

# **Social Security Act 1991**

## **Act No. 46 of 1991 as amended**

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**Volume 2** includes: Table of Contents  
Sections 660XAA – 1067L-F9

The text of any of those amendments not in force  
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be  
affected by application provisions that are set out in the Notes section

## **Chapter 2—Pensions, benefits and allowances**



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## **Part 2.12A—Mature age (pre-1 July 1996) allowances**

### **Division 1—Application of Part**

#### **660XAA Structure of Part**

Part 2.12A deals with 2 payment types, mature age allowance and mature age partner allowance:

- Division 1 deals with the application of this Part.
- Divisions 2, 3 and 11 are divided into Subdivisions that deal with either mature age allowance or mature age partner allowance.
- Divisions 4 to 10 and 12 also deal with both mature age allowance and mature age partner allowance. The sections in those Divisions usually apply to both allowances (eg section 660XDA). However, sometimes a section is divided into subsections dealing with only one of the allowances (eg section 660XDG).

#### **660XAB Time limits on claims of mature age allowance and grant of mature age partner allowance**

- (1) In spite of any other provision of this Part, other than section 660XJO, a person is not to be granted a mature age allowance under this Part unless:
  - (a) the person's claim for the allowance was lodged on or before 30 June 1996; and
  - (b) the person qualified for the allowance on or before that date.
- (2) In spite of any other provision of this Part or any provision of the Administration Act, other than section 85, a person is not to be granted a mature age partner allowance unless:
  - (a) the person's claim for the allowance is lodged on or before 30 June 1995; and
  - (b) the person qualifies for the allowance on or before 30 June 1995.

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**Division 1** Application of Part

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- (2A) For the purposes of paragraph (1)(a), if subsection 660XCC(2) applies, the person is taken to have lodged his or her claim on the day on which the person makes his or her initial claim.
- (3) For the purposes of paragraph (2)(a), if section 15 of the Administration Act applies, the person is taken to have lodged his or her claim on the day on which the person makes his or her initial claim.
- (4) In subsection (3):
- initial claim* has the same meaning as in section 15 of the Administration Act.

## **Division 2—Qualification for mature age allowance and mature age partner allowance**

### **Subdivision A—Qualification for mature age allowance**

#### **660XBA Qualification for mature age allowance**

- (1) A person is qualified for mature age allowance if the person:
- (a) has turned 60 but has not reached pension age; and
  - (b) satisfies the Secretary that the person is unemployed; and
  - (d) has been receiving one or a combination of the following:
    - (i) a social security pension;
    - (ii) a social security benefit;
    - (ia) a job search allowance;
    - (iii) a service pension;for a continuous period of at least 12 months immediately before a claim period day; and
  - (e) has 10 years qualifying Australian residence, or has a qualifying residence exemption for a mature age allowances.
- (1B) For the purposes of paragraph (1)(d), if a person ceases to receive one of the following:
- (a) a social security pension;
  - (b) a social security benefit;
  - (ba) a job search allowance;
  - (c) a service pension;
- for a period of less than 13 weeks, the person is taken to have been receiving the pension or benefit for that period.

*Exemption from satisfying paragraphs (1) (c) and (d)*

- (2) The qualifications in paragraphs (1)(c) and (1)(d) do not apply if the person has previously received mature age allowance or mature age partner allowance.
- (4) In this section, ***claim period day*** means:
- (a) the day on which the claim is lodged; or

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**Division 2** Qualification for mature age allowance and mature age partner allowance

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- (b) any other day in the period of 3 months that starts immediately after the day on which the claim is lodged.

Note 1: For *pension age* see section 23.

Note 5: For *qualifying Australian residence* and *qualifying residence exemption* see section 7.

Note 6: Exceptions to the qualification requirements in subsection (1) are set out in this Subdivision.

Note 7: A mature age allowance is not payable in certain situations even if the person is qualified (see Subdivision A of Division 3).

**660XBB Assurance of support**

A person is not qualified for mature age allowance on a day if the Secretary is satisfied that:

- (a) an assurance of support is in force in respect of the person (the *assuree*) on that day; and
- (b) the person who gave the assurance of support is willing and able to provide an adequate level of support to the assuree; and
- (c) it is reasonable for the assuree to accept that support.

Note: For *assurance of support* see subsection 23(1).

**660XBC Person may be treated as unemployed**

If:

- (a) a person undertakes paid work on a day; and
- (b) the Secretary is of the opinion that, taking into account:
  - (i) the nature of the work; and
  - (ii) the duration of the work; and
  - (iii) any other matters relating to the work that the Secretary considers relevant;

the work should be disregarded;

the Secretary may treat the person as being unemployed on that day.

**660XBE Unemployment due to industrial action**

- (1) A person is not qualified for mature age allowance on a day unless the person satisfies the Secretary that the person's unemployment

on that day was not due to the person being, or having been, engaged in industrial action or in a series of industrial actions.

- (2) A person is not qualified for mature age allowance on a day unless the Secretary is satisfied:
- (a) that the person's unemployment on that day was due to other people being, or having been, engaged in industrial action or a series of industrial actions; and
  - (b) the people, or some of the people, were members of a trade union which was involved in the industrial action; and
  - (c) the person was not a member of the trade union on that day.

Note: For *industrial action*, *trade union* and *unemployment* see section 16.

- (3) Subject to subsection (4), subsections (1) and (2) do not prevent a person from being qualified for a mature age allowance on a day that occurs after the relevant industrial action or series of industrial actions has stopped.

- (4) Where the relevant industrial action or series of industrial actions is in breach of an order, direction or injunction issued by a State industrial authority, the Australian Industrial Relations Commission, the Federal Court or the Federal Magistrates Court, a person is not qualified for a mature age allowance in respect of a period unless that period occurs 6 weeks or more after the relevant industrial action or series of industrial actions has stopped.

Note: For *State industrial authority* see section 4 of the Workplace Relations Act.

## **Subdivision B—Qualification for mature age partner allowance**

### **660XBI Qualification for mature age partner allowance**

A person is qualified for mature age partner allowance if:

- (a) the person is a member of a couple; and
- (b) the person's partner is receiving mature age allowance.

Note 1: For *member of a couple* see section 4.

Note 2: A person is not qualified if an assurance of support is in force (see section 660XBJ).

**660XBJ Assurance of support**

A person is not qualified for mature age partner allowance on a day if the Secretary is satisfied that:

- (a) an assurance of support is in force in respect of the person (the *assuree*) on that day; and
- (b) the person who gave the assurance of support is willing and able to provide an adequate level of support to the assuree; and
- (c) it is reasonable for the assuree to accept that support.

Note: For *assurance of support* see subsection 23(1).

## **Division 3—Payability of mature age allowance and mature age partner allowance**

### **Subdivision A—Payability of mature age allowance**

#### **660XCA Mature age allowance not payable if allowance rate nil**

- (1) Subject to subsection (2), a mature age allowance is not payable to a person if the person's mature age allowance rate would be nil.
- (2) Subsection (1) does not apply to a person if the person's rate would be nil merely because an advance pharmaceutical allowance has been paid to the person under:
  - (a) the social security law; or
  - (b) Division 2 of Part VIIA of the Veterans' Entitlements Act.

#### **660XCF Multiple entitlement exclusion**

- (1) A mature age allowance is not payable to a person if the person is already receiving a service pension.
- (2) If:
  - (a) a person is receiving a mature age allowance; and
  - (b) another social security pension, a social security benefit or a service pension becomes payable to the person;the mature age allowance is not payable to the person.

Note 1: Another payment type will generally not become payable to the person until the person claims it.

- (3) A mature age allowance is not payable to a woman if:
  - (a) the woman is an armed services widow; and
  - (b) the woman is receiving a pension under Part II or IV of the Veterans' Entitlements Act at a rate determined under or by reference to subsection 30(1) of that Act;unless:
  - (c) the woman has been receiving a payment referred to in paragraph (b) continuously since before 1 November 1986; and

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- (d) before 1 November 1986 the woman was also receiving a social security benefit.

Note 1: For *armed services widow* see subsection 4(1).

Note 2: A widow receiving a payment under the Veterans' Entitlements Act who is not covered by paragraph (b) may be paid at a lower rate (see subsection 1064(5)).

- (4) A mature age allowance is not payable to a man if:
- (a) the man is an armed services widower; and
  - (b) the man is receiving a pension under Part II or IV of the Veterans' Entitlements Act at a rate determined under or by reference to subsection 30(1) of that Act.

Note: For *armed services widower* see subsection 4(1).

**660XCG Educational and other schemes exclusion**

- (1) If:
- (a) a payment is, or may be, made in respect of a person under:
    - (i) a prescribed educational scheme other than the ABSTUDY Scheme to the extent that it applies to part-time students; or
    - (ii) the scheme to provide an allowance known as the Maintenance Allowance for Refugees; and
  - (b) the payment relates to a period;
- mature age allowance is not payable to the person in respect of any part of the period.

Note: For *prescribed educational scheme* see section 5.

- (2) If:
- (a) a person may enrol in a full-time course of education; and
  - (b) a payment under a scheme referred to in subsection (1) may be made in respect of the person;
- the Secretary may decide that, in spite of subsection (1), mature age allowance is payable to the person before the person starts the course.



## **Subdivision B—Payability of mature age partner allowance**

### **660XCI Mature age partner allowance not payable if allowance rate nil**

- (1) Subject to subsection (2), a mature age partner allowance is not payable to a person if the person's mature age partner allowance rate would be nil.
- (2) Subsection (1) does not apply to a person if the person's rate would be nil merely because an advance pharmaceutical allowance has been paid to the person under:
  - (a) the social security law; or
  - (b) Division 2 of Part VIIA of the Veterans' Entitlements Act.

### **660XCN Multiple entitlement exclusion**

- (1) A mature age partner allowance is not payable to a person if the person is already receiving a service pension.
- (2) If:
  - (a) a person is receiving a mature age partner allowance; and
  - (b) another social security pension, a social security benefit or a service pension becomes payable to the person;the mature age partner allowance is not payable to the person.

Note 1: Another payment type will generally not become payable to the person until the person claims it.

Note 2: For the day on which the mature age partner allowance ceases to be payable see section 660XJB.
- (3) A mature age partner allowance is not payable to a person if the person is receiving a pension under Part II or IV of the Veterans' Entitlements Act at a rate determined under or by reference to subsection 30(1) of that Act.

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**660XCO Educational schemes exclusion**

(1) If:

- (a) a payment has been, or may be, made in respect of a person under:
  - (ii) the ABSTUDY Scheme; or
  - (iii) a Student Financial Supplement Scheme; and
- (b) the payment relates to a period;

mature age partner allowance is not payable to the person in respect of any part of the period.

(2) If:

- (a) a person may enrol in a full-time course of education; and
- (b) a payment under a scheme referred to in subsection (1) may be made in respect of the person;

the Secretary may decide that, in spite of subsection (1), mature age partner allowance is payable to the person before the person starts the course.

**660XCP Commonwealth funded employment program exclusion**

If:

- (a) a person receives, or may receive, income that is paid by a community or group from funds provided under a Commonwealth funded employment program; and
- (b) the income is paid in respect of a period;

mature age partner allowance is not payable to the person in respect of any part of the period.

Note: For *Commonwealth funded employment program* see subsection 23(1).

## **Division 6—Rate of mature age allowance and mature age partner allowance**

### **660XFA How to work out a person's mature age allowance or mature age partner allowance**

A person's mature age allowance or mature age partner allowance rate is worked out by using Pension Rate Calculator A at the end of section 1064 (see Part 3.2).

## **Division 11—Bereavement payments**

### **Subdivision A—Person receiving mature age allowance (death of partner)**

#### **660XKA Qualification for payments under this Subdivision**

- (1) If:
- (a) a person is receiving a mature age allowance; and
  - (b) the person is a member of a couple; and
  - (c) the person's partner dies; and
  - (d) immediately before the partner died, the partner:
    - (i) was receiving a social security pension; or
    - (ii) was receiving a service pension; or
    - (iii) was a long-term social security recipient; and
  - (e) on the person's payday immediately before the first available bereavement adjustment payday, the amount that would be payable to the person if the person were not qualified for payments under this Subdivision is less than the sum of:
    - (i) the amount that would otherwise be payable to the person under section 660XKD (person's continued rate) on that payday; and
    - (ii) the amount that would otherwise be payable to the person under section 660XKB (continued payment of partner's pension or benefit) on the partner's payday immediately before the first available bereavement adjustment payday;

the person is qualified for payments under this Subdivision to cover the bereavement period.

Note 1: Section 660XKB provides for the payment to the person, up to the first available bereavement adjustment payday, of amounts equal to the instalments that would have been paid to the person's partner during that period if the partner had not died.

Note 2: Section 660XKC provides for a lump sum that represents the instalments that would have been paid to the person's partner, between the first available bereavement adjustment payday and the end of the bereavement period, if the partner had not died.

- (2) If:
- (a) a person is receiving a mature age allowance; and
  - (b) immediately before starting to receive the allowance the person was receiving partner bereavement payments; and
  - (c) the bereavement rate continuation period in relation to the death of the person's partner has not ended;
- the person is qualified for payments under this Subdivision to cover the remainder of the bereavement period.
- (3) A person who is qualified for payments under this Subdivision may choose not to receive payments under this Subdivision.
- Note: If a person makes an election, the date of effect of any determination to increase the person's rate of mature age allowance may, in some circumstances, be the day on which the person's partner died (see subsection 660XJP(6)).
- (4) An election under subsection (3):
- (a) must be made by written notice to the Secretary; and
  - (b) may be made after the person has been paid an amount or amounts under this Subdivision; and
  - (c) cannot be withdrawn after the Department has taken all the action required to give effect to that election.
- (5) If a person is qualified for payments under this Subdivision in relation to the partner's death, the rate at which mature age allowance is payable to the person during the bereavement period is, unless the person has made an election under subsection (3), governed by section 660XKD.
- (6) For the purposes of this section, a person is a **long term social security recipient** if:
- (a) the person is either receiving a social security benefit or is a benefit increase partner; and
  - (b) in respect of the previous 12 months, the person:
    - (i) was receiving a social security pension; or
    - (ii) was receiving a social security benefit; or
    - (ia) was receiving a youth training allowance; or
    - (iii) was receiving a service pension; or
    - (iv) was a benefit increase partner.

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- (7) A person is taken to satisfy the requirements of paragraph (6)(b) if:
- (a) the person's receipt of social security pension, social security benefit, youth training allowance or service pension, or the person's status as a benefit increase partner, or a combination of these, was continuous for the period of 12 months; or
  - (b) the person was receiving one or other of the payments referred to in paragraph (6)(b) or had the status of a benefit increase partner, or a combination of these, for 46 weeks of the previous 52.

**660XKB Continued payment of partner's pension**

- (1) If a person is qualified for payments under this Subdivision in relation to the death of the person's partner, there is payable to the person, on each of the partner's paydays in the bereavement rate continuation period the following amount:
- (a) where the partner was receiving a social security pension—the amount that would have been payable to the partner on the payday if the partner had not died; or
  - (b) where the partner was receiving a service pension—the amount that would have been payable to the partner under Part III of the Veterans' Entitlements Act on the service payday that:
    - (i) where the first Thursday after the partner's death was a service payday—precedes the partner's payday; or
    - (ii) in any other case—follows the partner's payday; if the partner had not died.
- (2) For the purposes of subsection (1), if the couple were, immediately before the partner's death, an illness separated couple or a respite care couple, the amounts are to be worked out as if they were not such a couple.

**660XKC Lump sum payable in some circumstances**

If:

- (a) a person is qualified for payments under this Subdivision in relation to the death of the person's partner; and

- (b) the first available bereavement adjustment payday occurs before the end of the bereavement period;
- there is payable to the person as a lump sum an amount worked out using the lump sum calculator at the end of this section.

#### **LUMP SUM CALCULATOR**

This is how to work out the amount of the lump sum:

##### *Method statement*

- Step 1. Work out the amount that would have been payable to the person on the person's payday immediately before the first available bereavement adjustment payday if:
- (a) the person's partner had not died; and
  - (b) where immediately before the partner's death the couple were an illness separated couple or a respite care couple—they were not such a couple.
- Step 2. Work out the amount that would have been payable to the person's partner on the partner's payday or service payday immediately before the first available bereavement adjustment payday if:
- (a) the partner had not died; and
  - (b) where immediately before the partner's death the couple were an illness separated couple or a respite care couple—they were not such a couple.
- Step 3. Add the results of Step 1 and Step 2: the result is called the ***combined rate***.
- Step 4. Work out the amount that, but for section 660XKD, would have been payable to the person on the person's payday immediately before the first available bereavement adjustment payday: the result is called the ***person's individual rate***.

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- Step 5. Take the person's individual rate away from the combined rate: the result is called the *partner's instalment component*.
- Step 6. Work out the number of paydays of the partner in the bereavement lump sum period.
- Step 7. Multiply the partner's instalment component by the number obtained in Step 6: the result is the amount of the lump sum payable to the person under this section.

**660XKD Adjustment of person's mature age allowance rate**

If:

- (a) a person is qualified for payments under this Subdivision;  
and
- (b) the person does not elect under subsection 660XKA(3) not to receive payments under this Subdivision;

the rate of the person's mature age allowance during the bereavement period is worked out as follows:

- (c) during the bereavement rate continuation period, the rate of mature age allowance payable to the person is the rate at which the mature age allowance would have been payable to the person if:
  - (i) the person's partner had not died; and
  - (ii) where immediately before the partner's death the couple were an illness separated couple or a respite care couple—they were not such a couple;
- (d) during the bereavement lump sum period (if any), the rate at which mature age allowance is payable to the person is the rate at which the mature age allowance would be payable to the person apart from this Subdivision.

**660XKE Effect of death of person entitled to payments under this Subdivision**

If:

- (a) a person is qualified for payments under this Subdivision in relation to the death of the person's partner; and
- (b) the person dies within the bereavement period; and



(c) the Secretary does not become aware of the death of the person's partner before the person dies;  
there is payable, to such person as the Secretary thinks appropriate, as a lump sum, an amount worked out using the lump sum calculator at the end of this section.

### **LUMP SUM CALCULATOR**

This is how to work out the amount of the lump sum:

#### *Method statement*

- Step 1. Work out the amount that would have been payable to the person on the person's payday immediately after the day on which the person died if:
- (a) neither the person nor the person's partner had died; and
  - (b) where immediately before the partner's death the couple were an illness separated couple or a respite care couple—they were not such a couple.
- Step 2. Work out the amount that would have been payable to the partner on the person's payday or service payday immediately after the day on which the person died if:
- (a) neither the person nor the partner had died; and
  - (b) where immediately before the partner's death the couple were an illness separated couple or a respite care couple—they were not such a couple.
- Step 3. Add the results of Step 1 and Step 2: the result is called the ***combined rate***.

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- Step 4. Work out the amount that, but for section 660XKD, would have been payable to the person on the person's payday immediately after the day on which the person died if the person had not died: the result is called the *person's individual rate*.
- Step 5. Take the person's individual rate away from the combined rate: the result is called the *partner's instalment component*.
- Step 6. Work out the number of paydays of the partner in the period that commences on the day on which the person dies and ends on the day on which the bereavement period ends.
- Step 7. Multiply the partner's instalment component by the number obtained in Step 6: the result is the amount of the lump sum payable under this section.

**660XKF Matters affecting payment of benefits under this Subdivision**

- (1) If:
- (a) a person is qualified for payments under this Subdivision in relation to the death of the person's partner; and
  - (b) after the person's partner died, an amount to which the partner would have been entitled if the partner had not died has been paid under this Act or under Part III of the Veterans' Entitlements Act; and
  - (c) the Secretary is not satisfied that the person has not had the benefit of that amount;
- the following provisions have effect:
- (d) the amount referred to in paragraph (b) is not recoverable from the person or from the personal representative of the person's partner, except to the extent (if any) that the amount exceeds the amount payable to the person under this Subdivision;
  - (e) the amount payable to the person under this Subdivision is to be reduced by the amount referred to in paragraph (b).

- (2) If:
- (a) a person is qualified for payments under this Subdivision in relation to the death of the person's partner; and
  - (b) an amount to which the person's partner would have been entitled if the person's partner had not died has been paid under this Act or under Part III of the Veterans' Entitlements Act, within the bereavement period, into an account with a bank; and
  - (c) the bank pays to the person, out of the account, an amount not exceeding the total of the amounts paid as mentioned in paragraph (b);
- the bank is, in spite of anything in any other law, not liable to any action, claim or demand by the Commonwealth, the personal representative of the person's partner or anyone else in respect of the payment of that money to the person.

### **Subdivision B—Death of person receiving mature age allowance**

#### **660XKG Death of recipient**

- (1) If:
- (a) a person is receiving mature age allowance; and
  - (b) either:
    - (i) the person is not a member of a couple; or
    - (ii) the person is a member of a couple and the person's partner:
      - (A) is not receiving a social security pension; and
      - (B) is not receiving a service pension; and
  - (c) the person dies;
- there is payable, to such person as the Secretary thinks appropriate, an amount equal to the amount that would have been payable to the person under this Act on the person's payday after the person's death if the person had not died.
- (2) If an amount is paid under subsection (1) in respect of a person, the Commonwealth is not liable to any action, claim or demand for any further payment under that subsection in respect of the person.

Note 2: For death of a person qualified for bereavement payments under Subdivision A see section 660XKE.

**Subdivision C—Continuation of mature age partner allowance  
where partner dies**

**660XKH Continuation of mature age partner allowance for  
bereavement period**

If:

- (a) a person is receiving a mature age partner allowance; and
- (b) the person's partner dies;

the person remains qualified for the mature age partner allowance during the bereavement period as if:

- (c) the partner had not died; and
- (d) the partner had continued to receive a mature age allowance; and
- (e) the person and the partner had continued to be members of a couple.

**660XKI Continued mature age partner allowance rate**

Where a person is qualified for a mature age partner allowance because of section 660XKH, the person's mature age partner allowance rate is worked out as follows:

- (a) during the bereavement rate continuation period, the rate of mature age partner allowance is the rate that would have been payable to the person if:
  - (i) the partner had not died; and
  - (ii) where the couple had been an illness separated couple or a respite care couple—they had not been such a couple;
- (b) during the bereavement lump sum period (if any), the rate of payments under this Subdivision is the rate at which a widow B pension would have been payable to the person if he or she had been qualified for a widow B pension.

**Subdivision D—Person receiving mature age partner allowance  
(death of partner)**

**660XKJ Qualification for payments under this Subdivision**

(1) If:

- (a) a person is receiving a mature age partner allowance; and
- (b) the person's partner dies;

the person is qualified for payments under this Subdivision to cover the bereavement period.

Note 1: Section 660XKK provides for the payment to the person, up to the first available bereavement adjustment payday, of amounts equal to the instalments that would have been paid to the person's partner during that period if the partner had not died.

Note 2: Section 660XKL provides for a lump sum that represents the instalments that would have been paid to the person's partner, between the first available bereavement adjustment payday and the end of the bereavement period, if the partner had not died.

(2) A person who is qualified for payments under this Subdivision may choose not to receive payments under this Subdivision.

(3) An election under subsection (2):

- (a) must be made by written notice to the Secretary; and
- (b) may be made after the person has been paid an amount or amounts under this Subdivision; and
- (c) cannot be withdrawn after the Department has taken all the action required to give effect to that election.

**660XKK Continued payment of partner's allowance**

If a person is qualified for payments under this Subdivision in relation to the death of the person's partner, there is payable to the person, on each day that would have been a payday for the partner in the bereavement rate continuation period, an amount equal to the amount that would have been payable to the person's partner on that day if the partner had not died.

**660XKL Lump sum payable in some circumstances**

If:

- (a) a person is qualified for payments under this Subdivision in relation to the death of the person's partner; and
- (b) the first available bereavement adjustment payday occurs before the end of the bereavement period;

there is payable to the person as a lump sum an amount worked out using the lump sum calculator at the end of this section.

**LUMP SUM CALCULATOR**

This is how to work out the amount of the lump sum:

*Method statement*

Step 1. Work out the amount that would have been payable to the person on the person's payday immediately before the first available bereavement adjustment payday if:

- (a) the person's partner had not died; and
- (b) where immediately before the partner's death the couple were an illness separated couple or a respite care couple—they were not such a couple.

Step 2. Work out the amount that would have been payable to the person's partner on the first day that would have been a payday of the partner on or after the first available bereavement adjustment payday if:

- (a) the partner had not died; and
- (b) where immediately before the partner's death the couple were an illness separated couple or a respite care couple—they were not such a couple.

Step 3. Add the results of Step 1 and Step 2: the result is called the ***combined rate***.

- Step 4. Work out the amount of widow B pension that would have been payable to the person on the person's payday immediately before the first available bereavement adjustment payday if a widow B pension had been payable to the person on that payday: the result is called the *person's individual rate*.
- Step 5. Take the person's individual rate away from the combined rate: the result is called the *partner's instalment component*.
- Step 6. Work out the number of paydays of the partner in the bereavement lump sum period.
- Step 7. Multiply the partner's instalment component by the number obtained in Step 6: the result is the amount of the lump sum payable to the person under this section.

**660XKM Effect of death of person entitled to payments under this Subdivision**

If:

- (a) a person is qualified for payments under this Subdivision in relation to the death of the person's partner; and
- (b) the person dies within the bereavement period; and
- (c) the Secretary does not become aware of the death of the person's partner before the person dies;

there is payable, to such person as the Secretary thinks appropriate, as a lump sum, an amount worked out using the lump sum calculator at the end of this section.

**LUMP SUM CALCULATOR**

This is how to work out the amount of the lump sum:

*Method statement*

- Step 1. Work out the amount that would have been payable to the person on the person's payday immediately after the day on which the person died if:
- (a) neither the person nor the person's partner had died; and
  - (b) where immediately before the partner's death the couple were an illness separated couple or a respite care couple—they were not such a couple.
- Step 2. Work out the amount that would have been payable to the person's partner on the first day that would have been a payday of the partner on or after the day on which the person died if:
- (a) neither the person nor the partner had died; and
  - (b) where immediately before the partner's death the couple were an illness separated couple or a respite care couple—they were not such a couple.
- Step 3. Add the results of Step 1 and Step 2: the result is called the ***combined rate***.
- Step 4. Work out the amount that, but for sections 660XKH and 660XKI, would have been payable to the person on the person's payday immediately after the day on which the person died if the person had not died: the result is called the ***person's individual rate***.
- Step 5. Take the person's individual rate away from the combined rate: the result is called the ***partner's instalment component***.



- Step 6. Work out the number of paydays of the partner in the period that commences on the day on which the person dies and ends on the day on which the bereavement period ends.
- Step 7. Multiply the partner's instalment component by the number obtained in Step 6: the result is the amount of the lump sum payable under this section.

**660XKN Matters affecting payment of benefits under this Subdivision**

(1) If:

- (a) a person is qualified for payments under this Subdivision in relation to the death of the person's partner; and
- (b) after the person's partner died, an amount to which the partner would have been entitled if the partner had not died has been paid under this Act or under Part III of the Veterans' Entitlements Act; and
- (c) the Secretary is not satisfied that the person has not had the benefit of that amount;

the following provisions have effect:

- (d) the amount referred to in paragraph (b) is not recoverable from the person or from the personal representative of the person's partner, except to the extent (if any) that the amount exceeds the amount payable to the person under this Subdivision;
- (e) the amount payable to the person under this Subdivision is to be reduced by the amount referred to in paragraph (b).

(2) If:

- (a) a person is qualified for payments under this Subdivision in relation to the death of the person's partner; and
- (b) an amount to which the person's partner would have been entitled if the person's partner had not died has been paid under this Act or under Part III of the Veterans' Entitlements Act, within the bereavement period, into an account with a bank; and

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(c) the bank pays to the person, out of that account, an amount not exceeding the total of the amounts paid as mentioned in paragraph (b);

the bank is, in spite of anything in any other law, not liable to any action, claim or demand by the Commonwealth, the personal representative of the person's partner or anyone else in respect of the payment of that money to the person.

## **Part 2.12B—Mature age (post-30 June 1996) allowance**

### **Division 1—Application of Part**

#### **660YAA Application of Part**

This Part deals with mature age allowance to which Part 2.12A does not apply.

#### **660YAB Time limits on claims for mature age allowance**

- (1) In spite of any other provisions of this Act or of the Administration Act, a person is not to be granted a mature age allowance under this Part unless:
  - (a) the person's claim for the allowance:
    - (i) was lodged before 20 September 2003; or
    - (ii) is taken, because of the operation of section 13 or 15 of the Administration Act, to have been made before 20 September 2003; and
  - (b) the person was qualified for the allowance:
    - (i) in a case to which subparagraph (a)(i) applies—on the date of lodgment of the claim; and
    - (ii) in a case to which subparagraph (a)(ii) applies—on the date the person is taken to have made the claim.
- (2) Subsection (1) does not imply that a person making a claim in the circumstances referred to in subsection 35(1) of the Administration Act before 20 September 2003 will be granted a mature age allowance if the date from which the allowance would be payable to that person under subsection 37(7) of that Act would be 20 September 2003 or a later date.
- (3) Nothing in this section affects the operation of section 85 of the Administration Act.

## Division 2—Qualification for mature age allowance

### 660YBA Qualification for mature age allowance

- (1) A person is qualified for a mature age allowance in respect of a period if the person fulfils the requirements set out in this section in respect of the period.
- (2) The first requirement is that the person has reached 60 years of age but has not reached pension age.  
Note: For *pension age* see section 23.
- (3) Subject to subsection (4), the second requirement is that either of the following paragraphs applies to the person:
  - (a) the person was receiving a job search allowance or a newstart allowance immediately before the claim lodgment day and has been receiving an income support payment for a continuous period of at least 9 months immediately before the claim lodgment day;
  - (b) at any time during the period of 13 weeks immediately before the claim lodgment day the person received a social security pension, a service pension, income support supplement, a widow allowance, a partner allowance, sickness allowance, benefit PP (partnered) or a parenting allowance (other than a non-benefit parenting allowance).

Note 1: For *income support payment* see subsection 23(1).

Note 2: For calculation of continuous period of receipt of income support payments see section 38B.
- (4) The requirement set out in subsection (3) does not apply to a person who has previously received mature age allowance under this Part or Part 2.12A.
- (5) The third requirement is that the person satisfies the Secretary that the person has no recent workforce experience.
- (6) For the purposes of subsection (5), *recent workforce experience* is employment of 20 hours or more a week for a total of 13 weeks or more at any time during the 12 months immediately before the claim lodgment day.

(7) The fourth requirement is that the person is an Australian resident.

Note: For *Australian resident* see section 7.

(11) In this section:

*claim lodgment day* means the day on which the claim is lodged.

Note: A mature age allowance is not payable in certain situations even if the person is qualified (see Division 3).

### **660YBB Assurance of support**

A person is not qualified for mature age allowance in respect of a period if the Secretary is satisfied that:

- (a) an assurance of support is in force in respect of the person (the *assuree*) for the period; and
- (b) throughout the period the person who gave the assurance of support is willing and able to provide an adequate level of support to the assuree; and
- (c) throughout the period it would be reasonable for the assuree to accept the support.

Note: For *assurance of support* see subsection 23(1).

## **Division 3—Payability of mature age allowance**

### **660YCA Mature age allowance not payable if allowance rate nil**

- (1) Subject to subsection (2), a mature age allowance is not payable to a person if the person's mature age allowance rate would be nil.
- (2) Subsection (1) does not apply to a person if the person's rate would be nil merely because an advance pharmaceutical allowance has been paid to the person under:
  - (a) the social security law; or
  - (b) Division 2 of Part VIIA of the Veterans' Entitlements Act.

### **660YCF Multiple entitlement exclusion**

- (1) A mature age allowance is not payable to a person if the person is already receiving a mature age allowance under Part 2.12A, a service pension or income support supplement.
- (2) If:
  - (a) a person is receiving a mature age allowance; and
  - (b) another social security benefit, a social security pension, a service pension or income support supplement becomes payable to the person;the mature age allowance is not payable to the person.
- (3) Subject to subsection (4), a mature age allowance is not payable to a woman if:
  - (a) the woman is an armed services widow; and
  - (b) the woman is receiving a pension under Part II or IV of the Veterans' Entitlements Act at a rate determined under or by reference to subsection 30(1) of that Act.

Note 1: For *armed services widow* see subsection 4(1).

Note 2: A widow receiving a payment under the Veterans' Entitlements Act who is not covered by paragraph (3)(b) may be paid at a lower rate (see subsection 1068(3)).

- (4) Subsection (3) does not apply to a woman if:
- (a) the woman has been receiving a payment referred to in paragraph (3)(b) continuously since before 1 November 1986; and
  - (b) before 1 November 1986 the woman was also receiving a social security benefit.
- (5) A mature age allowance is not payable to a man if:
- (a) the man is an armed services widower; and
  - (b) the man is receiving a pension under Part II or IV of the Veterans' Entitlements Act at a rate determined under or by reference to subsection 30(1) of that Act.

Note: For *armed services widower* see subsection 4(1).

- (6) A mature age allowance is not payable to a person if:
- (a) the person is an armed services widow or armed services widower; and
  - (b) the person has received a lump sum, or is receiving weekly amounts, mentioned in paragraph 234(1)(b) of the MRCA.

Note 1: For *armed services widow* and *armed services widower* see subsection 4(1).

Note 2: For *MRCA* see subsection 23(1).

### **660YCFA Newly arrived resident's waiting period**

- (1) Subject to this section, a person who:
- (a) has entered Australia on or after 1 January 1993; and
  - (b) has not been an Australian resident and in Australia for a period of, or periods totalling, 104 weeks;
- is subject to a newly arrived resident's waiting period.

- (2) Subsection (1) does not apply to a person who has a qualifying residence exemption for a mature age allowance.

Note: For *qualifying residence exemption* see subsections 7(6) and 7(6AA).

- (4) Subsection (1) does not apply to a person if:
- (a) the person is already subject to a newly arrived resident's waiting period; or
  - (b) the person has already served a newly arrived resident's waiting period; or

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- (c) the person:
  - (i) has previously entered Australia before 1 January 1993; and
  - (ii) held a permanent entry permit granted under the *Migration Act 1958* as then in force, or a permanent visa, before the person's last departure from Australia.
- (5) Subsection (1) does not apply to a person if:
  - (a) the person is a New Zealand citizen; and
  - (b) the person was an Australian resident on 1 February 2000.

**660YCFB Duration of newly arrived resident's waiting period**

- (1) If a person is subject to a newly arrived resident's waiting period, the period starts on the day the person first became an Australian resident.
- (3) The newly arrived resident's waiting period ends when the person has been an Australian resident and in Australia for a period of, or periods totalling, 104 weeks.

Note: This rule does not apply to people who were already subject to, or had already served, a newly arrived resident's waiting period before the commencement of this rule. Clause 121 of Schedule 1A to this Act continues the application of the previous rules to those people.

**660YCG Educational and other schemes exclusion**

- (1) Subject to subsections (2) and (3), a mature age allowance is not payable to a person for a period if a payment has been or may be made in respect of the person for that period under:
  - (a) a prescribed educational scheme other than the ABSTUDY Scheme to the extent that it applies to part-time students; or
  - (b) the scheme to provide an allowance known as the Maintenance Allowance for Refugees.

Note 1: For *prescribed educational scheme* see section 5.

- (2) If:
  - (a) a person enrolls in a full-time course of education; and
  - (b) a payment under a scheme referred to in subsection (1) may be made in respect of the person;



the Secretary may decide that, in spite of subsection (1), mature age allowance is payable to the person for a period before the person starts the course.

(3) If:

- (a) a person enrolls in a full-time course of education; and
- (b) the course is to last for 6 months or longer; and
- (c) an application is made for a payment in respect of the person under:
  - (ii) the ABSTUDY Schools Scheme; or
  - (iii) the ABSTUDY Tertiary Scheme; and
- (d) the person was receiving mature age allowance immediately before the start of the course;

the Secretary may decide that, in spite of subsection (1), mature age allowance is payable to the person until:

- (e) the application is determined; or
- (f) the end of 3 weeks beginning on the day on which the course starts;

whichever happens first.

#### **660YCH Maximum basic rate and remote area allowance not payable to CDEP Scheme participant**

The maximum basic rate, and the remote area allowance, of mature age allowance for a period are not payable to a person who is a CDEP Scheme participant in respect of the whole or a part of the period.

Note 1: For *remote area allowance* see Module J of Benefit Rate Calculator B.

Note 2: For *CDEP Scheme participant* see subsection 23(1).

#### **660YCI Exclusion for non-payment period for job search allowance, newstart allowance or partner allowance**

If:

- (a) a period of non-payment of newstart allowance or partner allowance has been imposed in respect of a person; and

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(b) the period has not ended;  
mature age allowance is not payable to the person for the period.

Note 2: For the imposition of a period of non-payment of newstart allowance see Subdivision F of Division 1 of Part 2.12 and section 634.

Note 3: For the imposition of a period of non-payment of partner allowance see paragraph 771HC(1)(b).

**660YCJ Allowance not payable if assets value limit exceeded**

[see Appendix for CPI adjusted figures]

- (1) A mature age allowance is not payable to a person if the value of the person's assets is greater than the person's assets value limit.
- (2) A person's assets value limit is calculated by working out which family situation in column 2 of the following Table applies to the person; the assets value limit is the corresponding amount in column 3.

<b>Assets value limit table</b>			
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	
<b>Item</b>	<b>Person's family situation</b>	<b>Assets value limit</b>	
		<b>Column 3A</b>	<b>Column 3B</b>
		<b>Either the person or the partner is a homeowner</b>	<b>Neither the person nor the partner is a homeowner</b>
1.	Not member of a couple	\$118,000	\$202,000
2.	Partnered (partner getting neither pension nor allowance)	\$167,500	\$251,500
3.	Partnered (partner getting pension or allowance)	\$83,750	\$125,750

Note 1: For *members of a couple, partnered (partner getting neither pension nor allowance)* and *partnered (partner getting pension or allowance)* see section 4.

Note 2: For *homeowner* see section 11.

- Note 3: If item 2 applies to a person, the value of *all* the assets of the person's partner is to be taken as being included in the value of the person's assets (see subsection 660YCK(1))—this is why the assets value limit is so high. If, on the other hand, item 3 applies to a person, the value of the person's assets is only *half* the combined value of the person's assets and the assets of the person's partner (see subsection 660YCK(2)).
- Note 4: If a mature age allowance is not payable to a person because of the value of the person's assets, the person may be able to take advantage of provisions dealing with financial hardship (see sections 1131 and 1132).
- Note 5: The assets value limits of items 1 and 3 in column 3A and item 3 in column 3B are indexed annually in line with CPI increases (see sections 1191 to 1194).
- Note 6: The assets value limit of item 1 in column 3B is adjusted annually (see subsection 1204(1)).
- Note 7: The assets value limits of item 2 are adjusted annually so that they are twice the corresponding item 3 limits (see subsections 1204(2) and (3)).

### **660YCK Value of assets of members of couples**

(1) If:

- (a) a person is a member of a couple; and
- (b) the person's partner is not in receipt of an income support payment;

the value of the person's assets, or of assets of a particular kind of the person, includes the value of the partner's assets or of assets of that kind of the partner.

(2) If:

- (a) a person is a member of a couple; and
- (b) the person's partner is in receipt of an income support payment;

the following paragraphs apply:

- (c) the value of the person's assets is taken to be 50% of the sum of the value of the assets of the person and the value of the assets of the person's partner; and
- (d) the value of the person's assets of a particular kind is taken to be 50% of the sum of the value of the assets of that kind of the person and the value of the assets of that kind of the person's partner.

Note: For *income support payment* see subsection 23(1).

### **660YCL Seasonal workers**

- (1) This section applies if, at any time during the 6 months immediately before the day on which a person lodges a claim for mature age allowance, the person, or, if the person is a member of a couple, the person or the person's partner, has been engaged in seasonal work.

Note: For *seasonal work* see subsection 16A(1).

- (2) Mature age allowance is not payable to the person:
- (a) if the person is subject to a seasonal work preclusion period (whether in relation to the claim referred to in subsection (1) or any other claim under this Act) and the Secretary has not made a determination under subsection (3) in relation to the person—for the person's seasonal work preclusion period; or
  - (b) if the Secretary has made a determination under subsection (3) in relation to the person—for that part (if any) of the person's seasonal work preclusion period to which the person is subject as a result of the determination.

Note: For *seasonal work preclusion period* see subsection 16A(1).

- (3) If the Secretary is satisfied that a person is in severe financial hardship because the person has incurred unavoidable or reasonable expenditure while the person is subject to a seasonal work preclusion period (whether in relation to the claim referred to in subsection (1) or any other claim under this Act):
- (a) the Secretary may determine that the person is not subject to the whole, or any part, of the preclusion period; and
  - (b) the determination has effect accordingly.

Note 1: For *in severe financial hardship* see subsection 19C(2) (person who is not a member of a couple) and subsection 19C(3) (person who is a member of a couple).

Note 2: For *unavoidable or reasonable expenditure* see subsection 19C(4).

## **Division 6—Rate of mature age allowance**

### **660YFA How to work out a person’s mature age allowance**

A person’s mature age allowance rate is worked out by using Benefit Rate Calculator B at the end of section 1068 (see Part 3.6).

### **660YGI CDEP Scheme participant may accumulate mature age allowance**

- (1) A person who is a CDEP Scheme participant in respect of the whole or a part of a quarter may, by written notice given to the Secretary, choose to accumulate the amounts of any mature age allowance that become payable to the person in respect of that quarter, or any later quarter in respect of the whole or a part of which the person is a CDEP Scheme participant, and have not already been paid.
- (2) If a person to whom subsection (1) applies makes a choice under that subsection, the sum of the accumulated amounts payable to the person in respect of a quarter is to be paid on, or as soon as practicable after, the first payday after:
  - (a) unless paragraph (b) applies, the last day of the quarter; or
  - (b) if the person ceases to be a CDEP Scheme participant before the end of the quarter—the day on which the person so ceases.
- (3) In this section:

***quarter*** means a CDEP Scheme quarter.

Note 1: For ***CDEP Scheme participant*** see section 1188B.

Note 2: For ***CDEP Scheme quarter*** see subsection 23(1).

## **Division 11—Bereavement payments**

### **Subdivision A—Preliminary**

#### **660YKA Surviving partner and deceased partner**

If:

- (a) a person is receiving mature age allowance; and
- (b) the person's partner dies;

then, for the purposes of this Division:

- (c) the person is the surviving partner; and
- (d) the person's partner is the deceased partner.

### **Subdivision B—Continuation of mature age allowance following death of recipient's partner**

#### **660YKB Continuation of mature age allowance for bereavement period**

- (1) This section applies if:
  - (a) a person is receiving mature age allowance; and
  - (b) the person's partner dies; and
  - (c) immediately before the deceased partner died, the partner:
    - (i) was a long-term social security recipient; or
    - (ii) was receiving a social security pension, a service pension or income support supplement; and
  - (d) immediately before the deceased partner died, the surviving partner was a long-term social security recipient.
- (2) The surviving partner remains qualified for mature age allowance during the bereavement period as if:
  - (a) the deceased partner had not died; and
  - (b) the deceased partner had continued to receive an income support payment; and
  - (c) the surviving partner and the deceased partner had continued to be members of a couple.

- (3) The surviving partner's mature age allowance rate during the bereavement rate continuation period is the rate that would have been payable to the surviving partner if:
- (a) the deceased partner had not died; and
  - (b) if the couple had been an illness separated couple or a respite care couple—they had not been such a couple.

- (4) The surviving partner's mature age allowance rate during the bereavement lump sum period (if any) is the rate at which mature age allowance would have been payable to the surviving partner if he or she was not a member of a couple.

Note 1: For *long-term social security recipient* see subsection 23(1).

Note 2: For *bereavement period, bereavement rate continuation period* and *bereavement lump sum period* see section 21.

Note 3: For *illness separated couple* and *respite care couple* see subsections 4(7) and 4(8) respectively.

Note 4: For *income support payment* see subsection 23(1).

### **Subdivision C—Bereavement payments for person receiving mature age allowance following death of the person's partner**

#### **660YKC Qualification for payments under this Subdivision**

- (1) If:
- (a) a person is receiving mature age allowance; and
  - (b) the person's partner dies; and
  - (c) immediately before the deceased partner died, the partner:
    - (i) was a long-term social security recipient; or
    - (ii) was receiving a social security pension, a service pension or income support supplement; and
  - (d) immediately before the deceased partner died, the surviving partner was a long-term social security recipient; and
  - (e) on the person's payday immediately before the first available bereavement adjustment payday, the amount that would be payable to the person if the person were not qualified for payments under this Subdivision is less than the sum of:
    - (i) the amount that would otherwise be payable to the person under section 660YKB (person's continued rate) on that payday; and

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- (ii) the amount that would otherwise be payable to the person under section 660YKD (continued payment of partner's pension or benefit) on the partner's payday immediately before the first available bereavement adjustment payday;

the surviving partner is qualified for payments under this Subdivision to cover the bereavement period.

Note 1: Section 660YKD provides for the payment to the surviving partner, up to the first available bereavement adjustment payday, of amounts equal to the instalments that would have been paid to the deceased partner during that period if the partner had not died.

Note 2: Section 660YKE provides for payment to the surviving partner of a lump sum that represents the instalments that would have been paid to the deceased partner, between the first available bereavement adjustment payday and the end of the bereavement period, if the deceased partner had not died.

Note 3: For *bereavement period* see section 21.

- (2) A surviving partner who is qualified for payments under this Subdivision may choose not to receive payments under this Subdivision.
- (3) An election under subsection (2):
- (a) must be made by written notice to the Secretary; and
  - (b) may be made after the surviving partner has been paid an amount or amounts under this Subdivision; and
  - (c) cannot be withdrawn after the Department has taken all the action required to give effect to that election.

**660YKD Continued payment of deceased partner's previous entitlement**

If a surviving partner is qualified for payments under this Subdivision in relation to the death of the deceased partner, there is payable to the surviving partner, on each of the deceased partner's paydays in the bereavement rate continuation period, an amount equal to the amount that would have been payable to the deceased partner on that payday if he or she had not died.

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



**660YKE Lump sum payable in some circumstances**

If:

- (a) a surviving partner is qualified for payments under this Subdivision in relation to the death of the deceased partner; and
- (b) the first available bereavement adjustment payday occurs before the end of the bereavement period;

there is payable to the surviving partner as a lump sum an amount worked out using the following Lump Sum Calculator:

**LUMP SUM CALCULATOR**

This is how to work out the amount of the lump sum:

*Method statement*

Step 1. Work out the amount that would have been payable to the surviving partner on the surviving partner's payday immediately before the first available bereavement adjustment payday if:

- (a) the deceased partner had not died; and
- (b) if immediately before the partner's death the couple were an illness separated couple or a respite care couple—they were not such a couple.

Note: For *illness separated couple* and *respite care couple* see subsections 4(7) and 4(8) respectively.

Step 2. Work out the amount that would have been payable to the deceased partner on the deceased partner's payday immediately before the first available bereavement adjustment payday if:

- (a) the deceased partner had not died; and

- (b) if immediately before the partner's death the couple were an illness separated couple or a respite care couple—they were not such a couple.

Note: For *illness separated couple* and *respite care couple* see subsections 4(7) and 4(8) respectively.

Step 3. Add the results of Step 1 and Step 2: the result is called the *combined rate*.

Step 4. Work out the amount of mature age allowance that would have been payable to the surviving partner on the surviving partner's payday immediately before the first available bereavement adjustment payday if:

- (a) mature age allowance had been payable to the surviving partner on that payday; and
- (b) the surviving partner was not a member of a couple on that payday:

the result is called the *surviving partner's notional rate*.

Step 5. Take the surviving partner's notional rate away from the combined rate: the result is called the *deceased partner's instalment component*.

Step 6. Work out the number of the deceased partner's paydays in the bereavement lump sum period.

Step 7. Multiply the deceased partner's instalment component by the number obtained in Step 6: the result is the amount of the lump sum payable to the surviving partner under this section.

Note: For *bereavement period*, *bereavement lump sum period* and *first available bereavement adjustment payday* see section 21.

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**660YKF Effect of death of surviving partner**

If:

- (a) a surviving partner is qualified for payments under this Subdivision in relation to the death of the deceased partner; and
- (b) the surviving partner dies within the bereavement period; and
- (c) the Secretary does not become aware of the death of the deceased partner before the surviving partner dies;

there is payable, as a lump sum, to any person that the Secretary thinks appropriate, an amount worked out using the following Lump Sum Calculator:

**LUMP SUM CALCULATOR**

This is how to work out the amount of the lump sum:

*Method statement*

Step 1. Work out the amount that would have been payable to the surviving partner on the surviving partner's payday immediately after the day on which the surviving partner died if:

- (a) neither the surviving partner nor the deceased partner had died; and
- (b) if immediately before the deceased partner's death the couple were an illness separated couple or a respite care couple—they were not such a couple.

Note: For *illness separated couple* and *respite care couple* see subsections 4(7) and 4(8) respectively.

Step 2. Work out the amount that would have been payable to the deceased partner on the deceased partner's payday immediately after the day on which the surviving partner dies if:

- (a) neither the surviving partner nor the deceased partner had died; and

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- (b) if immediately before the deceased partner's death the couple were an illness separated couple or a respite care couple—they were not such a couple.

Note: For *illness separated couple* and *respite care couple* see subsections 4(7) and 4(8) respectively.

Step 3. Add the results of Step 1 and Step 2: this result is called the *combined rate*.

Step 4. Work out the amount of mature age allowance that would have been payable to the surviving partner on the surviving partner's payday immediately after the day on which the surviving partner died if:

- (a) mature age allowance had been payable to the surviving partner on that payday; and
- (b) the surviving partner was not a member of a couple on that payday:

the result is called the *surviving partner's notional rate*.

Step 5. Take the surviving partner's notional rate away from the combined rate: the result is called the *deceased partner's instalment component*.

Step 6. Work out the number of the surviving partner's paydays in the period that starts on the day on which the surviving partner dies and ends on the day on which the bereavement period ends.

Step 7. Multiply the deceased partner's instalment component by the number obtained in Step 6: the result is the amount of the lump sum payable under this section.

Note: For *bereavement period* and *first available bereavement adjustment payday* see section 21.

**660YKG Matters affecting payments under this Subdivision**

(1) If:

- (a) the surviving partner is qualified for payments under this Subdivision; and
- (b) after the deceased partner died, an amount to which the deceased partner would have been entitled if he or she had not died has been paid under this Act or under Part III of the Veterans' Entitlements Act; and
- (c) the Secretary is not satisfied that the surviving partner had not had the benefit of that amount;

the following provisions have effect:

- (d) the amount referred to in paragraph (b) is not recoverable from the surviving partner or from the personal representative of the deceased partner, except to the extent (if any) to which the amount is greater than the amount payable to the surviving partner under this Subdivision;
- (e) the amount payable to the surviving partner under this Subdivision is to be reduced by the amount referred to in paragraph (b).

(2) If:

- (a) the surviving partner is qualified for payments under this Subdivision; and
- (b) an amount to which the deceased partner would have been entitled if the deceased partner had not died has been paid under this Act or under Part III of the Veterans' Entitlements Act, within the bereavement period, into an account with a financial institution; and
- (c) the financial institution pays to the surviving partner, out of that account, an amount not exceeding the total of the amounts paid as mentioned in paragraph (b);

the financial institution is, in spite of anything in any other law, not liable to any action, claim or demand by the Commonwealth, the personal representative of the deceased partner or anyone else in respect of the payment of that money to the surviving partner.

Note: For *bereavement period* see section 21.

**Subdivision D—Bereavement payment in respect of former  
CDEP Scheme participant**

**660YKH Calculation of bereavement payment in respect of former  
CDEP Scheme participant**

If a benefit becomes payable under this Division in respect of a person who was a CDEP Scheme participant in respect of the day on which the benefit becomes payable, the amount of the benefit is to be the amount that would have been the amount of the benefit if section 660YCH had not been enacted.

Note: For *CDEP Scheme participant* see section 1188B.

## **Part 2.13A—Education entry payment**

### **Division 1—Recipients of pension PP (single)**

#### **665A Payment to recipient of pension PP (single)**

A person is qualified for an education entry payment under this section if:

- (a) the person is receiving a pension PP (single); and
- (b) a pensioner education supplement is payable to the person; and

Note: Pensioner education supplement is payable to a person even if a person's whole payment has been traded in, or traded back, under the Student Financial Supplement Scheme established under Chapter 2B.

- (c) the person has not received a payment under this Part for which he or she made a claim in the current calendar year.

#### **665B Amount of section 665A payment**

The amount of an education entry payment under section 665A is \$208.

#### **665C Need for claim**

A person is not qualified for an education entry payment under section 665A unless the person has made a claim for the payment.

## **Division 2—Recipients of disability support pension or disability wage supplement**

### **665E Payment to a disability support pensioner**

A person is qualified for an education entry payment under this section if:

- (a) the person is receiving a disability support pension; and
- (b) a pensioner education supplement is payable to the person; and

**Note:** Pensioner education supplement is payable to a person even if a person's whole payment has been traded in, or traded back, under the Student Financial Supplement Scheme established under Chapter 2B.

- (d) the person has not received a payment under this Part for which he or she made a claim in the current calendar year.

### **665F Amount of section 665E payment**

The amount of an education entry payment under section 665E is \$208.

### **665G Need for claim**

A person is not qualified for an education entry payment under section 665E unless the person has made a claim for the payment.



## **Division 3—Widow B pension recipients**

### **665I Payment to a widow B pensioner**

A woman is qualified for an education entry payment under this section if:

- (a) the woman is receiving a widow B pension; and
- (b) a pensioner education supplement is payable to the person; and

Note: Pensioner education supplement is payable to a person even if a person's whole payment has been traded in, or traded back, under the Student Financial Supplement Scheme established under Chapter 2B.

- (d) the woman has not received a payment under this Part for which she made a claim in the current calendar year.

### **665J Amount of section 665I payment**

The amount of an education entry payment under section 665I is \$200.

### **665K Need for claim**

A person is not qualified for an education entry payment under section 665I unless the person has made a claim for the payment.

## **Division 4—Special benefit recipients**

### **665M Payment to a special benefit recipient**

A person is qualified for an education entry payment under this section if:

- (a) the person would be qualified for a pension PP (single) apart from paragraphs 500(1)(b) and (d) (Australian residency requirements); and
- (b) the person is receiving special benefit; and
- (c) a pensioner education supplement is payable to the person; and

**Note:** Pensioner education supplement is payable to a person even if a person's whole payment has been traded in, or traded back, under the Student Financial Supplement Scheme established under Chapter 2B.

- (e) the person has not received a payment under this Part for which he or she made a claim in the current calendar year.

### **665N Amount of section 665M payment**

The amount of an education entry payment under section 665M is \$208.

### **665P Need for claim**

A person is not qualified for an education entry payment under section 665M unless the person has made a claim for the payment.

## Division 6—Newstart allowance recipients

### 665U Payment to recipient

- (1) A person is qualified for an education entry payment under this section if:
- (a) either:
    - (i) the Secretary is satisfied that the person intends to enrol in a full-time course of education that is an approved course under the ABSTUDY scheme or an approved course of education or study for the purposes of paragraph 541B(1)(c) or 569A(b); or
    - (ii) the person is enrolled in such a course; and
  - (b) immediately before starting the course of education:
    - (i) the person is receiving a newstart allowance; and
    - (ii) the person had been receiving income support payments in respect of a continuous period of at least 12 months (whether or not the kind of payment received has changed over the period and whether the period or any part of it occurred before or after the commencement of this section); and
- Note 1: For *income support payment* see subsection 23(1).
- Note 2: For the determination of whether a person received income support payments in respect of a continuous period of at least 12 months see section 38B.
- (c) the person:
    - (i) ceases to be qualified for newstart allowance because the person takes part in the course of education; or
    - (ii) is not qualified for youth allowance as a full-time student, austudy payment or payments under the ABSTUDY scheme because the person takes part in the course to satisfy the activity test under section 601 or to comply with a Newstart Activity Agreement; and
  - (d) the person has not, within the last 12 months, received a payment under this Part.

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- (2) A person is also taken to be qualified for an education entry payment under this section if:
- (a) immediately before 20 September 1996, the person:
    - (i) was qualified for an education entry payment under section 665Q of this Act, or under this section, as in force immediately before that date; or
    - (ii) would have been so qualified if the person had, before that date, duly made a claim for the payment; and
  - (b) the person has not received the payment.

*Reduction of qualification period during designated period*

- (3) Subsection (1) has effect during the designated period as if the reference in subparagraph (b)(ii) to 12 months were a reference to 4 weeks.
- (4) For the purposes of subsection (3), the *designated period* is the period beginning on 1 January 2009 and ending at the end of:
- (a) 30 June 2010; or
  - (b) if a later date is determined by the Minister by legislative instrument—that later date.

**665V Amount of section 665U payment**

The amount of an education entry payment under section 665U is \$208.

**665W Need for claim**

A person is not qualified for an education entry payment under section 665U unless the person has made a claim for the payment.

## **Division 7—Mature age allowance recipient**

### **665Y Payment to a mature age allowance recipient**

A person is qualified for an education entry payment under this section if:

- (a) either:
  - (i) the Secretary is satisfied that the person intends to enrol in a course of education (whether full-time or part-time) that is an approved course under the ABSTUDY schemes; or
  - (ii) the person is enrolled in such a course; and
- (b) immediately before commencing the course of education, the person is receiving mature age allowance; and
- (c) the person has not, within the last 12 months, received a payment under this Part.

### **665Z Amount of section 665Y payment**

The amount of an education entry payment under section 665Y is \$208.

### **665ZA Need for claim**

A person is not qualified for an education entry payment under section 665Y unless the person has made a claim for the payment.

## Division 8—Widow allowance recipients

### 665ZC Payment to a widow allowance recipient

- (1) A woman is qualified for an education entry payment under this section if:
- (a) either:
    - (i) the Secretary is satisfied that she intends to enrol in a full-time or part-time course of education that is an approved course under the ABSTUDY scheme; or
    - (ii) she is enrolled in such a course; and
  - (b) immediately before she commences the course of education, she:
    - (i) is receiving widow allowance; and
    - (ii) is a long-term social security recipient; and
  - (c) she has not, within the last 12 months, received a payment under this Part.

Note 1: For *long-term social security recipient* see subsection 23(1).

Note 2: Transitional provisions apply to this section for 9 months after 1 January 1995 (see section 11 of the *Social Security (Parenting Allowance and Other Measures) Legislation Amendment Act 1994*).

#### *Reduction of qualification period during designated period*

- (2) Subsection (1) has effect during the designated period as if it were modified as follows:
- (a) by omitting subparagraph (b)(ii) and substituting the following subparagraph:
    - (ii) had been receiving income support payments in respect of a continuous period of at least 4 weeks (whether or not the kind of payment received has changed over the period and whether the period or any part of it occurred before or after 1 January 2009); and
  - (b) by omitting Note 1 and substituting the following notes:

Note 1: For *income support payment* see subsection 23(1).

Note 1A: For the determination of whether a person received income support payments in respect of a continuous period of at least 4 weeks see section 38B.

- (3) For the purposes of subsection (2), the *designated period* is the period beginning on 1 January 2009 and ending at the end of:
- (a) 30 June 2010; or
  - (b) if a later date is determined by the Minister by legislative instrument—that later date.

**665ZD Amount of section 665ZC payment**

The amount of an education entry payment under section 665ZC is \$208.

**665ZE Need for claim**

A person is not qualified for an education entry payment under section 665ZC unless the person has made a claim for the payment.

## **Division 8A—Carer payment recipients**

### **665ZFA Payment to a carer payment recipient**

A person is qualified for an education entry payment under this section if:

- (a) the person is receiving a carer payment; and
- (b) a pensioner education supplement is payable to the person; and

Note: Pensioner education supplement is payable to a person even if a person's whole payment has been traded in, or traded back, under the Student Financial Supplement Scheme established under Chapter 2B.

- (d) the person has not received a payment under this Part for which he or she made a claim in the current calendar year.

### **665ZFB Amount of section 665ZFA payment**

The amount of an education entry payment under section 665ZFA is \$208.

### **665ZFC Need for claim**

A person is not qualified for an education entry payment under section 665ZFA unless the person has made a claim for the payment.



## **Division 9—Mature age partner allowance**

### **665ZG Payment to a mature age partner allowance recipient**

A person is qualified for an education entry payment under this section if:

- (a) either:
  - (i) the Secretary is satisfied that the person intends to enrol in a full-time or part-time course of education that is an approved course under the ABSTUDY scheme; or
  - (ii) the person is enrolled in such a course; and
- (b) immediately before the person commences the course of education, the person is receiving a mature age partner allowance; and
- (c) the person has not received a payment under this Part for which he or she made a claim in the current calendar year.

### **665ZH Amount of section 665ZG payment**

The amount of an education entry payment under section 665ZG is \$208.

### **665ZJ Need for claim**

A person is not qualified for an education entry payment under section 665ZG unless the person has made a claim for the payment.

## **Division 10—Wife pension recipients**

### **665ZL Payment to a wife pensioner**

A woman is qualified for an education entry payment under this section if:

- (a) either:
  - (i) the Secretary is satisfied that she intends to enrol in a full-time or part-time course of education that is an approved course under the ABSTUDY scheme; or
  - (ii) she is enrolled in such a course; and
- (b) immediately before she commences the course of education, she is receiving a wife pension; and
- (c) she has not received a payment under this Part for which she made a claim in the current calendar year.

### **665ZM Amount of section 665ZL payment**

The amount of an education entry payment under section 665ZL is \$200.

### **665ZN Need for claim**

A person is not qualified for an education entry payment under section 665ZL unless the person has made a claim for the payment.

## Division 11—Partner allowance recipients

### 665ZQ Payment to a partner allowance recipient

- (1) A person is qualified for an education entry payment under this section if:
- (a) either:
    - (i) the Secretary is satisfied that the person intends to enrol in a full-time course of education that is an approved course under the ABSTUDY scheme; or
    - (ii) the person is enrolled in such a course; and
  - (b) immediately before the person commences the course of education, the person:
    - (i) is receiving partner allowance; and
    - (ii) is a long-term social security recipient; and
  - (c) the person has not, within the last 12 months, received a payment under this Part.

Note 1: For *long-term social security recipient* see subsection 23(1).

Note 2: Transitional provisions apply to this section for 3 months after 1 July 1995 (see section 12 of the *Social Security (Parenting Allowance and Other Measures) Legislation Amendment Act 1994*).

#### *Reduction of qualification period during designated period*

- (2) Subsection (1) has effect during the designated period as if it were modified as follows:
- (a) by omitting subparagraph (b)(ii) and substituting the following subparagraph:
    - (ii) had been receiving income support payments in respect of a continuous period of at least 4 weeks (whether or not the kind of payment received has changed over the period and whether the period or any part of it occurred before or after 1 January 2009); and
  - (b) by omitting Note 1 and substituting the following notes:

Note 1: For *income support payment* see subsection 23(1).

Note 1A: For the determination of whether a person received income support payments in respect of a continuous period of at least 4 weeks see section 38B.

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- (3) For the purposes of subsection (2), the *designated period* is the period beginning on 1 January 2009 and ending at the end of:
- (a) 30 June 2010; or
  - (b) if a later date is determined by the Minister by legislative instrument—that later date.

**665ZR Amount of section 665ZQ payment**

The amount of an education entry payment under section 665ZQ is \$208.

**665ZS Need for claim**

A person is not qualified for an education entry payment under section 665ZQ unless the person has made a claim for the payment.

## **Division 12—Recipients of PP (partnered)**

### **665ZU Payment to recipient of PP (partnered)**

- (1) A person is qualified for an education entry payment under this section if:
- (a) either:
    - (i) the Secretary is satisfied that the person intends to enrol in a full-time or part-time course of education that is an approved course under the AUSTUDY scheme or ABSTUDY scheme; or
    - (ii) the person is enrolled in such a course; and
  - (b) immediately before the person commences the course of education, the person:
    - (i) is receiving benefit PP (partnered); and
    - (ii) is a long-term social security recipient; and
  - (c) the person has not, within the last 12 months, received a payment under this Part.

Note 1: For *long-term social security recipient* see subsection 23(1).

Note 2: For *benefit PP (partnered)* see section 18.

Note 3: Transitional provisions apply to this section for 3 months after 1 July 1995 (see section 12 of the *Social Security (Parenting Allowance and Other Measures) Legislation Amendment Act 1994*).

#### *Reduction of qualification period during designated period*

- (2) Subsection (1) has effect during the designated period as if it were modified as follows:
- (a) by omitting subparagraph (b)(ii) and substituting the following subparagraph:
    - (ii) had been receiving income support payments in respect of a continuous period of at least 4 weeks (whether or not the kind of payment received has changed over the period and whether the period or any part of it occurred before or after 1 January 2009); and
  - (b) by omitting Note 1 and substituting the following notes:

Note 1: For *income support payment* see subsection 23(1).

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Note 1A: For the determination of whether a person received income support payments in respect of a continuous period of at least 4 weeks see section 38B.

- (3) For the purposes of subsection (2), the *designated period* is the period beginning on 1 January 2009 and ending at the end of:
- (a) 30 June 2010; or
  - (b) if a later date is determined by the Minister by legislative instrument—that later date.

**665ZV Amount of section 665ZU payment**

The amount of an education entry payment under section 665ZU is \$208.

**665ZW Need for claim**

A person is not qualified for an education entry payment under section 665ZU unless the person has made a claim for the payment.

## **Division 12A—Recipients of youth allowance (other)**

### **665ZX Payment to recipient of youth allowance (other)**

- (1) A person is qualified for an education entry payment under this section if:
- (a) either:
    - (i) the Secretary is satisfied that the person intends to enrol in a qualifying course; or
    - (ii) the person is enrolled in such a course; and
  - (b) immediately before the person commences the course, the person:
    - (i) is receiving youth allowance; and
    - (ii) is not undertaking full-time study and is not a new apprentice; and
    - (iii) had been receiving income support payments in respect of a continuous period of at least 4 weeks (whether or not the kind of payment received has changed over the period and whether the period or any part of it occurred before or after 1 January 2009); and
  - (c) the person has not, within the last 12 months, received a payment under this Part.

Note 1: For *undertaking full-time study* see section 541B.

Note 2: For *income support payment* see subsection 23(1).

Note 3: For the determination of whether a person received income support payments in respect of a continuous period of at least 4 weeks see section 38B.

- (2) For the purposes of subparagraph (1)(a)(i), a *qualifying course*, in relation to a person, is:
- (a) a full-time course of education that is an approved course under the ABSTUDY scheme or an approved course of education or study (within the meaning of subsection 541B(5)); or
  - (b) a course that is an activity (whether compulsory or not) provided for by a term of the person's Youth Allowance Activity Agreement.

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**665ZXA Amount of section 665ZX payment**

The amount of an education entry payment under section 665ZX is \$208.

**665ZXB Need for claim**

A person is not qualified for an education entry payment under section 665ZX unless the person has made a claim for the payment.

**665ZXC Cessation of Division** *[see Note 1]*

This Division ceases to have effect at the end of:

- (a) 30 June 2010; or
- (b) if a later date is determined by the Minister by legislative instrument—that later date.



## **Division 13—Protection of education entry payment**

### **665ZY Education entry payment to be absolutely inalienable**

- (1) Subject to subsections (2) and (3) and section 238 of the Administration Act, an education entry payment is absolutely inalienable, whether by way of, or in consequence of, sale, assignment, charge, execution, bankruptcy or otherwise.
- (2) The Secretary may make a deduction from an education entry payment payable to a person if the person asks the Secretary:
  - (a) to make the deduction; and
  - (b) to pay the amount to be deducted to the Commissioner of Taxation.
- (3) The Secretary may make a deduction from a person's education entry payment if the person consents under section 1234A to the Secretary making that deduction.

Note: Section 1234A enables the Secretary to recover a debt from a person other than the debtor if the person is receiving a social security payment.

### **665ZZ Effect of garnishee or attachment order**

- (1) If:
  - (a) a person has an account with a financial institution; and
  - (b) a court order in the nature of a garnishee order comes into force in respect of the account; and
  - (c) an education entry payment payable to the person (whether on the person's own behalf or not) has been paid to the credit of the account during the 4-week period immediately before the court order came into force;the court order does not apply to the saved amount (if any) in the account.

- (2) The saved amount is worked out as follows:

*Method statement*

- Step 1. Work out the amount of education entry payment paid to the credit of the account as mentioned in paragraph (1)(c).
- Step 2. Subtract from that amount the total amount withdrawn from the account during the 4-week period referred to in paragraph (1)(c): the result is the *saved amount*.

- (3) This section applies to an account whether it is maintained by a person:
- (a) alone; or
  - (b) jointly with another person; or
  - (c) in common with another person.

Note: A person affected by a garnishee order may have other saved amounts.

## **Division 14—Education entry payment supplement**

### **665ZZA Qualification for education entry payment supplement**

A person is qualified for an education entry payment supplement under this section if the person:

- (a) is qualified for an education entry payment under this Part on or after 1 January 2009; or
- (b) is eligible for an education entry payment under Part VIIAA of the *Veterans' Entitlements Act 1986* on or after 1 January 2009.

### **665ZZB Amount of education entry payment supplement**

The amount of an education entry payment supplement under section 665ZZA is \$950.

### **665ZZC Separate claim not needed**

A person is taken to have made a claim for an education entry payment supplement under section 665ZZA if the person has made a claim for an education entry payment as required by this Part or Part VIIAA of the *Veterans' Entitlements Act 1986*.

### **665ZZD Education entry payment supplement taken to be part of education entry payment for purposes of social security law**

- (1) For the purposes of the social security law, an education entry payment supplement payable to a person who is qualified for the supplement because of paragraph 665ZZA(a) is taken to be part of the education entry payment payable to the person.
- (2) Subsection (1) has effect except so far as any provision in the social security law expressly provides for or in relation to education entry payment supplement.

**665ZZE Cessation of Division** [*see* Note 1]

This Division ceases to have effect at the end of:

- (a) 30 June 2010; or
- (b) if a later date is determined by the Minister by legislative instrument—that later date.

