of allowance is to be reduced;

the allowance becomes payable to the person at the reduced rate on the day on which the event or change in circumstances occurs.

992 Changes to payments by computer following automatic reduction

If:

- (a) a person is receiving carer allowance on the basis of data in a computer; and
- (b) the allowance is automatically reduced by the operation of a provision of this Act; and
- (c) the automatic reduction is given effect to by the operation of a computer program approved by the Secretary reducing the rate of payment of the allowance;

there is taken to be a decision by the Secretary that the automatic rate reduction provision applies to the person's allowance.

Note: The decision that is taken to have been made is a decision of an officer for the purposes of review by the Secretary (see sections 1239 and 1240) and the Social Security Appeals Tribunal (see section 1247).

Subdivision D—Determinations

992A Rate increase determination

If the Secretary is satisfied that the rate at which carer allowance is being, or has been, paid is less than the rate provided for by this Act, the Secretary is to determine that the rate is to be increased to the rate specified in the determination.

Note: For the date of effect of a determination under this section see section 992G.

992B Rate reduction determination

If the Secretary is satisfied that the rate at which carer allowance is being, or has been, paid is more than the rate provided for by this Act, the Secretary is to determine that the rate is to be reduced to the rate specified in the determination.

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Note 1: A determination under this section is not necessary in a case where an automatic rate reduction is produced by section 990 or 991 (see subsection 986(2)).

Note 2: For the date of effect of a determination under this section see section 992H.

992C Cancellation or suspension determination

If the Secretary is satisfied that carer allowance is being, or has been, paid to a person to whom it is not, or was not, payable under this Act, the Secretary is to determine that the allowance is to be cancelled or suspended.

Note 1: A determination under this section is not necessary in a case where an automatic termination is produced by section 987 or 988 (see subsection 986(1)).

Note 2: For the date of effect of a determination under this section see section 992H.

992D Cancellation or suspension for failure to comply with section 985, 1304 or 1305 notice

If:

- (a) a person who is receiving carer allowance is given a notice under section 985, 1304 or 1305; and
- (b) the person does not comply with the requirements set out in the notice;

the Secretary may determine that the allowance is to be cancelled or suspended.

Note 1: This section will not apply in a case where section 992C applies.

Note 2: For the date of effect of a determination under this section see section 992H.

992E Changes to payments by computer

If:

- (a) payment of carer allowance to a person is based upon data in a computer; and
 - (b) the allowance rate is increased or reduced, or the allowance is cancelled or suspended, because of the operation of a computer program approved by the Secretary; and
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(c) the program causes the change for a reason for which the Secretary could determine the change;
the change is taken to have been made because of a determination by the Secretary for that reason.

Note: The determination that is taken to have been made is a decision of an officer for the purposes of review by the Secretary (see sections 1239 and 1240) and the Social Security Appeals Tribunal (see section 1247).

992F Resumption of payment after cancellation or suspension

- (1) If the Secretary:
- (a) cancels or suspends a person's carer allowance under section 992C or 992D; and
 - (b) reconsiders the decision to cancel or suspend; and
 - (c) becomes satisfied that because of the decision to cancel or suspend:
 - (i) the person did not receive carer allowance that was payable to the person; or
 - (ii) the person is not receiving carer allowance that is payable to the person;

the Secretary is to determine that carer allowance was or is payable to the person.

- (2) The reconsideration referred to in paragraph (1)(b) might be a reconsideration on an application under section 1240 for review or a reconsideration on the Secretary's own initiative.

Note: For the date of effect of a determination under this section see section 992G.

Subdivision E—Date of effect of determinations

992G Date of effect of favourable determination

- (1) The day on which a determination under section 992A or 992F (the *favourable determination*) takes effect is worked out in accordance with this section.

Notified decision—review sought within 3 months

(2) If:

- (a) a decision (the *previous decision*) is made in relation to carer allowance; and
- (b) a notice is given to the person to whom the allowance is payable advising the person of the making of the previous decision; and
- (c) the person applies to the Secretary under section 1240, within 3 months after the notice is given, for review of the previous decision; and
- (d) the favourable determination is made as a result of the application for review;

the determination takes effect on the day on which the previous decision took effect.

