



**Family and Community Services and
Veterans' Affairs Legislation
Amendment (2003 Budget and Other
Measures) Act 2003**

No. 122, 2003

**An Act to make amendments relating to the social
security law, family assistance law and law about
veterans' entitlements and child support, and for
related purposes**

Note: An electronic version of this Act is available in SCALEplus
(<http://scaleplus.law.gov.au/html/comact/browse/TOCN.htm>)

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Family and Community Services and Veterans' Affairs Legislation Amendment (2003 Budget and Other Measures) Act 2003

No. 122, 2003

**An Act to make amendments relating to the social
security law, family assistance law and law about
veterans' entitlements and child support, and for
related purposes**

[Assented to 5 December 2003]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Family and Community Services and Veterans' Affairs Legislation Amendment (2003 Budget and Other Measures) Act 2003*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

| Commencement information | | |
|---|--|---------------------|
| Column 1 | Column 2 | Column 3 |
| Provision(s) | Commencement | Date/Details |
| 1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table | The day on which this Act receives the Royal Assent. | 5 December 2003 |
| 2. Schedules 1 and 2 | The day on which this Act receives the Royal Assent. | 5 December 2003 |
| 3. Schedules 3, 4, 5 and 6 | 1 July 2004. | 1 July 2004 |
| 4. Schedule 7, item 1 | Immediately after the commencement of Schedule 3 to the <i>Family and Community Services Legislation Amendment (Australians Working Together and other 2001 Budget Measures) Act 2003</i> . | 22 May 2003 |
| 5. Schedule 7, item 2 | Immediately before the commencement of Schedule 1 to the <i>Family and Community Services Legislation Amendment (Australians Working Together and other 2001 Budget Measures) Act 2003</i> . | 19 September 2003 |

| Commencement information | | |
|---------------------------------|---|---------------------|
| Column 1 | Column 2 | Column 3 |
| Provision(s) | Commencement | Date/Details |
| 6. Schedule 7, item 3 | Immediately before the commencement of Schedule 5 to the <i>Family and Community Services Legislation Amendment (Australians Working Together and other 2001 Budget Measures) Act 2003</i> . | 19 September 2003 |
| 7. Schedule 7, item 4 | Immediately after the time specified in the <i>Family and Community Services Legislation Amendment (Australians Working Together and other 2001 Budget Measures) Act 2003</i> for the commencement of item 11E of Schedule 5 to that Act. | 20 September 2003 |
| 8. Schedule 7, item 5 | Immediately after the commencement of item 20A of Schedule 1 to the <i>Family and Community Services Legislation Amendment (Australians Working Together and other 2001 Budget Measures) Act 2003</i> . | 20 September 2003 |
| 9. Schedule 7, item 6 | Immediately after the commencement of item 2 of Schedule 1A to the <i>Family and Community Services Legislation Amendment (Australians Working Together and other 2001 Budget Measures) Act 2003</i> . | 20 September 2003 |
| 10. Schedule 7, item 7 | Immediately after the commencement of item 4 of Schedule 1A to the <i>Family and Community Services Legislation Amendment (Australians Working Together and other 2001 Budget Measures) Act 2003</i> . | 20 September 2003 |
| 11. Schedule 7, item 8 | Immediately after the commencement of Schedule 4 to the <i>Family and Community Services Legislation Amendment (Australians Working Together and other 2001 Budget Measures) Act 2003</i> . | 20 September 2003 |
| 12. Schedule 7, item 9 | Immediately after the commencement of item 59 of Schedule 6 to the <i>Family and Community Services Legislation Amendment (Australians Working Together and other 2001 Budget Measures) Act 2003</i> . | 20 September 2003 |

| Commencement information | | |
|---------------------------------|---|---------------------|
| Column 1 | Column 2 | Column 3 |
| Provision(s) | Commencement | Date/Details |
| 13. Schedule 7, items 10 to 15 | Immediately after the commencement of item 6 of Schedule 7 to this Act. | 20 September 2003 |
| 14. Schedule 7, items 16 to 18 | Immediately after the commencement of item 7 of Schedule 7 to this Act. | 20 September 2003 |
| 15. Schedule 7, item 19 | The day on which this Act receives the Royal Assent. | 5 December 2003 |

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Schedule(s)

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—Excluding payments for National Socialist persecution from income

Social Security Act 1991

1 Paragraphs 8(8)(n) and (p)

Repeal the paragraphs, substitute:

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

2 Application

The amendment of section 8 of the *Social Security Act 1991* made by this Schedule applies to amounts paid after the commencement of this Schedule.

Veterans' Entitlements Act 1986

3 Paragraphs 5H(8)(s) and (t)

Repeal the paragraphs, substitute:

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

4 Application

The amendment of section 5H of the *Veterans' Entitlements Act 1986* made by this Schedule applies to amounts paid after the commencement of this Schedule.

Schedule 2—Access to information

Excise Act 1901

1 At the end of paragraph 159(3)(c)

Add:

- or (v) the Secretary of the Department dealing with matters relating to the social security law (within the meaning of the *Social Security Act 1991*) and is of information to be used for the purpose of the administration of that law; or
- (vi) the Chief Executive Officer of the Commonwealth Services Delivery Agency established by the *Commonwealth Services Delivery Agency Act 1997* and is of information to be used for the purpose of the administration of the social security law (within the meaning of the *Social Security Act 1991*);

2 At the end of paragraph 159(3)(d)

Add:

- ; or (iv) the Secretary of the Department dealing with matters relating to the social security law (within the meaning of the *Social Security Act 1991*) and is of information to be used for the purpose of the administration of that law; or
- (v) the Chief Executive Officer of the Commonwealth Services Delivery Agency established by the *Commonwealth Services Delivery Agency Act 1997* and is of information to be used for the purpose of the administration of the social security law (within the meaning of the *Social Security Act 1991*).

3 Application

The amendments of the *Excise Act 1901* made by this Schedule apply to information obtained before, on or after the commencement of this Schedule by the Commissioner, a Deputy Commissioner or a person authorised by the Commissioner or a Deputy Commissioner.

