



# **Family and Community Services Legislation (Simplification and Other Measures) Act 2001**

**No. 71, 2001**



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**An Act to amend the social security law and the  
family assistance law, and for other purposes**

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**No. 71, 2001**

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# **An Act to amend the social security law and the family assistance law, and for other purposes**

[Assented to 30 June 2001]

The Parliament of Australia enacts:

## **1 Short title**

This Act may be cited as the *Family and Community Services Legislation (Simplification and Other Measures) Act 2001*.

## **2 Commencement**

- (1) This section and sections 1 and 3 commence on the day on which this Act receives the Royal Assent.
- (2) Schedule 1 (other than item 15) commences on 20 September 2001.
- (3) Item 15 of Schedule 1 is taken to have commenced on 1 July 2000.
- (4) Schedule 2 (other than items 1 and 24) commences on 20 September 2001.
- (5) Item 1 of Schedule 2 is taken to have commenced on 3 May 2000, immediately after the *A New Tax System (Family Assistance and Related Measures) Act 2000* received the Royal Assent.
- (6) Item 24 of Schedule 2 is taken to have commenced on 1 July 1998, immediately after the commencement of item 10 of Schedule 5 to the *Youth Allowance Consolidation Act 2000*.

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Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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

### ***Social Security Act 1991***

#### **1 Subsection 17(1) (definition of *average weekly earnings*)**

Repeal the definition.

#### **2 Subsection 17(1) (paragraph (ha) of the definition of *former payment type*)**

Repeal the paragraph, substitute:

- (ha) a job search allowance under this Act as previously in force;  
or

#### **3 Subsection 17(1) (paragraph (p) (second occurring) of the definition of *former payment type*)**

Repeal the paragraph, substitute:

- (r) a parenting payment under this Act as in force immediately before 1 July 2000; or
- (s) a youth training allowance under Part 8 of the *Student Assistance Act 1973* as previously in force; or
- (t) a payment under this Act as previously in force declared by the Minister to be a former payment type for the purposes of Part 3.14.

#### **4 Subsection 17(1) (definition of *income cut-out amount*)**

Repeal the definition, substitute:

*income cut-out amount*, in relation to a person who has received a compensation payment, means the amount worked out using the formula in subsection (8), as in force at the time when the compensation was received.

#### **5 Subsection 17(1) (definition of *lump sum preclusion period*)**

Repeal the definition.

#### **6 Subsection 17(1) (definition of *periodic payments period*)**

Repeal the definition, substitute:

*periodic payments period* means:

- (a) the period to which a periodic compensation payment, or a series of periodic compensation payments, relates; or
- (b) in the case of a payment of arrears of periodic compensation payments—the period to which those payments would have related if they had not been made by way of an arrears payment.

#### **7 Subsection 17(2)**

Omit “For the purposes”, substitute “Subject to subsection (2B), for the purposes”.

#### **8 Subsection 17(2)**

Omit all words after “series of”, substitute “periodic payments and whether it is made within or outside Australia) that is made wholly or partly in respect of lost earnings or lost capacity to earn resulting from personal injury”.

#### **9 Paragraph 17(2A)(b)**

Repeal the paragraph, substitute:

- (b) either:
  - (i) the agreement under which the contributions are made does not provide for the amounts that would otherwise be payable under the agreement being reduced or not payable because the recipient is eligible for or receives payments under this Act that are compensation affected payments; or
  - (ii) the agreement does so provide but the compensation payment has been calculated without reference to the provision.

#### **10 Subsections 17(2B) and (2C)**

Repeal the subsections, substitute:

- (2B) A payment under a law of the Commonwealth, a State or a Territory that provides for the payment of compensation for a criminal injury does not constitute compensation for the purposes of this Act.
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(2C) The reference in subsection (2B) to a criminal injury is a reference to a personal injury suffered, or a disease or condition contracted, as a result of the commission of an offence.

**11 Subsection 17(3)**

Omit “For the purposes”, substitute “Subject to subsection (4), for the purposes”.

**12 At the end of paragraph 17(3)(b)**

Add “, or both”.

**13 Subsection 17(4A) (note)**

Repeal the note.

**14 Subsection 17(7)**

Repeal the subsection.

**15 Subsection 17(8)**

Omit all the words before “*maximum basic rate*”, substitute:

(8) For the purposes of the definition of *income cut-out amount* in subsection (1), the formula is as follows:

$$2.5 \left[ \begin{array}{l} \text{Maximum} \\ \text{basic rate} \end{array} + \begin{array}{l} \text{Pharmaceutical amount} \\ \text{for a single person} \end{array} \right] + \begin{array}{l} \text{Ordinary free} \\ \text{area limit} \end{array}$$

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where:

**16 At the end of section 17**

Add:

(9) A determination by the Minister under paragraph (s) of the definition of *former payment type*:

- (a) must be in writing; and
- (b) is a disallowable instrument.

**17 Subsection 23(1) (definition of *compensation arrears debt*)**

Repeal the definition.

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**18 Subsection 23(1) (definition of *compensation debt*)**

Repeal the definition.

**19 Part 3.14**

Repeal the Part, substitute:

**Part 3.14—Compensation recovery**

**Division 1—General**

**1160 General effect of Part**

- (1) This Part operates in certain specified circumstances to do one or more of the following:
  - (a) reduce a person's compensation affected payment;
  - (b) render a person's compensation affected payment not payable;
  - (c) require the repayment of some or all of a person's compensation affected payment;because of the receipt of compensation by the person or the person's partner.
- (2) This Part applies whether or not there is any connection between the circumstances that give rise to the person's qualification for the compensation affected payment and the circumstances that give rise to the receipt of compensation by the person or the person's partner.

**1161 Application of Part**

- (1) Subject to subsections (2) to (7), payments of a compensation affected payment are affected under this Part if:
  - (a) whether the compensation was received before or after the commencement of this Part, the compensation affected payment is:
    - (i) a newstart allowance in relation to which, under Subdivision BA of Division 1 of Part 2.12, the recipient of the allowance is not required to satisfy the activity test; or

- (ii) a sickness allowance; or
  - (iii) a sickness benefit under the 1947 Act; or
  - (iv) a rehabilitation allowance under the 1947 Act payable in place of sickness benefit under the 1947 Act; or
  - (b) in the case of any other kind of compensation affected payment, the compensation was received on or after 1 May 1987 and the claim for the compensation affected payment was made on or after 1 May 1987.
- (2) This Part applies to a pension PP (single) if:
- (a) the compensation was received on or after 20 March 1992; and
  - (b) the claim for the pension was made on or after 20 March 1992.
- (3) This Part applies to carer payment if:
- (a) the compensation was received on or after 1 January 1993; and
  - (b) the claim for the carer payment was made on or after 1 January 1993.
- (4) This Part applies to a mature age allowance or mature age partner allowance if:
- (a) the compensation was received on or after 20 March 1994; and
  - (b) the claim for the allowance was made on or after 20 March 1994.
- (5) This Part applies to partner allowance if:
- (a) the compensation was received on or after 20 September 1994; and
  - (b) the claim for the allowance was made on or after 20 September 1994.
- (6) This Part applies to age pension if:
- (a) the compensation was received on or after 20 March 1997; and
  - (b) the person's provisional commencement day or start day for the age pension is on or after 20 March 1997.
- (7) In spite of subsection (1), Division 4 does not apply to:
-

- (a) a disability support wife pension; or
  - (b) a special needs disability support wife pension;
- received by a person if:
- (c) the compensation was received by the person on or after 1 May 1987 but before 1 January 1994; and
  - (d) the claim for the pension was made on or after 1 May 1987 but before 1 January 1994.