Notified decision—review sought after 3 months

(3) If:

- (a) a decision (the *previous decision*) is made in relation to carer allowance; and
- (b) a notice is given to the person to whom the allowance is payable advising the person of the making of the previous decision; and
- (c) the person applies to the Secretary under section 1240, more than 3 months after the notice is given, for review of the previous decision; and
- (d) the favourable determination is made as a result of the application for review;

the determination takes effect on the day on which the person sought the review.

Decision not notified

(4) If:

- (a) a decision (the *previous decision*) is made in relation to carer allowance; and

- (b) no notice is given to the person to whom the allowance is payable advising the person of the making of the previous decision; and
 - (c) the person applies to the Secretary under section 1240 for review of the previous decision; and
 - (d) the favourable determination is made as a result of the application for review;
- the determination takes effect on the day on which the previous decision took effect.

Notified change of circumstances

- (5) If the favourable determination is made following a person having advised the Department of a change in circumstances, the determination takes effect on the day on which the advice was received or on the day on which the change occurred, whichever is the later.

Other determinations

- (6) In any other case, the favourable determination takes effect on the day on which the determination was made or on such later day or earlier day (not being a day more than 3 months before the determination was made) as is specified in the determination.

992H Date of effect of adverse determination

- (1) The day on which a determination under section 992B, 992C or 992D (the *adverse determination*) takes effect is worked out in accordance with this section.

Notified change of circumstances

- (2) If:
 - (a) the adverse determination is made following a person having notified the Department of the occurrence of an event or change of circumstances specified in a notice under section 984; and
 - (b) the notification is made within the notification period specified in the notice; and

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- (c) the person is not paid an instalment of carer allowance after the making of the notification and before the determination is made;

the determination takes effect on the day on which the event or change in circumstances occurred.

Contravention of Act

- (3) If:

- (a) the person whose carer allowance is affected by the adverse determination has contravened a provision of this Act (other than section 985, 1304, 1305, 1306 or 1307); and
- (b) the contravention causes a delay in the making of the determination;

the determination takes effect on such day (which may be earlier than the day on which the determination is made) as is specified in the determination.

False statement or misrepresentation—cancellation or suspension

- (4) If:

- (a) a person has made a false statement or misrepresentation; and
- (b) because of the false statement or misrepresentation, the carer allowance has been paid to a person when it should have been cancelled or suspended;

the adverse determination takes effect on such day (which may be earlier than the day on which the determination is made) as is specified in the determination.

False statement or misrepresentation—rate reduction

- (5) If:

- (a) a person has made a false statement or misrepresentation; and
- (b) because of the false statement or misrepresentation, the rate at which the carer allowance was paid to a person was higher than it should have been;

the adverse determination takes effect on such day (which may be earlier than the day on which the determination is made) as is specified in the determination.

Other determinations

- (6) In any other case, an adverse determination takes effect:
 - (a) on the day on which it is made; or
 - (b) if the determination specifies a later day, on that day.

Division 10—Bereavement payments (death of disabled child)

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) 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 person was receiving family allowance for the child;

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) the person was, immediately before the child died, receiving family allowance for the child;

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 1: For *first available bereavement adjustment payday, bereavement period* and *bereavement lump sum period* see subsection 21(2).

Note 2: If the person qualified for payments under this Division was not receiving family allowance in respect of the child and somebody else was receiving family allowance in respect of the child, a corresponding lump sum may be payable to the other person under section 892.

- (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:
- (a) a person is receiving carer allowance (other than because of this section) 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 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
 - (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:

Schedule 2 Carer allowance

Part 1 Amendments to include new carer allowance Part in the Social Security Act

- (e) the amount of carer allowance that would have been payable to the person under subsection 992J(2) if the person had not died;
 - (f) any lump sum that would have been payable to the person under section 992K 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
 - (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) if the person had not died;
 - (f) any lump sum that would have been payable to the person under section 992K if the person had not died.

Part 2—Consequential amendments of the Social Security Act

Social Security Act 1991

8 Section 3 (index)

Omit:

CDA child 953

9 At the end of paragraph 8(8)(g)

Add “as in force immediately before 1 July 1999”.