Financial Transaction Reports Act 1988

4 Subsection 3(1)

Insert:

Centrelink officer means:

- (a) the Chief Executive Officer of the Commonwealth Services Delivery Agency established by the *Commonwealth Services Delivery Agency Act 1997*; or
- (b) a member of that Agency's staff mentioned in subsection 35(1) of that Act.

5 Subsection 3(1)

Insert:

Child Support Agency means the body consisting of the Child Support Registrar (within the meaning of the *Child Support (Registration and Collection) Act 1988*) and all other CSA officers.

6 Subsection 3(1)

Insert:

CSA officer means a person performing duties, or exercising powers or functions, under or in relation to the *Child Support (Assessment) Act 1989*, the *Child Support (Registration and Collection) Act 1988* or regulations under either or both of those Acts.

7 After paragraph 27(1)(c)

Insert:

- (caa) the Director may, in writing, authorise the Commonwealth Services Delivery Agency established by the *Commonwealth Services Delivery Agency Act 1997* to have access to FTR information for the purposes of the administration of the social security law (within the meaning of the *Social Security Act 1991*); and
- (cab) the Director may, in writing, authorise the Child Support Agency to have access to FTR information for the purposes of the administration of:

- (i) the *Child Support (Assessment) Act 1989*; or
- (ii) the *Child Support (Registration and Collection) Act 1988*; or
- (iii) regulations under either or both of those Acts; and

8 Subsection 27(2)

After “(c)”, insert “, (caa), (cab)”.

9 Subsections 27(2) and (3)

After “Service”, insert “, the Commonwealth Services Delivery Agency, the Child Support Agency”.

10 Subsection 27(3)

After “(c)”, insert “, (caa), (cab)”.

Note: The heading to subsection 27(3) is altered by inserting “, (caa), (cab)” after “(c)”.

11 Subsection 27(3)

After “customs officer,”, insert “any Centrelink officer, any CSA officer,”.

12 Subsections 27(6) and (9)

After “customs officer” (wherever occurring), insert “, a Centrelink officer, a CSA officer”.

13 Application

The amendments of the *Financial Transaction Reports Act 1988* made by this Schedule apply to FTR information obtained by the Director before, on or after the commencement of this Schedule.

Fringe Benefits Tax Assessment Act 1986

14 At the end of subsection 5(5)

Add:

- ; or (c) the Secretary of the Department dealing with matters relating to the social security law (within the meaning of the *Social Security Act 1991*), for the purpose of the administration of that law; or

- (d) the Chief Executive Officer of the Commonwealth Services Delivery Agency established by the *Commonwealth Services Delivery Agency Act 1997*, for the purpose of the administration of the social security law (within the meaning of the *Social Security Act 1991*).

15 Application

The amendment of the *Fringe Benefits Tax Assessment Act 1986* made by this Schedule applies to information acquired before, on or after the commencement of this Schedule by the Commissioner, a Deputy Commissioner or a person authorised by the Commissioner or a Deputy Commissioner.

Income Tax Assessment Act 1936

16 Paragraph 16(4)(e)

Repeal the paragraph, substitute:

- (e) the Secretary of the Department dealing with matters relating to the social security law (within the meaning of the *Social Security Act 1991*) for the purpose of the administration of that law; or

17 Paragraph 16(4)(eb)

Omit “any law of the Commonwealth relating to pensions, allowances or benefits”, substitute “the social security law (within the meaning of the *Social Security Act 1991*)”.

18 Application

The amendments of the *Income Tax Assessment Act 1936* made by this Schedule apply to information acquired before, on or after the commencement of this Schedule by the Commissioner, a Second Commissioner, a Deputy Commissioner or a person authorised by the Commissioner, a Second Commissioner or a Deputy Commissioner.

Product Grants and Benefits Administration Act 2000

19 At the end of paragraph 47(3)(c)

Add:

- or (iv) the Secretary of the Department dealing with matters relating to the social security law (within the meaning of the *Social Security Act 1991*) and is of information to be used for the purpose of the administration of that law; or
- (v) the Chief Executive Officer of the Commonwealth Services Delivery Agency established by the *Commonwealth Services Delivery Agency Act 1997* and is of information to be used for the purpose of the administration of the social security law (within the meaning of the *Social Security Act 1991*);

20 At the end of paragraph 47(3)(d)

Add:

- ; or (iii) the Secretary of the Department dealing with matters relating to the social security law (within the meaning of the *Social Security Act 1991*) and is of information to be used for the purpose of the administration of that law; or
- (iv) the Chief Executive Officer of the Commonwealth Services Delivery Agency established by the *Commonwealth Services Delivery Agency Act 1997* and is of information to be used for the purpose of the administration of the social security law (within the meaning of the *Social Security Act 1991*).

21 Application

The amendments of the *Product Grants and Benefits Administration Act 2000* made by this Schedule apply to information obtained before, on or after the commencement of this Schedule by the Commissioner, a Deputy Commissioner or a person authorised by the Commissioner or a Deputy Commissioner.

Social Security Act 1991

22 Subsection 23(1) (definition of *officer*)

Repeal the definition, substitute:

officer means a person performing duties, or exercising powers or functions, under or in relation to the social security law, the *Farm*

Household Support Act 1992 or subsection 91A(3) of the *Child Support (Assessment) Act 1989*.

Social Security (Administration) Act 1999

23 After section 201

Insert:

201A Definition of *officer*

In this Division:

officer means:

- (a) a person who is or has been an officer within the meaning of subsection 23(1) of the 1991 Act; or
- (b) a person who is or has been appointed or employed by the Commonwealth and who, as a result of that appointment or employment, may acquire or has acquired information concerning a person under the social security law or the *Farm Household Support Act 1992*; or
- (c) a person who, although not appointed or employed by the Commonwealth, performs or did perform services for the Commonwealth and who, as a result of performing those services, may acquire or has acquired information concerning a person under the social security law or the *Farm Household Support Act 1992*.