## **Part 2.14—Sickness allowance**

### **Division 1—Qualification for and payability of sickness allowance**

#### **Subdivision A—Basic qualification**

#### **666 Qualification for sickness allowance**

- (1) A person is qualified for sickness allowance in respect of a period if:
  - (a) the person is incapacitated for work or study throughout the period because of sickness or an accident; and
  - (b) the incapacity is caused wholly or virtually wholly by a medical condition arising from the sickness or accident; and
  - (c) the incapacity is, or is likely to be, of a temporary nature; and
  - (ca) one of the following applies:
    - (i) immediately before the incapacity occurred the person was in employment (whether the person was self-employed, or was employed by another person, on a full-time, part-time, casual or temporary basis) and the Secretary is satisfied that, when the incapacity ends, the employment will be again available to the person (whether or not the same kind of work will be available);
    - (ii) immediately before the incapacity occurred the person was in full-time education and was receiving payments under the ABSTUDY scheme and the Secretary is satisfied that the person is committed to resuming full-time study under that scheme when the incapacity ends;
    - (iii) immediately before the incapacity occurred the person was undertaking qualifying study and receiving austudy payment, and the Secretary is satisfied that the person is committed to resuming qualifying study when the incapacity ends; and
  - (e) before the period begins the person has turned 21; and

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- (f) before the period ends the person has not turned, or is not likely to turn, pension age; and
- (g) throughout the period, the person:
  - (i) is an Australian resident; or
  - (ii) is exempt from the residence requirement within the meaning of subsection 7(7).

Note 1: see section 677 for the circumstances in which sickness allowance is not payable to a person even though the person is qualified for the allowance.

Note 3: for *pension age* see section 23.

- (2) In this section:

**work**, in relation to a person, means work that the person has contracted to perform under a contract of employment that:

- (a) the person had immediately before the person becomes incapacitated; and
- (b) continues after the person becomes incapacitated.

*Person not qualified in certain circumstances*

- (9) A person is not qualified for sickness allowance in respect of an incapacity if the Secretary is satisfied that the incapacity is brought about with a view to obtaining youth allowance, austudy payment, newstart allowance, youth training allowance, sickness allowance or disability support pension.

**667 Person undertaking rehabilitation program may qualify for sickness allowance**

- (3) A person is qualified for sickness allowance in respect of a period (in this subsection called the **rehabilitation period**) if:
- (a) immediately before the rehabilitation period began the person was receiving sickness allowance in respect of a period; and
  - (b) the person is undertaking a rehabilitation program during the rehabilitation period; and
  - (c) the program is intended to enhance the person's ability to work; and
  - (ca) the length of the person's participation in the program is, or is likely to be, at least 6 weeks; and

- (d) the person's participation in the program is, or is likely to, end within the period of 208 weeks after the allowance commenced to be payable to the person; and
  - (e) subsection (4) or (4A) applies to the person.
- (4) This subsection applies to a person during a period if:
- (a) before the period begins the person has turned 21; and
  - (b) before the period ends the person has not turned, or is not likely to turn, pension age; and
  - (c) a person is an Australian resident throughout the period.

Note: for *pension age* see section 23.

*Person not qualified in certain circumstances*

- (5) A person is not qualified for sickness allowance in respect of an incapacity if the Secretary is satisfied that the incapacity is brought about with a view to obtaining youth allowance, austudy payment, job search allowance, newstart allowance, youth training allowance, sickness allowance or disability support pension.

### **669 Time limit on qualification for sickness allowance**

- (1) A person who is receiving sickness allowance ceases to be qualified for sickness allowance 14 days after the person's maximum allowance period ends.
- (2) The *maximum allowance period* for a person is the period specified in the determination granting the person's claim for sickness allowance as the maximum period for which the sickness allowance is payable to the person.
- (3) The period specified in the determination is not to be more than:
  - (a) if the person's claim for sickness allowance is supported by a medical certificate:
    - (i) the period specified in the medical certificate as the period for which the person is incapacitated for work; or
    - (ii) the period of 13 weeks;whichever is the lesser; or
  - (b) if the claim is not supported by a medical certificate because of the person's participation in a rehabilitation program—the period of the person's participation in the program; or

(c) in any other case—the period of 4 weeks.

- (4) For the purposes of subsection (3), the person's maximum allowance period commences on the first day the allowance becomes payable to the person.

Note: for the day on which sickness allowance becomes payable to a person see section 41 of the Administration Act.

*Secretary may extend maximum allowance period*

- (5) If:

- (a) a person is receiving sickness allowance; and
- (b) the person gives the Secretary a certificate of a medical practitioner containing the matters listed in subsection 704(1) and in accordance with the form approved under subsection 704(2); and
- (c) the Secretary is satisfied that the person's incapacity for work will continue after the end of the person's maximum allowance period;

the Secretary may extend the maximum allowance period by a period of not more than 13 weeks.

- (5A) If:

- (a) a person was receiving sickness allowance; and
- (b) within 14 days after the end of the person's maximum allowance period the person gives the Secretary a certificate of a medical practitioner containing the matters listed in subsection 704(1) and in accordance with the form approved under subsection 704(2); and
- (c) the Secretary is satisfied that the person's incapacity for work has continued after the end of the person's maximum allowance period and that the incapacity will continue;

the Secretary may extend the maximum exemption period by a period of not more than 13 weeks from the end of the previous maximum exemption period.

- (6) If:

- (a) a person is receiving sickness allowance; and
- (b) the person gives the Secretary written evidence (other than a certificate referred to in paragraph (5)(b)) that the person's incapacity for work will continue after the end of the person's maximum allowance period; and



- (c) the Secretary is satisfied that:
    - (i) the person's circumstances make it unreasonable to expect the person to obtain a certificate referred to in paragraph (5)(b) before the person's maximum allowance period ends; and
    - (ii) the person's incapacity for work will continue after the end of the person's maximum allowance period;the Secretary may extend the maximum allowance period by a period of not more than 4 weeks.
- (6A) If:
- (a) a person was receiving sickness allowance; and
  - (b) within 14 days after the end of the person's maximum allowance period the person gives the Secretary written evidence (other than a certificate referred to in paragraph (5A)(b)) that the person's incapacity for work will continue after the end of the person's maximum allowance period; and
  - (c) the Secretary is satisfied that:
    - (i) the person's circumstances make it unreasonable to expect the person to obtain a certificate referred to in paragraph (5A)(b); and
    - (ii) the person's incapacity for work has continued after the end of the person's maximum allowance period and that the incapacity will continue;the Secretary may extend the maximum allowance period by a period of not more than 4 weeks from the end of the previous maximum allowance period.
- (7) If:
- (a) a person is receiving sickness allowance; and
  - (b) the person gives the Secretary a certificate referred to in paragraph (5)(b) before the end of the person's maximum allowance period; and
  - (c) before the end of the person's maximum allowance period, the Secretary does not satisfy himself or herself that the person's incapacity for work will continue after the end of that period; and

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- (d) the sole or dominant cause of the Secretary failing to satisfy himself or herself is an act or omission of an officer of the Department;

the Secretary may extend the person's maximum allowance period by a period of not more than 4 weeks.

Note: if the person's maximum allowance period is extended under this subsection, the Secretary may further extend the person's maximum allowance period under subsection (5).

**676 Liquid assets test waiting period**

- (1) Subject to subsections (2), (6) and (7), if the value of a person's liquid assets exceeds the person's maximum reserve on:
  - (a) the day on which the person becomes incapacitated for work or study; or
  - (b) the day on which the person claims sickness allowance;the person is not qualified for sickness allowance for a period unless the person has served the liquid assets test waiting period in relation to the claim before the beginning of that period.

Note 1: for *liquid assets* see section 14A.

Note 2: for *maximum reserve* see section 14A.

Note 4: for serving the liquid assets test waiting period see subsection 23(10A).

- (2) Subsection (1) does not apply to a person if:
  - (a) the person is a transferee to sickness allowance; or
  - (b) the person has been in receipt of sickness allowance in respect of any period during the 4 weeks immediately before the person's current claim for sickness allowance is made.
- (3) The liquid assets test waiting period in relation to the claim is to be worked out under subsections (3A), (3B) and (3C).
- (3A) Work out the number of formula weeks (disregarding any fractions of a week) in relation to the claim using the formula:

$$\frac{\text{Liquid assets} - \text{Maximum reserve amount}}{\text{Divisor}}$$

where:

*liquid assets* means the person's liquid assets.

***maximum reserve amount*** means the maximum reserve in relation to the person under subsection 14A(1).

***divisor*** means, in relation to a person:

- (a) if the person is not a member of a couple and does not have a dependent child—\$500; or
  - (b) otherwise—\$1,000.
- (3B) If the number of formula weeks is equal to or greater than 13 weeks, the liquid assets test waiting period in relation to the claim is 13 weeks.
- (3C) If subsection (3B) does not apply, the liquid assets test waiting period in relation to the claim is the number of weeks equal to the number of formula weeks.
- (4) Subject to subsection (5), if the person is not a member of a couple, the liquid assets test waiting period in relation to the claim starts on the day on which the person became incapacitated for work or study.
- (4A) Subject to subsection (5), if the person is a member of a couple, the liquid assets test waiting period in relation to the claim starts on the last occurring of the following days:
- (a) the day on which the person became incapacitated for work or study;
  - (b) if, when the claim is made, the person's partner is unemployed—the day on which the person's partner became unemployed;
  - (c) if, when the claim is made, the person's partner is incapacitated for work or study—the day on which the person's partner became incapacitated for work or study.
- (5) If:
- (a) a person becomes qualified for austudy payment; and
  - (b) because of paragraph 572(c), austudy payment is not payable to the person while the person is subject to a liquid assets test waiting period (see section 575A); and
  - (c) within the liquid assets test waiting period referred to in paragraph (b):
    - (i) the person becomes incapacitated for study; and
    - (ii) the person claims sickness allowance;
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the liquid assets test waiting period in relation to the claim for sickness allowance starts on the day on which the person becomes qualified for austudy payment.

- (6) Subsection (1) does not apply to a person if, at any time during the 12 months preceding:
- (a) the day on which the person becomes incapacitated for work; or
  - (b) the day on which the person claims sickness allowance;
- the person or their partner was serving a liquid assets test waiting period that started during that 12 months.
- (7) If the Secretary is satisfied that a person is in severe financial hardship because the person has incurred unavoidable or reasonable expenditure while serving a liquid assets test waiting period, the Secretary may determine that the person does not have to serve the whole, or any part, of the waiting period.

Note 1: For *in severe financial hardship* see subsection 19C(2) (person who is not a member of a couple) and subsection 19C(3) (person who is a member of a couple).

Note 2: For *unavoidable or reasonable expenditure* see subsection 19C(4).

**676A Assurance of support**

A person is not qualified for sickness allowance in respect of a period if the Secretary is satisfied that throughout the period:

- (a) an assurance of support was in force in respect of the person (the *assuree*); and
- (b) the person who gave the assurance of support was willing and able to provide an adequate level of support to the assuree; and
- (c) it was reasonable for the assuree to accept that support.

Note: For *assurance of support* see subsection 23(1).

**Subdivision B—Situations where allowance not payable (general)**

**677 Sickness allowance not payable if allowance rate nil**

- (1) Subject to subsection (2), sickness allowance is not payable to a person if the person's sickness allowance rate would be nil.

- (2) Subsection (1) does not apply to a person if the person's sickness allowance rate would be nil merely because an advance pharmaceutical allowance has been paid to the person under:
- (a) the social security law; or
  - (b) Division 2 of Part VIIA of the Veterans' Entitlements Act.

**680 Assets test—allowance not payable if assets value limit exceeded**

[see Appendix for CPI adjusted figures]

- (1) A sickness allowance is not payable to a person if the value of the person's assets is more than the person's assets value limit.
- (3) A person's assets value limit is worked out using the following Table: work out which family situation applies to the person; the assets value limit is the corresponding amount in column 3.

<b>Assets value limit table</b>			
Column 1	Column 2	Column 3	
Item	Person's family situation	Assets value limit	
		Column 3A	Column 3B
		Either person or partner homeowner	Neither person nor partner homeowner
1.	Not member of a couple	\$110,750	\$190,250
2.	Partnered (partner getting neither pension nor benefit)	\$157,500	\$237,000
3.	Partnered (partner getting pension or benefit)	\$78,750	\$118,500

Note 1: for *member of a couple*, *partnered (partner getting neither pension nor benefit)* and *partnered (partner getting pension or benefit)* see section 4.

Note 2: for *homeowner* see section 11.

Note 3: if item 2 applies to a person, the value of *all* the assets of the person's partner is to be taken as being included in the value of the person's assets (see subsection 680(1)—this is why the assets value limit is so high. If, on the other hand, item 3 applies to a person, the value of the

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person's assets is only *half* the combined value of the person's assets and the assets of the person's partner (see subsection 680(2)).

- Note 4: if a sickness allowance is not payable to a person because of the value of the person's assets, the person may be able to take advantage of provisions dealing with financial hardship (sections 1131 and 1132).
- Note 5: the assets value limits of items 1 and 3 in column 3A and item 3 in column 3B are indexed annually in line with CPI increases (see sections 1191 to 1194).
- Note 6: the assets value limit of item 1 in column 3B is adjusted annually (see subsection 1204(1)).
- Note 7: the item 2 assets value limits are adjusted annually so that they are twice the corresponding item 3 limits (see subsections 1204(2) and (3)).

**681 Value of assets of members of couples**

(1) If:

- (a) the person is a member of a couple; and
- (b) the person's partner:
  - (i) is not in receipt of a social security or service pension or income support supplement; and
  - (ii) is not in receipt of a social security allowance;

the value of the person's assets, or of assets of a particular kind of the person, includes the value of the partner's assets or of assets of that kind of the partner.

(2) If:

- (a) the person is a member of a couple; and
- (b) the person's partner is in receipt of:
  - (i) a social security or service pension or income support supplement; or
  - (ii) a social security allowance;

the value of:

- (c) the person's assets is taken to be 50% of the sum of the value of the person's assets and the value of the partner's assets; and
- (d) the person's assets of a particular kind is taken to be 50% of the sum of the value of the assets of that kind of the person and the value of assets of that kind of the person's partner.

### 685 Full-time students

- (1) Subject to subsection (2), sickness allowance is not payable to a person who is enrolled in a full-time course of education or of vocational training for the period that:
  - (a) starts when the person starts the course; and
  - (b) finishes when the person:
    - (i) completes the course; or
    - (ii) abandons the course; or
    - (iii) gives notice to the provider of the course that the person:
      - (A) wishes to withdraw from the course; or
      - (B) wishes to withdraw from such number of subjects that the person's course will no longer be a full-time course; and
  - (c) includes periods of vacation.
- (2) Subsection (1) does not prevent a sickness allowance from being payable for any period during which:
  - (a) a person is enrolled in a full-time course of education that is part of a rehabilitation program that the person is undertaking as mentioned in paragraph 667(3)(b); or
  - (b) the person has deferred a course of education.

### 686 Multiple entitlement exclusion

- (1) Sickness allowance is not payable to a person if the person is already receiving a service pension, income support supplement, a job search allowance or a newstart allowance.
- (2) If:
  - (a) a person is receiving sickness allowance; and
  - (b) a social security pension, another social security benefit, service pension or income support supplement becomes payable to the person;

the sickness allowance is not payable to the person.

Note 1: another payment type will generally not become payable to the person until the person claims it.

Note 2: For *social security benefit* see subsection 23(1).

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- (3) Sickness allowance is not payable to a woman if:
- (a) the woman is an armed services widow; and
  - (b) the woman is receiving a pension under Part II or IV of the Veterans' Entitlements Act at a rate determined under or by reference to subsection 30(1) of that Act;

unless:

- (c) the woman has been receiving a payment referred to in paragraph (b) continuously since before 1 November 1986; and
- (d) before 1 November 1986 the woman was also receiving a social security benefit.

Note: for *armed services widow* see subsection 4(1).

- (4) Sickness allowance is not payable to a man if the man is a widower who is receiving a pension under Part II or IV of the Veterans' Entitlements Act at a rate determined under or by reference to subsection 30(1) of that Act.

- (4A) Sickness allowance is not payable to a person if:

- (a) the person is an armed services widow or an armed services widower; and
- (b) the person has received a lump sum, or is receiving weekly amounts, mentioned in paragraph 234(1)(b) of the MRCA.

Note 1: For *armed services widow* and *armed services widower* see subsection 4(1).

Note 2: For *MRCA* see subsection 23(1).

- (5) Sickness allowance is not payable to a person for a period if a payment has been or may be made in respect of the person for that period under:

- (a) a prescribed educational scheme other than the ABSTUDY Scheme to the extent that it applies to part-time students; or
- (b) the scheme to provide an allowance known as the Adult Migrant Education Program Living Allowance; or
- (c) the scheme to provide an allowance known as the Maintenance Allowance for Refugees; or
- (d) the scheme to provide an allowance known as the English as a Second Language Allowance to the extent that the scheme applies to full-time students.

Note: for *prescribed educational scheme* see section 5.



- (6) If:
- (a) a person starts a full-time course of education; and
  - (b) a payment under a scheme referred to in subsection (5) may be made in respect of the person;
- the Secretary may decide that, in spite of subsection (5), sickness allowance is payable to the person for a period before the person starts the course.
- (7) Sickness allowance is not payable to a person in respect of a period if the person is a CDEP Scheme participant in respect of the whole or any part of the period.

### **Subdivision C—Situations where allowance not payable (waiting periods)**

#### **693 Ordinary waiting period**

A person is subject to an ordinary waiting period unless:

- (a) at some time in the 13 weeks immediately before the person's start day, the person received an income support payment; or

Note: For *income support payment* see subsection 23(1).

- (e) the following conditions apply:
  - (i) the person is a member of a couple;
  - (ii) the person's partner dies;
  - (iii) immediately before the partner's death, the person was receiving a partner allowance;
  - (iv) within the period of 4 weeks that starts on the day after the day on which the partner dies, the person claims a sickness allowance; or
- (f) the Secretary is satisfied that the person is in severe financial hardship.

Note 2: For *social security benefit* see subsection 23(1).

Note 3: For *social security pension* see subsection 23(1).

Note 4: For *service pension* see subsection 23(1).

Note 5: For *in severe financial hardship* see subsection 19C(2) (person who is not a member of a couple) and 19C(3) (person who is a member of a couple).

### 694 Duration of ordinary waiting period

(1) If a person:

- (a) is subject to an ordinary waiting period; and
- (c) is not disqualified for sickness allowance under section 676 (liquid assets test);

the ordinary waiting period is the period of 7 days that starts on the person's start day.

Note 3: If the person is subject to a newly arrived resident's waiting period, the newly arrived resident's waiting period runs concurrently with the ordinary waiting period.

(3) If a person:

- (a) is subject to an ordinary waiting period; and
- (c) is disqualified for sickness allowance under section 676 (liquid assets test);

the ordinary waiting period is the period of 7 days that starts on the day after the end of the period referred to in subsection 676(3).

(6) If:

- (a) after the commencement of this subsection, a person becomes unemployed and claims newstart allowance; and
- (b) because of sections 620 and 621 (ordinary waiting period), newstart allowance is not payable to the person for a period starting on the day (the *applicable day*) applicable to the person under subparagraph (i) or (ii), as the case may be:
  - (i) if the person is not disqualified for newstart allowance under section 598 (liquid assets test)—the person's newstart allowance start day; or
  - (ii) if the person is disqualified for newstart allowance under section 598 (liquid assets test)—the day after the day on which the person's newstart allowance liquid assets waiting period ends; and
- (c) during that period the person becomes temporarily incapacitated for work and claims sickness allowance;

then, despite subsections (1), (2) and (3), the person's ordinary waiting period is a period of 7 days starting on the applicable day.

### **696B Newly arrived resident's waiting period**

- (1) Subject to this section, a person who:
- (a) has entered Australia on or after 1 January 1993; and
  - (b) has not been an Australian resident and in Australia for a period of, or periods totalling, 104 weeks;
- is subject to a newly arrived resident's waiting period.
- (2) Subsection (1) does not apply to a person who has a qualifying residence exemption for a sickness allowance.

Note: For *qualifying residence exemption* see subsection 7(6).

- (3) Subsection (1) does not apply to a person:
- (a) if, immediately before this section commenced, the person had held a valid designated temporary entry permit for a continuous period of at least 26 weeks; or
  - (b) if:
    - (i) immediately before this section commenced, the person had held a valid designated temporary entry permit for a continuous period (*permit period*) of less than 26 weeks; and
    - (ii) that permit was continued in force as a temporary visa by regulations made under the *Migration Reform Act 1992*; and
    - (iii) the period during which that permit continued to be in force as a temporary visa together with the permit period is at least 26 weeks.

Note: For *designated temporary entry permit* see subsection 7(1).

- (5) Subsection (1) does not apply to a person if:
- (a) the person is already subject to a newly arrived resident's waiting period; or
  - (b) the person has already served a newly arrived resident's waiting period; or
  - (c) the person:
    - (i) has previously entered Australia before 1 January 1993; and
    - (ii) held a permanent entry permit granted under the *Migration Act 1958* as then in force, or a permanent visa, before the person's last departure from Australia.

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- (6) Subsection (1) does not apply to a person if:
- (a) the person is a New Zealand citizen; and
  - (b) the person was an Australian resident on 1 February 2000.

**696C Duration of newly arrived resident's waiting period**

- (1) If a person is subject to a newly arrived resident's waiting period, the period starts on the day the person first became an Australian resident.
- (2) If:
- (a) immediately before this section commenced, the person held a valid designated temporary entry permit; and
  - (b) that permit was continued in force as a temporary visa by regulations made under the *Migration Reform Act 1992*; and
  - (c) that temporary visa was in force immediately before the person was granted his or her permanent visa;
- the newly arrived resident's waiting period ends 26 weeks after the day on which the designated temporary entry permit was granted to the person.

Note: For *designated temporary entry permit* see subsection 7(1).

- (3) If subsection (2) does not apply, the newly arrived resident's waiting period ends when the person has been an Australian resident and in Australia for a period of, or periods totalling, 104 weeks.

Note: This rule does not apply to people who were already subject to, or had already served, a newly arrived resident's waiting period before the commencement of this rule. Clause 121 of Schedule 1A to this Act continues the application of the previous rules to those people.

**697 Seasonal workers—preclusion period**

- (1) This section applies if:
- (a) a person has lodged a claim for sickness allowance; and
  - (b) at any time during the 6 months immediately before the day on which the person lodged the claim, the person, or the person's partner, has been engaged in seasonal work.

Note: For *seasonal work* see subsection 16A(1).

- (2) Sickness allowance is not payable to the person:
- (a) if the person is subject to a seasonal work preclusion period (whether in relation to the claim referred to in subsection (1) or any other claim under this Act) and the Secretary has not made a determination under subsection (3) in relation to the person—for the person’s seasonal work preclusion period; or
  - (b) if the Secretary has made a determination under subsection (3) in relation to the person—for that part (if any) of the person’s seasonal work preclusion period to which the person is subject as a result of the determination.

Note: For *seasonal work preclusion period* see subsection 16A(1).

- (3) If the Secretary is satisfied that a person is in severe financial hardship because the person has incurred unavoidable or reasonable expenditure while the person is subject to a seasonal work preclusion period (whether in relation to the claim referred to in subsection (1) or any other claim under this Act):
- (a) the Secretary may determine that the person is not subject to the whole, or any part, of the preclusion period; and
  - (b) the determination has effect accordingly.

Note 1: For *in severe financial hardship* see subsection 19C(2) (person who is not a member of a couple) or subsection 19C(3) (person who is a member of a couple).

Note 2: For *unavoidable or reasonable expenditure* see subsection 19C(4).

## **Division 4—Rate of sickness allowance**

### **709 How to work out a person's sickness allowance rate**

A person's sickness allowance rate is to be worked out using Benefit Rate Calculator B at the end of section 1068.

## **Division 9—Bereavement payments**

### **Subdivision AA—Death of partner**

#### **728PA Qualification for payments under this Subdivision**

- (1) If:
- (a) a person is receiving a sickness allowance; and
  - (b) the person is a long-term social security recipient; and
  - (c) the person is a member of a couple; and
  - (d) the person's partner dies; and
  - (e) immediately before the partner died, the partner:
    - (i) was receiving a social security pension; or
    - (ii) was receiving a service pension or income support supplement; or
    - (iii) was a long-term social security recipient; and
  - (f) on the person's payday immediately before the first available bereavement adjustment payday, the amount that would be payable to the person if the person were not qualified for payments under this Subdivision is less than the sum of:
    - (i) the amount that would otherwise be payable to the person under section 728PD (person's continued rate) on that payday; and
    - (ii) the amount (if any) that would otherwise be payable to the person, under section 728PB (continued payment of partner's pension or allowance) on the partner's payday immediately before the first available bereavement adjustment payday;

the person is qualified for payments under this Subdivision to cover the bereavement period.

Note 1: section 728PB provides for the payment to the person, up to the first available bereavement adjustment payday, of amounts equal to the instalments that would have been paid to the person's partner during that period if the partner had not died.

Note 2: section 728PC provides for a lump sum that represents the instalments that would have been paid to the person's partner, between the first available bereavement adjustment payday and the end of the bereavement period, if the partner had not died.

Note 3: for *long-term social security recipient* see subsection 23(1).

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- (2) A person who is qualified for payments under this Subdivision may choose not to receive payments under this Subdivision.
- (3) An election under subsection (2):
  - (a) must be made by written notice to the Secretary; and
  - (b) may be made after the person has been paid an amount or amounts under this Subdivision; and
  - (c) cannot be withdrawn after the Department has taken all the action required to give effect to that election.
- (4) If a person is qualified for payments under this Subdivision in relation to the partner's death, the rate at which sickness allowance is payable to the person during the bereavement period is, unless the person has made an election under subsection (2), governed by section 728PD.

**728PB Continued payment of partner's pension or benefit**

If a person is qualified for payments under this Subdivision in relation to the death of the person's partner, there is payable to the person, on each of the partner's paydays in the bereavement rate continuation period, an amount equal to the amount that would have been payable to the partner on that payday if the partner had not died.

**728PC Lump sum payable in some circumstances**

If:

- (a) a person is qualified for payments under this Subdivision in relation to the death of the person's partner; and
- (b) the first available bereavement adjustment payday occurs before the end of the bereavement period;

there is payable to the person as a lump sum an amount worked out using the lump sum calculator at the end of this section.



### **LUMP SUM CALCULATOR**

This is how to work out the amount of the lump sum:

#### *Method statement*

Step 1. Add up:

- (a) the amount that, if the person's partner had not died, would have been payable to the person on the person's payday immediately before the first available bereavement adjustment payday; and
- (b) the amount (if any) that, if the partner had not died, would have been payable to the partner on the partner's payday immediately before the first available bereavement adjustment payday;

the result is called the *combined rate*.

Step 2. Work out the amount that, but for section 728PD, would have been payable to the person on the person's payday immediately before the first available bereavement adjustment payday: the result is called the *person's individual rate*.

Step 3. Take the person's individual rate away from the combined rate: the result is called the *partner's instalment component*.

Step 4. Work out the number of the partner's paydays in the bereavement lump sum period.

Step 5. Multiply the partner's instalment component by the number obtained in Step 4: the result is the amount of the lump sum payable to the person under this section.

**728PD Adjustment of a person's sickness allowance rate**

If:

- (a) a person is qualified for payments under this Subdivision;  
and
- (b) the person does not elect under subsection 728PA(2) not to receive payments under this Subdivision;

the rate of the person's sickness allowance during the bereavement period is worked out as follows:

- (c) during the bereavement rate continuation period, the rate of sickness allowance payable to the person is the rate at which the allowance would have been payable to the person if the person's partner had not died;
- (d) during the bereavement lump sum period (if any), the rate at which sickness allowance is payable to the person is the rate at which the allowance would be payable to the person apart from this Subdivision.

**728PE Effect of death of person entitled to payments under this Subdivision**

If:

- (a) a person is qualified for payments under this Subdivision in relation to the death of the person's partner; and
- (b) the person dies within the bereavement period; and
- (c) the Secretary does not become aware of the death of the person's partner before the person dies;

there is payable, to such person as the Secretary thinks appropriate, as a lump sum, an amount worked out using the lump sum calculator at the end of this section.

**LUMP SUM CALCULATOR**

This is how to work out the amount of the lump sum:

*Method statement*

Step 1. Add up:

- (a) the amount that, if neither the person nor the person's partner had died, would have been payable to the person on the person's payday immediately after the day on which the person dies; and
- (b) the amount (if any) that, if neither the person nor the person's partner had died, would have been payable to the person's partner on the partner's payday immediately after the day on which the person died;

the result is called the *combined rate*.

Step 2. Work out the amount that, but for section 728PD, would have been payable to the person on the person's payday immediately after the day on which the person died if the person had not died: the result is called the *person's individual rate*.

Step 3. Take the person's individual rate away from the combined pensioner couple rate: the result is called the *partner's instalment component*.

Step 4. Work out the number of paydays of the partner in the period that commences on the day on which the person dies and ends on the day on which the bereavement period ends.

Step 5. Multiply the partner's instalment component by the number obtained in Step 4: the result is the amount of the lump sum payable under this section.

**728PF Matters affecting payments under this Subdivision**

(1) If:

- (a) a person is qualified for payments under this Subdivision in relation to the death of the person's partner; and
- (b) after the person's partner died, an amount to which the partner would have been entitled if the partner had not died has been paid under this Act or under Part III of the Veterans' Entitlements Act; and
- (c) the Secretary is not satisfied that the person has not had the benefit of that amount;

the following provisions have effect:

- (d) the amount referred to in paragraph (b) is not recoverable from the person or from the personal representative of the person's partner, except to the extent (if any) that the amount exceeds the amount payable to the person under this Subdivision;
- (e) the amount payable to the person under this Subdivision is to be reduced by the amount referred to in paragraph (b).

(2) If:

- (a) a person is qualified for payments under this Subdivision in relation to the death of the person's partner; and
- (b) the amount to which the person's partner would have been entitled if the person's partner had not died has been paid under this Act or under Part III of the Veterans' Entitlements Act, within the bereavement period, into an account with a bank; and
- (c) the bank pays to the person, out of the account, an amount not exceeding the total of the amounts paid as mentioned in paragraph (b);

the bank is, in spite of anything in any other law, not liable to any action, claim or demand by the Commonwealth, the personal representative of the person's partner or anyone else in respect of the payment of that money to the person.

## **Part 2.15—Special benefit**

### **Division 1—Qualification for and payability of special benefit**

#### **Subdivision A—Qualification**

#### **729 Qualification for special benefit**

- (1) A person is qualified for a special benefit for a period if the Secretary determines, in accordance with subsection (2), that a special benefit should be granted to the person for the period.

Note: special benefit is a discretionary benefit and is available only to a person who is not able to get any other income support payment (see paragraphs (2)(a) and (b) below).

- (2) The Secretary may, in his or her discretion, determine that a special benefit should be granted to a person for a period if:
- (a) no social security pension is payable to the person during the period; and
  - (b) no other social security benefit is payable to the person for the period; and
  - (bb) the person is not disqualified for a benefit PP (partnered) for the period solely because of the operation of section 500C (unemployment due to industrial action); and
  - (bc) the person is not disqualified from parenting payment for the period solely because of a failure to meet the requirement of paragraph 500(1)(c) or 500F(1)(f) or (2)(f) (participation requirements); and
  - (bd) if the person is qualified for parenting payment but the payment is not payable to the person for the period—that result is not produced because of the operation of:
    - (i) section 500ZB (parenting payment participation failure); or
    - (ii) section 500ZE (repeated or more serious failure); and
  - (c) the person is not disqualified for a newstart allowance for the period because of the operation of section 596; and
  - (d) if the person is qualified for a newstart allowance but the allowance is not payable to the person for the period—that

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result is not produced because of the operation of one or more of the following:

- (i) section 626 (newstart participation failure);
  - (ii) section 629 (repeated or more serious failure);
  - (vi) section 631 (person failing to comply with notification requirement);
  - (viii) section 633 (seasonal workers);
  - (ix) section 634 (move to area of lower employment prospects); and
- (da) the person is not disqualified for a youth allowance for the period because of the operation of:
- (i) section 541A (failure to satisfy the activity test); or
  - (ii) section 544 (requirements relating to Youth Allowance Activity Agreements); and
- (db) the person is not disqualified for an austudy payment for the period because the person fails to satisfy the activity test within the meaning of section 569; and
- (dc) youth allowance is not payable to the person for the period and that result is not because of the operation of:
- (i) section 550B (youth allowance participation failure); or
  - (ia) section 551 (repeated or more serious failure); or
  - (ii) section 553B (move to an area of lower employment prospects); or
  - (iii) section 81 of the Administration Act; and
- (dd) austudy payment is not payable to the person for the period and that result is not because of the operation of:
- (i) section 576A (austudy participation failure); or
  - (ia) section 577 (repeated failure); or
  - (ii) section 81 of the Administration Act; and
- (e) the Secretary is satisfied that the person is unable to earn a sufficient livelihood for the person and the person's dependants (if any) because of age, physical or mental disability or domestic circumstances or for any other reason; and
- (f) the person:
- (i) is an Australian resident; or

- (v) is the holder of a visa that is in a class of visas determined by the Minister for the purposes of this subparagraph; and
- (g) if the person is:
  - (i) the holder of a visa included in a class of visas that is issued for temporary protection, humanitarian, or safe haven purposes and that is determined by the Minister to be a class of visas to which this subparagraph applies; and
  - (ii) a person to whom subsection (2A) applies; the person meets the additional criteria set out in paragraph (2B); and
- (h) an assurance of support does not apply to the person at any time during the period (see subsection (2C)).

Note 1: for *Australian resident* see subsection 7(2).

- (2A) For the purposes of paragraph (2)(g), the holder of a visa included in a class of visas that is issued for temporary protection, humanitarian, or safe haven purposes and that is determined by the Minister to be a class of visas to which subparagraph (2)(g)(i) applies is a person to whom that first-mentioned paragraph applies only if:
  - (a) the person would not qualify for disability support pension under section 94, 94A or 95 if the person were an Australian resident; and
  - (b) the person has attained the minimum age for youth allowance as determined in accordance with subsection 543A(1) but has not attained pension age; and
  - (c) the person:
    - (i) claims, or has claimed, special benefit on or after 1 January 2003 that is not continuous with any previous grant of special benefit; or
    - (ii) if the person had not attained the minimum age for youth allowance as defined by subsection 543A(1) before 1 January 2003—is receiving special benefit granted before, or continuous with special benefit granted before, that date.
- (2B) A person referred to in paragraph (2)(g) is qualified for special benefit in respect of a period only if, in addition to meeting any relevant requirement in paragraphs (2)(a) to (f):

- (a) throughout the period, and for each period within the period, the person either:
    - (i) satisfies the activity test set out in section 731A; or
    - (ii) is not required to satisfy the activity test; and
  - (b) at all times (if any) during the period when the person is not a party to a Special Benefit Activity Agreement, the person is prepared to enter into such an agreement; and
  - (c) at all times during the period when the person is a party to a Special Benefit Activity Agreement, the person is prepared to enter into another such agreement instead of the existing agreement; and
  - (d) if the person is required by the Secretary to enter into a Special Benefit Activity Agreement in relation to the period or a part of the period, the person enters into that agreement; and
  - (e) while a Special Benefit Activity Agreement is in force, the person satisfies the Secretary that the person is complying with the terms of the agreement.
- (2C) For the purposes of paragraph (2)(h), an assurance of support applies to a person at a particular time if:
- (a) an assurance of support is in force in respect of the person (the *assuree*) at that time; and
  - (b) the person who gave the assurance was willing and able to provide an adequate level of support to the assuree; and
  - (c) it was reasonable for the assuree to accept that support.
- Note: For *assurance of support* see subsection 23(1).
- (2D) For the avoidance of doubt, if, at any time during the period for which special benefit is granted to a person, the person's circumstances change such that, if the person were to be making a claim for special benefit on the basis of the changed circumstances, the person would not be qualified for special benefit, special benefit ceases to be payable.
- (3) The Secretary is not to determine that a special benefit should be granted to a person for a period if the Secretary is satisfied that the benefit is not payable to the person for that period.



- (4) For the purposes of paragraph (2)(d), a newstart allowance is to be taken to be not payable to a person for a period because of the operation of a provision if:
- (a) the person has claimed the allowance for the period and the allowance is not payable to the person because of the operation of the provision; or
  - (b) were the person to claim the allowance for the period the allowance would not be payable to the person because of the operation of the provision.
- (4A) For the purposes of paragraph (2)(dc) a youth allowance is taken to be not payable to a person for a period because of the operation of a provision if:
- (a) the person has claimed the allowance for the period and the allowance is not payable to the person because of the operation of the provision; or
  - (b) were the person to claim the allowance for the period the allowance would not be payable to the person because of the operation of the provision.
- (4B) For the purposes of paragraph (2)(dd), an austudy payment is taken not to be payable to a person for a period because of the operation of a provision if:
- (a) the person has claimed the payment for the period and the payment is not payable to the person because of the operation of the provision; or
  - (b) were the person to claim the payment for the period, the payment would not be payable to the person because of the operation of the provision.
- (6) If:
- (a) a person was receiving a social security pension, a service pension or income support supplement; and
  - (b) the person claims a special benefit within 14 days of the day on which the last instalment of the person's pension was paid; and
  - (c) the person becomes qualified for a special benefit at some time during the 14 day period but after the first day of that period;
- the person is taken to be qualified for a special benefit for the whole of the 14 day period.
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Note: subsection (6) operates when a person transfers from a pension to a special benefit and the person is not qualified for a special benefit immediately after the day on which the person's last instalment of pension is paid. The subsection deems the person to be so qualified. As a result, the person may be paid a special benefit for the period beginning on the day after the day on which the person's last instalment of pension was paid. The subsection aims to ensure that there is minimal disruption to a person's payments when a person transfers from a pension to a special benefit.

**729A Time limit on qualification for certain recipients of special benefit**

- (1) This section applies to a person who is receiving special benefit if:
  - (a) the person's maximum benefit period is 13 weeks or less; and
  - (b) the Secretary determines that this section should apply to the person.
- (2) The *maximum benefit period* for a person is the period specified in the determination granting the person's claim for special benefit as the maximum period for which the special benefit is payable to the person.
- (3) If:
  - (a) the section applies to a person; and
  - (b) the Secretary is satisfied that the person's qualification for special benefit will continue after the end of the person's maximum benefit period; and
  - (c) the Secretary determines that this subsection should apply to the person;the Secretary may determine that special benefit should be granted to the person for a period of not more than 13 weeks.
- (4) Subject to section 729B, if:
  - (a) the Secretary has determined that special benefit should be granted to the person for a period of not more than 13 weeks under subsection (3) or this subsection; and
  - (b) the Secretary is satisfied that the person's qualification for special benefit will continue after the end of that period; and
  - (c) the Secretary determines that this subsection should apply to the person;the Secretary may determine that special benefit should be granted to the person for a further period of not more than 13 weeks.

**729AA Effect of industrial action on qualification conditions of certain claimants for special benefit**

- (1) A person who:
  - (a) has claimed special benefit; and
  - (b) is:
    - (i) the holder of a visa included in a class of visas that is issued for temporary protection, humanitarian, or safe haven purposes and that is determined by the Minister to be a class of visas to which subparagraph 729(2)(g)(i) applies; and
    - (ii) a person to whom subsection 729(2A) applies;is not, for the purposes of paragraph 729(2)(e), taken to be unable to earn a sufficient livelihood for the person and the person's dependants (if any) if:
  - (c) that inability arises because the person has ceased to be employed, or to be employed at a particular level of income; and
  - (d) that cessation is attributable to the person's being, or having been, engaged in industrial action, or in a series of industrial actions.
- (2) Subsection (1) does not apply in relation to a person if the Secretary is satisfied that:
  - (a) the person's unemployment or the effect on the person's level of income was due to other people being, or having been, engaged in industrial action or in a series of industrial actions; and
  - (b) the people or some of the people were members of a trade union that was involved in the industrial action; and
  - (c) the person was not a member of the trade union during the period of the industrial action.
- (3) Subject to subsection (4), subsections (1) and (2) do not prevent a person from being qualified for special benefit in respect of a period that occurs after the relevant industrial action or series of industrial actions has stopped.
- (4) If the relevant industrial action or series of industrial actions is in breach of an order, direction or injunction issued by:

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- (a) a State industrial authority within the meaning of section 4 of the Workplace Relations Act; or
- (b) the Australian Industrial Relations Commission; or
- (c) the Federal Court; or
- (d) the Federal Magistrates Court;

a person is not qualified for special benefit in respect of a period unless that period occurs 6 weeks or more after the relevant industrial action or series of industrial actions has stopped.

**729B Certain recipients of special benefit cease to be qualified for special benefit after 52 weeks**

- (1) A person to whom subsection 729A(4) applies ceases to be qualified for special benefit if the person has received special benefit in respect of the immediately preceding period of 52 weeks.
- (2) The Secretary may make a written determination that subsection (1) does not apply to a person if the Secretary is satisfied:
  - (a) that the person's qualification for special benefit will end during the next 13 weeks; or
  - (b) that the person's qualification for special benefit will continue after the end of the period of 65 weeks commencing on the person's start day.

**729C Consequence of subsection 729B(2) determination**

- (1) If the Secretary:
  - (a) is satisfied of the matter mentioned in paragraph 729B(2)(a); and
  - (b) makes a determination under subsection 729B(2) in relation to a person;then the person ceases to be qualified for special benefit if:
  - (c) the person has received special benefit in respect of the immediately preceding 65 weeks; and
  - (d) the Secretary is satisfied that this subsection should apply to the person.
- (2) If the Secretary:
  - (a) is satisfied of the matter mentioned in paragraph 729B(2)(b); and

- (b) makes a determination under subsection 729B(2) in relation to a person;
- the Secretary may determine that special benefit should be granted to the person for a period.

### **730 Determination of period**

The period determined by the Secretary under subsection 729(2) is not to begin before the person's start day.

### **Subdivision AA—Activity test for certain nominated visa holders**

#### **731 Application of Subdivision**

This Subdivision applies to a person who is:

- (a) the holder of a visa that is included in a class of visas that is issued for temporary protection, humanitarian, or safe haven purposes and that is determined by the Minister to be a class of visas to which subparagraph 729(2)(g)(i) applies; and
- (b) a person to whom subsection 729(2A) applies.

#### **731A Activity test**

- (1) Subject to subsection (2), a person to whom this Subdivision applies satisfies the activity test in respect of a period, whether it is the period of the grant of special benefit or a period within that period, if the person satisfies the Secretary that, throughout the period, the person is:
  - (a) actively seeking; and
  - (b) willing to undertake;paid work in Australia other than unsuitable paid work within the meaning of section 731B.
- (7) A person to whom this Subdivision applies also satisfies the activity test in respect of a period if:
  - (a) the Secretary is of the opinion that, throughout the period, the person should undertake particular paid work, other than unsuitable paid work within the meaning of section 731B; and

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- (b) the Secretary notifies the person that the person is required to act in accordance with the opinion; and
  - (c) the person complies, throughout the period, with the Secretary's requirement.
- (8) To avoid doubt, the work that the person is required to undertake under subsection (7) may involve a number of hours per week that differs from the number of hours of work per week that the person is required to seek to comply with a Special Benefit Activity Agreement between the Secretary and the person.
- (9) A person cannot be taken to satisfy the activity test throughout a period if the person fails to comply with a requirement under subsection (7):
  - (a) whether or not the person complies with subsection (1) or (11); and
  - (b) whether or not another provision of this Act under which the activity test is satisfied, or taken to be satisfied, applies (or would apart from this section apply) to the person.
- (11) A person to whom this Subdivision applies also satisfies the activity test in respect of a period if, throughout the period, the person is complying with the terms of a Special Benefit Activity Agreement between the Secretary and the person.
- (12) If a person to whom this Subdivision applies fails to comply, throughout a period, with the terms of a Special Benefit Activity Agreement between the Secretary and the person, the person cannot be taken to satisfy the activity test in respect of the period in spite of any compliance of the person with subsection (1).

**731B Meaning of unsuitable work for the purposes of the activity test**

- (1) For the purposes of subsection 731A(1) and paragraph 731A(7)(a), particular paid work is unsuitable paid work in respect of a person if and only if, in the Secretary's opinion:
  - (a) the person lacks the particular skills, experience or qualifications that are needed to perform the work and no training will be provided by the employer; or
  - (b) it has been established that there is medical evidence that the person has an illness, disability or injury that would be

aggravated by the conditions in which the work would be performed; or

- (ba) the person is the principal carer for one or more children, and does not have access to appropriate care and supervision for the children at the times when the person would be required to undertake the work; or

Note: For *principal carer* see subsections 5(15) to (24).

- (c) performing the work in the conditions in which the work would be performed would constitute a risk to health or safety and would contravene a law of the Commonwealth, a State or a Territory relating to occupational health and safety; or
- (e) the terms and conditions for the work would be less generous than the applicable statutory conditions; or
- (g) commuting between the person's home and the place of work would be unreasonably difficult; or
- (h) the work requires the person to move from a home in a place to a home in another place; or
- (i) for any other reason, the work is unsuitable for the person.
- (1A) A person has, for the purposes of paragraph (1)(ba), access to appropriate care and supervision for a child at a particular time if, at that time:
- (a) the child could be provided with care by an approved child care service (within the meaning of the Family Assistance Administration Act), and provision of that care would, in the Secretary's opinion, be appropriate in the circumstances; or
- (b) the child could be provided with other care that the person considers to be suitable; or
- (c) the child could be attending school, and attendance at that school would, in the Secretary's opinion, be appropriate in the circumstances.
- (1B) For the purposes of paragraph (1)(ba), a time when the person would be required to undertake the work includes reasonable amounts of time that would be needed for the person to travel from the person's home to the place of work and from the place of work to the person's home.
- (1C) The Secretary must, by legislative instrument, determine matters that the Secretary must take into account in deciding whether, for

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the purposes of paragraph (1)(i), particular paid work is unsuitable for a person.

(1D) To avoid doubt, a determination under subsection (1C) does not limit the matters that the Secretary may take into account in deciding whether, for the purposes of paragraph (1)(i), particular paid work is unsuitable for a person.

(2) If:

- (a) a person seeks work in an area (the *new area*) that is outside the area (the *old area*) in which the person's home is situated; and
- (b) the person is offered permanent full-time work (whether or not work of the kind sought) in the new area;

the work offered is not unsuitable work in respect of the person because of paragraph (1)(g) or (h) unless:

- (c) the person is under the age of 18; or
- (d) the person or the person's partner is pregnant; or
- (e) the person or the person's partner has a severe medical condition and the condition makes it unreasonable for the person to accept the offer; or
- (f) the acceptance of the offer would jeopardise the current employment, or the employment prospects, of the person's partner; or
- (g) the person or the person's partner has a child under the age of 16 years who is living with them or is living somewhere else in the old area; or
- (h) the person or the person's partner has significant caring responsibilities in the old area; or
- (i) the educational, cultural or religious background of the person makes it unreasonable for the person to accept the offer; or
- (j) it is more appropriate for the person to participate in education or training than to accept the offer; or
- (k) the person would suffer severe financial hardship if the person were to accept the offer.

(3) A person who, when seeking employment through an employment service provider, represents to the provider that he or she is willing to undertake work outside the area in which the person's home is



situated is taken, for the purposes of subsection (2), to seek work outside the area at the time when the representation is made.

- (4) Subsection (3) does not affect what would otherwise constitute a circumstance of a person seeking work outside the area in which the person's home is situated.
- (7) A reference in paragraph (1)(f) to remuneration for work is a reference to any income derived from the work that is income from personal exertion.

### **731D Persons in certain areas can be taken to comply with activity test**

If the Secretary considers that:

- (a) it would be reasonable to assume that, at the end of a period, a person is present in an area where:
  - (i) there is no locally accessible labour market; and
  - (ii) there is no locally accessible vocational training course; and
- (aa) it would be reasonable to assume that, throughout the period, the person is capable of undertaking, and willing to undertake, paid work that in the Secretary's opinion is suitable to be undertaken by the person; and
- (b) having regard to all the relevant factors, including:
  - (i) the location of offices of the Department; and
  - (ii) difficulties with transport and communication; and
  - (iii) the educational and cultural background of the person;it would be unreasonable to expect the person to comply with the activity test in order to be qualified for special benefit for that period;

then, unless the person has been notified of a requirement under subsection 731A(7) in relation to the period, the person is taken to satisfy the activity test during that period.

### **731DA Relief from activity test—domestic violence etc.**

- (1) A person is not required to satisfy the activity test in respect of a period that the Secretary determines under this section in relation to the person.

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- (2) The Secretary may make a determination under this section in relation to the person if the Secretary is satisfied that:
- (a) the person:
    - (i) is the principal carer of one or more children; and
    - (ii) has ceased to be a member of a couple in the period of 26 weeks before the determination; and
    - (iii) was subjected to domestic violence in that period of 26 weeks (whether or not the domestic violence was connected with ceasing to be a member of that or any other couple); and
    - (iv) has not again become a member of a couple; or
  - (b) the person is the principal carer of one or more children, and there are special circumstances relating to the person's family that make it appropriate to make the determination.

Note: For *principal carer* see subsections 5(15) to (24).

- (2A) The Secretary must, by legislative instrument, specify matters that the Secretary must take into account in deciding whether there are special circumstances relating to a person's family that make it appropriate to make a determination under this section.
- (2B) To avoid doubt, a determination under subsection (2A) does not limit the matters that the Secretary may take into account in making a determination under subsection (2).
- (3) The period that the Secretary determines under this section must be the lesser of:
- (a) the period that the Secretary considers to be appropriate; or
  - (b) 16 weeks.
- (4) Any such period may be followed by one or more other periods (not exceeding 16 weeks) determined under this section in relation to the person.
- (5) The period that the Secretary determines under this section must, despite subsection (3), be 16 weeks if the determination:
- (a) is made on grounds referred to in paragraph (2)(a) (or on grounds that include those grounds); and
  - (b) is the first determination made on those grounds (or on grounds that include those grounds) in connection with the particular cessation referred to in subparagraph (2)(a)(ii).

- (6) The Secretary may revoke a determination under this section in relation to a person if the Secretary is satisfied that the grounds on which the determination was made no longer exist.
- (7) Subsection (6) does not affect any operation that subsection 33(3) of the *Acts Interpretation Act 1901* has in relation to a determination under this section.

**731DB Relief from activity test—people with disabled children and other circumstances**

- (1) A person is not required to satisfy the activity test in respect of a period that the Secretary determines under this section in relation to the person.
- (2) The Secretary may make a determination under this section in relation to the person if the Secretary is satisfied that the person is the principal carer of one or more children:
  - (a) who suffer from a physical, intellectual or psychiatric disability or illness; and
  - (b) whose care needs are such that the person should, for the period specified in the determination, not be required to satisfy the activity test.

Note: For *principal carer* see subsections 5(15) to (24).

- (3) The Secretary must make a determination under this section in relation to the person if the Secretary is satisfied that the person is the principal carer of one or more children, and that:
  - (a) the person is a registered and active foster carer; or
  - (b) the person is a home educator of that child, or one or more of those children; or
  - (c) the person is a distance educator of that child, or one or more of those children; or
  - (d) under a family law order that the person is complying with, a child, of whom the person is a relative (other than a parent), is to live with the person.

Note 1: For *principal carer* see subsections 5(15) to (24).

Note 2: For *registered and active foster carer* see section 5B.

Note 3: For *home educator* see section 5C.

Note 4: For *distance educator* see section 5D.

**Chapter 2** Pensions, benefits and allowances

**Part 2.15** Special benefit

**Division 1** Qualification for and payability of special benefit

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Note 5: For *family law order* see subsection 23(1).

Note 6: For *relative (other than a parent)* see section 5E.

- (3A) The Secretary must make a determination under this section in relation to the person if the Secretary is satisfied that the person is the principal carer of 4 or more children.

Note: For *principal carer* see subsections 5(15) to (24).

- (4) The Secretary may make a determination under this section in relation to the person if the Secretary is satisfied that:
- (a) the person is a person included in a class of persons specified under subsection (5); and
  - (b) the person's circumstances are such that the person should not be required to satisfy the activity test for the period.
- (5) The Secretary may, by legislative instrument, specify classes of persons in respect of whom determinations under this section may be made.
- (6) The period that the Secretary determines under this section must be the lesser of:
- (a) the period that the Secretary considers to be appropriate; or
  - (b) 12 months.
- (7) Any such period may be followed by one or more other periods (not exceeding 12 months) determined under this section in relation to the person.
- (8) The Secretary may revoke a determination under this section in relation to a person if the Secretary is satisfied that the grounds on which the determination was made no longer exist.
- (9) Subsection (8) does not affect any operation that subsection 33(3) of the *Acts Interpretation Act 1901* has in relation to a determination under this section.

**731DC Persons may be treated as actively seeking etc. paid work**

- (1) A person is not required to satisfy the activity test in respect of the period to which subsection (4) applies if:
- (a) during the period, the person undertakes:
    - (i) paid work that, in the Secretary's opinion, is suitable for the person to undertake; or

- (ii) any other activity; and
- (b) the Secretary is of the opinion that, taking into account:
  - (i) the nature of the work or other activity; and
  - (ii) the duration of the work or other activity; and
  - (iii) any remuneration received for the work or other activity; and
  - (iv) any other matters relating to the work or other activity, or to the person's circumstances, that the Secretary considers relevant;it would be unreasonable to expect the person to satisfy the activity test for the period.
- (2) However, the work or other activity must not be or include any work or other activity of a kind that the Secretary determines under subsection (3).
- (3) The Secretary may determine, by legislative instrument, kinds of work or other activity that are not to be taken into account for the purposes of subsection (1).
- (4) This subsection applies to the period:
  - (a) starting:
    - (i) when the person made a claim, or is taken to have made a claim, for special benefit; or
    - (ii) when the person started to undertake the work or other activity;whichever happens later; and
  - (b) ending:
    - (i) if the person has been required to enter into a Special Benefit Activity Agreement but has failed to enter that agreement—when the person so failed; or
    - (ii) in any other case—when the person has entered into such an agreement.

### **731E Relief from activity test—special circumstances**

- (1) Subject to subsections (2) and (3), a person to whom this Subdivision applies is not required to satisfy the activity test for a period if:
  - (a) the Secretary is satisfied that special circumstances, beyond the person's control, exist; and

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- (b) the Secretary is satisfied that in those circumstances it would be unreasonable to expect the person to comply with the activity test for that period.
- (2) The period referred to in subsection (1) is not to exceed 13 weeks.
- (3) If:
  - (a) the Secretary makes a number of determinations under subsection (1); and
  - (b) the periods to which the determinations relate form a continuous period;the continuous period is not to exceed 13 weeks unless the Secretary determines otherwise, having regard to the continued existence, or likely continued existence, of the special circumstances on which the last preceding determination was based.

**731F Relief from activity test—pre-natal and post-natal**

- (1) A pregnant woman is not required to satisfy the activity test for the period that starts 6 weeks before the woman's expected date of confinement and ends on the day on which the woman gives birth to the child (whether or not the child is born alive).
- (2) If a woman gives birth to a child (whether or not the child is born alive), the woman is not required to satisfy the activity test for the period that starts on the day on which she gives birth to the child and ends 6 weeks after that day.

**731G Relief from activity test—people 55 and over who are engaged in work**

- (1) Subject to subsection (3), a person to whom this Subdivision applies who has reached 55 years is taken to satisfy the activity test in respect of each period of 2 weeks while the person is receiving special benefit (the *relevant period*) if the person:
  - (a) is engaged in approved unpaid voluntary work for an approved organisation for at least 30 hours in the relevant period; or
  - (b) is engaged, for at least 30 hours in the relevant period, in a combination of:

- (i) approved unpaid voluntary work for an approved organisation; and
  - (ii) paid work that the Secretary regards as suitable; or
  - (c) is engaged for at least 30 hours in the period in paid work that the Secretary regards as suitable.
- (3) This section does not apply to a person in respect of a day in a relevant period if, having regard to the opportunities, or possible opportunities, for employment that become available to the person on or before the day, the Secretary considers that this section is not to apply to the person in respect of that day.
- (4) In this section:

*approved organisation* is an organisation that has been approved by the Secretary for the purposes of this section.

*approved voluntary unpaid work*, either full-time or otherwise, is work that has been approved by the Secretary for the purposes of this section.

#### **731GA Relief from activity test—certain principal carers and people with partial capacity to work**

A person who:

- (a) is the principal carer of at least one child; or
- (b) has a partial capacity to work;

is taken to satisfy the activity test in respect of a period if, during the period, the person is engaged for at least 30 hours per fortnight in paid work that the Secretary regards as suitable.

#### **731H Relief from activity test—dependent child**

- (1) A person is taken to satisfy the activity test in respect of a period when the person has at least one child who:
- (a) is a dependent child of the person within the meaning of subsection 5(2) as qualified by subsections 5(3) and (6); and
  - (b) has not turned 6; and
  - (c) is in Australia.
- (2) For the purposes of subsection (1), a child can be a dependent child of only one person at a time.

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- (3) If the Secretary is satisfied that, but for subsection (2), a child would be a dependent child of 2 or more persons (*adults*), the Secretary must determine in relation to which of those adults the child is a dependent child.

**731J Relief from activity test—carers**

- (1) A person to whom this Subdivision applies is taken to satisfy the activity test during any period during which:
- (a) the person meets the qualification conditions for a carer payment set out in subsections 198(2), (3), (8) and (9); or
  - (b) the person is participating in the care in hospital of another person (the *hospitalised person*), whether that other person is a disabled adult, a profoundly disabled child, a disabled child or a dependent child of a disabled adult; and
    - (i) it is reasonable to assume that, if the hospitalised person were not in hospital, the carer would meet the qualification conditions for carer payment set out in subsections 198(2), (3), (8) and (9) for the hospitalised person or for the hospitalised person and another person or persons; and
    - (ii) either the hospitalised person is terminally ill or it is reasonable to expect that the hospitalised person will reside in the private home of the carer and the hospitalised person upon leaving hospital.
- (2) However, the period, or the sum of the periods, for which a person to whom this Subdivision applies is taken to satisfy the activity test by virtue of the operation of paragraph (1)(b) must not exceed:
- (a) 63 days in any calendar year; or
  - (b) another period that the Secretary, for any special reason in a particular case, decides to be appropriate.
- (3) If subsection (1) (including any subsection of section 198 that is applied under that subsection) uses a term that is defined for the purposes of section 198, it has the same meaning in subsection (1) as it has for the purposes of that section.
- (4) A person to whom this Subdivision applies is taken to satisfy the activity test during any period during which:



- (a) the person meets the qualification conditions for carer allowance set out in section 953 as modified by subsection (5); or
  - (b) the person meets the qualification conditions for carer allowance set out in section 954 as modified by subsection (5); or
  - (ba) the person meets the qualification conditions for carer allowance set out in section 954A as modified by subsection (5); or
  - (c) the person is participating in the care in hospital of another person (the *hospitalised person*), whether that other person is a disabled child or a disabled adult, and:
    - (i) it is reasonable to assume that, if the hospitalised person were not in hospital, the carer would meet the qualification conditions for carer allowance set out in section 953 or 954 as so modified, whichever is appropriate, for the hospitalised person, or set out in both of sections 953 and 954 as so modified, for the hospitalised person and another person or persons; and
    - (ii) either the hospitalised person is terminally ill or it is reasonable to expect that the hospitalised person will reside in the private home of the carer and the hospitalised person upon leaving hospital.
- (5) In this section:
- (a) a reference to section 953 as modified by this subsection is a reference to section 953, subject to:
    - (i) the substitution of a requirement that care receivers be in Australia for the requirement in paragraphs 953(1)(b) and (2)(b); and
    - (ii) the omission of paragraphs 953(1)(f) and (2)(f); and
  - (b) a reference to section 954 as modified by this subsection is a reference to section 954, subject to:
    - (i) the substitution of a requirement that the care receiver be in Australia for the requirement in paragraph 954(1)(a); and
    - (ii) the omission of paragraph 954(1)(f); and
  - (c) a reference to section 954A as modified by this subsection is a reference to section 954A, subject to:
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- (i) the substitution of a requirement that the care receiver be in Australia for the requirement in paragraph 954A(1)(a); and
  - (ii) the omission of paragraph 954A(1)(e).
- (6) However, the period, or the sum of the periods, for which a person to whom this Subdivision applies is taken to satisfy the activity test by virtue of the operation of paragraph (4)(c) must not exceed:
- (a) 63 days in any calendar year; or
  - (b) another period that the Secretary, for any special reason in a particular case, decides to be appropriate.
- (7) If subsection (4) (including one or more of sections 953, 954 and 954A as modified by subsection (5) and applied under subsection (4)) uses a term that is defined for the purposes of one or more of sections 953, 954 and 954A, that term has the same meaning in subsection (4) as it has for the purposes of one or more of those sections.

**731JA Relief from activity test—grant of temporary protection, humanitarian or safe haven visa**

A person to whom this Subdivision applies is not required to satisfy the activity test in respect of the period of 13 weeks commencing the day after the day on which the person is granted a visa included in a class of visas that is issued for temporary protection, humanitarian or safe haven purposes and that is determined by the Minister to be a class of visas to which subparagraph 729(2)(g)(i) applies.

**731K Temporarily incapacitated person not required to satisfy activity test**

- (1) A person to whom this Subdivision applies is not required to satisfy the activity test in respect of a period if:
- (a) throughout the period the person is incapacitated for work because of sickness or an accident; and
  - (b) the incapacity is caused wholly, or virtually wholly, by a medical condition arising from the sickness or accident; and
  - (c) the incapacity is, or is likely to be, of a temporary nature; and

- (d) the person has, whether before or after the commencement of this section, given the Secretary a certificate of a medical practitioner, in a form approved by the Secretary, stating:
    - (i) the medical practitioner's diagnosis; and
    - (ii) the medical practitioner's prognosis; and
    - (iii) that the person is incapacitated for work; and
    - (iv) the period for which the person is incapacitated for work; and
  - (e) the Secretary is satisfied that the incapacity has not been brought about with a view to avoiding any requirement to satisfy the activity test.
- (1A) The Secretary must comply with the guidelines (if any) determined and in force under subsection (1B) in deciding the following:
- (a) whether paragraph (1)(a), (b) or (c) applies to a person in respect of a period;
  - (b) whether, for the purposes of paragraph (a) of the definition of *work* in subsection (2), work is of a kind that a person could be reasonably expected to do.
- (1B) The Minister may, by legislative instrument, determine guidelines to be complied with by the Secretary in making a decision referred to in subsection (1A).
- (2) In this section:
- work*, in relation to a person, means work (whether full-time, part-time, permanent or casual) that:
- (a) is of a kind that the person could, in the Secretary's opinion, be reasonably expected to do; and
  - (b) is for at least 8 hours per week on wages that are at or above the relevant minimum wage.

**731KA Time limit for exemption—Secretary satisfied person can undertake activity**

- (1) A person ceases to be exempt, under this Subdivision, from the activity test if the Secretary is satisfied that, although the person meets the requirements of section 731K, the person should undertake one or more activities that the Secretary regards as suitable for the person.

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- (2) The cessation occurs:
  - (a) if the person has been required to enter into a Special Benefit Activity Agreement but has failed to enter that agreement—when the person so failed; or
  - (b) in any other case—when the person has entered into such an agreement.

**Subdivision AB—Special Benefit Activity Agreements for persons who are nominated visa holders**

**731L Special Benefit Activity Agreements—requirement to enter**

- (1) Subject to this section, if a person who is a nominated visa holder:
  - (a) has made a claim for special benefit; or
  - (b) is in receipt of special benefit;the Secretary may require the person to enter into a Special Benefit Activity Agreement.
- (2) Subject to this section, the Secretary may require a person who has entered into a Special Benefit Activity Agreement to enter into another such agreement instead of the existing one.
- (3) Subsections (1) and (2) do not apply to a person who, under section 731DA, 731DB, 731E, 731F or 731JA, is not required to satisfy the activity test.
- (3A) If, under section 731K, a person is not required to satisfy the activity test, subsections (1) and (2) apply to the person only if subsection 731KA(1) applies to the person.
- (4) The Secretary is to give a person who is required to enter into a Special Benefit Activity Agreement notice of:
  - (a) the requirement; and
  - (b) the places and times at which the agreement is to be negotiated.
- (5) A Special Benefit Activity Agreement is a written agreement in a form approved by the Secretary. The agreement is between the person and the Secretary.

### **731M Special Benefit Activity Agreements—terms**

- (1) Subject to subsection (2) and to sections 731N to 731Q, a Special Benefit Activity Agreement with a person is to require the person to undertake one or more activities that the Secretary regards as suitable for the person.
  - (1A) However, an agreement must not require the person to undertake an activity of a kind that the Secretary determines under subsection (1B).
  - (1B) The Secretary must determine, by legislative instrument, kinds of activities that agreements must not require persons to undertake.
  - (1C) To avoid doubt, a determination under subsection (1B) does not limit the Secretary's discretion to exclude other kinds of requirements from a particular agreement under subsection (1).
- (2) An agreement must not require the person concerned to participate in an approved program of work for income support payment if:
  - (a) the person has not turned 18; or
  - (b) the person or the person's partner has income; or
  - (c) in the Secretary's opinion:
    - (i) it has been established that there is medical evidence that the person has an illness, disability or injury that would be aggravated by the conditions in which the work would be performed; or
    - (ii) performing the work in the conditions in which the work would be performed would constitute a risk to health or safety or would contravene a law of the Commonwealth, a State or a Territory relating to occupational health and safety; or
  - (d) the person is at least 50 years of age and is not a person to whom subsection 28(4) applies.

Note: Section 731Q provides for revocation of such requirements.

- (3) The terms of an agreement, which include the specification of the activities that the person is to be required to undertake, are to be approved by the Secretary.
- (4) In considering whether to approve the terms of an agreement with a person who is a nominated visa holder, the Secretary is to have

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regard to the person's capacity to comply with the proposed agreement and the person's needs.

- (5) In having regard to a person's capacity to comply with an agreement, the Secretary is to take into account, but is not limited to, the following matters:
- (a) the person's education, experience, skills and age;
  - (aa) the impact of any disability, illness, mental condition or physical condition of the person on the person's ability to work, to look for work or to participate in training activities;
  - (b) the state of the local labour market and the transport options available to the person in accessing that market;
  - (c) the participation opportunities available to the person;
  - (d) the family and caring responsibilities of the person;
  - (e) the length of travel time required for compliance with the agreement;
  - (f) the financial costs of compliance with the agreement, such as travel costs, and the capacity to pay for such compliance;
  - (g) any other matters that the Secretary or the person considers relevant in the circumstances.
- (6) An agreement with a person:
- (a) may be varied (in negotiation with the person) or suspended; and
  - (b) if another Special Benefit Activity Agreement is made with the person—may be cancelled; and
  - (c) may be reviewed from time to time at the request of either party to the agreement; and
  - (d) may be cancelled by the Secretary after a review under paragraph (c).
- (7) A person who is a party to an agreement is to notify the Secretary of any circumstances preventing or affecting the person's compliance with the agreement.

**731N Special Benefit Activity Agreements—principal carers**

- (1) A Special Benefit Activity Agreement that:
- (a) is between the Secretary and a person who is the principal carer of at least one child; and

(b) requires the person to undertake, as an activity, looking for part-time work that the Secretary regards as suitable; must require the person to undertake looking for such part-time work of at least the appropriate number of hours per week.

Note: For *principal carer* see subsections 5(15) to (24).

- (2) The appropriate number of hours per week is:
- (a) 15; or
  - (b) such other number as the Secretary determines to be appropriate having regard to the person's circumstances.

### **731P Special Benefit Activity Agreements—people with partial capacity to work**

- (1) A Special Benefit Activity Agreement that:
- (a) is between the Secretary and a person who has a partial capacity to work; and
  - (b) requires the person to undertake, as an activity, looking for part-time work that the Secretary regards as suitable; must require the person to undertake looking for such part-time work of at least the appropriate number of hours per week.

Note: For *partial capacity to work* see section 16B.

- (2) The appropriate number of hours per week is:
- (a) 15; or
  - (b) such other number as the Secretary determines to be appropriate having regard to the person's circumstances.

### **731Q Special Benefit Activity Agreements—revocation of requirement to participate in approved program of work**

- (1) The Secretary may, by notice given to a person whom a Special Benefit Activity Agreement requires to participate in an approved program of work for income support payment, revoke the requirement to participate in the program if the Secretary:
- (a) is satisfied that the person or the person's partner has income; or
  - (b) forms the opinion that:
    - (i) it has been established that there is medical evidence that the person has an illness, disability or injury that

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- would be aggravated by the conditions in which the work would be performed; or
- (ii) performing the work in the conditions in which the work would be performed would constitute a risk to health or safety or would contravene a law of the Commonwealth, a State or a Territory relating to occupational health and safety; or
- (c) is satisfied that the person is at least 50 years of age and is not a person to whom subsection 28(4) applies.
- (2) Upon the Secretary so notifying the person, the requirement is taken to have been revoked with effect from the day specified in the notice.

**731R Special Benefit Activity Agreements—suspension of agreements in cases of domestic violence etc.**

A Special Benefit Activity Agreement between the Secretary and a person is taken to be suspended during any period during which the person is not required to satisfy the activity test because of section 731DA or 731DB.

**Subdivision B—Payability**

**732 Special benefit not payable if benefit rate nil**

- (1) Subject to subsection (2), special benefit is not payable to a person if the person's special benefit rate would be nil.
- (2) Subsection (1) does not apply to a person if the person's special benefit rate would be nil merely because an advance pharmaceutical allowance has been paid to the person under:
- (a) the social security law; or
- (b) Division 2 of Part VIIA of the Veterans' Entitlements Act.

**733 Assets test—benefit not payable if assets value limit exceeded**

[see Appendix for CPI adjusted figures]

- (1) A special benefit is not payable to a person if:
- (a) the person is not excluded from the special benefit assets test; and



- (b) the value of the person's assets exceeds the person's assets value limit.
- (2) A person is excluded from the special benefit assets test if the person:
- (a) has not turned 18; and
  - (b) is not independent within the meaning of section 1067A.
- (3) A person's assets value limit is worked out using the following table: work out which family situation applies to the person; the assets value limit is the corresponding amount in the *assets value limit* column.

<b>Assets value limit table</b>			
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	
		<b>Assets value limit</b>	
<b>Item</b>	<b>Person's family situation</b>	<b>Column 3A</b> <b>Either person or partner homeowner</b>	<b>Column 3B</b> <b>Neither person nor partner homeowner</b>
1.	Not member of a couple	\$110,750	\$190,250
2.	Partnered (partner getting neither pension nor benefit)	\$157,500	\$237,000
3.	Partnered (partner getting pension or benefit)	\$78,750	\$118,500

Note 1: for *member of a couple, partnered (partner getting neither pension nor benefit)* and *partnered (partner getting pension or benefit)* see section 4.