### **1162 Part to bind Crown**

This Part binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory, of the Northern Territory and of Norfolk Island.

### **1163 Interpretation**

- (1) In a provision of this Part (other than section 1164), a reference to the payment or receipt of periodic compensation payments includes a reference to the payment or receipt, as the case may be, of arrears of periodic compensation payments.
- (2) A reference in this Part to periodic compensation payments is a reference to:
  - (a) a periodic compensation payment; or
  - (b) if 2 or more periodic compensation payments relate to the same period, those payments.
- (3) In this Part, a reference to a person's partner receiving or claiming a compensation affected payment includes a reference to the partner receiving or claiming a compensation affected pension within the meaning of the Veterans' Entitlements Act.

### **1164 Certain lump sums to be treated as though they were received as periodic compensation payments**

If:

- (a) a person was entitled to periodic compensation payments under a law of a State or Territory; and
  - (b) the person's entitlement to the periodic payments was converted under the law of the State or Territory into an entitlement to a lump sum; and
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- (c) the lump sum was calculated by reference to a period;  
this Part applies to the person as if:
- (d) the person had not received:
- (i) the lump sum; or
  - (ii) if the lump sum was to be paid in instalments—any of the instalments; and
- (e) the person had received in each fortnight during the period a periodic compensation payment equal to:

$$\frac{\text{Lump sum amount}}{\text{Number of fortnights in the period}}$$

where:

***lump sum amount*** is the amount of the lump sum referred to in paragraph (b);

***number of fortnights in the period*** is the number of whole fortnights in the period referred to in paragraph (c).

### **1165 Effect of certain State and Territory laws**

If:

- (a) a law of a State or Territory provides for the payment of compensation; and
- (b) the law includes a provision to the effect that a person's compensation under the law is to be or may be reduced or cancelled if the person is qualified for or receives payments under this Act;

this Act applies as if the person had received under the law the compensation that the person would have received under the law if the provision referred to in paragraph (b) had not been enacted.

## **Division 2—Enforcement of compensation rights**

### **1166 Secretary may require person to take action to obtain compensation**

(1) If:

- (a) a person receives or claims a compensation affected payment; and

- (b) the person or the person's partner is, or, in the Secretary's opinion, may be, entitled to compensation; and
  - (c) the person or the partner:
    - (i) has taken no action to claim or obtain the compensation; or
    - (ii) has taken no action that the Secretary considers reasonable to claim or obtain the compensation;the Secretary may require the person or the partner to take the action specified by the Secretary.
- (2) The action specified by the Secretary is to be the action that the Secretary considers reasonable to enable the person to claim or obtain the compensation.
  - (3) Even though a person has entered into an agreement to give up the person's right to compensation, the Secretary may form the opinion that the person may be entitled to compensation if the Secretary is satisfied that the agreement is void, ineffective or unenforceable.
  - (4) For the purposes of subsection (3), a person enters into an agreement to give up the person's right to compensation if the person:
    - (a) enters into an agreement to waive the person's right to compensation; or
    - (b) enters into an agreement to withdraw the person's claim for compensation.

**1167 Failure to comply with a requirement to take action to obtain compensation**

- (1) If the Secretary, under section 1166, requires a person who receives or claims a compensation affected payment to take action to claim or obtain compensation, the compensation affected payment is not payable to the person or is not to be granted, as the case may be, unless the person complies with the requirement.
- (2) If the Secretary requires the partner of a person who receives or claims a compensation affected payment to take action to claim or obtain compensation, the compensation affected payment is not payable to the person or is not to be granted, as the case may be, unless the partner complies with the requirement.

## **Division 3—Receipt of compensation**

### **1168 Application**

A provision of this Division that refers to a person receiving or claiming a compensation affected payment and receiving a lump sum compensation payment has effect regardless of whether the lump sum compensation payment was received before or after the person received or claimed the compensation affected payment.

### **1169 Compensation affected payment not payable during lump sum preclusion period**

- (1) If:
  - (a) a person receives or claims a compensation affected payment; and
  - (b) the person receives a lump sum compensation payment; the compensation affected payment is not payable to the person in relation to any day or days in the lump sum preclusion period.
- (2) In this section:

*lump sum compensation payment* does not include a lump sum payment:

- (a) to which section 1164 applies; or
- (b) that relates only to arrears of periodic compensation payments.

### **1170 Lump sum preclusion period**

- (1) Subject to subsection (2), if a person receives both periodic compensation payments and a lump sum compensation payment, the lump sum preclusion period is the period that:
  - (a) begins on the day following the last day of the periodic payments period or, where there is more than one periodic payments period, the day following the last day of the last periodic payments period; and
  - (b) ends at the end of the number of weeks worked out under subsections (4) and (5).

- (2) If a person chooses to receive part of an entitlement to periodic compensation payments in the form of a lump sum, the lump sum preclusion period is the period that:
- (a) begins on the first day on which the person's periodic compensation payment is a reduced payment because of that choice; and
  - (b) ends at the end of the number of weeks worked out under subsections (4) and (5).
- (3) If neither of subsections (1) and (2) applies, the lump sum preclusion period is the period that:
- (a) begins on the day on which the loss of earnings or loss of capacity to earn began; and
  - (b) ends at the end of the number of weeks worked out under subsections (4) and (5).
- (4) The number of weeks in the lump sum preclusion period in relation to a person is the number worked out using the formula:
- $$\frac{\text{Compensation part of lump sum}}{\text{Income cut - out amount}}$$
- (5) If the number worked out under subsection (4) is not a whole number, the number is to be rounded down to the nearest whole number.

### **1171 Deemed lump sum payment arising from separate payments**

- (1) If:
- (a) a person receives 2 or more lump sum payments in relation to the same event that gave rise to an entitlement of the person to compensation (the *multiple payments*); and
  - (b) at least one of the multiple payments is made wholly or partly in respect of lost earnings or lost capacity to earn;
- the following paragraphs have effect for the purposes of this Act and the Administration Act:
- (c) the person is taken to have received one lump sum compensation payment (the *single payment*) of an amount equal to the sum of the multiple payments;



- (d) the single payment is taken to have been received by the person:
  - (i) on the day on which he or she received the last of the multiple payments; or
  - (ii) if the multiple payments were all received on the same day, on that day.
- (2) A payment is not a lump sum payment for the purposes of paragraph (1)(a) if it relates exclusively to arrears of periodic compensation.

**1172 Lump sum compensation not counted as ordinary income**

If an amount of a compensation affected payment is not payable to a person under section 1169 because the person has received a lump sum compensation payment, that lump sum compensation payment is not to be regarded as ordinary income of either the person or the person's partner (if any) for the purposes of a provision of this Act, other than point 1071A-4.