Taxation Administration Act 1953

24 At the end of paragraph 68(3)(c)

Add:

- or (v) the Secretary of the Department dealing with matters relating to the social security law (within the meaning of the *Social Security Act 1991*) and is of information to be used for the purpose of the administration of that law; or
 - (vi) the Chief Executive Officer of the Commonwealth Services Delivery Agency established by the *Commonwealth Services Delivery Agency Act 1997* and is of information to be used for the purpose of the
-

administration of the social security law (within the meaning of the *Social Security Act 1991*);

25 At the end of paragraph 68(3)(d)

Add:

- (iv) the Secretary of the Department dealing with matters relating to the social security law (within the meaning of the *Social Security Act 1991*) and is of information to be used for the purpose of the administration of that law; or
- (v) the Chief Executive Officer of the Commonwealth Services Delivery Agency established by the *Commonwealth Services Delivery Agency Act 1997* and is of information to be used for the purpose of the administration of the social security law (within the meaning of the *Social Security Act 1991*);

26 Application

The amendments of the *Taxation Administration Act 1953* made by this Schedule apply to information obtained before, on or after the commencement of this Schedule by the Commissioner, a Deputy Commissioner or a person authorised by the Commissioner or a Deputy Commissioner.

Schedule 3—Assurances of support

Part 1—Main amendment

Social Security Act 1991

1 After Chapter 2B

Insert:

Chapter 2C—Assurances of support

Part 2C.1—Giving assurances

1061ZZGA What is an assurance of support?

In this Chapter:

assurance of support means an undertaking by a person under this Chapter that the person will pay the Commonwealth an amount equal to the amount of social security payments that are:

- (a) received in respect of a period by another person who:
 - (i) is identified in the undertaking; and
 - (ii) becomes the holder under the *Migration Act 1958* of a visa granted in connection with the undertaking (whether or not the person continues to hold the visa throughout the period); and
- (b) specified in a determination in force under section 1061ZZGH when the payments are received.

Note: An assurance of support may relate to social security payments received by 2 or more persons. See paragraph 23(b) of the *Acts Interpretation Act 1901*.

1061ZZGB Who may give an assurance of support?

A person may give an assurance of support only if the requirements specified for the purposes of this section in a determination under section 1061ZZGH are met in relation to the person.

Note 1: If a person who does not meet the requirements gives an undertaking purporting to be an assurance of support, the undertaking is not an assurance of support (because it is not under this Chapter) and the Secretary is not required either to accept or to reject the purported assurance.

Note 2: This section lets 2 or more persons give an assurance of support if they all meet the requirements specified in a determination under section 1061ZZGH. See paragraph 23(b) of the *Acts Interpretation Act 1901*.

1061ZZGC How to give an assurance of support

- (1) A person gives an assurance of support by:
 - (a) delivering the assurance in writing in accordance with a form approved by the Secretary:
 - (i) to a person apparently performing duties at a place approved for the purpose by the Secretary; or
 - (ii) to a person approved for the purpose by the Secretary; or
 - or
 - (iii) in a manner, and to a place, approved for the purpose by the Secretary; or
 - (b) giving the assurance in a manner approved by the Secretary for the purposes of this paragraph.

Note: If an undertaking purporting to be an assurance of support is given in some other way, the undertaking is not an assurance of support (because it is not under this Chapter) and the Secretary is not required either to accept or to reject the purported assurance.

- (2) A form approved for the purposes of paragraph (1)(a) may include other undertakings as well as the assurance of support.
- (3) A place or person approved for the purposes of paragraph (1)(a) may be in or out of Australia.

- (4) The Secretary's power to approve for the purposes of paragraph (1)(b) is not limited by any other provision of this section.

Material to accompany assurance of support

- (5) When a person is giving an assurance of support, the person must also give the following material in a way in which an assurance of support may be given under subsection (1):
- (a) information specified in a form approved by the Secretary;
 - (b) documents specified by the Secretary.
- (6) If the person giving the assurance of support contravenes subsection (5), the assurance is taken not to have been given.

Part 2C.2—Acceptance of assurances

1061ZZGD Accepting or rejecting an assurance of support

- (1) If an assurance of support is given under this Chapter, the Secretary must accept or reject the assurance.

Accepting the assurance

- (2) The Secretary may accept the assurance, but only if:
- (a) he or she is satisfied that the requirements that are specified for the purposes of this paragraph in a determination under section 1061ZZGH and relate to the person who gave the assurance are met; and
 - (b) the requirements in subsection (3) are met, if the assurance is in respect of:
 - (i) a visa of a kind that can be granted under the *Migration Act 1958* only if an assurance of support is accepted; and
 - (ii) another person who was at least 18 at the time of the application for the visa;(whether or not the assurance is also in respect of someone else who was under 18 at the time of the application for the visa).

Schedule 3 Assurances of support
Part 1 Main amendment

Note 1: The Secretary may accept an assurance given by 2 or more persons only if satisfied that the requirements specified in a determination under item 3 of the table in subsection 1061ZZGH(1) and relating to all of them are met. See paragraph 23(b) of the *Acts Interpretation Act 1901*.

Note 2: Subparagraph (2)(b)(i) does not apply to a visa of a kind in relation to which there is a discretion to request an assurance of support, because a visa of that kind can be granted without accepting an assurance if one is not requested (even if, in a case in which an assurance is requested, acceptance of the assurance is a condition for the grant of the visa).

- (3) At least one person who gave the assurance must have given the Secretary a single security for the liability that may be incurred, under section 1061ZZGG in connection with the assurance and a social security payment received by anyone identified in the assurance, by everyone who gave the assurance. The security must:
- (a) be in a form approved by the Secretary; and
 - (b) be of a value specified for the purposes of this paragraph in a determination under section 1061ZZGH.

Rejecting the assurance

- (4) The Secretary may reject the assurance.
- (5) The circumstances in which the Secretary may reject the assurance include failure of the person giving the assurance to attend an interview relating to the assurance as requested by the Secretary. This subsection does not limit subsection (4).

1061ZZGE Notices relating to an assurance of support

- (1) If the Secretary accepts or rejects an assurance of support, he or she must give written notice of the acceptance or rejection to:
- (a) the person who gave the assurance; and
 - (b) the Minister administering section 65 of the *Migration Act 1958*.

The notice must name the person in respect of whom the assurance was given.