Note 2: for *homeowner* see section 11.

Note 3: if item 2 applies to a person, the value of *all* the assets of the person's partner is to be taken as being included in the value of the person's assets (see subsection 734(1)—this is why the assets value limit is so high. If, on the other hand, item 3 applies to a person, the value of the person's assets is only *half* the combined value of the person's assets and the assets of the person's partner (see subsection 734(2)).

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- Note 4: if a special benefit is not payable to a person because of the value of the person's assets, the person may be able to take advantage of provisions dealing with financial hardship (see sections 1131 and 1132).
- Note 5: the assets value limits of items 1 and 3 in column 3A and item 3 in column 3B are indexed annually in line with CPI increases (see sections 1191 to 1194).
- Note 6: the assets value limit of item 1 in column 3B is adjusted annually (see subsection 1204(1)).
- Note 7: the item 2 assets value limits are adjusted annually so that they are twice the corresponding item 3 limits (see subsections 1204(2) and (3)).

**734 Value of assets of members of couples**

(1) If:

- (a) the person is a member of a couple; and
- (b) the person's partner:
  - (i) is not in receipt of a social security, service pension or income support supplement; and
  - (ii) is not in receipt of a social security benefit;

the value of the person's assets, or of assets of a particular kind of the person, includes the value of the partner's assets or of assets of that kind of the partner.

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

(2) If:

- (a) the person is a member of a couple; and
- (b) the person's partner is in receipt of:
  - (i) a social security, service pension or income support supplement; or
  - (ii) a social security benefit;

the following provisions have effect:

- (c) the value of the person's assets is taken to be 50% of the sum of the value of the assets of the person and the value of the assets of the person's partner; and
- (d) the value of the person's assets of a particular kind is taken to be 50% of the sum of the value of the assets of that kind of the person and the value of assets of that kind of the person's partner.

### 735 Multiple entitlement exclusion

(1) Special benefit is not payable to a person if the person is already receiving a service pension or income support supplement.

(2) If:

- (a) a person is receiving special benefit; and
- (b) a social security pension, another social security benefit, service pension or income support supplement becomes payable to the person;

the special benefit is not payable to the person.

Note 1: another payment type will generally not become payable to the person until the person claims it.

Note 2: For *social security pension* and *social security benefit* see subsection 23(1).

(3) Special benefit is not payable to a woman if:

- (a) the woman is an armed services widow; and
- (b) the woman is receiving a pension under Part II or IV of the Veterans' Entitlements Act at a rate determined under or by reference to subsection 30(1) of that Act;

unless:

- (c) the woman has been receiving a payment referred to in paragraph (b) continuously since before 1 November 1986; and
- (d) before 1 November 1986 the woman was also receiving a social security benefit.

Note: for *armed services widow* see subsection 4(1).

(4) Special benefit is not payable to a man if:

- (a) the man is an armed services widower; and
- (b) the man is receiving a pension under Part II or IV of the Veterans' Entitlements Act at a rate determined under or by reference to subsection 30(1) of that Act.

Note: for *armed services widower* see subsection 4(1).

(5) Special benefit is not payable to a person if:

- (a) the person is an armed services widow or an armed services widower; and
- (b) the person has received a lump sum, or is receiving weekly amounts, mentioned in paragraph 234(1)(b) of the MRCA.

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Note 1: For *armed services widow* and *armed services widower* see subsection 4(1).

Note 2: For *MRCA* see subsection 23(1).

**736 Secretary may require certain persons to attend courses or undertake work**

- (1) If:
- (a) a person, other than a person who is a nominated visa holder, is receiving, or has lodged a claim for, special benefit; and
  - (b) the Secretary is of the opinion that the person should:
    - (i) undertake a course of vocational training; or
    - (ii) undertake a course:
      - (A) which the person could reasonably undertake; and
      - (B) to which the person has been referred by the Secretary; or
    - (iii) do any work suitable to be done by the person; and
  - (c) the Secretary notifies the person that the person is required to:
    - (i) undertake that course; or
    - (ii) do that work; and
  - (d) the person does not comply with the Secretary's requirements;
- special benefit is not payable to the person for a period determined by the Secretary.
- (2) The Secretary may determine that special benefit is payable for a period for which he or she had previously determined that it was not payable under subsection (1) if, within a reasonable period, the person complies with the Secretary's requirements.

**737 Full-time students**

- (1) Subject to subsection (3), a special benefit is not payable to a person:
- (a) who has turned 18; or
  - (b) who satisfies both of the following:
    - (i) the person has not turned 16; and

(ii) the person is not a SPB homeless person;  
if the person is enrolled in a full-time course of education or of vocational training.

Note: for *SPB homeless person* see section 739.

*Period for which benefit not payable*

- (2) The period for which a special benefit is not payable under subsection (1) is the period that:
- (a) starts when the person starts the course; and
  - (b) finishes when the person:
    - (i) completes the course; or
    - (ii) abandons the course; or
    - (iii) gives notice to the provider of the course that the person:
      - (A) wishes to withdraw from the course; or
      - (B) wishes to withdraw from such number of subjects that the person's course will no longer be a full-time course; and
  - (c) includes periods of vacation.

*Subsection (1) does not apply in certain cases*

- (3) Subsection (1) does not prevent a special benefit from being payable for any period during which:
- (a) a person is enrolled in a course of study that the Secretary has required the person to undertake under section 736; or
  - (b) the person is engaged in a course undertaken under a Special Benefit Activity Agreement; or
  - (c) the person has deferred a course of education.

### **738 Payments under certain education schemes**

- (1) Subject to subsections (2) and (3), a special benefit is not payable to a person:
- (a) who has turned 18; or
  - (b) who satisfies both of the following:
    - (i) the person has not turned 16;

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(ii) the person is not a SPB homeless person;  
if a payment has been made or may be made in respect of the person for the same period under:

- (c) a prescribed educational scheme other than the ABSTUDY scheme to the extent that it applies to part-time students; or
- (d) the scheme to provide an allowance known as the Adult Migrant Education Program Living Allowance; or
- (e) the scheme to provide an allowance known as the Maintenance Allowance for Refugees; or
- (f) the scheme to provide an allowance known as the English as a Second Language Allowance to the extent that the scheme applies to full-time students.

Note 1: for *prescribed educational scheme* see section 5.

Note 2: for *SPB homeless person* see section 739.

(2) If:

- (a) a person may start a course of education on a full-time basis; and
- (b) a payment under a scheme referred to in subsection (1) may be made in respect of the person;

the Secretary may decide that, in spite of subsection (1), a special benefit is payable to the person for a period before the person starts the course.

(3) If:

- (a) a person enrolls in a full-time course of education; and
- (b) an application is made for a payment in respect of the person under:
  - (ii) the ABSTUDY Schooling scheme; or
  - (iii) the ABSTUDY Tertiary scheme; and
- (c) the person was receiving special benefit immediately before the start of the course;

the Secretary may decide that, in spite of subsection (1), special benefit is payable to the person for the period of 3 weeks commencing on the day on which the course starts.

### 739 SPB homeless person

For the purposes of subparagraphs 737(1)(b)(ii) and 738(1)(b)(ii), a person is an *SPB homeless person* if:

- (a) the person is not a member of a couple; and
- (b) the person does not have a dependent child; and
- (c) the person meets the conditions in subsection 1067A(9) (which is about being independent).

### **739A Newly arrived resident's waiting period**

- (1) Subject to this section, a person who, on or after the commencement of this subsection:
  - (a) enters Australia; or
  - (b) becomes the holder of a permanent visa; or
  - (e) becomes the holder of a visa that is in a class of visas determined by the Minister, by legislative instrument, for the purposes of this paragraph;is subject to a newly arrived resident's waiting period.
- (2) Subject to this section, if, immediately before the commencement of this subsection, a person was the holder of a visa that is in a class of visas determined by the Minister for the purposes of this subsection, the person is subject to a newly arrived resident's waiting period.
- (3) If:
  - (a) a person is subject to a newly arrived resident's waiting period; and
  - (b) before, on or after the commencement of this subsection, the person applies for a visa that is in a class of visas determined by the Minister, by legislative instrument, for the purposes of this paragraph;the waiting period:
  - (c) starts on the day on which the person applied for that visa; and
  - (d) ends when the person has been in Australia for a period of, or periods totalling, 104 weeks after that day.
- (4) If:
  - (a) a person is subject to a newly arrived resident's waiting period; and
  - (b) before, on or after the commencement of this subsection, the person was the holder of a visa that is in a class of visas

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determined by the Minister, by legislative instrument, for the purposes of this paragraph;

the period:

(c) starts on the day on which the person applied for that visa; and

(d) ends when the person has been in Australia for a period of, or periods totalling, 104 weeks after that day.

(5) If:

(a) a person is subject to a newly arrived resident's waiting period; and

(b) neither subsection (3) nor (4) apply to the person;

the waiting period starts on the day on which the person:

(c) first entered Australia; or

(d) becomes the holder of a permanent visa;

whichever occurs last, and ends on the day after the person has been in Australia for a period of, or periods totalling, 104 weeks after that day.

(6) Neither subsection (1) nor (2) applies to a person if the person holds, or was the former holder of, a visa in a class of visas determined by the Minister, by legislative instrument, for the purposes of this subsection.

(7) Neither subsection (1) nor (2) apply to a person if the person, in the Secretary's opinion, has suffered a substantial change in circumstances beyond the person's control.

Note: For *permanent visa* see subsection 7(1).

**739B Secretary to act in accordance with guidelines**

The Secretary must exercise the powers under subsection 739A(7), in accordance with guidelines from time to time in force under section 739C.

**739C Guidelines for exercise of Secretary's powers under subsection 739A(7)**

The Minister, by legislative instrument:

(a) is to set guidelines for the exercise of the Secretary's powers under subsection 739A(7); and



- (b) may revoke or vary those guidelines.

### **Subdivision C—Situations where benefit not payable because of special benefit participation failure**

#### **740 Special benefit participation failures**

- (1) A person who is a nominated visa holder commits a *special benefit participation failure* if the person:
- (a) fails to comply with a requirement:
    - (i) that was notified to the person under subsection 63(2) or 64(2) of the Administration Act; and
    - (ii) that was reasonable; and
    - (iii) the notification of which included a statement to the effect that a failure to comply with the requirement could constitute a special benefit participation failure; or
  - (b) fails to satisfy the activity test; or
  - (c) fails to comply with a requirement to enter into a Special Benefit Activity Agreement; or
  - (d) fails to comply with a term of a Special Benefit Activity Agreement between the Secretary and the person; or
  - (e) fails to attend a job interview; or
  - (f) fails:
    - (i) to commence, complete or participate in an approved program of work for income support payment that the person is required to undertake; or
    - (ii) to comply with the conditions of such a program; or
  - (g) fails to continue his or her involvement in a labour market program because he or she:
    - (i) voluntarily ceases to take part in the program; or
    - (ii) is dismissed from the program for misconduct; or
  - (h) is issued with a notice under subsection 741(1) and fails to comply with it within the period specified in the notice; or
  - (i) fails to comply with subsection 741(2); or
  - (j) fails to comply with a requirement included in a Special Benefit Activity Agreement between the Secretary and the person to:
    - (i) undertake a certain number of job searches per fortnight; and
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- (ii) keep a record of the person's job searches in a document referred to in the agreement as a job seeker diary; and
    - (iii) return the job seeker diary to the Department at the end of the period specified in the agreement; or
  - (k) fails to comply with a requirement to undertake another activity referred to in paragraph 742(1)(b).
- (2) Despite subsection (1), a failure of a kind referred to in that subsection is not a special benefit participation failure if the person satisfies the Secretary that the person had a reasonable excuse for the failure.
- (2A) The Secretary must, by legislative instrument, determine matters that the Secretary must take into account in deciding whether, for the purposes of subsection (2), a person had a reasonable excuse for committing a special benefit participation failure.
- (2B) To avoid doubt, a determination under subsection (2A) does not limit the matters that the Secretary may take into account in deciding whether, for the purposes of subsection (2), a person had a reasonable excuse for committing the special benefit participation failure referred to in subsection (1).
- (3) Despite subsection (1), if a failure of a kind referred to in that subsection occurs in an instalment period of the person in which the person has already committed a special benefit participation failure, the failure is not a special benefit participation failure if:
- (a) the instalment period is the person's first instalment period for special benefit; or
  - (b) the instalment period is not the person's first instalment period for special benefit, and:
    - (i) the person did not commit a special benefit participation failure in the immediately preceding instalment period of the person; or
    - (ii) in respect of each special benefit participation failure that the person committed in the immediately preceding instalment period of the person, the person acted in accordance with a requirement of the Secretary notified in respect of that failure.
- (4) Paragraph (1)(f) does not apply to a failure if:
- (a) the person is under 60; and

(b) a determination under paragraph 28(4)(b) is in force in relation to the person.

(5) Paragraph (1)(j) does not limit the scope of paragraph (1)(d).

#### **741 Requiring a person to apply for job vacancies**

- (1) The Secretary may notify a person who:
  - (a) is a nominated visa holder (other than a person who is not required to satisfy the activity test); and
  - (b) is receiving special benefit;that the person must apply for a particular number of advertised job vacancies in the period specified in the notice.
- (2) The person must give the Secretary a written statement from each employer whose job vacancy the person applied for that confirms that the person applied for that job vacancy.
- (3) The statement from the employer must be in a form approved by the Secretary.
- (4) Subsection (2) does not apply to the person if the Secretary is satisfied that there are special circumstances in which it is not reasonable to expect the person to give the statement referred to in that subsection.

#### **742 Allowance not payable because of special benefit participation failure**

- (1) A special benefit is not payable to a person, for the period starting in accordance with section 743 and ending in accordance with section 744, if:
  - (a) the person commits a special benefit participation failure; and
  - (b) the Secretary requires the person:
    - (i) to comply with the requirement, or undertake the activity, to which the special benefit participation failure relates; or
    - (ii) to comply with a particular requirement, or undertake a particular activity, in place of the requirement or activity to which the failure relates;during the participation failure instalment period for the failure, or at a particular time during that period; and

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- (c) the person fails to comply with the requirement.  
However, paragraphs (b) and (c) do not apply in relation to a special benefit participation failure of a kind referred to in paragraph 740(1)(h), (i) or (j).
- (2) This section does not apply in relation to the failure if:
- (a) the Secretary is satisfied that the person had a reasonable excuse for the failure referred to paragraph (1)(c); or
  - (b) the Secretary is for any other reason satisfied that subsection (1) should not apply to the failure.
- (2A) The Secretary must, by legislative instrument, determine matters that the Secretary must take into account in deciding whether, for the purposes of paragraph (2)(a), a person had a reasonable excuse for a failure of a kind referred to in paragraph (1)(c).
- (2B) To avoid doubt, a determination under subsection (2A) does not limit the matters that the Secretary may take into account in deciding whether, for the purposes of paragraph (2)(a), a person had a reasonable excuse for the failure referred to in paragraph (1)(c).
- (3) The *participation failure instalment period* for the special benefit participation failure is:
- (a) if the failure is a failure of a kind referred to in paragraph 740(1)(h) or (i)—the next instalment period of the person to start after the end of the period specified in the notice under subsection 741(1) to which the failure relates; or
  - (b) if the failure is a failure of a kind referred to in paragraph 740(1)(j)—the next instalment period of the person to start after the end of the period referred to in subparagraph 740(1)(j)(iii); or
  - (c) otherwise—the next instalment period of the person to start after the day on which the Secretary first became aware that the person committed the failure.
- (4) This section does not apply to a special benefit participation failure if section 745 applies to the failure.

**743 When the period of non-payment starts**

The period for which special benefit is not payable to the person because of section 742 is taken to have started at the start of the

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participation failure instalment period for the special benefit participation failure.

#### **744 When the period of non-payment ends**

The period for which special benefit is not payable to the person because of section 742 ends when:

- (a) in accordance with a requirement of the Secretary that the person comply with the requirement, or undertake the activity, to which the special benefit participation failure related, the person has complied with the requirement or undertaken the activity; or
- (b) in accordance with a requirement of the Secretary that the person undertake another activity in place of the requirement or activity to which the special benefit participation failure related, the person has undertaken the other activity; or
- (c) in accordance with a requirement of the Secretary that the person comply with another requirement in place of the requirement or activity to which the special benefit participation failure related, the person has complied with the other requirement.

#### **Subdivision CA—Situations where allowance not payable because of repeated or more serious failure**

#### **745 Allowance not payable because of repeated or more serious failure**

- (1) A special benefit is not payable to a person, for the period of 8 weeks starting in accordance with section 745A, if the person:
  - (a) commits a special benefit participation failure (the *repeated failure*), having committed special benefit participation failures (the *earlier failures*) on 2 or more other occasions during the period of 12 months preceding that failure; or
  - (b) is unemployed due, either directly or indirectly, to a voluntary act of the person, and as a result the person is unable to earn a sufficient livelihood for the person and the person's dependants; or
  - (c) is unemployed due to the person's misconduct as a worker, and as a result the person is unable to earn a sufficient livelihood for the person and the person's dependants; or

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- (d) has refused or failed, without reasonable excuse, to accept a suitable offer of employment; or
  - (e) fails, without reasonable excuse:
    - (i) to commence, complete or participate in an approved program of work for income support payment that the person is required to undertake; or
    - (ii) to comply with the conditions of such a program.
- (1A) The Secretary must, by legislative instrument, determine matters that the Secretary must take into account in deciding whether, for the purposes of paragraph (1)(d), a person had a reasonable excuse for refusing or failing to accept a suitable offer of employment.
- (1B) To avoid doubt, a determination under subsection (1A) does not limit the matters that the Secretary may take into account in deciding whether, for the purposes of paragraph (1)(d), a person had a reasonable excuse for refusing or failing to accept a suitable offer of employment referred to in that paragraph.
- (2) For the purposes of paragraph (1)(a), disregard any earlier failure that is a failure to which subsection 742(1) does not apply because of subsection 742(2).
- (3) Subsection (1) does not apply in relation to the repeated failure if the Secretary is for any other reason satisfied that subsection (1) should not apply to the failure.
- (4) Paragraph (1)(b) does not apply if the Secretary is satisfied that the person's voluntary act was reasonable.
- (5) Paragraph (1)(e) applies only if:
  - (a) the person is under 60; and
  - (b) a determination under paragraph 28(4)(b) is in force in relation to the person.

**745A When the period of non-payment starts**

- (1) The period for which special benefit is not payable to the person because of paragraph 745(1)(a) is taken to start, or to have started:
- (a) if the repeated failure is a failure of a kind referred to in paragraph 740(1)(h), (i) or (j)—at the start of the participation failure instalment period for the repeated failure; or
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- (b) if paragraph (a) of this subsection does not apply and the repeated failure occurs during a participation failure instalment period for an earlier failure—at the start of the participation failure instalment period for the earlier failure; or
- (c) otherwise—at the start of the next instalment period of the person to start after the day on which the Secretary first became aware that the person committed the failure.

Note: For *participation failure instalment period* see subsection 742(3).

- (2) The period for which special benefit is not payable to the person because of section 745 (other than because of paragraph 745(1)(a)) starts on the day the Secretary determines that section 745 applies to the person.
- (3) However, if:
  - (a) section 745 would not apply to the person but for the application of paragraph 745(1)(b) or (c), or both; and
  - (b) at the time of the voluntary act or misconduct in question, the person was not receiving special benefit;the period for which special benefit is not payable to the person starts at the time the person became unemployed as a result of the voluntary act or misconduct.

### **Subdivision D—Situations where special benefit not payable to persons who are nominated visa holders (administrative breaches)**

#### **745H Situations where special benefit not payable for failure to comply with certain requirements**

Special benefit is not payable to a person who is a nominated visa holder if the person refuses or fails, without reasonable excuse, to comply with a requirement made of the person under section 67, 68 or 192 of the Administration Act.

**Subdivision E—Participation by persons who are nominated visa holders in an approved program of work for income support payment**

**745L Participation in an approved program of work for income support payment does not give rise to employment under certain industrial relations legislation**

A person who is a nominated visa holder is not to be taken, by reason only of participation in an approved program of work for income support payment in accordance with the terms of a Special Benefit Activity Agreement under section 731M, to be:

- (a) an employee within the meaning of section 9 of the *Occupational Health and Safety Act 1991*; or
- (b) an employee within the meaning of section 5 of the *Safety, Rehabilitation and Compensation Act 1988*; or
- (c) an employee for the purposes of the *Superannuation Guarantee (Administration) Act 1992*; or
- (d) an employee for the purposes of the *Workplace Relations Act 1996*.

**Subdivision F—Other situations where special benefit not payable to persons who are nominated visa holders**

**745M Seasonal workers**

- (1) This section applies if, at any time during the 6 months immediately before the day on which a person who is a nominated visa holder lodges a claim for special benefit, the person or, if the person is a member of a couple, the person or the person's partner, has been engaged in seasonal work within the meaning of subsection 16A(1).
- (2) Special benefit is not payable to the person:
  - (a) if the person is subject to a seasonal work preclusion period within the meaning of subsection 16A(1) (whether in relation to the claim referred to in subsection (1) or any other claim under this Act) and the Secretary has not made a determination under subsection (3) in relation to the person—for the person's seasonal work preclusion period; or



- (b) if the Secretary has made a determination under subsection (3) in relation to the person—for that part (if any) of the person's seasonal work preclusion period to which the person is subject as a result of the determination.
- (3) If the Secretary is satisfied that a person is in severe financial hardship within the meaning of subsection 19C(2) or (3), whichever is appropriate, because the person has incurred unavoidable or reasonable expenditure within the meaning of subsection 19C(4) while the person is subject to a seasonal work preclusion period (whether in relation to the claim referred to in subsection (1) or any other claim under this Act):
  - (a) the Secretary may determine that the person is not subject to the whole, or any part, of the preclusion period; and
  - (b) the determination has effect accordingly.

#### **745N Move to area of lower employment prospects**

- (1) Subject to subsection (3), if, in the opinion of the Secretary, a person who is a nominated visa holder has reduced his or her employment prospects by moving to a new place of residence without sufficient reason, special benefit is not payable to the person for 26 weeks.
- (2) Subsection (1) extends to a person who makes a claim for special benefit on or after the day on which the person moved to the new place of residence and before the end of the period referred to in that subsection.
- (3) If a person to whom special benefit is not payable under subsection (1) for a period of 26 weeks (including that subsection as it applies by virtue of subsection (2)) does either of the following during that period:
  - (a) moves back to the place of residence (the *original place of residence*) the movement from which resulted in special benefit not being payable to him or her;
  - (b) moves to another place of residence a movement to which from the original place of residence would not have resulted in special benefit not being payable to him or her;the period of 26 weeks ends at the time of the movement back to the original place of residence or the movement to the other place of residence, as the case may be.

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- (4) For the purposes of subsection (1), a person has a sufficient reason for moving to a new place of residence if and only if the person:
  - (a) moves to live with a family member who has already established his or her residence in that place of residence; or
  - (b) moves to live near a family member who has already established residence in the same area; or
  - (c) satisfies the Secretary that the move is necessary for the purposes of treating or alleviating a physical disease or illness suffered by the person or by a family member; or
  - (d) satisfies the Secretary that the person has moved from his or her original place of residence because of an extreme circumstance which made it reasonable for the person to move to the new place of residence (for example, the person had been subjected to domestic or family violence in the original place of residence).
  
- (5) The Secretary may determine in writing the day on which the period of non-payment imposed by subsection (1) commences and that day may be before the day of the determination.

## **Division 4—Rate of special benefit**

### **746 Rate of special benefit**

- (1) The rate of a person's special benefit is the fortnightly rate determined by the Secretary in his or her discretion.
- (2) The rate of a person's special benefit is not to exceed the rate at which youth allowance, austudy payment or newstart allowance would be payable to the person if:
  - (a) the person were qualified for youth allowance, austudy payment or newstart allowance; and
  - (b) youth allowance, austudy payment or newstart allowance were payable to the person.
- (3) In working out, for the purposes of subsection (2), the rate at which youth allowance would be payable to a person, disregard any amount by which the rate would be increased because of point 1067G-B3A or 1067G-D1 of the Youth Allowance Rate Calculator.
- (4) In working out, for the purposes of subsection (2), the rate at which newstart allowance would be payable to a person, disregard any amount by which the rate would be increased because of point 1068-B5 of Benefit Rate Calculator B.

### **747 Approved program of work supplement for persons who are nominated visa holders**

If a person who is a nominated visa holder:

- (a) is receiving special benefit; and
- (b) is participating in an approved program of work for income support payment;

the rate of the person's special benefit is increased by an amount of \$20.80, to be known as the approved program of work supplement, for each fortnight during which the person participates in the program unless, during that fortnight, the person subsequently ceases to participate in the program in circumstances that constitute:

- (c) a failure of the activity test to which the person is subject; or

- (d) a failure to comply with the terms of a Special Benefit Activity Agreement to which the person is subject.

**759 Effect of industrial action on rate of special benefit payable to persons who are nominated visa holders**

(1) If:

- (a) a person who is a nominated visa holder is receiving special benefit; and
- (b) while the person is receiving that benefit the person becomes engaged in industrial action, or in a series of industrial actions, that leads to the person's unemployment or to a decrease in the person's level of income;

the rate of special benefit payable to the person is to be determined as if the person had continued, for the period of that industrial action, to be employed and to receive income at the level at which it would have been received if the person had not engaged in that action.

(2) Subsection (1) does not apply in relation to a person if the Secretary is satisfied:

- (a) that the person's unemployment or the effect on the person's level of income was due to other people being, or having been, engaged in industrial action or in a series of industrial actions; and
- (b) the people or some of the people were members of a trade union that was involved in the industrial action; and
- (c) the person was not a member of the trade union during the period of the industrial action.

(3) Subject to subsection (4), subsections (1) and (2) do not affect the rate of special benefit payable to a person in respect of a period that occurs after the relevant industrial action or series of industrial actions has stopped.

(4) If the relevant industrial action or series of industrial actions is in breach of an order, direction or injunction issued by:

- (a) a State industrial authority within the meaning of section 4 of the Workplace Relations Act; or
- (b) the Australian Industrial Relations Commission; or
- (c) the Federal Court; or

(d) the Federal Magistrates Court;  
the rate of special benefit payable to a person is to continue to be determined in accordance with subsection (1) but subject to subsection (2) until the end of a period of 6 weeks after the relevant industrial action or series of industrial actions has stopped.

## Division 9—Bereavement payments

### Subdivision AA—Death of partner

#### 768A Qualification for payments under this Subdivision

- (1) If:
- (a) a person is receiving a special benefit; and
  - (b) the person is a long-term social security recipient; and
  - (c) the person is a member of a couple; and
  - (d) the person's partner dies; and
  - (e) immediately before the partner died, the partner:
    - (i) was receiving a social security pension; or
    - (ii) was receiving a service pension or income support supplement; or
    - (iii) was a long-term social security recipient; and
  - (f) on the person's payday immediately before the first available bereavement adjustment payday, the amount that would be payable to the person if the person were not qualified for payments under this Subdivision is less than the sum of:
    - (i) the amount that would otherwise be payable to the person under section 768D (person's continued rate) on that payday; and
    - (ii) the amount (if any) that would otherwise be payable to the person, under section 768B (continued payment of partner's pension or benefit) on the partner's payday immediately before the first available bereavement adjustment payday;

the person is qualified for payments under this Subdivision to cover the bereavement period.

Note 1: section 768B provides for the payment to the person, up to the first available bereavement adjustment payday, of amounts equal to the instalments that would have been paid to the person's partner during that period if the partner had not died.

Note 2: section 768C provides for a lump sum that represents the instalments that would have been paid to the person's partner, between the first available bereavement adjustment payday and the end of the bereavement period, if the partner had not died.

Note 3: for *long-term social security recipient* see subsection 23(1).

- (2) A person who is qualified for payments under this Subdivision may choose not to receive payments under this Subdivision.
- (3) An election under subsection (2):
  - (a) must be made by written notice to the Secretary; and
  - (b) may be made after the person has been paid an amount or amounts under this Subdivision; and
  - (c) cannot be withdrawn after the Department has taken all the action required to give effect to that election.
- (4) If a person is qualified for payments under this Subdivision in relation to the partner's death, the rate at which newstart allowance is payable to the person during the bereavement period is, unless the person has made an election under subsection (2), governed by section 768D.

#### **768B Continued payment of partner's pension or benefit**

If a person is qualified for payments under this Subdivision in relation to the death of the person's partner, there is payable to the person, on each of the partner's paydays in the bereavement rate continuation period, an amount equal to the amount that would have been payable to the partner on that payday if the partner had not died.

#### **768C Lump sum payable in some circumstances**

If:

- (a) a person is qualified for payments under this Subdivision in relation to the death of the person's partner; and
- (b) the first available bereavement adjustment payday occurs before the end of the bereavement period;

there is payable to the person as a lump sum an amount worked out using the lump sum calculator at the end of this section.

### LUMP SUM CALCULATOR

This is how to work out the amount of the lump sum:

#### *Method statement*

Step 1. Add up:

- (a) the amount that, if the person's partner had not died, would have been payable to the person on the person's payday immediately before the first available bereavement adjustment payday; and
- (b) the amount (if any) that, if the partner had not died, would have been payable to the partner on the partner's payday immediately before the first available bereavement adjustment payday;

the result is called the *combined rate*.

Step 2. Work out the amount that, but for section 768D, would have been payable to the person on the person's payday immediately before the first available bereavement adjustment payday: the result is called the *person's individual rate*.

Step 3. Take the person's individual rate away from the combined rate: the result is called the *partner's instalment component*.

Step 4. Work out the number of the partner's paydays in the bereavement lump sum period.

Step 5. Multiply the partner's instalment component by the number obtained in Step 4: the result is the amount of the lump sum payable to the person under this section.



**768D Adjustment of a person's special benefit rate**

If:

- (a) a person is qualified for payments under this Subdivision;  
and
- (b) the person does not elect under subsection 768A(2) not to receive payments under this Subdivision;

the rate of the person's special benefit during the bereavement period is worked out as follows:

- (c) during the bereavement rate continuation period, the rate of special benefit payable to the person is the rate at which the allowance would have been payable to the person if the person's partner had not died;
- (d) during the bereavement lump sum period (if any), the rate at which special benefit is payable to the person is the rate at which the allowance would be payable to the person apart from this Subdivision.

**768E Effect of death of person entitled to payments under this Subdivision**

If:

- (a) a person is qualified for payments under this Subdivision in relation to the death of the person's partner; and
- (b) the person dies within the bereavement period; and
- (c) the Secretary does not become aware of the death of the person's partner before the person dies;

there is payable, to such person as the Secretary thinks appropriate, as a lump sum, an amount worked out using the lump sum calculator at the end of this section.

### LUMP SUM CALCULATOR

This is how to work out the amount of the lump sum:

#### *Method statement*

Step 1. Add up:

- (a) the amount that, if neither the person nor the person's partner had died, would have been payable to the person on the person's payday immediately after the day on which the person dies; and
- (b) the amount (if any) that, if neither the person nor the person's partner had died, would have been payable to the person's partner on the partner's payday immediately after the day on which the person died;

the result is called the *combined rate*.

Step 2. Work out the amount that, but for section 768D, would have been payable to the person on the person's payday immediately after the day on which the person died if the person had not died: the result is called the *person's individual rate*.

Step 3. Take the person's individual rate away from the combined pensioner couple rate: the result is called the *partner's instalment component*.

Step 4. Work out the number of paydays of the partner in the period that commences on the day on which the person dies and ends on the day on which the bereavement period ends.

Step 5. Multiply the partner's instalment component by the number obtained in Step 4: the result is the amount of the lump sum payable under this section.

**768F Matters affecting payments under this Subdivision**

(1) If:

- (a) a person is qualified for payments under this Subdivision in relation to the death of the person's partner; and
- (b) after the person's partner died, an amount to which the partner would have been entitled if the partner had not died has been paid under this Act or under Part III of the Veterans' Entitlements Act; and
- (c) the Secretary is not satisfied that the person has not had the benefit of that amount;

the following provisions have effect:

- (d) the amount referred to in paragraph (b) is not recoverable from the person or from the personal representative of the person's partner, except to the extent (if any) that the amount exceeds the amount payable to the person under this Subdivision;
- (e) the amount payable to the person under this Subdivision is to be reduced by the amount referred to in paragraph (b).

(2) If:

- (a) a person is qualified for payments under this Subdivision in relation to the death of the person's partner; and
- (b) the amount to which the person's partner would have been entitled if the person's partner had not died has been paid under this Act or under Part III of the Veterans' Entitlements Act, within the bereavement period, into an account with a bank; and
- (c) the bank pays to the person, out of the account, an amount not exceeding the total of the amounts paid as mentioned in paragraph (b);

the bank is, in spite of anything in any other law, not liable to any action, claim or demand by the Commonwealth, the personal representative of the person's partner or anyone else in respect of the payment of that money to the person.

## **Part 2.15A—Partner allowance**

### **Division 1A—Application of Part**

#### **771 Time limits on claims for partner allowance**

- (1) In spite of any other provisions of this Act or of the Administration Act, a person is not to be granted a partner allowance under this Part unless:
  - (a) the person's claim for the allowance:
    - (i) was lodged before 20 September 2003; or
    - (ii) is taken, because of the operation of section 13 or 15 of the Administration Act, to have been made before 20 September 2003; and
  - (b) the person was qualified for the allowance:
    - (i) in a case to which subparagraph (a)(i) applies—on the date of lodgment of the claim; and
    - (ii) in a case to which subparagraph (a)(ii) applies—on the date the person is taken to have made the claim.
- (2) Subsection (1) does not imply that a person making a claim in the circumstances referred to in subsection 35(1) of the Administration Act before 20 September 2003 will be granted a partner allowance if the date from which the allowance would be payable to that person under subsection 37(7) of that Act would be 20 September 2003 or a later date.
- (3) Nothing in this section affects the operation of section 85 of the Administration Act.

## **Division 1—Qualification for and payability of partner allowance**

### **Subdivision A—Qualification for partner allowance**

#### **771HA Qualification for partner allowance**

- (1) Subject to subsections (1A) and (3), and section 771HB, a person is qualified for a partner allowance in respect of a period if:
- (a) throughout the period, the person is a member of a couple; and
  - (b) throughout the period, the person's partner is at least 21; and
  - (c) the person's partner is receiving:
    - (i) youth allowance, austudy payment, newstart allowance, sickness allowance, special benefit, rehabilitation allowance, age pension, disability support pension, mature age allowance, service pension or income support supplement; or
    - (ii) assistance under a Student Financial Supplement Scheme or an income tested living allowance under an Aboriginal study assistance scheme; and
  - (d) throughout the period, the person is an Australian resident; and
  - (e) the person was born on or before 1 July 1955; and
  - (f) the person is not qualified for parenting payment at any time during the period; and
  - (h) the person does not have recent workforce experience.

Note 1: For *member of a couple* see section 4.

Note 2: For *Australian resident* see section 7.

- (1A) If the Secretary determines under section 36 of the Administration Act that a person's claim for partner allowance is to be granted, the person's partner need not satisfy the requirements of paragraph (1)(c) in order for the person to remain qualified for the allowance.
- (1B) For the purposes of paragraph (1)(c), the person's partner is taken to be receiving newstart allowance if the person's partner would be receiving newstart allowance except for:

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- (a) the application of a compliance penalty period; or
- (b) the application of a period of non-payment under section 634.

Note: For *compliance penalty period* see subsection 23(1).

(1BA) For the purposes of paragraph (1)(c), the person's partner is taken to be receiving youth allowance if the person's partner would be receiving youth allowance except for:

- (a) the application of a compliance penalty period; or
- (b) the application of an employment-related exclusion under section 553A or 553B.

Note: For *compliance penalty period* see subsection 23(1).

(1BB) For the purposes of paragraph (1)(c), the person's partner is taken to be receiving austudy payment if the person's partner would be receiving austudy payment except for the application of a compliance penalty period.

Note: For *compliance penalty period* see subsection 23(1).

(1C) For the purposes of paragraph (1)(h), *recent workforce experience* is employment of 20 hours or more a week for a total of 13 weeks or more at any time during the 12 months immediately before the day the person lodged the claim for the allowance.

*Person subject to waiting period or non-payment period*

- (3) If youth allowance, austudy payment, newstart allowance or sickness allowance is not payable to a person because:
- (a) the person is serving a waiting period; or
  - (b) a compliance penalty period applies to the person; or
  - (ba) a period of non-payment applies to the person under section 634; or
  - (c) the person is subject to an employment-related exclusion for a period under section 553B or 553C;
- the person is not qualified for a partner allowance throughout the period.

Note 1: For *waiting period* see subsection 23(1).

Note 2: For *compliance penalty period* see subsection 23(1).

### **771HB Unemployment due to industrial action**

- (1) If a person is unemployed during a period, the person is not qualified for a partner allowance in respect of the period unless the Secretary is satisfied that the person's unemployment during the period was not due to the person being, or having been, engaged in industrial action or a series of industrial actions.
- (2) For the purposes of subsection (1) and without limiting that subsection, a person is to be taken not to be, or to have been, engaged in industrial action or in a series of industrial actions if the Secretary is satisfied:
  - (a) the person's unemployment was due to other people being, or having been, engaged in industrial action or in a series of industrial actions; and
  - (b) the people, or some of the people, were members of a trade union which was involved in the industrial action; and
  - (c) the person was not a member of the trade union during the period.
- (3) Subject to subsection (4), subsection (1) does not prevent a person from being qualified for a partner allowance in respect of a period that occurs after the relevant industrial action or series of industrial actions has stopped.

Note: For *industrial action*, *trade union* and *unemployment* see section 16.

- (4) Where the relevant industrial action or series of industrial actions is in breach of an order, direction or injunction issued by a State industrial authority, the Australian Industrial Relations Commission, the Federal Court or the Federal Magistrates Court, a person is not qualified for a partner allowance in respect of a period unless that period occurs 6 weeks or more after the relevant industrial action or series of industrial actions has stopped.

Note: For *State industrial authority* see section 4 of the Workplace Relations Act.

### **Subdivision B—Payability of partner allowance**

#### **771HC Partner allowance not payable if allowance rate nil**

- (1) Subject to subsection (2), a partner allowance is not payable to a person if the person's partner allowance rate would be nil.

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- (2) Subsection (1) does not apply to a person if the person's partner allowance rate would be nil merely because an advance pharmaceutical allowance has been paid to the person under:
- (a) Part 2.23 of this Act; or
  - (b) Division 2 of Part VIIA of the Veterans' Entitlements Act.

**771HF Assets test—allowance not payable if assets value limit exceeded** [see Appendix for CPI adjusted figures]

- (1) A partner allowance is not payable to a person if the value of the person's assets exceeds the person's assets value limit.

Note: The value of the person's assets is only *half* the combined value of the person's assets and the assets of the person's partner (see subsection (3)).

- (2) A person's assets value limit is worked out using the following Table:

<b>Assets value limit table</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Item</b>	<b>Person's situation</b>	<b>Assets value limit</b>
1.	Person or partner a homeowner	\$80,250.00
2.	Neither person nor partner a homeowner	\$120,500.00

Note 1: For *homeowner* see section 11.

Note 2: The assets value limits in column 3 are indexed annually in line with CPI increases (see sections 1191 to 1194).

- (3) The value of the person's assets is taken to be 50% of the sum of the value of the assets of the person and the value of the assets of the person's partner.
- (4) The amounts in column 3 of the Assets Value Limit Table are to be indexed on 1 July 1994 as if this section and items 79A and 79B of Schedule 2 had commenced on 30 June 1993.

**771HI Multiple entitlement exclusion**

- (1) A partner allowance is not payable to a person if the person is already receiving a service pension.
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- (2) If:
- (a) a person is receiving a partner allowance; and
  - (b) a social security pension, another social security benefit or a service pension becomes payable to the person;
- a partner allowance is not payable to the person.

Note 1: Another payment type will generally not become payable to the person until the person claims it.

- (3) A partner allowance is not payable to a person if the person is receiving a pension under Part II or IV of the Veterans' Entitlements Act at a rate determined under or by reference to subsection 30(1) of that Act.
- (4) A partner allowance is not payable to a person if the person has received a lump sum, or is receiving weekly amounts, mentioned in paragraph 234(1)(b) of the MRCA.

Note: For *MRCA* see subsection 23(1).

#### **771HJ Educational schemes exclusion**

A partner allowance is not payable to a person for a period if the person is receiving a payment for that period under:

- (b) the ABSTUDY Scheme; or
- (c) a Student Financial Supplement Scheme.

#### **771HK Maximum basic rate and remote area allowance not payable to CDEP Scheme participant**

The maximum basic rate, and the remote area allowance, of partner allowance for a period are not payable to a person who is a CDEP Scheme participant in respect of the whole or a part of the period.

Note 1: For *remote area allowance* see Module J of Benefit Rate Calculator B.

Note 2: For *CDEP Scheme participant* see subsection 23(1).

#### **771HNA Newly arrived resident's waiting period**

- (1) Subject to this section, a person who:
- (a) has entered Australia on or after 1 January 1993; and
  - (b) has not been an Australian resident and in Australia for a period of, or periods totalling, 104 weeks;

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is subject to a newly arrived resident's waiting period.

- (2) Subsection (1) does not apply to a person who has a qualifying residence exemption for a partner allowance.

Note: For *qualifying residence exemption* see subsection 7(6).

- (4) Subsection (1) does not apply to a person if:
- (a) the person is already subject to a newly arrived resident's waiting period; or
  - (b) the person has already served a newly arrived resident's waiting period; or
  - (c) the person:
    - (i) has previously entered Australia before 1 January 1993; and
    - (ii) held a permanent entry permit granted under the *Migration Act 1958* as then in force, or a permanent visa, before the person's last departure from Australia.
- (5) Subsection (1) does not apply to a person if:
- (a) the person is a New Zealand citizen; and
  - (b) the person was an Australian resident on 1 February 2000.

**771HNB Duration of newly arrived resident's waiting period**

- (1) If a person is subject to a newly arrived resident's waiting period, the period starts on the day the person first became an Australian resident.
- (3) The newly arrived resident's waiting period ends when the person has been an Australian resident and in Australia for a period of, or periods totalling, 104 weeks.

Note: This rule does not apply to people who were already subject to, or had already served, a newly arrived resident's waiting period before the commencement of this rule. Clause 121 of Schedule 1A to this Act continues the application of the previous rules to those people.

**771HNC Seasonal workers**

- (1) This section applies if, at any time during the 6 months immediately before the day on which a person lodges a claim for partner allowance, the person, or the person's partner, has been engaged in seasonal work.

Note: For *seasonal work* see subsection 16A(1).

- (2) Partner allowance is not payable to the person:
- (a) if the person is subject to a seasonal work preclusion period (whether in relation to the claim referred to in subsection (1) or any other claim under this Act) and the Secretary has not made a determination under subsection (3) in relation to the person—for the person’s seasonal work preclusion period; or
  - (b) if the Secretary has made a determination under subsection (3) in relation to the person—for that part (if any) of the person’s seasonal work preclusion period to which the person is subject as a result of the determination.

Note: For *seasonal work preclusion period* see subsection 16A(1).

- (3) If the Secretary is satisfied that a person is in severe financial hardship because the person has incurred unavoidable or reasonable expenditure while the person is subject to a seasonal work preclusion period (whether in relation to the claim referred to in subsection (1) or any other claim under this Act):
- (a) the Secretary may determine that the person is not subject to the whole, or any part, of the preclusion period; and
  - (b) the determination has effect accordingly.

Note 1: For *in severe financial hardship* see subsection 19C(2) (person who is not a member of a couple) and subsection 19C(3) (person who is a member of a couple).

Note 2: For *unavoidable or reasonable expenditure* see subsection 19C(4).

## **Division 4—Rate of partner allowance**

### **771KA Rate of partner allowance if partner is not receiving special benefit**

If section 771KE does not apply to a person, the person's rate of partner allowance is worked out using the Benefit Rate Calculator B at the end of section 1068.

### **771KE Rate of partner allowance if partner receiving special benefit**

- (1) If a person's partner is receiving a special benefit, the person's rate of partner allowance is the fortnightly rate determined by the Secretary in his or her discretion.
- (2) The rate of a person's partner allowance is not to exceed the rate at which youth allowance, austudy payment or newstart allowance would be payable to the person if:
  - (a) the person were qualified for youth allowance, austudy payment or newstart allowance; and
  - (b) youth allowance, austudy payment or newstart allowance were payable to the person.

### **771KN CDEP Scheme participant may accumulate partner allowance**

- (1) A person who is a CDEP Scheme participant in respect of the whole or a part of a quarter may, by written notice given to the Secretary, choose to accumulate the amounts of any partner allowance that become payable to the person in respect of that quarter, or any later quarter in respect of the whole or a part of which the person is a CDEP Scheme participant, and have not already been paid.
- (2) If a person to whom subsection (1) applies makes a choice under that subsection, the sum of the accumulated amounts payable to the person in respect of a quarter is to be paid on, or as soon as practicable after, the first payday after:
  - (a) unless paragraph (b) applies, the last day of the quarter; or

(b) if the person ceases to be a CDEP Scheme participant before the end of the quarter—the day on which the person so ceases.

(3) In this section:

***quarter*** means a CDEP Scheme quarter.

Note 1: For ***CDEP Scheme participant*** see section 1188B.

Note 2: For ***CDEP Scheme quarter*** see subsection 23(1).

## **Division 9—Bereavement payments**

### **Subdivision A—Surviving partner and deceased partner defined**

#### **771NT Surviving partner and deceased partner**

If:

- (a) a person is receiving partner allowance; and
- (b) the person's partner dies;

then, for the purposes of this Division:

- (c) the person is the surviving partner; and
- (d) the person's partner is the deceased partner.

### **Subdivision B—Person to continue to receive partner allowance where person's partner dies**

#### **771NU Continuation of partner allowance for bereavement period**

(1) If:

- (a) a person is receiving partner allowance; and
- (b) the person's partner dies; and
- (c) immediately before the deceased partner died:
  - (i) if the deceased partner was receiving a social security pension, a service pension or income support supplement—the surviving partner was a long-term social security recipient; or
  - (ii) if the deceased partner was receiving a social security benefit or a job search allowance—each partner was a long-term social security recipient;

the surviving partner remains qualified for partner allowance during the bereavement period as if:

- (d) the deceased partner had not died; and
- (e) the deceased partner had continued to receive newstart allowance, sickness allowance, special benefit, rehabilitation allowance, age pension, disability support pension, mature age allowance, service pension or income support supplement; and

- (f) the surviving partner and the deceased partner had continued to be members of a couple.

*Rate of partner allowance during bereavement rate continuation period*

- (2) The surviving partner's partner allowance rate during the bereavement rate continuation period is the rate of the partner allowance that would have been payable to the surviving partner if:
- (a) the deceased partner had not died; and
  - (b) if the couple had been an illness separated couple or a respite care couple—they had not been such a couple.

*Rate of partner allowance during the bereavement lump sum period*

- (3) The surviving partner's partner allowance rate during the bereavement lump sum period (if any) is worked out as follows:
- (aa) if the deceased partner was receiving a youth allowance or an austudy payment immediately before he or she died, the rate of partner allowance is the rate at which a partner allowance would have been payable to the surviving partner if:
    - (i) the surviving partner had been qualified for youth allowance or austudy payment (as the case may be); and
    - (ii) the surviving partner was not a member of a couple;
  - (b) if the deceased partner was receiving newstart allowance immediately before he or she died, the rate of partner allowance is the rate at which newstart allowance would have been payable to the surviving partner if:
    - (i) the surviving partner had been qualified for newstart allowance; and
    - (ii) the surviving partner was not a member of a couple;
  - (c) if the deceased partner was receiving sickness allowance immediately before he or she died, the rate of partner allowance is the rate at which sickness allowance would have been payable to the surviving partner if:
    - (i) the surviving partner had been qualified for sickness allowance; and
    - (ii) the surviving partner was not a member of a couple;
  - (d) if the deceased partner was receiving special benefit immediately before he or she died, the rate of partner
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allowance is the rate at which special benefit would have been payable to the surviving partner if:

- (i) the surviving partner had been qualified for special benefit; and
  - (ii) the surviving partner was not a member of a couple;
- (e) if the deceased partner was receiving rehabilitation allowance, age pension, disability support pension or mature age allowance immediately before he or she died, the rate of partner allowance is the rate at which newstart allowance would have been payable to the surviving partner if:
- (i) the surviving partner had been qualified for newstart allowance; and
  - (ii) the surviving partner was not a member of a couple.

Note 1: For *long-term social security recipient* see subsection 23(1).

Note 2: For *bereavement period*, *bereavement rate continuation period* and *bereavement lump sum period* see section 21.

### **Subdivision C—Bereavement payments for person receiving partner allowance following death of the person’s partner**

#### **771NV Qualification for payments under this Subdivision**

- (1) If:
- (a) a person is receiving partner allowance; and
  - (b) the person’s partner dies; and
  - (c) immediately before the deceased partner died, the deceased partner was a long term social security recipient;
- the surviving partner is qualified for payments under this Subdivision to cover the bereavement period.

Note 1: Section 771NW provides for the payment to the surviving partner, up to the first available bereavement adjustment payday, of amounts equal to the instalments that would have been paid to the deceased partner during that period if the partner had not died.

Note 2: Section 771NX provides for a lump sum that represents the instalments that would have been paid to the surviving partner, between the first available bereavement adjustment payday and the end of the bereavement period, if the deceased partner had not died.



- (2) A surviving partner who is qualified for payments under this Subdivision may choose not to receive payments under this Subdivision.
- (3) An election under subsection (2):
  - (a) must be made by written notice to the Secretary; and
  - (b) may be made after the surviving partner has been paid an amount or amounts under this Subdivision; and
  - (c) cannot be withdrawn after the Department has taken all the action required to give effect to that election.

### **771NW Continued payment of deceased partner's benefit**

If a surviving partner is qualified for payments under this Subdivision in relation to the death of the deceased partner, there is payable to the surviving partner, on each of the deceased partner's paydays in the bereavement rate continuation period, an amount equal to the amount that would have been payable to the deceased partner on that payday if he or she had not died.

### **771NX Lump sum payable in some circumstances**

- (1) If:
  - (a) a surviving partner is qualified for payments under this Subdivision in relation to the death of the deceased partner; and
  - (b) the first available bereavement adjustment payday occurs before the end of the bereavement period;there is payable to the surviving partner as a lump sum an amount worked out using the following Lump Sum Calculator:

### LUMP SUM CALCULATOR

This is how to work out the amount of the lump sum:

#### *Method statement*

Step 1. Work out the amount that would have been payable to the surviving partner on the surviving partner's payday immediately before the first available bereavement adjustment payday if:

- (a) the deceased partner had not died; and
- (b) if immediately before the partner's death the couple were an illness separated couple or a respite care couple—they were not such a couple.

Note: For *illness separated couple* and *respite care couple* see subsections 4(7) and 4(8) respectively.

Step 2. Work out the amount that would have been payable to the deceased partner on the deceased partner's payday immediately before the first available bereavement adjustment payday if:

- (a) the deceased partner had not died; and
- (b) if immediately before the partner's death the couple were an illness separated couple or a respite care couple—they were not such a couple.

Note: For *illness separated couple* and *respite care couple* see subsections 4(7) and 4(8) respectively.

Step 3. Add the results of Step 1 and Step 2: the result is called the *combined rate*.

Step 4. Work out the *surviving partner's notional rate* using subsection (2), (2A), (3), (4), (5) or (6) (whichever applies).

Note: The subsection that you use depends on whether the deceased partner was receiving a job search allowance, newstart allowance, sickness allowance, special benefit, rehabilitation allowance, age pension, disability support pension or mature age allowance before he or she died.

Step 5. Take the surviving partner's notional rate away from the combined rate: the result is called the *deceased partner's instalment component*.

Step 6. Work out the number of the deceased partner's paydays in the bereavement lump sum period.

Step 7. Multiply the deceased partner's instalment component by the number obtained in Step 6: the result is the amount of the lump sum payable to the surviving partner under this section.

*Deceased partner receiving youth allowance or austudy payment*

- (2A) If, immediately before the deceased partner died, he or she was receiving youth allowance or austudy payment, the surviving partner's notional rate is the amount of youth allowance or austudy payment that would have been payable to the surviving partner on the surviving partner's pay day immediately before the first available bereavement adjustment pay day if:
- (a) a youth allowance or an austudy payment had been payable to the surviving partner on that pay day; and
  - (b) the surviving partner was not a member of a couple on that pay day.

*Deceased partner receiving newstart allowance*

- (3) If, immediately before the deceased partner died, he or she was receiving newstart allowance, the surviving partner's notional rate is the amount of newstart allowance that would have been payable to the surviving partner on the surviving partner's payday immediately before the first available bereavement adjustment payday if:
- (a) a newstart allowance had been payable to the surviving partner on that payday; and

- (b) the surviving partner was not a member of a couple on that payday.

*Deceased partner receiving sickness allowance*

- (4) If, immediately before the deceased partner died, he or she was receiving sickness allowance, the surviving partner's notional rate is the amount of sickness allowance that would have been payable to the surviving partner on the surviving partner's payday immediately before the first available bereavement adjustment payday if:
  - (a) a sickness allowance had been payable to the surviving partner on that payday; and
  - (b) the surviving partner was not a member of a couple on that payday.

*Deceased partner receiving special benefit*

- (5) If, immediately before the deceased partner died, he or she was receiving special benefit, the surviving partner's notional rate is the amount of special benefit that would have been payable to the surviving partner on the surviving partner's payday immediately before the first available bereavement adjustment payday if:
  - (a) a special benefit had been payable to the surviving partner on that payday; and
  - (b) the surviving partner was not a member of a couple on that payday.

*Deceased partner receiving other social security payment*

- (6) If, immediately before the deceased partner died, he or she was receiving rehabilitation allowance, age pension, disability support pension or mature age allowance, the surviving partner's notional rate is the amount of newstart allowance that would have been payable to the surviving partner on the surviving partner's payday immediately before the first available bereavement adjustment payday if:
  - (a) newstart allowance had been payable to the surviving partner on that payday; and
  - (b) the surviving partner was not a member of a couple on that payday.

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**771NY Effect of death of surviving partner**

If:

- (a) a surviving partner is qualified for payments under this Subdivision in relation to the death of the deceased partner; and
- (b) the surviving partner dies within the bereavement period; and
- (c) the Secretary does not become aware of the death of the deceased partner before the surviving partner dies;

there is payable as a lump sum, to any person that the Secretary thinks appropriate, an amount worked out using the following Lump Sum Calculator:

**LUMP SUM CALCULATOR**

This is how to work out the amount of the lump sum:

*Method statement*

Step 1. Work out the amount that would have been payable to the surviving partner on the surviving partner's payday immediately after the day on which the surviving partner died if:

- (a) neither the surviving partner nor the deceased partner had died; and
- (b) if immediately before the deceased partner's death the couple were an illness separated couple or a respite care couple—they were not such a couple.

Note: For *illness separated couple* and *respite care couple* see subsections 4(7) and 4(8) respectively.

Step 2. Work out the amount that would have been payable to the deceased partner on the surviving partner's payday immediately after the day on which the surviving partner died if:

- (a) neither the surviving partner nor the deceased partner had died; and

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- (b) if immediately before the deceased partner's death the couple were an illness separated couple or a respite care couple—they were not such a couple.

Note: For *illness separated couple* and *respite care couple* see subsections 4 (7) and 4 (8) respectively.

- Step 3. Add the results of Step 1 and Step 2: the result is called the ***combined rate***.
- Step 4. Work out the amount that, but for section 771NU, would have been payable to the surviving partner on the surviving partner's payday immediately after the day on which the surviving partner died if he or she had not died: the result is called the ***surviving partner's individual rate***.
- Step 5. Take the surviving partner's individual rate away from the combined rate: the result is called the ***deceased partner's instalment component***.
- Step 6. Work out the number of the surviving partner's paydays in the period that commences on the day on which the surviving partner dies and ends on the day on which the bereavement period ends.
- Step 7. Multiply the deceased partner's instalment component by the number obtained in Step 6: the result is the amount of the lump sum payable under this section.

**771NZ Matters affecting payments under this Subdivision**

- (1) If:
- (a) the surviving partner is qualified for payments under this Subdivision; and
  - (b) after the deceased partner died, an amount to which the deceased partner would have been entitled if he or she had not died has been paid under this Act or under Part III of the Veterans' Entitlements Act; and
  - (c) the Secretary is not satisfied that the surviving partner had not had the benefit of that amount;
- the following provisions have effect:

- (d) the amount referred to in paragraph (b) is not recoverable from the surviving partner or from the personal representative of the deceased partner, except to the extent (if any) that the amount exceeds the amount payable to the surviving partner under this Subdivision;
  - (e) the amount payable to the surviving partner under this Subdivision is to be reduced by the amount referred to in paragraph (b).
- (2) If:
- (a) the surviving partner is qualified for payments under this Subdivision; and
  - (b) an amount to which the deceased partner would have been entitled if the deceased partner had not died has been paid under this Act or under Part III of the Veterans' Entitlements Act, within the bereavement period, into an account with a bank; and
  - (c) the bank pays to the surviving partner, out of that account, an amount not exceeding the total of the amounts paid as mentioned in paragraph (b);

the bank is, in spite of anything in any other law, not liable to any action, claim or demand by the Commonwealth, the personal representative of the deceased partner or anyone else in respect of the payment of that money to the surviving partner.

### **Subdivision D—Bereavement payment in respect of former CDEP Scheme participant**

#### **771NZAA Calculation of bereavement payment in respect of former CDEP Scheme participant**

If a benefit becomes payable under this Division in respect of a person who was a CDEP Scheme participant in respect of the day on which the benefit becomes payable, the amount of the benefit is to be the amount that would have been the amount of the benefit if section 771HK had not been enacted.

Note: For *CDEP Scheme participant* see section 1188B.

## Part 2.16—Special needs pensions

### Division 1A—Time limit on grant of special needs wife pension

#### 771P Special needs wife pension not to be granted after 30 June 1995

- (1) In spite of any other provision of this Part or any provision of the Administration Act, other than section 85, a woman is not to be granted a special needs wife pension unless:
  - (a) her claim for the pension is lodged on or before 30 June 1995; and
  - (b) she qualifies for the pension on or before 30 June 1995.
- (2) For the purposes of paragraph (1)(a), if section 15 of the Administration Act applies, the woman is taken to have lodged her claim on the day on which she makes her initial claim.
- (3) In subsection (2):

*initial claim* has the same meaning as in section 15 of the Administration Act.



**Division 1B—Time limit on grant of other special needs pensions**

**771PA Special needs pensions not to be granted after 20 September 2000**

- (1) In spite of any other provision of this Part, a person is not to be granted a special needs age pension, a special needs disability pension or a special needs widow B pension unless:
  - (a) the person's claim for the pension is lodged, or is taken to have been lodged, on or before 20 September 2000; and
  - (b) the person qualifies for the pension on or before 20 September 2000.

## **Division 1—Qualifications for and payability of special needs pensions**

### **Subdivision A—Qualification**

#### **772 Qualification for special needs age pension**

A person is qualified for a special needs age pension if:

- (a) the person has not resided in Australia at any time after 7 May 1973; and
- (b) the person has turned:
  - (i) if the person is a woman—60; or
  - (ii) if the person is a man—65; and
- (c) the person ceased to reside in Australia after the person had turned:
  - (i) if the person is a woman—55; or
  - (ii) if the person is a man—60; and
- (d) the person had resided in Australia for a period that was, or for periods that in the aggregate were, not less than 30 years; and
- (e) the person would:
  - (i) if the person had lodged a claim immediately before the person ceased to reside in Australia—have been qualified under section 25 of the 1947 Act to receive an age pension; or
  - (ii) if the person had not ceased to reside in Australia, were physically present in Australia and lodged a claim for an age pension—be qualified under section 25 of the 1947 Act to receive an age pension; and
- (f) the person is, in the opinion of the Secretary, in special need of financial assistance.

#### **773 Qualification for special needs disability support pension**

##### *Inability to work*

A person is qualified for a special needs disability support pension if:

- (a) the person has not resided in Australia at any time after 7 May 1973; and
- (b) the person is severely disabled; and
- (c) the person has turned 16; and
- (d) at the time when the person first satisfied paragraph (b), the person was in Australia or temporarily absent from Australia; and
- (e) the person is, in the opinion of the Secretary, in special need of financial assistance.

Note: a person who is receiving a special needs disability support pension may be automatically transferred to the special needs age pension if the person becomes qualified for the special needs age pension (see subsection 789(3)).

#### **774 Qualification for special needs wife pension**

A person is qualified for a special needs wife pension if the person:

- (a) is a woman who is a member of a couple; and
- (b) has a partner who is receiving a special needs age pension or a special needs disability support pension.

Note 1: for *member of a couple* see subsections 4(2), (3) and (6).

Note 2: a person who is receiving a special needs wife pension may be automatically transferred to the special needs age pension if the person becomes qualified for the special needs age pension (see subsection 789(3)).

#### **778A Special needs widow B pension not to be granted in certain cases**

- (1) In spite of anything else in this Part, a special needs widow B pension must not be granted to a woman unless:
  - (a) the woman's claim for the pension is lodged before 20 March 1997; and
  - (b) the woman is qualified for the pension before that day.
- (2) If section 15 of the Administration Act applies to a woman, the woman is taken, for the purposes of subsection (1) of this section, to have lodged a claim on the day on which the initial claim was made.
- (3) This section does not apply in relation to a determination by the Secretary under section 85 of the Administration Act.

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(4) In this section:

*initial claim* has the same meaning as in section 15 of the Administration Act.

**778 Qualification for special needs widow B pension**

A woman is qualified for a special needs widow B pension if:

- (aa) the woman has not reached pension age; and
  - (a) the woman has not resided in Australia at any time after 7 May 1973; and
  - (b) the woman:
    - (i) was, immediately before 1 July 1987, receiving a widow's pension as a class B widow under the 1947 Act; or
    - (ii) on 1 July 1987 had turned 45 years old and:
      - (A) was receiving a supporting parent's benefit or a widow's pension as a class A widow on or after that day; or
      - (B) was receiving a sole parent pension after 1 March 1989; or
    - (iii) on 1 July 1987 had turned 50 years old; and
- Note: For *sole parent pension* see subsection 23(1).
- (d) the woman:
    - (i) was legally married and her husband has died; or
    - (ii) was a dependent female, that is:
      - (A) she was a member of a couple and her partner has died; and
      - (B) she was a member of the couple for 3 years immediately before her partner died; and
      - (C) she was wholly or mainly financially maintained by him; and
  - (e) both the woman and the man were residing permanently in Australia when the man died; and
  - (f) the woman is not a member of another couple; and
  - (g) the woman is, in the Secretary's opinion, in special need of financial assistance.

Note 1: for *member of a couple* see subsections 4(2), (3) and (6).

Note 2: a person who is receiving a special needs widow B pension may be automatically transferred to the special needs age pension if the person becomes qualified for the special needs age pension (see subsection 789(3)).

## **Subdivision B—Payability**

### **779 Special needs pension not payable if pension rate nil**

A special needs pension is not payable to a person if the person's special needs pension rate would be nil.

### **783 Second special needs pension generally not payable after cancellation of initial pension**

If:

- (a) a special needs pension is payable to a person; and
- (b) the special needs pension is cancelled;

another special needs pension is not payable to the person unless the person is qualified to receive another special needs pension at the time the initial pension is cancelled.

### **787 Multiple entitlement exclusion**

- (1) A special needs pension is not payable to a person if the person is already receiving a service pension.

(2) If:

- (a) a person is receiving a special needs pension; and
- (b) another social security pension or a social security benefit or service pension becomes payable to the person;

the special needs pension is not payable to the person.

Note 1: another payment type will generally not become payable to the person until the person claims it.

Note 2: For *social security pension* and *social security benefit* see subsection 23(1).

- (3) A special needs pension is not payable to a woman if:

- (a) the woman is an armed services widow; and
- (b) the woman is receiving a pension under Part II or IV of the Veterans' Entitlements Act at a rate determined under or by reference to subsection 30(1) of that Act.

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Note: for *armed services widow* see subsection 4(1).

- (4) A special needs pension is not payable to a man if:
- (a) the man is an armed services widower; and
  - (b) the man is receiving a pension under Part II or IV of the Veterans' Entitlements Act at a rate determined under or by reference to subsection 30(1) of that Act.

Note: for *armed services widower* see subsection 4(1).

- (5) A special needs pension is not payable to a person if:
- (a) the person is an armed services widow or an armed services widower; and
  - (b) the person has received a lump sum, or is receiving weekly amounts, mentioned in paragraph 234(1)(b) of the MRCA.

Note 1: For *armed services widow* and *armed services widower* see subsection 4(1).

Note 2: For *MRCA* see subsection 23(1).

## **Division 5—Rate of special needs pension**

### **796 How to work out a person's special needs pension rate**

- (1) Subject to subsection (2), the rate of a person's special needs pension is:
  - (a) if the pension is a special needs age pension—the rate at which an age pension would be payable to the person if the person were qualified for an age pension; or
  - (b) if the pension is a special needs disability support pension—the rate at which a disability support pension would be payable to the person if the person were qualified for a disability support pension; or
  - (c) if the pension is a special needs wife pension—the rate at which a wife pension would be payable to the person if the person were qualified for a wife pension; or
  - (e) if the pension is a special needs widow B pension—the rate at which a widow B pension would be payable to the person if the person were qualified for a widow B pension.
- (2) If:
  - (a) the person was absent from Australia on 1 July 1986; and
  - (b) the person commences after 1 July 1986 to receive a special needs pension; and
  - (c) the person is absent from Australia;the rate of the person's special needs pension is, subject to subsections (3) and (4), the person's special needs proportional rate worked out using the Special Needs Proportional Rate Calculator at the end of this section.
- (3) Subsection (2) does not apply to a person's special needs disability support pension if the person became qualified for the pension because the person became permanently incapacitated for work or permanently blind while the person was an Australian resident.
- (4) Subsection (2) does not apply to a person's special needs sole parent or widow B pension if:
  - (a) the person became qualified for the pension because of the death of the person's former partner; and

- (b) at the time when the former partner died the former partner was an Australian resident; and
- (c) the person would, apart from subsections 249(2) and 362(2) of this Act, and section 46 of the 1947 Act as in force at any time before 1 March 1989, have become so qualified for that pension.

## Special Needs Proportional Rate Calculator

### Module A—Overall rate calculation process

#### *Overall rate calculation process*

796-A1 This is how to work out a person's special needs proportional rate:

#### *Method statement*

- Step 1. Work out the period of the person's Australian working life residence using Module B: the result is called the ***residence period***.
- Step 2. Use the person's residence period to work out the person's ***residence factor*** using Module C below.
- Step 3. Work out the rate that would be the person's pension or allowance rate if this Rate Calculator did not apply to the person: the result is called the person's ***notional domestic rate***.
- Step 4. Multiply the person's notional domestic rate by the person's residence factor: the result is the person's special needs proportional rate.

### Module B—Australian working life residence

#### *Working life*

796-B1 For the purposes of this Module, a person's **working life** is the period commencing when the person turns 16 and ending:

- (a) if the person is a woman—when she turns 60; or
- (b) if the person is a man—when he turns 65.



*Australian working life residence (general)*

- 796-B2 Subject to points 796-B3 to 796-B9, a person's *period of Australian working life residence* as at a particular time is the number of months in the period, or the aggregate of the periods, during the person's working life during which the person has, up to that time, been an Australian resident.

*Calculation of number of months*

- 796-B3 If a person's period of Australian working life residence would, apart from this subsection, be a number of whole months, the period is to be increased by one month.
- 796-B4 If a person's period of Australian working life residence would, apart from this subsection, be a number of whole months and a day or days, the period is to be increased so that it is equal to the number of months plus one month.

*Australian working life residence (special needs age or disability support pensioner couples)*

- 796-B5 If:
- (a) a person is receiving a special needs age pension or a special needs disability support pension; and
  - (b) the person is a member of a couple; and
  - (c) the person's partner is receiving an age or disability support pension or a special needs age or disability support pension; and
  - (d) the partner's period of Australian working life residence is longer than the period that would be the person's period of Australian working life residence under point 796-B2;
- the person's period of Australian working life residence is to be equal to the partner's period of Australian working life residence.

*Australian working life residence (member of former special needs age or disability support pensioner couple)*

- 796-B6 If:
- (a) a person is receiving a special needs age pension or a special needs disability support pension; and
  - (b) the person is a member of a couple; and

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- (c) the person ceases to be a member of a couple; and
- (d) immediately before the person ceases to be a member of a couple:
  - (i) the person was receiving an age or disability support pension or a special needs age or disability support pension; and
  - (ii) the partner was receiving an age or disability support pension or a special needs age or disability support pension; and
- (e) the partner's period of Australian working life residence (immediately before the person ceases to be a member of a couple) is longer than the period that would be the person's period of Australian working life residence under point 796-B2;

the person's period of Australian working life residence is to be equal to the partner's period of Australian working life residence (immediately before the person ceases to be a member of a couple).

*Australian working life residence (special needs wife pensioner)*

- 796-B7 If a person is receiving a special needs wife pension, the person's period of Australian working life residence is equal to the period of Australian working life residence of the person's partner.

*Australian working life residence (recipient of special needs sole parent pension or widow B pension)*

- 796-B8 If:
- (a) a person is receiving a special needs widow B pension; and
  - (b) the person became qualified for the pension because the person's former partner died; and
  - (c) the partner's period of Australian working life residence (immediately before the partner's death) is longer than the period that would be the person's period of Australian working life residence under point 796-B2;

the person's period of Australian working life residence is to be equal to the partner's period of Australian working life residence (immediately before the partner's death).

*Australian working life residence—second special needs pension*

796-B9

If:

- (a) a special needs pension is payable to a person (in this point called the *initial pension*); and
- (b) the special needs pension is cancelled or ceases to be payable automatically; and
- (c) another special needs pension is payable to the person (in this point called the *second pension*); and
- (d) the person's period of Australian working life residence in respect of the second pension is shorter than the period that was the person's period of Australian working life residence for the purposes of calculating the person's initial special needs pension;

the person's period of Australian working life residence for the second pension is to be equal to the period of Australian working life residence used in calculating the person's initial pension.

**Module C—Residence factor**

*Residence factor (period of Australian working life residence 25 years or more)*

796-C1

If a person's period of Australian working life residence is 300 months (25 years) or more, the person's residence factor is 1.