10 Subsection 23(1)

Insert:

child disability allowance means child disability allowance under Part 2.19 of this Act as in force at any time before 1 July 1999.

11 Subsection 23(1) (paragraph (o) of the definition of recipient notification notice)

Repeal the paragraph, substitute:

(o) section 984 (carer allowance); or

12 Subsection 23(1) (paragraph (o) of the definition of recipient statement notice)

Repeal the paragraph, substitute:

(o) section 985 (carer allowance); or

13 Paragraph 500D(2)(b)

Repeal the paragraph, substitute:

(b) has not turned 16; and

14 Subparagraph 843(2)(a)(i)

After “allowance”, insert “, carer allowance”.

15 Paragraphs 846(b) and (c)

Repeal the paragraphs, substitute:

- (b) an FA child of the person is also a disabled child, or one of 2 disabled children, in respect of whom the person is qualified for carer allowance under section 953 or 954; and
- (c) either:
 - (i) the carer allowance is payable to the person from a day determined in accordance with section 961 (backdating for a claim in respect of one or 2 disabled children) or section 962 (backdating for a claim in respect of a disabled adult); or
 - (ii) child disability allowance was payable to the person for the child or children from a day determined in accordance with section 959 (backdating for a claim within 12 months of becoming qualified) or section 960 (backdating for a claim after 12 months of becoming qualified) of this Act as in force at any time before 1 July 1999;

Note: The heading to section 846 is altered by omitting “**child disability**” and substituting “**carer**”.

16 Subparagraph 900AI(2)(a)(i)

After “disability allowance”, insert “, carer allowance”.

17 Paragraphs 900AL(b) and (c)

Repeal the paragraphs, substitute:

- (b) an FTP child of the person is also a disabled child, or one of 2 disabled children, in respect of whom the person is qualified for carer allowance under section 953 or 954; and
- (c) either:
 - (i) the carer allowance is payable to the person from a day determined in accordance with section 960 (provisional commencement day); or
 - (ii) child disability allowance was payable to the person for the child or children from a day determined in accordance with section 958 (provisional commencement day) of this Act as in force at any time before 1 July 1999;

Note: The heading to section 900AL is altered by omitting “**child disability**” and substituting “**carer**”.

18 Subparagraph 900P(a)(i)

After “disability allowance”, insert “, carer allowance”.

19 Subparagraph 1002(2)(a)(i)

After “disability allowance”, insert “, carer allowance”.

20 Point 1064-E5

Omit “child disability”, substitute “carer”.

21 Point 1066A-F4

Omit “child disability”, substitute “carer”.

22 Point 1068A-E15

Omit “child disability”, substitute “carer”.

23 Section 1190 (table item 15)

Repeal the item, substitute:

15. Rate of carer allowance CA rate [subsection 974(2)]

24 Section 1190 (table item 40)

Omit “[subparagraph 953(b)(iv)]”.

25 Subsection 1191(1) (table item 9)

Omit “CDA”, substitute “CA”.

26 Section 1198C

Omit “CDA” (wherever occurring), substitute “CA”.

27 Subsection 1239(1) (note 1)

Omit “984A,”, substitute “989, 992,”.

28 Subsection 1239(1) (note 1)

Omit “987B,”, substitute “992E,”.

29 Subsection 1240(1) (note 1)

Omit “984A,”, substitute “989, 992,”.

30 Subsection 1240(1) (note 1)

Omit “987B,”, substitute “992E,”.

31 Subsection 1247(1) (note)

Omit “987B,”, substitute “992E,”.

32 Paragraph 1250(1)(d)

Omit “962, 963,”, substitute “967, 968,”.

33 Subclause 23(3) of Schedule 1A

Repeal the subclause.

34 Subclause 27(3A) of Schedule 1A (after paragraph (e) of the definition of *post-1995 increase*)

Insert:

(ea) carer allowance;

35 After paragraph 28(4)(e) of Schedule 1A

Insert:

(ea) carer allowance;

36 Paragraph 50(2)(b) of Schedule 1A

After “allowance”, insert “or carer allowance”.