**1173 Effect of periodic compensation payments on rate of person's compensation affected payment**

- (1) If:
  - (a) a person receives periodic compensation payments; and
  - (b) the person was not, at the time of the event that gave rise to the entitlement of the person to the compensation, qualified for, and receiving, a compensation affected payment; and
  - (c) the person receives or claims a compensation affected payment in relation to a day or days in the periodic payments period;the rate of the person's compensation affected payment in relation to that day or those days is reduced in accordance with subsection (2).
- (2) The person's daily rate of compensation affected payment is reduced by the amount of the person's daily rate of periodic compensation.
- (3) The reference in subsection (2) to a daily rate of periodic compensation is a reference to the amount worked out by dividing

the total amount of the periodic compensation payments referred to in paragraph (1)(a) by the number of days in the periodic payments period.

(4) If:

- (a) a person receives periodic compensation payments; and
- (b) at the time of the event that gave rise to the entitlement of the person to compensation, the person was qualified for, and was receiving, a compensation affected payment; and
- (c) the person receives or claims a compensation affected payment in relation to a day or days in the periodic payments period;

the periodic compensation payments are to be treated as ordinary income of the person for the purposes of this Act.

#### **1174 Effect of periodic compensation payments on rate of partner's compensation affected payment**

(1) If:

- (a) a person receives periodic compensation payments; and
- (b) the person is a member of a couple; and
- (c) the person was not, at the time of the event that gave rise to the entitlement of the person to the compensation, qualified for, and receiving, a compensation affected payment; and
- (d) the person is qualified for a compensation affected payment in relation to a day or days in the periodic payments period but, solely because of the operation of this Part, does not, or would not, receive the payment; and
- (e) the person's partner receives or claims a compensation affected payment in relation to a day or days in the periodic payments period;

the amount (if any) by which the daily rate of periodic compensation payable to the person exceeds the daily rate of the compensation affected payment for which the person is qualified in relation to a day or days in the periodic payments period (the *excess amount*) is to be treated as ordinary income of the person's partner for the purpose of the calculation of the amount of the compensation affected payment referred to in paragraph (e).

- (2) The reference in subsection (1) to a daily rate of periodic compensation is a reference to the amount worked out by dividing the total amount of the periodic compensation payments referred to in paragraph (1)(a) by the number of days in the periodic payments period.
- (3) For the purposes of subsection (1):
  - (a) the amount that would, apart from this section, be the amount of the partner's ordinary income in relation to the day or days referred to in paragraph (1)(e) is to be increased by the excess amount; and
  - (b) the increased amount is to be taken to be the amount of the partner's ordinary income in relation to that day or those days, as the case may be.

### **1175 Rate reduction under both income/assets test and this Part**

If the rate of a person's compensation affected payment is reduced under this Part, the reduction applies to the person's rate as reduced under the ordinary income test Module or the assets test Module of the relevant Rate Calculator.

### **1176 Periodic compensation not counted as ordinary income**

If an instalment of a compensation affected payment payable to a person is reduced under section 1173 because of the receipt of periodic compensation payments, those payments are not to be regarded as ordinary income of the person for the purposes of a provision of this Act, other than point 1071A-4.

## **Division 4—Recoverable amounts**

### **Subdivision A—Preliminary**

#### **1177 Interpretation**

If:

- (a) a person is liable to make a compensation payment to another person; or

- (b) an authority of a State or Territory has determined that it will make a compensation payment to another person, whether or not it is liable to make the payment;

then, for the purposes of this Division, in relation to the person to whom the compensation is payable or is to be paid, the following paragraphs have effect:

- (c) a reference to the lump sum preclusion period is a reference to the period that would represent the lump sum preclusion period if the compensation were paid in accordance with the liability or determination;
- (d) a reference to the periodic payments period is a reference to the period that would represent the periodic payments period if the compensation were paid in accordance with the liability or determination.

### **Subdivision B—Recovery from recipient of compensation affected payment**

#### **1178 Repayment of amount where both lump sum and payments of compensation affected payment have been received**

- (1) If:
  - (a) a person receives a lump sum compensation payment; and
  - (b) the person receives payments of a compensation affected payment in relation to a day or days in the lump sum preclusion period;the Secretary may, by written notice to the person, determine that the person is liable to pay to the Commonwealth the amount specified in the notice.
- (2) The amount to be specified in the notice is the recoverable amount under section 1179.

#### **1179 The section 1178 recoverable amount**

The recoverable amount under this section is equal to the smaller of the following amounts:

- (a) the compensation part of the lump sum compensation payment;

- (b) the sum of the payments of the compensation affected payment made to the person in relation to a day or days in the lump sum preclusion period.

**1180 Repayment where both periodic compensation payments and payments of compensation affected payment have been received**

- (1) If:
  - (a) a person receives periodic compensation payments; and
  - (b) the person was not, at the time of the event that gave rise to the entitlement of the person to the compensation, qualified for, and receiving, a compensation affected payment; and
  - (c) the person receives payments of a compensation affected payment in relation to a day or days in the periodic payments period; and
  - (d) the payments referred to in paragraph (c) have not been reduced to nil as a result of the operation of section 1173;the Secretary may, by written notice to the person, determine that the person is liable to pay to the Commonwealth the amount specified in the notice.
- (2) The amount to be specified in a notice for the purpose of subsection (1) is the recoverable amount under section 1181.

**1181 The section 1180 recoverable amount**

- (1) Subject to subsection (2), the recoverable amount under this section is equal to the smaller of the following amounts:
  - (a) the sum of the periodic compensation payments;
  - (b) the difference between:
    - (i) the sum of the compensation affected payments made to the person in relation to a day or days in the periodic payments period; and
    - (ii) the sum of the compensation affected payments that would have been made to the person in relation to any such day or days had those payments been made at the rate to which the payments were reduced as a result of the operation of section 1173.

(2) If:

- (a) a person is a member of a couple; and
- (b) the person's partner receives a compensation affected payment in relation to a day or days in the periodic payments period;

the recoverable amount under this section is equal to the smaller of the following amounts:

- (c) the sum of the periodic compensation payments;
- (d) the difference between:
  - (i) the sum of the compensation affected payments made to the person and the person's partner in relation to a day or days in the periodic payments period; and
  - (ii) the sum of the compensation affected payments that would have been made to the person and the person's partner in relation to any such day or days had those payments been made at the rates to which the payments were reduced as a result of the operation of sections 1173 and 1174.

### **Subdivision C—Recovery from compensation payers and insurers**

#### **1182 Secretary may send preliminary notice to potential compensation payer or insurer**

(1) If:

- (a) a person (the *claimant*) makes a claim against another person (the *potential compensation payer*) for compensation; and
- (b) the claimant claims a compensation affected payment in relation to a day or days in the periodic payments period or the lump sum preclusion period, as the case may be;

the Secretary may give written notice to the potential compensation payer that the Secretary may wish to recover an amount from the potential compensation payer.