Note: if a person's residence factor is 1, the person's overseas pension will be payable overseas at the full domestic rate (less any rent assistance and any and remote area allowance).

*Residence factor (period of Australian working life residence under 25 years)*

796-C2

If a person's period of Australian working life residence is less than 300 months (25 years), the person's residence factor is:

$$\frac{\text{person's Australian working life residence}}{300}$$

## Division 10—Bereavement payments

### Subdivision A—Death of partner

#### 822 Qualification for payments under this Subdivision

(1) If:

- (a) a person is receiving a special needs age, disability support or wife pension; and
- (b) the person is a member of a couple; and
- (c) the person's partner dies; and
- (d) immediately before the partner died, the partner:
  - (i) was receiving a social security pension; or
  - (ii) was receiving a service pension or income support supplement; or
  - (iii) was a long-term social security recipient; and
- (e) on the person's payday immediately before the first available bereavement adjustment payday, the amount that would be payable to the person if the person were not qualified for payments under this Subdivision is less than the sum of:
  - (i) the amount that would otherwise be payable to the person under section 825 (person's continued rate) on that payday; and
  - (ii) the amount that would otherwise be payable to the person under section 823 (continued payment of partner's pension or benefit) on the partner's payday immediately before the first available bereavement adjustment payday;

the person is qualified for payments under this Subdivision to cover the bereavement period.

Note 1: section 823 provides for the payment to the person, up to the first available bereavement adjustment payday, of amounts equal to the instalments that would have been paid to the person's partner during that period if the partner had not died.

Note 2: section 824 provides for a lump sum that represents the instalments that would have been paid to the person's partner, between the first available bereavement adjustment payday and the end of the bereavement period, if the partner had not died.

- (1A) If:
- (a) a person is receiving a special needs pension; and
  - (b) immediately before starting to receive the special needs pension the person was receiving partner bereavement payments; and
  - (c) the bereavement rate continuation period in relation to the death of the person's partner has not ended;
- the person is qualified for payments under this Subdivision to cover the remainder of the bereavement period.
- (2) A person who is qualified for payments under this Subdivision may choose not to receive payments under this Subdivision.
- (3) An election under subsection (2):
- (a) must be made by written notice to the Secretary; and
  - (b) may be made after the person has been paid an amount or amounts under this Subdivision; and
  - (c) cannot be withdrawn after the Department has taken all the action required to give effect to that election.
- (4) If a person is qualified for payments under this Subdivision in relation to the partner's death, the rate at which special needs pension is payable to the person during the bereavement period is, unless the person has made an election under subsection (2), governed by section 825.
- (5) For the purposes of this section, a person is a *long-term social security recipient* if:
- (a) the person is receiving a social security benefit; and
  - (b) in respect of the previous 12 months, the person:
    - (i) was receiving a social security pension; or
    - (ii) was receiving a social security benefit; or
    - (ia) was receiving a youth training allowance; or
    - (iii) was receiving a service pension or income support supplement.
- (6) A person is taken to satisfy the requirements of paragraph (5)(b) if:
- (a) the person was receiving one or a combination of the payments referred to in that paragraph for a continuous period of 12 months; or

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- (b) the person was receiving one or a combination of the payments referred to in that paragraph for 46 weeks of the previous 52.

**823 Continued payment of deceased partner's previous entitlement**

- (1) If a person is qualified for payments under this Subdivision in relation to the death of the person's partner, there is payable to the person, on each of the partner's paydays in the bereavement rate continuation period:
  - (a) where the partner was receiving a social security pension or social security benefit—the amount that would have been payable to the partner on the payday if the partner had not died; or
  - (b) where the partner was receiving a service pension or income support supplement—the amount that would have been payable to the partner under Part III or IIIA of the Veterans' Entitlements Act on the service payday that:
    - (i) where the first Thursday after the partner's death was a service payday—precedes the partner's payday; or
    - (ii) in any other case—follows the partner's payday; if the partner had not died.
- (2) For the purposes of subsection (1), if the couple were, immediately before the partner's death, an illness separated couple or a respite care couple, the amounts are to be worked out as if they were not such a couple.

**824 Lump sum payable in some circumstances**

If:

- (a) a person is qualified for payments under this Subdivision in relation to the death of the person's partner; and
- (b) the first available bereavement adjustment payday occurs before the end of the bereavement period;

there is payable to the person as a lump sum an amount worked out using the lump sum calculator at the end of this section.

### **LUMP SUM CALCULATOR**

This is how to work out the amount of the lump sum:

#### *Method statement*

- Step 1. Work out the amount that would have been payable to the person on the person's payday immediately before the first available bereavement adjustment payday if:
- (a) the person's partner had not died; and
  - (b) where immediately before the partner's death the couple were an illness separated couple or a respite care couple—they were not such a couple.
- Step 2. Work out the amount that would have been payable to the person's partner on the partner's payday or service payday immediately before the first available bereavement adjustment payday if:
- (a) the partner had not died; and
  - (b) where immediately before the partner's death the couple were an illness separated couple or a respite care couple—they were not such a couple.
- Step 3. Add the results of Step 1 and Step 2: the result is called the ***combined rate***.
- Step 4. Work out the amount that, but for subsection 825, would have been payable to the person on the person's payday immediately before the first available bereavement adjustment payday: the result is called the ***person's individual rate***.
- Step 5. Take the person's individual rate away from the combined rate: the result is called the ***partner's instalment component***.

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- Step 6. Work out the number of paydays of the partner in the bereavement lump sum period.
- Step 7. Multiply the partner's instalment component by the number obtained in Step 6: the result is the amount of the lump sum payable to the person under this section.

**825 Adjustment of rate of person's special needs pension**

If:

- (a) a person is qualified for payments under this Subdivision; and
- (b) the person does not elect under subsection 822(2) not to receive payments under this Subdivision;

the rate of the person's special needs pension during the bereavement period is worked out as follows:

- (c) during the bereavement rate continuation period, the rate of special needs pension payable to the person is the rate at which the pension would have been payable to the person if:
  - (i) the person's partner had not died; and
  - (ii) where immediately before the partner's death the couple were an illness separated couple or a respite care couple—they were not such a couple;
- (d) during the bereavement lump sum period (if any), the rate at which special needs pension is payable to the person is the rate at which the special needs pension would be payable to the person apart from this Subdivision.

**826 Effect of death of person entitled to payments under this Subdivision**

If:

- (a) a person is qualified for payments under this Subdivision in relation to the death of the person's partner; and
- (b) the person dies within the bereavement period; and



- (c) the Secretary does not become aware of the death of the person's partner before the person dies;  
there is payable, to such person as the Secretary thinks appropriate, as a lump sum, an amount worked out using the lump sum calculator at the end of this section.

### **LUMP SUM CALCULATOR**

This is how to work out the amount of the lump sum:

#### *Method statement*

- Step 1. Work out the amount that would have been payable to the person on the person's payday immediately after the day on which the person died if:
- (a) neither the person nor the person's partner had died; and
  - (b) where immediately before the partner's death the couple were an illness separated couple or a respite care couple—they were not such a couple.
- Step 2. Work out the amount that would have been payable to the partner on the partner's payday or service payday immediately after the day on which the person died if:
- (a) neither the person nor the partner had died; and
  - (b) where immediately before the partner's death the couple were an illness separated couple or a respite care couple—they were not such a couple.
- Step 3. Add the results of Step 1 and Step 2: the result is called the ***combined rate***.

- Step 4. Work out the amount that, but for section 825, would have been payable to the person on the person's payday immediately after the day on which the person died if the person had not died: the result is called the *person's individual rate*.
- Step 5. Take the person's individual rate away from the combined rate: the result is called the *partner's instalment component*.
- Step 6. Work out the number of paydays of the partner in the period that starts on the day on which the person dies and ends on the day on which the bereavement period ends.
- Step 7. Multiply the partner's instalment component by the number obtained in Step 6: the result is the amount of the lump sum payable under this section.

### 827 Matters affecting payment of benefits under this Subdivision

(1) If:

- (a) a person is qualified for payments under this Subdivision and in relation to the death of the person's partner; and
- (b) after the person's partner died, an amount to which the partner would have been entitled if the partner had not died has been paid under this Act or under Part III of the Veterans' Entitlements Act; and
- (c) the Secretary is not satisfied that the person has not had the benefit of that amount;

the following provisions have effect:

- (d) the amount referred to in paragraph (b) is not recoverable from the person or from the personal representative of the person's partner except to the extent (if any) that the amount exceeds the amount payable to the person under this Subdivision;
- (e) the amount payable to the person under this Subdivision is to be reduced by the amount referred to in paragraph (b).

- (2) If:
- (a) a person is qualified for payments under this Subdivision in relation to the death of the person's partner; and
  - (b) an amount to which the person's partner would have been entitled if the person's partner had not died has been paid under this Act or under Part III of the Veterans' Entitlements Act, within the bereavement period, into an account with a bank; and
  - (c) the bank pays to the person, out of the account, an amount not exceeding the total of the amounts paid as mentioned in paragraph (b);
- the bank is, in spite of anything in any other law, not liable to any action, claim or demand by the Commonwealth, the personal representative of the person's partner or anyone else in respect of the payment of that money to the person.

### **Subdivision C—Death of recipient**

#### **830 Death of recipient**

- (1) If:
- (a) a person is receiving a special needs pension; and
  - (b) either:
    - (i) the person is not a member of a couple; or
    - (ii) the person is a member of a couple and the person's partner:
      - (A) is not receiving a social security pension; and
      - (C) is not receiving a service pension or income support supplement; and
  - (c) the person dies;
- there is payable, to such person as the Secretary thinks appropriate, an amount equal to the amount that would have been payable to the person under this Act on the person's payday after the person's death if the person had not died.
- (2) If an amount is paid under subsection (1) in respect of a person, the Commonwealth is not liable to any action, claim or demand for any further payment under that subsection in respect of the person.

Note 2: for death of a person qualified for bereavement payments under Subdivision A see section 826.

## Part 2.17—Economic security strategy payment

### 900 Qualification for economic security strategy payment

*Qualified if this section applies*

- (1) A person is qualified for an economic security strategy payment if subsection (2), (3) or (4) applies to the person.

*Receipt of certain payments*

- (2) This subsection applies to a person if:
- (a) the person was receiving one of the following payments in respect of 14 October 2008:
    - (i) an age pension;
    - (ii) a disability support pension;
    - (iii) a wife pension;
    - (iv) a carer payment;
    - (v) a bereavement allowance;
    - (vi) a widow B pension;
    - (vii) a widow allowance;
    - (viii) partner allowance;
    - (ix) carer allowance; and
  - (b) except in the case of carer allowance, the person was receiving that payment because of a claim the person made on or before 14 October 2008.

Note: For *receive* see subsections 23(2) and (4).

*Pension age and receipt of other payments*

- (3) This subsection applies to a person if:
- (a) the person reached pension age on or before 14 October 2008; and
  - (b) the person was receiving one of the following payments in respect of 14 October 2008:
    - (i) a parenting payment;
    - (ii) austudy payment;

- (iii) special benefit;
- (iv) a payment under the ABSTUDY Scheme that includes an amount identified as living allowance; and
- (c) the person was receiving that payment because of a claim the person made on or before 14 October 2008.

Note: For *receive* see subsections 23(2) and (4).

*Qualified for seniors health card*

- (4) This subsection applies to a person if:
  - (a) on or before 14 October 2008, the person made a claim for a seniors health card under Division 1 of Part 3 of the Administration Act and had not withdrawn that claim on or before 14 October 2008; and
  - (b) on 14 October 2008, the person was qualified for the card.

*One payment under this section only*

- (5) A person cannot receive more than one payment under this section, regardless of how many times the person qualifies under this section.
- (6) Despite anything else in this section, a person who is eligible for a payment under section 118ZZQ of the Veterans' Entitlements Act is not qualified for a payment under this section unless the person is so qualified because he or she was receiving carer allowance in respect of 14 October 2008.

**901 Amount of economic security strategy payment—general**

- (1) The amount of a person's economic security strategy payment under this Part is the amount, specified in column 3 of the following table, that corresponds to the family situation, specified in column 2 of the table, that applied to the person on 14 October 2008:

<b>Amount of economic security strategy payment</b>		
<b>Item</b>	<b>Person's family situation on 14 October 2008</b>	<b>Amount</b>
1	Not member of couple	\$1,400.00
2	Partnered	\$1,050.00
3	Member of illness separated couple	\$1,400.00

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**Amount of economic security strategy payment**

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<b>Item</b>	<b>Person's family situation on 14 October 2008</b>	<b>Amount</b>
4	Member of respite care couple	\$1,400.00
5	Partnered (partner in gaol)	\$1,400.00

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Note: For *member of couple, partnered, illness separated couple, respite care couple* and *partnered (partner in gaol)* see section 4.

- (2) However, this section does not apply to a person if he or she is qualified under section 900 for an economic security strategy payment because he or she was receiving carer allowance in respect of 14 October 2008.

**902 Amount of economic security strategy payment—person receiving carer allowance**

- (1) If a person:
- (a) is qualified under section 900 for an economic security strategy payment because he or she was receiving carer allowance in respect of 14 October 2008; and
  - (b) would not be so qualified if he or she had not been receiving carer allowance in respect of 14 October 2008;
- the amount of the person's economic security strategy payment under this Part is the amount worked out under subsection (3) for the person's carer allowance.
- (2) If a person:
- (a) is qualified under section 900 for an economic security strategy payment because he or she was receiving carer allowance in respect of 14 October 2008; and
  - (b) would be so qualified even if he or she had not been receiving carer allowance in respect of 14 October 2008;
- the amount of the person's economic security strategy payment under this Part is the sum of the amount worked out under subsection (3) for the person's carer allowance and the amount that would have been worked out under section 901 for the person if subsection 901(2) had not applied.
- (3) Subject to subsection (4), the amount for a person's carer allowance is worked out by adding together the amount applicable

under this section for each person (*care receiver*) whose care qualified the person for carer allowance in respect of 14 October 2008.

- (4) If subsection 953(2) applied in relation to the carer allowance in respect of 14 October 2008, the 2 disabled children whose care qualified the person for carer allowance in respect of 14 October 2008 are to be treated as if they were a single care receiver in relation to the person qualified for the economic security strategy payment.
- (5) Subject to subsection (6), the amount applicable for a care receiver is \$1,000.
- (6) If the rate at which carer allowance in respect of 14 October 2008 was paid took account of a determination under subsection 981(1) of a particular share (being a percentage or proportion) in relation to a care receiver, the amount applicable for the care receiver is that share of \$1,000.

## **Part 2.18—Training and learning bonus and farmers hardship bonus**

### **Division 1—Training and learning bonus**

#### **910 Qualification for training and learning bonus**

*Qualified if this section applies*

- (1) A person is qualified for a training and learning bonus if subsection (2) or (4) applies to the person.

*Receipt of certain payments*

- (2) This subsection applies to a person if the person was receiving one or more of the following payments in respect of 3 February 2009:
  - (a) youth allowance;
  - (b) austudy payment;
  - (c) special benefit;
  - (d) sickness allowance;
  - (e) a payment under the ABSTUDY Scheme that included an amount identified as living allowance;
  - (f) an education allowance under section 3.2, 3.3, 3.4, 3.5, 3.6 or 3.6A of the Veterans' Children Education Scheme;
  - (g) an education allowance under section 3.2, 3.3, 3.4, 3.5 or 3.6 of the Military Rehabilitation and Compensation Act Education and Training Scheme.
- (3) However:
  - (a) paragraph (2)(a) does not apply to the person unless the person was receiving youth allowance on the basis that, on 3 February 2009:
    - (i) the person was undertaking full-time study; or
    - (ii) the person was qualified for a youth allowance under section 540AA; and
  - (b) paragraph (2)(c) does not apply if the person had reached pension age on or before 14 October 2008.



*Person entitled to family tax benefit Part A*

- (4) This subsection applies to a person if:
- (a) on 3 February 2009 the person was entitled to family tax benefit; and
  - (b) the rate of family tax benefit payable in relation to that day consisted of or included a Part A rate greater than nil worked out taking into account at least one FTB child who was aged 21 or more and less than 25 on that day; and
  - (c) the person would have been entitled to a back to school bonus under section 95 of the Family Assistance Act if any such child were aged 4 or more and less than 19 on that day.

*One payment under this section only*

- (5) A person cannot receive more than one payment under this section, regardless of how many times the person qualifies under this section.

*No qualification under subsection (2) in certain circumstances*

- (6) Despite anything else in this section, a person who is:
- (a) an FTB child in respect of whom another person is entitled to a back to school bonus under section 95 of the Family Assistance Act; or
  - (b) entitled to a back to school bonus under section 98 of the Family Assistance Act;
- is not qualified for a training and learning bonus under subsection (2) of this section.

**911 Amount of training and learning bonus**

- (1) The amount of a person's training and learning bonus is:
- (a) if the person qualifies for a training and learning bonus under subsection 910(2) but not under subsection 910(4)—\$950; or
  - (b) if the person qualifies for a training and learning bonus under subsection 910(4) but not under subsection 910(2)—\$950 for each FTB child because of whom the person so qualifies; or
  - (c) if the person qualifies for a training and learning bonus under subsection 910(2) and also qualifies under subsection 910(4)—the sum of:

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- (i) \$950; and
  - (ii) \$950 for each FTB child because of whom the person so qualifies.
- (2) Despite paragraph (1)(b) and subparagraph (1)(c)(ii) of this section, subsections 97(3), (4) and (5) of the Family Assistance Act apply in relation to the amount of a person's training and learning bonus in relation to an FTB child in the same way as they would apply in relation to the amount of a back to school bonus under that Act.

## **Division 2—Farmers hardship bonus**

### **912 Qualification for farmers hardship bonus**

A person is qualified for a farmers hardship bonus if the person was paid any of the following in respect of a period that included 3 February 2009:

- (a) an instalment of exceptional circumstances relief payment under the *Farm Household Support Act 1992*;
- (b) an instalment of farm help income support under that Act;
- (c) a payment by the Commonwealth that:
  - (i) is known as Exceptional Circumstances Interim Income Support or as Transitional Income Support; and
  - (ii) is of a similar nature as a payment of a kind referred to in paragraph (a) or (b).

### **913 Amount of farmers hardship bonus**

The amount of a person's farmers hardship bonus is \$950.

## Part 2.19—Carer allowance

### Division 1—Interpretation

#### 952 Carer allowance definitions

In this Part, unless the contrary intention appears:

*Adult Disability Assessment Tool* has the meaning given by subsection 38C(3).

*care receiver* has the meaning given by subsections 953(1) and (2), 954(1) and 954A(1).

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

*disabled adult* means a person aged 16 or more who:

- (a) has a physical, intellectual or psychiatric disability; and
- (b) is likely to suffer from that disability permanently or for an extended period.

*disabled child* means a person aged under 16 who:

- (a) has a physical, intellectual or psychiatric disability; and
- (b) is likely to suffer from that disability permanently or for an extended period.

## **Division 2—Qualification for and payability of carer allowance**

### **Subdivision A—Qualification**

#### **953 Qualification for carer allowance—caring for either 1 or 2 disabled children**

##### *Single child*

- (1) A person is qualified for carer allowance for a disabled child (the *care receiver*) if:
- (a) the care receiver is a dependent child (disregarding subsection 5(3)) of the person; and
  - (b) the care receiver is an Australian resident; and
  - (c) either of the following applies:
    - (i) the disability from which the care receiver is suffering is declared, under subsection 38D(3), to be a recognised disability for the purposes of this section;
    - (ii) the care receiver has been assessed and rated under the Child Disability Assessment Tool and given a positive score under that assessment tool not less than 1, being a score calculated on the basis of a professional questionnaire score greater than 0; and
  - (d) because of the disability from which the care receiver is suffering, the care receiver receives care and attention on a daily basis from:
    - (i) if the person is a member of a couple—the person, the person's partner or the person together with another person (whether or not the person's partner); or
    - (ii) if the person is not a member of a couple—the person or the person together with another person;in a private home that is the residence of the person and the care receiver; and
  - (f) the person is an Australian resident.

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*2 children*

- (2) A person is qualified for carer allowance for 2 disabled children (the *care receivers*) if:
- (a) each care receiver is a dependent child (disregarding subsection 5(3)) of the person; and
  - (b) each care receiver is an Australian resident; and
  - (c) each care receiver has been assessed and rated under the Child Disability Assessment Tool and given a positive score under that assessment tool less than 1, being a score calculated on the basis of a professional questionnaire score greater than 0; and
  - (ca) the sum of the scores of the care receivers under the Child Disability Assessment Tool is positive and not less than 1; and
  - (d) because of the disability from which each care receiver is suffering, each care receiver receives care and attention on a daily basis from:
    - (i) if the person is a member of a couple—the person, the person’s partner or the person together with another person (whether or not the person’s partner); or
    - (ii) if the person is not a member of a couple—the person or the person together with another person;in a private home that is the residence of the person and each care receiver; and
  - (f) the person is an Australian resident.

Note 1: For *Australian resident* see section 7.

Note 2: For qualification for carer allowance in circumstances of hospitalisation, see section 955.

Note 4: For the effect of temporary cessation of care and attention on carer allowance, see section 957.

Note 5: For the effect of 2 people being qualified for carer allowance, see sections 964 and 965.

**954 Qualification for carer allowance—caring for a disabled adult in a private home of both the adult and the carer**

- (1) A person is qualified for carer allowance for a disabled adult (the *care receiver*) if:
- (a) the care receiver is an Australian resident; and

- (b) the care receiver is a family member of the person or is a person approved in writing by the Secretary for the purposes of this paragraph; and
- (c) the care receiver has been assessed and rated under the Adult Disability Assessment Tool and given a score under that assessment tool of at least 30, being a score calculated on the basis of a professional questionnaire score of at least 12; and
- (d) because of the disability from which the care receiver is suffering, the care receiver receives care and attention on a daily basis from the person, or the person together with another person, in a private home that is the residence of the person and the care receiver; and
- (f) the person is an Australian resident.

Note 1: For *family member* see subsection 23(1). For *Australian resident* see section 7.

Note 2: For qualification for carer allowance in circumstances of hospitalisation, see section 955.

Note 4: For the effect of temporary cessation of care and attention on carer allowance, see section 957.

Note 5: For the effect of 2 people being qualified for carer allowance, see sections 964 and 965.

*Disabled adult does not qualify for carer allowance for another disabled adult*

- (2) If a person is qualified for carer allowance for a disabled adult, the disabled adult is not able to qualify for carer allowance for another disabled adult.

*Person cannot qualify for more than 2 carer allowances*

- (3) A person may qualify for carer allowance under this section and/or section 954A for 2, but no more than 2, disabled adults.

### **954A Qualification for carer allowance—caring for a disabled adult in a private home not shared by the adult and carer**

- (1) A person is qualified for carer allowance for a disabled adult (the *care receiver*) if:
  - (a) the care receiver is an Australian resident; and

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- (b) the care receiver is a family member of the person or is a person approved in writing by the Secretary for the purposes of this paragraph; and
- (c) the care receiver has been assessed and rated under the Adult Disability Assessment Tool and given a score under that assessment tool of at least 30, being a score calculated on the basis of a professional questionnaire score of at least 12; and
- (d) the care receiver receives care and attention that meet the requirements in subsection (2); and
- (e) the person is an Australian resident; and
- (f) the person's work in providing the care and attention is not on wages that are at or above:
  - (i) if the employee:
    - (A) is an employee within the meaning of the *Workplace Relations Act 1996*; and
    - (B) is not a junior employee or a trainee; the Federal Minimum Wage for the employee; or
  - (ii) if the employee is:
    - (A) an employee within the meaning of the *Workplace Relations Act 1996*; and
    - (B) a junior employee;either:
    - (C) if the Australian Fair Pay Commission has made a special FMW that applies to the junior employee—that wage; or
    - (D) in any other case—a rate of pay under an Australian Pay and Classification Scale applying to the junior employee; or
  - (iii) if the employee is:
    - (A) an employee within the meaning of the *Workplace Relations Act 1996*; and
    - (B) a trainee;either:
    - (C) if the Australian Fair Pay Commission has made a special FMW that applies to the trainee—that wage; or
    - (D) in any other case—a rate of pay under an Australian Pay and Classification Scale applying to the trainee; or



- (iv) if the employee is an employee within the meaning of Schedule 6 to the *Workplace Relations Act 1996*—award wages under the relevant transitional award; or
- (v) in any other case—award wages.

- (g) neither the person nor anyone else is qualified for carer allowance for the care receiver under section 954.

Note 1: For *Australian resident* see section 7. For *family member* see subsection 23(1).

Note 2: For qualification for carer allowance in circumstances of hospitalisation, see section 955.

Note 3: For the effect of temporary cessation of care and attention on carer allowance, see section 957.

Note 4: For the effect of 2 people being qualified for carer allowance, see sections 964 and 965.

(2) The care and attention:

- (a) must address special care needs:
  - (i) that the care receiver is assessed under the Adult Disability Assessment Tool as having; and
  - (ii) that relate to the care receiver's bodily functions or to sustaining the care receiver's life; and
- (b) must be received by the care receiver on a daily basis, for a total of at least 20 hours a week; and
- (c) must:
  - (i) be received by the care receiver from the person alone; or
  - (ii) be received by the care receiver from the person together with another person whose work in providing the care and attention is not on wages that are at or above the wages mentioned in paragraph (1)(f), whether or not both persons are present every day when the care receiver receives the care and attention; and
- (d) must be received in a private home that is the residence of the care receiver, the person or the other person (if any), but not the residence of both the care receiver and the person; and
- (e) must not be care and attention of a kind (if any) specified, by legislative instrument, by the Secretary for the purposes of this paragraph.

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*Disabled adult does not qualify for carer allowance for another disabled adult*

- (4) If a person is qualified for carer allowance for a disabled adult, the disabled adult is not able to qualify for carer allowance for another disabled adult.

*Person cannot qualify for more than 2 carer allowances*

- (5) A person may qualify for carer allowance under this section and/or section 954 for 2, but no more than 2, disabled adults.

**955 Qualification for carer allowance—hospitalisation**

- (1) If:

- (a) a person (the *carer*) is participating in the care of a disabled child, or a disabled adult, (the *hospitalised person*) in hospital; and
- (b) it is reasonable to assume that, if the hospitalised person were not in hospital, one or more persons would qualify for carer allowance for the hospitalised person or for the hospitalised person and another person; and
- (c) either the hospitalised person is terminally ill or it is reasonable to expect that, upon the hospitalised person leaving hospital:
- (i) the hospitalised person will reside in the private home of the carer and the hospitalised person; or
- (ii) the carer will qualify under section 954A for carer allowance for the hospitalised person;

the one or more persons who would qualify for carer allowance as mentioned in paragraph (b) qualify for carer allowance.

*Limit on qualification under subsection (1)*

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

### **956 Absence from Australia**

During any period of absence from Australia:

- (a) throughout which Division 2 of Part 4.2 applies to the person; and
- (b) that is before the end of the person's portability period for carer allowance (within the meaning of that Division);

the person does not cease to be qualified for carer allowance merely because the care and attention of the care receiver or care receivers is not provided in a private home that is described in whichever one of paragraphs 953(1)(d) and (2)(d), 954(1)(d) and 954A(2)(d) is relevant.

### **957 Effect of cessation of care etc. on carer allowance**

*Continuation of allowance where temporary cessation of care*

- (1) Subject to subsection (3), if:
  - (a) a person is qualified for carer allowance because a care receiver or care receivers are receiving care and attention on a daily basis; and
  - (b) the care receiver or care receivers temporarily cease to receive care and attention that would qualify the person for carer allowance;

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

*Continuation of allowance after hospitalisation—section 955 ceases to apply*

- (2) Subject to subsection (3), if:
  - (a) a person is qualified for carer allowance under section 955 because the person or another person is participating in the care of a disabled child or disabled adult in hospital; and
  - (b) apart from this subsection, the person would later cease to be qualified for carer allowance under that section; and
  - (c) the person would not cease to be qualified for carer allowance if the disabled child or disabled adult were receiving care and attention on a daily basis;

the person does not cease to be qualified for carer allowance merely because of the lack of receipt of that care and attention.

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*Limit on subsections (1) and (2)*

- (3) However, the period, or the sum of the periods, for which subsection (1) or (2), or a combination of those subsections, can apply is:
- (a) 63 days in any calendar year; or
  - (b) another period that the Secretary, for any special reason in the particular case, decides to be appropriate.

*Cessation of care in order to undertake training etc.*

- (4) If:
- (a) a person is qualified for carer allowance for a care receiver who is a disabled child or for care receivers who are 2 disabled children; and
  - (b) the care receiver or either or both of the care receivers then are, or are likely to be, receiving education, training or treatment (other than treatment in hospital) for a period; and
  - (c) during the period the care receiver or care receivers are not receiving the care and attention that would qualify the person for carer allowance; and
  - (d) subsection (1) does not apply to the period;
- the person does not cease to be qualified for carer allowance during the period merely because of the lack of receipt of that care and attention.

Note: A person who continues to be qualified for carer allowance because of subsection (4) will receive a reduced rate of carer allowance: see subsection 974(3).

**Subdivision B—Limitations on payability**

**958 Carer allowance not payable if allowance rate nil**

A carer allowance is not payable to a person if the person's carer allowance rate would be nil.

**964 Carer allowance not payable to 2 people for the same care receiver or care receivers unless declaration made**

If:

- (a) 2 persons who are not members of the same couple are each qualified for carer allowance for the same care receiver or care receivers; and
- (b) the Secretary has not made a declaration under subsection 981(1) in respect of carer allowance for the care receiver or care receivers; and
- (c) one of the persons is receiving carer allowance for the care receiver or care receivers;

carer allowance is not payable to the other person for the care receiver or care receivers.

**965 Carer allowance not payable to more than one member of a couple**

- (1) Subject to this section, if one member of a couple is receiving carer allowance for a care receiver or care receivers, carer allowance is not payable to the other member of the couple for the same care receiver or care receivers.

(2) If:

- (a) the Secretary is satisfied that each of the members of a couple is qualified for carer allowance for the same care receiver or care receivers; and
- (b) each of them has made a claim for carer allowance (whether or not one of them is receiving carer allowance);

the Secretary is to make a declaration:

- (c) stating that the Secretary is satisfied that each of them is qualified for carer allowance for the care receiver or care receivers; and
  - (d) naming one of them as the member of the couple to whom carer allowance is payable for the care receiver or care receivers.
- (3) If such a declaration is made, carer allowance for the care receiver or care receivers to which the declaration relates is not payable to the member of the couple who is not named in the declaration as mentioned in paragraph (2)(d).

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- (4) The Secretary is to give notice of the declaration to each of the members of the couple involved.
- (5) In making the declaration, the Secretary must have regard to whether one member of the couple is the primary carer for the care receiver or care receivers.

## Division 5—Rate of carer allowance

### 974 Rate of carer allowance

#### *Daily rate*

- (1) A person's rate of carer allowance is a daily rate worked out by dividing the person's fortnightly rate of carer allowance by 14.

#### *Fortnightly rate*

- (2) Subject to subsections (3) and (4), a person's fortnightly rate of carer allowance for a care receiver or care receivers is \$75.60.

Note: The rate of carer allowance is indexed annually (see sections 1190 and 1191).

#### *Reduced fortnightly rate if care receiver undertakes training etc.*

- (3) If on one or more days (each of which is a **training day**) in an instalment period in relation to carer allowance a person would have stopped being qualified for carer allowance apart from subsection 957(4) (care receiver undertakes training etc.), the person's fortnightly rate of carer allowance for that period is to be reduced by the following amount:

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

#### *Rate where carer allowance shared*

- (4) If:
- (a) 2 people who are not members of the same couple are each qualified for carer allowance for the same care receiver or care receivers; and
  - (b) the Secretary has made a declaration under subsection 981(1) in respect of carer allowance for the care receiver or care receivers;

the person's rate of carer allowance is the share specified in the declaration under paragraph 981(1)(b) of the carer allowance rate that would otherwise apply in respect of the care receiver or care receivers.

**Division 6—Multiple qualification for carer allowance for same care receiver or receivers**

**981 Secretary may make declaration where 2 people are qualified for carer allowance for the same care receiver or care receivers**

- (1) If the Secretary is satisfied that 2 people who are not members of the same couple are each qualified for carer allowance for the same care receiver or care receivers, the Secretary is to make a declaration:
  - (a) stating that the Secretary is satisfied that the 2 people are each qualified for carer allowance for the care receiver or care receivers; and
  - (b) specifying the share of the carer allowance for the care receiver or care receivers that each of the 2 people is to receive.

- (2) If the Secretary makes a declaration under subsection (1), the Secretary is to give each of the 2 people involved notice of the declaration.

Note 1: Until the declaration under this section is made, only one of the 2 people involved can receive carer allowance for the care receiver or care receivers—see section 964.

Note 2: For the effect of a declaration under this section on the calculation of carer allowance rates see subsection 974(4).



## **Division 10—Bereavement payments (death of disabled child)**

### **Subdivision A—Death of disabled child**

#### **992J Continued carer allowance during bereavement rate continuation period where disabled child dies**

- (1) If:
- (a) a person is receiving carer allowance (other than because of this section) for a care receiver who is a disabled child or for care receivers who are 2 disabled children; and
  - (b) the disabled child or one of the disabled children dies; and
  - (c) immediately before the child's death, the child was an FTB child, or a regular care child, of the person;

the person is to be qualified for carer allowance during the bereavement rate continuation period as if the child had not died and had received the care and attention referred to in paragraph 953(1)(d) or 953(2)(d) (as the case may be).

Note 1: For *bereavement rate continuation period* see subsection 21(2).

Note 2: If a person fails to satisfy paragraph (1)(c), the person may still be qualified for carer allowance for 4 weeks after the death of the child under section 992L.

- (2) The rate at which the carer allowance is to be paid during the bereavement rate continuation period is the rate at which the allowance was payable to the person immediately before the day on which the child died.

#### **992K Lump sum payable in some circumstances**

- (1) If:
- (a) a person is qualified for carer allowance under section 992J in relation to a disabled child, or one of 2 disabled children, who has died; and
  - (b) the first available bereavement adjustment payday occurs before the end of the bereavement period; and
  - (c) immediately before the child's death, the child was an FTB child, or a regular care child, of the person;

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a lump sum (worked out using the lump sum calculator at the end of this subsection) is payable to the person.

**Lump Sum Calculator**

This is how to work out the amount of the lump sum:

*Method statement*

- Step 1. Work out the rate at which carer allowance was payable to the person immediately before the child died.
- Step 2. Work out the number of paydays of the person in the bereavement lump sum period.
- Step 3. Multiply the rate obtained in Step 1 by the number obtained in Step 2: the result is the amount of the lump sum payable to the person under this section.

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

- (2) However, if a person is qualified for carer allowance under section 992J in relation to 2 disabled children both of whom have died at the same time, only one lump sum is payable to the person under this section.

**Subdivision B—Death of disabled child (special short-term assistance)**

**992L Continuation of qualification for carer allowance for 4 weeks in some cases where recipient's disabled child dies**

- (1) If:
  - (a) a person is receiving carer allowance (other than because of this section) for a care receiver who is a disabled child or for care receivers who are 2 disabled children; and
  - (b) the disabled child or one of the disabled children dies; and
  - (c) the person is not qualified under section 992J for carer allowance for the disabled child or disabled children;the person is to be qualified for carer allowance for the period of 4 weeks that starts on the day on which the child died as if the child

had not died and had received the care and attention referred to in paragraph 953(1)(d) or 953(2)(d) (as the case may be).

- (2) The rate at which the carer allowance is to be paid during the 4 week period is the rate at which the allowance was payable to the person immediately before the day on which the child died.

### **Subdivision C—Death of recipient**

#### **992M Death of recipient**

- (1) If:
- (a) a person is receiving carer allowance; and
  - (b) the person is a member of a couple; and
  - (c) the person dies; and
  - (d) the person:
    - (i) was qualified at the time of the person's death for payments under Subdivision A in relation to the death of a disabled child; or
    - (ii) would have been so qualified if the person had not died;
- there is payable to the partner an amount equal to the sum of the following amounts:
- (e) the amount of carer allowance that would have been payable to the person under subsection 992J(2) if the person had not died;
  - (f) any lump sum that would have been payable to the person under section 992K if the person had not died.
- (2) If:
- (a) a person is receiving carer allowance; and
  - (b) the person is not a member of a couple; and
  - (c) the person dies; and
  - (d) the person:
    - (i) was qualified at the time of the person's death for payments under Subdivision A in relation to the death of a disabled child; or
    - (ii) would have been so qualified if the person had not died;
- there is payable, to such person as the Secretary thinks appropriate, an amount equal to the sum of the following amounts:

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

## **Part 2.19AA—Child disability assistance**

### **992MA Child disability assistance definitions**

In this Part:

*care receiver* has the same meaning as in Part 2.19.

*disabled child* has the same meaning as in Part 2.19.

*eligible care receiver* has the meaning given by section 992MC.

*qualified person* has the meaning given by subsection 992MB(1).

*qualifying instalment* has the meaning given by subsection 992MB(2).

### **992MB Qualification for child disability assistance**

- (1) A person (the *qualified person*) is qualified for child disability assistance in respect of a particular 1 July if the following conditions are satisfied in respect of one or more instalments of carer allowance:
  - (a) the person was paid the instalment in respect of a period that included that 1 July;
  - (b) the instalment was for a care receiver who was a disabled child or for care receivers who were 2 disabled children.
- (2) Each instalment in respect of which the conditions in subsection (1) are satisfied is a *qualifying instalment*.

### **992MC Eligible care receivers**

- (1) Each person to whose care a qualifying instalment relates is an *eligible care receiver* in relation to the qualified person.
- (2) However, if subsection 953(2) applied in relation to a qualifying instalment, the 2 disabled children to whom the instalment relates are to be treated as if they were a single *eligible care receiver* in relation to the qualified person.

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**992MD Amount of child disability assistance**

- (1) The amount of child disability assistance for the qualified person in respect of the 1 July is worked out by adding together the amount applicable under subsection (2) for each eligible care receiver in relation to the qualified person.
- (2) The amount applicable under this subsection for an eligible care receiver is:
  - (a) \$1,000; or
  - (b) if the rate at which the qualifying instalment was paid took account of a determination under subsection 981(1) of a particular share (being a percentage or proportion) in relation to an eligible care receiver—that share of \$1,000.

## **Part 2.19A—One-off payments to carers eligible for carer allowance**

### **Division 1—One-off payment to carers eligible for carer allowance**

#### **992N One-off payment to carers (carer allowance related)**

- (1) A person (the *qualified person*) is qualified for a one-off payment to carers (carer allowance related) if the following conditions are satisfied in relation to one or more instalments of carer allowance that have been paid to the person:
  - (a) the instalment was in respect of a period that included 11 May 2004;
  - (b) the reason why the instalment covered 11 May 2004 was not only because of clause 16 or 17 of Schedule 2 to the *Social Security (Administration) Act 1999*.
- (2) For the purposes of this Part, the instalment, or each instalment, in relation to which paragraphs (1)(a) and (b) are satisfied is a *qualifying instalment*.

Note: The person may also be qualified for a one-off payment to carers (carer payment related) under Division 1 of Part 2.5A.

#### **992O In respect of what care receivers is the payment payable?**

- (1) Subject to subsection (2), each person to whose care a qualifying instalment relates is an *eligible care receiver* in relation to the qualified person.
- (2) If subsection 953(2) applied in relation to a qualifying instalment, the 2 disabled children to whom the instalment relates are to be treated as if they were a single *eligible care receiver* in relation to the qualified person.

**992P What is the amount of the payment?**

*Add together the amounts applicable under this section for each eligible care receiver*

- (1) The amount of the one-off payment to the qualified person is worked out by adding together the amounts applicable under this section for each eligible care receiver.

*Amount is \$600 unless subsection (3) applies*

- (2) Subject to subsection (3), the amount applicable for an eligible care receiver is \$600.

*Reduced amount if instalment rate took account of a subsection 981(1) determination*

- (3) If the rate at which a qualifying instalment was paid took account of a determination under subsection 981(1) of a particular share (being a percentage or proportion) in relation to an eligible care receiver, the amount applicable for the eligible care receiver is that share of \$600.



## **Division 2—2005 one-off payment to carers eligible for carer allowance**

### **992Q 2005 one-off payment to carers (carer allowance related)**

- (1) A person (the *qualified person*) is qualified for a 2005 one-off payment to carers (carer allowance related) if the following conditions are satisfied in relation to one or more instalments of carer allowance that have been paid to the person:
  - (a) the instalment was in respect of a period that included 10 May 2005;
  - (b) the reason why the instalment covered 10 May 2005 was not only because of clause 16 or 17 of Schedule 2 to the *Social Security (Administration) Act 1999*.
- (2) For the purposes of this Part, the instalment, or each instalment, in relation to which paragraphs (1)(a) and (b) are satisfied is a *qualifying instalment*.

Note: The person may also be qualified for a 2005 one-off payment to carers (carer payment related) under Division 2 of Part 2.5A.

### **992R In respect of what care receivers is the payment payable?**

- (1) Subject to subsection (2), each person to whose care a qualifying instalment relates is an *eligible care receiver* in relation to the qualified person.
- (2) If subsection 953(2) applied in relation to a qualifying instalment, the 2 disabled children to whom the instalment relates are to be treated as if they were a single *eligible care receiver* in relation to the qualified person.

### **992S What is the amount of the payment?**

*Add together the amounts applicable under this section for each eligible care receiver*

- (1) The amount of the one-off payment to the qualified person is worked out by adding together the amounts applicable under this section for each eligible care receiver.

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*Amount is \$600 unless subsection (3) applies*

- (2) Subject to subsection (3), the amount applicable for an eligible care receiver is \$600.

*Reduced amount if instalment rate took account of a subsection 981(1) determination*

- (3) If the rate at which a qualifying instalment was paid took account of a determination under subsection 981(1) of a particular share (being a percentage or proportion) in relation to an eligible care receiver, the amount applicable for the eligible care receiver is that share of \$600.

### **Division 3—2006 one-off payment to carers eligible for carer allowance**

#### **992T 2006 one-off payment to carers (carer allowance related)**

- (1) A person (the *qualified person*) is qualified for a 2006 one-off payment to carers (carer allowance related) if the following conditions are satisfied in relation to one or more instalments of carer allowance that have been paid to the person:
  - (a) the instalment was in respect of a period that includes 9 May 2006;
  - (b) the reason why that instalment covered 9 May 2006 was not only because of clause 16 or 17 of Schedule 2 to the Administration Act;
  - (c) the person was paid that instalment because of a claim the person made on or before 9 May 2006.
- (2) For the purposes of this Part, the instalment, or each instalment, in relation to which paragraphs (1)(a), (b) and (c) are satisfied is a *qualifying instalment*.

#### **992U In respect of which care receivers is the payment payable?**

- (1) Subject to subsection (2), each person to whose care a qualifying instalment relates is an *eligible care receiver* in relation to the qualified person.
- (2) If subsection 953(2) applied in relation to a qualifying instalment, the 2 disabled children to whom the instalment relates are to be treated as if they were a single *eligible care receiver* in relation to the qualified person.

#### **992V Amount of the one-off payment**

*Add together the amounts applicable under this section for each eligible care receiver*

- (1) The amount of the one-off payment to the qualified person is worked out by adding together the amounts applicable under this section for each eligible care receiver.

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*Amount is \$600 unless subsection (3) applies*

- (2) Subject to subsection (3), the amount applicable for an eligible care receiver is \$600.

*Reduced amount if instalment rate took account of a subsection 981(1) determination*

- (3) If the rate at which a qualifying instalment was paid took account of a determination under subsection 981(1) of a particular share (being a percentage or proportion) in relation to an eligible care receiver, the amount applicable for the eligible care receiver is that share of \$600.

## **Division 4—2007 one-off payment to carers eligible for carer allowance**

### **992WA 2007 one-off payment to carers (carer allowance related)**

- (1) A person (the *qualified person*) is qualified for a 2007 one-off payment to carers (carer allowance related) if the following conditions are satisfied in relation to one or more instalments of carer allowance that have been paid to the person:
  - (a) the instalment was in respect of a period that includes 8 May 2007;
  - (b) the reason why that instalment covered 8 May 2007 was not only because of clause 16 or 17 of Schedule 2 to the Administration Act;
  - (c) the person was paid that instalment because of a claim the person made on or before 8 May 2007.
- (2) For the purposes of this Part, the instalment, or each instalment, in relation to which paragraphs (1)(a), (b) and (c) are satisfied is a *qualifying instalment*.

### **992WB Eligible care receivers**

- (1) Subject to subsection (2), each person to whose care a qualifying instalment relates is an *eligible care receiver* in relation to the qualified person.
- (2) If subsection 953(2) applied in relation to a qualifying instalment, the 2 disabled children to whom the instalment relates are to be treated as if they were a single *eligible care receiver* in relation to the qualified person.

### **992WC Amount of the one-off payment**

*Add together the amounts applicable under this section for each eligible care receiver*

- (1) The amount of the one-off payment to the qualified person is worked out by adding together the amounts applicable under this section for each eligible care receiver.

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*Amount is \$600 unless subsection (3) applies*

- (2) Subject to subsection (3), the amount applicable for an eligible care receiver is \$600.

*Reduced amount if instalment rate took account of a subsection 981(1) determination*

- (3) If the rate at which a qualifying instalment was paid took account of a determination under subsection 981(1) of a particular share (being a percentage or proportion) in relation to an eligible care receiver, the amount applicable for the eligible care receiver is that share of \$600.

## **Division 5—2008 one-off payment to carers eligible for carer allowance**

### **992WD 2008 one-off payment to carers (carer allowance related)**

- (1) A person (the *qualified person*) is qualified for a 2008 one-off payment to carers (carer allowance related) if the following conditions are satisfied in relation to one or more instalments of carer allowance that have been paid to the person:
  - (a) the instalment was in respect of a period that includes 13 May 2008;
  - (b) the reason why that instalment covered 13 May 2008 was not only because of clause 16 or 17 of Schedule 2 to the Administration Act;
  - (c) the person was paid that instalment because of a claim the person made on or before 13 May 2008.
- (2) For the purposes of this Part, the instalment, or each instalment, in relation to which paragraphs (1)(a), (b) and (c) are satisfied is a *qualifying instalment*.

### **992WE Eligible care receivers**

- (1) Subject to subsection (2), each person to whose care a qualifying instalment relates is an *eligible care receiver* in relation to the qualified person.
- (2) If subsection 953(2) applied in relation to a qualifying instalment, the 2 disabled children to whom the instalment relates are to be treated as if they were a single *eligible care receiver* in relation to the qualified person.

### **992WF Amount of the one-off payment**

*Add together the amounts applicable under this section for each eligible care receiver*

- (1) The amount of the one-off payment to the qualified person is worked out by adding together the amounts applicable under this section for each eligible care receiver.

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*Amount is \$600 unless subsection (3) applies*

- (2) Subject to subsection (3), the amount applicable for an eligible care receiver is \$600.

*Reduced amount if instalment rate took account of a subsection 981(1) determination*

- (3) If the rate at which a qualifying instalment was paid took account of a determination under subsection 981(1) of a particular share (being a percentage or proportion) in relation to an eligible care receiver, the amount applicable for the eligible care receiver is that share of \$600.



## Part 2.19B—Carer supplement

### 992X Carer supplement for 2009 and later years

#### *Qualifying for carer supplement*

- (1) A person (the **qualified person**) is qualified for carer supplement for a year if the person was or is paid an instalment (the **qualifying instalment**) of carer allowance, carer payment or carer service pension in respect of a period that includes:
  - (a) 12 May in the year if the year is 2009; or
  - (b) 1 July in the year if the year is a later year.

Note: There may be more than one qualifying instalment for carer supplement for a year. For example, if a person is paid both an instalment of carer allowance and an instalment of carer payment in respect of a period including 1 July 2010, both instalments are qualifying instalments for carer supplement for 2010 for the person.

#### *Amount of carer supplement*

- (2) The amount of carer supplement for the qualified person for the year is the total worked out in accordance with the table (taking account of every relevant item of the table):

<b>Amount of carer supplement</b>		
<b>Item</b>	<b>If:</b>	<b>Include this amount in the total:</b>
1	The qualifying instalment is of carer allowance	The amount worked out under subsection (3) for each eligible care receiver (see subsections (4) and (5))
2	The qualifying instalment is of carer payment	\$600
3	The qualifying instalment is of carer service pension	\$600

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<b>Amount of carer supplement</b>		
<b>Item</b>	<b>If:</b>	<b>Include this amount in the total:</b>
4	Both of the following apply: (a) the qualifying instalment is of carer allowance; (b) the qualified person was or is also paid an instalment of wife pension in respect of a period that includes the day described in subsection (1) for the year	\$600
5	Both of the following apply: (a) the qualifying instalment is of carer allowance; (b) the qualified person was or is also paid an instalment of partner service pension under the Veterans' Entitlements Act in respect of a period that includes the day described in subsection (1) for the year	\$600

*Amount for eligible care receiver*

- (3) The amount for an eligible care receiver is:
- (a) \$600; or
  - (b) if the rate at which the qualifying instalment was paid takes account of a determination under subsection 981(1) of a particular share (being a percentage or proportion) in relation to the eligible care receiver—that share of \$600.

Example 1: Assume that:

- (a) the qualified person qualifies for carer supplement for 2010 because he or she is paid a qualifying instalment of carer allowance relating to 3 eligible care receivers; and
- (b) the rate of the qualifying instalment takes account of a determination under subsection 981(1) of a half share in relation to one of those eligible care receivers; and
- (c) the qualified person is also paid an instalment of partner service pension for a period including 1 July 2010.

The amount of carer supplement for the qualified person for 2010 is \$2,100, made up of \$600 each for 2 of the eligible care receivers, \$300 (which is half of \$600) for the eligible care receiver to whom the half-share determination relates and \$600 relating to the partner service pension.

Example 2: Assume that the qualified person qualifies for carer supplement for 2011 because he or she is paid a qualifying instalment of carer allowance relating to one eligible care receiver and also because the qualifying person is paid a qualifying instalment of carer payment.

The amount of carer supplement for the qualified person for 2011 is \$1,200, made up of \$600 relating to carer allowance relating to the eligible care receiver and \$600 relating to carer payment.

*Definition of eligible care receiver*

- (4) Each person to whose care a qualifying instalment of carer allowance relates is an *eligible care receiver* in relation to the qualified person.
- (5) However, if subsection 953(2) applies in relation to a qualifying instalment, the 2 disabled children to whom the instalment relates are to be treated as if they were a single *eligible care receiver* in relation to the qualified person.

*Definition of carer service pension*

- (6) In this section:

*carer service pension* means carer service pension that is payable because of subclause 8(2) or (4) of Schedule 5 to the Veterans' Entitlements Act.

## Part 2.20—Double orphan pension

### Division 1—DOP child status

#### 993 Double orphan—not refugee

- (1) A young person is a double orphan if:
- (a) the young person is not a refugee child; and
  - (b) each parent of the young person is dead.

Note 1: for *young person* and *parent* see section 5.

Note 2: for *refugee child* see section 995.

Note 3: if the young person does not qualify as a double orphan under this subsection, and the young person is a refugee child, the young person may qualify as a double orphan under section 994.

- (2) A young person is a double orphan if:
- (a) the young person is not a refugee child; and
  - (b) one parent of the young person is dead; and
  - (c) the other parent of the young person is:
    - (i) a long-term prisoner; or
    - (ii) a mental hospital patient on a long-term basis; or
    - (iii) in residential care on a long-term basis; or
    - (iv) uncontactable.

Note 1: for *young person* and *parent* see section 5.

Note 2: for *refugee child* see section 995.

Note 3: for *long-term prisoner* see section 996.

Note 4: For *mental hospital patient on a long-term basis*, see subsection 997(1).

Note 4A: For *in residential care on a long-term basis*, see subsection 997(2).

Note 5: for *uncontactable* see section 998.

#### 994 Double orphan—refugee

- A young person is a double orphan if:
- (a) the young person is a refugee child; and
  - (b) one parent of the young person is:
    - (i) dead; or

- (ii) living outside Australia; or
- (iii) uncontactable; and
- (c) the other parent, if any, is:
  - (i) dead; or
  - (ii) living outside Australia; or
  - (iii) uncontactable; or
  - (iv) a long-term prisoner; or
  - (v) a mental hospital patient on a long-term basis; or
  - (vi) in residential care on a long-term basis.

Note 1: for *young person* and *parent* see section 5.

Note 2: for *refugee child* see section 995.

Note 3: for *uncontactable* see section 998.

Note 4: for *long-term prisoner* see section 996.

Note 5: For *mental hospital patient on a long-term basis*, see subsection 997(1).

Note 5A: For *in residential care on a long-term basis*, see subsection 997(2).

### **995 Refugee child**

- (1) A young person is a refugee child if:
  - (a) the young person is not an adopted child by virtue of an adoption under a law in force in a State or Territory of the Commonwealth; and
  - (b) the young person has not, at any time, lived in Australia with one or both of his or her parents; and
  - (c) the young person:
    - (i) has been granted refugee status by the Australian Government; or
    - (ii) has, at any time, been admitted into Australia as a refugee by the Australian Government; or
    - (iii) the young person has been, at any time, admitted into Australia in accordance with the terms of a special humanitarian program of the Australian Government that has been approved by the Minister for the purposes of this definition.
- (2) An approval of a special humanitarian program for the purposes of subparagraph (1)(c)(iii) may be expressed to have retrospective effect to the date of the establishment of the program.

### 996 Long-term prisoner

- (1) For the purposes of this Division, a person is a *long-term prisoner* if the person:
  - (a) has been convicted of an offence; and
  - (b) has been sentenced to imprisonment:
    - (i) for life; or
    - (ii) for a term of at least 10 years; and
  - (c) is serving the sentence.
- (2) For the purposes of this Division, a person is a long-term prisoner if:
  - (a) the person has been charged with an offence punishable by imprisonment for life or for a term of at least 10 years; and
  - (b) the person has not been convicted of the offence; and
  - (c) the person is in custody; and
  - (d) the person is not serving a sentence of imprisonment for life or for a term of 10 years or more imposed as a result of conviction of another offence.

### 997 Patient on a long-term basis

#### *Mental hospital patient*

- (1) For the purposes of this Division, a person is a *mental hospital patient on a long-term basis* if:
  - (a) the person is a mental hospital patient; and
  - (b) the Secretary is satisfied that the person will require care and treatment for an indefinite period.

Note: for *mental hospital patient* see section 23.

#### *Nursing home patient*

- (2) For the purposes of this Division, a person is *in residential care on a long-term basis* if:
  - (a) the person is in residential care; and
  - (b) the Secretary is satisfied that the person will be in residential care for an indefinite period.

### **998 Person uncontactable**

For the purposes of this Division, a person is *uncontactable* if the person's whereabouts are not known to the person or approved care organisation claiming or receiving the double orphan pension concerned.

## **Division 2—Qualification for and payability of double orphan pension**

### **Subdivision A—Qualification**

#### **999 Qualification for double orphan pension**

*Persons other than approved care organisations*

- (1) A person is qualified for a double orphan pension for a young person if:
  - (a) the young person is an FTB child of the person, or would be an FTB child of the person except that the young person, or someone on behalf of the young person, is receiving payments under a prescribed educational scheme; and
  - (b) the person is eligible for family tax benefit, or would be so eligible except that:
    - (i) the young person is not an FTB child of the person, but only because of the receipt of the payments referred to in paragraph (a); or
    - (ii) the person's rate of family tax benefit, worked out under Division 1 of Part 4 of the Family Assistance Act, is nil; and
  - (c) on the day on which the person claims the double orphan pension, the young person is a double orphan; and
  - (d) either:
    - (i) the young person continues to be a double orphan; or
    - (ii) if the young person is no longer a double orphan, the person has not become aware that the young person is no longer a double orphan.

*Approved care organisations*

- (2) An approved care organisation is qualified for a double orphan pension for a young person if:
  - (a) the organisation is eligible for family tax benefit for the young person, or would be eligible for family tax benefit for the young person except that the young person, or someone



- on behalf of the young person, is receiving payments under a prescribed education scheme; or
- (b) on the day on which the organisation claims the double orphan pension, the young person is a double orphan; and
  - (c) either:
    - (i) the young person continues to be a double orphan; or
    - (ii) if the young person is no longer a double orphan—the organisation has not become aware that the young person is no longer a double orphan.

Note 1: for *double orphan* see sections 993 and 994.

Note 2: for *approved care organisation* see sections 6 and 35.

### **Subdivision B—Payability**

#### **1003 Double orphan pension not payable for child receiving a pension under the Veterans' Entitlements Act**

- (1) A double orphan pension is not payable for a child in relation to an instalment period for family tax benefit if the child is receiving a pension under Part II or IV of the Veterans' Entitlements Act.
- (2) In subsection (1):

*instalment period for family tax benefit* means a period that is an instalment period for the purposes of section 23 of the Family Assistance Administration Act.

## Division 5—Rate of double orphan pension

### 1010 Rate of double orphan pension

- (1) Subject to subsections (1A) to (3A), the rate of double orphan pension is a daily rate calculated by dividing \$37.90 by 14.
- (1A) If a person who is qualified for double orphan pension for a child has, under section 59 of the Family Assistance Act, a shared care percentage for the child, the rate of double orphan pension under subsection (1) is the person's shared care percentage of the rate of double orphan pension that would otherwise apply under that subsection to the child.

#### *Children who became double orphans before 1 July 2000*

- (2) If:
  - (a) a child became a double orphan before 1 July 2000; and
  - (b) the person who is qualified for double orphan pension for the child does not, under section 59 of the Family Assistance Act, have a shared care percentage for the child; and
  - (c) the current family tax benefit rate in respect of the child is less than the prior family allowance rate in respect of the child;then the rate calculated under subsection (1) in relation to the child is increased by an amount equal to the difference between the prior family allowance rate and the current family tax benefit rate.
- (2A) If:
  - (a) a child became a double orphan before 1 July 2000; and
  - (b) the person who is qualified for double orphan pension for the child has, under section 59 of the Family Assistance Act, a shared care percentage for the child; and
  - (c) the current family tax benefit rate in respect of the child is less than the shared care percentage of the prior family allowance rate in respect of the child;then the rate calculated under subsections (1) and (1A) in relation to the child is increased by an amount equal to the difference between:

- (d) the person's shared care percentage of the prior family allowance rate; and
- (e) the current family tax benefit rate.

*Children who become double orphans on or after 1 July 2000*

(3) If:

- (a) a child becomes a double orphan on or after 1 July 2000; and
- (b) the person who is qualified for double orphan pension for the child does not, under section 59 of the Family Assistance Act, have a shared care percentage for the child; and
- (c) the current family tax benefit rate in respect of the child is less than the prior family tax benefit rate in respect of the child;

then the rate calculated under subsection (1) in relation to the child is increased by an amount equal to the difference between the prior family tax benefit rate and the current family tax benefit rate.

(3A) If:

- (a) a child becomes a double orphan on or after 1 July 2000; and
- (b) the person who is qualified for double orphan pension for the child has, under section 59 of the Family Assistance Act, a shared care percentage for the child; and
- (c) the current family tax benefit rate in respect of the child is less than the shared care percentage of the prior family tax benefit rate in respect of the child;

then the rate calculated under subsections (1) and (1A) in relation to the child is increased by an amount equal to the difference between:

- (d) the person's shared care percentage of the prior family tax benefit rate; and
- (e) the current family tax benefit rate.

- (4) Subsections (2) and (3) do not have effect in relation to a child at any time at which double orphan pension in respect of the child is payable to an approved care organisation.

(5) In this section:

***current family tax benefit rate***, in relation to a child, means the rate represented by so much of an individual's Part A rate of family tax benefit as relates to the child.

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*prior family allowance rate*, in relation to a child, means the rate at which family allowance was payable in respect of the child immediately before the child became a double orphan.

*prior family tax benefit rate*, in relation to a child, means the rate represented by so much of an individual's Part A rate of family tax benefit as related to the child immediately before the child became a double orphan.

## **Division 10—Bereavement payments (death of DOP child)**

### **Subdivision A—Death of DOP child (General)**

#### **1033 Continued double orphan pension during bereavement rate continuation period where DOP child dies**

If:

- (a) a person is receiving double orphan pension for a young person; and
- (b) the young person dies; and
- (c) immediately before the young person died:
  - (ii) the young person was an FTB child of the person; or
  - (iii) the person was receiving a service pension or income support supplement whose rate included:
    - (A) a dependent child add-on for the young person;  
or
    - (B) guardian allowance in respect of the young person;

the person is to be qualified for double orphan pension for the young person during the bereavement rate continuation period as if the young person had not died.

#### **1034 Lump sum payable in some circumstances**

If:

- (a) a person is qualified for double orphan pension under section 1033 in relation to the death of a DOP child; and
- (b) the first available bereavement adjustment payday occurs before the end of the bereavement period; and
- (c) immediately before the child died, the child was an FTB child;

a lump sum (worked out using the lump sum calculator at the end of this section) is payable to the person.

**LUMP SUM CALCULATOR**

This is how to work out the amount of the lump sum:

*Method statement*

- Step 1. Work out the rate at which double orphan pension was payable immediately before the first available bereavement adjustment payday: the result is called the *continued rate*.
- Step 2. Work out the number of the person's paydays in the bereavement lump sum period.
- Step 3. Multiply the continued rate by the number obtained in Step 2: the result is the amount of the lump sum payable to the person under this section.

**Subdivision AA—Death of dependent child (special short-term assistance)**

**1034AA Continuation of qualification for double orphan pension for 4 weeks in some cases where recipient's DOP child dies**

If:

- (a) a person is receiving double orphan pension for a young person; and
- (b) the young person dies; and
- (c) the person is not qualified for double orphan pension under section 1033 in respect of the young person;

the person is to be qualified for double orphan pension, for the period of 4 weeks that starts on the day after the day on which the young person died, as if the young person had not died.

**Subdivision B—Death of recipient**

**1034A Death of recipient**

(1) If:

- (a) a person is receiving a double orphan pension; and

- (b) the person is a member of a couple; and
  - (c) the person dies; and
  - (d) the person:
    - (i) was qualified at the time of the person's death for payments under Subdivision A in relation to the death of a DOP child; or
    - (ii) would have been so qualified if the person had not died; and
  - (e) the person's partner claims the payments referred to in paragraph (d) within 3 months after the death of the child; there is payable to the partner an amount equal to the sum of the following amounts:
    - (f) the amount of double orphan pension that would have been payable to the person under section 1033 if the person had not died;
    - (g) any lump sum that would have been payable to the person under section 1034 if the person had not died.
- (2) If:
- (a) a person is receiving a double orphan pension; and
  - (b) the person is not a member of a couple; and
  - (c) the person dies; and
  - (d) the person:
    - (i) was qualified at the time of the person's death for payments under Subdivision A in relation to the death of a DOP child; or
    - (ii) would have been so qualified if the person had not died;
- there is payable, to such person as the Secretary thinks appropriate, an amount equal to the sum of the following amounts:
- (e) the amount of double orphan pension that would have been payable to the person under section 1033 if the person had not died; and
  - (f) any lump sum that would have been payable to the person under section 1034 if the person had not died.

## **Part 2.21—Mobility allowance**

### **Division 1—Qualification for and payability of mobility allowance**

#### **Subdivision A—Qualification**

##### **1035 Qualification for mobility allowance (rate specified in subsection 1044(1))**

- (1) A person is qualified for a mobility allowance at the rate specified in subsection 1044(1) if the person satisfies the travel test set out in subsection (2) and:
  - (a) all of the following apply:
    - (i) the person is a handicapped person;
    - (ii) the person is engaged in gainful employment;
    - (iii) the Secretary is of the opinion that:
      - (A) the person is unable to use public transport without substantial assistance, either permanently or for an extended period; and
      - (B) the person's inability to use public transport without substantial assistance is due to the person's physical or mental disability; and
      - (C) the person is engaged in the gainful employment for at least 32 hours in every 4 weeks on a continuing basis;
    - (iv) the person is an Australian resident; or
  - (b) all of the following apply:
    - (i) the person is a handicapped person;
    - (ii) the person is undertaking vocational training;
    - (iii) the Secretary is of the opinion that:
      - (A) the person is unable to use public transport without substantial assistance, either permanently or for an extended period; and
      - (B) the person's inability to use public transport without substantial assistance is due to the person's physical or mental disability; and



- (C) the person is undertaking the vocational training for at least 32 hours in every 4 weeks on a continuing basis;
- (iv) the person is an Australian resident; or
- (c) all of the following apply:
  - (i) the person is a handicapped person;
  - (ii) the person is receiving newstart allowance, youth allowance or austudy payment;
  - (iii) the Secretary is of the opinion that:
    - (A) the person is unable to use public transport without substantial assistance, either permanently or for an extended period; and
    - (B) the person's inability to use public transport without substantial assistance is due to the person's physical or mental disability; and
  - (iv) the person is required to satisfy the activity test;
  - (v) the person is an Australian resident; or
- (d) all of the following apply:
  - (i) the person is a handicapped person;
  - (ii) the Secretary is of the opinion that:
    - (A) the person is unable to use public transport without substantial assistance, either permanently or for an extended period; and
    - (B) the person's inability to use public transport without substantial assistance is due to the person's physical or mental disability; and
    - (C) the person is undertaking job search activities under an agreement between the Secretary and a service provider nominated by the Secretary of the Employment Department;
  - (iii) the person is an Australian resident; or
- (e) all of the following apply:
  - (i) the person is a handicapped person;
  - (ii) the Secretary is of the opinion that:
    - (A) the person is unable to use public transport without substantial assistance, either permanently or for an extended period; and

- (B) the person's inability to use public transport without substantial assistance is due to the person's physical or mental disability; and
- (C) the person is undertaking job search activities under the Competitive Employment Placement and Training Program administered by the Department;
- (iii) the person is an Australian resident; or
- (f) all of the following apply:
  - (i) the person is a handicapped person;
  - (ii) the Secretary is of the opinion that:
    - (A) the person is unable to use public transport without substantial assistance, either permanently or for an extended period; and
    - (B) the person's inability to use public transport without substantial assistance is due to the person's physical or mental disability; and
    - (C) the person is engaged in voluntary work for at least 32 hours in every 4 weeks on a continuing basis;
  - (iii) the person is an Australian resident; or
- (g) all of the following apply:
  - (i) the person is a handicapped person;
  - (ii) the Secretary is of the opinion that:
    - (A) the person is unable to use public transport without substantial assistance, either permanently or for an extended period; and
    - (B) the person's inability to use public transport without substantial assistance is due to the person's physical or mental disability;
  - (iii) the Secretary is of the opinion that the person is undertaking a combination of any 2 or more of the following:
    - (A) gainful employment;
    - (B) vocational training;
    - (C) voluntary work;for at least 32 hours in every 4 weeks on a continuing basis;
  - (iv) the person is an Australian resident; or

- (h) all of the following apply:
  - (i) the person is a handicapped person;
  - (ii) the person is undertaking a vocational rehabilitation program;
  - (iii) the Secretary is of the opinion that:
    - (A) the person is unable to use public transport without substantial assistance, either permanently or for an extended period; and
    - (B) the person's inability to use public transport without substantial assistance is due to the person's physical or mental disability;
  - (iv) the person is an Australian resident.
- (2) A person satisfies the travel test mentioned in subsection (1) if the person is required to travel to and from the person's home for the purpose of undertaking:
  - (a) gainful employment; or
  - (b) vocational training; or
  - (c) job search activities; or
  - (d) voluntary work; or
  - (e) a vocational rehabilitation program.

- (3) In this section:

***vocational rehabilitation program*** means a rehabilitation program (or follow-up program) under Part III of the *Disability Services Act 1986* that provides a person with assistance to obtain or retain unsupported paid employment.

Note: A vocational rehabilitation program may include vocational training within the meaning of section 19.

***vocational training*** means vocational training within the meaning of section 19 (other than training provided as part of a rehabilitation program or follow-up program under Part III of the *Disability Services Act 1986*).

***voluntary work*** means work approved by the Secretary undertaken in a voluntary capacity for charitable, welfare or community organisations.

**1035A Qualification for mobility allowance (rate specified in subsection 1044(1A))**

*General principle*

- (1) A person is qualified for a mobility allowance at the rate specified in subsection 1044(1A) if:
- (a) the person is a handicapped person; and
  - (b) the Secretary is of the opinion that the person is unable to use public transport without substantial assistance (either permanently or for an extended period) due to the person's physical or mental disability; and
  - (c) the person is an Australian resident; and
  - (d) the person satisfies one or more of subsections (2) to (9).

*Disability support pension*

- (2) A person satisfies this subsection if:
- (a) at a particular time, the person's hours of work per week, on wages that are at or above the relevant minimum wage increase to at least 30 hours per week; and
  - (b) immediately before that time, the person was receiving disability support pension as a result of a claim made before 1 July 2006; and
  - (c) the person ceased to be qualified for disability support pension because of the increase in the number of hours worked; and
  - (d) since the time mentioned in paragraph (a), the person:
    - (i) has been working at least 30 hours per week on wages that are at or above the relevant minimum wage; and
    - (ii) has not received another income support payment; and
  - (e) the person is required to travel to and from the person's home for the purpose of performing that work.

However, this subsection ceases to apply to a transitional DSP applicant from the date of effect of the first decision about the person's capacity to perform work made on or after 1 July 2006 following a review of the person's capacity to perform work.

- (3) A person satisfies this subsection if:
- (a) the person is receiving disability support pension; and
  - (b) one or both of the following applies to the person:

- (i) the person is working for at least 15 hours per week on wages that are at or above the relevant minimum wage;
  - (ii) the person is undertaking job search activities under an agreement between the Secretary and the person for work of at least 15 hours per week on wages that are at or above the relevant minimum wage; and
  - (c) if the person is working as mentioned in subparagraph (b)(i)—the person is required to travel to and from the person's home for the purpose of performing the work; and
  - (d) if the person is undertaking job search activities as mentioned in subparagraph (b)(ii)—the person is required to travel to and from the person's home for the purpose of undertaking those activities.
- (4) A person satisfies this subsection if:
- (a) subsection (2) does not apply (or has ceased to apply) to the person; and
  - (b) the person is working for at least 15 hours per week on wages that are at or above the relevant minimum wage; and
  - (c) immediately before the person started that work, the person was receiving disability support pension; and
  - (d) the person ceased to be qualified for disability support pension because of the number of hours worked; and
  - (e) since starting that work, the person:
    - (i) has been working at least 15 hours per week on wages that are at or above the relevant minimum wage; and
    - (ii) has not received another income support payment; and
  - (f) the person is required to travel to and from the person's home for the purpose of performing that work.
- (5) A person satisfies this subsection if:
- (a) subsection (2) does not apply (or has ceased to apply) to the person; and
  - (b) at a particular time, the person starts to earn income from work or the person's income from work increases; and
  - (c) immediately before that time, the person was receiving disability support pension; and
  - (d) the disability support pension ceased to be payable to the person because the rate of the pension is nil due to the

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income, or increased income, the person earned from the work; and

- (e) since the time mentioned in paragraph (b), the person has been working at least 15 hours per week on wages that are at or above the relevant minimum wage; and
- (f) the person is required to travel to and from the person's home for the purpose of performing that work; and
- (g) since the time mentioned in paragraph (b), no income support payment has been payable to the person because the rate of the payment is nil due to the income, or increased income, the person has been earning from the work.