37 Paragraph 52(2)(b) of Schedule 1A

After “allowance”, insert “or carer allowance”.

38 Subclause 63(3A) of Schedule 1A (after paragraph (e) of the definition of *post-1995 increase*)

Insert:

(ea) carer allowance;

39 Clause 64 of Schedule 1A

Repeal the clause.

40 After subclause 65(2) of Schedule 1A

Insert:

(2A) If, immediately before 1 July 1999:

- (a) a person was receiving child disability allowance for a young person; and
- (b) the person's rate of child disability allowance for the young person was the rate worked out under subclause (2) (the *old rate*);

then, for the period on and after 1 July 1999 for which the person is qualified for carer allowance for the young person, the person's fortnightly rate of carer allowance for the young person is equal to the old rate.

41 Subparagraph 108(b)(ii) of Schedule 1A

Omit "30 June 2003", substitute "the end of 30 June 1999".

42 After clause 108 of Schedule 1A

Insert:

108A Disabled child (changes made on 1 July 1999)

- (1) If clause 108 applies to a young person immediately before the end of 30 June 1999, Part 2.19 of this Act applies on and after 1 July 1999 to the young person as if the changes set out in subclauses (2), (3), (4) and (5) were made, and that Part continues so to apply until:
 - (a) the day on which carer allowance for the young person ceases to be payable; or
 - (b) 30 June 2003;whichever is the earlier.

Disabled child changes

- (2) The first change is that the definition of *disabled child* in section 952 is to be replaced by the following definition:

disabled child means a young person aged under 16 in respect of whom the following requirements are satisfied:

- (a) the young person has a physical, intellectual or psychiatric disability; and
 - (b) because of that disability:
 - (i) the young person needs care and attention from another person on a daily basis; and
 - (ii) the care and attention needed by the young person are substantially more than are needed by a young person of the same age who does not have a physical, intellectual or psychiatric disability; and
 - (c) the young person is likely to need that care and attention permanently or for an extended period.
- (3) The second change is that paragraph 953(1)(c) is to be omitted.

Disabled adult changes

- (4) The third change is that the definition of ***disabled adult*** in section 952 is to be replaced by the following definition:

disabled adult means a young person aged 16 or more in respect of whom the following requirements are satisfied:

- (a) the young person has a physical, intellectual or psychiatric disability; and
 - (b) because of that disability:
 - (i) the young person needs care and attention from another person on a daily basis; and
 - (ii) the care and attention needed by the young person are substantially more than are needed by a young person of the same age who does not have a physical, intellectual or psychiatric disability; and
 - (c) the young person is likely to need that care and attention permanently or for an extended period.
- (5) The fourth change is that paragraph 954(1)(c) is to be omitted.

Part 3—Consequential amendments of the National Health Act

National Health Act 1953

43 Paragraph 48B(1)(a)

Omit “(within the meaning of Part VB)”.

44 At the end of section 48B

Add:

(5) In this section:

registered nurse includes:

- (a) a person who is registered under a law of a State or Territory as:
 - (i) a psychiatric nurse; or
 - (ii) a mental nurse; or
 - (iii) a geriatric nurse; and
- (b) in respect of the Territory of Cocos (Keeling) Islands or the Territory of Christmas Island, a nurse who has such qualifications (if any) as are determined by the Minister by notice in writing published in the *Gazette*.

45 Part VB

Repeal the Part.

46 Part VC (heading)

Repeal the heading, substitute:

Part VC—Administration of Parts V, VA, VAB and VD

47 Subsection 58K(1) (definition of *Commonwealth benefit*)

Omit “, VAB or VB”, substitute “or VAB”.

Schedule 2 Carer allowance

Part 3 Consequential amendments of the National Health Act

48 Paragraph 139A(1)(fa)

Repeal the paragraph.

49 Paragraph 139B(1)(ea)

Repeal the paragraph.

Part 4—Consequential amendments of the income tax Acts

Income Tax Assessment Act 1997

50 Section 11-15 (table item headed “social security or like payments”)

Omit:

domiciliary nursing care benefit53-10

51 Section 52-10 (after table item 3.1)

Insert:

3A.1 **Carer allowance** Exempt Exempt Exempt Not applicable

52 Section 52-10 (table item 5.1)

Repeal the item.