(2) If:

- (a) a person (the *claimant*) makes a claim against a person (the *potential compensation payer*) for compensation; and

- (b) the claimant claims a compensation affected payment for a day or days in the periodic payments period or the lump sum preclusion period, as the case may be; and
  - (c) an insurer, under a contract of insurance, may be liable to indemnify the potential compensation payer against any liability arising from the claim for compensation;
- the Secretary may give written notice to the insurer that the Secretary may wish to recover an amount from the insurer.
- (3) A notice must contain:
    - (a) a statement of the potential compensation payer's or insurer's obligation under section 1183; and
    - (b) a statement of the effect of section 1184D so far as it relates to the notice.

### **1183 Potential compensation payer or insurer must notify Secretary of liability**

- (1) If a person (the *potential compensation payer*):
  - (a) is given a notice under subsection 1182(1) in relation to a person; and
  - (b) whether before or after receiving the notice, the potential compensation payer becomes liable to pay compensation to the person;

the potential compensation payer must give written notice to the Secretary of the liability within 7 days after:

  - (c) becoming liable; or
  - (d) receiving the notice;

whichever happens later.

Penalty: Imprisonment for 12 months.

- (2) If an insurer:
  - (a) is given a notice under subsection 1182(2) in relation to a claim by a person; and
  - (b) whether before or after receiving the notice, the insurer becomes liable to indemnify the potential compensation payer, either wholly or partly, in relation to the claim;

the insurer must give written notice to the Secretary of the liability within 7 days after:

- (c) becoming liable; or
  - (d) receiving the notice;
- whichever happens later.

Penalty: Imprisonment for 12 months.

- (3) Strict liability applies to:
  - (a) an element of an offence against subsection (1) that a notice is a notice under subsection 1182(1); and
  - (b) an element of an offence against subsection (2) that a notice is a notice under subsection 1182(2).

**1184 Secretary may send recovery notice to compensation payer or insurer**

(1) If:

- (a) a person (the *compensation payer*):
  - (i) is liable to pay compensation to a person (a *claimant*); or
  - (ii) where the compensation payer is an authority of a State or Territory, has determined that a payment by way of compensation is to be made to a claimant; and
- (b) the claimant has received a compensation affected payment in relation to a day or days in the periodic payments period or the lump sum preclusion period, as the case may be;

the Secretary may give written notice to the compensation payer that the Secretary proposes to recover from the compensation payer the amount specified in the notice.

(2) If:

- (a) an insurer is liable, under a contract of insurance, to indemnify a compensation payer against any liability arising from a person's claim for compensation; and
- (b) the person has received a compensation affected payment in relation to a day or days in the periodic payments period or the lump sum preclusion period, as the case may be;

the Secretary may give written notice to the insurer that the Secretary proposes to recover from the insurer the amount specified in the notice.



- (3) If a compensation payer or insurer is given notice under subsection (1) or (2), as the case may be, the compensation payer or insurer is liable to pay to the Commonwealth the amount specified in the notice.
- (4) The amount to be specified in the notice is the recoverable amount under section 1184A.
- (5) A notice under this section must contain a statement of the effect of section 1184D so far as it relates to such a notice.
- (6) This section applies to an amount payable by way of compensation in spite of any law of a State or Territory (however expressed) under which the compensation is inalienable.

**1184A The section 1184 recoverable amount**

- (1) If a person receives compensation affected payments in relation to a day or days in a lump sum preclusion period, the recoverable amount under this section is equal to the smallest of the following amounts:
    - (a) the sum of all compensation affected payments made to the person that relate to a day or days in a lump sum preclusion period;
    - (b) the compensation part of the lump sum payment;
    - (c) in the case of a compensation payer—the maximum amount that the compensation payer is liable to pay to the person in relation to the matter at any time after receiving:
      - (i) a notice under section 1182 in relation to the matter; or
      - (ii) if the compensation payer has not received a notice under section 1182—the notice under section 1184 in relation to the matter;
    - (d) in the case of an insurer—the maximum amount for which the insurer is liable to indemnify the compensation payer in relation to the matter at any time after receiving:
      - (i) a notice under section 1182 in relation to the matter; or
      - (ii) if the insurer has not received a notice under section 1182—the notice under section 1184 in relation to the matter.
  - (2) Subject to subsection (4), if:
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- (a) a person receives compensation affected payments in relation to a day or days in a periodic payments period; and
- (b) either:
  - (i) the person is not a member of a couple; or
  - (ii) the person's partner neither receives nor claims a compensation affected payment in relation to any day in the periodic payments period;

the recoverable amount under this section is equal to the smallest of the following amounts:

- (c) the difference between:
    - (i) the sum of all compensation affected payments made to the person that relate to a day or days in a periodic payments period; and
    - (ii) the sum of all compensation affected payments that would have been made to the person in relation to any such day or days had those payments been reduced in accordance with section 1173;
  - (d) the sum of the amounts of the periodic compensation payments;
  - (e) in the case of a compensation payer—the maximum amount that the compensation payer is liable to pay to the person in relation to the matter at any time after receiving:
    - (i) a notice under section 1182 in relation to the matter; or
    - (ii) if the compensation payer has not received a notice under section 1182—the notice under section 1184 in relation to the matter;
  - (f) in the case of an insurer—the maximum amount for which the insurer is liable to indemnify the compensation payer in relation to the matter at any time after receiving:
    - (i) a notice under section 1182 in relation to the matter; or
    - (ii) if the insurer has not received a notice under section 1182—the notice under section 1184 in relation to the matter.
- (3) Subject to subsection (4), if:
- (a) the person claiming compensation is a member of a couple; and

- (b) compensation affected payments received by the person were received in relation to a day or days in a periodic payments period; and
- (c) the person's partner receives a compensation affected payment in relation to a day or days in the periodic payments period;

the recoverable amount under this section is equal to the smallest of the following amounts:

- (d) the difference between:
  - (i) the sum of all compensation affected payments made to the person and the person's partner in relation to a day or days in the periodic payments period; and
  - (ii) the sum of all compensation affected payments that would have been made to the person and the person's partner in relation to any such day or days had those payments been reduced as a result of the operation of section 1173 or 1174;
- (e) the sum of the amounts of the periodic compensation payments;
- (f) in the case of a compensation payer—the maximum amount that the compensation payer is liable to pay to the person in relation to the matter at any time after receiving:
  - (i) a notice under section 1182 in relation to the matter; or
  - (ii) if the compensation payer has not received a notice under section 1182—the notice under section 1184 in relation to the matter;
- (g) in the case of an insurer—the maximum amount for which the insurer is liable to indemnify the compensation payer in relation to the matter at any time after receiving:
  - (i) a notice under section 1182 in relation to the matter; or
  - (ii) if the insurer has not received a notice under section 1182—the notice under section 1184 in relation to the matter.

(4) If:

- (a) at the time of the event that gave rise to the entitlement of a person to compensation, the person was qualified for, and was receiving, a compensation affected payment; and

- (b) the person or the person's partner received or claimed a compensation affected payment in relation to a day or days in the periodic payments period;

the recoverable amount is the amount determined by the Secretary to be the total amount by which the person's, or the person's partner's, compensation affected payment in relation to a day or days in the periodic payments period would have been reduced if a determination had been made under Division 7 of Part 3 of the Administration Act because of point 1064-E3, 1066A-F2A, 1067G-H25, 1067L-D24, 1068-G8A, 1068A-E13 or 1068B-D21 of this Act.