- (2) If:

- (a) the Secretary has accepted an assurance of support given by a person (the *assurer*) in respect of another person and a visa; and
- (b) the Secretary is informed that the other person:
 - (i) is a holder under the *Migration Act 1958* of the visa; and
 - (ii) has entered the migration zone (as defined in that Act) before, on or after becoming the holder of the visa;

the Secretary must give the assurer written notice of the period for which the assurance is in force in respect of the other person.

Note: Section 1061ZZGF explains when an assurance of support is in force in respect of the other person.

- (3) If the assurance of support ceases to be in force in respect of the other person at the time described in subparagraph 1061ZZGF(1)(b)(ii), the Secretary must give the assurer written notice of the fact.

Note: That subparagraph is about an assurance ceasing to be in force in respect of the other person when another assurance of support comes into force in respect of him or her.

Part 2C.3—Effect of accepted assurances

1061ZZGF When an accepted assurance is in force

- (1) For the purposes of this Act, an assurance of support that has been given in respect of a person identified in the assurance and has been accepted under this Chapter:
 - (a) comes into force in respect of the person at the later of the following times:
 - (i) the time at which the person becomes under the *Migration Act 1958* the holder of the visa that was granted under that Act in connection with the assurance;
 - (ii) the time at which the person enters the migration zone (as defined in that Act) as the holder of the visa; and
 - (b) remains in force in respect of the person until the earlier of the following times:

- (i) the end of the period specified for the purposes of this subparagraph in a determination under section 1061ZZGH;
- (ii) the time (if any) determined by the Secretary under subsection (2).

Note: An assurance of support given in respect of 2 or more persons may be in force at different times in respect of each of those persons.

- (2) The Secretary may determine that the assurance of support ceases to be in force in respect of the person at the time (which may be before the determination is made) another assurance of support comes into force in respect of the person.
- (3) For the purposes of this Act, an assurance of support (as defined in section 1061ZZGA) is in force in respect of a person only for the period for which it is in force in respect of the person under subsection (1) of this section.
- (4) An assurance of support that is in force in respect of a person under subsection (1) remains in force in respect of the person under that subsection in spite of any change in circumstances whatsoever (including the withdrawal, however described, of the assurance).

1061ZZGG Liability to pay for social security payments

- (1) This section has effect if:
 - (a) a person (the *assurer*) has given an assurance of support that has been accepted under this Chapter; and
 - (b) a social security payment is received, by another person who is identified in the assurance, in respect of all or part of the period for which the assurance is in force in respect of the other person; and
 - (c) the social security payment is specified for the purposes of this section in a determination in force under section 1061ZZGH when the payment is received.
 - (2) The assurer is liable to pay the Commonwealth the amount of the social security payment.
 - (3) If the assurance was given by more than one person, all of the persons who gave it are jointly and severally liable to pay the Commonwealth the amount of the social security payment.
-

Part 2C.4—Determinations

1061ZZGH Determinations

- (1) The Minister must make a written determination specifying, for the purposes of the provisions mentioned in the table, the things in the table.

| Determinations | |
|--|--|
| Provision(s) | Things to be specified |
| 1 Definition of <i>assurance of support</i> in section 1061ZZGA and section 1061ZZGG | Social security payments |
| 2 Section 1061ZZGB | Requirements to be met in relation to persons for them to be permitted by section 1061ZZGB to give assurances of support |
| 3 Paragraph 1061ZZGD(2)(a) | Requirements to be met in relation to persons giving assurances of support for the Secretary to be permitted by subsection 1061ZZGD(2) to accept such assurances |
| 4 Paragraph 1061ZZGD(3)(b) | Values of securities to be given for the Secretary to be permitted to accept assurances of support |
| 5 Subparagraph 1061ZZGF(1)(b)(i) | Periods for which assurances of support accepted under this Chapter remain in force in respect of persons under section 1061ZZGF |

Note 1: A determination may specify matters and things by reference to classes and may make different provision with respect to different matters or classes of matters. See the *Acts Interpretation Act 1901*.

Note 2: The Minister may amend a determination by another written determination. See the *Acts Interpretation Act 1901*.

- (2) A determination may specify, as a requirement to be met in relation to a person (the *assurer*) giving an assurance of support for the Secretary to be permitted by subsection 1061ZZGD(2) to accept the assurance, a requirement that relates to:
- (a) the members of a couple consisting of the assurer and the assurer's partner; or
 - (b) the assurer's partner.

This subsection does not limit the requirements that may be specified under item 3 of the table in subsection (1) of this section.

- (3) Before making a determination specifying a thing described in item 4 or 5 of the table in subsection (1), the Minister must ask the Minister administering section 65 of the *Migration Act 1958* for comments on the things that should be specified and consider the comments (if any) received.
- (4) A determination under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Part 2C.5—Assurances by unincorporated bodies

1061ZZGI Application of social security law to unincorporated bodies

- (1) This Chapter, and the rest of the social security law so far as it relates to this Chapter, apply to an unincorporated body or association (the *body*) as if it were a person other than an individual, but they apply with the following changes.

Acts of certain persons treated as acts of the body

- (2) One change is that anything done or omitted by or in relation to:
 - (a) if the body is a partnership—a partner; or
 - (b) in any other case—a member of the committee of management of the body;on behalf of the body is taken to have been done or omitted by the body.

Imposition of obligations and liabilities

- (3) Another change is that obligations, or liabilities under section 1061ZZGG, that would be imposed on the body are imposed instead on:
 - (a) if the body is a partnership—each partner; or
 - (b) in any other case—each member of the committee of management of the body;

but they may be discharged by any of the partners or any of those members.

The body cannot commit an offence

- (4) Another change is that if, apart from this subsection, the body would commit an offence, the body does not commit the offence.

Example: Subsection (1) applies section 217 of the *Social Security (Administration) Act 1999* to the body as if it were a person. That section provides that a person who contravenes certain provisions of that Act about false or misleading statements is guilty of an offence. The body does not commit an offence if it contravenes those provisions by making a false or misleading statement.