53 Section 52-40 (after table item 3)

Insert:

3A Carer allowance Part 2.19 Sections 992K and 992M Not applicable

54 Section 52-40 (table item 5)

Repeal the item.

55 Section 53-10 (table item 2)

Repeal the item.

Income Tax Assessment Act 1936

56 Subparagraph 102AC(2)(c)(i)

Omit “child disability”, substitute “carer”.

57 Sub-subparagraph 102AC(2)(d)(i)(A)

After “disabled child”, insert “, or a disabled adult,”.

58 Subsection 159J(6) (paragraph (a) of the definition of *separate net income*)

Omit “child disability allowance”, substitute “carer allowance”.

59 Subsection 159J(6) (paragraph (a) of the definition of *separate net income*)

Omit “, amounts”, substitute “or amounts”.

60 Subsection 159J(6) (paragraph (a) of the definition of *separate net income*)

Omit “or domiciliary nursing care benefit paid under Part VB of the *National Health Act 1953*”.

61 Subsection 159J(6) (subparagraph (b)(i) of the definition of *separate net income*)

Omit “child disability allowance”, substitute “carer allowance”.

62 Subsection 159P(2)

Repeal the subsection.

63 Application

The amendments made by this Part apply to assessments for the 1999-2000 income year and later income years.

64 Continuation of references to old allowance and benefit

- (1) The *Income Tax Assessment Act 1997* has effect after the commencement of this Part as if:
- (a) the entry in the table in section 11-15 of that Act, under the heading “**social security or like payments**”, relating to domiciliary nursing care benefit had not been omitted; and
 - (b) the references in item 3A.1 of the table in section 52-10, and item 3A of the table in section 52-40, of that Act to carer allowance included references to child disability allowance within the meaning of the *Social Security Act 1991* as previously in force; and
 - (c) item 2 of the table in section 53-10 of the *Income Tax Assessment Act 1997* had not been repealed by this Act and
-

had referred to Part VB of the *National Health Act 1953* as previously in force.

- (2) The *Income Tax Assessment Act 1936* has effect after the commencement of this Part as if:
- (a) the references in paragraphs (a) and (b) of the definition of ***separate net income*** in subsection 159J(6) of that Act to carer allowance included a reference to child disability allowance within the meaning of the *Social Security Act 1991* as previously in force; and
 - (b) the reference in paragraph (a) of the definition of ***separate net income*** in subsection 159J(6) of the *Income Tax Assessment Act 1936* to domiciliary nursing care benefit paid under Part VB of the *National Health Act 1953* had not been omitted by this Act and referred to the *National Health Act 1953* as previously in force; and
 - (c) subsection 159P(2) of the *Income Tax Assessment Act 1936* had not been repealed by this Act.
- (3) In this item:
- as previously in force*** means as in force immediately before the commencement of this Part.

Part 5—Consequential amendments of other Acts

Child Care Payments Act 1997

65 Paragraph 15(1)(c)

Repeal the paragraph, substitute:

- (c) receives carer allowance for a disabled adult (within the meaning of section 952 of the *Social Security Act 1991*) under Part 2.19 of that Act; or

66 Paragraph D2(1)(b) of Module D of Schedule 1

Omit “child disability allowance under”, substitute “carer allowance under section 953 of”.

Childcare Rebate Act 1993

67 Paragraph 29(1)(c)

Repeal the paragraph, substitute:

- (c) receives carer allowance for a disabled adult (within the meaning of section 952 of the *Social Security Act 1991*) under Part 2.19 of that Act; or

Health Insurance Act 1973

68 Section 4CA

Repeal the section, substitute:

4CA Disadvantaged persons, being persons suffering from certain disabilities

Disabled child or children—qualification for carer allowance

- (1) While a person is qualified under Part 2.19 of the *Social Security Act 1991* for carer allowance for a disabled child (within the meaning of that Part), or for 2 such disabled children, the disabled

child or each of the disabled children is a disadvantaged person within the meaning of this section.