**1184B Preliminary notice or recovery notice suspends liability to pay compensation**

- (1) If a compensation payer has been given a notice under section 1182 or 1184 in relation to the compensation payer's liability, or possible liability, to pay compensation, the compensation payer is not liable to pay that compensation while the notice has effect.
- (2) If an insurer has been given a notice under section 1182 or 1184 in relation to the insurer's liability, or possible liability, to indemnify a compensation payer against a liability arising from a claim for compensation:
  - (a) the insurer is not liable to so indemnify the compensation payer; and
  - (b) the compensation payer is not liable to pay that compensation;while the notice has effect.

**1184C Compensation payer's or insurer's payment to Commonwealth discharges liability to compensation claimant**

- (1) Payment to the Commonwealth of an amount that a compensation payer is liable to pay under section 1184 in relation to a person operates, to the extent of the payment, as a discharge of the compensation payer's liability to pay compensation to the person.

- (2) Payment to the Commonwealth of an amount that an insurer is liable to pay under section 1184 in relation to a person operates, to the extent of the payment, as a discharge of:
  - (a) the insurer's liability to the compensation payer; and
  - (b) the compensation payer's liability to pay compensation to the person.

**1184D Offence to make compensation payment after receiving preliminary notice or recovery notice**

- (1) If a person (the *potential compensation payer*) has been given a notice under section 1182 or 1184 in relation to the payment of compensation to a person, the potential compensation payer must not make the compensation payment to the person unless:
  - (a) in the case of a notice under section 1182—the Secretary has given the potential compensation payer written notice that the notice under section 1182 is revoked; or
  - (b) in the case of a notice under section 1184—the potential compensation payer has paid to the Commonwealth the amount specified in the notice; or
  - (c) the Secretary has given the potential compensation payer written permission to pay the compensation.

Penalty: Imprisonment for 12 months.

- (2) If an insurer has been given a notice under section 1182 or 1184 in relation to the insurer's liability to indemnify a compensation payer, the insurer must not make any payment to the compensation payer in relation to that liability unless:
  - (a) in the case of a notice under section 1182—the Secretary has given the insurer written notice that the notice under section 1182 is revoked; or
  - (b) in the case of a notice under section 1184—the insurer has paid to the Commonwealth the amount specified in the notice; or
  - (c) the Secretary has given the insurer written permission to pay the amount.

Penalty: Imprisonment for 12 months.

- (3) Strict liability applies to an element of an offence against subsection (1) or (2) that:
  - (a) a notice is a notice under section 1182; or
  - (b) a notice is a notice under section 1184.

**1184E Liability of compensation payer or insurer to pay the Commonwealth if there is a contravention of section 1184D**

- (1) A compensation payer or insurer who contravenes section 1184D is, in addition to being liable under that section, liable to pay to the Commonwealth:
  - (a) if the contravention relates to a notice under section 1182—  
an amount determined by the Secretary; or
  - (b) if the contravention relates to a notice under section 1184—  
the recoverable amount specified in the notice.
- (2) The amount determined by the Secretary under paragraph (1)(a) must not be more than the smallest of the amounts worked out:
  - (a) if the person is not a member of a couple—under subsection 1184A(1), (2) or (4), as the case requires; or
  - (b) if the person is a member of a couple—under subsection 1184A(1), (2), (3) or (4), as the case requires.
- (3) This section applies in relation to a payment by way of compensation in spite of any law of a State or Territory (however expressed) under which the compensation is inalienable.

**Division 5—Recoverable debts**

**1184F Debts resulting from notices under section 1178 or 1180**

If the Secretary gives a person a notice under section 1178 or 1180 determining that the person is liable to pay to the Commonwealth the amount specified in the notice, the amount so specified is a debt due by the person to the Commonwealth.

**1184G Debts resulting from notices under section 1184**

If the Secretary gives a person a notice under section 1184 that the Secretary proposes to recover a specified amount from the person,

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the specified amount is a debt due by the person to the Commonwealth.

**1184H Debts resulting from contravention of section 1184D**

- (1) An amount payable by a compensation payer under section 1184E is a debt due by the compensation payer to the Commonwealth.
- (2) An amount payable by an insurer under section 1184E is a debt due by the insurer to the Commonwealth.

**1184I Compensation arrears debts**

- (1) If an adverse determination is made in relation to a person because of point 1064-E3, 1066A-F2A, 1067G-H25, 1067L-D24, 1068-G8A, 1068A-E13 or 1068B-D21, the amount that the person is liable to pay to the Commonwealth because of the determination is a debt due by the person to the Commonwealth.
- (2) In this section:

*adverse determination* means a determination under section 79, 80, 81 or 82 of the Administration Act.

**Division 6—Miscellaneous**

**1184J Secretary may give recovery notice either to compensation payer or to insurer but not to both**

- (1) The Secretary is not to give a notice to an insurer under section 1184 about a matter if there is a notice to a compensation payer under section 1184 in force in relation to the same matter.
- (2) The Secretary is not to give a notice to a compensation payer under section 1184 about a matter if there is a notice to an insurer under section 1184 in force in relation to the same matter.

**1184K Secretary may disregard some payments**

- (1) For the purposes of this Part, the Secretary may treat the whole or part of a compensation payment as:
  - (a) not having been made; or

(b) not liable to be made;  
if the Secretary thinks it is appropriate to do so in the special circumstances of the case.

(2) If:

- (a) a person or a person's partner receives or claims a compensation affected payment; and
- (b) the person receives compensation; and
- (c) the set of circumstances that gave rise to the claim for compensation is not related to the set of circumstances that gave rise to the person's or the person's partner's receipt of, or claim for, the compensation affected payment;

the fact that those 2 sets of circumstances are unrelated does not alone constitute special circumstances for the purposes of subsection (1).

**1184L Application to review compensation decision—disability support pension**

(1) This section applies if a person claims a disability support pension and:

- (a) the Secretary decides under section 1167 that the pension is not to be granted or is not payable; or
- (b) the Secretary decides under section 1169 that the pension is not payable; or
- (c) the Secretary decides that, if the person were qualified for the pension, the rate of the pension would be reduced to nil under section 1173.

(2) If:

- (a) an application is made, under section 142 of the Administration Act, to the Social Security Appeals Tribunal for a review of that decision; and
  - (b) at the time of the application, the Secretary has not taken the necessary steps to satisfy himself or herself whether the person is qualified for the disability support pension or the disability wage supplement; and
  - (c) the person who claimed the disability support pension or disability wage supplement requests the Secretary, in writing, to take those steps;
-



the Secretary must take those steps as soon as practicable after the request is made.