Limit on scope of changes

- (5) Subsections (2) and (3) do not affect:
- (a) whether, for the purposes of section 1061ZZGB (about giving an assurance of support), the requirements specified in a determination under section 1061ZZGH are met in relation to the body; or
 - (b) whether, for the purposes of paragraph 1061ZZGD(2)(a) (about accepting an assurance of support), the requirements specified in a determination under section 1061ZZGH are met in relation to the body.

Note: Whether the body may give an assurance of support and whether such an assurance may be accepted depend on whether the requirements specified in relation to the body are met, rather than whether requirements relating to a person who is a partner or member of the body's management committee are met in relation to that partner or member.

- (6) A determination under section 1061ZZGH (applying in accordance with this section) may specify, for the purposes of section 1061ZZGB or paragraph 1061ZZGD(2)(a) (as so applying in relation to the body), a requirement that relates to:
- (a) one or more of the partners, if the body is a partnership; or
 - (b) some or all of the members of the body or of its committee of management, if the body is not a partnership.

This subsection does not limit the requirements relating to the body that may be specified.

Part 2—Consequential amendments

Migration Act 1958

2 After subsection 504(5)

Insert:

- (5A) The following have effect only in relation to assurances of support that were given before 1 July 2004 and are not assurances of support in relation to which Chapter 2C of the *Social Security Act 1991* applies or applied:
- (a) subsection (5) of this section;
 - (b) regulations made under paragraph (1)(g) (whether before, on or after the commencement of this subsection) providing for:
 - (i) the enforcement of assurances of support; or
 - (ii) the imposition on persons who give assurances of support of liabilities in respect of the maintenance of, and other expenditure in connection with, the persons in respect of whom the assurances of support are given.

Social Security Act 1991

3 Subsection 23(1) (definition of *assurance of support*)

Repeal the definition, substitute:

assurance of support means an assurance of support within the meaning of:

- (a) the Migration (1989) Regulations; or
- (b) the Migration (1993) Regulations; or
- (c) Subdivision 2.7.1 or 2.7.2 of the *Migration Regulations 1994* as in force on or after 1 September 1994; or
- (d) Chapter 2C.

4 Subsection 23(1) (definition of *assurance of support debt*)

Repeal the definition, substitute:

assurance of support debt has the meaning given by subsection 1227(2).

5 Subsection 1222(2) (table item 14)

Repeal the item, substitute:

| | | | |
|----|--|--|--|
| 14 | 1227 (assurance of support debt) | enforcement of security deductions legal proceedings garnishee notice repayment by instalments | 1230C 1231, 1234A 1232 1233 1234 |
|----|--|--|--|

6 Section 1227 (note)

Repeal the note.

7 At the end of section 1227

Add:

(2) In this Chapter:

assurance of support debt means:

- (a) a debt due and payable by a person to the Commonwealth, or a liability of a person to the Commonwealth, because of the operation of:
 - (i) subregulation 165(1) of the Migration (1989) Regulations as in force on or before 19 December 1991; or
 - (ii) regulation 164C of the Migration (1989) Regulations as in force after 19 December 1991 and before 1 February 1993; or
 - (iii) Part 5 of the Migration (1993) Regulations as in force on or after 1 February 1993; or
 - (iv) Division 2.7 of the *Migration Regulations 1994* as in force on or after 1 September 1994;
in respect of the payment to another person of a social security payment of a kind mentioned in subregulation 2.38(1) of the *Migration Regulations 1994*; or
- (b) a liability of a person to the Commonwealth because of the operation of section 1061ZZGG.

8 At the end of section 1230C

Add:

- (5) This section does not prevent the recovery of an assurance of support debt by the enforcement at any time of a security given in connection with the relevant assurance of support. It does not matter:
- (a) whether or not the enforcement involves legal proceedings; or
 - (b) whether the enforcement occurs before or after seeking to recover the debt by means of another method described in this section.

9 Subsection 1236A(1)

Omit “and 1237AAD”, substitute “, 1237AAD and 1237AAE”.

10 At the end of subsection 1237(1)

Add “and, if the debt is an assurance of support debt, subject to section 1237AAE”.

11 At the end of sections 1237AAA and 1237AAB

Add:

Note: Section 1237AAE limits the circumstances in which an assurance of support debt may be waived under this section, and the amount of the debt that may be waived.

12 Section 1237AAD (note)

Omit “Note:”, substitute “Note 1:”.

13 At the end of section 1237AAD

Add:

Note 2: This section has effect subject to section 1237AAE in relation to an assurance of support debt.

14 After section 1237AAD

Insert:

1237AAE Extra rules for waiver of assurance of support debts

- (1) This section affects waiver under some other provisions of this Part of an assurance of support debt in connection with an assurance of support given by one or more persons (the *assurers*), by setting out extra rules limiting the circumstances in which waiver may occur and the extent of waiver.
- (2) The Secretary may waive under section 1237AAD the right to recover all or part of the debt only if the Secretary is satisfied that the waiver is justified on grounds other than one or more of the assurers being unaware of the effect of section 1061ZZGG, or of regulations made under the *Migration Act 1958*, in connection with the assurance.
- (3) If the Secretary has been given a security that meets the requirements of subsection 1061ZZGD(3) in connection with the assurance, the Secretary may waive under section 1237AAA, 1237AAB or 1237AAD the right to recover an amount of the debt that is not greater than the difference (if any) between:
 - (a) the debt; and
 - (b) the amount that can be:
 - (i) obtained by enforcing the security; and
 - (ii) applied to reduce the debt.

Note: An amount that can be obtained by enforcing the security cannot be applied to reduce the debt if it is applied to reduce another assurance of support debt connected with the assurance of support.
- (4) If 2 or more assurers are jointly and severally liable for the debt, the Secretary may waive under section 1237AAD the right to recover an amount of the debt that is not greater than the amount (which may be a nil amount) of the debt that the Secretary is satisfied cannot be recovered from any of the assurers.
- (5) If subsections (3) and (4) apply, the Secretary may waive under section 1237AAD the right to recover an amount of the debt that is not greater than the amount (if any) of the debt that may be waived taking into account both of those subsections.