*Newstart allowance, youth allowance or parenting payment recipients*

- (6) A person satisfies this subsection if:
  - (a) the person:
    - (i) is receiving newstart allowance; or
    - (ii) is receiving youth allowance, but is not undertaking full-time study and is not a new apprentice; or
    - (iii) is receiving parenting payment; and
  - (b) one or both of the following applies to the person:
    - (i) the person is working for at least 15 hours per week on wages that are at or above the relevant minimum wage;
    - (ii) the person is undertaking job search activities under an agreement between the Secretary and the person for work of at least 15 hours per week on wages that are at or above the relevant minimum wage; and
  - (c) if the person is working as mentioned in subparagraph (b)(i)—the person is required to travel to and from the person's home for the purpose of performing the work; and
  - (d) if the person is undertaking job search activities as mentioned in subparagraph (b)(ii)—the person is required to travel to and from the person's home for the purpose of undertaking those activities.

Note 1: For *undertaking full-time study* see section 541B.

Note 2: For *new apprentice* see subsection 23(1).

- (7) A person satisfies this subsection if:
- (a) at a particular time, the person starts to earn income from work or the person's income from work increases; and
  - (b) immediately before that time, the person:
    - (i) was receiving newstart allowance; or
    - (ii) was receiving youth allowance, but was not undertaking full-time study and was not a new apprentice; or
    - (iii) was receiving parenting payment; and
  - (c) the newstart allowance, youth allowance or parenting payment ceased to be payable to the person because the rate of the allowance or payment was nil due to the income, or increased income, the person earned from his or her work; and
  - (d) since the time mentioned in paragraph (a), the person has been working at least 15 hours per week on wages that are at or above the relevant minimum wage; and
  - (e) the person is required to travel to and from the person's home for the purpose of performing that work; and
  - (f) since the time mentioned in paragraph (a), no income support payment has been payable to the person because the rate of the payment is nil due to the income, or increased income, the person has been earning from the work.

Note 1: For *undertaking full-time study* see section 541B.

Note 2: For *new apprentice* see subsection 23(1).

*Newstart allowance, youth allowance, disability support pension and parenting payment recipients*

- (8) A person satisfies this subsection if:
- (a) the person:
    - (i) is receiving newstart allowance; or
    - (ii) is receiving youth allowance, but is not undertaking full-time study and is not a new apprentice; or
    - (iii) is receiving disability support pension; or
    - (iv) is receiving parenting payment; and
  - (b) the person is working for at least 15 hours per week on wages set in accordance with the program administered by the Commonwealth known as the supported wage system; and

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- (c) the work is not performed by the person in the course of employment that is supported by supported employment services within the meaning of section 7 of the *Disability Services Act 1986*; and
- (d) the person is required to travel to and from the person's home for the purpose of performing the work.

Note 1: For *undertaking full-time study* see section 541B.

Note 2: For *new apprentice* see subsection 23(1).

(9) A person satisfies this subsection if:

- (a) at a particular time, the person starts to earn income from work or the person's income from work increases; and
- (b) immediately before that time, the person:
  - (i) was receiving newstart allowance; or
  - (ii) was receiving youth allowance, but was not undertaking full-time study and was not a new apprentice; or
  - (iii) was receiving disability support pension; or
  - (iv) was receiving parenting payment; and
- (c) the newstart allowance, youth allowance, disability support pension or parenting payment ceased to be payable to the person because the rate of the allowance, pension or payment was nil due to the income, or increased income, the person earned from his or her work; and
- (d) since the time mentioned in paragraph (a), the person has been working:
  - (i) for at least 15 hours per week on wages set in accordance with the program administered by the Commonwealth known as the supported wage system; or
  - (ii) at least 15 hours per week on wages that are at or above the relevant minimum wage; and
- (e) the work has not been performed by the person in the course of employment that is or was supported by supported employment services within the meaning of section 7 of the *Disability Services Act 1986*; and
- (f) the person has been required to travel to and from the person's home for the purpose of performing that work; and
- (g) since the time mentioned in paragraph (a), no income support payment has been payable to the person because the rate of



the payment is nil due to the income, or increased income, the person has been earning from the work.

Note 1: For *undertaking full-time study* see section 541B.

Note 2: For *new apprentice* see subsection 23(1).

## **Subdivision B—Payability**

### **1036 Mobility allowance not payable at 2 rates**

Mobility allowance at the rate specified in subsection 1044(1) is not payable to a person while mobility allowance at the rate specified in subsection 1044(1A) is payable to the person.

### **1037 Mobility allowance not payable where person receiving motor vehicle assistance**

A mobility allowance is not payable to a person:

- (a) if the person is provided with a motor vehicle under the Vehicle Assistance Scheme prepared under section 105 of the VEA—during any period during which the vehicle is provided; or
- (aa) if the person is provided with a motor vehicle under the Motor Vehicle Compensation Scheme under section 212 of the MRCA—during any period during which the vehicle is provided.

Note: for *VEA* and *MRCA* see section 23.

### **1039AA Newly arrived resident's waiting period**

- (1) Subject to subsections (2), (3) and (4), a person who, on or after the commencement of this subsection:
  - (a) enters Australia; and
  - (b) has not been an Australian resident and in Australia for a period of, or periods totalling, 104 weeks;is subject to a newly arrived resident's waiting period.
- (2) Subsection (1) does not apply to a person who has a qualifying residence exemption for a mobility allowance.

Note: For *qualifying residence exemption* see subsections 7(6) and 7(6AA).

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- (3) Subsection (1) does not apply to a person if the person has already served a newly arrived resident's waiting period.
- (4) Subsection (1) does not apply to a person who becomes a handicapped person while in Australia.  
Note: For *handicapped person* see section 19.
- (5) Subsection (1) does not apply to a person if:
  - (a) the person is a New Zealand citizen; and
  - (b) the person was an Australian resident on 1 February 2000.

**1039AB Duration of newly arrived resident's waiting period**

If a person is subject to a newly arrived resident's waiting period, the period:

- (a) starts on the day the person first became an Australian resident; and
- (b) ends when the person has been an Australian resident and in Australia for a period of, or periods totalling, 104 weeks.

## **Division 2—Rate of mobility allowance**

### **1044 Rate of mobility allowance**

[see Appendix for CPI adjusted figures]

(1AA) The rate of mobility allowance is a daily rate worked out by dividing the fortnightly rate by 14.

(1) The fortnightly rate of mobility allowance for a person who qualifies for the allowance under section 1035 is \$50.50.

(1A) The fortnightly rate of mobility allowance for a person who qualifies for the allowance under section 1035A is \$100.

(2) A person's mobility allowance rate is nil if:

(a) the person has received mobility allowance advance under section 1045; and

(b) the person's advance payment period has not ended.

Note 2: the rate of mobility allowance is indexed annually in line with CPI increases (see section 1191—item 34 of the CPI Indexation Table—and sections 1192 to 1194).

(3) In this section:

*advance payment period*, in relation to a person, means the period of:

(a) 26 weeks; or

(b) if section 1044A applies—such number of days as is provided for in that section;

that starts at the beginning of the advance entitlement period.

### **1044A Reduction of the advance payment period**

(1) A person's advance payment period is the period worked out using the following Method statement if:

(a) the person has received a mobility allowance advance; and

(b) the amount of the advance was calculated on the basis that the person qualified for mobility allowance under section 1035; and

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- (c) the person qualifies for mobility allowance under section 1035A, during the period of 26 weeks starting on the day on which the person qualified for the advance; and
- (d) this section has not previously applied to the person in relation to the same advance.

*Method statement*

Step 1. Work out the number of days that, at the time of qualification under section 1035A, remain from the period of 26 weeks referred to in paragraph (c) (counting the day on which that qualification occurs as a whole day).

Step 2. Multiply the result under Step 1 by the amount worked out under the following formula:

$$\frac{\text{Rate of mobility allowance specified in subsection 1044(1)}}{\text{Rate of mobility allowance specified in subsection 1044(1A)}}$$

If the result is not a whole number, round the result down to the next whole number.

Step 3. Subtract the result under Step 2 from the result under Step 1.

Step 4. Subtract the result under Step 3 from the number 182. The result is the number of days in the person's advance payment period.

## **Division 3—Mobility allowance advance**

### **1045 Qualification for mobility advance**

- (1) A person is qualified for a mobility allowance advance if:
  - (a) the person is receiving mobility allowance; and
  - (b) the person has requested the advance; and
  - (c) the Secretary is satisfied that the person will continue to be qualified for mobility allowance for at least 26 weeks from the day on which the person receives the advance; and
  - (d) if the person has previously received a mobility allowance advance, a period of not less than 12 months has elapsed since the person last received a mobility allowance advance.
- (2) If a person has previously received a mobility allowance advance, a request is not effective for the purpose of paragraph (1)(b) if it was made within 11 months after the person received a mobility allowance advance.
- (3) The amount of the advance is calculated by multiplying the mobility allowance rate by 13.
- (4) For the purpose of subsection (3):

*mobility allowance rate* is the rate of mobility allowance on the advance payday.

## Division 4—Continuation

### 1046 Continuation of mobility allowance when person ceases to be qualified

- (1) This section applies to a person if:
  - (a) a mobility allowance at the rate specified in subsection 1044(1) is payable to a person; and
  - (b) the person would, apart from this section, cease to be qualified for the mobility allowance because he or she ceases, in the Secretary's opinion:
    - (i) to undertake gainful employment, vocational training or voluntary work; or
    - (ii) to undertake a combination of any 2 or more of the following:
      - (A) gainful employment;
      - (B) vocational training;
      - (C) voluntary work;for at least 32 hours in every 4 weeks on a continuing basis.
- (2) This section applies to a person if:
  - (a) a mobility allowance at the rate specified in subsection 1044(1) is payable to a person; and
  - (b) the person would, apart from this section, cease to be qualified for the mobility allowance because he or she ceases, in the Secretary's opinion:
    - (i) to receive newstart allowance for a reason other than the application of section 601 or 605 of this Act or section 81 of the Administration Act; or
    - (ii) to receive youth allowance for a reason other than the application of section 541A, 544A, 544C, 550 or 553B of this Act or section 81 of the Administration Act; or
    - (iii) to receive an austudy payment for a reason other than the application of section 569 or 576 of this Act or section 81 of the Administration Act; or
    - (iv) to undertake job search activities under an agreement between the Secretary and the person; or

- (v) to undertake job search activities under the Competitive Employment Placement and Training Program administered by the Department; or
  - (vi) to undertake a vocational rehabilitation program.
- (2A) This section applies to a person if:
- (a) a mobility allowance is payable to a person at the rate specified in subsection 1044(1A); and
  - (b) the person would, apart from this section, cease to be qualified for the mobility allowance because he or she ceases, in the Secretary's opinion, to satisfy one or more of subsections 1035A(2), (3), (4), (5), (6), (7), (8) and (9).
- (2B) This section applies to a person if:
- (a) a mobility allowance is payable to a person at the rate specified in subsection 1044(1A) because the person satisfies one or both of subsections 1035A(6) and (7); and
  - (b) the person would, apart from this section, cease to be qualified for the mobility allowance because he or she ceases, in the Secretary's opinion:
    - (i) to receive newstart allowance for a reason other than the application of section 601 or 605 of this Act or section 81 of the Administration Act; or
    - (ii) to receive youth allowance for a reason other than the application of section 541A, 544A, 550B, 551 or 553B of this Act or section 81 of the Administration Act; or
    - (iia) to receive parenting payment for a reason other than the application of section 500J, 500ZB or 500ZE of this Act or section 81 of the Administration Act; or
    - (iii) to undertake job search activities, under an agreement between the Secretary and a service provider nominated by the Secretary of the Employment Department, for work of at least 15 hours per week on wages that are at or above the relevant minimum wage.
- (3) A person to whom this section applies continues to be qualified for the mobility allowance for 12 weeks after the person would, apart from this section, have ceased to be qualified for the mobility allowance.
- (4) If:
- (a) a mobility allowance is payable to a person; and
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(b) the person would, apart from this section, cease to be qualified for the allowance because of circumstances other than those described in subsections (1), (2), (2A) and (2B); the person continues to be qualified for the mobility allowance for 2 weeks after the person would, apart from this section, have ceased to be qualified for the mobility allowance.

(5) If:

(a) a mobility allowance is payable to a person because of subsection (3); and

(b) circumstances occur that would, if the person were still qualified for the allowance, result in the person ceasing to be qualified;

the mobility allowance ceases to be payable to the person on the day on which those circumstances occur.

(6) In this section:

**vocational rehabilitation program** means a rehabilitation program (or follow-up program) under Part III of the *Disability Services Act 1986* that provides a person with assistance to obtain or retain unsupported paid employment.

Note: A vocational rehabilitation program may include vocational training within the meaning of section 19.

**vocational training** means vocational training within the meaning of section 19 (other than vocational training provided as part of a rehabilitation program or follow-up program under Part III of the *Disability Services Act 1986*).

**voluntary work** means work approved by the Secretary undertaken in a voluntary capacity for charitable, welfare or community organisations.



## **Part 2.21A—Language, literacy and numeracy supplement**

### **Division 1—Preliminary**

#### **1047 Definition**

In this Part:

*designated social security payment* means:

- (a) disability support pension; or
- (b) mature age allowance payable under Part 2.12B; or
- (c) newstart allowance; or
- (d) parenting payment; or
- (e) partner allowance; or
- (f) widow allowance; or
- (g) youth allowance.

## **Division 2—Qualification for language, literacy and numeracy supplement**

### **1048 General statement of qualification**

A person is qualified to receive a language, literacy and numeracy supplement in respect of a fortnight if:

- (a) the person is receiving a designated social security payment in respect of that fortnight; and
- (b) the Secretary is satisfied that, on a day during that fortnight, the person was attending a course included in the language, literacy and numeracy program administered by the Department of State responsible for education and training.

### **Division 3—Circumstances where language, literacy and numeracy supplement not payable**

#### **1049 Language, literacy and numeracy supplement not payable in certain circumstances**

- (1) Language, literacy and numeracy supplement is not payable to a person in respect of a fortnight if pensioner education supplement under Part 2.24A or under ABSTUDY is payable to the person in respect of a day in the fortnight.
- (2) Language, literacy and numeracy supplement is not payable to a person in respect of a fortnight if an approved program of work supplement or a CDEP Scheme Participant Supplement is payable to the person in respect of that fortnight.
- (3) Language, literacy and numeracy supplement is not payable to a person in respect of a fortnight in relation to attendance at a second or subsequent language, literacy or numeracy course in that fortnight.
- (4) For the avoidance of doubt, language, literacy and numeracy supplement is payable in respect of a person's attendance at a language, literacy or numeracy course whether that attendance is voluntary or is required under the provisions of, or of an agreement made under, any other provision of this Act.

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**Part 2.21A** Language, literacy and numeracy supplement

**Division 4** Rate increase relating to language, literacy and numeracy supplement

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## **Division 4—Rate increase relating to language, literacy and numeracy supplement**

### **1050 Rate increase attributable to language, literacy and numeracy supplement**

If a person:

- (a) is qualified to receive language, literacy and numeracy supplement in respect of a fortnight; and
- (b) nothing in section 1049 precludes the payability of that supplement to that person in respect of that fortnight;

the rate of the person's designated social security payment in respect of that fortnight, worked out under Chapter 3 and taking account of any rate reduction provided for in this Act, is increased by \$20.80, being the fortnightly rate of the supplement.

## **Part 2.22—Advance payments of social security entitlements**

### **Division 1—Qualification for advance payment**

#### **1061A Qualification for advance payment**

##### *Qualifications*

- (1) Subject to this section, a person is qualified for an advance payment of a social security entitlement only if:
  - (a) the social security entitlement is payable to the person; and
  - (b) the person has been receiving an income support payment for a continuous period of 3 months immediately before the day on which the person's application for the advance payment is made; and
  - (d) the Secretary is satisfied that the person will not suffer financial hardship from reductions in instalments of the social security entitlement as a result of receiving the advance payment.

Note 1: Other provisions of this Act deal with advances of social security payments that are not social security entitlements. For example, Division 3 of Part 2.21 deals with mobility allowance advance and Part 2.23 deals with advance pharmaceutical allowance.

Note 2: For *income support payment* and *social security entitlement* see subsection 23(1).

Note 3: For the determination of the continuous period in respect of which a person received an income support payment see section 38B.

- (2) The Secretary may, by legislative instrument, determine that paragraph (1)(b) does not apply to a person who has applied for an advance of youth allowance or austudy payment and the determination has effect accordingly.

##### *Disqualification*

- (4) A person is not qualified for an advance payment if:
  - (a) the maximum amount of advance payment to which the person would be entitled under Division 4 is less than \$250;  
or

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- (b) the person has received an advance payment, or an instalment of an advance payment, of a social security entitlement and has not fully repaid the advance payment; or
  - (c) the person has received the amount of an advance payment in a single lump sum, or has received the first instalment of such an amount, on or after 1 January 1997, and the period of 12 months from the day the lump sum or instalment was paid has not elapsed; or
  - (d) the person owes a debt to the Commonwealth (whether arising under this Act or not) that is recoverable under Part 5.2 by means of deductions from the person's social security payment.
- (5) Paragraph (4)(c) does not apply to a person:
- (a) who is receiving a pension PP (single); and
  - (b) who applies for an advance payment within the period of 28 days after ceasing to be a member of a couple.
- (6) Paragraph (4)(d) does not apply to a person if:
- (a) the debt the person owes to the Commonwealth arose as a result of the person's parenting payment rate changing from benefit PP (partnered) to pension PP (single); and
  - (b) the amount of the debt is smaller than the amount of advance payment to which the person would be entitled under Division 4.

## **Division 2—Applying for advance payment**

### **1061B Application**

A person who wants an advance payment of a social security entitlement under this Part must apply for the advance payment in accordance with this Division.

### **1061C Form of application**

- (1) The application must be in writing and must be in accordance with a form approved by the Secretary.
- (2) The application must specify the amount of advance payment sought.

### **1061D Lodgment of application**

- (1) The application must be lodged:
  - (a) at an office of the Department; or
  - (b) at a place approved for the purpose by the Secretary; or
  - (c) with a person approved for the purpose by the Secretary.
- (2) A place or person approved under subsection (1) must be a place or person in Australia.
- (3) The applicant must be in Australia when the application is lodged.

### **1061E Application may be withdrawn**

- (1) An applicant for an advance payment or a person acting on behalf of an applicant may withdraw an application that has not been determined.
- (2) An application that is withdrawn is taken not to have been made.
- (3) A withdrawal may be made orally or in writing.

### **Division 3—Determination of application and payment of advance payment**

#### **1061EA Secretary to determine application**

- (1) The Secretary must determine the application in accordance with this Act.
- (2) The Secretary must grant the application if the Secretary is satisfied that the person is qualified for the advance payment.

#### **1061EB Payment of advance payment**

- (1) Subject to subsection (3), if the application is granted, the advance payment of the social security entitlement is to be paid on the next day on which the person is paid an instalment of the social security entitlement.
- (2) Subject to subsection (3), the advance payment is to be paid as a single lump sum.
- (3) The Secretary may determine that:
  - (a) an advance payment is to be paid on the day specified in the determination; or
  - (b) an advance payment is to be paid in the two instalments specified in the determination on the days specified in the determination.



## **Division 4—Amount of advance payment**

### **1061ED Amount of advance payment—social security pensions**

#### *Application*

- (1) The amount of an advance payment of a social security pension is calculated according to this section.

#### *Amount of advance*

- (2) Subject to section 1061EH, the amount of the advance payment is the smallest of the following amounts:
  - (a) the amount of advance payment sought;
  - (b) the maximum amount of advance payment payable to the person as worked out under subsection (3);
  - (c) \$500.

#### *Formula for maximum amount of advance under paragraph (2)(b)*

- (3) For the purposes of paragraph (2)(b), the maximum amount of advance payment payable to the person is the amount worked out using the following formula:

$$6\% \times \text{annual payment rate}$$

where:

#### *annual payment rate* is:

- (a) if the person was receiving a social security pension on the last payday before the application for the advance payment was made—the rate at which the pension was payable under the relevant Pension Rate Calculator or Pension PP (Single) Rate Calculator (as the case requires) to the person on that payday, excluding any amount payable by way of remote area allowance; or
- (b) if the person was receiving a benefit PP (partnered) on the last payday before the application for the advance payment was made—the rate at which pension PP (single) is payable to the person under the Pension PP (Single) Rate Calculator on the person's first pension PP (single) payday after the

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application for the advance payment was made, excluding any amount payable by way of remote area allowance.

*Rounding*

- (4) Amounts worked out under subsection (3) must be rounded to the nearest cent (rounding 0.5 cents upwards).

*Example:*

*Facts:* Geoff has, at all times during the past 5 months, been receiving age pension. His annual payment rate is \$4,680. He applies for an advance payment of \$290.

*Application:* The maximum amount of advance payment payable to Geoff is worked out under subsection (3) as follows:  $6\% \times \$4680 = \$280.80$ . This is the smallest of the 3 amounts referred to in subsection (2). Geoff can therefore be paid an advance payment of \$280.80.

**1061EE Amount of advance payment—certain other social security payments**

*Application*

- (1) The amount of an advance payment of widow allowance, benefit PP (partnered), youth allowance, austudy payment, mature age allowance under Part 2.12B or newstart allowance is worked out according to this section.

*Amount of advance*

- (2) Subject to section 1061EH, the amount of the advance payment is the smallest of the following amounts:
- (a) the amount of advance payment sought;
  - (b) the maximum amount of advance payment payable to the person as worked out under subsection (3) or (4), as the case requires;
  - (c) \$500.

*Formula for maximum amount of advance: widow allowance and mature age allowance*

- (3) For the purpose of paragraph (2)(b), the maximum amount of advance payment of widow allowance or mature age allowance

under Part 2.12B payable to the person is the amount worked out under the following formula:

$$6\% \times \text{Fortnightly payment rate} \times 26$$

*Formula for maximum amount of advance: benefit PP (partnered), youth allowance, austudy payment or newstart allowance*

- (4) For the purpose of paragraph (2)(b), the maximum amount of advance payment of benefit PP (partnered), youth allowance, austudy payment or newstart allowance payable to the person is the amount worked out under the following formula:

$$7\% \times \text{Fortnightly payment rate} \times 26$$

*Rounding*

- (5) Amounts worked out under subsection (3) or (4) must be rounded to the nearest cent (rounding 0.5 cents upwards).

*Meaning of fortnightly payment rate*

- (6) For the purposes of the formulae in subsections (3) and (4):

*fortnightly payment rate* means:

- (a) in relation to benefit PP (partnered)—the fortnightly rate of that benefit payable under the Benefit PP (Partnered) Rate Calculator to the person on the last payday before the application for the advance payment was made, excluding any amount payable by way of remote area allowance; or
- (b) in relation to widow allowance, mature age allowance under Part 2.12B or newstart allowance—the fortnightly rate of that benefit payable under Benefit Rate Calculator B to the person on the last payday before the application for the advance payment was made, excluding any amount payable by way of remote area allowance; or
- (c) in relation to youth allowance—the fortnightly rate of that benefit payable under the Youth Allowance Rate Calculator to the person on the last payday before the application for the advance payment was made, excluding any amount payable by way of remote area allowance; or
- (d) in relation to austudy payment—the fortnightly rate of that benefit payable under the Austudy Payment Rate Calculator

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to the person on the last payday before the application for the advance payment was made, excluding any amount payable by way of remote area allowance.

Example:

**Facts:** Veronique has, at all times in the past 4 months, been receiving widow allowance. Her fortnightly payment rate is \$200. She applies for an advance payment of \$300.

**Result:** The maximum amount of advance payment payable to Veronique is worked out under subsection (3) as follows:

$$6\% \times \$200 \times 26 = \$312.00$$

The smallest of the 3 amounts referred to in subsection (2) is \$300. Veronique can therefore be paid an advance payment of \$300.

### **1061EH Minimum amount of advance payment**

- (1) An advance payment is not payable if it would be less than \$250.
- (2) Subsection (1) does not prevent payment of an advance payment in instalments of less than \$250.

*Example:*

**Facts:** Sarah has, at all times during the past 14 weeks, been receiving pension PP (single). Her annual payment rate is \$7,800. She applies for an advance payment of \$470.

**Application:** The maximum amount of advance payment payable to Sarah is worked out under subsection 1061ED(3) as follows:  $6\% \times \$7,800 = \$468$ . The Secretary directs that the advance payment be paid in 2 equal instalments. Sarah therefore receives 2 instalments of \$234 each.

## **Division 5—Payment of advance payment**

### **1061EI Advance payment to be paid to person or nominee**

- (1) Subject to subsection (3), an advance payment of a person's social security entitlement is to be paid to that person.
- (2) The Secretary may direct that the whole or part of the advance payment of a person's social security entitlement is to be paid to someone else on behalf of the person.
- (3) If the Secretary makes a direction under subsection (2), the advance payment is to be paid in accordance with the direction.

### **1061EJ Payment into bank account etc.**

- (1) An amount that is to be paid to a person under section 1061EI may only be paid in accordance with this section.
- (2) Subject to this section, the amount is to be paid, at the time or times worked out under section 1061EB, to the credit of a bank account nominated and maintained by the person.
- (3) The account may be an account that is maintained by the person either alone or jointly or in common with another person.
- (4) Where the person has not nominated an account for the purposes of subsection (2), then, subject to subsections (5) and (7), the amount is not to be paid.
- (5) Where:
  - (a) an amount has not been paid because of subsection (4); and
  - (b) the person nominates an account for the purposes of subsection (2);the amount is to be paid under subsection (2).
- (6) The Secretary may direct that the whole or a part of the amount be paid to the person in a different way from that provided for by subsection (2).
- (7) If the Secretary gives a direction under subsection (6), the amount is to be paid in accordance with the direction.

## **Division 6—Protection of advance payment**

### **1061EK Advance payment to be absolutely inalienable**

#### *Inalienability*

- (1) Subject to subsections (2) and (3) and section 238 and Part 3B of the Administration Act, an advance payment under this Part is absolutely inalienable, whether by way of, or in consequence of, sale, assignment, charge, execution, bankruptcy or otherwise.

**Note:** The effect of a garnishee order on an advance payment of a social security entitlement is dealt with in the Part of this Chapter that deals with that social security entitlement. For example, the effect of a garnishee order on an advance payment of age pension is dealt with in Part 2.2 (which deals with age pension).

#### *Payments to Commissioner of Taxation at recipient's request*

- (2) The Secretary may make deductions from an advance payment payable to a person under this Part if the recipient asks the Secretary:
  - (a) to make the deductions; and
  - (b) to pay the amounts to be deducted to the Commissioner of Taxation.

#### *Deductions from advance payment with recipient's consent*

- (3) The Secretary may make deductions from an advance payment payable to a person under this Part if the recipient consents under section 1234A to the Secretary making the deductions.

**Note:** Section 1234A enables the Secretary to recover a debt from a person other than the debtor if the person is receiving a social security payment.

## **Division 7—Repayment of advance payment**

### **1061EL Repayment of advance payment**

- (1) If a person receives an advance payment or an instalment of an advance payment under this Part, the person must repay the advance payment or instalment to the Commonwealth by one or more of the following methods:
  - (a) deductions from the person's social security entitlement under Chapter 3 (General provisions relating to payability and rates);
  - (b) a method provided for by Chapter 5 (Overpayments and debt recovery);
  - (c) a method (other than a method described in paragraph (a) or (b)) that is acceptable to both the person and the Secretary.
- (2) Subsection (1) does not affect:
  - (a) the operation of subsection 1224E(1) (Debts arising from advance payments of social security entitlements); or
  - (b) the Secretary's powers and duties under Part 5.4 (Non-recovery of debts) if the amount of the advance payment or instalment that has not been repaid becomes a debt due to the Commonwealth.

## Part 2.22A—Special employment advances

### Division 1—Qualification for special employment advance

#### 1061EM Qualification for special employment advance

- (1) Subject to section 1061EO, a person is qualified for a special employment advance at a particular time (the *relevant time*) only if:
  - (a) the person is qualified for a special employment advance qualifying entitlement at the relevant time; and
  - (b) the person has been receiving an income support payment for a continuous period of 3 months immediately before the day on which the person's claim for the special employment advance is made; and
  - (c) either of the following applies:
    - (i) the person or, if the person is a member of a couple, the person's partner has earned from casual work in Australia, but has not received, income (the *unreceived income*);
    - (ii) the Secretary is satisfied that the person has received a definite offer of employment in Australia (the *offered employment*) for a period of not less than 6 weeks and needs financial assistance from the Commonwealth to enable him or her to take up the employment; and
  - (d) subsection (2) or (3), as the case requires, applies for the purpose of determining whether the person is qualified for a special employment advance at the relevant time; and
  - (e) where subparagraph (c)(i) applies—the person is in severe financial hardship; and
  - (f) the Secretary is satisfied that the person will not suffer financial hardship as a result of the recovery by the Commonwealth of the special employment advance.
- (2) This subsection applies for the purpose of determining whether a person is qualified for a special employment advance at the relevant time only where:



- (a) the person's claim for the advance was based on the effect of the unreceived income on the person's special employment advance qualifying entitlement; and
  - (b) the person is not a CDEP Scheme participant; and
  - (c) either of the following subparagraphs applies:
    - (i) if the person were qualified for the special employment qualifying entitlement on the next payday for the entitlement at a rate equal to the maximum basic rate of the entitlement, the rate of the entitlement on that payday would be reduced by at least 50% as a result of the person or the person's partner having earned the unreceived income;
    - (ii) subparagraph (i) does not apply in respect of the person but, if the person were qualified for the special employment qualifying entitlement on 2 or more paydays for the entitlement at a rate equal to the maximum basic rate of the entitlement, the average of the rates of the entitlement on those paydays would be reduced by at least 50% as a result of the person or the person's partner having earned the unreceived income.
- (3) This subsection applies for the purpose of determining whether a person is qualified for a special employment advance at the relevant time only where the person's claim for the advance was based on the person's need for financial assistance from the Commonwealth to enable him or her to take up the offered employment and:
- (a) if the person were qualified for the special employment qualifying entitlement on each of the paydays for the entitlement that occur in the period of 6 weeks referred to in subparagraph (1)(c)(ii) at a rate equal to the maximum basic rate of the entitlement, the average of the rates of the entitlement on those paydays:
    - (i) would be reduced by at least 50% as a result of the person having taken up the offered employment; or
    - (ii) would be so reduced if Module J of the Youth Allowance Rate Calculator in section 1067G or Module E of the Austudy Payment Rate Calculator were disregarded; or

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- (b) the person would cease to be qualified for the special employment advance qualification upon his or her taking up the offered employment.

**1061EN Meaning of *in severe financial hardship***

- (1) For the purposes of paragraph 1061EM(1)(e) as it applies to a person who makes a claim for special employment advance, the person is *in severe financial hardship* if:
  - (a) where the person is not a member of a couple—the value of the person’s liquid assets (within the meaning of subsection 14A(1)) is less than the fortnightly amount of the maximum payment rate of the special employment advance qualifying entitlement that is payable to the person; or
  - (b) where the person is a member of a couple—the value of the person’s liquid assets (within the meaning of subsection 14A(2)) is less than twice the fortnightly amount of the maximum payment rate of the special employment advance qualifying entitlement that is payable to the person.
- (2) If the person referred to in subsection (1) is a CDEP Scheme participant, then, in determining for the purposes of that subsection the fortnightly amount of the maximum payment rate of the special employment advance qualifying entitlement payable to the person, the person’s maximum basic rate is taken to be the rate that would be that maximum basic rate if sections 408CG, 500W, 552C, 614A, 660YCH and 771HK had not been enacted.

**1061EO Person not qualified in certain circumstances**

A person is not qualified for a special employment advance if:

- (b) the lump sum amount, or the total of the amounts of the instalments, as the case may be, of the special employment advance to which the person would be entitled under Division 4 is less than \$50; or
- (c) the person owes a debt to the Commonwealth (whether arising under this Act or not) and the debt is recoverable under Part 5.2 by means of deductions from the person’s social security payment; or
- (d) where subparagraph 1061EM(1)(c)(ii) applies in respect of the person—the person is participating in a program for the placing of people in employment and the program has been

declared by the Secretary, by legislative instrument, to be a program to which this paragraph applies.

## **Division 4—Amount of special employment advance**

### **1061EW Where claim based on effect of unreceived income on special employment advance qualifying entitlement**

- (1) This section applies where the claim was based on the effect of the unreceived income on the claimant's special employment advance qualifying entitlement.
- (2) The total amount of the special employment advance payable to the claimant is to be the smallest of the following amounts:
  - (a) the amount sought in the claim for the advance;
  - (b) the amount by which the instalment, or the sum of the amounts by which the instalments, of the claimant's special employment advance qualifying entitlement is or will be reduced because of the unreceived income;
  - (c) \$500;
  - (d) if an amount of special employment advance previously paid to the claimant has not been repaid to, or recovered by, the Commonwealth—the difference between that amount and \$500.

### **1061EX Where claim based on claimant's need for financial assistance to take up offered employment**

- (1) This section applies where the claim was based on the claimant's need for financial assistance to take up offered employment.
- (2) Subject to the following provisions of this section, the total amount of the special employment advance payable to the claimant is to be the smallest of the following amounts:
  - (a) the amount sought in the claim for the advance;
  - (b) the amount of financial assistance needed by the claimant from the Commonwealth to take up the offered employment;
  - (c) \$500.
- (3) If:
  - (a) an amount of special employment advance previously paid to the claimant has not been repaid to, or recovered by, the Commonwealth; and

- (b) the sum of:
    - (i) the amount referred to in paragraph (a); and
    - (ii) the amount of financial assistance needed by the claimant from the Commonwealth to take up the offered employment;is not more than \$500;
- the total amount of the special employment advance payable to the claimant is the amount referred to in subparagraph (b)(ii).
- (4) If:
    - (a) an amount of special employment advance previously paid to the claimant has not been repaid to, or recovered by, the Commonwealth; and
    - (b) the sum of:
      - (i) the amount referred to in paragraph (a); and
      - (ii) the amount of financial assistance needed by the claimant from the Commonwealth to take up the offered employment;is more than \$500;the following paragraphs have effect:
    - (c) where the amount referred to in paragraph (a) is less than \$500 and the claimant satisfies the Secretary that the claimant would have sufficient financial resources to enable him or her to take up the offered employment if the total amount of the special employment advance payable were an amount equal to the difference between \$500 and the amount referred to in paragraph (a)—the total amount of the special employment advance payable to the claimant is an amount equal to that difference;
    - (d) where paragraph (c) does not apply—no amount of special employment advance is payable to the claimant.
  - (5) If:
    - (a) the claimant is not a member of a couple; and
    - (b) the value of the claimant's liquid assets (within the meaning of subsection 14A(1)) exceeds the fortnightly amount of the maximum payment rate of the special employment advance qualifying entitlement that is payable to the claimant;

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the total amount of the special employment advance that, apart from this subsection, would be payable to the claimant under subsections (2) to (4) is reduced by the amount of the excess.

(6) If:

- (a) the claimant is a member of a couple; and
- (b) the value of the claimant's liquid assets (within the meaning of subsection 14A(2)) exceeds twice the fortnightly amount of the maximum payment rate of the special employment advance qualifying entitlement that is payable to the claimant;

the total amount of the special employment advance that, apart from this subsection, would be payable to the claimant under subsections (2) to (4) is reduced by the amount of the excess.

- (7) In determining for the purposes of subsection (5) or (6) the fortnightly amount of the maximum payment rate of the special employment advance qualifying entitlement that is payable to a claimant who is a CDEP Scheme participant, the claimant's maximum basic rate is taken to be the rate that would be that maximum basic rate if sections 408CG, 500W, 552C, 614A, 660YCH and 771HK had not been enacted.

## **Division 7—Repayment of special employment advance**

### **1061EZC Repayment of special employment advance**

- (1) If a person receives a special employment advance or an instalment of a special employment advance under this Part, the person must repay the special employment advance or instalment to the Commonwealth by one or more of the following methods:
  - (a) deductions from the person's special employment advance qualifying entitlement under Chapter 3 (General provisions relating to payability and rates);
  - (b) a method provided for by Chapter 5 (Overpayments and debt recovery);
  - (c) a method (other than a method described in paragraph (a) or (b)) that is acceptable to both the person and the Secretary.
- (2) Subsection (1) does not affect the Secretary's powers and duties under Part 5.4 (Non-recovery of debts) if the amount of the special employment advance or instalment that has not been repaid becomes a debt due to the Commonwealth.

## **Part 2.23—Advance pharmaceutical allowance**

### **Division 1—Qualification for and payability of advance pharmaceutical allowance**

#### **1061F Qualification for advance pharmaceutical allowance**

- (1) A person is qualified for an advance pharmaceutical allowance if:
  - (a) the person is receiving a social security pension; and
  - (b) the Secretary is satisfied that the person's ordinary income is not more than \$20.50 per fortnight.
- (2) For the purposes of this section, a person's *ordinary income* does not include:
  - (a) a payment:
    - (i) that the person is entitled to under the law of a foreign country; and
    - (ii) that results in the person's social security pension rate being reduced by an amount equal to the amount of the payment; or
  - (b) a periodic compensation payment to which Part 3.14 applies.
- (3) For the purposes of this section, if a person is a member of a couple the amount of the person's *ordinary income* is worked out by adding the couple's ordinary incomes (on a fortnightly basis) and dividing by 2.

#### **1061G Advance pharmaceutical allowance not payable in some circumstances**

- (1) Even though a person is qualified for an advance pharmaceutical allowance, the allowance is not payable to the person if the person is not an Australian resident.
- (2) Even though a person is qualified for an advance pharmaceutical allowance, the allowance is not payable to the person if:
  - (a) the person is a member of a couple; and
  - (b) the person's partner:



- (i) is receiving an advance pharmaceutical allowance under the Veterans' Entitlements Act; and
- (ii) is not receiving a service pension.

Note: for *Veterans' Entitlements Act* and *service pension* see subsection 23(1).

## **Division 3—Amount of advance pharmaceutical allowance**

### **1061JC Amount of advance pharmaceutical allowance**

Subject to section 1061JD, the amount of a person's advance pharmaceutical allowance is:

$$\frac{\text{pharmaceutical allowance rate} \times 7}{26}$$

where:

*pharmaceutical allowance rate* is the yearly amount of pharmaceutical allowance that would be added to the person's maximum basic rate if a pharmaceutical allowance advance were not being paid to the person.

Note: Pharmaceutical rates are to be found at:

- (a) point 1064-C8 of Pension Rate Calculator A;
- (b) point 1065-C8 of Pension Rate Calculator B;
- (c) point 1066-C7 of Pension Rate Calculator C;
- (d) point 1066A-D8 of Pension Rate Calculator D;
- (e) point 1066B-D8 of Pension Rate Calculator E;
- (f) point 1068A-C7 of Pension PP (Single) Rate Calculator.

### **1061JD Annual limit**

- (1) The amount paid to a person in a calendar year by way of:
- (a) pharmaceutical allowance; and
  - (b) advance pharmaceutical allowance;

is not to exceed the total amount of pharmaceutical allowance that would have been paid to the person during that year if the person had not received any advance pharmaceutical allowance.

Note: for the amount *paid* to a person by way of pharmaceutical allowance see subsections 19A(2) to (6).

- (2) In this section:

*advance pharmaceutical allowance* includes advance pharmaceutical allowance under the Veterans' Entitlements Act.

*pharmaceutical allowance* includes pharmaceutical allowance under the Veterans' Entitlements Act or the Military Rehabilitation and Compensation Act.

## Part 2.23A—Crisis payment

### Division 1—Qualification for crisis payment

#### 1061JG Qualification—release from gaol or psychiatric confinement

- (1) A person is qualified for a crisis payment if, after the commencement of this section:
  - (a) the person spends at least 14 days in gaol, or in psychiatric confinement that starts because he or she has been charged with an offence, and is released so that he or she is neither in gaol nor in psychiatric confinement; and
  - (b) the person claims the crisis payment either while the person was in gaol or psychiatric confinement, or within 7 days after being released; and
  - (c) on the day on which the claim for the crisis payment is made (including the day on which it is taken to have been made under Schedule 2 to the Administration Act):
    - (i) the person is qualified for a social security pension or social security benefit; and
    - (ii) the person is in severe financial hardship (see section 19D).

Note: A person does not cease to be in gaol merely because he or she is transferred between a prison and a psychiatric institution where he or she is lawfully detained while still under sentence. See subsection 23(5).

- (2) Disregard subsection 23(9) in determining whether a person meets the condition in paragraph (1)(a) of this section.

Note: Subsection 23(9) provides that the confinement of a person in a psychiatric institution when the person is undertaking a course of rehabilitation is not to be taken to be psychiatric confinement.

#### 1061JH Qualification—extreme circumstances forcing departure from home

- (1) A person is qualified for a crisis payment if, after the commencement of this section:
  - (a) the person has left, or cannot return to, his or her home because of an extreme circumstance; and

- (b) the extreme circumstance makes it unreasonable to expect the person to remain in, or return to, the home; and
- (c) the person has established, or intends to establish, a new home; and
- (d) at the time the extreme circumstance occurred, the person was in Australia; and
- (e) the person makes a claim for a crisis payment within 7 days after the extreme circumstance occurred; and
- (f) on the day on which the claim is made:
  - (i) the person is in severe financial hardship (see section 19D); and
  - (ii) the person has made a claim (whether on the same day or on an earlier day) for a social security pension or benefit and the person is qualified for the pension or benefit; and
- (g) during the 12 months immediately preceding the day on which the claim is made, no more than 3 crisis payments have been payable to the person based on:
  - (i) the qualifications set out in this section; or
  - (ii) the qualifications set out in section 1061JHA (remaining in home after removal of family member due to domestic or family violence).

Note: Examples of extreme circumstances that would qualify a person for crisis payment are the person's house being burnt down, or the person being subjected to domestic or family violence.

- (2) A person is not qualified for a crisis payment in respect of an extreme circumstance if the Secretary is satisfied that the extreme circumstance is brought about with a view to obtaining a crisis payment.

**1061JHA Qualification—remaining in home after removal of family member due to domestic or family violence**

- (1) A person is qualified for a crisis payment if:
    - (a) the person has been subjected to domestic or family violence, in Australia, by a family member of the person; and
    - (b) at the time of the domestic or family violence the person was living with that family member; and
    - (c) the family member leaves, or is removed from, the person's home because of the domestic or family violence; and
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- (d) the person remains living in the person's home after the family member leaves or is removed; and
- (e) the person's home is in Australia; and
- (f) the person makes a claim for a crisis payment within 7 days after the day on which the family member left or was removed; and
- (g) on the day on which the claim is made:
  - (i) the person is in severe financial hardship (see section 19D); and
  - (ii) the person has made a claim (whether on the same day or on an earlier day) for a social security pension or benefit and the person is qualified for the pension or benefit; and
- (h) during the 12 months immediately preceding the day on which the claim is made, no more than 3 crisis payments have been payable to the person based on:
  - (i) the qualifications set out in this section; or
  - (ii) the qualifications set out in section 1061JH (extreme circumstances forcing departure from home).

Note: For *family member* see subsection 23(14).

- (2) A person is not qualified for a crisis payment if the Secretary is satisfied that the family member left the person's home with a view to the person obtaining a crisis payment.

**1061JI Qualification—humanitarian entrant to Australia**

- (1) A person is qualified for a crisis payment if:
  - (a) the person arrives in Australia; and
  - (b) that arrival is the first time the person has arrived in Australia as the holder of a qualifying humanitarian visa (see subsection (2)); and
  - (c) the person makes a claim for a crisis payment within 7 days of that arrival; and
  - (d) on the day on which the claim is made:
    - (i) the person is in severe financial hardship (see section 19D); and
    - (ii) the person has made a claim (whether on the same day or on an earlier day) for a social security pension or

benefit and the person is qualified for the pension or benefit.

- (2) The Minister may, by legislative instrument, specify visas that are qualifying humanitarian visas for the purposes of paragraph (1)(b).

### **1061JJ Crisis payment not payable in addition to disaster relief payment**

- (1) A crisis payment is not payable to a person in respect of an extreme circumstance if the person is qualified for an AGDRP or other disaster relief payment (whether under this Act or otherwise) in respect of the same extreme circumstance.
- (2) However, this section does not affect a person's entitlement to a crisis payment in respect of an extreme circumstance if:
- (a) the person has claimed the crisis payment; and
  - (b) the person subsequently qualifies for an AGDRP or other disaster relief payment in respect of the same extreme circumstance.

### **1061JK Crisis payment not payable if assurance of support in force**

A person is not qualified for a crisis payment if the Secretary is satisfied that at the time the person would otherwise have been qualified for crisis payment:

- (a) an assurance of support was in force in respect of the person (the *assuree*); and
- (b) the person who gave the assurance of support was willing and able to provide an adequate level of support to the assuree; and
- (c) it was reasonable for the assuree to accept that support.

Note: For *assurance of support* see subsection 23(1).

### **1061JL Person not qualified for crisis payment if qualified for crisis payment under ABSTUDY scheme**

A person is not qualified for a crisis payment under section 1061JG, 1061JH, 1061JHA or 1061JI in respect of a circumstance if the Secretary is satisfied that:

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- (a) the person is qualified under the ABSTUDY scheme for a crisis payment in respect of that same circumstance; and
- (b) the crisis payment is payable under that scheme in respect of that circumstance.



## Division 4—Amount of crisis payment

### 1061JU Amount of payment

- (1) Subject to subsection (2), the amount of a crisis payment payable to a person is half the fortnightly amount at the maximum basic rate of the social security pension or social security benefit that is payable to the person.
- (2) If a person is a CDEP Scheme participant, the amount of a crisis payment payable to the person is half the fortnightly amount at the maximum basic rate of the social security pension or social security benefit that the person is taken to be receiving under section 1188H.

Note: For *CDEP Scheme participant* see section 1188B.

- (3) If, under section 1188H, the person is taken to be receiving more than one social security pension or social security benefit, the person is taken, for the purposes of subsection (2), to be receiving the pension or benefit with the higher maximum basic rate.
- (4) In this section:

*maximum basic rate*, in relation to each of the following social security payments, means (unless otherwise stated below) the rate worked out at Module B of the relevant Rate Calculator:

- (a) for the following pensions if the recipient is not blind:
  - (i) age pension;
  - (ii) disability support pension (recipient has turned 21);
  - (iii) carer pension;
  - (iv) wife pension;the Rate Calculator at the end of section 1064; or
- (b) for age pension and disability support pension (recipient has turned 21) if the recipient is blind—the Rate Calculator at the end of section 1065; or
- (c) for widow B pension—the Rate Calculator at the end of section 1066; or
- (d) for disability support pension if the recipient is under 21 and not blind—the Rate Calculator at the end of section 1066A; or

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- (e) for disability support pension if the recipient is under 21 and is blind—the Rate Calculator at the end of section 1066B; or
- (f) for the following allowances:
  - (i) newstart allowance;
  - (ii) widow allowance;
  - (iii) sickness allowance;
  - (iv) partner allowance;
  - (v) mature age allowance granted under Part 2.12B;the Rate Calculator at the end of section 1068; or
- (g) for mature age allowance granted under Part 2.12A—the Rate Calculator at the end of section 1064; or
- (h) for a pension PP (single)—the Rate Calculator at the end of section 1068A; or
- (i) for benefit PP (partnered)—Module C of the Rate Calculator at the end of section 1068B; or
- (j) for mature age partner allowance—the Rate Calculator at the end of section 1064; or
- (k) for special benefit—section 746; or
- (l) for youth allowance—the Rate Calculator at the end of section 1067G; or
- (m) for austudy payment—Step 3 of the Method statement in Module A of the Rate Calculator at the end of section 1067L.

## **Part 2.24—Australian Government Disaster Recovery Payment**

### **Division 1—Qualification for Australian Government Disaster Recovery Payment**

#### **1061K Qualification for Australian Government Disaster Recovery Payment**

- (1) A person is qualified for an Australian Government Disaster Recovery Payment if:
  - (a) the person is at least 16 years old, or is receiving a social security payment; and
  - (b) the person:
    - (i) is an Australian resident; or
    - (ii) is the holder of a visa that is in a class of visas determined by the Minister for the purposes of subparagraph 729(2)(f)(v); or
    - (iii) is receiving a social security payment; or
    - (iv) is an Australian citizen who is not an Australian resident and who is covered by a determination under subsection (2); and
  - (c) the person is adversely affected by a major disaster.

Note 1: For *Australian resident* see section 7.

Note 2: For *adversely affected* see section 1061L.

Note 3: For *major disaster* see section 36.

- (2) The Minister may determine in writing that a specified class of Australian citizens who are not Australian residents can qualify for an AGDRP.

Note: For *Australian resident* see section 7.

- (3) A determination made under subsection (2) is a legislative instrument, but section 42 of the *Legislative Instruments Act 2003* does not apply to the determination.
- (4) A person cannot be qualified for more than one AGDRP in relation to the same major disaster.

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**1061L** Meaning of *adversely affected*

- (1) For the purposes of this Act, a person is *adversely affected* by a major disaster if the person is affected by the disaster in a way determined by the Minister in relation to the disaster.
- (2) The Minister may determine in writing, in relation to a major disaster, the circumstances in which persons are to be taken to be adversely affected by the disaster.
- (3) A determination made under this section is a legislative instrument, but section 42 of the *Legislative Instruments Act 2003* does not apply to the determination.

## **Division 2—Amount of Australian Government Disaster Recovery Payment**

### **1061M Amount of payment for disasters in Australia**

- (1) The amount of an AGDRP payable to a person in relation to a major disaster that occurs in Australia is the sum of:
- (a) the adult rate for the financial year in which the major disaster is declared under section 36; and
  - (b) if the person is the principal carer of one or more children—the amount worked out by multiplying the child rate for that financial year by the number of children for whom the person is the principal carer.

Note 1: For *major disaster* see section 36.

Note 2: For *principal carer* see subsections 5(15) to (24).

- (2) For the purposes of this Division, the *adult rate* for a financial year is:
- (a) the amount that the Minister determines under subsection 1061P(1) to be the adult rate for the financial year; or
  - (b) if the Minister has not determined an adult rate for the financial year—the amount that the Minister last determined to be the adult rate for a previous financial year; or
  - (c) if the Minister has never determined an adult rate for any financial year—\$1,000.
- (3) For the purposes of this Division, the *child rate* for a financial year is:
- (a) the amount that the Minister determines under subsection 1061P(2) to be the child rate for the financial year; or
  - (b) if the Minister has not determined a child rate for the financial year—the amount that the Minister last determined to be the child rate for a previous financial year; or
  - (c) if the Minister has never determined a child rate for any financial year—\$400.

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**1061N Amount of payment for disasters outside Australia**

The amount of an AGDRP payable to a person in relation to a major disaster that occurs outside Australia is the sum of:

- (a) the amount that the Minister determines under subsection 1061P(4) in relation to the disaster; and
- (b) if the person is the principal carer of one or more children—the amount worked out by multiplying the amount that the Minister determines under subsection 1061P(5) in relation to the disaster by the number of children for whom the person is the principal carer.

Note 1: For *major disaster* see section 36.

Note 2: For *principal carer* see subsections 5(15) to (24).

**1061P Determinations of rates**

- (1) The Minister may determine in writing for the purposes of subsection 1061M(2) the adult rate for a financial year.
- (2) The Minister may determine in writing for the purposes of subsection 1061M(3) the child rate for a financial year.
- (3) A determination under subsection (1) or (2) must be made in the financial year preceding the year to which the determination relates.
- (4) The Minister may determine in writing for the purposes of paragraph 1061N(a) an amount not exceeding the adult rate for the financial year in which the determination is made.
- (5) The Minister may determine in writing for the purposes of paragraph 1061N(b) an amount not exceeding the child rate for the financial year in which the determination is made.
- (6) A determination made under this section is a legislative instrument, but section 42 of the *Legislative Instruments Act 2003* does not apply to the determination.

## **Part 2.24A—Pensioner education supplement**

### **Division 1—Qualification for pensioner education supplement**

#### **Subdivision A—The basic rules**

##### **1061PA Qualification for pensioner education supplement**

A person is qualified for a pensioner education supplement if the person:

- (a) is undertaking qualifying study (see Subdivision B); and
- (b) is receiving a payment attracting pensioner education supplement (see Subdivision C); and
- (c) is of pensioner education supplement age (see Subdivision D); and
- (d) meets the residency requirements under Subdivision E.

Note: Division 2 sets out situations in which pensioner education supplement is not payable even if the person qualifies for it.

#### **Subdivision B—Undertaking qualifying study**

##### **1061PB Undertaking qualifying study**

###### *General*

- (1) For the purposes of this Part, a person is *undertaking qualifying study* if the Secretary is satisfied that:
  - (a) the person:
    - (i) is enrolled in a course of education at an educational institution; or
    - (ii) was enrolled in the course and satisfies the Secretary that he or she intends, and has (since no longer being enrolled) always intended, to re-enrol in the course when re-enrolments in the course are next accepted; or
    - (iii) was enrolled in the course and satisfies the Secretary that he or she intends, and has (since no longer being enrolled) always intended, to enrol in another course of

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- education (at the same or a different educational institution) when enrolments in the other course are next accepted; and
- (b) the course in which the person is enrolled, or intends to enrol, is an approved course of education or study (see section 1061PC); and
  - (c) the person is a full-time student or a concessional study-load student in respect of that course (see sections 1061PD and 1061PE); and
  - (d) the person satisfies the progress rules (see sections 1061PH and 1061PI).

*Persons not undertaking qualifying study*

- (2) A person is not undertaking qualifying study if the person:
  - (a) is employed on a full-time basis as an apprentice or trainee under an industrial instrument or the AFPCS, and has a training agreement (however described) with a training authority (by whatever name called) of a State or Territory; or
  - (b) has completed a course for:
    - (i) a degree of Master or Doctor at an educational institution; or
    - (ii) a qualification at a foreign institution that is, in the Secretary's opinion, of the same standing as a degree of Master or Doctor at an educational institution.

Note: For *educational institution* see subsection 23(1).

*Taken to be undertaking qualifying study from 1 January*

- (3) For the purpose of subsection (1), a person is taken to have been undertaking qualifying study from 1 January in a particular year if:
  - (a) the person is enrolled in a course of education that is a full year course starting before 1 April in that year; and
  - (b) the person starts his or her full year course before that day; and
  - (c) either:
    - (i) the person did not undertake full-time or part-time study for the whole, or a part, of the immediately preceding semester (excluding vacations); or



- (ii) the person did not undertake full-time or part-time study for more than one semester (excluding vacations) during the immediately preceding 12 months and the Secretary is satisfied that this was due to the person's illness or to other circumstances beyond the person's control.

*Taken to be undertaking qualifying study from 1 July*

- (4) For the purpose of subsection (1), a person is taken to have been undertaking qualifying study from 1 July in a particular year if:
  - (a) the person is enrolled in a course of education that is a full year course starting on or after 1 July in that year; and
  - (b) the person starts his or her full year course on or after that day; and
  - (c) either:
    - (i) the person did not undertake full-time or part-time study for the whole, or a part, of the immediately preceding semester (excluding vacations); or
    - (ii) the person did not undertake full-time or part-time study for more than one semester (excluding vacations) during the immediately preceding 12 months and the Secretary is satisfied that this was due to the person's illness or to other circumstances beyond the person's control.

*Taken to be undertaking qualifying study until 31 December*

- (5) For the purpose of subsection (1), a person is taken to be undertaking qualifying study until the end of 31 December in a particular year if:
  - (a) the person completes his or her course of education after 15 September but before 31 December in that year; and
  - (b) the person's course of education is a full year course or a late starting course.

*Industrial instruments*

- (6) In paragraph (2)(a):

*AFPCS* means the Australian Fair Pay and Conditions Standard within the meaning of the *Workplace Relations Act 1996*.

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***industrial instrument*** means an award or agreement (however described) that:

- (a) is made under or recognised by a law of the Commonwealth or of a State or Territory that:
  - (i) regulates the relationships between employers and employees; or
  - (ii) provides for the prevention or settlement of disputes between employers and employees; and
- (b) concerns the relationship between an employer and the employer's employees, or provides for the prevention or settlement of a dispute between an employer and the employer's employees.

**1061PC Approved course of education or study**

For the purposes of paragraph 1061PB(1)(b), a course is an approved course of education or study if it is a course determined, under section 5D of the *Student Assistance Act 1973*, to be a secondary course or a tertiary course for the purposes of that Act.

**1061PD Full-time students**

For the purposes of this Subdivision, a person is a ***full-time student*** in respect of a course if:

- (a) in the case of a person who is enrolled in the course for a particular study period (such as, for example, a semester)—the person is undertaking at least three quarters of the normal amount of full-time study in respect of the course for that period; or
- (b) in the case of a person who intends to enrol in the course for a particular study period—the person intends to undertake at least three quarters of the normal amount of full-time study in respect of the course for that period.

Note: For ***normal amount of full-time study*** see section 1061PF.

**1061PE Concessional study-load students**

- (1) For the purposes of this Subdivision, there are 2 classes of concessional study-load students, namely:
  - (a) 25% concessional study-load students; and
  - (b) 66% concessional study-load students.

- (2) For the purposes of this Subdivision, a person is a **25% concessional study-load student** in respect of a course if this subsection applies to the person and:
- (a) in the case of a person who is enrolled in the course for a particular study period (such as, for example, a semester)—the person is undertaking at least one quarter, but less than three quarters, of the normal amount of full-time study in respect of the course for that period; or
  - (b) in the case of a person who intends to enrol in the course for a particular study period—the person intends to undertake at least one quarter, but less than three quarters, of the normal amount of full-time study in respect of the course for that period.
- (3) For the purposes of this Subdivision, a person is a **66% concessional study-load student** in respect of a course if this subsection applies to the person and:
- (a) in the case of a person who is enrolled in the course for a particular study period (such as, for example, a semester)—the person is undertaking at least two thirds, but less than three quarters, of the normal amount of full-time study in respect of the course for that period; or
  - (b) in the case of a person who intends to enrol in the course for a particular study period—the person intends to undertake at least two thirds, but less than three quarters, of the normal amount of full-time study in respect of the course for that period.
- Note: For *normal amount of full-time study* see section 1061PF.
- (4) Subsection (2) applies to a person if:
- (a) an officer in the Commonwealth Rehabilitation Service or an appropriate medical practitioner who has a detailed knowledge of the person's physical condition has stated in writing that:
    - (i) the person has a substantial physical disability; and
    - (ii) the person cannot successfully undertake the normal amount of full-time study in respect of the course because of the disability; or
  - (b) a medical practitioner specialising in psychiatry has stated in writing that:
    - (i) the person has a substantial psychiatric disability; and

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- (ii) the person cannot successfully undertake the normal amount of full-time study in respect of the course because of the disability; or
- (c) a psychologist who is registered with the Australian Psychologist Society has stated in writing that the person:
  - (i) has an intellectual disability; and
  - (ii) cannot successfully undertake the normal amount of full-time study in respect of the course because of the disability; or
- (d) the person is receiving:
  - (i) a disability support pension, a carer payment, a pension PP (single), a youth allowance or a newstart allowance under this Act; or
  - (ii) an invalidity service pension or a carer service pension under the Veterans' Entitlements Act; or
- (e) the person has a dependent child aged less than 16 years and:
  - (i) is receiving a widow B pension under this Act; or
  - (ii) is a sole parent and is receiving a special benefit under this Act; or
  - (iii) is receiving a widow allowance under this Act; or
  - (iv) is receiving a pension under Part II of the Veterans' Entitlements Act; or
  - (v) is receiving pension under Part IV of the Veterans' Entitlements Act; or
  - (vi) has received, or is entitled to receive, compensation for permanent impairment under section 68, 71 or 75 of the Military Rehabilitation and Compensation Act; or
  - (vii) is receiving a Special Rate Disability Pension under Part 6 of Chapter 4 of the Military Rehabilitation and Compensation Act; or
  - (viii) is receiving, or has received, compensation mentioned in paragraph 234(1)(b) of the Military Rehabilitation and Compensation Act.
- (5) Subsection (3) applies to a person if:
  - (a) the person cannot undertake the course as a full-time student because of:
    - (i) the relevant educational institution's usual requirements for the course; or

- (ii) a specific direction in writing to the person from the academic registrar or an equivalent officer; or
- (b) the academic registrar (or an equivalent officer) of the relevant educational institution recommends in writing that the person undertake less than the normal amount of full-time study in respect of the course for specified academic or vocational reasons for a period not exceeding half an academic year.

### **1061PF Normal amount of full-time study**

- (1) For the purposes of this Subdivision, the *normal amount of full-time study* in respect of a course is:
  - (a) if:
    - (i) the course is a course of study within the meaning of the *Higher Education Support Act 2003*; and
    - (ii) there are Commonwealth supported students (within the meaning of that Act) enrolled in the course; the full-time student load for the course; or
  - (b) if the course is not such a course and the institution defines an amount of full-time study that a full-time student should typically undertake in respect of the course—the amount so defined; or
  - (c) otherwise—an amount of full-time study equivalent to the average amount of full-time study that a person would have to undertake for the duration of the course in order to complete the course in the minimum amount of time needed to complete it.
- (2) Without limiting subsection (1), the *normal amount of full-time study* in respect of a course is an average, taken over the duration of the period for which the person in question is enrolled in the course, of 20 contact hours per week.

### **1061PG First fortnight of classes**

A person is taken to be undertaking full-time study or a concessional study-load (as the case may be) in respect of a course during the period (the *relevant period*):

- (a) starting on the first day of classes in a study period; and

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- (b) ending on the Friday of the second week of classes in the study period;
- if the person is enrolled in the course and undertakes study in respect of the course on at least one day in the relevant period.

**1061PH Progress rules—secondary students**

*General rule*

- (1) Subject to subsection (2), a person enrolled in, or intending to enrol in, a secondary course satisfies the progress rules for the purposes of paragraph 1061PB(1)(d) if, in the Secretary's opinion, the person is making satisfactory progress towards completing the course.

*Students repeating year 12*

- (2) A person does not satisfy the progress rules if:
  - (a) the person is enrolled in a secondary course that is at year 12 level, or the overall level of which is at year 12 level (see subsections (3) and (4)); and
  - (b) the person has been a full-time student in respect of a course at that level (a *previous course*) in each of 2 previous years; and
  - (c) none of the following circumstances apply:
    - (i) the person failed a previous course because of an illness that had not been diagnosed when the person began that course;
    - (ii) the person failed a previous course because of other circumstances beyond the person's control that were not apparent when the person began that course;
    - (iii) the person failed a previous course because English is not the person's native language;
    - (iv) the person completed or discontinued a previous course within 6 months after the relevant academic year started;
    - (v) each of the previous courses was undertaken more than 10 years before the present study.

*Course at year 12 level*

- (3) A secondary course is at year 12 level if the institution in which the course is undertaken regards it as being at year 12 level.

*Overall level of course at year 12 level*

- (4) The overall level of a secondary course is at year 12 level if the institution in which the course is undertaken regards at least 50% of the course as being at year 12 level.

*Meaning of secondary course*

- (5) For the purposes of this section, a course is a secondary course if it is a course determined, under section 5D of the *Student Assistance Act 1973*, to be a secondary course for the purposes of that Act.

**1061PI Progress rules—tertiary students**

*Full-time students*

- (1) A person who is a full-time student in respect of a tertiary course satisfies the progress rules if:
- (a) in the case of a person who is enrolled in the course—on the day on which the person enrolled in the course; or
  - (b) in the case of a person who is not yet enrolled in the course but intends to enrol in the course—on the day on which enrolments in the course are next accepted;
- the time already spent by the student on the course, or on one or more other tertiary courses at the same level as that course, does not exceed the allowable study time for that course.

Note: For allowable study time for a course see subsection (3).

*Concessional study-load students*

- (2) A person who is a concessional study-load student in respect of a tertiary course satisfies the progress rules if:
- (a) in the case of a person who is enrolled in the course—on the day on which the person enrolled in the course; or
  - (b) in the case of a person who is not yet enrolled in the course but intends to enrol in the course—on the day on which enrolments in the course are next accepted;

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the time already spent by the person on the course, or on one or more other tertiary courses at the same level as that course, does not exceed the allowable study time for the course.

Note: For allowable study time for a course see subsections (3) and (4).

*Allowable study time—full-time students and 66% concessional study-load students*

- (3) The allowable study time for a course undertaken by a full-time student or a 66% concessional study-load student is:
- (a) if the minimum amount of time needed to complete the course as a full-time student is one year or less—that minimum amount of time; or
  - (b) if the minimum amount of time needed to complete the course as a full-time student is more than 1 year and:
    - (i) the student is enrolled, or intends to enrol, in a year-long subject; or
    - (ii) the student's further progress in the course depends on passing a whole year's work in the course; the minimum amount of time plus 1 year; or
  - (c) in any other case—the minimum amount of time needed to complete the course as a full-time student plus half an academic year.

*Allowable study time—25% concessional study-load students*

- (4) The allowable study time for a course undertaken by a 25% concessional study-load student is twice the minimum period in which it is possible to complete the course as a full-time student.

*Time spent by person studying part-time*

- (5) If a student has studied part-time for a course over a certain period, the time spent by the student on that course is taken to be the proportion of that period calculated by using the formula:

$$\frac{\text{Study undertaken}}{\text{Normal full-time study}}$$

where:



***normal full-time study*** means the normal amount of full-time study for the course.

***study undertaken*** means the amount of study undertaken part-time by the student for the course.

*Current full-time students who have previously undertaken courses as concessional study-load students*

- (6) If:
- (a) a person is undertaking a course as a full-time student; and
  - (b) the person has previously undertaken:
    - (i) part of the course; or
    - (ii) one or more than one other course at the same level as that course;as a concessional study-load student; and
  - (c) the time spent by the person undertaking the part of the course referred to in subparagraph (b)(i), or the course or courses referred to in subparagraph (b)(ii), (the ***previous study***) is not to be disregarded under subsection (7);
- the time spent by the person undertaking the previous study is taken to be equal to the minimum amount of time that a full-time student would have taken to complete the previous study.

*Matters to be disregarded in determining whether someone has exceeded the allowable study time*

- (7) In determining whether a person has exceeded the allowable study time (for a full-time student or a concessional study-load student), disregard the following:
- (a) if the person has completed a course (a ***pre-requisite course***), the completion of which is the normal requirement for admission to the course in which the person is enrolled, or intends to enrol—time spent undertaking the pre-requisite course;
  - (b) a failed year of study, or a failed part of a year of study, if the failure is because of:
    - (i) the person's illness; or
    - (ii) other circumstances beyond the person's control;
  - (c) time spent undertaking a course that has been permanently discontinued because of:

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- (i) the person's illness; or
- (ii) other circumstances beyond the person's control;
- (d) time spent undertaking a course that has been completed but which, because of the person's illness, the person cannot use in any of the trades or profession to which the course is appropriate;
- (e) time spent undertaking a TAFE course if the normal length of the course for a full-time student is one year or less;
- (f) time spent undertaking a course more than 10 years ago, unless the course has since been completed;
- (g) time spent undertaking a course after 1973 if the course was not:
  - (i) approved for the Tertiary Education Assistance Scheme; or
  - (ii) approved for the AUSTUDY scheme; or
  - (iii) an approved course for the purposes of paragraph 541B(1)(c), 569A(b) or 1061PB(1)(b) of this Act;
- (h) time spent undertaking a course at a foreign institution;
- (i) time spent undertaking a subject from which the student withdrew, if the educational institution in which the subject was undertaken did not record the withdrawal from the subject as a failure;
- (j) any time spent undertaking a course during which the person was ineligible to receive:
  - (i) AUSTUDY; or
  - (ii) a benefit under the Tertiary Education Assistance Scheme; or
  - (iii) youth allowance; or
  - (iv) austudy payment;because of the application of rules in respect of academic progress.

*Levels of tertiary courses*

- (8) There are 4 levels of tertiary courses—levels A, B, C and D.

*Level A courses*

- (9) The following are Level A courses:
- (a) a postgraduate bachelor degree course, with or without honours;
  - (b) a graduate or postgraduate diploma course;
  - (c) a course of practical legal training at a higher education institution;
  - (d) a course of advanced education regarded by an accrediting authority as being at PG1 level;
  - (e) a graduate certificate course.

*Level B courses*

- (10) The following are Level B courses:
- (a) a bachelor degree course (other than a postgraduate course), with or without honours;
  - (b) the bachelor level component of a masters degree course with concurrent bachelor and masters level study;
  - (c) a diploma course other than:
    - (i) a graduate or postgraduate diploma course; or
    - (ii) a course for which an entry requirement is successful completion of year 10 of secondary studies; or
    - (iii) a TAFE course;
  - (d) a Master's qualifying course;
  - (e) the Barristers or Solicitors Admission Board's course;
  - (f) a course of advanced education regarded by an accrediting authority as being at UG1 or UG2 level.

*Level C courses*

- (11) The following are Level C courses:
- (a) an associate degree course;
  - (b) an associate diploma course;
  - (c) a diploma course at a TAFE institution for which an entry requirement is successful completion of year 12 of secondary studies;
  - (d) a 2-year undergraduate diploma course.

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*Level D courses*

- (12) The following are Level D courses:
- (a) a TAFE course at a higher education institution;
  - (b) a TAFE course, unless the course is in Level A, B or C.

*Meaning of tertiary course*

- (13) For the purposes of this section, a course is a tertiary course if it is a course determined, under section 5D of the *Student Assistance Act 1973*, to be a tertiary course for the purposes of that Act.