**1185 Special provision for certain recipients of dependency-based payments**

- (1) This section applies to a person if:
  - (a) the person is a member of a couple; and
  - (b) the person was a member of the same couple immediately before 20 September 2001; and
  - (c) the person's partner was receiving a compensation affected payment immediately before 20 September 2001; and
  - (d) the person was receiving a dependency-based payment immediately before 20 September 2001; and
  - (e) the person was born on or before 1 July 1955.
- (2) If this section applies to a person, the following paragraphs have effect:
  - (a) the dependency-based payment does not cease to be payable to the person only because the person's partner receives periodic compensation payments;
  - (b) in spite of Division 3, the person continues to be qualified for the dependency-based payment to the same extent as he or she would have if the person's partner had not received the payments of compensation.
- (3) Paragraph (2)(b) does not prevent a dependency-based payment being cancelled, or ceasing to be payable, under a provision of the social security law, other than a provision of this Part.
- (4) Paragraph (2)(b) does not prevent the rate of a dependency-based payment being reduced or cancelled under the social security law because of the operation of section 1174.
- (5) In this section:

***dependency-based payment*** means:

  - (a) wife pension; or
  - (b) mature age partner allowance; or
  - (c) partner allowance.

**20 Sections 1225, 1226 and 1226A**

Repeal the sections.

**21 Subparagraph 1229(1)(b)(i)**

After “of”, insert “Part 3.14 or”.

**22 Subparagraph 1229A(1)(b)(i)**

After “of”, insert “Part3.14 or”.

**23 Section 1230B**

After “sections”, insert “1184F, 1184I,”.

**24 Section 1230B**

Omit “1225, 1226A,”.

**25 Subsection 1230C(2)**

Omit “In this section”, substitute “For the purposes of subsection (1)”.

**26 Subsection 1230C(2) (paragraph (a) of the definition of *debt*)**

After “1135,”, insert “1184F, 1184H, 1184I,”.

**27 Subsection 1230C(2) (paragraph (a) of the definition of *debt*)**

Omit “1225, 1226A”.

**28 At the end of section 1230C**

Add:

- (3) A debt due to the Commonwealth under section 1184G is recoverable by the Commonwealth by means of legal proceedings.

**29 At the end of Schedule 1A**

Add:

**134 Transitional and saving provisions—substitution of Part 3.14**

- (1) In this clause:
-

**2001 amending Act** means the *Family and Community Services Legislation (Simplification and Other Measures) Act 2001*.

**new Act** means this Act, as amended by the 2001 amending Act.

**old Act** means this Act, as in force immediately before 20 September 2001.

**old lump sum preclusion period** has the same meaning as in the old Act.

- (2) Part 3.14 of the new Act has effect subject to this clause.
- (3) Subject to subclause (9), if:
- (a) before 20 September 2001, because of the operation of subsection 1165(1A) or (2AA) of the old Act, a social security payment had ceased to be payable to a person for a period; and
  - (b) if the provisions of the old Act had continued in force on and after 20 September 2001, the payment would not have become payable again until a time on or after that date;
- then, on and after 20 September 2001, the new Act has effect as if:
- (c) the new Act had been in operation when the social security payment ceased to be payable for the period; and
  - (d) the social security payment had so ceased because of the operation of subsection 1169(1) of the new Act.
- (4) Subject to subclause (9), if:
- (a) before 20 September 2001, because of the operation of a provision of the old Act specified in the table in subclause (8), the rate at which a social security payment was payable to a person was reduced for a period; and
  - (b) if the provisions of the old Act had continued in force on and after 20 September 2001, the payment would have continued to be payable at the reduced rate until a time on or after that date;
- then, on and after 20 September 2001, the new Act has effect as if:
- (c) the new Act had been in operation when the social security payment became payable at the reduced rate; and

- (d) the social security payment had become so payable because of the operation of the corresponding provision of the new Act.
- (5) If a notice to which this subclause applies was in effect immediately before 20 September 2001, the new Act has effect, on and after 20 September 2001, as if:
  - (a) the new Act had been in operation when the notice was given; and
  - (b) the notice had been given under the provision of the new Act that corresponds to the provision of the old Act under which the notice was given.
- (6) Subclause (5) applies to the following notices:
  - (a) a notice under subsection 1166(1) of the old Act in relation to a recoverable amount calculated under subsection 1166(3), (4) or (4C) of that Act;
  - (b) a notice under subsection 1170(1) of the old Act in relation to a recoverable amount calculated under subsection 1170(3) or (4) of that Act;
  - (c) a notice under subsection 1172(1) of the old Act;
  - (d) a notice under subsection 1174(1) of the old Act in relation to a recoverable amount calculated under subsection 1174(6) of that Act;
  - (e) a notice under subsection 1177(1) of the old Act;
  - (f) a notice under subsection 1179(1) of the old Act in relation to a recoverable amount calculated under subsection 1179(6) of that Act.
- (7) If:
  - (a) before 20 September 2001, a person applied, under section 129, 142 or 179 of the Administration Act, for review of a decision made as a result of the operation of a provision of the old Act specified in column 2 of an item in the table in subclause (8); and
  - (b) the review was not determined before 20 September 2001; then, on and after 20 September 2001, the review is to be determined in accordance with this Act, as in force when the decision was made.

- (8) The provision of the new Act that corresponds, for the purposes of this clause, to the provision of the old Act specified in column 2 of an item of the following table is the provision specified in column 3 of the item.

<b>Corresponding provisions</b>		
<b>Column 1 Item</b>	<b>Column 2 Old Act provision</b>	<b>Column 3 Corresponding new Act provision</b>
1	Subsection 1165(1A)	Subsection 1169(1)
2	Subsection 1165(2AA)	Subsection 1169(1)
3	Subsection 1166(1)	Subsection 1178(1)
4	Subsection 1168(1) (except to the extent that it operated in relation to a person's social security payment where the person's partner, but not the person, had received compensation)	Subsection 1173(1)
5	Subsection 1170(1)	Subsection 1180(1)
6	Subsection 1172(1)	Subsection 1182(1)
7	Subsection 1174(1)	Subsection 1184(1)
8	Subsection 1177(1)	Subsection 1182(2)
9	Subsection 1179(1)	Subsection 1184(2)
10	Section 1184	Section 1184K

- (9) On and after 20 September 2001:
- (a) the new Act has effect as if:
- (i) it included provisions in the same terms as subsection 17(1) of the old Act to the extent that it defines **average weekly earnings** and subsections 1165(1) and (2), 1166(4A), 1174(4) and (5), and 1179(4) and (5) of the old Act; and
- (ii) section 1169 of the new Act did not apply where the lump sum compensation payment was received before 20 March 1997; and

- (b) for the purposes of the operation of paragraph (a), *old lump sum preclusion period* is taken to have the same meaning in the new Act as in the old Act; and
- (c) for the purposes of the operation of paragraph (a), the lump sum preclusion period, for the purposes of the new Act, is the period that corresponds to the old lump sum preclusion period.

(10) If:

- (a) a person received compensation before 1 January 1993; and
- (b) the person's partner (the *partner*) claimed or received carer pension before that date because the partner was caring for the person;

this Act, as it applied in relation to carer payment being received by the partner immediately before 20 September 2001, continues to apply in relation to carer payment received by the partner before, on or after 20 September 2001 because the partner was or is caring for the person.