Social Security (Administration) Act 1999

15 After paragraph 144(d)

Insert:

(da) a decision under section 1061ZZGC of the 1991 Act;

16 After paragraph 151(2)(b)

Insert:

(ba) section 1061ZZGC of the 1991 Act; or

17 At the end of section 192

Add:

; (j) the question whether an assurance of support given under Chapter 2C of the 1991 Act should be accepted or rejected.

Part 3—Application and transitional provisions

18 Application and transitional provisions

Application provisions for Chapter 2C of Social Security Act 1991

- (1) Chapter 2C of the *Social Security Act 1991* (as amended by this Schedule) applies in relation to:
 - (a) the giving of assurances of support (as defined in that Chapter) after the commencement of this Schedule; and
 - (b) the acceptance of assurances of support (as defined in that Chapter) given after the commencement of this Schedule; and
 - (c) the acceptance of assurances of support (as defined in Subdivision 2.7.2 of the *Migration Regulations 1994*) that:
 - (i) were given to the Minister (the **Migration Minister**) administering the *Migration Act 1958* before the commencement of this Schedule; and
 - (ii) the Migration Minister had neither accepted nor decided not to accept, before the commencement of this Schedule; and
 - (d) the effect of assurances of support accepted under that Chapter.
- (2) That Chapter applies in relation to assurances of support described in paragraph (1)(c) as if they had been given to the Secretary under that Chapter.

Transitional provisions

- (3) As soon as practicable after the commencement of this Schedule, the Migration Minister must give to the Secretary of the Department, for the purposes of the provisions of the social security law relating to assurances of support, all assurances of support described in paragraph (1)(c) and any information that the Migration Minister proposed to consider in deciding whether to accept the assurances.

Note: Subitem (3) requires the disclosure of personal information relevant to a decision whether to accept the assurances of support, so that the disclosure is not prevented by the *Privacy Act 1988*.

Schedule 3 Assurances of support

Part 3 Application and transitional provisions

- (4) The requirements in subsection 1061ZZGD(3) of the *Social Security Act 1991* are taken to be met in relation to an assurance of support described in paragraph (1)(c) of this item if one or more persons who gave the assurance under the *Migration Regulations 1994* complied with regulation 2.39 of those Regulations before the commencement of this Schedule.

Note: This may allow the Secretary of the Department to accept the assurance under Chapter 2C of the *Social Security Act 1991*, even though a security has not been given as required by subsection 1061ZZGD(3) of that Act, if one or more bonds were lodged in connection with the assurance under regulation 2.39 of the *Migration Regulations 1994*.

Application of some other amendments

- (5) The amendments of the *Social Security Act 1991* made by Part 2 of this Schedule apply in relation to assurance of support debts arising before, on or after the commencement of this Schedule. This does not limit the application of the definition of **assurance of support** included in section 23 of that Act by that Part.

Schedule 4—Stopping payment for people absent from Australia without notice

1 Application

The amendments made by this Schedule apply in relation to departures from Australia before, on or after the commencement of this Schedule by persons who are absent from Australia on or after that commencement as a result of those departures.

A New Tax System (Family Assistance) (Administration) Act 1999

2 Subparagraphs 9(c)(i) and 10(1)(c)(i)

Omit “or 30(2)”, substitute “, 30(2), 30A(2) or 30B(2)”.

3 After section 30

Insert:

30A Variation of instalment entitlement determination where failure to notify claimant’s departure from Australia

- (1) This section applies if:
 - (a) a determination is in force on a particular day under which the claimant is entitled to be paid family tax benefit by instalment; and
 - (b) the claimant leaves Australia without having notified the Secretary that the claimant proposed to leave or is leaving; and
 - (c) less than 3 years have passed since the claimant left Australia.
- (2) The Secretary may vary the determination so that it has the effect that the claimant is not entitled to be paid family tax benefit for any day on which the determination was or will be in force after the end of the last instalment period before the variation takes place.

- (3) If the Secretary varies the determination under subsection (2), and later obtains information relating to the question whether the claimant is entitled to be paid family tax benefit for a day described in that subsection, the Secretary must vary the determination to undo the effect mentioned in that subsection.

30B Variation of instalment entitlement determination where failure to notify FTB child's departure from Australia

- (1) This section applies if:
- (a) a determination is in force on a particular day under which the claimant is entitled to be paid family tax benefit by instalment; and
 - (b) an FTB child of the claimant leaves Australia without the claimant having notified the Secretary that the FTB child will leave or is leaving; and
 - (c) less than 3 years have passed since the FTB child left Australia.
- (2) The Secretary may vary the determination so that, for any day on which the determination was or will be in force after the end of the last instalment period before the variation takes place, the determination:
- (a) has the effect that the claimant is not entitled to be paid family tax benefit, if the conditions in paragraphs (1)(b) and (c) are met in relation to each FTB child of the claimant; or
 - (b) has the effect that the daily rate of family tax benefit for which the claimant is entitled under the determination does not take into account the FTB child, if the conditions in paragraphs (1)(b) and (c) are not met in relation to each FTB child of the claimant.
- (3) If the Secretary:
- (a) varies the determination under subsection (2); and
 - (b) later obtains information relating to the question whether the claimant is entitled to be paid family tax benefit for the FTB child for a day described in that subsection or the question what is the claimant's daily rate of family tax benefit for the day;

the Secretary must vary the determination to undo the effect mentioned in that subsection relating to the day.

4 Paragraphs 31(3)(a), 31A(3)(a) and 31B(3)(a)

Omit “or 30”, substitute “, 30, 30A or 30B”.

Note: The heading to subsection 31(3) is altered by omitting “and 30” and substituting “, 30, 30A and 30B”.

Social Security (Administration) Act 1999

5 At the end of section 80

Add:

- (3) However, subsection (1) authorises the Secretary to make a determination that:
- (a) cancels a social security payment that has been suspended under subsection 81(3); and
 - (b) takes effect at or after the time the suspension took effect.

6 At the end of section 81

Add:

- (3) If:
- (a) a person who is receiving a social security payment has been given a notice under section 67 or 68 that requires the person to inform the Department of a proposal by the person to leave Australia; and
 - (b) the person does not comply with the requirement; and
 - (c) the person leaves Australia; and
 - (d) the person’s portability period (see section 1217 of the 1991 Act) for the payment has not ended;
- the Secretary may determine that the payment is to be cancelled or suspended.