**Subdivision C—Payments attracting pensioner education supplement**

**1061PJ Payments attracting pensioner education supplement**

*General*

- (1) A person is receiving a payment attracting pensioner education supplement if the person is receiving:
- (a) a payment under this Act set out in subsection (2); or
  - (b) a pension under the Veterans' Entitlements Act set out in subsection (3); or
  - (c) in the case of a person who has a dependent child—compensation under the Military Rehabilitation and Compensation Act set out in subsection (4).

*Payments under this Act*

- (2) The payments under this Act are the following:
- (a) a disability support pension;
  - (b) in the case of a person whose partner is receiving a disability support pension—a wife pension;
  - (c) a carer payment;
  - (d) a pension (PP) single;
  - (da) subject to subsection (2A), a youth allowance;
  - (db) subject to subsection (2B), a newstart allowance;
  - (dc) subject to subsection (2D), a benefit PP (partnered);
  - (e) a widow B pension;
  - (f) a widow allowance;

- (g) in the case of a person who is a sole parent—a special benefit;
  - (h) a rehabilitation allowance payable under clause 35 of Schedule 1A.
- (2A) Paragraph (2)(da) only applies if:
- (a) the person receiving the payment:
    - (i) has a partial capacity to work; and
    - (ii) on the day (being a day occurring on or after 1 July 2006) immediately before the person first qualified for a youth allowance, was a transitional DSP applicant and was receiving a disability support pension; and
    - (iii) ceased to be qualified for that disability support pension because he or she no longer had a continuing inability to work within the meaning of section 94; and
    - (iiia) ceased to be so qualified as a result of the first decision about the person's capacity to work made on or after 1 July 2006; and
    - (iv) on the day immediately before ceasing to be qualified for that disability support pension, was qualified for a pensioner education supplement in relation to a particular course of education or study; or
  - (b) the person receiving the payment:
    - (i) is the principal carer of at least one child and is not a member of a couple; and
    - (ii) on the day (being a day occurring on or after 1 July 2006) immediately before the person last qualified for a youth allowance, was qualified for parenting payment and was receiving a pension (PP) single; and
    - (iii) ceased to be qualified for that parenting payment because he or she no longer had a PP child for the reason that his or her youngest dependent child had turned 8; and
    - (iv) on the day immediately before ceasing to be qualified for that parenting payment, was qualified for a pensioner education supplement in relation to a particular course of education or study;
- and the person has:
- (c) at all times since that day, been qualified both for:
    - (i) a youth allowance; and
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- (ii) a pensioner education supplement in relation to that particular course of education or study; and
- (d) at no time since that day, either undertaken full-time study or been a new apprentice.

Note 1: For *partial capacity to work* see section 16B.

Note 2: For *transitional DSP applicant* see subsection 23(1).

Note 3: For *principal carer* see subsections 5(15) to (24). See also subsection (2C) of this section.

Note 4: For *undertaking full-time study* see section 541B.

Note 5: For *new apprentice* see subsection 23(1).

(2B) Paragraph (2)(db) only applies if:

- (a) the person receiving the payment:
  - (i) has a partial capacity to work; and
  - (ii) on the day (being a day occurring on or after 1 July 2006) immediately before the person first qualified for a newstart allowance, was a transitional DSP applicant and was receiving a disability support pension, or was receiving a youth allowance in respect of which subsection (2A) applied; and
  - (iii) if he or she was receiving a disability support pension—ceased to be qualified for it because he or she no longer had a continuing inability to work within the meaning of section 94; and
  - (iiia) if he or she was receiving a disability support pension—ceased to be so qualified as a result of the first decision about the person’s capacity to work made on or after 1 July 2006; and
  - (iv) on the day immediately before ceasing to be qualified for that disability support pension, was qualified for a pensioner education supplement in relation to a particular course of education or study; or
- (b) the person receiving the payment:
  - (i) is the principal carer of at least one child and is not a member of a couple; and
  - (ii) on the day (being a day occurring on or after 1 July 2006) immediately before the person last qualified for a newstart allowance, was qualified for parenting payment and was receiving a pension (PP) single, or

was receiving a youth allowance in respect of which subsection (2A) applied; and

- (iii) if he or she was receiving a pension (PP) single—ceased to be qualified for that parenting payment because he or she no longer had a PP child for the reason that his or her youngest dependent child had turned 8; and
- (iv) on the day immediately before ceasing to be qualified for that parenting payment, was qualified for a pensioner education supplement in relation to a particular course of education or study;

and the person has, at all times since that day, been qualified both for:

- (c) a newstart allowance; and
- (d) a pensioner education supplement in relation to that particular course of education or study.

Note 1: For *partial capacity to work* see section 16B.

Note 2: For *transitional DSP applicant* see subsection 23(1).

Note 3: For *principal carer* see subsections 5(15) to (24). See also subsection (2C) of this section.

- (2C) If a person is the principal carer of a child who dies, the person is taken, for the purposes of subparagraphs (2A)(b)(i) and (2B)(b)(i), to continue to be the principal carer of the child during the period of 14 weeks that starts on the day of the child's death.
- (2D) Paragraph (2)(dc) only applies if the person receiving the payment:
  - (a) has a partial capacity to work; and
  - (b) on the day (the *relevant day*) (being a day occurring on or after 1 July 2006) immediately before the person first qualified for parenting payment, was a transitional DSP applicant and was:
    - (i) receiving a disability support pension; or
    - (ii) receiving a youth allowance in respect of which subsection (2A) applied; or
    - (iii) receiving a newstart allowance in respect of which subsection (2B) applied; and
  - (c) if he or she was receiving a disability support pension—ceased to be qualified for it because he or she no longer had a continuing inability to work within the meaning of section 94; and

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- (d) if he or she was receiving a disability support pension—  
ceased to be so qualified as a result of the first decision about  
the person's capacity to work made on or after 1 July 2006;  
and
- (e) was, on the relevant day, qualified for a pensioner education  
supplement in relation to a particular course of education or  
study; and
- (f) at all times since the relevant day, has been a member of a  
couple; and
- (g) at all times since the relevant day, has been qualified both  
for:
  - (i) parenting payment; and
  - (ii) a pensioner education supplement in relation to that  
particular course of education or study.

Note 1: For *partial capacity to work* see section 16B.

Note 2: For *transitional DSP applicant* see subsection 23(1).

*Pensions under the Veterans' Entitlements Act*

- (3) The pensions under the Veterans' Entitlements Act are the  
following:
  - (a) in the case of a person who has a dependent child—a pension  
under Part II of that Act;
  - (b) an invalidity service pension;
  - (ba) income support supplement;
  - (c) in the case of a person whose partner is receiving an  
invalidity service pension—a partner service pension;
  - (d) a carer service pension;
  - (e) in the case of a person who has a dependent child—a pension  
under Part IV of that Act.

*Compensation under the Military Rehabilitation and  
Compensation Act*

- (4) For a person who has a dependent child, the compensation under  
the Military Rehabilitation and Compensation Act is the following:
  - (a) compensation for permanent impairment paid as a weekly  
amount under section 68, 71 or 75 of the Military  
Rehabilitation and Compensation Act;



- (b) a Special Rate Disability Pension under Part 6 of Chapter 4 of the Military Rehabilitation and Compensation Act;
- (c) compensation of a weekly amount mentioned in subparagraph 234(1)(b)(ii) of the Military Rehabilitation and Compensation Act.

### **Subdivision D—Pensioner education supplement age**

#### **1061PK Pensioner education supplement age**

For the purposes of this Part, a person is of pensioner education supplement age if the person:

- (a) is at least 16 years old; or
- (b) is independent and has reached the minimum school leaving age for the State or Territory in which the person is living.

#### **1061PL When a person is regarded as independent**

##### *Application*

- (1) This section applies to determine whether a person is to be regarded as independent for the purposes of this Part. A person is not to be regarded as independent except as provided by this section.

##### *Person with a dependent child*

- (2) A person is independent if:
  - (a) the person has a natural or adopted child who is wholly or substantially dependent on the person or his or her partner; or
  - (b) the person previously had a natural or adopted child who was wholly or substantially dependent on the person or on a person who, at the time, was the person's partner.

##### *Orphan*

- (3) A person is independent if both the person's parents are dead, whether or not the person is dependent, or was last dependent, on someone other than his or her parents.

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*If parents cannot exercise responsibilities*

- (4) A person is independent if both of the person's parents are (or, if the person has only one parent, that parent is):
- (a) serving a prison sentence of at least 10 years; or
  - (b) mentally incapacitated and likely to remain so incapacitated for an indefinite period; or
  - (c) living in a nursing home and likely to remain there for an indefinite period; or
  - (d) missing;
- whether or not the person is dependent, or was last dependent, on someone other than a parent of the person.

*Refugee*

- (5) A person is independent if the person:
- (a) is the holder, within the meaning of the Migration (1993) Regulations, of a Group 1.3 entry permit (permanent resident) (refugee and humanitarian); or
  - (b) while the holder of such a permit, was granted Australian citizenship.

However, a person is not independent under this subsection if the person has a parent living in Australia, or is wholly or substantially dependent on someone else on a long-term basis.

*Person in State care*

- (6) A person is independent if the person is not living with a parent, and:
- (a) the person is in the guardianship, care or custody of a court, a Minister, or a Department, of the Commonwealth, a State or a Territory; or
  - (b) there is a current direction from such a court, Minister or Department placing the person in the guardianship, care or custody of someone who is not the person's parent; or
  - (c) the person stopped being in a situation described in paragraph (a) or (b) only because of his or her age.

A person to whom this subsection applies is taken, for the purposes of this Part, to be *in State care*.

*Unreasonable to live at home*

- (7) A person is independent if:
- (a) the person cannot live at the home of either or both of his or her parents:
    - (i) because of extreme family breakdown or other similar exceptional circumstances; or
    - (ii) because it would be unreasonable to expect the person to do so as there would be a serious risk to his or her physical or mental well-being due to violence, sexual abuse or other similar exceptional circumstances; and
  - (b) the person is not receiving continuous support, whether directly or indirectly and whether financial or otherwise, from a parent of the person or from another person who is acting as the person's guardian on a long-term basis; and
  - (c) the person is not receiving, on a continuous basis, any payments in the nature of income support (other than a social security benefit) from the Commonwealth, a State or a Territory.

**Subdivision E—Residency**

**1061PM Residency requirements**

For the purposes of this Part, a person meets the residency requirements if the person:

- (a) is an Australian resident; and
- (b) subject to section 1061PN, is in Australia.

**1061PN Absence of persons overseas**

*General*

- (1) A person who is undertaking qualifying study is taken to be in Australia while the person:
- (a) is absent from Australia for the purpose of undertaking part of the studies for the course of education in respect of which the person is undertaking qualifying study; or
  - (b) is absent from Australia, for any other purpose, for not more than 13 weeks.

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*Temporary return to Australia*

- (2) If the person:
- (a) returns to Australia after having been outside Australia (whether before or after the commencement of this section) for more than 13 weeks; and
  - (b) leaves Australia before the end of 13 weeks after he or she so returned to Australia;

the person is taken to have continued to be absent from Australia throughout the period from the time of the person's return to the time when the person so left Australia.

## **Division 2—Situations in which pensioner education supplement is not payable**

### **Subdivision C—Newly arrived resident’s waiting period**

#### **1061PT Pensioner education supplement not payable during newly arrived resident’s waiting period**

A pensioner education supplement is not payable to a person while the person is subject to a newly arrived resident’s waiting period (see sections 1061PU and 1061PV).

#### **1061PU Newly arrived resident’s waiting period**

##### *Basic rule*

- (1) Subject to this section, a person is subject to a newly arrived resident’s waiting period if the person:
  - (a) has entered Australia on or after 4 March 1997; and
  - (b) has not been an Australian resident in Australia for a period of, or periods totalling, 104 weeks.

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

##### *Exception—qualifying resident exemption*

- (2) Subsection (1) does not apply to a person who has a qualifying residence exemption for an austudy payment.

Note: For *qualifying residence exemption* see subsection 7(6).

##### *Exception—person already subject to waiting period etc.*

- (3) Subsection (1) does not apply to a person if:
  - (a) the person has been subject to:
    - (i) a newly arrived resident’s waiting period under this Act; or
    - (ii) a waiting period under Part 2 of the *Student Assistance Act 1973* as in force immediately before 1 July 1998; or

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- (iii) a newly arrived resident's waiting period under Part 8 of the *Student Assistance Act 1973* as in force immediately before 1 July 1998; and
  - (b) that period has ended.
- (4) Subsection (1) does not apply to a person if:
  - (a) the person would:
    - (i) if the person had made a claim under this Act for a social security payment other than youth allowance—have been subject to a newly arrived resident's waiting period under this Act; or
    - (ii) if the person had, before 1 July 1998, made a claim under the *Student Assistance Act 1973*—have been subject to a waiting period under Part 2 of that Act or a newly arrived resident's waiting period under Part 8 of that Act;and that period would have ended; or
  - (b) the person has had:
    - (i) a qualifying residence exemption for a newstart allowance or a sickness allowance under this Act; or
    - (ii) a qualifying residence exemption for a youth training allowance under the *Student Assistance Act 1973*; or
  - (c) in the case of an AUSTUDY allowance recipient—the person was not subject to a waiting period.

**1061PV Length of newly arrived resident's waiting period**

If a person is subject to a newly arrived resident's waiting period, the period:

- (a) starts on the day on which the person first entered Australia; and
- (b) ends when the person has been an Australian resident in Australia for a period of, or periods totalling, 104 weeks after that day.

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

## **Subdivision D—Multiple entitlement exclusion**

### **1061PW Meaning of multiple entitlement exclusion**

For the purposes of this Division, a person is subject to a multiple entitlement exclusion if the person is receiving a pensioner education supplement under the ABSTUDY scheme.

### **1061PX Multiple entitlement exclusion**

A pensioner education supplement is not payable to a person if the person is subject to a multiple entitlement exclusion.

## Division 5—Rate of pensioner education supplement

### 1061PZG Rate of pensioner education supplement

- (1) If a person:
- (a) is a sub-50% concessional study-load student in respect of a course; and
  - (b) is not receiving any of the following:
    - (i) a disability support pension under this Act;
    - (ia) a youth allowance, newstart allowance or benefit PP (partnered) under this Act, in a case where the person has a partial capacity to work;
    - (ii) an invalidity service pension under the Veterans' Entitlements Act;
    - (iii) an income support supplement under the Veterans' Entitlements Act on the grounds of permanent incapacity;

the pensioner education supplement fortnightly rate for the person is \$31.20.

Note 1: Recipients of youth allowance, newstart allowance or benefit PP (partnered) only qualify for pensioner education supplement in the limited circumstances set out in subsection 1061PJ(2A), (2B) or (2D).

Note 2: For *partial capacity to work* see section 16B.

- (2) The pensioner education supplement fortnightly rate for a person to whom subsection (1) does not apply is \$62.40.
- (3) The rate of pensioner education supplement for a person is a daily rate worked out by dividing the person's fortnightly rate by 14.
- (4) For the purposes of this section, a person is a **sub-50% concessional study-load student** in respect of a course if the person is a 25% concessional study-load student in respect of the course for the purposes of Subdivision B of Division 1 of this Part who is undertaking, or who intends to undertake, less than one half of the normal amount of full-time study, determined in accordance with section 1061PF, in respect of that course.



## Part 2.25—Telephone allowance

### Division 1—Qualification for and payability of telephone allowance

#### 1061Q Qualification for telephone allowance

- (1) A person is qualified for a telephone allowance if:
- (a) the person is receiving a social security pension; and
  - (c) the person is a telephone subscriber.

Note 1: For *telephone subscriber* see subsection (5).

- (2) A person is qualified for a telephone allowance if:
- (a) the person is receiving a youth allowance; and
  - (b) the person is not undertaking full-time study; and
  - (c) the person is not a new apprentice; and
  - (d) the person:
    - (i) has a partial capacity to work; or
    - (ii) is the principal carer of at least one child and is not a member of a couple; and
  - (e) the person is a telephone subscriber.

Note 1: For *undertaking full-time study* see section 541B.

Note 2: For *new apprentice* see subsection 23(1).

Note 3: For *partial capacity to work* see section 16B.

Note 4: For *principal carer* see subsections 5(15) to (24). See also subsection (2C) of this section.

Note 5: For *telephone subscriber* see subsection (5).

- (2A) A person is qualified for a telephone allowance if:
- (a) the person is receiving a newstart allowance; and
  - (b) the person:
    - (i) has a partial capacity to work; or
    - (ii) is the principal carer of at least one child and is not a member of a couple; and
  - (c) the person is a telephone subscriber.

Note 1: For *partial capacity to work* see section 16B.

**Chapter 2** Pensions, benefits and allowances

**Part 2.25** Telephone allowance

**Division 1** Qualification for and payability of telephone allowance

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Note 2: For *principal carer* see subsections 5(15) to (24). See also subsection (2C) of this section.

Note 3: For *telephone subscriber* see subsection (5).

(2B) A person is qualified for a telephone allowance if:

(a) the person is:

(i) receiving a youth allowance while the person is not undertaking full-time study and is not a new apprentice; or

(ii) receiving a newstart allowance; and

(b) the person is the principal carer of at least one child and is a member of a couple; and

(c) the person is a telephone subscriber; and

(d) the person's partner has turned 60; and

(e) the person's partner is receiving newstart allowance or sickness allowance; and

(f) the person's partner has been receiving income support payments in respect of a continuous period of at least 9 months.

Note 1: For *undertaking full-time study* see section 541B.

Note 2: For *new apprentice* see subsection 23(1).

Note 3: For *principal carer* see subsections 5(15) to (24). See also subsection (2C) of this section.

Note 4: For *telephone subscriber* see subsection (5).

Note 5: For *income support payment* see subsection 23(1).

Note 6: Subsection 23(4A) can affect when a person is taken to be receiving the pension or allowance.

(2C) If a person is the principal carer of a child who dies, the person is taken, for the purposes of subparagraphs (2)(d)(ii) and (2A)(b)(ii) and paragraph (2B)(b), to continue to be the principal carer of the child during the period of 14 weeks that starts on the day of the child's death.

(2D) A person is qualified for a telephone allowance if:

(a) the person is receiving a benefit PP (partnered); and

(b) the person has a partial capacity to work; and

(c) the person is a telephone subscriber.

Note 1: For *partial capacity to work* see section 16B.

Note 2: For *telephone subscriber* see subsection (5).

- (3) A person is qualified for a telephone allowance if:
- (a) the person is receiving widow allowance newstart allowance, sickness allowance, partner allowance, benefit PP (partnered) or special benefit; and
  - (b) the person has been receiving income support payments in respect of a continuous period of at least 9 months; and

Note 1: For *income support payment* see subsection 23(1).

Note 2: For the determination of the continuous period in respect of which a person received income support payments see section 38B.

- (c) the person has turned 60; and
- (d) the person is a telephone subscriber.

Note: for *telephone subscriber* see subsection (5).

- (3A) A person is qualified for telephone allowance if:
- (a) the person is receiving partner allowance or benefit PP (partnered); and
  - (b) the person is a telephone subscriber; and
  - (c) the person's partner has turned 60; and
  - (d) the person's partner is receiving job search allowance, newstart allowance or sickness allowance; and
  - (e) the person's partner has been receiving income support payments in respect of a continuous period of at least 9 months.

Note 1: For *income support payment* see subsection 23(1).

Note 2: For the determination of the continuous period in respect of which a person received income support payments see section 38B.

Note 1: For *telephone subscriber* see subsection (5).

Note 2: For *income support payment* see subsection 23(1).

- (3B) A person is qualified for telephone allowance if:
- (a) the person is receiving a mature age allowance under Part 2.12B; and
  - (b) the person is a telephone subscriber.

- (3C) If:
- (a) a person has been receiving one of the following:
    - (i) a social security pension;
    - (ii) a mature age allowance under Part 2.12B; and

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(b) the person ceases to receive the pension or allowance because the person or the person's partner earns, derives or receives, or is taken to earn, derive or receive, employment income; and

(c) the person is a telephone subscriber;

the person is qualified for a telephone allowance:

(d) if the person has been receiving a disability support pension—for a period of 12 months from the date on which the person ceases to receive the pension; or

(e) in any other situation mentioned in paragraph (a)—for a period of 6 months from the date on which the person ceases to receive the pension or allowance.

Note 1: For *telephone subscriber* see subsection (5).

Note 2: Subsection 23(4A) can affect when a person is taken to be receiving the pension or allowance.

(3D) Subsection (3C) applies to a person who:

(a) has been receiving a youth allowance while the person:

(i) has had a partial capacity to work; and

(ii) has not been undertaking full-time study; and

(iii) has not been a new apprentice; or

(b) has been receiving a newstart allowance or parenting

payment while the person has had a partial capacity to work;

as if the person had been receiving a disability support pension.

Note 1: For *partial capacity to work* see section 16B.

Note 2: For *undertaking full-time study* see section 541B.

Note 3: For *new apprentice* see subsection 23(1).

(3E) Subsection (3C) applies to a person who:

(a) has been receiving a youth allowance while the person:

(i) has been the principal carer of at least one child; and

(ii) has not been a member of a couple; and

(iii) has not had a partial capacity to work; and

(iv) has not been undertaking full-time study; and

(v) has not been a new apprentice; or

(b) has been receiving a newstart allowance while the person:

(i) has been the principal carer of at least one child; and

(ii) has not been a member of a couple; and

(iii) has not had a partial capacity to work;  
as if the person had been receiving pension PP (single).

Note 1: For *principal carer* see subsections 5(15) to (24). See also subsection (3K) of this section.

Note 2: For *partial capacity to work* see section 16B.

Note 3: For *undertaking full-time study* see section 541B.

Note 4: For *new apprentice* see subsection 23(1).

(3F) If:

(a) a person has been receiving one of the following social security benefits:

- (i) newstart allowance;
- (ii) widow allowance;
- (iii) partner allowance;
- (iv) sickness allowance;
- (v) special benefit;
- (vi) benefit PP (partnered); and

(b) the person ceases to receive the benefit because the person or the person's partner earns, derives or receives, or is taken to earn, derive or receive, employment income; and

(c) the person has turned 60; and

(d) immediately before the person ceases to receive the benefit, the person had been receiving income support payments in respect of a continuous period of at least 9 months; and

(e) the person is a telephone subscriber;

the person is qualified for a telephone allowance for a period of 6 months from the date on which the person ceases to receive the benefit.

Note 1: For *telephone subscriber* see subsection (5).

Note 2: Subsection 23(4A) can affect when a person is taken to be receiving the benefit.

(3G) If:

(a) a person has been receiving partner allowance or benefit PP (partnered); and

(b) the person ceases to receive the benefit because the person or the person's partner earns, derives or receives, or is taken to earn, derive or receive, employment income; and

(c) the person's partner has turned 60; and

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- (d) the person's partner:
    - (i) is receiving newstart allowance or sickness allowance; or
    - (ii) was receiving newstart allowance or sickness allowance immediately before the person ceased to receive partner allowance or benefit PP (partnered); and
  - (e) immediately before the person ceases to receive the benefit, the person's partner had been receiving income support payments in respect of a continuous period of at least 9 months; and
  - (f) the person is a telephone subscriber;
- the person is qualified for a telephone allowance for a period of 6 months from the date on which the person ceases to receive the benefit.

Note 1: For *telephone subscriber* see subsection (5).

Note 2: Subsection 23(4A) can affect when a person is taken to be receiving the benefit.

(3H) Subsection (3G) applies to a person who:

- (a) has been receiving youth allowance while the person:
  - (i) has been the principal carer of at least one child; and
  - (ii) has been a member of a couple; and
  - (iii) has not been undertaking full-time study; and
  - (iv) has not been a new apprentice; or
- (b) has been receiving newstart allowance while the person:
  - (i) has been the principal carer of at least one child; and
  - (ii) has been a member of a couple;

as if the person had been receiving partner allowance or benefit PP (partnered).

Note 1: For *principal carer* see subsections 5(15) to (24). See also subsection (3K) of this section.

Note 2: For *undertaking full-time study* see section 541B.

Note 3: For *new apprentice* see subsection 23(1).

- (3J) A reference in paragraph (3C)(b), (3F)(b) or (3G)(b) to the employment income of a person is a reference to that person's employment income either alone or in combination with any other ordinary income earned, derived or received, or taken to have been earned, derived or received, by the person or the person's partner.

- (3K) If a person was the principal carer of a child who died, the person is taken, for the purposes of subparagraphs (3E)(a)(i) and (3H)(b)(i), to have continued to be the principal carer of the child during the period of 14 weeks that started on the day of the child's death.
- (4) For the purposes of paragraph (2B)(f), (3)(b), (3A)(e), (3F)(d) or (3G)(e), it does not matter:
- (a) whether the kind of payment received has changed over the period in question; or
  - (b) whether the period or any part of it occurred before or after the commencement of that paragraph.
- (4A) A person is qualified for a telephone allowance if:
- (a) either:
    - (i) the person is the holder of a seniors health card; or
    - (ii) the person is temporarily absent from Australia for a continuous period not exceeding 13 weeks and was the holder of a seniors health card immediately before leaving Australia; and
  - (b) the person is a telephone subscriber.
- (5) In this section:
- telephone subscriber** means:
- (a) a person who has a telephone service connected in Australia in his or her name; or
  - (b) a person:
    - (i) to whom paragraph (a) does not apply; and
    - (ii) who is a member of a couple (other than an illness separated, temporarily separated or respite care couple); and
    - (iii) whose partner has a telephone service connected in Australia in the partner's name.

Note: for *member of a couple, illness separated couple, temporarily separated couple* and *respite care couple* see section 4.

### 1061R Telephone allowance not payable in some circumstances

Even though a person is qualified for a telephone allowance, the allowance is not payable to the person:

- (a) if the person is receiving a telephone allowance under the Military Rehabilitation and Compensation Act; or
- (b) if the person is receiving a telephone allowance under the Veterans' Entitlements Act; or
- (c) if:
  - (i) the person is a member of a couple (other than an illness separated, temporarily separated or respite care couple); and
  - (ii) the person's partner is receiving a telephone allowance because of:
    - (A) subsection 118Q(3) of the Veterans' Entitlements Act; or
    - (B) a determination under subsection 5R(1) of the Veterans' Entitlements Act.

Note 1: for *member of a couple, illness separated couple, temporarily separated couple* and *respite care couple* see section 4.

Note 2: subsection 118Q(3) of the Veterans' Entitlements Act covers certain categories of World War I veterans.

Note 3: the relevant determination under subsection 5R(1) of the Veterans' Entitlements Act provides eligibility for telephone allowance to certain categories of World War I Australian mariners.



## Division 2—Rate of telephone allowance

### 1061S Standard rate of telephone allowance [see Appendix for CPI adjusted figures]

- (1) The rate of telephone allowance for a person to whom section 1061SB (increased rate for home Internet) does not apply is worked out using the following Table:

<b>Standard rate of telephone allowance</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Item</b>	<b>Person's situation</b>	<b>Rate per year</b>
1.	Not member of a couple	\$88.00
2.	Partnered (partner getting neither social security pension nor social security benefit), partner not holder of a seniors health card and person getting pension or benefit before 12 March 1992	\$51.80
3.	Partnered (partner getting neither social security pension nor social security benefit), partner not holder of a seniors health card and person not getting pension or benefit before 12 March 1992	\$44.00
4.	Either: (a) partnered (partner getting pension or benefit); or (b) partnered and partner is a holder of a seniors health card; and partner not getting telephone allowance	\$88.00
5.	Either: (a) partnered (partner getting pension or benefit); or (b) partnered and partner is a holder of a seniors health card; and partner getting telephone allowance	\$44.00

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<b>Standard rate of telephone allowance</b>		
<b>Column 1 Item</b>	<b>Column 2 Person's situation</b>	<b>Column 3 Rate per year</b>
6.	Member of an illness separated, temporarily separated or respite care couple	\$88.00
7.	Partnered (partner not getting telephone allowance under the VEA or MRCA)	\$88.00
8.	Partnered (partner getting telephone allowance under the VEA or MRCA)	\$44.00
9.	Partnered (partner in gaol)	\$88.00

Note: the amounts in column 3 (except the item 2 amount) are indexed or adjusted annually in line with CPI increases (see sections 1191 to 1194).

- (1A) Item 7 does not apply to a person if any other item applies to the person.
- (2) If item 8 applies to a person, neither item 2 nor 3 applies to the person.
- (3) Item 2 does not apply to a person if the rate of telephone allowance that would be payable to the person if item 2 applied is less than the rate that would otherwise be payable.

Note: because the item 2 rate is not indexed it may eventually become a lower rate than other rates in the Table.

- (3A) For the purposes of working out a person's rate of telephone allowance under subsection (1), the person's partner is taken to be the holder of a seniors health card if the partner:
  - (a) is temporarily absent from Australia for a continuous period not exceeding 13 weeks; and
  - (b) was the holder of a seniors health card immediately before leaving Australia.
- (4) In this section:

***person getting pension or benefit before 12 March 1992*** means a person to whom clause 41 of Schedule 1A applies.

***person not getting pension or benefit before 12 March 1992***

means a person to whom clause 41 of Schedule 1A does not apply.

Note: clause 41 of Schedule 1A applies to people who were receiving social security pension or benefit before 12 March 1992 and who meet certain other conditions.

**1061SA Increased rate of telephone allowance**

- (1) The rate of telephone allowance for a person to whom section 1061SB (increased rate for home Internet) applies is worked out using the following table:

<b>Increased rate of telephone allowance</b>		
<b>Column 1 Item</b>	<b>Column 2 Person's situation</b>	<b>Column 3 Rate per year</b>
1.	Not member of a couple	\$132.00
2.	Partnered (partner getting neither social security pension nor social security benefit), partner not a holder of a seniors health card and person getting pension or benefit before 12 March 1992	\$95.80
3.	Partnered (partner getting neither social security pension nor social security benefit), partner not a holder of a seniors health card and person not getting pension or benefit before 12 March 1992	\$66.00
4.	Either: (a) partnered (partner getting pension or benefit); or (b) partnered and partner is a holder of a seniors health card; and partner not getting telephone allowance	\$132.00

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<b>Increased rate of telephone allowance</b>		
<b>Column 1 Item</b>	<b>Column 2 Person's situation</b>	<b>Column 3 Rate per year</b>
5.	Either: (a) partnered (partner getting pension or benefit); or (b) partnered and partner is a holder of a seniors health card; and partner getting telephone allowance at the increased rate	\$66.00
6.	Member of an illness separated, temporarily separated or respite care couple	\$132.00
7.	Partnered (partner not getting telephone allowance under the VEA or MRCA)	\$132.00
8.	Partnered (partner getting telephone allowance under the VEA or MRCA at the increased rate)	\$66.00
9.	Partnered (partner in gaol)	\$132.00
10.	Either: (a) partnered (partner getting pension or benefit); or (b) partnered and partner is a holder of a seniors health card; and partner getting telephone allowance at the standard rate	\$88.00
11.	Partnered (partner getting telephone allowance under the VEA or MRCA at the standard rate)	\$88.00

Note: The amounts in column 3 (except the item 2 amount) are indexed or adjusted annually in line with CPI increases (see sections 1191 to 1194).

- (2) Item 7 does not apply to a person if any other item applies to the person.
- (3) If item 8 or 11 applies to a person, neither item 2 nor 3 applies to the person.

- (4) Item 2 does not apply to a person if the rate of telephone allowance that would be payable to the person if item 2 applied is less than the rate that would otherwise be payable.

Note: Because the item 2 rate is not indexed, it may eventually become a lower rate than other rates in the table.

- (5) For the purposes of working out a person's rate of telephone allowance under subsection (1), the person's partner is taken to be the holder of a seniors health card if the partner:
- (a) is temporarily absent from Australia for a continuous period not exceeding 13 weeks; and
  - (b) was the holder of a seniors health card immediately before leaving Australia.

- (6) In this section:

***person getting pension or benefit before 12 March 1992*** means a person to whom clause 41 of Schedule 1A applies.

***person not getting pension or benefit before 12 March 1992*** means a person to whom clause 41 of Schedule 1A does not apply.

Note: Clause 41 of Schedule 1A applies to people who were receiving social security pension or benefit before 12 March 1992 and who meet certain other conditions.

### **1061SB Increased rate of telephone allowance for home Internet**

- (1) This section applies to a person if the person satisfies the conditions in this section.

Note: A person is eligible for an increased rate of telephone allowance if this section applies to him or her: see section 1061SA.

#### *First condition*

- (2) The first condition is that the person:
- (a) is the holder of a seniors health card; or
  - (b) is temporarily absent from Australia for a continuous period not exceeding 13 weeks and was the holder of a seniors health card immediately before leaving Australia; or
  - (c) has reached pension age and is receiving an income support payment; or
  - (d) is receiving a disability support pension or carer payment.

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*Second condition*

- (3) The second condition is that an Internet carriage service (within the meaning of the *Broadcasting Services Act 1992*) is connected in Australia either:
- (a) in the person's name; or
  - (b) if the person is a member of a couple (other than an illness separated, temporarily separated or respite care couple)—in the person's partner's name.

*Third condition*

- (4) The third condition is that the person is able to access that Internet carriage service at the person's principal home.

*Fourth condition*

- (5) The fourth condition is that, on or before the telephone allowance payday, the person gave oral or written notice to the Secretary about the connection of the Internet carriage service mentioned in subsection (3).

*Definition*

- (6) In this section:

***telephone allowance payday*** has the same meaning as in subsection 48(4) of the Administration Act.

## **Part 2.25A—Utilities allowance**

### **Division 1—Qualification for and payability of utilities allowance**

#### **1061T Qualification for utilities allowance**

A person is qualified for utilities allowance if the person:

- (a) either:
  - (i) has reached pension age and is receiving an income support payment; or
  - (ii) is receiving a widow allowance, a mature age allowance, a partner allowance, a disability support pension, a carer payment, a wife pension, a widow B pension or a bereavement allowance; and
- (c) either:
  - (i) is in Australia; or
  - (ii) is temporarily absent from Australia and has been so for a continuous period not exceeding 13 weeks.

#### **1061TA When utilities allowance is payable**

- (1) Utilities allowance is payable to a person in relation to each utilities allowance test day on which the person is qualified for the allowance.
- (2) However, utilities allowance is not payable to the person in relation to that day if:
  - (a) a service pension or an income support supplement is payable to the person on that day; or
  - (b) either of the following are payable in relation to that day:
    - (i) seniors concession allowance under this Act;
    - (ii) seniors concession allowance under the Veterans' Entitlements Act; or
  - (c) before that day:
    - (i) the person had elected not to be covered by this Part; and
    - (ii) that election had not been withdrawn.

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(3) In this section:

*utilities allowance test day* means:

- (a) 20 March; and
- (b) 20 June; and
- (c) 20 September; and
- (d) 20 December.



**Division 2—Rate of utilities allowance****1061TB Rate of utilities allowance**

A person's annual rate of utilities allowance is worked out using the following table:

<b>Utilities allowance rate table</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Item</b>	<b>Person's situation</b>	<b>Annual rate</b>
1	not a member of a couple	\$500
2	member of an illness separated couple	\$500
3	member of a respite care couple	\$500
4	member of a temporarily separated couple	\$500
5	member of a couple (other than an illness separated couple, respite care couple or temporarily separated couple)	half the rate specified in column 3 of item 1

Note: The annual rates of utilities allowance are indexed twice a year in line with CPI increases (see sections 1191 to 1194).

## **Part 2.25B—Seniors concession allowance**

### **Division 1—Qualification for and payability of seniors concession allowance**

#### **1061U Qualification for seniors concession allowance**

A person is qualified for seniors concession allowance if:

- (a) the person is the holder of a seniors health card and is in Australia; or
- (b) all of the following apply to the person:
  - (i) the person is temporarily absent from Australia;
  - (ii) the person has been so for a continuous period not exceeding 13 weeks;
  - (iii) the person was the holder of a seniors health card immediately before leaving Australia.

#### **1061UA When seniors concession allowance is payable**

- (1) Seniors concession allowance is payable to a person in relation to each seniors concession allowance test day on which the person is qualified for the allowance.
- (2) However, seniors concession allowance is not payable to the person in relation to that day if:
  - (b) before that day:
    - (i) the person had elected not to be covered by this Part; and
    - (ii) that election had not been withdrawn; or
  - (c) subsection 55(5) (failing to nominate a bank account) of the Administration Act applies to the person.

- (3) In this section:

*seniors concession allowance test day* means:

- (a) 20 March; and
- (b) 20 June; and
- (c) 20 September; and

(d) 20 December.

## **Division 2—Rate of seniors concession allowance**

### **1061UB Rate of seniors concession allowance**

A person's annual rate of seniors concession allowance is \$500.

Note: The annual rate of seniors concession allowance is indexed twice a year in line with CPI increases (see sections 1191 to 1194).

## **Part 2.26—Fares allowance**

### **Division 1—Qualification for fares allowance**

#### **1061ZAAA Qualification for fares allowance**

- (1) A person is qualified for fares allowance for a journey by the person if:
- (a) during a period (the *relevant period*) that is the whole or a part of a study year the person undertakes an approved tertiary course (the *approved course*) at an educational institution in Australia (the *relevant educational institution*); and
  - (b) during the relevant period the person is receiving one or more of the following forms of financial assistance:
    - (i) youth allowance because the person satisfies the activity test by undertaking full-time study;
    - (ii) youth allowance where the only term of the relevant Youth Allowance Activity Agreement is a term to the effect that the person has to undertake an approved course of education or study under subsection 541B(5);
    - (iii) austudy payment;
    - (iv) pensioner education supplement; and
  - (c) during the relevant period the person's permanent home is in Australia; and
  - (d) either:
    - (i) subsection (2) or (3) applies in respect of the person for the study year; or
    - (ii) subsection (4) or (5) applies in respect of the person in relation to the journey; and
  - (e) either section 1061ZAAB or 1061ZAAC applies in respect of the journey; and
  - (f) the journey has been made or, if it has not been made, the Secretary is satisfied that:
    - (i) the person intends to make the journey; and
    - (ii) the person's means of travel for the journey will be provided by a commercial operator.

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Note: A person is taken to be receiving a form of financial assistance referred to in paragraph (b) even though the person has traded in, or traded back, the assistance to obtain a financial supplement.

- (2) This subsection applies in respect of the person for the study year if, during the relevant period, the person:
  - (a) has a partner, or a dependent child, living at the person's permanent home; and
  - (b) is required to live away from his or her permanent home in order to undertake the approved course.
- (3) This subsection applies in respect of the person for the study year if, during the relevant period, the person is enrolled as an external student for the approved course.
- (4) This subsection applies in respect of the person in relation to the journey if:
  - (a) during the relevant period, the person:
    - (i) is receiving youth allowance as referred to in subparagraph (1)(b)(i) or (ii); and
    - (ii) is required to live away from home within the meaning of Part 3.5 (see section 1067D); and
  - (b) the person is not independent when the journey is made.
- (5) This subsection applies in respect of the person in relation to the journey if:
  - (a) during the relevant period, the person:
    - (i) is receiving youth allowance as referred to in subparagraph (1)(b)(i) or (ii); and
    - (ii) is required to live away from home within the meaning of Part 3.5 (see section 1067D); and
  - (b) during the study year and before the journey was made the person became independent because of subsection 1067A(4) or (10); and
  - (c) if the journey had been made in the study year before the person became independent, subsection (4) would have applied in respect of the person in relation to the journey.

Note: A person is not qualified for a fares allowance in respect of a journey made before the commencement of this section (see clause 126 of Schedule 1A).

**1061ZAAB Journey by person who is not an external student**

If the person is enrolled for the approved course as a student other than an external student, this section applies in respect of a journey only if the journey is one of the following:

- (a) a journey from the person's permanent home to the relevant educational institution to start the course;
- (b) a journey made, in the study year or before 1 April in the next year, from the relevant educational institution to the person's permanent home after the person has finished or discontinued the course;
- (c) a return journey during the study year between the relevant educational institution and the person's permanent home where the person:
  - (i) has, during the study year and before the making of the journey, received one or more of the forms of financial assistance referred to in paragraph 1061ZAAA(1)(b) for a total period of 6 months (whether continuous or not); and
  - (ii) is receiving one of those forms of financial assistance when the journey is made.

**1061ZAAC Journey by person who is an external student**

If the person is enrolled for the approved course as an external student, this section applies only in respect of one return journey by the person during the study year between the person's permanent home and the relevant educational institution in order to attend the institution for a period under a requirement that is a compulsory component of the course.

## **Division 3—Amount of fares allowance**

### **1061ZAAJ Fares allowance for public transport**

- (1) If the Secretary is satisfied that it is practicable for the person to make the entire journey by public transport, the amount of fares allowance for the entire journey is worked out using this section.
- (2) If the Secretary is satisfied that it is practicable for the person to make part of the journey by public transport, the amount of fares allowance for that part of the journey is worked out using this section.
- (3) The amount of fares allowance is the cost of making the journey, or the part of the journey, using a reasonable route and the least expensive form of public transport that is reasonable.
- (4) The cost is to be based on the cost of any concessional fare available to the person.
- (5) The cost of a sleeping berth is to be included only if it is reasonable for the person to travel by rail and for the person to have the berth.
- (6) In deciding what is practicable or reasonable for the purposes of this section, the period of time needed for the entire journey, and any illness or incapacity of the person, must be taken into account.
- (7) The amount of fares allowance to be paid is to be worked out using this section whether or not the person chooses to make the journey, or the part of the journey, in the way described in this section.

### **1061ZAAK Fares allowance for private transport**

- (1) If the Secretary is satisfied that it is not practicable for the person to make any part of the journey by public transport, the amount of fares allowance for the entire journey is worked out using this section.
- (2) If the Secretary is satisfied that it is not practicable for the person to make a part of the journey by public transport, the amount of fares allowance for that part of the journey is worked out using this section.



- (3) If the person makes the journey, or the part of the journey, by taxi, the fares allowance is 63 cents per kilometre travelled by taxi.
- (4) If the person makes the journey, or the part of the journey, by another vehicle, the fares allowance is worked out in accordance with the following table:

<b>Table of rates of allowance</b>			
<b>Item</b>	<b>Kind of engine in the vehicle the person uses</b>	<b>Capacity of the vehicle's engine (cubic centimetres)</b>	<b>Allowance per kilometre (cents)</b>
1	Rotary	not more than 800	45.7
2	Rotary	more than 800 but not more than 1,300	51.9
3	Rotary	more than 1,300	53.8
4	Not rotary	not more than 1,600	45.7
5	Not rotary	more than 1,600 but not more than 2,600	51.9
6	Not rotary	more than 2,600	53.8

- (5) If the Secretary is satisfied that:
- it is unreasonable for the person to make the journey or the part of the journey by taxi or another vehicle because of abnormal travel hazards (for example, bushfire or flood); and
  - the person makes the journey or the part of the journey by another form of transport that is reasonable because of the distance travelled and the cost of the transport;
- the amount of fares allowance for the journey or that part of the journey is the actual cost to the person of making the journey or that part of the journey.
- (6) In deciding what is practicable or reasonable for the purposes of this section, the period of time needed for the entire journey, and any illness or incapacity of the person, must be taken into account.
- (7) For the purposes of this section, a vehicle that is registered as a taxi in a State or Territory is to be taken to be a taxi only while it is used in the State or Territory.

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- (8) The Minister may, by legislative instrument, make determinations:
- (a) varying the amount referred to in subsection (3); or
  - (b) amending the table in subsection (4) or omitting that table and substituting another table.

## **Part 2.27—Northern Territory CDEP transition payment**

### **Division 1—Qualification for and payability of Northern Territory CDEP transition payment**

#### **Subdivision A—Qualification for Northern Territory CDEP transition payment**

##### **1061ZAAL Qualification for Northern Territory CDEP transition payment**

- (1) A person is qualified for Northern Territory CDEP transition payment if:
  - (a) on 23 July 2007, the person was eligible to participate in the CDEP Scheme under the criteria set out in paragraphs 6.1, 6.2 and 6.3 of CDEP Annexure B (see subsection (2)); and
  - (b) on 23 July 2007, the person was recorded as active in CDEPManager; and
  - (c) there is a transition day for the person (see section 1061ZAAM); and
  - (d) during the period starting on 23 July 2007 and ending on the transition day for the person, the person did not cease to participate in the CDEP Scheme for a period of more than 12 consecutive weeks (disregarding any period during which the person was taking paid or unpaid leave approved by a CDEP Scheme provider); and
  - (e) the person meets any other conditions specified in rules made for the purposes of this paragraph under section 1061ZAAW.
- (2) The reference in paragraph (1)(a) to CDEP Annexure B is a reference to Annexure B to the CDEP Schedule of the 2007/2008 Commonwealth Programme Funding Agreement as in force on 23 July 2007.

Note: In 2007, the text of the annexure as in force on 23 July 2007 was accessible through the Australian Government Internet site at [www.workplace.gov.au](http://www.workplace.gov.au).

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**1061ZAAM Northern Territory CDEP transition day**

- (1) The Secretary may give a CDEP Scheme provider a written notice specifying the day on which the provider must stop making CDEP Scheme payments to or on behalf of persons participating in the CDEP Scheme in the Northern Territory.
- (2) A notice under subsection (1) is not a legislative instrument.
- (3) If the Secretary has given a CDEP Scheme provider a notice under subsection (1), the Secretary may, before the day specified in that notice, vary that notice by further written notice to the provider.
- (4) The *transition day* for a person is the day specified in a notice given to a CDEP Scheme provider under this section, if:
  - (a) at any time before the specified day, the person has been registered as active in CDEPManager so far as that system is maintained by that provider; and
  - (b) between that time and the specified day, the person has not been registered as active in CDEPManager so far as that system is maintained by any other provider.
- (5) However, if, apart from this subsection, a person would have more than one transition day, the *transition day* for the person is the earliest of the days that would otherwise have been transition days.

**Subdivision B—Payability of Northern Territory CDEP transition payment**

**1061ZAAN Northern Territory CDEP transition payment only payable if certain claim criteria met**

Northern Territory CDEP transition payment is not payable to a person unless one of the following applies:

- (a) a claim made by the person for a social security benefit or a social security pension was granted before the transition day for the person and the benefit or pension had not been cancelled by the transition day;
- (b) a claim made by the person for a social security benefit or a social security pension before the transition day for the person had not been determined by the transition day;

- (c) on or after the transition day for the person, the person has made a claim for a social security benefit or a social security pension.

**1061ZAAO Northern Territory CDEP transition payment not payable while CDEP Scheme payments being received**

Northern Territory CDEP transition payment is not payable to a person in respect of any period for which the person is receiving CDEP Scheme payments.

**1061ZAAP Northern Territory CDEP transition payment not payable if rate too low**

Northern Territory CDEP transition payment is not payable to a person if the person's fortnightly rate of Northern Territory CDEP transition payment under subsection 1061ZAAS(2) would be less than \$5.

**1061ZAAQ Northern Territory CDEP transition payment not payable if compliance penalty period applies**

Northern Territory CDEP transition payment is not payable to a person if a compliance penalty period applies in relation to the person.

Note: For *compliance penalty period* see subsection 23(1).

**1061ZAAR Northern Territory CDEP transition payment not payable from 1 July 2008**

Northern Territory CDEP transition payment is not payable:

- (a) for a period that includes 1 July 2008—in respect of so much of the period as occurs on or after 1 July 2008; and
- (b) in respect of any period starting on or after 1 July 2008.

## Division 2—Rate of Northern Territory CDEP transition payment

### 1061ZAAS Rate of Northern Territory CDEP transition payment

- (1) The rate of a person's Northern Territory CDEP transition payment is a daily rate, worked out by dividing the person's fortnightly rate worked out under subsection (2) by 14.
- (2) The person's fortnightly rate is:
  - (a) the excess (if any) of the amount in subparagraph (i) over the amount in subparagraph (ii):
    - (i) the person's pre-transition fortnightly income worked out under section 1061ZAAT; and
    - (ii) the person's post-transition fortnightly income worked out under section 1061ZAAU; or
  - (b) if the Secretary considers that a person's rate worked out under paragraph (a) is not appropriate in the person's circumstances—the rate determined by the Secretary.
- (3) In making a determination under this section, the Secretary must have regard to the guidelines (if any) set out in rules made for the purposes of this section under section 1061ZAAW.

### 1061ZAAT Pre-transition fortnightly income

- (1) For the purposes of subparagraph 1061ZAAS(2)(a)(i), a person's *pre-transition fortnightly income* is the sum of:
  - (a) the person's average fortnightly income from CDEP Scheme payments during the period determined for the person by the Secretary under subsection (2); and
  - (b) if the person was receiving a social security benefit on 23 July 2007—the person's provisional fortnightly payment rate for the benefit; and
  - (c) if the person was receiving a social security pension on 23 July 2007—the person's provisional annual payment rate for the pension, expressed as a fortnightly rate; and
  - (d) if the person received remote area allowance in respect of a fortnight that included 23 July 2007—the person's remote area allowance for the fortnight; and

- (e) if the person received CDEP Scheme Participant Supplement under Division 3 of Part 3.15A in respect of a period that included 23 July 2007—\$20.80.
- (2) The Secretary must determine a period for a person for the purposes of paragraph (1)(a). The period must not be more than 13 weeks and must end on 23 July 2007.
- (3) Despite subsection (1), if the Secretary considers that a person's pre-transition fortnightly income as worked out under that subsection would not be appropriate in the person's circumstances, the person's *pre-transition fortnightly income* is the amount determined by the Secretary (having regard to the person's income as at 23 July 2007 from CDEP Scheme payments and any social security benefit or social security pension).
- (4) In making a determination under this section, the Secretary must have regard to the guidelines (if any) set out in rules made for the purposes of this section under section 1061ZAAW.

#### **1061ZAAU Post-transition fortnightly income**

- (1) For the purposes of subparagraph 1061ZAAS(2)(a)(ii), a person's *post-transition fortnightly income* is the sum of:
  - (a) if the person is receiving a social security benefit on the relevant day—the person's provisional fortnightly payment rate for the benefit; and
  - (b) if the person is receiving a social security pension on the relevant day—the person's provisional annual payment rate for the pension, expressed as a fortnightly rate; and
  - (c) if the person is receiving remote area allowance in respect of a period that includes the relevant day—the person's remote area allowance for the period.
- (2) The *relevant day* for the purposes of subsection (1) is:
  - (a) the start day for the person's Northern Territory CDEP transition payment; or
  - (b) a later day determined by the Secretary.
- (3) Despite subsection (1), if the Secretary considers that a person's post-transition fortnightly income as worked out under that subsection would not be appropriate in the person's circumstances,

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the person's *post-transition fortnightly income* is the amount determined by the Secretary.

- (4) In making a determination under this section, the Secretary must have regard to the guidelines (if any) set out in rules made for the purposes of this section under section 1061ZAAW.

**1061ZAAV Maximum rate of Northern Territory CDEP transition payment**

The maximum fortnightly rate of Northern Territory CDEP transition payment under subsection 1061ZAAS(2) is \$794.80.



### **Division 3—Miscellaneous**

#### **1061ZAAW Northern Territory CDEP transition payment rules**

- (1) The Secretary may, by legislative instrument, make rules in relation to any or all of the following:
  - (a) any matters required or permitted by this Part to be set out in rules;
  - (b) qualification for, and payability and rate of, Northern Territory CDEP transition payment;
  - (c) any other matters in relation to Northern Territory CDEP transition payment.
- (2) Rules made for the purposes of paragraph (1)(b) may impose requirements or limitations additional to the requirements or limitations imposed under this Part.

## Chapter 2A—Benefits and concessions other than payments

### Part 2A.1—Concession cards

#### Division 1—Qualification for, and issue of, pensioner concession card

##### 1061ZA General qualification rules

- (1) Subject to subsection (3), a person is qualified for a pensioner concession card on a day if:
  - (a) a social security pension; or
  - (b) a mature age allowance under Part 2.12B;is payable to the person for that day.
- (2) Subject to subsection (3), a person is qualified for a pensioner concession card on a day (the *qualification day*) if, on that day:
  - (a) the person has attained 60 years of age; and
  - (b) the person is receiving:
    - (i) newstart allowance; or
    - (ii) partner allowance; or
    - (iii) widow allowance; or
    - (iv) benefit PP (partnered); or
    - (v) sickness allowance; or
    - (vi) special benefit; and
  - (c) the person has been receiving, for a continuous period of not less than 39 weeks ending immediately before the qualification day:
    - (i) one or more of the social security benefits referred to in paragraph (b); or
    - (ii) a social security pension.
- (2A) Subject to subsection (3), a person is qualified for a pensioner concession card on a day if, on that day:
  - (a) the person is receiving a youth allowance; and
  - (b) the person is not undertaking full-time study and is not a new apprentice; and

- (c) the person:
  - (i) has a partial capacity to work; or
  - (ii) is the principal carer of at least one child and is not a member of a couple.

Note 1: For *undertaking full-time study* see section 541B.

Note 2: For *new apprentice* see subsection 23(1).

Note 3: For *partial capacity to work* see section 16B.

Note 4: For *principal carer* see subsections 5(15) to (24). See also subsection (2C) of this section.

- (2B) Subject to subsection (3), a person is qualified for a pensioner concession card on a day if, on that day:

- (a) the person is receiving a newstart allowance; and
- (b) the person:
  - (i) has a partial capacity to work; or
  - (ii) is the principal carer of at least one child and is not a member of a couple; and
- (c) the person is not qualified for a pensioner concession card under subsection (2).

Note 1: For *partial capacity to work* see section 16B.

Note 2: For *principal carer* see subsections 5(15) to (24). See also subsection (2C) of this section.

- (2C) If a person is the principal carer of a child who dies, the person is taken, for the purposes of subparagraphs (2A)(c)(ii) and (2B)(b)(ii), to continue to be the principal carer of the child during the period of 14 weeks that starts on the day of the child's death.

- (2D) Subject to subsection (3), a person is qualified for a pensioner concession card on a day if, on that day:

- (a) the person is receiving a benefit PP (partnered); and
- (b) the person has a partial capacity to work; and
- (c) the person is not qualified for a pensioner concession card under subsection (2).

Note: For *partial capacity to work* see section 16B.

- (3) Subject to subsection (4), subsections (1), (2), (2A), (2B) and (2D) only apply to a person in relation to a day on which the person is in Australia and is an Australian resident.

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Note: If the person is temporarily absent from Australia, the person continues to be qualified for a pensioner concession card for a maximum period of up to 13 weeks (see Division 4).

- (4) In spite of subsection (3), subsections (1), (2), (2A), (2B) and (2D) apply to a person in relation to a day on which the person:
- (a) is in Australia; and
  - (b) is receiving a social security pension or benefit solely because of the operation of the scheduled international agreement between Australia and New Zealand.

Note: If the person is temporarily absent from Australia, the person continues to be qualified for a pensioner concession card for a maximum period of up to 13 weeks (see Division 4).

**1061ZB Extended qualification rule: former recipient of mature age allowance etc.**

- (1) Subject to subsection (2), if:
- (a) a person is receiving:
    - (i) a mature age allowance under Part 2.12A; or
    - (ii) a mature age partner allowance under Part 2.12A; or
    - (iii) a mature age allowance under Part 2.12B; and
  - (b) either:
    - (i) the person or the person's partner commences employment; or
    - (ii) there is an increase in the ordinary income of the person or the person's partner from employment; and
  - (c) but for the commencement of employment or increase in ordinary income, as the case may be, the person would have been, or would have continued to be, qualified for a pensioner concession card under subsection 1061ZA(1);
- the person is qualified for a pensioner concession card:
- (d) if the person is qualified for such a card under section 1061ZEA until a particular day—for the period of 26 weeks after that day; and
  - (e) in any other case—for the period of 26 weeks after the commencement or increase, as the case may be.

(1A) If:

(a) either:

- (i) the person first referred to in subsection (1) commences employment; or
- (ii) there is an increase in the ordinary income from employment of the person so referred to; and

(b) at the start of the instalment period of the person in which the commencement or increase occurs, the person's working credit balance is greater than nil; and

(c) the balance is subsequently reduced to nil because of the commencement or increase; and

(d) the person is not qualified for a pensioner concession card under section 1061ZEA;

paragraph (1)(e) has effect as if the reference to 26 weeks after the commencement or increase were a reference to 26 weeks after the day on which the balance is reduced to nil.

(1B) If:

(a) either:

- (i) the partner of the person first referred to in subsection (1) commences employment; or
- (ii) there is an increase in the ordinary income from employment of the partner of the person so referred to; and

(b) at the start of the instalment period of the partner in which the commencement or increase occurs:

- (i) the partner is a working credit participant or a person to whom the student income bank applies; and
- (ii) the partner's working credit balance or student income bank balance is greater than nil; and

(c) the balance is subsequently reduced to nil because of the commencement or increase; and

(d) the person is not qualified for a pensioner concession card under section 1061ZEA;

paragraph (1)(e) has effect as if the reference to 26 weeks after the commencement or increase were a reference to 26 weeks after the day on which the balance is reduced to nil.

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- (2) Subsection (1) (including that subsection as modified by subsection (1A) or (1B)) only applies to a person while the person is in Australia and is an Australian resident.

Note: If the person is temporarily absent from Australia, the person continues to be qualified for a pensioner concession card for a maximum period of up to 13 weeks (see Division 4).

- (3) If, during the period of 26 weeks referred to in subsection (1) (including that subsection as modified by subsection (1A) or (1B)), a person receives an instalment of a social security pension or a mature age allowance under Part 2.12B that relates to one or more days within that period, the person is not qualified under this section for a pensioner concession card on the day or days in relation to which the person receives the instalment.

**1061ZC Extended qualification rule: long-term recipient of social security benefits**

- (1) Subject to subsection (2), if:
- (a) a person has been receiving a social security benefit referred to in paragraph 1061ZA(2)(b) for a continuous period of not less than 39 weeks; and
  - (b) either:
    - (i) the person or the person's partner commences employment; or
    - (ii) there is an increase in the ordinary income of the person or the person's partner from employment; and
  - (c) but for the commencement of employment or increase in ordinary income, as the case may be, the person would have been, or would have continued to be, qualified for a pensioner concession card under subsection 1061ZA(2); and
  - (ca) the person did not become qualified under section 1061ZEB for a pensioner concession card because of that employment or increase in ordinary income;
- the person is qualified for a pensioner concession card:
- (d) if the person is qualified for a pensioner concession card under section 1061ZEA until a particular day—for the period of 26 weeks after that day; and
  - (e) in any other case—for the period of 26 weeks after the commencement or increase, as the case may be.

(1A) If:

- (a) either:
  - (i) the person first referred to in subsection (1) commences employment; or
  - (ii) there is an increase in the ordinary income from employment of the person so referred to; and
- (b) at the start of the instalment period of the person in which the commencement or increase occurs:
  - (i) the person is a working credit participant; and
  - (ii) the person's working credit balance is greater than nil; and
- (c) the balance is subsequently reduced to nil because of the commencement or increase; and
- (d) the person is not qualified for a pensioner concession card under section 1061ZEA;

paragraph (1)(e) has effect as if the reference to 26 weeks after the commencement or increase were a reference to 26 weeks after the day on which the balance is reduced to nil.

(1B) If:

- (a) either:
  - (i) the partner of the person first referred to in subsection (1) commences employment; or
  - (ii) there is an increase in the ordinary income from employment of the partner of the person so referred to; and
- (b) at the start of the instalment period of the partner in which the commencement or increase occurs:
  - (i) the partner is a working credit participant or a person to whom the student income bank applies; and
  - (ii) the partner's working credit balance or student income bank balance is greater than nil; and
- (c) the balance is subsequently reduced to nil because of the commencement or increase; and
- (d) the person is not qualified for a pensioner concession card under section 1061ZEA;

paragraph (1)(e) has effect as if the reference to 26 weeks after the commencement or increase were a reference to 26 weeks after the day on which the balance is reduced to nil.

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(1C) If the person:

- (a) is qualified for a pensioner concession card under section 1061ZEA until a particular day; and
- (b) has, immediately before becoming so qualified, been receiving a social security benefit referred to in paragraph 1061ZA(2)(b) for a continuous period of less than 39 weeks;

the person is taken, for the purpose of the reference in paragraph (1)(a) to a continuous period of not less than 39 weeks, to be receiving the benefit until the particular day.

- (2) Subject to subsection (4), subsection (1) (including that subsection as modified by subsection (1A), (1B) or (1C)) only applies to a person while the person is in Australia and is an Australian resident.

Note: If the person is temporarily absent from Australia, the person continues to be qualified for a pensioner concession card for a maximum period of up to 13 weeks (see Division 4).

- (3) If, during the period of 26 weeks referred to in subsection (1) (including that subsection as modified by subsection (1A) or (1B)), a person receives an instalment of a social security pension or a mature age allowance under Part 2.12B that relates to one or more days within that period, the person is not qualified under this section for a pensioner concession card on the day or days in relation to which the person receives the instalment.

- (4) In spite of subsection (2), subsection (1) (including that subsection as modified by subsection (1A), (1B) or (1C)) applies to a person when:

- (a) the person is in Australia; and
- (b) the social security benefit that the person had been receiving was received solely because of the operation of the scheduled international agreement between Australia and New Zealand.

Note: If the person is temporarily absent from Australia, the person continues to be qualified for a pensioner concession card for a maximum period of up to 13 weeks (see Division 4).



**1061ZD Extended qualification rule: former recipient of disability support pension**

- (1) Subject to subsections (5), (5A) and (7), a person is qualified for a pensioner concession card for the period of 52 weeks starting on the day on which this section begins to apply to the person.
- (2) Subject to subsection (4), this section applies to a person if:
  - (a) the person has been receiving a disability support pension; and
  - (b) the person commences employment that requires him or her to work for at least 15 hours per week; and
  - (c) because of the commencement of that employment, the person ceases (having regard, where appropriate, to the operation of section 1073J) to be qualified for the disability support pension.
- (3) Subject to subsection (4), this section applies to a person if:
  - (a) the person has been receiving a disability support pension; and
  - (b) because there is an increase in the person's ordinary income from employment (and after any working credit balance of the person is reduced to nil), the disability support pension ceases to be payable to the person.
- (4) Subject to subsection (6), this section only applies to a person while the person is in Australia and is an Australian resident.

Note: If the person is temporarily absent from Australia, the person continues to be qualified for a pensioner concession card for a maximum period of up to 13 weeks (see Division 4).
- (5) If, during the period of 52 weeks referred to in subsection (1), a person receives an instalment of a social security pension or a mature age allowance under Part 2.12B that relates to one or more days within that period, the person is not qualified under this section for a pensioner concession card on the day or days in relation to which the person receives the instalment.
- (5A) If, during the period of 52 weeks referred to in subsection (1), a person receives an instalment of:
  - (a) a youth allowance while subsection 1061ZA(2A) applies to the person; or

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(b) a newstart allowance while subsection 1061ZA(2B) applies to the person; or

(c) a benefit PP (partnered) while subsection 1061ZA(2D) applies to the person;

that relates to one or more days within that period, the person is not qualified under this section for a pensioner concession card on the day or days in relation to which the person receives the instalment.

(6) In spite of subsection (4), this section applies to a person in relation to a day if:

(a) the person is in Australia on that day; and

(b) the disability support pension that the person had been receiving was received solely because of the operation of the scheduled international agreement between Australia and New Zealand.

Note: If the person is temporarily absent from Australia, the person continues to be qualified for a pensioner concession card for a maximum period of up to 13 weeks (see Division 4).

(7) This section does not apply in any case where a person is qualified for a pensioner concession card under section 1061ZEB.

**1061ZE Extended qualification rule: former recipient of wife pension**

(1) Subject to subsection (5), a person is qualified for a pensioner concession card for the period of 52 weeks starting on the day on which this section begins to apply to the person.

(2) Subject to subsection (4), this section applies to a person if:

(a) the person has been receiving a wife pension; and

(b) the person's partner has been receiving disability support pension; and

(c) the person's partner commences employment that requires him to work for at least 30 hours per week; and

(d) the person ceases to be qualified for wife pension because the partner of the person:

(i) commences that employment; and

(ii) as a result, ceases (having regard, where appropriate, to the operation of section 1073J) to be qualified for the disability support pension.

- (3) Subject to subsection (4), this section applies to a person if:
- (a) the person has been receiving a wife pension; and
  - (b) the person's partner has been receiving disability support pension; and
  - (c) the wife pension ceases to be payable to the person because there is an increase in the ordinary income of the person's partner from employment (and after any working credit balance of the partner is reduced to nil).
- (4) Subject to subsection (6), this section only applies to a person while the person is in Australia and is an Australian resident.
- Note: If the person is temporarily absent from Australia, the person continues to be qualified for a pensioner concession card for a maximum period of up to 13 weeks (see Division 4).
- (5) If, during the period of 52 weeks referred to in subsection (1), a person receives an instalment of a social security pension or a mature age allowance under Part 2.12B that relates to one or more days within that period, the person is not qualified under this section for a pensioner concession card on the day or days in relation to which the person receives the instalment.
- (6) In spite of subsection (4), this section applies to a person in relation to a day if:
- (a) the person is in Australia on that day; and
  - (b) the wife pension that the person had been receiving was received solely because of the operation of the scheduled international agreement between Australia and New Zealand.
- Note: If the person is temporarily absent from Australia, the person continues to be qualified for a pensioner concession card for a maximum period of up to 13 weeks (see Division 4).

**1061ZEA Further extended qualification rule: loss of payment because of employment income**

- (1) This section does not apply in any case where a person is qualified for a pensioner concession card under section 1061ZD, 1061ZE or 1061ZEB.
- (2) If:
- (a) a person is receiving a social security pension or a social security benefit; and

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- (b) the person's rate of payment of the pension or benefit is worked out with regard to the income test module of a rate calculator in Chapter 3; and
- (c) the person has not reached pension age; and
- (d) the person is qualified for a pensioner concession card; and
- (e) the person or the person's partner earns, derives or receives, or is taken to earn, derive or receive, employment income; and
- (f) a payment mentioned in subsection 1061ZA(1) ceases to be payable to the person or the person ceases to receive a payment mentioned in subsection 1061ZA(2), (2A), (2B) or (2D):
  - (i) if paragraph (e) applies to the person—because of the employment income of the person (either alone or in combination with any other ordinary income earned, derived or received, or taken to have been earned, derived or received, by the person) (and after any working credit balance of the person is reduced to nil); or
  - (ii) if paragraph (e) applies to the partner—because of the employment income of the partner (either alone or in combination with any other ordinary income earned, derived or received, or taken to have been earned, derived or received, by the partner) (and after any working credit balance or student income bank balance of the partner is reduced to nil); and
- (g) but for the employment income, or the combined income, referred to in paragraph (f), the person would have been, or would have continued to be, qualified for a pensioner concession card:
  - (i) under subsection 1061ZA(1)—because the payment referred to in that subsection would have continued to be payable to the person; or
  - (ii) under subsection 1061ZA(2), (2A), (2B) or (2D)—because the person would have continued to receive the payment referred to in that subsection; and
- (ga) the person:
  - (i) in the case of a woman to whom wife pension ceases to be payable because of the employment income, or the combined income, referred to in subparagraph (f)(ii)—

continues, but for that employment income or combined income, to be qualified for wife pension; and

- (ii) in the case of a person to whom pension PP (single) ceases to be payable, or who ceases to receive benefit PP (partnered)—continues, but for the requirement to have at least one PP child, to be qualified for that pension or benefit; and
- (iia) in the case of a person who is a principal carer of a child and who ceases to receive youth allowance—continues, but for the fact that one or both of paragraphs 540(1)(a) and (c) no longer apply to the person, to be qualified for youth allowance; and
- (iib) in the case of a person who is a principal carer of a child and who ceases to receive newstart allowance—continues, but for the fact that one or more of paragraphs 593(1)(a) to (f) no longer apply to the person, to be qualified for newstart allowance; and
- (iii) in any other case—continues to be qualified for the payment referred to in section 1061ZA;

the person is qualified for a pensioner concession card until:

- (h) 12 weeks after the end of the instalment period in which the payment ceases to be payable to the person or the person ceases to receive the payment, as the case requires; or
- (i) the day the person reaches pension age; or
- (j) the day the person would cease to be qualified for a pensioner concession card as mentioned in paragraph (g) for a reason other than the employment income, or the combined income, referred to in paragraph (f); or
- (k) the day the person ceases to be qualified as mentioned in paragraph (ga);

whichever happens first.

Note: For *principal carer* see subsections 5(15) to (24). See also subsection (2A) of this section.

- (2A) If a person is the principal carer of a child who dies, the person is taken, for the purposes of subparagraphs (2)(ga)(iia) and (iib), to continue to be the principal carer of the child during the period of 14 weeks that starts on the day of the child's death.
- (3) Subject to subsection (5), subsection (2) only applies to a person while the person is in Australia and is an Australian resident.

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Note: If the person is temporarily absent from Australia, the person continues to be qualified for a pensioner concession card for a maximum period of up to 13 weeks (see Division 4).

- (4) If, during the period of 12 weeks referred to in subsection (2), a person receives an instalment of social security pension or a mature age allowance under Part 2.12B that relates to one or more days within that period, the person is not qualified under this section for a pensioner concession card on the day or the days in relation to which the person receives the instalment.
- (5) In spite of subsection (3), subsection (2) applies to a person when:
- (a) the person is in Australia; and
  - (b) the social security pension or the social security benefit that the person had been receiving was received solely because of the operation of the scheduled international agreement between Australia and New Zealand.

Note: If the person is temporarily absent from Australia, the person continues to be qualified for a pensioner concession card for a maximum period of up to 13 weeks (see Division 4).

**1061ZEB Extended qualification rule: persons with a partial capacity to work**

- (1) A person is qualified for a pensioner concession card for the period of 52 weeks starting on the day on which this section begins to apply to the person.
- (2) Subject to subsection (3), this section applies to a person if:
- (a) either:
    - (i) the person has been receiving a youth allowance while the person was not undertaking full-time study and was not a new apprentice; or
    - (ii) the person has been receiving a newstart allowance; or
    - (iii) the person has been receiving parenting payment; and
  - (b) because there is an increase in the person's ordinary income from employment (and after any working credit balance of the person is reduced to nil), the youth allowance, newstart allowance or parenting payment ceases to be payable to the person; and

- (c) at the time of the cessation the person:
  - (i) was qualified for a pensioner concession card under subsection 1061ZA(2A), (2B) or (2D); or
  - (ii) was qualified for a pensioner concession card under subsection 1061ZA(1) because a pension PP (single) was payable to the person; and
- (d) at the time of the cessation the person had a partial capacity to work.

Note 1: For *undertaking full-time study* see section 541B.

Note 2: For *new apprentice* see subsection 23(1).