(11) If:

- (a) before 20 September 2001, a person was given a notice under Subdivision B of Division 6 of Part 3, or Division 1 of Part 5, of the Administration Act; and
- (b) the notice required the person:
  - (i) to inform the Department whether a specified event or change of circumstances had occurred; or
  - (ii) to give the Department a statement about a matter; or
  - (iii) to give information or produce a document; and
- (c) the notice required the information or statement to be given within a specified period; and
- (d) the person has failed to comply with the requirement of the notice;

any determination made under the Administration Act on or after 20 September 2001 as a result of the occurrence of an event or change of circumstances, or in connection with a matter, to which the notice related must be made in accordance with this Act as in force immediately before the end of the period referred to in paragraph (c).

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

**30 Paragraphs 118(3)(a) and (4)(a)**

After “1068B-D21”, insert “, or Division 3 of Part 3.14,”.

## Schedule 2—Other amendments

### *A New Tax System (Family Assistance and Related Measures) Act 2000*

#### **1 Subsection 2(11)**

Omit “(other than item 63)”, substitute “(other than items 22, 63, 66 and 67A)”.

### *Social Security Act 1991*

#### **2 Subsection 9(1) (paragraph (b) of the definition of *income stream*)**

After “public sector”, insert “superannuation”.

#### **3 Subsection 9A(1)**

Repeal the subsection, substitute:

##### *General requirements*

- (1) An income stream provided to a person is an asset-test exempt income stream for the purposes of this Act if:
  - (a) it is an income stream arising under a contract, or governing rules, that meet the requirements of subsection (2) and the Secretary has not made a determination under subsection (4) in respect of the income stream; and
  - (b) subject to subsections (1B) and (1C), the Secretary is satisfied that in relation to an income stream, provided by a class of provider specified by the Secretary for the purposes of this paragraph, there is in force a current actuarial certificate that states that in the actuary’s opinion there is a high probability that the provider of the income stream will be able to pay the income stream as required under the contract or governing rules; and
  - (c) the Secretary is satisfied that the requirements of subsection (2) are being given effect to from the day the income stream commences to be paid.



*Determination under subsection (5)*

- (1A) An income stream provided to a person is an asset-test exempt income stream for the purposes of this Act if the Secretary has made a determination under subsection (5) in respect of the income stream.

*Guidelines relating to actuarial certificates*

- (1B) The Secretary may determine, in writing, guidelines to be complied with when determining whether an actuarial certificate is in force and what constitutes a high probability that the provider of the income stream will be able to pay the income stream as required under the contract or governing rules.
- (1C) Paragraph (1)(b) does not apply if, for a period beginning when an actuarial certificate referred to in that paragraph ceases to be in force and ending not more than 26 weeks later, such an actuarial certificate is not in force.

**4 Subparagraph 9A(2)(h)(i)**

Repeal the subparagraph, substitute:

- (i) if the income stream is a non-commutation funded income stream and the commutation is made within 6 months after the commencement day of the income stream; or

**5 Subparagraph 9A(2)(h)(iv)**

Repeal the subparagraph, substitute:

- (iv) to the extent necessary to cover any superannuation contributions surcharge that the person is liable to pay in his or her capacity as purchaser of the income stream; or
- (v) to the extent necessary to pay a hardship amount; and

**6 Paragraph 9A(2)(i)**

Repeal the paragraph, substitute:

- (i) that the income stream cannot be transferred to a person except:

- (i) on the death of the primary beneficiary, to a reversionary beneficiary; or
- (ii) on the death of a reversionary beneficiary, to another reversionary beneficiary; and

## 7 After subsection 9A(2)

Insert:

- (2A) A contract, or the governing rules, for the provision to a person of an income stream that meets all of the requirements of subsection (2), except the requirement of paragraph (2)(c), are taken to meet the requirements of subsection (2) if the contract or governing rules specify that any provision included in the contract or governing rules in accordance with paragraph (2)(c) does not apply in any year in which:
- (a) the person ceases to receive income under an income stream jointly and begins to receive income under a single income stream; and
  - (b) the total amount received in the year under the single income stream is less than the total amount received by the person in the previous year but is not nil.

## 8 At the end of section 9A

Add:

- (7) In this section:

***hardship amount***, in relation to a person, means an amount determined by the Secretary for the purposes of this definition if:

- (a) the person applies in writing to the Secretary to be allowed to commute the whole or part of an income stream because of extreme financial hardship; and
- (b) the Secretary is satisfied that:
  - (i) the person's circumstances are exceptional and could not be reasonably foreseen at the time the person purchased the income stream; and
  - (ii) the person has insufficient liquid assets or other assets (excluding the person's principal home) that could be realised to avoid the extreme financial hardship; and

- (iii) that amount is required to meet unavoidable expenditure.

**liquid assets**, in relation to a person, means the person's cash and readily realisable assets, and includes:

- (a) the person's shares and debentures in a public company within the meaning of the Corporations Law; and
- (b) managed investments; and
- (c) insurance policies that can be surrendered for money; and
- (d) amounts deposited with, or lent to, a bank or other financial institution by the person (whether or not the amount can be withdrawn or repaid immediately); and
- (e) amounts due, and able to be paid, to the person by, or on behalf of, a former employer of the person.

**non-commutation funded income stream** means an income stream that has not been purchased by transferring directly to the purchase of the income stream a payment resulting from the commutation of another asset-test exempt income stream.

**unavoidable expenditure**, in relation to a person, means one or more of the following:

- (a) essential medical expenses of the person, or the person's partner, to the extent that the expenses are not covered by health insurance or other contracts or arrangements;
- (b) the cost of:
  - (i) replacing the person's principal home; or
  - (ii) essential repairs to the person's principal home; to the extent that the cost of the replacement or repairs is not covered by an insurance policy;
- (c) expenditure to buy replacement essential household goods because of the loss of those goods to the extent that the cost of replacement is not covered by an insurance policy.

## **9 Subsection 9B(1)**

Repeal the subsection, substitute:

*General requirements*

- (1) An income stream provided to a person is also an asset-test exempt income stream for the purposes of this Act if:
- (a) the person has reached pension age on or before the day on which the person purchases or acquires the income stream; and
  - (b) either subsection (1A) or (1B) applies.
- (1A) This subsection applies if:
- (a) the income stream is an income stream arising under a contract, or governing rules, that meet the requirements of subsection (2) and the Secretary has not made a determination under subsection (3) in respect of the income stream; and
  - (b) subject to subsection (1C), the Secretary is satisfied that, in relation to an income stream provided by a class of provider specified by the Secretary for the purposes of this paragraph, there is in force a current actuarial certificate that states that in the actuary's opinion there is a high probability that the provider of the income stream will be able to pay the income stream as required under the contract or governing rules; and
  - (c) the Secretary is satisfied that the requirements of subsection (2) have been given effect to from the day the income stream commenced to be paid.
- (1B) This subsection applies if the Secretary has made a determination under subsection (4) in respect of the income stream.
- (1C) Paragraph (1A)(b) does not apply if, for a period beginning when an actuarial certificate referred to in that paragraph ceases to be in force and ending not more than 26 weeks later, such an actuarial certificate is not in force.
- (1D) The Secretary may determine, in writing, guidelines to be complied with when determining whether an actuarial certificate is in force and what constitutes a high probability that the provider of the income stream will be able to pay the income stream as required under the contract or governing rules.