Note: Subsection (3) lets the Secretary make one determination suspending the payment and later make another determination cancelling the payment. See subsection 33(1) of the *Acts Interpretation Act 1901*.

7 After subsection 118(7)

Insert:

(7A) Subsection (7) does not apply to a determination under subsection 81(3).

8 After subsection 118(11)

Insert:

(11A) Despite subsection (11), a determination under section 80 or subsection 81(3) cancelling a person's social security payment that has already been suspended under subsection 81(3) takes effect on such day (which may be earlier than the day on which the determination is made) as is specified in the determination.

Schedule 5—Comparable foreign payment debt recovery

Social Security Act 1991

1 Subsection 1222(1) (notes)

Repeal the notes.

2 Subsection 1222(2) (after table item 15)

Insert:

| | | | |
|-----|--|---|-------------------------------------|
| 15A | 1228A (comparable foreign payment debts) | deductions legal proceedings garnishee notice repayment by instalments | 1231, 1234A 1232 1233 1234 |
|-----|--|---|-------------------------------------|

3 After section 1228

Insert:

1228A Comparable foreign payment debt recovery

- (1) This section applies if:
- (a) an amount (the *social security amount*) was paid to a person by way of a social security payment in respect of a particular period; and
 - (b) another amount (the *lump sum*) was paid as a lump sum:
 - (i) to the person; or
 - (ii) to the person's partner, if the person is a member of a couple;
 by way of a payment of arrears of a comparable foreign payment in respect of that period; and
 - (c) assuming that the lump sum had been paid by way of periodical payments of the comparable foreign payment in respect of the period, the social security amount would have been reduced.

- (2) The amount by which the social security amount would have been reduced is a debt due to the Commonwealth.
- (3) Section 1073 does not apply to the person in respect of the lump sum.

4 Application

Section 1228A of the *Social Security Act 1991* applies in relation to lump sums paid on or after the commencement of this Schedule, whether or not the lump sum relates wholly or partly to a period occurring wholly or partly before that commencement.

Schedule 6—Reducing portability period

A New Tax System (Family Assistance) Act 1999

1 Subparagraph 21(1A)(b)(i)

Omit “26”, substitute “13”.

2 Section 24

Omit “26” (wherever occurring), substitute “13”.

3 Subparagraphs 42(1A)(b)(i), 44(1A)(b)(i) and 45(1A)(b)(i)

Omit “26”, substitute “13”.

4 Paragraphs 62(2)(b) and (3)(d) and 63(2)(b), (2)(d) and (3)(c)

Omit “26”, substitute “13”.

5 Subsection 63A(1)

Omit “26”, substitute “13”.

6 Application

- (1) The amendments of the *A New Tax System (Family Assistance) Act 1999* made by this Schedule apply in relation to absences from Australia that start on or after the commencement of this Schedule.
- (2) However:
 - (a) those amendments of subsections 24(2) and (3) and 63(3) of that Act apply in relation to children coming to Australia on or after the commencement of this Schedule; and
 - (b) those amendments of subsections 24(5) and (6) and 62(3) of that Act apply in relation to individuals returning to Australia on or after the commencement of this Schedule.

Social Security Act 1991

7 Sections 500F, 500G and 500H

Omit “26” (wherever occurring), substitute “13”.

Note: The heading to section 500F is altered by omitting “26” and substituting “13”.

8 Paragraph 1061PN(1)(b)

Omit “26”, substitute “13”.

9 Subparagraph 1061Q(4A)(a)(ii)

Omit “26”, substitute “13”.

10 Paragraph 1061S(3A)(a)

Omit “26”, substitute “13”.

11 Subsection 1217(5)

Repeal the subsection.

12 Section 1217 (table items 2 and 3)

Repeal the items, substitute:

| | | | | |
|---|----------------------------|-------------|-------------|---|
| 3 | Disability support pension | All persons | Any absence | 13 weeks (but see also section 1218AA) |
|---|----------------------------|-------------|-------------|---|

13 Section 1217 (table items 5 and 6)

Omit “26”, substitute “13”.

14 Section 1217 (table items 9 to 23, inclusive)

Omit “26”, substitute “13”.

15 Before section 1218

Insert:

1218AA Extended portability period for disability support pension

- (1) The Secretary may determine that a particular person’s maximum portability period for disability support pension is an unlimited

period, if all of the following circumstances (the *qualifying circumstances*) exist:

- (a) the person is severely disabled (see subsection 23(4B)); and
 - (b) the person is receiving disability support pension; and
 - (c) the person is terminally ill; and
 - (d) the person's absence from Australia is or will be permanent; and
 - (e) the purpose of the person's absence is:
 - (i) to be with or near a family member of the person (see subsection 23(14)); or
 - (ii) to return to the person's country of origin.
- (2) The Secretary may revoke the determination if any of the qualifying circumstances ceases to exist.
- (3) If the Secretary revokes the determination, this Part has effect after the first time at which one of the qualifying circumstances does not exist as if the person's maximum portability period for the pension were 13 weeks starting at that time.

16 Paragraph 1218B(b)

Omit "26", substitute "13".

17 Subsection 1220B(1)

After "person" (first occurring), insert "for whom an unlimited maximum portability period for the pension has been determined under section 1218AA".

18 At the end of clause 128 of Schedule 1A

Add:

- (2) However, the following provisions (as in force as if the amendments described in subclause (1) had not been made) do not continue to apply to the person at or after the first time the person is in Australia after the commencement of Schedule 6 to the *Family and Community Services and Veterans' Affairs Legislation Amendment (2003 Budget and Other Measures) Act 2003*:
- (a) section 1213A;
 - (b) section 1215;

- (c) section 1216;
- (d) section 1220B, so far as it relates to a pension other than age pension or bereavement allowance.

Note: If those provisions (as in force as if the amendments described in subclause (1) had not been made) do not continue to apply to the person at a particular time, the person is covered at that time by this Act as in force at that time.