Note 3: For *partial capacity to work* see section 16B.

- (3) This section only applies to a person while the person is in Australia and is an Australian resident.

Note: If the person is temporarily absent from Australia, the person continues to be qualified for a pensioner concession card for a maximum period of up to 13 weeks (see Division 4).

- (4) If, during the period of 52 weeks referred to in subsection (1), a person receives an instalment of:
  - (a) a youth allowance while subsection 1061ZA(2A) applies to the person; or
  - (b) a newstart allowance while subsection 1061ZA(2B) applies to the person; or
  - (ba) a benefit PP (partnered) while subsection 1061ZA(2D) applies to the person; or
  - (c) a social security pension;that relates to one or more days within that period, the person is not qualified under this section for a pensioner concession card on the day or days in relation to which the person receives the instalment.

### **1061ZEC Effect of compliance penalty periods**

- (1) For the purposes of this Division, a social security payment is taken to be payable to a person if the payment would be payable to the person except for the application of a compliance penalty period.

Note: For *compliance penalty period* see subsection 23(1).

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- (2) For the purposes of this Division, a social security payment is taken to have ceased to be payable to a person if:
- (a) the payment would have ceased to be payable to the person if the payment had been payable to the person; and
  - (b) the payment was not payable to the person because of the application of a compliance penalty period.

Note: For *compliance penalty period* see subsection 23(1).

- (3) In this section:
- (a) a reference to a social security payment being payable to a person includes, in appropriate cases, a reference to the person receiving the payment; and
  - (b) a reference to a social security payment ceasing to be payable to a person includes, in appropriate cases, a reference to the person ceasing to receive the payment.

**1061ZF Issue of pensioner concession card**

The Secretary must issue a pensioner concession card to a person who is qualified for such a card.



## Division 2—Qualification for seniors health card

### 1061ZG Qualification rules

- (1) Subject to subsection (2), a person is qualified for a seniors health card on a day if, on that day, the person:
- (a) has reached pension age; and
  - (b) is an Australian resident or a special category visa holder residing in Australia; and
  - (c) is in Australia; and
  - (d) satisfies the seniors health card taxable income test; and
  - (e) is not receiving a social security pension or benefit; and
  - (f) is not receiving a service pension or an income support supplement; and
  - (g) is not subject to a newly arrived resident's waiting period.

Note: If the person is temporarily absent from Australia, the person continues to be qualified for a seniors health card for a maximum period of up to 13 weeks (see Division 4).

- (2) A person is not qualified for a seniors health card on a day if:
- (a) the person has failed to comply with section 1061ZJ in respect of the reference tax year; or
  - (aa) on that day the person is the holder of a seniors health card under the Veterans' Entitlements Act; or
  - (b) where the person made an estimate of taxable income for the reference tax year and the estimate was accepted—the person did not give the Secretary a copy of a notice of assessment of the person's taxable income for that tax year within 52 weeks after the end of that tax year.

Note: If a person is qualified for a seniors health card, the Secretary must not make a determination granting a claim for the card in certain circumstances if the Secretary makes a request under subsection 75(2) or (3) of the Administration Act of the person (about providing tax file numbers): see subsections 76(1A) and 77(1A) of that Act.

- (3) In subsection (2):

**reference tax year** has the same meaning as in the Seniors Health Card Taxable Income Test Calculator.

**1061ZH Newly arrived resident's waiting period**

- (1) Subject to subsections (2), (3) and (4), for the purposes of this Division, a person who:
  - (a) has entered Australia on or after 1 February 2000; and
  - (b) has not been both:
    - (i) an Australian resident or a special category visa holder residing in Australia; and
    - (ii) in Australia;for a period of, or for periods totalling, 104 weeks;  
is subject to a newly arrived resident's waiting period.
- (2) Subsection (1) does not apply to a person who has a qualifying residence exemption for a seniors health card.
- (3) Subsection (1) does not apply to a person who has already served a newly arrived resident's waiting period.
- (4) Subsection (1) does not apply to a person if:
  - (a) the person is a New Zealand citizen; and
  - (b) the person was an Australian resident on 1 February 2000.
- (5) If, before 1 February 2000, a person had begun to serve a waiting period under subsection 1061ZA(2) of this Act as then in force but had not served the whole of the waiting period:
  - (a) the person is subject to a waiting period under this section; and
  - (b) this Division applies in relation to the person as if:
    - (i) this Division had been in force when the person began to serve the waiting period; and
    - (ii) the part of the waiting period served before 1 February 2000 had been served under this section.

**1061ZI Duration of newly arrived resident's waiting period**

If a person is subject to a newly arrived resident's waiting period, the period:

- (a) starts on the day on which the person first became an Australian resident or a special category visa holder residing in Australia; and
- (b) ends when the person has been both:

- (i) an Australian resident or a special category visa holder residing in Australia; and
  - (ii) in Australia;
- for a period of, or for periods totalling, 104 weeks.

**1061ZJ Giving of copy of assessment of taxable income to Secretary**

If a person who is the holder of a seniors health card receives a notice of assessment or amended assessment of his or her taxable income for a particular tax year, the person must, if requested by the Secretary to do so, give a copy of the notice to the Secretary within 13 weeks after the day on which the notice was received.

## Division 3—Qualification for health care card

### Subdivision A—Qualification for automatic issue health care card

#### 1061ZK Qualification: general rules

- (1) A person is qualified for a health care card on a day if this section applies to the person on that day.
- (2) This section applies to a child on a day if a person is qualified under Part 2.19 for carer allowance for the child on that day.
- (3) This section applies to a disabled child on a day if all of the following paragraphs are satisfied on that day:
  - (a) the child is or would, but for subsection 5(3), be a dependent child of another person (the *carer*);
  - (b) because of his or her disability, the child needs, on a daily basis, a level of care and attention that is substantially more than that needed by a person of the same age who does not have a physical, intellectual or psychiatric disability;
  - (c) the child receives care and attention on a daily basis from:
    - (i) if the carer is a member of a couple—the carer, the carer’s partner or the carer together with another person (whether or not the carer’s partner); or
    - (ii) if the carer is not a member of a couple—the carer or the carer together with another person;
  - (d) that care and attention is received in a private home that is the residence of the child and the carer.
- (4) This section applies to a person on a day if, on that day:
  - (a) the person is entitled, under the Family Assistance Administration Act, to be paid family tax benefit by instalment; and
  - (b) the person’s daily rate of family tax benefit consists of, or includes, a Part A rate calculated under Part 2 or 3A of Schedule 1 to the Family Assistance Act; and
  - (c) the person’s income excess for the purposes of Division 2C of Part 5 of Schedule 1 to the Family Assistance Act is nil.

- (4A) This section applies to a person on a day if, on that day:
- (a) the person has a regular care child; and
  - (b) the person is not entitled, under the Family Assistance Administration Act, to be paid family tax benefit by instalment; and
  - (c) the person's income excess for the purposes of Division 2C of Part 5 of Schedule 1 to the Family Assistance Act is nil.
- (5) This section applies to a person (other than a person who is qualified for a pensioner concession card because of subsection 1061ZA(2A), (2B) or (2D)) on a day if:
- (a) on that day the person is receiving a youth allowance (except because of section 540AA) and is not undertaking full-time study; or
  - (b) the person is receiving, on that day:
    - (i) a newstart allowance; or
    - (ii) a partner allowance; or
    - (iii) a widow allowance; or
    - (iv) benefit PP (partnered); or
    - (v) sickness allowance; or
    - (vi) special benefit.
- (6) This section applies to a person on a day if, on that day, the person is receiving exceptional circumstances relief payment or farm help income support under the *Farm Household Support Act 1992*.
- (7) This section applies to a person on a day if, on that day, the person is receiving mobility allowance.
- (8) In this section:
- disabled child*** means a person aged under 16 who:
- (a) has a physical, intellectual or psychiatric disability; and
  - (b) is likely to suffer from that disability permanently or for an extended period.
- (9) This section has effect subject to section 1061ZN.

**1061ZM Qualification for health care card: employment-affected person**

- (1) Subject to subsection (2), if:
- (a) either:
    - (i) a person who is an employment-affected person or the partner of such a person commences employment; or
    - (ii) there is an increase in the ordinary income from employment of a person who is an employment-affected person or the partner of such a person; and
  - (b) because either:
    - (i) the person or the partner commences employment; or
    - (ii) there is an increase in the ordinary income of the person or the partner from employment;the person ceases to be an employment-affected person; and
  - (c) the person has been a qualified recipient for a continuous period of 52 weeks immediately before so ceasing;
- the person is qualified for a health care card for the period of 26 weeks starting on the day on which the person ceases to be an employment-affected person.
- (1A) If the person is qualified for a health care card under section 1061ZMA until a day (the *particular day*), subsection (1) has effect as if the reference to 26 weeks starting on the day on which the person ceases to be an employment-affected person were a reference to 26 weeks starting on the particular day.
- (1B) If the person:
- (a) was an employment-affected person because of receiving pension PP (single); and
  - (b) is qualified for a pensioner concession card under section 1061ZEA until a day (the *particular day*);
- subsection (1) has effect as if the reference to the period of 26 weeks starting on the day on which the person ceases to be an employment-affected person were a reference to the period starting on the particular day and ending 26 weeks after the person ceases to be an employment-affected person.
- (1BA) If the person:
- (a) was an employment-affected person because of receiving youth allowance or newstart allowance; and

(b) was, on the day on which the person ceased to be an employment-affected person, the principal carer of at least one child; and

(c) is qualified for a pensioner concession card under section 1061ZEA until a day (the *particular day*);

subsection (1) has effect as if the reference to the period of 26 weeks starting on the day on which the person ceases to be an employment-affected person were a reference to the period starting on the particular day and ending 26 weeks after the person ceases to be an employment-affected person.

Note: For *principal carer* see subsections 5(15) to (24).

(1C) If the person:

(a) is qualified for a health care card under section 1061ZMA until a particular day; and

(b) has, immediately before the commencement or increase mentioned in subsection (1), been a qualified recipient because of receiving newstart allowance, sickness allowance, widow allowance, partner allowance or youth allowance, other than while undertaking full-time study or being a new apprentice, for a continuous period of less than 52 weeks;

the person is taken, for the purpose of the reference in paragraph (1)(c) to a continuous period of 52 weeks, to be receiving the allowance until the particular day.

(2) If, during the period of 26 weeks referred to in subsection (1) (including that subsection as modified by subsection (1A)) or the period provided by subsection (1B), a person receives a payment of a social security pension or benefit specified in the definition of *employment-affected person* in subsection (3) that relates to one or more days within that period, the person ceases to be qualified under this section for a health care card on the day on which the person receives the payment.

(3) In this section:

*employment-affected person* means:

(a) a person who is receiving any of the following:

(i) pension PP (single);

(ii) newstart allowance;

(iii) sickness allowance;

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- (iv) special benefit;
- (v) widow allowance;
- (vi) partner allowance; or
- (b) a person who is receiving a youth allowance but who:
  - (i) is not undertaking full-time study; and
  - (ii) is not a new apprentice.

*qualified recipient* means:

- (a) a person who is receiving:
    - (i) a social security pension, other than a pension under Part 2.16; or
    - (ii) a social security benefit, other than a youth allowance or austudy payment; or
  - (b) a person who is receiving a youth allowance but who:
    - (i) is not undertaking full-time study; and
    - (ii) is not a new apprentice.
- (4) This section has effect subject to section 1061ZN.

**1061ZMA Further extended qualification rule: loss of payment because of employment income**

- (2) If:
- (a) a person is receiving a social security pension or a social security benefit; and
  - (b) the person's rate of payment of the pension or benefit is worked out with regard to the income test module of a rate calculator in Chapter 3; and
  - (c) the person has not reached pension age; and
  - (d) the person is qualified for a health care card; and
  - (e) the person or the person's partner earns, derives or receives, or is taken to earn, derive or receive, employment income; and
  - (f) the person ceases to receive a payment mentioned in subsection 1061ZK(5):
    - (i) if paragraph (e) applies to the person—because of the employment income of the person (either alone or in combination with any other ordinary income earned, derived or received, or taken to have been earned, derived or received, by the person) (and after any



working credit balance of the person is reduced to nil);  
or

- (ii) if paragraph (e) applies to the partner—because of the employment income of the partner (either alone or in combination with any other ordinary income earned, derived or received, or taken to have been earned, derived or received, by the partner) (and after any working credit balance or student income bank balance of the partner is reduced to nil); and
- (g) but for the employment income, or the combined income, referred to in paragraph (f), the person would have been, or would have continued to be, qualified for a health care card under section 1061ZK because the person would have continued to receive the payment mentioned in subsection 1061ZK(5); and
- (ga) the person:
  - (i) in the case of a person who ceases to receive benefit PP (partnered)—continues, but for the requirement to have at least one PP child, to be qualified for that benefit; and
  - (ii) in any other case—continues to be qualified for the payment referred to in subsection 1061ZK(5);

the person is qualified for a health care card until:

- (h) 12 weeks after the end of the instalment period in which the person ceases to receive the pension or benefit; or
  - (i) the day the person reaches pension age; or
  - (j) the day the person would cease to be qualified for a health care card as mentioned in paragraph (g) for a reason other than the employment income, or the combined income, referred to in paragraph (f); or
  - (k) the day the person ceases to be qualified as mentioned in paragraph (ga);
- whichever happens first.
- (3) If, during the period of 12 weeks referred to in subsection (2), a person receives a payment of a social security pension or benefit specified in the definition of *employment-affected person* in subsection (4) that relates to one or more days within that period, the person ceases to be qualified under this section for a health care card on the day on which the person receives the payment.

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(4) In this section:

*employment-affected person* has the same meaning as it has for the purposes of section 1061ZM.

(5) This section has effect subject to section 1061ZN.

**1061ZN Residence requirement**

(1) Sections 1061ZK, 1061ZM and 1061ZMA only have effect in relation to a person on a day on which:

(a) the person is in Australia and is:

(i) an Australian resident or a special category visa holder residing in Australia; or

(ii) the holder of a visa included in a class of visas determined by the Minister for the purposes of this paragraph; or

(iii) a person declared by the Minister to be a person to whom this subparagraph applies; or

(b) the person:

(i) is in Australia; and

(ii) is receiving a social security pension or benefit solely because of the operation of the scheduled international agreement between Australia and New Zealand.

Note: If the person is temporarily absent from Australia, the person continues to be qualified for a health care card for a maximum period of up to 13 weeks (see Division 4).

(2) The Minister may, by legislative instrument, declare that a person who:

(a) is included in a specified class of persons; and

(b) is, or has been, in Australia in specified circumstances; is a person to whom subparagraph (1)(a)(iii) applies.

(3) The circumstances that may be specified in a declaration under subsection (2) include circumstances that existed or exist at any time before or after the making of the declaration.

**1061ZNA Effect of compliance penalty periods**

(1) For the purposes of this Subdivision, a person is taken to have been receiving, or to be receiving, a social security pension or social

security benefit if the person would have been receiving, or would be receiving, the pension or benefit except for the application of a compliance penalty period.

Note: For *compliance penalty period* see subsection 23(1).

- (2) For the purposes of this Subdivision, a person is taken to have ceased to receive a social security pension or social security benefit if:
- (a) the person would have ceased to receive the pension or benefit if the person had been receiving it; and
  - (b) the person had not been receiving the pension or benefit because of the application of a compliance penalty period.

Note: For *compliance penalty period* see subsection 23(1).

### **Subdivision B—Qualification for health care cards for which claim required**

#### **1061ZO Qualification**

- (1) A person is qualified for a health care card on a day if this section applies to the person on that day.
- (2) This section applies to a person on a day if, on that day:
- (a) in the case of a child—the person is:
    - (i) an Australian resident or a special category visa holder residing in Australia; or
    - (ii) living in Australia with an Australian resident or with a special category visa holder residing in Australia; and
  - (b) in the case of a person other than a child—the person is:
    - (i) an Australian resident or a special category visa holder residing in Australia; and
    - (ii) in Australia; and
  - (c) the person is neither an FTB child, nor a regular care child, aged over 16 years; and
  - (d) the person satisfies the health care card income test.

Note: If the person is temporarily absent from Australia, the person continues to be qualified for a health care card for a maximum period of up to 13 weeks (see Division 4).

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- (3) This section applies to a person on a day if, on that day, the person:
- (a) is an Australian resident or a special category visa holder residing in Australia; and
  - (b) is in Australia; and
  - (c) is an FTB child, or a regular care child, who is 16 or more, but not yet 19, years of age; and
  - (d) is not undertaking secondary studies; and
  - (e) satisfies the health care card income test.

Note: If the person is temporarily absent from Australia, the person continues to be qualified for a health care card for a maximum period of up to 13 weeks (see Division 4).

- (4) This section applies to a person on a day if, on that day, the person:
- (a) is an Australian resident or a special category visa holder residing in Australia; and
  - (b) is in Australia; and
  - (c) is an FTB child, or a regular care child, who is 19 or more years of age; and
  - (d) satisfies the health care card income test.

Note: If the person is temporarily absent from Australia, the person continues to be qualified for a health care card for a maximum period of up to 13 weeks (see Division 4).

- (5) This section applies to a child on a day if:
- (a) on that day, the child is in foster care; and
  - (b) the child is living in Australia with an Australian resident or with a special category visa holder residing in Australia.

- (7) The Minister may, by legislative instrument, declare that a person who:
- (a) is included in a specified class of persons; and
  - (b) is, or has been, in Australia in specified circumstances;
- is a person to whom this section applies.

- (8) The circumstances that may be specified in a declaration under subsection (7) include circumstances that existed or exist at any time before or after the making of the declaration.

- (9) This section applies to a person on a day if:
- (a) on that day, the person:
    - (i) is aged at least 16 and has not turned 26; and

- (ii) is a full-time student; and
- (iii) is an Australian resident; and
- (iv) is living in Australia; and
- (b) on the day before the person turned 16:
  - (i) another person was qualified under Part 2.19 for carer allowance for the person; or
  - (ii) subsection 1061ZK(3) applied to the person; and
- (c) on the day before the person turned 16, the person was qualified for, and held, a health care card.

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

### **1061ZP Person subject to newly arrived resident's waiting period**

This Subdivision does not apply to a person while the person is subject to a newly arrived resident's waiting period.

### **1061ZQ Newly arrived resident's waiting period**

- (1) Subject to subsection (2), for the purposes of this Division, a person who has entered Australia on or after 1 February 2000 is subject to a newly arrived resident's waiting period.
- (2) Subsection (1) does not apply to a person who:
  - (a) has a qualifying residence exemption for a health care card; or
  - (b) has already served a newly arrived resident's waiting period; or
  - (c) has been an Australian resident, or a special category visa holder residing in Australia, and in Australia for a period of, or for periods totalling, 104 weeks; or
  - (d) holds, or formerly held, a visa included in a class of visas determined by the Minister for the purposes of subsection 739A(6); or
  - (e) is not subject to a newly arrived resident's waiting period under subsection 739A(1) or (2) because of the operation of subsection 739A(7).

**1061ZR Duration of newly arrived resident's waiting period**

If a person is subject to a newly arrived resident's waiting period, the period:

- (a) starts on the day on which the person first became an Australian resident or a special category visa holder residing in Australia; and
- (b) ends when the person has been both:
  - (i) an Australian resident or a special category visa holder residing in Australia; and
  - (ii) in Australia;for a period of, or for periods totalling, 104 weeks.

**Subdivision C—Miscellaneous provisions relating to health care cards**

**1061ZS Issue of health care cards**

The Secretary must issue an automatic issue health care card to a person who is qualified for such a card.

**1061ZT Certain dependants not qualified for health care card**

- (1) Subject to subsection (2), a person is not qualified for a health care card in respect of any day on which the person:
  - (a) is a dependant of any person; or
  - (b) is wholly or substantially dependent on:
    - (i) a resident of; or
    - (ii) a corporation carrying on business in; or
    - (iii) the government of; a country other than Australia.
- (2) Subsection (1) does not apply to:
  - (a) a person who is the partner of another person; or
  - (b) a person who is qualified for a health care card under subsection 1061ZK(2) or (3) or subsection 1061ZO(3), (4), (5) or (9).

## **Division 4—Non-cancellation of concession cards for temporary overseas absences**

### **1061ZUA Persons to whom Division applies**

- (1) This Division applies to a person if:
  - (a) the person leaves Australia temporarily (see subsection (2)); and
  - (b) the person is continuously absent from Australia during a period (the *period of absence*) beginning on the day the person leaves Australia; and
  - (c) any of the following applies:
    - (i) immediately before the period of absence commences, the person was the holder of a concession card;
    - (ii) during the period of absence, the person's claim for a seniors health card or a health care card is granted under the Administration Act;
    - (iii) during the period of absence, the person is issued an automatic issue card.
- (2) For the purposes of paragraph (1)(a), in determining if an absence is temporary, regard must be had to:
  - (a) the purpose of the absence; and
  - (b) the intended duration of the absence.

### **1061ZUB Non-cancellation of concession cards for temporary overseas absences**

- (1) Throughout the person's maximum non-cancellation period (see subsection (3)), the person's qualification for the concession card is not affected merely by the absence.
- (2) Throughout so much (if any) of the period of absence as occurs after the end of the period of 13 weeks beginning on the day the person leaves Australia, the person is not qualified for the concession card.
- (3) For the purposes of subsection (1), a person's *maximum non-cancellation period* is the shorter of the following periods:
  - (a) the person's period of absence;

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- (b) the period of 13 weeks beginning on the day the person leaves Australia.

**1061ZUC Extension cards**

- (1) This section applies if:
  - (a) a person qualifies for a concession card under the following section (the *qualification section*):
    - (i) section 1061ZB, 1061ZC, 1061ZD, 1061ZE, 1061ZEB or 1061ZM;
    - (ii) section 1061ZEA as a result of the operation of subsection 1061ZEA(2A); and
  - (b) as a result of subsection 1061ZUB(1), the person's qualification for the card is not affected by a period of absence; and
  - (c) at the end of the period of 13 weeks mentioned in subsection 1061ZUB(2), the card is cancelled; and
  - (d) after that time, the person returns to Australia; and
  - (e) the person qualifies again for the card under the qualification section (and in the case of section 1061ZEA, the person qualifies as a result of the operation of subsection 1061ZEA(2A)); and
  - (f) the period for which the person was qualified under the qualification section has not yet ended.
- (2) To avoid doubt, the person continues to qualify for the concession card until the end of the period for which the person was qualified under the qualification section (unless the person ceases to be qualified for the card at an earlier time).



## **Chapter 2B—Student Financial Supplement Scheme**

### **Part 2B.1—Establishment of scheme**

#### **Division 1—Preliminary**

##### **1061ZW Object of this Chapter**

The object of this Chapter is to establish a Student Financial Supplement Scheme enabling certain tertiary students to obtain a repayable financial supplement by entering into a contract for that purpose with a financial corporation that participates in the scheme.

##### **1061ZX Outline of the scheme**

- (1) The scheme provides for the reduction of the rate of youth allowance, austudy payment or pensioner education supplement payable to a person who obtains financial supplement.
- (2) The scheme contains provisions under which the amount of supplement that the person is eligible to obtain depends on the total rate of youth allowance, austudy payment or pensioner education supplement that the person chooses to receive. Those provisions allow the person to choose to repay some or all of the youth allowance, austudy payment or pensioner education supplement, or to receive a lower rate of payment of such an allowance, payment or supplement, in order to receive a higher amount of financial supplement.
- (3) The scheme provides that the person is not liable to pay interest to the financial corporation in respect of financial supplement received by the person, but provides for payment by the Commonwealth, without cost to the person, to the financial corporation of a subsidy that includes an amount in lieu of interest.
- (4) The scheme provides for the amount of the financial supplement that has to be repaid under a contract to be indexed on 1 June in the year next following the year in which the contract is entered into, and on 1 June in each later year. The amount by which the

supplement is increased by indexation is owed by the person to the Commonwealth and not to the financial corporation.

- (5) Under the scheme, the person is entitled, but not required, to make early repayments in respect of the supplement during the period of the contract. The scheme provides for a discount for any repayments made before the end of that period.
- (6) The scheme provides that, if financial supplement paid to a person is not repaid in full before the end of the period of the contract, the obligation to repay the outstanding amount of the supplement is transferred to the Commonwealth, and the indexed amount is repayable by the person to the Commonwealth through the taxation system when the person's income reaches a specified level.

## **Division 2—Eligibility to obtain financial supplement**

### **1061ZY Eligibility to obtain financial supplement**

- (1) Subject to subsection (2), a person is eligible to obtain financial supplement for a period (an *eligibility period*) that is a year or a part of a year if:
  - (a) the person is undertaking, or intending to undertake, a tertiary course at an educational institution throughout the period; and
  - (b) the person does not undertake a course of primary or secondary education at any time during the period; and
  - (c) the person is a category 1 student or a category 2 student in respect of the period; and
  - (d) the amount of financial supplement that the person is eligible to obtain under Division 6 for the year is not less than the minimum amount of financial supplement.
- (2) A person is not eligible to obtain financial supplement for an eligibility period that begins on or after the day on which the *Student Assistance Legislation Amendment Act 2006* receives the Royal Assent.

### **1061ZZ Category 1 student**

- (1) A person is a *category 1 student* in respect of a period if, throughout the period, one or more of the payments referred to in this section are payable to the person.
- (2) The payment may be youth allowance if:
  - (a) the person's youth allowance general rate is more than zero; and
  - (b) the youth allowance is payable because the person is undertaking full-time study.
- (3) The payment may be austudy payment if the person's austudy payment general rate is more than zero.
- (4) The payment may be pensioner education supplement.

**1061ZZA Category 2 student**

- (1) A person is a *category 2 student* in respect of a period if:
  - (a) the person is not a category 1 student in respect of the period; and
  - (b) throughout the period the person is undertaking full-time study; and
  - (c) throughout the period youth allowance at the youth allowance general rate is not payable to the person only because of the operation of one or more of the following:
    - (i) Module F (the parental income test) of the Youth Allowance Rate Calculator in section 1067G;
    - (ii) Module G (the family actual means test) of that Calculator;
    - (iii) Subdivision AB (the youth allowance assets test) of Division 2 of Part 2.11; and
  - (d) if subparagraph (c)(i) applies—the person’s combined parental income for the appropriate tax year under Submodule 4 of Module F is throughout the period less than the person’s modified parental income free area; and
  - (e) if subparagraph (c)(ii) applies—the actual means of the person’s family under Module G is throughout the period less than the person’s modified parental income free area; and
  - (ea) if subparagraph (c)(iii) applies—the allowance would have been payable if the reference to 50% in subsection 547G(2) were instead a reference to 75%; and
  - (f) neither section 1061ZZAA nor 1061ZZAB applies to the person.
- (2) For the purposes of paragraphs (1)(d) and (e), the person’s *modified parental income free area* is the indexed amount that would be the person’s parental income free area under point 1067G-F22 if the amount of \$23,400 that was specified in paragraph 1067G-F22(a) when that paragraph was enacted had been \$54,949.

**1061ZZAA Failure by person to comply with request to provide person's tax file number**

- (1) This section applies to a person if:
  - (a) the Secretary has requested the person under section 1061ZZBP to:
    - (i) give the Secretary a written statement of the person's tax file number; or
    - (ii) apply to the Commissioner of Taxation for a tax file number and give the Secretary a written statement of the person's tax file number after it has been issued; and
  - (b) at the end of 28 days after the request is made, the person has neither:
    - (i) given the Secretary a written statement of the person's tax file number; nor
    - (ii) given the Secretary an employment declaration and satisfied either subsection (2) or (3).
- (2) The person satisfies this subsection if:
  - (a) the employment declaration states that the person:
    - (i) has a tax file number but does not know what it is; and
    - (ii) has asked the Commissioner of Taxation to inform him or her of the number; and
  - (b) the person has given the Secretary a document authorising the Commissioner to tell the Secretary:
    - (i) whether the person has a tax file number; and
    - (ii) if the person has a tax file number—the tax file number; and
  - (c) the Commissioner has not told the Secretary that the person has no tax file number.
- (3) The person satisfies this subsection if:
  - (a) the employment declaration states that the person has applied for a tax file number; and
  - (b) the person has given the Secretary a document authorising the Commissioner of Taxation to tell the Secretary:
    - (i) if a tax file number is issued to the person—the tax file number; or
    - (ii) if the application is refused—that the application has been refused; or

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- (iii) if the application is withdrawn—that the application has been withdrawn; and
- (c) the Commissioner has not told the Secretary that the person has not applied for a tax file number; and
- (d) the Commissioner has not told the Secretary that an application by the person for a tax file number has been refused; and
- (e) the application for a tax file number has not been withdrawn.

**1061ZZAB Failure by person to comply with request to provide the tax file number of a parent of the person**

- (1) Subject to subsection (4), this section applies to a person if:
  - (a) the person is requested under section 1061ZZBQ to give the Secretary a written statement of the tax file number of a parent of the person; and
  - (b) at the end of 28 days after the request is made the person has neither:
    - (i) given the Secretary a written statement of the parent's tax file number; nor
    - (ii) given the Secretary a declaration by the parent in a form approved by the Secretary and satisfied either subsection (2) or (3).
- (2) The person satisfies this subsection if:
  - (a) the parent's declaration states that the parent:
    - (i) has a tax file number but does not know what it is; and
    - (ii) has asked the Commissioner of Taxation to inform him or her of his or her tax file number; and
  - (b) the person has given the Secretary a document signed by the parent that authorises the Commissioner to tell the Secretary:
    - (i) whether the parent has a tax file number; and
    - (ii) if the parent has a tax file number—the tax file number; and
  - (c) the Commissioner has not told the Secretary that the parent has no tax file number.
- (3) The person satisfies this subsection if:
  - (a) the parent's declaration states that he or she has applied for a tax file number; and

- (b) the person has given the Secretary a document signed by the parent that authorises the Commissioner of Taxation to tell the Secretary:
    - (i) if a tax file number is issued to the parent—the tax file number; or
    - (ii) if the application is refused—that the application has been refused; or
    - (iii) if the application is withdrawn—that the application has been withdrawn; and
  - (c) the Commissioner has not told the Secretary that an application by the parent for a tax file number has been refused; and
  - (d) the application for a tax file number has not been withdrawn.
- (4) The Secretary may waive the request for a statement of the parent's tax file number if the Secretary is satisfied that:
- (a) the person does not know the parent's tax file number; and
  - (b) the person can obtain none of the following from the parent:
    - (i) the parent's tax file number;
    - (ii) a statement of the parent's tax file number;
    - (iii) a declaration by the parent under subparagraph (1)(b)(ii).

## Division 3—Decision and notice about eligibility to obtain financial supplement

### 1061ZZAC Secretary's decision

- (1) If a person claims youth allowance, a study payment or pensioner education supplement, the Secretary must decide whether the person is eligible to obtain financial supplement for a period that is the whole or a part of a year.
- (2) Also, if:
  - (a) the Secretary has made a decision in a year that a person is eligible to obtain financial supplement for a period that is the whole or a part of that year; and
  - (b) the person is likely to:
    - (i) continue to undertake the person's tertiary course in the next year; or
    - (ii) undertake a new tertiary course in the next year when enrolments in the course are next accepted;the Secretary must make a new decision, as early as practicable in the next year, about whether the person is eligible to obtain financial supplement for a period that is the whole or a part of that next year.
- (3) If the Secretary decides that the person is eligible to obtain financial supplement for a period, the Secretary must give the person a notice (a *supplement entitlement notice*):
  - (a) stating that the person is eligible to obtain financial supplement for that period; and
  - (b) specifying the minimum and maximum amounts of financial supplement that the person can obtain.
- (4) This section does not apply in relation to a period that is the whole or part of a year if the year begins on or after the day on which the *Student Assistance Legislation Amendment Act 2006* receives the Royal Assent.



**1061ZZAD Revocation or variation of decision after review**

- (1) This section applies if:
  - (a) the Secretary has made a decision under section 1061ZZAC in relation to a person; and
  - (b) the Secretary has given the person a supplement entitlement notice under subsection 1061ZZAC(3) as a result of the decision; and
  - (c) after the notice was given the decision is reviewed under Chapter 6; and
  - (d) as a result of the review, the decision is revoked or varied.
- (2) The revocation or variation revokes the supplement entitlement notice and the notice ceases to be valid for the purpose of applying for financial supplement.
- (3) The Secretary must give the person a statement telling the person:
  - (a) that the decision has been revoked, or has been varied in a manner set out in the statement, as the case may be; and
  - (b) that the supplement entitlement notice has been revoked and ceases to be valid for the purpose of applying for financial supplement.
- (4) If the decision is varied and, after the variation, the person is or becomes eligible to obtain financial supplement for a period, the Secretary must give the person a notice (also a *supplement entitlement notice*):
  - (a) stating that the person is eligible to obtain financial supplement for that period; and
  - (b) specifying the minimum and maximum amounts of financial supplement that the person can obtain.

**1061ZZAE Transitional**

- (1) This section applies if, immediately before the commencement of this Chapter, a person held a notice given under Part 3 of the Social Security Student Financial Supplement Scheme 1998.
- (2) If the person had not used the notice before that commencement in an application for financial supplement under that Scheme, the person is eligible to obtain financial supplement under this Chapter for the period to which the notice related.

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**Part 2B.1** Establishment of scheme

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- (3) The notice is taken to be a *supplement entitlement notice* given under this Division.

## **Division 4—Agreements between Commonwealth and financial corporations**

### **1061ZZAF Applications for financial supplement**

A person may apply for financial supplement only to a participating corporation.

### **1061ZZAG Agreements**

- (1) The Minister may enter into an agreement, on behalf of the Commonwealth, with a financial corporation for the payment by the corporation after the commencement of this Chapter, in the year in which this Chapter commences or a later year, of financial supplement.
- (2) An agreement referred to in subsection (1) does not have any effect unless it:
  - (a) is expressed to have effect subject to this Chapter; and
  - (b) provides for the payment by the Commonwealth to the financial corporation, in respect of each amount of financial supplement paid by the corporation to a person that has not been repaid, or in respect of which the rights of the corporation have been transferred to the Commonwealth, of a subsidy of such amount or amounts, or at such rate or rates, and in respect of such period or periods, as are stated in the agreement.
- (3) If such an agreement is entered into, the corporation is a *participating corporation* for the purposes of this Chapter in respect of the year, or each year, concerned.
- (4) The parties to an agreement referred to in subsection (2) (including such an agreement as previously amended under this subsection) may enter into an agreement amending or terminating it.
- (5) The amendment or termination of an agreement does not affect any financial supplement contract that was in force immediately before the amendment or termination took effect.

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- (6) If an agreement was in force, immediately before the commencement of this Chapter, between the Commonwealth and a financial corporation under section 1.7 of the Social Security Student Financial Supplement Scheme 1998, the amendment or termination of the agreement, and the commencement of an agreement under this section, do not affect any financial supplement contract made under that Scheme.
- (7) An agreement between the Commonwealth and a financial corporation is not subject to any stamp duty or other tax under a law of a State or Territory.
- (8) An officer may disclose to a participating corporation any information about a person that is relevant to the exercise or performance by the corporation of any of its rights or obligations in respect of the person under this Chapter.
- (9) A participating corporation may disclose to an officer any information about a person that is relevant to the exercise or performance of any rights, powers or obligations conferred or imposed on an officer or on the Commonwealth in respect of the person under this Chapter.

## **Division 5—Application for financial supplement**

### **1061ZZAH When to apply**

A person who is eligible to obtain financial supplement for an eligibility period may apply to a participating corporation, during that period, for financial supplement.

### **1061ZZAI How to apply**

A person may only apply for financial supplement by:

- (a) completing an application form approved by the Secretary; and
- (b) lodging it, with the person's supplement entitlement notice, at an office of a participating corporation.

### **1061ZZAJ Changing an application**

A person who has applied for financial supplement for the eligibility period may, at any time, lodge another application form approved by the Secretary at an office of the participating corporation, telling the corporation that the person requires for that period:

- (a) a specified lesser amount of financial supplement, which must be:
  - (i) not less than the total amount of financial supplement already paid to the person for the period; and
  - (ii) not less than the minimum amount of financial supplement in respect of the person for the year that constitutes, or includes, the eligibility period; or
- (b) a specified greater amount of financial supplement, which must be not more than the maximum amount of financial supplement in respect of the person for the period.

## Division 6—Amount of financial supplement

### Subdivision A—Category 1 students

#### 1061ZZAK Maximum amount of financial supplement

- (1) If the relevant eligibility period of a person who is a category 1 student is a year, the *maximum amount of financial supplement* for the period in respect of the person is the lesser of:
  - (a) \$7,000; and
  - (b) the amount worked out using the following Method statement.

*Method statement*

Step 1. Work out the total amount of youth allowance general rate, austudy payment general rate or pensioner education supplement that would be payable to the person for the eligibility period if the person did not apply for financial supplement.

Step 2. Work out the total amount of advance payment deductions (if any) to be made from the person's rate of youth allowance or austudy payment, under Part 3.16A, in the eligibility period.

Subtract that total amount from the total amount worked out under Step 1.

Step 3. Work out the total amount of overpayments (if any) for the eligibility period.

Subtract that total amount from the total amount worked out under Step 2.

Step 4. Work out the total amount of deductions (if any) that are to be paid to the Commissioner of Taxation, under section 1359, for the eligibility period.

Note: Section 1359 provides for the deduction and payment to the Commissioner of Taxation of amounts of tax that a person is required to pay.

Subtract that total amount from the total amount worked out under Step 3.

Step 5. Work out the total amount (if any) of youth allowance general rate, austudy payment general rate or pensioner education supplement that has already been paid for the eligibility period.

Ignore any amount that has already been dealt with under Step 2.

Ignore any amount that is taken never to have been paid because of section 1061ZZAW.

Subtract the total amount from the amount worked out under Step 4.

Step 6. Multiply the amount left by 2.

Step 7. If the result is not a number of whole dollars, round the result up to the next number of whole dollars.

- (2) If the relevant eligibility period of a person who is a category 1 student is less than a year, the *maximum amount of financial supplement* for the period in respect of the person is the lesser of:
- (a) the amount worked out using the Method statement in subsection (1); and
  - (b) the amount worked out using the following Method statement.

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*Method statement*

Step 1. Multiply \$7,000 by the number of days in the eligibility period.

Step 2. Divide the result by the number of days in the year in which the eligibility period is included.

If the result is not a number of whole dollars, round the result up to the next number of whole dollars.

- (3) This section has effect subject to Subdivision C.

**Subdivision B—Category 2 students**

**1061ZZAL Change in eligibility period**

- (1) The maximum amount of financial supplement in respect of a person who is a category 2 student depends on the person's eligibility period.
- (2) If the person is undertaking, or intends to undertake, a short course, it is necessary to work out whether the person's eligibility period is to be changed under section 1061ZZAM.
- (3) If the person is neither undertaking, nor intending to undertake, a short course, it is necessary to work out whether the person's eligibility period is to be changed under section 1061ZZAN.

**1061ZZAM Eligibility period (short course)**

- (1) This section explains whether, and how, to change the eligibility period for a person who is undertaking, or intending to undertake, a short course.
- (2) Subject to subsection (3), the eligibility period that would have applied to the person apart from this subsection (the *eligibility period otherwise applicable*) must be changed if the person applied for financial supplement more than 4 weeks after being given a supplement entitlement notice.



- (3) The Secretary may decide that the eligibility period otherwise applicable is not to be changed if the Secretary is satisfied that:
  - (a) the person took reasonable steps to apply within 4 weeks after being given a supplement entitlement notice; and
  - (b) circumstances beyond the person's control prevented the person from applying within the 4 weeks; and
  - (c) the person applied as soon as practicable after the circumstances stopped.
- (4) If the eligibility period otherwise applicable is to be changed, the person's new eligibility period is the period:
  - (a) starting on the later of:
    - (i) the day when the person applied; and
    - (ii) the start of the eligibility period otherwise applicable; and
  - (b) ending when the eligibility period otherwise applicable would have ended.

**1061ZZAN Eligibility period (no short course)**

- (1) This section explains whether, and how, to change the eligibility period for a person who is neither undertaking, nor intending to undertake, a short course.
- (2) Subject to subsection (3), the eligibility period that would have applied to the person apart from this subsection (the *eligibility period otherwise applicable*) must be changed if the person applied for financial supplement after 31 May in the year in which the period is included.
- (3) The Secretary may decide that the period is not to be changed if the Secretary is satisfied that:
  - (a) the person took reasonable steps to apply within 4 weeks after being given a supplement entitlement notice; and
  - (b) circumstances beyond the person's control prevented the person from applying within the 4 weeks; and
  - (c) the person applied as soon as practicable after the circumstances stopped.

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- (4) If the eligibility period otherwise applicable is to be changed and the person applied before 1 October in the year, the person's new eligibility period is the period:
- (a) starting on the later of 1 July and the start of the eligibility period otherwise applicable; and
  - (b) ending when the eligibility period otherwise applicable would have ended.
- (5) If the eligibility period otherwise applicable is to be changed and the person applied on or after 1 October in the year, the person's new eligibility period is the period:
- (a) starting on the later of:
    - (i) the day when the person applied; and
    - (ii) the start of the eligibility period otherwise applicable; and
  - (b) ending when the eligibility period otherwise applicable would have ended.

**1061ZZAO Maximum amount of financial supplement**

- (1) If:
- (a) the person is undertaking, or intending to undertake, a short course; or
  - (b) the person is neither undertaking, nor intending to undertake, a short course and the person's eligibility period is less than a year;

the *maximum amount of financial supplement* for the eligibility period in respect of the person is worked out using the following Method statement.

*Method statement*

Step 1. Multiply \$2,000 by the number of days in the eligibility period.

Step 2. Divide the result by the number of days in the year that includes the eligibility period.

If the result is not a number of whole dollars, round the result up to the next number of whole dollars.

- (2) If the person is neither undertaking, nor intending to undertake, a short course, and the person's eligibility period is a year, the *maximum amount of financial supplement* for the eligibility period in respect of the person is \$2,000.
- (3) This section has effect subject to Subdivision C.

### **Subdivision C—Provisions applying to both category 1 students and category 2 students**

#### **1061ZZAP Minimum amount of financial supplement**

The *minimum amount of financial supplement* in respect of a person is \$500.

#### **1061ZZAQ Person doing more than one course**

- (1) This section applies if a person undertakes, or intends to undertake, more than one tertiary course in the same period in a year.
- (2) The *maximum amount of financial supplement* for the period in respect of the person is the maximum amount worked out under this Division for the period in respect of the person for one of the courses.

## **Division 7—Trading in youth allowance, austudy payment or pensioner education supplement for financial supplement**

### **1061ZZAR Purpose of Division**

- (1) Financial supplement will be paid to a person who is eligible to obtain financial supplement at a rate determined by the person's financial supplement contract.
- (2) If youth allowance, austudy payment or pensioner education supplement is payable to the person, the payment of financial supplement will reduce the rate at which the youth allowance, austudy payment or pensioner education supplement is payable.
- (3) The reduction of the rate of payment is a *trade in*.
- (4) The Division explains how trade in works.

### **1061ZZAS Reduction of youth allowance, austudy payment or pensioner education supplement for financial supplement**

- (1) The period for which a payment of financial supplement will be made is an *instalment period*.
- (2) Subject to subsection (3), the rate of youth allowance, austudy payment or pensioner education supplement that would have been payable to the person in an instalment period is reduced by an amount equal to one-half of the amount of financial supplement to be paid during the instalment period under the financial supplement contract.
- (3) If, apart from this subsection, the amount by which the rate would be reduced is an amount including one-half of a cent, the amount is to be increased by one-half of a cent.
- (4) This section has effect despite any other provision of this Act.

## **Division 8—Obtaining or increasing financial supplement by trading back youth allowance, austudy payment or pensioner education supplement**

### **Subdivision A—Purpose of Division**

#### **1061ZZAT Purpose of Division**

- (1) If a person who is eligible to obtain financial supplement wishes to obtain financial supplement, the person may repay an amount of youth allowance, austudy payment or pensioner education supplement.
- (2) If a person who is obtaining financial supplement wishes to increase the amount of financial supplement, the person may repay an amount of youth allowance, austudy payment or pensioner education supplement.
- (3) The repayment of the youth allowance, austudy payment or pensioner education supplement is a *trade back*.
- (4) This Division explains how trade back works.
- (5) This Division also sets out the effect of trade back.
- (6) This Division does not affect the operation of Chapter 5.

### **Subdivision B—When a person may repay youth allowance, austudy payment or pensioner education supplement to obtain or increase financial supplement**

#### **1061ZZAU Election to repay youth allowance, austudy payment or pensioner education supplement**

- (1) A person to whom youth allowance, austudy payment or pensioner education supplement was payable during a payment period may elect to repay to the Commonwealth some or all of the youth allowance, austudy payment or pensioner education supplement.
- (2) The person must make the election using the form approved under paragraph 1061ZZAI(a).

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**Part 2B.1** Establishment of scheme

**Division 8** Obtaining or increasing financial supplement by trading back youth allowance, austudy payment or pensioner education supplement

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- (3) A *payment period* is:
- (a) the part of a year starting on 1 January and ending on 31 May; or
  - (b) the part of a year starting on 1 July and ending on 30 September.

**1061ZZAV Timing of repayment**

- (1) A person who is not obtaining financial supplement may, in order to obtain financial supplement, repay to the Commonwealth youth allowance, austudy payment or pensioner education supplement:
- (a) while the person is eligible to obtain financial supplement; and
  - (b) during the payment period.
- (2) However, if the person does not repay youth allowance, austudy payment or pensioner education supplement during the payment period, the person may, in order to obtain financial supplement, repay youth allowance, austudy payment or pensioner education supplement after that period if the Secretary is satisfied that:
- (a) the person took reasonable steps to repay it during the payment period; and
  - (b) circumstances beyond the person's control prevented the person from repaying it during the period; and
  - (c) the person repays it as soon as practicable after the end of the payment period and during the year that includes the payment period.
- (3) A person who is obtaining financial supplement may, in order to increase the amount of financial supplement, repay to the Commonwealth youth allowance, austudy payment or pensioner education supplement:
- (a) while the person is eligible to obtain financial supplement; and
  - (b) during the year in which the youth allowance, austudy payment or pensioner education supplement was paid.

### **Subdivision C—Repayment**

#### **1061ZZAW Effect of repayment**

If an amount is repaid by a person under this Division, the amount is taken never to have been paid to the person.

## Division 9—Financial supplement contracts

### Subdivision A—Making a contract for payment of financial supplement

#### 1061ZZAX Making a contract between person and participating corporation

- (1) If a person applies to a participating corporation under Division 5 for the payment of financial supplement for an eligibility period, the corporation must, as soon as practicable, accept the application by written notice to the person.
- (2) A contract is made when the corporation accepts the application by giving the notice referred to in subsection (1). The contract is a *financial supplement contract*.
- (3) A financial supplement contract is a contract for the making of a loan by the corporation to the person under this Division without any requirement on the person to pay interest.
- (4) The contract must be for the amount of financial supplement for which the person from time to time asks, but the amount must not be less than the minimum amount, or more than the maximum amount, of financial supplement that the person is, from time to time, eligible to obtain under Division 6.
- (5) The contract must also allow, but not compel, the person to make repayments during the contract period under Division 13 of the amount outstanding at any time under the contract.
- (6) The contract must set out the *termination date* for the contract. The date to be set out is the last day of the contract period.
- (7) The *contract period* is the period beginning on the day when the contract is made and ending on 31 May in the year in which the last of the periods referred to in paragraph 1061ZZCH(1)(b) ends.



### **1061ZZAY Existing contracts**

- (1) A contract is also a *financial supplement contract* if it is a contract referred to in section 8.2 of the Social Security Student Financial Supplement Scheme 1998.
- (2) The *termination date* for the contract is the date set out in the contract.
- (3) The *contract period* is the period beginning on the day when the contract was made and ending on 31 May in the year in which the last of the periods referred to in paragraph 1061ZZCH(1)(b) ended or ends.

### **1061ZZAZ Liability for money paid under a financial supplement contract**

- (1) A participating corporation may rely on advice given by the Commonwealth to decide:
  - (a) whether it must pay financial supplement to a person; and
  - (b) the amount of financial supplement.
- (2) An amount paid to a person by a corporation, relying on advice given by the Commonwealth, is taken to be financial supplement paid under the contract even though the person may not have been eligible to obtain the amount.
- (3) Subsection (2) does not affect the operation of Part 2B.2.

### **1061ZZBA Validity of financial supplement contract**

- (1) The validity of a financial supplement contract with a person is not affected merely because the person was not eligible to obtain financial supplement when the contract was made, or ceases at a later time to be eligible.
- (2) The contract is not invalid, and is not voidable, under any other law (whether written or unwritten) in force in a State or Territory.
- (3) The contract is not invalid merely because the person is an undischarged bankrupt when the contract is made.
- (4) Bankruptcy does not release a person from his or her obligations under the contract.

### **Subdivision B—When a financial supplement contract can be cancelled**

#### **1061ZZBB Person has right to cancel financial supplement contract**

- (1) A person who makes a financial supplement contract has a right to cancel the contract.
- (2) Subsection (1) does not affect the operation of section 1061ZZCU.
- (3) If, under section 1061ZZBF, the person waives his or her right to cancel the contract, sections 1061ZZBC to 1061ZZBE do not apply to the contract.

#### **1061ZZBC How to cancel financial supplement contract**

- (1) To exercise the right to cancel the contract, the person must give to the participating corporation written notice that the person is withdrawing his or her application for financial supplement
- (2) The notice must be lodged at an office of the corporation.

#### **1061ZZBD When to cancel financial supplement contract**

The person's right may be exercised within 14 days (the *cooling off period*) after the day when the contract is made under section 1061ZZAX.

#### **1061ZZBE Payments made during cooling off period**

- (1) In the cooling off period, the participating corporation must not make a payment to the person under the contract.
- (2) If the corporation makes a payment to the person under the contract within the cooling off period, the payment is taken not to be a payment of financial supplement if the person repays to the corporation an amount equal to the payment within 7 days after the date of the payment.
- (3) If the corporation makes a payment to the person under the contract after the cooling off period and the person has exercised the right to cancel the contract, the payment is taken not to be a payment of financial supplement if the person repays to the

corporation an amount equal to the payment within 7 days after the date of the payment.

**1061ZZBF Person may waive right to cancel contract**

The person may waive the right to cancel the contract.

**1061ZZBG How to waive right to cancel contract**

To waive the right to cancel the contract, the person must give to the participating corporation written notice that he or she is waiving the right to cancel the contract.

**1061ZZBH When to waive right to cancel contract**

To exercise the right of waiver, the person must give the participating corporation the notice referred to in section 1061ZZBG immediately after the contract is made under section 1061ZZAX.

**Subdivision C—Financial supplement contract exempt from certain laws and taxes**

**1061ZZBI Financial supplement contract exempt from certain laws and taxes**

- (1) A law of a State or Territory about giving credit or other financial assistance does not apply to a financial supplement contract.
- (2) An application for the payment of financial supplement, a financial supplement contract, or an act or thing done or transaction entered into under such a contract, is not taxable under any law of a State or Territory.

## **Division 10—Payment of financial supplement**

### **1061ZZBJ Payment by instalments**

- (1) Financial supplement is to be paid by instalments for periods determined by the Secretary.
- (2) Instalments of financial supplement are to be paid at times determined by the Secretary.

### **1061ZZBK Rounding off**

If the amount of an instalment includes a fraction of a cent, the amount is to be rounded to the nearest whole cent (0.5 cent being rounded upwards).

### **1061ZZBL To whom instalments must be paid**

- (1) If a person who is a category 1 student is trading in, or trading back, youth allowance, financial supplement must be paid to the person to whom instalments of youth allowance are or were being paid under section 559D or 559E.
- (2) If a person who is a category 1 student is trading in, or trading back, austudy payment, financial supplement must be paid to the person to whom instalments of austudy payment are or were being paid under section 584D.
- (3) If a person who is a category 1 student is trading in, or trading back, pensioner education supplement, financial supplement must be paid to the person to whom instalments of pensioner education supplement are or were being paid under section 1061PZK.
- (4) If a person who is a category 2 student obtains financial supplement, it must be paid to the person to whom instalments of youth allowance would be paid under section 559D or 559E if youth allowance were payable to the student.
- (5) This section does not affect the liability of a person to make repayments under Part 2B.3.

**1061ZZBM Payment into bank account**

- (1) If an amount of financial supplement is paid to a person, it must be paid to the credit of a bank account nominated and maintained by the person.
- (2) The bank account may be maintained by the person alone or jointly or in common with someone else.

## Division 11—Protection of financial supplement

### 1061ZZBN Financial supplement to be absolutely inalienable

Financial supplement is absolutely inalienable, whether by way of, or in consequence of, sale, assignment, charge, execution, bankruptcy or otherwise.

### 1061ZZBO Effect of garnishee or attachment order

- (1) This section applies if:
  - (a) a person has an account with a financial institution (whether the account is maintained by the person alone, or jointly or in common with someone else); and
  - (b) a court order in the nature of a garnishee order comes into force in respect of the account; and
  - (c) an amount of financial supplement has been paid (whether on the person's own behalf or not) to the credit of the account in the 4 weeks immediately before the court order came into force.
- (2) The court order does not apply to the saved amount (if any) in the account.
- (3) The *saved amount* is the amount worked out using the following Method statement.

*Method statement*

Step 1. Work out the amount of financial supplement paid to the credit of the account in the 4 weeks.

Step 2. Subtract from that amount the total amount withdrawn from the account in the 4 weeks.

The amount left is the saved amount.

## **Division 12—Obligations of category 2 students**

### **Subdivision A—Statements about tax file numbers**

#### **1061ZZBP Secretary may request person obtaining financial supplement to give statement of person's tax file number**

*Request for tax file number*

- (1) The Secretary may request, but not compel, a person who is a category 2 student and is obtaining financial supplement:
  - (a) if the person has a tax file number—to give the Secretary a written statement of the person's tax file number; or
  - (b) if the person does not have a tax file number:
    - (i) to apply to the Commissioner of Taxation for a tax file number; and
    - (ii) to give the Secretary a written statement of the person's tax file number after the Commissioner has issued it.

*Failure to satisfy request*

- (2) A person is not eligible to obtain financial supplement if, at the end of 28 days after a request is made:
  - (a) the person has failed to satisfy the request; and
  - (b) the Secretary has not exempted the person from having to satisfy the request.

#### **1061ZZBQ Secretary may request person obtaining financial supplement to give statement of parent's tax file number**

*Request for parent's tax file number*

- (1) If:
  - (a) a person (the *recipient*) who is a category 2 student is obtaining financial supplement; and
  - (b) the income of a parent of the recipient is required to be taken into account for the purpose of working out the recipient's eligibility for financial supplement; and
  - (c) the parent is in Australia;

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the Secretary may request, but not compel, the recipient to give the Secretary a written statement of the parent's tax file number.

*Failure to satisfy request*

- (2) A recipient is not eligible to obtain financial supplement if, at the end of 28 days after the request is made:
- (a) the recipient has failed to satisfy the request; and
  - (b) the Secretary has not exempted the recipient from having to satisfy the request.
- (3) In this section:

**parent** has the same meaning as in paragraph (b) of the definition of **parent** in subsection 5(1).

Note 1: In some cases the request can be satisfied in relation to a parent by giving the Secretary a declaration by the parent about the parent's tax file number and an authority by the parent to the Commissioner of Taxation to give the Secretary certain information relevant to the parent's tax file number (see subsections 1061ZZAB(2) and (3)).

Note 2: The Secretary may waive the requirement in some cases (see subsection 1061ZZAB(4)).

**Subdivision B—Notice of events or changes in circumstances**

**1061ZZBR Secretary may give notice requiring information**

- (1) The Secretary may give a notice under this section to a person who is a category 2 student if:
- (a) financial supplement is paid to the person on the person's own behalf; or
  - (b) financial supplement is paid to someone else, on the person's behalf, under section 1061ZZBL.
- (2) The notice must require the person to tell the Department if:
- (a) a stated event or change of circumstances happens; or
  - (b) the person becomes aware that a stated event or change of circumstances is likely to happen.



**1061ZZBS Event or change relevant to payment**

An event or change of circumstances is not to be stated in a notice given under section 1061ZZBR unless the event or change of circumstances might affect the payment of financial supplement.

**1061ZZBT Formalities related to notice**

Subject to section 1061ZZBU, a notice under section 1061ZZBR:

- (a) must be in writing; and
- (b) may be given personally or by post; and
- (c) must state how the person is to give the information to the Department; and
- (d) must state the period in which the person is to give the information to the Department; and
- (e) must state that the notice is a *recipient notification notice* given under this Act.

**1061ZZBU Validity of notice**

A notice under section 1061ZZBR is not invalid merely because it does not comply with paragraph 1061ZZBT(c) or (e).

**1061ZZBV Period within which information to be given**

- (1) Subject to this section, the period stated under paragraph 1061ZZBT(d) must be the period of 14 days after:
  - (a) the day on which the event or change of circumstances happens; or
  - (b) the day on which the person becomes aware that the event or change of circumstances is likely to happen.
- (2) If the Secretary is satisfied that there are special circumstances related to the person to whom the notice under section 1061ZZBR is to be given, the period to be stated under paragraph 1061ZZBT(d) is such period as the Secretary directs in writing, being a period that ends not less than 15 days, and not more than 28 days, after:
  - (a) the day on which the event or change of circumstances happens; or

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- (b) the day on which the person becomes aware that the event or change of circumstances is likely to happen.
- (3) If the notice specifies an event consisting of the death of a person, the period to be stated under paragraph 1061ZZBT(d) is a period of 28 days after the day on which the event happens.
- (4) If the notice requires the person to tell the Department of a proposal by the person to leave Australia, subsection (1) does not apply to that requirement.
- (5) If the notice requires information about receipt of a compensation payment, the period stated under paragraph 1061ZZBT(d) in relation to the information must end at least 7 days after the day when the person becomes aware that he or she has received, or is to receive, a compensation payment.

**1061ZZBW Refusal or failure to comply with notice**

- (1) A person is guilty of an offence if:
  - (a) the person is required to comply with a notice; and
  - (b) the notice is a notice under section 1061ZZBR; and
  - (c) the person refuses or fails to comply with the notice; and
  - (d) the person is reckless as to the requirement.

Penalty: Imprisonment for 6 months.

- (2) Subsection (1) applies only to the extent to which the person is capable of complying with the notice.
- (3) Subsection (1) does not apply if the person has a reasonable excuse.
- (4) Strict liability applies to paragraph (1)(b).

**1061ZZBX Application overseas**

This Subdivision extends to:

- (a) acts, omissions, matters and things outside Australia whether or not in a foreign country; and
- (b) all people irrespective of their nationality or citizenship.

**Subdivision C—Notice about a matter relevant to payment of financial supplement**

**1061ZZBY Secretary may give notice requiring statement on matter**

- (1) The Secretary may give a notice under this section to a person who is a category 2 student if:
  - (a) financial supplement is paid to the person on the person's own behalf; or
  - (b) financial supplement is paid to someone else, on the person's behalf, under section 1061ZZBL.
- (2) The notice must require the person to give the Department a statement about a matter that might affect the payment of financial supplement.

**1061ZZBZ Formalities related to notice**

Subject to section 1061ZZCA, a notice under section 1061ZZBY:

- (a) must be in writing; and
- (b) may be given personally or by post; and
- (c) must state how the statement is to be given to the Department; and
- (d) must state the period within which the person is to give the statement to the Department; and
- (e) must state that the notice is a *recipient statement notice* given under this Act.

**1061ZZCA Validity of notice**

A notice under section 1061ZZBY is not invalid merely because it does not comply with paragraph 1061ZZBZ(c) or (e).

**1061ZZCB Period within which statement to be given**

The period stated under paragraph 1061ZZBZ(d) must be at least 14 days after the day on which the notice is given.

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**1061ZZCC Statement must be in approved form**

A statement given in response to a notice under section 1061ZZBY must be in writing and in accordance with a form approved by the Secretary.

**1061ZZCD Refusal or failure to comply with notice**

- (1) A person is guilty of an offence if:
- (a) the person is required to comply with a notice; and
  - (b) the notice is a notice under section 1061ZZBY; and
  - (c) the person refuses or fails to comply with the notice; and
  - (d) the person is reckless as to the requirement.

Penalty: Imprisonment for 6 months.

- (2) Subsection (1) applies only to the extent to which the person is capable of complying with the notice.
- (3) Subsection (1) does not apply if the person has a reasonable excuse.
- (4) Strict liability applies to paragraph (1)(b).

**1061ZZCE Application overseas**

This Subdivision extends to:

- (a) acts, omissions, matters and things outside Australia whether or not in a foreign country; and
- (b) all people irrespective of their nationality or citizenship.

## **Division 13—Early repayments of financial supplement**

### **Subdivision A—Calculation and notification of amount outstanding under financial supplement contract**

#### **1061ZZCF Application of Subdivision**

This Subdivision has effect subject to section 1061ZZEE.

#### **1061ZZCG Calculation of amount outstanding under financial supplement contract before 1 June in the year after the year in which the contract was made**

- (1) The *amount outstanding* under a financial supplement contract at a time (the *test time*) before 1 June in the year immediately after the year in which the contract was made is the amount worked out using the formula:

Principal sum – (Amounts repaid + Discounts)

- (2) For the purpose of applying the formula in subsection (1) at the test time:

*amounts repaid* means the total of the amounts repaid under the contract before the test time.

*discounts* means the total of the discounts to which the person became entitled before the test time.

*principal sum* means the principal sum at the test time.

#### **1061ZZCH Calculation of amount outstanding under financial supplement contract at a later time**

- (1) Subject to subsections 1061ZZCN(6) and (7), the *amount outstanding* under a financial supplement contract at a time (the *test time*) during a period of 12 months (the *test period*) referred to in either of the following paragraphs:

- (a) the period of 12 months beginning on 1 June in the year immediately after the year in which the contract was made;  
or

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(b) any of the following 3 periods of 12 months;  
is the amount worked out using the formula:

$$\left( \begin{array}{c} \text{Previous amount} \\ \text{outstanding} \end{array} \times \begin{array}{c} \text{Indexation} \\ \text{factor} \end{array} \right) - \left( \begin{array}{c} \text{Amounts} \\ \text{repaid} \end{array} + \text{Discounts} \right)$$

(2) For the purpose of applying the formula in subsection (1) at the test time:

**amounts repaid** means the total of the amounts repaid under the contract during the test period but before the test time.

**discounts** means the total of the discounts to which the person became entitled during the test period but before the test time.

**indexation factor** means the number worked out using the method statement in subsection (3).

**previous amount outstanding** means the amount outstanding under the contract immediately before the beginning of the test period.

(3) The Method statement for the purposes of the definition of **indexation factor** in subsection (2) is as follows:

*Method statement*

Step 1. Work out the total of the index number for the March quarter in the later reference period and the index numbers for the 3 immediately preceding quarters.

Step 2. Work out the total of the index number for the March quarter in the earlier reference period and the index numbers for the 3 immediately preceding quarters.

Step 3. Divide the total worked out under Step 1 by the total worked out under Step 2.

Step 4. Round the result to 3 decimal places.

- (4) In subsection (3):

*earlier reference period* means the period of 12 months immediately before the later reference period.

*later reference period* means the period of 12 months immediately before the test period.

- (5) If an indexation factor worked out under subsection (3) would end with a number greater than 4, were it to be worked out to 4 decimal places, the indexation factor is increased by 0.001.
- (6) If, apart from this subsection, an amount worked out under this section would be an amount of dollars and cents, disregard the amount of the cents.

### **1061ZZCI Notification of amount outstanding**

- (1) The Secretary must give to a person who is a party to a financial supplement contract with a participating corporation a notice of an amount outstanding under the contract that exists on:
- (a) 1 June in the year following the year in which the contract was made; or
  - (b) 1 June in any of the following 3 years.
- (2) The notice must state the amount outstanding under the contract at that date.

### **Subdivision B—Person’s rights to make repayments during contract period**

#### **1061ZZCJ Person not required to, but may, make repayments during contract period**

- (1) Subject to sections 1061ZZDE, 1061ZZDL, 1061ZZDV and 1061ZZEE, a person who is a party to a financial supplement contract with a participating corporation is not required during the contract period to make a repayment of the amount outstanding under the contract.
- (2) Non-payment by the person during the contract period of the amount outstanding is not a default under the contract for the

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purposes of any law of the Commonwealth, of a State or of a Territory.

- (3) However, the person may, at any time during the contract period, make a repayment (an *amount repaid*) to the corporation of the whole or a part of the amount outstanding at that time.
- (4) Subsection (3) has effect subject to section 1061ZZCL.

**1061ZZCK What happens if person makes an excess repayment**

If a person purports to make a repayment to a participating corporation under a financial supplement contract by paying an amount under subsection 1061ZZCJ(3) that exceeds the amount that, having regard to the discount to which the person is entitled, would be needed to pay in full the amount outstanding, the excess:

- (a) is taken not to be a repayment; and
- (b) must be repaid by the corporation to the person.

**1061ZZCL Amount repaid not to include certain amounts**

If the person makes a repayment under subsection 1061ZZCJ(3), the amount repaid is to be disregarded for the purposes of this Division:

- (a) to the extent to which it relates to wrongly paid supplement; or
- (b) if it is repaid after the giving of a notice under section 1061ZZCZ, 1061ZZDG, 1061ZZDQ or 1061ZZEA.

**1061ZZCM How to work out discount**

- (1) If, during the contract period, a person makes a repayment of an amount that is less than the amount outstanding, the person is entitled, in respect of the repayment, to a *discount* of an amount worked out using the formula:

$$\left( \text{Amount repaid} \times \frac{100}{85} \right) - \text{Amount repaid}$$

- (2) If, during the contract period, a person makes a repayment of an amount that is equal to the amount outstanding, the person is entitled, in respect of the repayment, to a *discount* of an amount worked out using the formula:



$$\left( \text{Amount repaid} \times \frac{115}{100} \right) - \text{Amount repaid}$$

- (3) If, apart from this subsection, an amount worked out under subsection (1) or (2) would be an amount of dollars and cents, the amount is to be rounded to the nearest number of whole dollars (rounding 50 cents upwards).

### **1061ZZCN Effect of making a repayment during contract period**

#### *Application*

- (1) This section applies if a person, at a time (the **repayment time**) during the contract period of a financial supplement contract made by the person with a participating corporation, makes a repayment (the **relevant repayment**) in respect of the amount outstanding under the contract. For the purposes of this section, it is first necessary to work out whether an indexation amount is taken to have existed in respect of the contract immediately before the repayment time.

#### *When an indexation amount is taken to have existed*

- (2) For the purposes of this section, an **indexation amount** is taken to have existed in respect of the contract immediately before the repayment time if:
- (a) an amount outstanding under the contract existed immediately before the repayment time under section 1061ZZCH; and
  - (b) that amount outstanding exceeds the amount worked out using the formula:

$$\text{Principal sum} - \left( \text{Amounts repaid} + \begin{array}{l} \text{Amounts previously} \\ \text{notionally repaid} \end{array} \right)$$

#### *Meaning of expressions used in formula*

- (3) For the purpose of applying the formula in subsection (2) immediately before the repayment time:

**amounts repaid** means the total of the amounts repaid under the contract before the repayment time.

**amounts previously notionally repaid** means the total of the amounts notionally repaid under the contract before the repayment time because of the application of this section in respect of previous repayments.

**principal sum** means the principal sum immediately before the repayment time.

*What constitutes indexation amount*

- (4) The indexation amount referred to in subsection (2) is the amount of the excess referred to in paragraph (2)(b).

*If no indexation amount*

- (5) If no indexation amount existed in respect of the contract immediately before the repayment time, the person is taken to have repaid to the corporation at the repayment time an amount (an **amount notionally repaid**) equal to the discount to which the person is entitled in respect of the relevant repayment.

*If discount does not exceed indexation amount*

- (6) If:
- (a) an indexation amount existed in respect of the contract immediately before the repayment time; and
  - (b) the discount to which the person is entitled in respect of the relevant repayment is equal to or less than the indexation amount;
- the amount outstanding under the contract is taken to be reduced by the discount.

*If discount exceeds indexation amount*

- (7) If:
- (a) an indexation amount existed in respect of the contract immediately before the repayment time; and
  - (b) the discount to which the person is entitled in respect of the relevant repayment exceeds the indexation amount;
- the following paragraphs have effect:

- (c) the amount outstanding under the contract is taken to be reduced by the indexation amount;
- (d) the person is taken to have repaid to the corporation at the repayment time an amount (an *amount notionally repaid*) equal to the excess.

*Commonwealth to pay corporation amounts notionally repaid*

- (8) The Commonwealth must pay to the corporation an amount equal to any amount notionally repaid.

### **1061ZZCO Rights and liabilities of participating corporation if repayment made**

- (1) This section applies if, immediately after a repayment is made under a financial supplement contract made by a participating corporation, the total of the amounts repaid and the amounts notionally repaid is equal to or exceeds the principal sum.
- (2) The corporation's rights under the contract are, by this subsection, transferred to the Commonwealth immediately after the repayment is made.
- (3) If the total of the amounts repaid and the amounts notionally repaid exceeds the principal sum, the corporation must pay the excess to the Commonwealth.

### **Subdivision C—What happens at the end of the contract period**

#### **1061ZZCP Corporation's rights at end of contract period**

- (1) This section applies if, at the end of the contract period of a financial supplement contract made by a participating corporation, the corporation's rights under the contract have not previously been transferred to the Commonwealth.
- (2) The corporation's rights under the contract are, by this subsection, transferred to the Commonwealth at the end of the contract period.
- (3) If the principal sum exceeds the total of the amounts repaid and the amounts notionally repaid, the Commonwealth must pay the excess to the corporation.

**1061ZZCQ Termination notice**

- (1) As soon as practicable after the termination date of a financial supplement contract made by a person with a participating corporation, the Secretary must arrange for written notice (the *termination notice*) to be given to the person if such a notice has not already been given under the Social Security Student Financial Supplement Scheme 1998 or the *Student Assistance Act 1973* as in force at a time before 1 July 1998.
- (2) The termination notice must:
  - (a) state that, at the end of the contract period, the person no longer owes a debt to the corporation under the contract and will not receive a discount for repayments made after that time; and
  - (b) state that, on a date referred to in the notice, being 1 June immediately following the termination date, the person incurred or will incur an FS debt or FS debts to the Commonwealth; and
  - (c) specify the amount of that debt or the amounts of those debts; and
  - (d) state that the person is entitled at any time to make repayments in respect of that debt or those debts and that so much of that debt or those debts as is not voluntarily repaid by the person will be recovered through the taxation system.