**10 Subparagraph 9B(2)(a)(i)**

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Repeal the subparagraph, substitute:

- (i) if the person's life expectancy is less than 15 years—  
throughout a period that is not less than the person's life expectancy but, if the person's life expectancy does not consist of a number of whole years, not more than the person's life expectancy rounded up to the next whole number; or

**11 Subparagraph 9B(2)(h)(i)**

Repeal the subparagraph, substitute:

- (i) if the income stream is a non-commutation funded income stream and the commutation is made within 6 months after the commencement day of the income stream; or

**12 Subparagraphs 9B(2)(h)(iii) and (iv)**

Repeal the subparagraphs, substitute:

- (iii) if the legal or equitable interest in the payment resulting from the commutation is transferred on the death of a person to the benefit of a reversionary beneficiary, and on the death of a reversionary beneficiary to the benefit of another reversionary beneficiary or, if there is no other reversionary beneficiary, to the estate of the reversionary beneficiary; or
- (iv) to the extent necessary to cover any superannuation contributions surcharge that the person is liable to pay in his or her capacity as purchaser of the income stream; or
- (v) to the extent necessary to pay a hardship amount; and

**13 Paragraph 9B(2)(i)**

Repeal the paragraph, substitute:

- (i) that the income stream cannot be transferred to a person except:
  - (i) on the death of the primary beneficiary, to a reversionary beneficiary or, if there is no reversionary beneficiary, to the estate of the primary beneficiary; or
  - (ii) on the death of a reversionary beneficiary, to another reversionary beneficiary or, if there is no other

reversionary beneficiary, to the estate of the reversionary beneficiary; and

#### 14 After subsection 9B(2)

Insert:

- (2A) A contract, or the governing rules, for the provision to a person of an income stream that meets all of the requirements of subsection (2), except the requirement of paragraph (2)(c), are taken to meet the requirements of subsection (2) if the contract or governing rules specify that any provision included in the contract or governing rules in accordance with paragraph (2)(c) does not apply in any year in which:
- (a) the person ceases to receive income under an income stream jointly and begins to receive income under a single income stream; and
  - (b) the total amount received in the year under the single income stream is less than the total amount received by the person in the previous year but is not nil.

#### 15 At the end of section 9B

Add:

- (6) In this section:

*hardship amount* has the same meaning as in section 9A.

*non-commutation funded income stream* means an income stream that has not been purchased by transferring directly to the purchase of the income stream a payment resulting from the commutation of another asset-test exempt income stream.

#### 16 Subsection 1072(1)

Omit “Division 1A”, substitute “Division 2 or 3”.

#### 17 At the end of section 1075

Add:

- (3) If a person’s ordinary income for a period includes rental income from a property that is not business income, the person’s ordinary income from that property is to be reduced by losses and outgoings

that relate to the property and are allowable deductions for the purposes of section 51 of the *Income Tax Assessment Act 1936* or section 8-1 of the *Income Tax Assessment Act 1997*, as appropriate, for that period.

- (4) If the amount of the allowable deductions relating to a property for a period under section 51 of the *Income Tax Assessment Act 1936* or section 8-1 of the *Income Tax Assessment Act 1997*, as appropriate, exceeds the amount of the rental income from the property for that period, the amount of the ordinary income from the property for that period is taken to be nil.

### **18 Subsection 1083(2)**

Repeal the subsection, substitute:

- (2) If, because of:
- (a) a determination under subsection 1084(1); or
  - (b) the operation of subsection 1084(2);
- a financial investment is not to be regarded as a financial asset for the purposes of section 1076, 1077 or 1078, subsection (1) does not apply to any return on the investment that the person actually receives.

### **19 Section 1084**

Repeal the section, substitute:

#### **1084 Certain money and financial investments not taken into account**

- (1) The Minister may determine that:
- (a) specified financial investments; or
  - (b) a specified class of financial investments;
- are not to be regarded as financial assets for the purposes of section 1076, 1077 or 1078.
- (2) If a financial investment is an unrealisable asset for the purposes of section 1129, 1130B or 1131, the financial asset is not to be regarded as a financial asset for the purposes of section 1076, 1077 or 1078.
- (3) A determination under subsection (1):
-

- (a) must be in writing; and
- (b) takes effect on the day on which it is made or on such other day (whether earlier or later) as is specified in the determination.

**20 After subsection 1121(3)**

Insert:

- (3A) Subsection (1) does not apply to an asset that is an asset-tested income stream (long-term).

**21 After section 1223**

Insert:

**1223A Debt resulting from commutation of asset-test exempt income stream contrary to subsection 9A(2) or 9B(2)**

(1) If:

- (a) a person is provided with an asset-test exempt income stream for a period beginning on the first day in respect of which an income stream payment was made to the person and ending on the last day in respect of which an income stream payment was made to the person; and
- (b) during the whole or any part of that period an amount has been paid to the person by way of an income support payment; and
- (c) the whole or any part of the income stream is commuted contrary to the contract or governing rules under which the income stream was provided on the commencement day of the income stream; and
- (d) the amount that has been paid to the person by way of a social security income support payment for that period is more than the amount that would have been payable to the person for that period had the income stream not been an asset-test exempt income stream for the purposes of this Act for that period;

an amount worked out under subsection (2) is a debt due to the Commonwealth.



- (2) The amount for the purposes of subsection (1) is an amount equal to the difference between the amount that has been paid to the person by way of a social security income support payment during the period worked out under subsection (3) and the amount that would have been paid to the person by way of social security income support payment had the income stream not been an asset-test exempt income stream for the purposes of this Act for that period.
- (3) The period for the purposes of subsection (2) is the period beginning on:
  - (a) the day 5 years before the day the income stream was commuted; or
  - (b) either:
    - (i) the commencement day of the income stream; or
    - (ii) 20 September 2001;whichever occurs later.
- (4) For the purpose of working out the asset value of the income stream had the income stream not been an asset-test exempt income stream for the period referred to in subsection (2), it is to be assumed that the income stream was asset tested from the commencement day and the asset value of the income stream is depleted in accordance with the formula specified in subsection 1119(4).
- (5) This section does not apply to an income stream in relation to which a determination under subsection 9A(5) or 9B(4) is in force.

**22 Subclause 120A(4) of Schedule 1A (definition of *binding arrangement*)**

Repeal the definition, substitute:

*binding arrangement*, in relation to a person, means:

- (a) an arrangement that does not allow the person to commute an income stream; or
- (b) an arrangement that may only be terminated on terms that are, in the opinion of the Secretary, likely to cause severe detriment to the person.

**23 Saving**

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A determination in force under subsection 1084(1) of the *Social Security Act 1991* immediately before the commencement of this Schedule has the same effect after that commencement as it would have had if:

- (a) this Schedule had been in force when the determination was made; and
- (b) the determination had been made under subsection 1084(1) of the *Social Security Act 1991*, as amended by this Schedule.

### ***Taxation Administration Act 1953***

#### **24 Paragraph 8WA(1)(b)**

After “(j),”, insert “(ka),”.

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[*Minister’s second reading speech made in—  
House of Representatives on 24 May 2001  
Senate on 20 June 2001*]

(36/01)

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