Other disabled children

- (2) A person is a disadvantaged person within the meaning of this section if all of the following conditions are satisfied:
- (a) the person is a dependent child (within the meaning of the *Social Security Act 1991* (disregarding subsection 5(3) of that Act)) of another person (the *carer*);
 - (b) the person is aged under 16;
 - (c) the person is an Australian resident (within the meaning of the *Social Security Act 1991*);
 - (d) the person:
 - (i) has a physical, intellectual or psychiatric disability; and
 - (ii) is likely to suffer from the disability permanently or for an extended period;
 - (e) because of that disability, the person 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;
 - (f) the person 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;in a private home that is the residence of the person and the carer;
 - (g) the carer is in Australia and is an Australian resident (within the meaning of the *Social Security Act 1991*).

Disabled adult

- (3) A person is a disadvantaged person within the meaning of this section if all of the following conditions are satisfied:
- (a) the person is a disabled adult (within the meaning of the *Social Security Act 1991*);

(b) clause 108A of Schedule 1A to the *Social Security Act 1991* applies to the person at the beginning of 1 July 1999;

(c) the person is aged under 22.

This subsection applies for so long as that clause continues to apply to the person.

Safety, Rehabilitation and Compensation Act 1988

69 Paragraph 4(7)(b)

Repeal the paragraph.

70 Paragraph 4(7)(c)

Omit “child disability”, substitute “carer”.

71 Application

The *Safety, Rehabilitation and Compensation Act 1988* has effect on and after 1 July 1999 as if a reference to carer allowance in paragraph 4(7)(c) of that Act included a reference to child disability allowance (within the meaning of the *Social Security Act 1991*).

Seafarers Rehabilitation and Compensation Act 1992

72 Paragraphs 15(4)(a) and (b)

Repeal the paragraphs, substitute:

(a) an amount of family allowance under the *Social Security Act 1991*;

(b) an amount of carer allowance under that Act;

(c) an amount of double orphan pension under that Act.

73 Application

The *Seafarers Rehabilitation and Compensation Act 1992* has effect on and after 1 July 1999 as if a reference to carer allowance in paragraph 15(4)(b) of that Act included a reference to child disability allowance (within the meaning of the *Social Security Act 1991*).

Veterans' Entitlements Act 1986

74 At the end of paragraph 5H(8)(n)

Add “as in force immediately before 1 July 1999”.

75 Point SCH6-E7

Omit “child disability”, substitute “carer”.

Schedule 3—Transitional provisions relating to carer payment and carer allowance

Part 1—Transitional provisions relating to the Social Security Act

Social Security Act 1991

1 Schedule 1A

Insert in its appropriate position (determined on a numerical order basis):

122 Issue of notice before 1 July 1999 to person to whom domiciliary nursing care benefit is being paid requiring notification of events affecting the payment of carer allowance on and after that day

- (1) The Secretary may, during the period from the start of the day on which the *Assistance for Carers Legislation Amendment Act 1999* receives the Royal Assent until the end of 30 June 1999, give a person (the ***DNCB recipient***) to whom domiciliary nursing care benefit under Part VB of the *National Health Act 1953* is being paid a notice in the same terms as could be given under section 984 of this Act on or after 1 July 1999 to a person to whom carer allowance is being paid. The notice only has effect as mentioned in subclause (2).
- (2) If, because of the operation of subclause 124(7), carer allowance becomes payable to the DNCB recipient on and after 1 July 1999, the notice has effect on and after that day as if it were given under section 984 of this Act on that day.

Note: Section 984 of this Act allows the Secretary to give a person to whom carer allowance is being paid a notice requiring the person to inform the Department of an event or change in circumstances that might affect the payment of carer allowance.

2 Schedule 1A

Insert in their appropriate position (determined on a numerical order basis):

123 Carer payment provisions (changes to “severely handicapped person” category with effect from 1 July 1999)

If a determination, notice, statement or instrument made or given under Part 2.5 of this Act had effect immediately before 1 July 1999 (whether made or given before, on or after that day), it continues to have effect on and after that day despite the amendments made by Part 1 of Schedule 1 to the *Assistance for Carers Legislation Amendment Act 1999*.