- (3) To avoid doubt, Schedule 6 to the *Family and Community Services and Veterans' Affairs Legislation Amendment (2003 Budget and Other Measures) Act 2003* does not affect section 1220B (as in force as if the amendments described in subclause (1) had not been made) so far as that section continues to apply because of that subclause.

19 At the end of Schedule 1A

Add:

135 Unlimited maximum portability period for disability support pension

- (1) The Secretary may determine that a person's maximum portability period for disability support pension is an unlimited period if:
 - (a) at the commencement of this clause, the person is absent from Australia and receiving disability support pension; and
 - (b) under this Act as in force immediately before the commencement, that absence could not affect the person's right to continue to be paid the disability support pension throughout the period of that absence; and
 - (c) after the commencement, the person enters Australia but does not become an Australian resident again.

Note: The condition in paragraph (1)(b) may be met:

- (a) because the person was severely disabled (see subsection 1214(1) and item 2 of the table in subsection 1217(5) as those subsections were in force just before the commencement); or
- (b) because clause 128 (as in force just before the commencement) applied to the person section 1213A as in force before its repeal by the *Social Security and Veterans' Entitlements Legislation Amendment (Miscellaneous Matters) Act 2000*.

- (2) The determination has effect for the purposes of Part 4.2 of this Act as it applies in relation to an absence after the person's entry, despite the repeal and substitution of items 2 and 3 of the table in section 1217 of this Act by the *Family and Community Services and Veterans' Affairs Legislation Amendment (2003 Budget and Other Measures) Act 2003*.

20 Application

- (1) The amendments of the *Social Security Act 1991* made by this Schedule apply in relation to absences from Australia that start on or after the commencement of this Schedule.
- (2) However, the amendment of section 500H of that Act made by this Schedule applies in relation to children coming to Australia on or after the commencement of this Schedule.
- (3) Subitem (1) does not apply to the amendments of Schedule 1A to the *Social Security Act 1991* made by this Schedule.

Schedule 7—Technical corrections

Part 1—Amendment commencing on 22 May 2003

Social Security (Administration) Act 1999

1 Subsection 63(5)

Repeal the subsection, substitute:

(5) If:

- (a) the Secretary notifies a person under subsection (3) of a requirement; and
- (b) the requirement is reasonable; and
- (c) the person does not comply with the requirement;

then:

- (d) newstart allowance or special benefit is not payable to the person; and
- (e) an administrative breach rate reduction period applies to the person if:
 - (i) the person meets the conditions in subsection (5A) at the time of the non-compliance and newstart allowance later becomes payable to the person; or
 - (ii) special benefit later becomes payable to the person.

(5A) The conditions are that the person:

- (a) is receiving newstart allowance; and
- (b) is not subject to a requirement by the Secretary to participate in the PSP; and
- (c) is not a party to a Newstart Activity Agreement under which the person is required to participate in the PSP.

**Part 2—Amendments commencing on 19 September
2003**

*Family and Community Services Legislation Amendment
(Australians Working Together and other 2001
Budget Measures) Act 2003*

2 Part 1 of Schedule 6

Repeal the Part.

*Family and Community Services Legislation Amendment
(Special Benefit Activity Test) Act 2002*

3 Subsection 2(1) (table item 3)

Omit “2002”, substitute “2003”.

**Part 3—Amendments commencing just after the start
of 20 September 2003**

***Family and Community Services Legislation Amendment
(Australians Working Together and other 2001
Budget Measures) Act 2003***

4 Item 11E of Schedule 5 (heading)

Omit “607(1)(iii)”, substitute “607(1)(b)(iii)”.

Social Security Act 1991

**5 Subsection 544(3) (the subsection (3) inserted by item 20A
of Schedule 1 to the *Family and Community Services
Legislation Amendment (Australians Working Together
and other 2001 Budget Measures) Act 2003*)**

Re-number as subsection (2A).

**6 Subsections 557A(4), (5), (6) and (7) (the subsections (4),
(5), (6) and (7) added by item 2 of Schedule 1A to the
*Family and Community Services Legislation
Amendment (Australians Working Together and other
2001 Budget Measures) Act 2003*)**

Re-number as subsections (6), (7), (8) and (9) respectively.

**7 Subsections 558A(4) and (5) (the subsections (4) and (5)
added by item 4 of Schedule 1A to the *Family and
Community Services Legislation Amendment
(Australians Working Together and other 2001 Budget
Measures) Act 2003*)**

Re-number as subsections (6) and (7) respectively.

8 Subsections 660YAB(1) and (2) and 771(1) and (2)

Omit “1 July 2003” (wherever occurring), substitute “20 September
2003”.

Social Security (Administration) Act 1999

9 Subsection 118(6)

Omit “subject”, substitute “Subject”.

**Part 4—Amendments commencing later on
20 September 2003**

Social Security Act 1991

10 Subsection 557A(1)

Omit “and (4)”, substitute “, (4), (6) and (9)”.

11 Subsection 557A(6)

Omit “subsection (3)”, substitute “subsections (3) and (4)”.

12 Subparagraph 557A(6)(a)(iv)

Omit “(6)”, substitute “(8)”.

13 Subsection 557A(7)

Omit “(4)(a)(iii)”, substitute “(6)(a)(iii)”.

14 Subsection 557A(8)

Omit “(4)(a)(iv)”, substitute “(6)(a)(iv)”.

15 Paragraph 557A(9)(a)

Omit “(4)(c)”, substitute “(6)(c)”.

16 Subsection 558A(1)

Omit “and (4)”, substitute “, (4), (6) and (7)”.

17 Subsection 558A(6)

Omit “subsection (3)”, substitute “subsections (3) and (4)”.

18 Paragraph 558A(7)(a)

Omit “(4)(c)”, substitute “(6)(c)”.

Part 5—Amendment commencing on Royal Assent

Social Security Act 1991

19 Subsection 1230C(3) (the subsection (3) added by item 28 of Schedule 1 to the *Family and Community Services Legislation (Simplification and Other Measures) Act 2001*)

Renumber as subsection (4).

*[Minister's second reading speech made in—
House of Representatives on 18 September 2003
Senate on 8 October 2003]*

(159/03)