Note: Carer payments that continue to be payable because of this clause would be able to be terminated later e.g. under section 231.

124 Carer allowance (changes introduced on 1 July 1999)

Continuing effect of determinations etc. effective before 1 July 1999

- (1) If a determination, notice, statement or other instrument made or given under this Act in relation to child disability allowance had effect immediately before 1 July 1999 (whether made or given before, on or after that day), it continues to have effect on and after that day as if it had been made or given under this Act in relation to carer allowance.

Note: A determination that carer allowance is payable to a person ceases to have effect if the Secretary becomes satisfied that the allowance is no longer payable and determines that the allowance is to be cancelled or suspended: see sections 992C and 992D.

Pending claims for child disability allowance

- (2) If:
- (a) a person lodged a claim for child disability allowance under this Act before 1 July 1999 (including because of subclause (3) or (4)); and
 - (b) the claim was not determined before that day; and
 - (c) the Secretary later determines that the claim is not to be granted;

Schedule 3 Transitional provisions relating to carer payment and carer allowance
Part 1 Transitional provisions relating to the Social Security Act

the claim has effect on and after 1 July 1999 as if it were a claim for carer allowance made under this Act.

Claims made on or after 1 July 1999 for child disability allowance

- (3) If a person lodges a claim for child disability allowance on or after 1 July 1999, the claim has effect as if it had been made immediately before 1 July 1999.

Claims made on or after 1 July 1999 in respect of qualification before 1 July 1999—carer allowance

- (4) If:
- (a) a person lodges a claim for carer allowance in respect of a disabled child or 2 disabled children on or after 1 July 1999; and
 - (b) if the amendments made by Schedule 2 to the *Assistance for Carers Legislation Amendment Act 1999* had not been made, the claim could have been made in respect of qualification for child disability allowance for a period before 1 July 1999;
- the claim has effect:
- (c) as if it had been made immediately before 1 July 1999; and
 - (d) as if it were a claim for child disability allowance.

Child disability allowance bereavement payment in respect of death of child

- (5) If, immediately before 1 July 1999, a person was qualified for child disability allowance for a period under section 991 or 992AA of this Act as in force immediately before that day, the person continues to be qualified for child disability allowance for that period on and after 1 July 1999 as if the amendments made by Schedule 2 to the *Assistance for Carers Legislation Amendment Act 1999* had not been made.

Effect of overseas absence before 1 July 1999

- (6) If:
- (a) immediately before 1 July 1999, child disability allowance was payable to a person for a CDA child or for 2 dependent

children in circumstances where the person or the child or children were absent from Australia; and

- (b) that absence from Australia continues on and after 1 July 1999; and
- (c) before the end of the period of 26 weeks beginning on 1 July 1999, the period of that absence from Australia exceeds 3 years; and
- (d) immediately before the end of those 3 years, carer allowance is payable to the person for the child or children;

carer allowance ceases to be payable to the person for the child or children at the end of those 3 years.

Domiciliary nursing care benefit payable to a person immediately before 1 July 1999

- (7) If domiciliary nursing care benefit under Part VB of the *National Health Act 1953* was payable, or is taken to have been payable, immediately before 1 July 1999 to a person in relation to a patient, then, on and after that day:
 - (a) carer allowance is payable to the person for the patient; and
 - (b) Part 2.19 of this Act applies to the person;as if he or she had made a claim for carer allowance under Part 2.19 of this Act and the claim had been granted.

Pending claims for domiciliary nursing care benefit—application to Secretary to the Health Department

- (8) If:
 - (a) before 1 July 1999, a person made an application under Part VB of the *National Health Act 1953* for approval as an approved person for the purposes of that Part in relation to a patient; and
 - (b) the Secretary to the Health Department had not dealt with the application before that day; and
 - (c) the Secretary to the Health Department later refuses the application;the application has effect on and after 1 July 1999 as if it were a claim for carer allowance lodged under this Act.

Pending claims for domiciliary nursing care benefit—review by Health Minister

(9) If:

- (a) before 1 July 1999, a person made a request to the Health Minister under section 58F of the *National Health Act 1953* for a review of a decision of the Secretary to the Health Department refusing the person's application for approval as an approved person for the purposes of Part VB of that Act; and
- (b) the Health Minister had not dealt with the request before that day; and
- (c) the Health Minister later confirms the decision of the Secretary to the Health Department;

the person is taken to have made a claim for carer allowance on 1 July 1999 under Part 2.19 of this Act, and that claim is taken to have contained any information in the application mentioned in paragraph (a).

Decision of Health Minister in relation to domiciliary nursing care benefit

(10) If:

- (a) under item 3 of Schedule 3 to the *Assistance for Carers Legislation Amendment Act 1999*, the Health Minister is required to deal with a request to review a decision of the Secretary to the Health Department to refuse a person's application for approval as an approved person for the purposes of Part VB of the *National Health Act 1953*; and
- (b) the Health Minister confirms the decision of the Secretary to the Health Department;

the person is taken to have made a claim for carer allowance on 1 July 1999 under Part 2.19 of this Act, and that claim is taken to have contained any information in the application mentioned in paragraph (a).

Preserving the no residency requirement for domiciliary nursing care benefit

(11) If:

(a) domiciliary nursing care benefit under Part VB of the *National Health Act 1953* was payable, or is to be taken to have been payable, immediately before 1 July 1999 to a person in relation to a patient; and

(b) immediately before that day, the person or the patient was not an Australian resident;

then Part 2.19 of this Act as in force on and after that day has effect as if the person or the patient, as the case may be, were an Australian resident.

Definitions

(12) In this clause:

Health Department means the Department administered by the Health Minister.

Health Minister means the Minister administering the *National Health Act 1953*.

125 Transitional regulations arising out of carer allowance changes introduced on 1 July 1999

Regulations made under section 1364 may prescribe matters in relation to any transitional matters (including prescribing any saving or application provision) arising out of amendments of this Act made by Schedule 2 to the *Assistance for Carers Legislation Amendment Act 1999*.

Part 2—Transitional provisions relating to the National Health Act

3 Transitional—time limits for making a request for review of an adverse domiciliary nursing care benefit decision

Review of an adverse domiciliary nursing care benefit decision made before 1 July 1999

(1) If:

- (a) before 1 July 1999, the Secretary to the Health Department made a decision to refuse a person's application for approval as an approved person for the purposes of Part VB of the *National Health Act 1953*; and
- (b) immediately before 1 July 1999, the person had not requested the Health Minister to review the decision under section 58F of that Act;

then:

- (c) the person may, at any time before 1 October 1999, request the Health Minister to review the decision under section 58F of that Act; and
- (d) the Health Minister must deal with the request;

as if the repeal of Part VB of the *National Health Act 1953* made by Schedule 2 to this Act had not occurred.

Review of an adverse domiciliary nursing care benefit decision made on or after 1 July 1999

(2) If, on or after 1 July 1999, the Secretary to the Health Department makes a decision to refuse a person's application for approval as an approved person for the purposes of Part VB of the *National Health Act 1953*, then:

- (a) the person may request the Health Minister to review the decision under section 58F of that Act at any time within 3 months after the day on which the person was notified of the decision; and
- (b) the Health Minister must deal with the request;

as if the repeal of Part VB of the *National Health Act 1953* made by Schedule 2 to this Act had not occurred.

Definitions

- (3) In this item:

Health Department means the Department administered by the Health Minister.

Health Minister means the Minister administering the *National Health Act 1953*.

4 Transitional—Secretary to Health Department to continue to issue certain certificates relating to domiciliary nursing care benefit

- (1) Despite the repeal of paragraph 139A(1)(fa) of the *National Health Act 1953* made by Schedule 2 to this Act, the Secretary to the Health Department may, on or after 1 July 1999, give a certification under that paragraph in relation to any period before that day as if the repeal had not occurred.

- (2) In this item:

Health Department means the Department administered by the Minister administering the *National Health Act 1953*.

[*Minister's second reading speech made in—
House of Representatives on 17 February 1999
Senate on 25 March 1999*]

(17/99)