**1061ZZCR Secretary may give notice correcting information in previous notice**

If, after a notice has been given to a person under this Division or under the corresponding provision of the Social Security Student Financial Supplement Scheme 1998 or of the *Student Assistance Act 1973* as in force at a time before 1 July 1998 (including a notice previously given under this section or under a provision of that Scheme or Act corresponding to this section), the Secretary is satisfied that significant information in the notice was not, or is no longer, correct, the Secretary must arrange for a further written notice to be given to the person setting out the correct information.

### **1061ZZCS Person may request notice to be corrected**

- (1) If a person considers that a notice given to the person under this Division or under the corresponding provision of the Social Security Student Financial Supplement Scheme 1998 or of the *Student Assistance Act 1973* as in force at a time before 1 July 1998, was not, or is no longer, correct in a significant respect, the person may, by writing, request the Secretary to correct the notice.
- (2) The person must make the request within 14 days after the date when the notice was received by the person or within such further period as the Secretary allows.
- (3) A request must set out the information that is considered to be incorrect and the grounds on which the person considers the information to be incorrect.
- (4) If a request is received by the Secretary, the Secretary must arrange, as soon as practicable, for it to be considered and for written notice of the decision on the request to be given to the person.

### **1061ZZCT Effect of notices and requests**

- (1) A notice to a person under this Division or under the corresponding provision of the Social Security Student Financial Supplement Scheme 1998 or of the *Student Assistance Act 1973* as in force at a time before 1 July 1998, is intended only to give information to the person and an FS debt of the person is not affected by a failure to give a notice or by any incorrect statement or information in a notice given under this Division or that corresponding provision.
- (2) The making by a person of a request for a notice to be corrected does not affect an FS debt of the person.

**Chapter 2B** Student Financial Supplement Scheme

**Part 2B.2** Payments of financial supplement under scheme to stop in certain circumstances

**Division 1** Payments to stop at request of recipient

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**Part 2B.2—Payments of financial supplement under scheme to stop in certain circumstances**

**Division 1—Payments to stop at request of recipient**

**1061ZZCU Person may ask for payment to stop**

A person who is a party to a financial supplement contract with a participating corporation may, by written notice to the corporation lodged at an office of the corporation, tell the corporation that he or she does not want further payments under the contract to be made after a day stated in the notice.

**1061ZZCV Effect of notice**

- (1) If a person gives a notice referred to in section 1061ZZCU, the corporation is discharged from liability to make further payments to the person under the contract from the end of the day stated in the notice.
- (2) However, if the corporation continues to make payments to the person after that day, any amounts paid after that day or the end of 4 weeks after the day on which the notice was given to the corporation, whichever is the later:
  - (a) are taken not to be payments of financial supplement made under the contract; and
  - (b) are repayable by the person to the corporation; and
  - (c) may be recovered by the corporation as a debt due to it by the person.

## **Division 2—Payments to stop if the maximum amount of financial supplement is reduced to the amount already paid or a lesser amount**

### **Subdivision A—Notice that payments are to stop**

#### **1061ZZCW Secretary must give notice to person and corporation**

- (1) This section applies if:
  - (a) a person is a party to a financial supplement contract with a participating corporation; and
  - (b) the decision (the *original decision*) made in respect of the person under section 1061ZZAC, or under Part 3 of the Social Security Student Financial Supplement Scheme 1998, is reviewed under Chapter 6; and
  - (c) the person remains eligible to obtain financial supplement for the year or part of the year to which the contract relates; and
  - (d) because of the review, the original decision is varied so that the maximum amount (the *original amount*) of financial supplement that the person is eligible to obtain under the contract is reduced to another amount (the *revised amount*); and
  - (e) the revised amount is equal to or less than the amount of financial supplement that the person has already been paid under the contract.
- (2) The Secretary must give written notice to the person and to the corporation:
  - (a) stating:
    - (i) that this section applies to the contract; and
    - (ii) that the corporation must stop paying financial supplement to the person; and
  - (b) specifying:
    - (i) the revised amount that the person is eligible to obtain; and
    - (ii) the amount (if any) of financial supplement paid in excess of the revised amount.

**Chapter 2B** Student Financial Supplement Scheme

**Part 2B.2** Payments of financial supplement under scheme to stop in certain circumstances

**Division 2** Payments to stop if the maximum amount of financial supplement is reduced to the amount already paid or a lesser amount

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**1061ZZCX Effect of notice**

- (1) If the Secretary gives a notice under section 1061ZZCW to the person and the corporation, then, unless the decision on the review is set aside or varied after a further review under Chapter 6, the following provisions have effect.
- (2) From the time when the notice is given to the corporation, the corporation is discharged from liability to make further payments to the person under the contract.
- (3) However, if the corporation continues to make payments to the person after that time, any amounts paid after the end of 4 weeks after the day on which the notice is given to the corporation:
  - (a) are taken not to be payments of financial supplement made under the contract; and
  - (b) are repayable by the person to the corporation; and
  - (c) may be recovered by the corporation as a debt due to it by the person.

**1061ZZCY This Subdivision is subject to sections 1061ZZFS and 1061ZZFT**

This Subdivision has effect subject to sections 1061ZZFS and 1061ZZFT.

**Subdivision B—Original amount paid because person failed to notify change of circumstances**

**1061ZZCZ Secretary may give notice to person and corporation**

- (1) If the Secretary is satisfied that:
    - (a) a person who is a party to a financial supplement contract with a participating corporation was given a notice under section 1061ZZCW; and
    - (b) the person failed to tell the Secretary, in response to a notice under section 561B, 586B, 1061PZQ or 1061ZZBR, about the happening of, or about becoming aware of the likely happening of, a stated event or change of circumstances within the period prescribed for complying with the notice; and
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- (c) the person was paid the original amount after the end of that period; and
  - (d) the payment of the original amount after the end of that period resulted from the person's failure to comply with the notice referred to in paragraph (b);
- the Secretary may give to the person and the corporation a notice stating that he or she is so satisfied and telling them that this Subdivision applies in relation to them.
- (2) If the Secretary is satisfied that:
- (a) a person who is a party to a financial supplement contract with a participating corporation was given a notice under section 14.5 of the Social Security Student Financial Supplement Scheme 1998; and
  - (b) the person failed to tell the Secretary, in response to a notice under section 561B, 586B or 1061PZQ, or a notice under section 12.2 of that Scheme, about the happening of, or about becoming aware of the likely happening of, a stated event or change of circumstances within the period prescribed for complying with the notice; and
  - (c) the person was paid the original amount after the commencement of this Chapter; and
  - (d) the payment of the original amount after the commencement of this Chapter resulted from the person's failure to comply with the notice referred to in paragraph (b);
- the Secretary may give to the person and the corporation a notice stating that he or she is so satisfied and telling them that this Subdivision applies in relation to them.

**1061ZZDA Effect of notice**

If the Secretary gives a notice under section 1061ZZCZ to the person and the corporation, then, unless the decision to give the notice is set aside or varied after a review under Chapter 6, the following provisions have effect.

**Chapter 2B** Student Financial Supplement Scheme

**Part 2B.2** Payments of financial supplement under scheme to stop in certain circumstances

**Division 2** Payments to stop if the maximum amount of financial supplement is reduced to the amount already paid or a lesser amount

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**1061ZZDB Transfer of corporation's rights to Commonwealth**

- (1) On the giving of the notice to the corporation, the corporation's rights referred to in subsection (2) or (3), as the case may be, are transferred to the Commonwealth by this subsection.
- (2) If the notice was given under subsection 1061ZZCZ(1), the rights transferred are the corporation's rights under the contract that relate to payment of financial supplement during the period:
  - (a) beginning at the end of the period referred to in paragraph 1061ZZCZ(1)(b); and
  - (b) ending at the end of the period of 4 weeks referred to in subsection 1061ZZCX(3).
- (3) If the notice was given under subsection 1061ZZCZ(2), the rights transferred are the corporation's rights under the contract that relate to payment of financial supplement during the period:
  - (a) beginning at the commencement of this Chapter; and
  - (b) ending at the end of the period of 4 weeks referred to in subsection 1061ZZCX(3).
- (4) Financial supplement paid during the period referred to in subsection (2) or (3), as the case requires, is *wrongly paid supplement*.

**1061ZZDC Apportionment of financial supplement**

Repayments of financial supplement made by the person before the notice was given to the person under subsection 1061ZZCZ(1) or (2) are taken to have been made:

- (a) first, in or towards the repayment of the wrongly paid supplement; and
- (b) then, if those repayments exceed the amount of the wrongly paid supplement, in or towards the repayment of the rest of the financial supplement paid to the person under the contract.

**1061ZZDD Liability of Commonwealth to corporation**

The Commonwealth is liable to pay to the corporation the amount of any wrongly paid supplement that has not been repaid.

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**1061ZZDE Liability of person to Commonwealth**

- (1) If the notice was given to the person under subsection 1061ZZCZ(1), the person is liable to pay to the Commonwealth an amount equal to the total of:
  - (a) the amount that the Commonwealth is liable to pay to the corporation under section 1061ZZDD; and
  - (b) the interest subsidy for the period referred to in subsection 1061ZZDB(2).
- (2) If the notice was given to the person under subsection 1061ZZCZ(2), the person is liable to pay to the Commonwealth an amount equal to the total of:
  - (a) the amount that the Commonwealth is liable to pay to the corporation under section 1061ZZDD; and
  - (b) the interest subsidy for the period referred to in subsection 1061ZZDB(3).

**1061ZZDF This Subdivision not to affect Subdivision A**

This Subdivision does not affect the operation of Subdivision A.

**Subdivision C—Original amount paid because of false or misleading information**

**1061ZZDG Secretary may give notice to person and corporation**

- (1) If the Secretary is satisfied that:
  - (a) a person who is a party to a financial supplement contract with a participating corporation was given a notice under section 1061ZZCW; and
  - (b) false or misleading information was given to the Commonwealth in relation to the calculation of the original amount; and
  - (c) the payment of financial supplement in excess of the revised amount resulted from the false or misleading information;the Secretary may give to the person and the corporation a notice stating that he or she is so satisfied and telling them that this Subdivision applies in relation to them.

**Chapter 2B** Student Financial Supplement Scheme

**Part 2B.2** Payments of financial supplement under scheme to stop in certain circumstances

**Division 2** Payments to stop if the maximum amount of financial supplement is reduced to the amount already paid or a lesser amount

**Section 1061ZZDH**

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- (2) If the Secretary is satisfied that:
- (a) a person who is a party to a financial supplement contract with a participating corporation was given a notice under section 14.5 of the Social Security Student Financial Supplement Scheme 1998; and
  - (b) false or misleading information was given to the Commonwealth in relation to the calculation of the original amount; and
  - (c) the payment of financial supplement in excess of the revised amount resulted from the false or misleading information;
- the Secretary may give to the person and the corporation a notice stating that he or she is so satisfied and telling them that this Subdivision applies in relation to them.

**1061ZZDH Effect of notice**

If the Secretary gives a notice under section 1061ZZDG to the person and the corporation, then, unless the decision to give the notice is set aside or varied after a review under Chapter 6, the following provisions have effect.

**1061ZZDI Transfer of corporation's rights to Commonwealth**

- (1) On the giving of the notice to the corporation, the corporation's rights referred to in subsection (2) or (3), as the case may be, are transferred to the Commonwealth by this subsection.
- (2) If the notice was given under subsection 1061ZZDG(1), the rights transferred are the corporation's rights under the contract that relate to payment of financial supplement during the period:
  - (a) beginning at the time when the person had been paid an amount equal to the revised amount; and
  - (b) ending at the end of the period of 4 weeks referred to in subsection 1061ZZCX(3).
- (3) If the notice was given under subsection 1061ZZDG(2), the rights transferred are the corporation's rights under the contract that relate to payment of financial supplement during the period:
  - (a) beginning at the commencement of this Chapter; and

- (b) ending at the end of the period of 4 weeks referred to in subsection 1061ZZCX(3).
- (4) Financial supplement paid during the period referred to in subsection (2) or (3), as the case requires, is *wrongly paid supplement*.

### **1061ZZDJ Apportionment of financial supplement**

Repayments of financial supplement made by the person before the notice was given to the person under subsection 1061ZZDG(1) or (2) are taken to have been made:

- (a) first, in or towards the repayment of the wrongly paid supplement; and
- (b) then, if those repayments exceed the amount of the wrongly paid supplement, in or towards the repayment of the rest of the financial supplement paid to the person under the contract.

### **1061ZZDK Liability of Commonwealth to corporation**

The Commonwealth is liable to pay to the corporation the amount of any wrongly paid supplement that has not been repaid.

### **1061ZZDL Liability of person to Commonwealth**

- (1) If the notice was given to the person under subsection 1061ZZDG(1), the person is liable to pay to the Commonwealth an amount equal to the total of:
  - (a) the amount that the Commonwealth is liable to pay to the corporation under section 1061ZZDK; and
  - (b) the interest subsidy for the period referred to in subsection 1061ZZDI(2).
- (2) If the notice was given to the person under subsection 1061ZZDG(2), the person is liable to pay to the Commonwealth an amount equal to the total of:
  - (a) the amount that the Commonwealth is liable to pay to the corporation under section 1061ZZDK; and
  - (b) the interest subsidy for the period referred to in subsection 1061ZZDI(3).

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**Part 2B.2** Payments of financial supplement under scheme to stop in certain circumstances

**Division 2** Payments to stop if the maximum amount of financial supplement is reduced to the amount already paid or a lesser amount

Section 1061ZZDM

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**1061ZZDM This Subdivision not to affect Subdivision A**

This Subdivision does not affect the operation of Subdivision A.

## **Division 3—Payments to stop if person ceases to be eligible to obtain financial supplement**

### **Subdivision A—Notice that payments are to stop**

#### **1061ZZDN Secretary must give notice to person and corporation**

- (1) This section applies if:
  - (a) a person is a party to a financial supplement contract with a participating corporation; and
  - (b) the decision (the *original decision*) made in respect of the person under section 1061ZZAC or under Part 3 of the Social Security Student Financial Supplement Scheme 1998 is reviewed under Chapter 6; and
  - (c) because of the review, the original decision is varied so that the person ceases to be eligible to obtain financial supplement.
- (2) The Secretary must give written notice to the person and the corporation:
  - (a) stating that the person ceased to be eligible; and
  - (b) specifying the date when the person ceased to be eligible.

#### **1061ZZDO Effect of notice**

- (1) If the Secretary gives a notice under section 1061ZZDN to the person and the corporation, then, unless the decision on the review is set aside or varied after a further review under Chapter 6, the following provisions have effect.
- (2) From the time when the notice is given to the corporation, the corporation is discharged from liability to make further payments to the person under the contract.
- (3) However, if the corporation continues to make payments to the person after that time, any amounts paid after the end of 4 weeks after the day on which the notice is given to the corporation:
  - (a) are taken not to be payments of financial supplement made under the contract; and

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- (b) are repayable by the person to the corporation; and
- (c) may be recovered by the corporation as a debt payable to it by the person.

**1061ZZDP This Subdivision is subject to sections 1061ZZFS and 1061ZZFT**

This Subdivision has effect subject to sections 1061ZZFS and 1061ZZFT.

**Subdivision B—Financial supplement paid because person failed to notify change of circumstances**

**1061ZZDQ Secretary may give notice to person and corporation**

- (1) If the Secretary is satisfied that:
  - (a) a person who is a party to a financial supplement contract with a participating corporation was given a notice under section 1061ZZDN; and
  - (b) the person failed to tell the Secretary, in response to a notice under section 561B, 586B, 1061PZQ or 1061ZZBR, about the happening of, or about becoming aware of the likely happening of, a stated event or change in circumstances, within the period prescribed for complying with the notice; and
  - (c) the person ceased to be eligible to obtain financial supplement because of the event or change in circumstances; and
  - (d) the person was paid financial supplement after the end of the period referred to in paragraph (b); and
  - (e) the payment of financial supplement after the end of that period resulted from the person's failure to comply with the notice referred to in paragraph (b);the Secretary may give to the person and the corporation a notice stating that he or she is so satisfied and telling them that this Subdivision applies in relation to them.
- (2) If the Secretary is satisfied that:
  - (a) a person who is a party to a financial supplement contract with a participating corporation was given a notice under



section 14.24 of the Social Security Student Financial Supplement Scheme 1998; and

- (b) the person failed to tell the Secretary, in response to a notice under section 561B, 586B or 1061PZQ, or a notice under section 12.2 of that Scheme, about the happening of, or about becoming aware of the likely happening of, a stated event or change of circumstances within the period prescribed for complying with the notice; and
- (c) the person was paid financial supplement after the commencement of this Chapter; and
- (d) the payment of financial supplement after the commencement of this Chapter resulted from the person's failure to comply with the notice referred to in paragraph (b);

the Secretary may give to the person and the corporation a notice stating that he or she is so satisfied and telling them that this Subdivision applies in relation to them.

#### **1061ZZDR Effect of notice**

If the Secretary gives a notice under section 1061ZZDQ to the person and the corporation, then, unless the decision to give the notice is set aside or varied after a review under Chapter 6, the following provisions have effect.

#### **1061ZZDS Transfer of corporation's rights to Commonwealth**

- (1) On the giving of the notice to the corporation, the corporation's rights referred to in subsection (2) or (3), as the case may be, are transferred to the Commonwealth by this subsection.
- (2) If the notice was given under subsection 1061ZZDQ(1), the rights transferred are the corporation's rights under the contract that relate to payment of financial supplement during the period:
  - (a) beginning at the end of the period referred to in paragraph 1061ZZDQ(1)(b); and
  - (b) ending at the end of the period of 4 weeks referred to in subsection 1061ZZDO(3).
- (3) If the notice was given under subsection 1061ZZDQ(2), the rights transferred are the corporation's rights under the contract that relate to payment of financial supplement during the period:

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- (a) beginning at the commencement of this Chapter; and
  - (b) ending at the end of the period of 4 weeks referred to in subsection 1061ZZDO(3).
- (4) Financial supplement paid during the period referred to in subsection (2) or (3), as the case requires, is *wrongly paid supplement*.

**1061ZZDT Apportionment of financial supplement**

Repayments of financial supplement made by the person before the notice was given to the person under subsection 1061ZZDQ(1) or (2) are taken to have been made:

- (a) first, in or towards the repayment of the wrongly paid supplement; and
- (b) then, if those repayments exceed the amount of the wrongly paid supplement, in or towards the repayment of the rest of the financial supplement paid to the person under the contract.

**1061ZZDU Liability of Commonwealth to corporation**

The Commonwealth is liable to pay to the corporation the amount of any wrongly paid supplement that has not been repaid.

**1061ZZDV Liability of person to Commonwealth**

- (1) If the notice was given to the person under subsection 1061ZZDQ(1), the person is liable to pay to the Commonwealth an amount equal to the total of:
  - (a) the amount that the Commonwealth is liable to pay to the corporation under section 1061ZZDU; and
  - (b) the interest subsidy for the period referred to in subsection 1061ZZDS(2).
- (2) If the notice was given to the person under subsection 1061ZZDQ(2), the person is liable to pay to the Commonwealth an amount equal to the total of:
  - (a) the amount that the Commonwealth is liable to pay to the corporation under section 1061ZZDU; and

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(b) the interest subsidy for the period referred to in subsection 1061ZZDS(3).

**1061ZZDW This Subdivision not to affect Subdivision A**

This Subdivision does not affect the operation of Subdivision A.

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**Part 2B.2** Payments of financial supplement under scheme to stop in certain circumstances

**Division 4** Payments to stop if person is found never to have been eligible to obtain financial supplement

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**Division 4—Payments to stop if person is found never to have been eligible to obtain financial supplement**

**Subdivision A—Notice that payments are to stop**

**1061ZZDX Secretary must give notice to person and corporation**

- (1) This section applies if:
  - (a) a person is a party to a financial supplement contract with a participating corporation; and
  - (b) the decision (the *original decision*) made in respect of the person under section 1061ZZAC or under Part 3 of the Social Security Student Financial Supplement Scheme 1998 is reviewed under Chapter 6; and
  - (c) because of the review the original decision is varied so that the statement in the supplement entitlement notice given to the person that the person was eligible to obtain financial supplement during an eligibility period was incorrect.
- (2) The Secretary must give written notice to the person and the corporation stating that the person had never been eligible to obtain financial supplement.

**1061ZZDY Effect of notice**

- (1) If the Secretary gives a notice under section 1061ZZDX to the person and the corporation, then, unless the decision on the review is set aside or varied after a further review under Chapter 6, the following provisions have effect.
- (2) From the time when the notice is given to the corporation, the corporation is discharged from liability to make further payments to the person under the contract.
- (3) However, if the corporation continues to make payments to the person after that time, any amounts paid after the end of 4 weeks after the day on which the notice is given to the corporation:
  - (a) are taken not to be payments of financial supplement made under the contract; and

- (b) are repayable by the person to the corporation; and
- (c) may be recovered by the corporation as a debt payable to it by the person.

**1061ZZDZ This Subdivision is subject to sections 1061ZZFS and 1061ZZFT**

This Subdivision has effect subject to sections 1061ZZFS and 1061ZZFT.

**Subdivision B—Financial supplement paid because of false or misleading information**

**1061ZZEA Secretary may give notice to person and corporation**

If the Secretary is satisfied that the incorrectness of a statement referred to in section 1061ZZDX that was given to a person who is a party to a financial supplement contract with a participating corporation resulted from false or misleading information given to the Commonwealth about the person, the Secretary may give notice to the person and the corporation stating that he or she is so satisfied and that this Subdivision applies in relation to them.

**1061ZZEB Effect of notice**

If the Secretary gives a notice under section 1061ZZEA to the person and the corporation, then, unless the decision to give the notice is set aside or varied after a review under Chapter 6, the following provisions have effect.

**1061ZZEC Transfer of corporation's rights to Commonwealth**

- (1) On the giving of the notice to the corporation, the corporation's rights referred to in subsection (2) or (3), as the case may be, are transferred to the Commonwealth by this subsection.
- (2) If the statement was in a supplement entitlement notice given under subsection 1061ZZAC(3) or 1061ZZAD(4), the rights transferred are the corporation's rights under the contract that relate to payment of financial supplement during the period:
  - (a) beginning at the start of the contract period; and

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- (b) ending at the end of the period of 4 weeks referred to in subsection 1061ZZDY(3).
- (3) If the statement was in a supplement entitlement notice referred to in subsection 1061ZZAE(3), the rights transferred are the corporation's rights under the contract that relate to payment of financial supplement during the period:
  - (a) beginning at the commencement of this Chapter; and
  - (b) ending at the end of the period of 4 weeks referred to in subsection 1061ZZDY(3).
- (4) Financial supplement paid during the period referred to in subsection (2) or (3), as the case requires, is *wrongly paid supplement*.

**1061ZZED Liability of Commonwealth to corporation**

The Commonwealth is liable to pay to the corporation an amount worked out, as at the end of the period of 4 weeks referred to in subsection 1061ZZDY(3), using the formula:

Principal sum – (Amounts repaid + Amounts notionally repaid)

**1061ZZEE Liability of person**

- (1) No amount is taken to be outstanding under the contract after the notice is given.
- (2) However, the person is liable to pay to the Commonwealth an amount worked out, as at the end of the period of 4 weeks referred to in subsection 1061ZZDY(3), using the formula:

Principal sum – Amounts repaid + Interest subsidy

**1061ZZEF Definitions**

In sections 1061ZZED and 1061ZZEE:

*amounts notionally repaid* means the total of the amounts notionally repaid before the notice was given.

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*amounts repaid* means the total of the amounts repaid under the contract before the notice was given.

*interest subsidy* means the interest subsidy in relation to financial supplement paid under the contract.

*principal sum* means the principal sum at the time when the notice was given.

**1061ZZEG This Subdivision not to affect Subdivision A**

This Subdivision does not affect the operation of Subdivision A.

## **Division 5—Payments to stop if person dies**

### **1061ZZEH Secretary may give notice to corporation if other party to contract dies**

If the Secretary becomes aware that a person who is a party to a financial supplement contract with a participating corporation has died, the Secretary may give written notice to the corporation stating that this Division applies in respect of the contract.

### **1061ZZEI Effect of notice**

If the Secretary gives a notice under section 1061ZZEH to the corporation, the following provisions have effect.

### **1061ZZEJ Discharge of corporation's liability**

- (1) From the time when the notice is given to the corporation, the corporation is discharged from liability to make further payments under the contract.
- (2) However, if the corporation continues to make payments under the contract after that time, any amounts paid after the end of 4 weeks after the day on which the notice is given to the corporation:
  - (a) are taken not to be payments of financial supplement made under the contract; and
  - (b) are repayable from the person's estate to the corporation; and
  - (c) may be recovered by the corporation as a debt payable to it from the person's estate.

### **1061ZZEK Transfer of corporation's rights to Commonwealth**

- (1) The corporation's rights referred to in subsection (2) are transferred to the Commonwealth, by this subsection, at the earlier of:
  - (a) the time when the corporation stopped making payments under the contract; or
  - (b) the end of 4 weeks after the time when the notice was given.



- (2) The rights transferred are the corporation's rights under the contract that relate to payment of financial supplement during the period:
- (a) beginning at the start of the contract period; and
  - (b) ending at the end of the period of 4 weeks referred to in paragraph (1)(b).

### **1061ZZEL Liability of Commonwealth to corporation**

- (1) The Commonwealth is liable to pay to the corporation an amount worked out, as at the earlier of:
- (a) the time when the corporation stopped making payments under the contract; or
  - (b) the end of the period of 4 weeks referred to in paragraph 1061ZZEK(1)(b);
- using the formula:
- $$\text{Principal sum} - (\text{Amounts repaid} + \text{Amounts notionally repaid})$$

- (2) In this section:

*amounts notionally repaid* means the total of the amounts notionally repaid before the notice was given.

*amounts repaid* means the total of the amounts repaid under the contract before the notice was given.

*principal sum* means the principal sum at the time when the notice was given.

### **1061ZZEM Discharge of person's liability**

The person's liability to the Commonwealth under the contract as a result of the transfer referred to in section 1061ZZEK is discharged by this section.

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**Part 2B.3** Repayment of financial supplement through taxation system after termination date

**Division 1** Purpose and application of Part

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**Part 2B.3—Repayment of financial supplement  
through taxation system after termination  
date**

**Division 1—Purpose and application of Part**

**1061ZZEN Purpose and application of Part**

This Part provides for the recovery through the taxation system of a person's debt in respect of financial supplement at the end of 4 years beginning on 1 June in the year immediately after the year in which the relevant financial supplement contract was made.

## **Division 2—FS debt and accumulated FS debt**

### **1061ZZEO FS debt owed by person**

- (1) If, at the termination date of a financial supplement contract made by a person with a participating corporation, there was or is an amount outstanding under the contract, the person owes an *FS debt* to the Commonwealth.
- (2) The FS debt is taken to have been incurred, or is incurred, as the case may be, on 1 June immediately after the termination date.

### **1061ZZEP How to work out FS debt**

- (1) The FS debt is worked out using the formula:

Amount outstanding × Indexation factor

- (2) In subsection (1):

*amount outstanding* means the amount outstanding under the contract at the termination date.

*indexation factor* means the factor worked out under section 1061ZZET.

### **1061ZZEQ Accumulated FS debt incurred by person**

- (1) If:
  - (a) a person had or has an FS debt or FS debts on 1 June in a year (the *later date*); and
  - (b) the debt was not or is not, or the debts did not or do not include, an FS debt that existed on the previous 1 June;the person is taken to have incurred, or incurs, as the case may be, an *accumulated FS debt* to the Commonwealth on the later date.
- (2) If:
  - (a) a person had or has an FS debt or FS debts on 1 June in a year (the *later date*); and
  - (b) the debt was or is, or the debts included or include, an FS debt that existed on the previous 1 June (the *earlier date*);

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the person is taken to have incurred, or incurs, as the case may be, an *accumulated FS debt* to the Commonwealth on the later date.

**1061ZZER How to work out accumulated FS debt**

- (1) A person's *accumulated FS debt* referred to in subsection 1061ZZEQ(1) is an amount equal to the FS debt or the total of the FS debts referred to in that subsection.
- (2) A person's *accumulated FS debt* referred to in subsection 1061ZZEQ(2) is an amount worked out using the formula:  
(Adjusted accumulated FS debt × Indexation factor) + Later FS debts
- (3) In subsection (2):

*adjusted accumulated FS debt* means the person's adjusted accumulated FS debt on the earlier date.

*indexation factor* means the factor worked out under section 1061ZZET.

*later FS debts* means any FS debt, or the total of any FS debts, of the person that did not exist on the earlier date.

**1061ZZES Adjusted accumulated FS debt**

- (1) A person's *adjusted accumulated FS debt* on the earlier date is the amount worked out using the formula:

$$\text{Accumulated FS debt} - \left( \begin{array}{l} \text{FSA} \\ \text{debts} \end{array} + \text{Repayments} + \begin{array}{l} \text{Increases in} \\ \text{FSA debts} \end{array} - \begin{array}{l} \text{Reductions in} \\ \text{FSA debts} \end{array} \right)$$

- (2) In this section:

*accumulated FS debt* means the person's accumulated FS debt on the earlier date as worked out under this Division as it previously applied in respect of that date.

*FSA debts* means the total of:

- (a) any FS assessment debt or FS assessment debts of the person, assessed on or after the earlier date and before the later date,

excluding any FS assessment debt assessed because of a return lodged before the earlier date; and

- (b) any FS assessment debt or FS assessment debts of the person, assessed on or after the later date because of a return lodged before the later date.

***increases in FSA debts*** means any amount, or the total of any amounts, by which any FS assessment debt is increased by an amendment of the relevant assessment (whether because of an increase in the person's taxable income or otherwise) where the amendment was made on or after the earlier date and before the later date.

***reductions in FSA debts*** means any amount, or the total of any amounts, by which any FS assessment debt is reduced by an amendment of the relevant assessment (whether as a result of a reduction in the person's taxable income or otherwise) where the amendment was made on or after the earlier date and before the later date.

***repayments*** means any amount, or the total of any amounts, repaid, except in discharge of an FS assessment debt, on or after the earlier date and before the later date in reduction of the accumulated FS debt on the earlier date as worked out under this Division as it previously applied in respect of that date.

- (3) For the purposes of subsection (2), an assessment or an amendment of an assessment is taken to have been made on the date stated in the notice of assessment or notice of amended assessment, as the case may be, to be the date of that notice.

### **1061ZZET Indexation factor**

- (1) The ***indexation factor*** for the purpose of calculating a person's FS debt or accumulated FS debt at 1 June in a year (the ***relevant year***), is worked out using the following Method statement.

*Method statement*

- Step 1. Work out the total of the index number for the March quarter in the relevant year and the index numbers for the 3 immediately preceding quarters.

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**Part 2B.3** Repayment of financial supplement through taxation system after termination date

**Division 2** FS debt and accumulated FS debt

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Step 2. Work out the total of the index number for the March quarter immediately before the relevant year and the index numbers for the 3 immediately preceding quarters.

Step 3. Divide the total worked out using Step 1 by the total worked out using Step 2.

Step 4. Round the result to 3 decimal places.

- (2) If an indexation factor worked out using the Method statement would end with a number greater than 4 were it to be worked out to 4 decimal places, the indexation factor is increased by 0.001.
- (3) If, apart from this subsection, the amount of an FS debt or accumulated FS debt worked out under this section would be an amount of dollars and cents, disregard the amount of the cents.

**1061ZZEU Accumulated FS debt discharges earlier debts**

- (1) An accumulated FS debt that a person is taken to have incurred or incurs on 1 June in a year (the *relevant date*) discharges, or discharges the unpaid part of:
  - (a) an accumulated FS debt that the person incurred on the previous 1 June; and
  - (b) an FS debt that the person incurred on the relevant date.
- (2) The accumulated FS debt also discharges the person's liability to pay the amount outstanding immediately before the relevant date.
- (3) However, in applying sections 1061ZZEP to 1061ZZET, subsection (1) of this section is disregarded.

### **Division 3—Information to be given to Commissioner of Taxation**

#### **1061ZZEV Secretary to give notice to Commissioner of Taxation**

If a person who has made a financial supplement contract with a participating corporation has an FS debt immediately after the termination date of the contract, the Secretary must, if such a notice has not already been given under the corresponding provision of the Social Security Student Financial Supplement Scheme 1998 or of the *Student Assistance Act 1973* as in force at a time before 1 July 1998, give to the Commissioner of Taxation, as soon as practicable after that date, a notice stating as many of the following matters as the Secretary knows:

- (a) the person's name;
- (b) the person's identifying number;
- (c) the person's last-known address;
- (d) the person's tax file number;
- (e) the amount of the FS debt or the amounts of the FS debts that the person incurred on 1 June immediately following the termination date;
- (f) any other information about the person that is reasonably required by the Commissioner to administer this Part.

#### **1061ZZEW Secretary to give further notice to Commissioner of Taxation**

If the Secretary or an officer of the Department is convinced that significant information in a notice referred to in section 1061ZZEV was not, or is no longer, correct, the Secretary must give to the Commissioner of Taxation a further notice setting out the correct information.

#### **1061ZZEX Secretary to give certificate to Commissioner of Taxation**

The Secretary must, if asked by the Commissioner of Taxation to do so, give a written certificate to the Commissioner setting out a

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matter mentioned by the Commissioner that was, or was required to be, set out in a notice under section 1061ZZEV or 1061ZZEW.



## **Division 4—Voluntary repayments of FS debts**

### **1061ZZEY Voluntary repayments of FS debts**

- (1) If a person has a debt to the Commonwealth under this Part, he or she may at any time make a payment to reduce the debt.
- (2) A payment under subsection (1) must be made to the Commissioner of Taxation.

### **1061ZZEYA Refunding of payments**

If:

- (a) a person pays an amount to the Commonwealth under this Division; and
- (b) the amount exceeds the sum of:
  - (i) the amount required to discharge the total debt that the person owed to the Commonwealth under this Part; and
  - (ii) the total amount of the person's primary tax debts (within the meaning of Part IIB of the *Taxation Administration Act 1953*);

the Commonwealth must refund to the person an amount equal to that excess.

Note: Interest is payable if the Commonwealth is late in paying requested refunds: see Part IIIA of the *Taxation (Interest on Overpayments and Early Payments) Act 1983*.

## Division 5—Compulsory repayments in respect of accumulated FS debt

### 1061ZZEZ Compulsory payments in respect of accumulated FS debt

- (1) If:
  - (a) a person's repayment income for the income year 2006-07 or a subsequent income year exceeds the minimum repayment income for that income year; and
  - (b) on 1 June immediately preceding the making of an assessment in respect of the person's income for that income year, the person had an accumulated FS debt;the person is liable to pay to the Commonwealth, in accordance with this Division, the amount worked out under section 1061ZZFD in reduction of the person's repayable debt.
- (2) A person is not liable under this section to pay an amount for an income year if, under section 8 of the *Medicare Levy Act 1986*:
  - (a) no Medicare levy is payable by the person on the person's taxable income for the income year; or
  - (b) the amount of the Medicare levy payable by the person on the person's taxable income for the income year is reduced.

### 1061ZZFA Repayment income

- (1) A person's *repayment income* for an income year is an amount equal to the sum of:
  - (a) the person's taxable income for the income year; and
  - (b) the person's total net investment loss (within the meaning of the *Income Tax Assessment Act 1997*) for the income year; and
  - (c) if the person:
    - (i) is an employee (within the meaning of the *Fringe Benefits Tax Assessment Act 1986*); and
    - (ii) has a reportable fringe benefits total (within the meaning of that Act) for the income year;the reportable fringe benefits total for the income year; and

- (d) the person's exempt foreign income for the income year; and
  - (e) the person's reportable superannuation contributions (within the meaning of the *Income Tax Assessment Act 1997*) for the income year.
- (4) The person's *exempt foreign income* is the total amount (if any) by which the person's income that is exempt from tax under section 23AF or 23AG of the *Income Tax Assessment Act 1936* exceeds the total amount of losses and outgoings that the person incurs in deriving that exempt income.
- (5) For the purposes of subsection (4), disregard any capital losses and outgoings.

### **1061ZZFB Minimum repayment income**

The *minimum repayment income* for the 2006-07 income year or for a later income year is the amount worked out under paragraph 154-10(b) of the *Higher Education Support Act 2003* in respect of that income year.

### **1061ZZFC Repayable debt for an income year**

- (1) A person's *repayable debt* for an income year is:
- (a) the person's accumulated FS debt referred to in paragraph 1061ZZEZ(1)(b) in relation to that income year; or
  - (b) if one or more amounts:
    - (i) have been paid in reduction of that debt; or
    - (ii) have been assessed under section 1061ZZFH to be payable in respect of that debt;the amount (if any) remaining after deducting from that debt the amount, or sum of the amounts, so paid or assessed to be payable.
- (2) A reference in paragraph (1)(b) to an amount assessed to be payable is, if the amount has been increased or reduced by an amendment of the relevant assessment, a reference to the increased amount or the reduced amount.

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**1061ZZFD** Amounts payable to the Commonwealth

The amount that a person is liable to pay under section 1061ZZEZ, in respect of an income year, is an amount equal to so much of the person's repayable debt for the income year as does not exceed the percentage of the person's repayment income that is applicable under the following table:

<b>Applicable percentages</b>		
<b>Item</b>	<b>If the person's repayment income for the 2006-07 income year or a later income year is:</b>	<b>The percentage applicable is:</b>
1	More than the minimum repayment income, but less than the amount determined as set out in column 2 of item 2 of the table in section 154-20 of the Higher Education Support Act 2003, in respect of that income year.	2%
2	More than the amount under item 1, but less than the amount determined as set out in column 2 of item 7 of the table in section 154-20 of the Higher Education Support Act 2003, in respect of that income year.	3%
3	More than the amount under item 2.	4%

**1061ZZFE** Publishing indexed amounts

- (1) The Minister must cause to be published in the *Gazette*, before the start of the 2007-08 income year or a later income year, a notice setting out:
  - (a) the minimum repayment income; and
  - (b) the amounts determined as referred to in the second column of items 1 and 2 of the table in section 1061ZZFD; for that income year.
- (2) A notice under subsection (1) is not a legislative instrument.

## **Division 6—Application of tax legislation**

### **1061ZZFG Application of tax legislation**

Part IV, and section 204, of the *Income Tax Assessment Act 1936*, and Part IVC of, and Part 4-15 in Schedule 1 to, the *Taxation Administration Act 1953*, apply, so far as they can be applied and subject to this Part, to a person's FS assessment debt as if it were income tax assessed to be payable by a taxpayer by an assessment made under Part IV of the *Income Tax Assessment Act 1936*.

Note: FS assessment debts are also collected through the Pay As You Go (PAYG) system of collecting income tax: see Parts 2-1, 2-5 and 2-10 in Schedule 1 to the *Taxation Administration Act 1953*.

### **1061ZZFGA Charges and administrative penalties for failing to meet obligations**

- (1) Part 4-25 in Schedule 1 to the *Taxation Administration Act 1953* has effect as if:
  - (a) any compulsory repayment amount of a person were income tax payable by the person in respect of the income year in respect of which the assessment of that debt was made; and
  - (b) this Part were an income tax law.
- (2) Subsection (1) does not have the effect of making a person liable to a penalty for any act or omission that happened before the commencement of this subsection.

### **1061ZZFGB Pay as you go (PAYG) withholding**

Part 2-5 (other than section 12-55 and Subdivisions 12-E, 12-F and 12-G) in Schedule 1 to the *Taxation Administration Act 1953* applies, so far as it is capable of application, in relation to the collection of amounts of a compulsory repayment amount of a person as if the compulsory repayment amount were income tax.

### **1061ZZFGC Provisional tax**

Division 3 of Part VI of the *Income Tax Assessment Act 1936* applies, so far as it is capable of application, in relation to the

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collection of a compulsory repayment amount of a person as if the compulsory repayment amount were income tax.

**1061ZZFGD Pay as you go (PAYG) instalments**

Division 45 in Schedule 1 to the *Taxation Administration Act 1953* applies, so far as it is capable of application, in relation to the collection of a compulsory repayment amount of a person as if the compulsory repayment amount were income tax.

## **Division 7—Assessments**

### **1061ZZFH Commissioner of Taxation may make assessment**

- (1) The Commissioner of Taxation may make an assessment of:
  - (a) the amount of a person's accumulated FS debt at 1 June immediately before the assessment is made; and
  - (b) the amount required to be paid to reduce that debt under Division 5.
- (2) To make an assessment, the Commissioner may use any information in his or her possession, whether or not it came from a return.

### **1061ZZFI Notice of assessment may be served**

If:

- (a) the Commissioner of Taxation is required to serve on a person a notice of assessment in respect of the person's income of a year of income under section 174 of the *Income Tax Assessment Act 1936*; and
- (b) an assessment (the *relevant assessment*) has been made in respect of the person of the amounts referred to in section 1061ZZFH but notice of the relevant assessment has not been served on the person;

notice of the relevant assessment may be served by setting out the amounts concerned in the notice referred to in paragraph (a).

## **Division 8—Commissioner of Taxation may delay assessment**

### **1061ZZFJ Commissioner of Taxation may delay assessment**

- (1) The Commissioner of Taxation may, on written application by a person who has an accumulated FS debt, delay the making of an assessment under section 1061ZZFH.
- (2) An assessment may be delayed if the Commissioner considers that:
  - (a) were the assessment to be made, payment of the assessed amount would cause serious hardship to the person; or
  - (b) there are other special reasons that make it fair and reasonable to delay the assessment.
- (3) The Commissioner may delay the assessment for a period that he or she considers appropriate.

### **1061ZZFK Commissioner of Taxation may amend assessment**

- (1) The Commissioner of Taxation may, on written application by a person who has an accumulated FS debt, amend an assessment made under section 1061ZZFH so that no amount is payable under the assessment.
- (2) The Commissioner may amend the assessment if he or she considers that:
  - (a) payment of the assessed amount has caused or would cause serious hardship to the person; or
  - (b) there are other special reasons that make it fair and reasonable to make the amendment.

### **1061ZZFL When Commissioner of Taxation must make decision to delay or amend assessment**

- (1) If an application referred to in section 1061ZZFJ or 1061ZZFK is made, the Commissioner of Taxation must, as soon as practicable:
  - (a) consider it; and
  - (b) give to the applicant written notice of his or her decision on the application.



- (2) A notice of the decision must:
  - (a) include a statement that, if the applicant is dissatisfied with the decision of the Commissioner on the application, an application may, subject to the *Administrative Appeals Tribunal Act 1975*, be made to the Administrative Appeals Tribunal for review of the decision; and
  - (b) except if subsection 28(4) of that Act applies, also include a statement to the effect that the applicant may ask for a statement under section 28 of that Act.
- (3) A failure to comply with subsection (2) does not affect the validity of the notice or of the decision to which the notice relates.

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**Division 9** Review of Commissioner of Taxation's decision

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**Division 9—Review of Commissioner of Taxation's decision**

**1061ZZFM Application to Administrative Appeals Tribunal**

An applicant under section 1061ZZFJ or 1061ZZFK may apply to the Administrative Appeals Tribunal for review of:

- (a) a decision of the Commissioner of Taxation on the application referred to in section 1061ZZFJ; or
- (b) a decision by the Commissioner refusing to amend an assessment after receiving the application referred to in section 1061ZZFK.

## **Division 10—Treatment of payments under financial supplement scheme**

### **1061ZZFN Payments not subject to taxation**

- (1) An amount paid, or other benefit given, to a person under this Chapter is not subject to taxation under a law of the Commonwealth unless a provision of such a law expressly provides to the contrary.
- (2) However, subsection (1) does not affect the liability to taxation of a participating corporation for a subsidy or other amount paid to the corporation under this Chapter.

### **1061ZZFO Application of payments**

An amount paid by a person to reduce the person's debt to the Commonwealth under this Part must be applied in accordance with the person's direction or, if there is no direction or the direction does not adequately deal with the matter:

- (a) first, to discharge or reduce the person's FS assessment debts; and
- (b) then, to discharge or reduce the person's accumulated FS debt.

### **1061ZZFP Debt discharged by death**

If a person dies owing a debt owing to the Commonwealth under this Part, other than an FS assessment debt, the debt is discharged by force of this section.

## Part 2B.4—Miscellaneous

### Division 1—Application of the Bankruptcy Act 1966

#### 1061ZZFQ Application of Division

This Division applies if, after a person makes a financial supplement contract with a participating corporation, whether before or after the termination date:

- (a) the person becomes bankrupt; or
- (b) the person enters into a personal insolvency agreement under Part X of the *Bankruptcy Act 1966*.

#### 1061ZZFR Treatment of debt

- (1) A debt arising under or out of the contract is not a provable debt in the bankruptcy or for the purposes of the personal insolvency agreement.
- (2) A right of the Commonwealth or of the corporation to bring an action or other proceeding against the person in respect of the debt is not affected by the bankruptcy or personal insolvency agreement.
- (3) The trustee of the estate of the bankrupt person or the trustee of the personal insolvency agreement is not entitled to recover under the *Bankruptcy Act 1966* a payment made by the person to the Commonwealth or to the corporation in respect of the debt.
- (4) In this section:

***debt arising under or out of the contract:***

- (a) includes, but is not limited to:
  - (i) an amount outstanding under the contract; and
  - (ii) an amount that the person is liable to pay under section 1061ZZDE, 1061ZZDL, 1061ZZDV or 1061ZZEE; and
  - (iii) an accumulated FS debt that discharges, or discharges the unpaid part of, an FS debt; but

- (b) does not include:
- (i) a debt constituted by an obligation to repay the amount of a payment that, because of paragraph 1061ZZCV(2)(a), 1061ZZCX(3)(a), 1061ZZDO(3)(a) or 1061ZZDY(3)(a), is not a payment of financial supplement; or
  - (ii) an FS assessment debt that is required to be paid to reduce an accumulated FS debt.

## **Division 2—Review of decisions**

### **1061ZZFS What happens if a decision of the Secretary is set aside**

- (1) Subject to subsection (2), if a decision of the Secretary under this Chapter is set aside after a review under Chapter 6, this Chapter has effect, and is taken to have always had effect, as if the decision had not been made.
- (2) If the decision is set aside after a review under Chapter 6 and another decision is substituted for the original decision, this Chapter has effect, and is taken to have always had effect, as if the substituted decision had been the original decision.

### **1061ZZFT What happens if a decision of the Secretary is varied**

If a decision of the Secretary under this Chapter is varied after a review under Chapter 6, this Chapter has effect, and is taken to have always had effect, as if the decision as varied had been the original decision.

## **Division 3—Transfer of rights under this Chapter**

### **1061ZZFU Notices of transfer**

If any rights of a participating corporation to receive a payment from a person under this Chapter are transferred to the Commonwealth, the Secretary must, as soon as practicable, arrange for a written notice to be given to the person:

- (a) stating that the rights have been transferred; and
- (b) identifying any future payments that, because of the transfer, are required to be made to the Commonwealth.

### **1061ZZFV Transfers not subject to State or Territory taxes**

A transfer to the Commonwealth under this Chapter of any of the corporation's rights under a financial supplement contract, or any other act or thing done or transaction entered into under this Chapter, is not subject to taxation under a law of a State or Territory.

## Chapter 2C—Assurances of support

### Part 2C.1—Giving assurances

#### 1061ZZGA What is an assurance of support?

In this Chapter:

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

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

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

#### 1061ZZGB Who may give an assurance of support?

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

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

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



**1061ZZGC How to give an assurance of support**

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

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

- (2) A form approved for the purposes of paragraph (1)(a) may include other undertakings as well as the assurance of support.
- (3) A place or person approved for the purposes of paragraph (1)(a) may be in or out of Australia.
- (4) The Secretary's power to approve for the purposes of paragraph (1)(b) is not limited by any other provision of this section.

*Material to accompany assurance of support*

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

## Part 2C.2—Acceptance of assurances

### 1061ZZGD Accepting or rejecting an assurance of support

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

*Accepting the assurance*

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

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

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

- (3) At least one person who gave the assurance must have given the Secretary a single security for the liability that may be incurred, under section 1061ZZGG in connection with the assurance and a social security payment received by anyone identified in the assurance, by everyone who gave the assurance. The security must:

- (a) be in a form approved by the Secretary; and
- (b) be of a value specified for the purposes of this paragraph in a determination under section 1061ZZGH.

*Rejecting the assurance*

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

**1061ZZGE Notices relating to an assurance of support**

- (1) If the Secretary accepts or rejects an assurance of support, he or she must give written notice of the acceptance or rejection to:
  - (a) the person who gave the assurance; and
  - (b) the Minister administering 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 a time determined by the Secretary under subparagraph 1061ZZGF(1)(b)(ii) or (iii), the Secretary must give the assurer written notice of that fact.

## Part 2C.3—Effect of accepted assurances

### 1061ZZGEA Assurance cannot be withdrawn once visa issued

A person who has given an assurance of support that has been accepted under this Chapter cannot withdraw that assurance once the person in respect of whom the assurance was given becomes the holder under the *Migration Act 1958* of a visa granted in connection with the assurance.

### 1061ZZGF When an accepted assurance is in force

- (1) For the purposes of this Act, an assurance of support that has been given in respect of a person identified in the assurance and has been accepted under this Chapter:
  - (a) comes into force in respect of the person at the later of the following times:
    - (i) the time at which the person becomes under the *Migration Act 1958* the holder of the visa that was granted under that Act in connection with the assurance;
    - (ii) the time at which the person enters the migration zone (as defined in that Act) as the holder of the visa; and
  - (b) remains in force in respect of the person until the earliest of the following times:
    - (i) the end of the period specified for the purposes of this subparagraph in a determination under section 1061ZZGH;
    - (ii) the time (if any) determined by the Secretary under subsection (2);
    - (iii) if a circumstance specified for the purposes of this subparagraph in a determination under section 1061ZZGH applies in relation to the assurance—the time determined by the Secretary in relation to that circumstance.

Note: An assurance of support given in respect of 2 or more persons may be in force at different times in respect of each of those persons.
- (2) The Secretary may determine that the assurance of support ceases to be in force in respect of the person at the time (which may be

before the determination is made) another assurance of support comes into force in respect of the person.

- (3) For the purposes of this Act, an assurance of support (as defined in section 1061ZZGA) is in force in respect of a person only for the period for which it is in force in respect of the person under subsection (1) of this section.
- (4) Except as provided by paragraph (1)(b), an assurance of support that has come into force in respect of a person remains in force in respect of that person in spite of any change in circumstances whatsoever (including any purported withdrawal, however described, of the assurance).

### **1061ZZGG Liability to pay for social security payments**

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

## Part 2C.4—Determinations

### 1061ZZGH Determinations

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

Determinations	
Provision(s)	Things to be specified
1 Definition of <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
6 Subparagraph 1061ZZGF(1)(b)(iii)	Circumstances in which assurances of support accepted under this Chapter cease to be in force

Note 1: A determination may specify matters and things by reference to classes and may make different provision with respect to different matters or classes of matters. See the *Legislative Instruments Act 2003*.

Note 2: The Minister may amend a determination by another legislative instrument. 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

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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.

## 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.

## **Chapter 3—General provisions relating to payability and rates**

### **Part 3.1—Rate Calculators (General)**

#### **1062 Steps in rate calculation**

- (1) The following are the usual steps in the rate calculation process:
  - (a) start with a maximum basic rate;
  - (b) add any additional amounts that are subject to income or assets testing;
  - (c) apply the income and assets tests;
  - (d) add any additional amounts that are not subject to income or assets testing.
- (2) The overall rate calculation process is usually described in an early Module of the relevant Rate Calculator.

#### **1063 Standard categories of family situations**

- (1) The Rate Calculators use the following standard categories of family situations:
  - not member of a couple;
  - member of a couple (or partnered);
  - partnered (partner getting neither pension nor benefit);
  - partnered (partner getting pension or benefit);
  - partnered (partner getting pension);
  - partnered (partner getting benefit);
  - partnered (partner in gaol).

Note: see section 4 for definitions of those terms.

- (2) If it is necessary to distinguish between the members of sub-categories of these standard categories further words of description are added to the standard category label.

## **Part 3.2—Pension Rate Calculator A**

### **1064 Rate of age, disability support, wife pensions and carer payment and of disability wage supplement (people who are not blind)**

- (1) The rate of:
- (a) age pension; and
  - (b) disability support pension or disability wage supplement of a person who has turned 21; and
  - (c) wife pension; and
  - (d) carer payment; and
  - (f) mature age allowance under Part 2.12A; and
  - (g) mature age partner allowance;
- is, subject to subsection (2), to be calculated in accordance with the Rate Calculator at the end of this section.

Note 1: Module A of the Rate Calculator establishes the overall rate calculation process and the remaining Modules provide for the calculation of the component amounts used in the overall rate calculation.

Note 2: the rate obtained by applying the Rate Calculator may be reduced because of:

- the receipt of compensation (see Part 3.14); or
- overseas portability (see Part 4.2—Division 3); or
- the receipt of payments under the New Enterprise Incentive Scheme (see Part 3.15).

- (2) Subsection (1) does not apply to a person's age or disability support pension or to a person's disability wage supplement if the person is permanently blind.

Note: the rate for an age pension or disability support pension payable to a person who is permanently blind is dealt with in section 1065.

- (4) If:
- (a) a person has a relationship with a person of the opposite sex (*other person*); and
  - (b) the relationship between them is a marriage-like relationship in the Secretary's opinion (formed after the Secretary has had regard to all the circumstances of the relationship, including,

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in particular, the matters referred to in paragraphs 4(3)(a) to (e) and subsection 4(3A));

- (c) either or both of them are under the age of consent applicable in the State or Territory in which they are living;

the person's pension rate is not to exceed the rate at which it would be payable to the person if the other person were the person's partner.

Note: this provision has the effect of taking into account the ordinary income, maintenance income and assets of the partner in applying the ordinary income test, maintenance income test and assets test respectively.

*Rate limited for armed service widow*

- (5) If:

- (a) an armed services widow is receiving a pension under Part II or IV of the Veterans' Entitlements Act at a rate determined under or by reference to subsection 30(1) of that Act; and

- (b) one of the following is payable to the widow:

- (i) an age pension;
- (ii) a disability support pension;
- (iii) a wife pension;
- (iv) a carer payment;
- (v) a mature age allowance under Part 2.12A;
- (vi) disability wage supplement;

the widow's pension rate is not to exceed:

- (c) if:

- (i) the widow has been receiving the payment referred to in paragraph (a) continuously since before 1 November 1986; and
- (ii) immediately before 1 November 1986, the widow was receiving a payment referred to in paragraph (b) at a rate exceeding \$3,247.40; and
- (iii) the pension referred to in paragraph (b) is of the same type as the one which was payable to the person before 1 November 1986;

the rate of pension received by the widow immediately before 1 November 1986; and

- (d) in any other case—\$3,247.40.

Note: for *armed services widow* see subsection 4(1).

*Rate limited for armed services widower*

- (6) If:
- (a) an armed services widower is receiving a pension under Part II or IV of the Veterans' Entitlements Act at a rate determined under or by reference to subsection 30(1) of that Act; and
  - (b) one of the following is payable to the widower:
    - (i) an age pension;
    - (ii) a disability support pension;
    - (iii) a carer payment;
    - (iv) disability wage supplement;
- the rate of pension payable to the widower is not to exceed \$3,247.40.

Note: for *armed services widower* see subsection 4(1).

- (7) If:
- (a) an armed services widow or an armed services widower has received a lump sum, or is receiving a weekly amount, mentioned in paragraph 234(1)(b) of the Military Rehabilitation and Compensation Act; and
  - (b) one of the following is payable to the widow or widower:
    - (i) an age pension;
    - (ii) a disability support pension;
    - (iii) a wife pension;
    - (iv) a carer payment;
    - (v) a mature age allowance under Part 2.12B;
    - (vi) disability wage supplement;
- the rate of pension payable to the widow or widower is not to exceed \$3,247.40.

Note: For *armed services widow* and *armed services widower* see subsection 4(1).

## Pension Rate Calculator A

### Module A—Overall rate calculation process

#### *Method of calculating rate*

- 1064-A1 The rate of pension is a daily rate. That rate is worked out by dividing the annual rate calculated according to this Rate Calculator by 364 (fortnightly rates are provided for information only).

#### *Method statement*

- Step 1. Work out the person's **maximum basic rate** using MODULE B below.
- Step 1A. Work out the amount of pension supplement using Module BA below.
- Step 2. Work out the amount per year (if any) of pharmaceutical allowance using MODULE C below.
- Step 3. Work out the amount per year (if any) for rent assistance in accordance with paragraph 1070A(b).
- Step 4. Add up the amounts obtained in Steps 1, 1A, 2 and 3: the result is called the **maximum payment rate**.
- Step 5. Apply the ordinary income test using MODULE E below to work out the income reduction.
- Note: Module F contains provisions that may apply to working out the ordinary income of a person, and the ordinary income of a partner of the person, for the purposes of disability support pension.
- Step 8. Take the income reduction away from the maximum payment rate: the result is called the **income reduced rate**.
- Step 9. Apply the assets test using MODULE G below to work out the reduction for assets.

- Step 10. Take the reduction for assets away from the maximum payment rate: the result is called the *assets reduced rate*.
- Step 11. Compare the income reduced rate and the assets reduced rate: the lower of the 2 rates, or the income reduced rate if the rates are equal, is the *provisional annual payment rate*.
- Step 12. The *rate of pension* is the amount obtained by:
- (a) subtracting from the provisional annual payment rate any special employment advance deduction (see Part 3.16B); and
  - (b) if there is any amount remaining, subtracting from that amount any advance payment deduction (see Part 3.16A); and
  - (c) adding any amount payable by way of remote area allowance (see Module H).

Note 1: if a person's assets reduced rate is less than the person's income reduced rate, the person may be able to take advantage of provisions dealing with financial hardship (sections 1129 and 1130).

Note 1A: If a person's rate is, or is to be, an income reduced rate or an assets reduced rate, and at least one of those reduced rates is not a nil rate, the person may be able to take advantage of provisions dealing with the pension loans scheme (sections 1133AA to 1144).

Note 2: if a person's rate is reduced under Step 11 the order in which the reduction is to be made against the components of the maximum payment rate is laid down by section 1210 (maximum basic rate first, then rent assistance).

Note 3: the rate calculation for a member of a couple is affected by the operation of points 1064-A2 and 1064-A3.

Note 4: in some circumstances a person may also be qualified for a pharmaceutical allowance under Part 2.22.

Note 5: a person's rate may also be reduced because the person or the person's partner receives compensation (see section 1168) or because the person or the person's partner is receiving a foreign pension (see scheduled international social security agreements at section 1208).

Note 6: An amount of remote area allowance is to be added under Step 11 only if the person's rate of pension after Step 10 is greater than nil.

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*Members of a couple*

1064-A2 Where 2 people are members of a couple, they will be treated as pooling their resources (income and assets) and sharing them on a 50/50 basis (see points 1064-E2 and 1064-G2 below). They will also be treated as sharing expenses (e.g. for rent) on a 50/50 basis (see section 1070V).

**Module B—Maximum basic rate**

[see Appendix for CPI adjusted figures]

*Maximum basic rate*

1064-B1 A person's maximum basic rate depends on the person's family situation. Work out which family situation in Table B applies to the person. The maximum basic rate is the corresponding amount in column 3.

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**Table B—Maximum basic rates**

Column 1 Item	Column 2 Person's family situation	Column 3 Rate per year	Column 4 Rate per fortnight
1.	Not member of couple	\$8,114.60	\$312.10
2.	Partnered	\$6,767.80	\$260.30
3.	Member of illness separated couple	\$8,114.60	\$312.10
4.	Member of respite care couple	\$8,114.60	\$312.10
5.	Partnered (partner in gaol)	\$8,114.60	\$312.10

Note 1: For *member of couple, partnered, illness separated couple, respite care couple* and *partnered (partner in gaol)* see section 4.

Note 2: the maximum basic rates are indexed 6 monthly in line with CPI increases (see sections 1191 to 1194).

**Module BA—Pension supplement**

*Pension supplement*

1064-BA1 The amount of a person's pension supplement depends on the person's maximum basic rate. There is a pension supplement amount for each maximum basic rate listed in the table in point 1064-B1.



*Amount of pension supplement*

- 1064-BA2 The amount of a person's pension supplement is worked out by:
- (a) calculating the amount (the **provisional supplement amount**) that is 4% of the person's 1 July 2000 maximum basic rate; and
  - (b) rounding off the provisional supplement amount in accordance with points 1064-BA4 to 1064-BA6.

Note: The pension supplement amounts are indexed 6 monthly in line with CPI increases (see sections 1191 to 1194).

- 1064-BA3 A person's **1 July 2000 maximum basic rate** is the maximum basic rate that would have been the person's maximum basic rate if the rate had not changed since 1 July 2000.

*Rounding off of provisional supplement amount*

- 1064-BA4 If a provisional supplement amount is a multiple of \$2.60, the amount of the pension supplement is the provisional supplement amount.
- 1064-BA5 If a provisional supplement amount is not a multiple of \$2.60, the amount of the pension supplement is the provisional supplement amount rounded up or down to the nearest multiple of \$2.60.
- 1064-BA6 If a provisional supplement amount is not a multiple of \$2.60, but is a multiple of \$1.30, the amount of the pension supplement is the provisional supplement amount rounded up to the nearest multiple of \$2.60.

**Module C—Pharmaceutical allowance**

[see Appendix for CPI adjusted figures]

*Qualification for pharmaceutical allowance*

- 1064-C1 Subject to points 1064-C2, 1064-C3, 1064-C4 and 1064-C6, an additional amount by way of pharmaceutical allowance is to be added to a person's maximum basic rate if the person is an Australian resident.

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*No pharmaceutical allowance if person receiving pharmaceutical allowance under the Veterans' Entitlements Act or the Military Rehabilitation and Compensation Act*

- 1064-C2 Pharmaceutical allowance is not to be added to a person's maximum basic rate if the person is receiving pharmaceutical allowance under the Veterans' Entitlements Act or the Military Rehabilitation and Compensation Act.

*No pharmaceutical allowance if partner receiving pharmaceutical allowance under the Veterans' Entitlements Act or the Military Rehabilitation and Compensation Act and not a service pensioner*

- 1064-C3 Pharmaceutical allowance is not to be added to a person's maximum basic rate if:

- (a) the person is a member of a couple; and
- (b) the person's partner is receiving pharmaceutical allowance under the Veterans' Entitlements Act or the Military Rehabilitation and Compensation Act; and
- (c) the person's partner is not receiving a service pension.

Note: if paragraphs (a), (b) and (c) apply to the person's partner, the partner is receiving pharmaceutical allowance under the VEA at the higher rate (rather than the person and the person's partner each receiving pharmaceutical allowance at the lower rate) or is receiving pharmaceutical allowance under the MRCA.

*No pharmaceutical allowance before advance payment period ends*

- 1064-C4 Pharmaceutical allowance is not to be added to a person's maximum basic rate if:

- (a) the person has received an advance pharmaceutical allowance under:
  - (i) Part 2.23 of this Act; or
  - (ii) Division 2 of Part VIIA of the Veterans' Entitlements Act; and
- (b) the person's advance payment period has not ended.

Note: *advance payment period* see point 1064-C5.

*Advance payment period*

1064-C5 A person's advance payment period:

- (a) starts on the day on which the advance pharmaceutical allowance is paid to the person; and
- (b) ends after the number of paydays worked out using the following formula have passed:

$$\frac{\text{amount of advance} \times 26}{\text{pharmaceutical allowance rate}}$$

where:

**amount of advance** is the amount of the advance paid to the person.

**pharmaceutical allowance rate** is the yearly amount of pharmaceutical allowance which would be added to the person's maximum basic rate in working out the instalment for the day on which the advance is paid if pharmaceutical allowance were to be added to the person's maximum basic rate on that day.

*No pharmaceutical allowance if annual limit reached*

1064-C6 Pharmaceutical allowance is not to be added to a person's maximum basic rate if:

- (a) the person has received an advance pharmaceutical allowance during the current calendar year; and
- (b) the total amount paid to the person for that year by way of:
  - (i) pharmaceutical allowance; and
  - (ii) advance pharmaceutical allowance;

equals the total amount of pharmaceutical allowance that would have been paid to the person during that year if the person had not received any advance pharmaceutical allowance.

Note 1: for the amount **paid** to a person by way of pharmaceutical allowance see subsections 19A(2) to (6).

Note 2: the annual limit is affected by:

- how long during the calendar year the person was on pension or benefit;
- the rate of pharmaceutical allowance the person attracts at various times depending on the person's family situation.

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*VEA and MRCA payments taken into account*

1064-C7 In points 1064-C5 and 1064-C6:

**advance pharmaceutical allowance** includes advance pharmaceutical allowance under the Veterans' Entitlements Act; and

**pharmaceutical allowance** includes pharmaceutical allowance under the Veterans' Entitlements Act or the Military Rehabilitation and Compensation Act.

*Amount of pharmaceutical allowance*

1064-C8 The amount of pharmaceutical allowance is the amount per year worked out using the following Table:

<b>Pharmaceutical allowance amount table</b>			
<b>Column 1 Item</b>	<b>Column 2 Person's family situation</b>	<b>Column 3 Rate per year</b>	<b>Column 4 rate per fortnight</b>
1.	Not member of couple	\$135.20	\$5.20
2.	Partnered	\$67.60	\$2.60
3.	Member of illness separated couple	\$135.20	\$5.20
4.	Member of respite care couple	\$135.20	\$5.20
5.	Partnered (partner getting service pension)	\$67.60	\$2.60
6.	Partnered (partner in gaol)	\$135.20	\$5.20

Note 1: For *member of couple, partnered, illness separated couple, respite care couple* and *partnered (partner in gaol)* see section 4.

Note 2: The amounts in column 3 are adjusted annually in line with CPI increases (see section 1206A).

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## Module E—Ordinary income test

[see Appendix for CPI adjusted figures]

### *Effect of income on maximum payment rate*

1064-E1 This is how to work out the effect of a person's ordinary income on the person's maximum payment rate:

#### *Method statement*

Step 1. Work out the amount of the person's ordinary income on a yearly basis.

Note 1: For the treatment of the ordinary income of members of a couple see point 1064-E2.

Note 2: Module F contains provisions that may apply to working out the ordinary income of a person, and the ordinary income of a partner of the person, for the purposes of disability support pension.

Step 2. Work out the person's ordinary income free area (see points 1064-E4 to 1064-E9 below).

Note: a person's ordinary income free area is the amount of ordinary income that the person can have without any deduction being made from the person's maximum payment rate.

Step 3. Work out whether the person's ordinary income exceeds the person's ordinary income free area.

Step 4. If the person's ordinary income does not exceed the person's ordinary income free area, the person's ordinary income excess is nil.

Step 5. If the person's ordinary income exceeds the person's ordinary income free area, the person's ordinary income excess is the person's ordinary income less the person's ordinary income free area.

Step 6. Use the person's ordinary income excess to work out the person's reduction for ordinary income using points 1064-E10 to 1064-E12 below.

**Chapter 3** General provisions relating to payability and rates

**Part 3.2** Pension Rate Calculator A

**Module E** Ordinary income test

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Note 1: see point 1064-A1 (Steps 5 to 8) for the significance of the person's reduction for ordinary income.

Note 2: the application of the ordinary income test is affected by provisions concerning:

- the general concept of ordinary income (sections 1072 and 1073);
- business income (sections 1074 and 1075);
- deemed income from financial assets (sections 1076 to 1084);
- income from income streams (sections 1095 to 1099DAA);
- disposal of income (sections 1106 to 1112);

*Ordinary incomes of members of couples*

1064-E2 If a person is a member of a couple, add the couple's ordinary incomes (on a yearly basis) and divide by 2 to work out the amount of the person's ordinary income for the purposes of this Module.

Note: For the purposes of working out a person's disability support pension rate under this Rate Calculator, Module F applies to working out the ordinary incomes of both members of the couple.

*Payment of arrears of periodic compensation payments*

1064-E3 If:

- (a) at the time of an event that gives rise to an entitlement of a person to compensation, the person is receiving age pension, disability support pension, wife pension, carer pension, mature age allowance under Part 2.12A or mature age partner allowance; and
- (b) in relation to that entitlement, the person receives a payment of arrears of periodic compensation;

the person is taken to receive on each day in the periodic payments period an amount calculated by dividing the amount received by the number of days in the periodic payments period.

Note: for *periodic payments period* see section 17.

*How to calculate a person's ordinary income free area*

1064-E4 A person's ordinary income free area is worked out using Table E-1. Work out which family situation in Table E-1 applies to the person. The ordinary income free area is the corresponding amount in column 3 plus an additional corresponding amount in column 5 for each dependent child of the person.

**Table E-1—Ordinary free area limits**

Column 1 Item	Column 2 Category of person	Column 3 Basic free area per year	Column 4 Basic free area per fortnight	Column 5 Additional free area per year	Column 6 Additional free area per fortnight
1.	Not member of a couple	\$2,080	\$80	\$639.60	\$24.60
2.	Partnered (partner getting neither pension nor benefit)	\$1,820	\$70	\$639.60	\$24.60
3.	Partnered (partner getting benefit)	\$1,820	\$70	\$639.60	\$24.60
4.	Partnered (partner getting pension)	\$1,820	\$70	\$319.80	\$12.30

Note 1: for *member of a couple, partnered (partner getting neither pension nor benefit), partnered (partner getting benefit)* and *partnered (partner getting pension)* see section 4.

Note 2: for *dependent child* see section 5 and point 1064-E12.

Note 3: items 2, 3 and 4 of Table E-1 apply to members of illness separated and respite care couples.

Note 4: the basic free area limits are indexed annually in line with CPI increases (see sections 1191 to 1194).

*No additional free area for certain prescribed student children*

1064-E5 No additional free area is to be added for a dependent child who:

- (a) has turned 18; and
- (b) is a prescribed student child;

unless the person whose rate is being calculated, or the person's partner, receives carer allowance for the child.

Note: this point may not apply to a person who has been receiving additional free area since 1 January 1990: see clause 29 in Schedule 1A.

*Reduction of additional free area for dependent children*

1064-E6 The additional free area for a dependent child of a person to whom item 1, 2 or 3 of Table E-1 applies is reduced by the annual amount

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of any payment received by the person or the person's partner for or in respect of that particular child. The payments referred to in point 1064-E8 do not result in a reduction.

1064-E7 The additional free area for a dependent child of a person to whom item 4 of Table E-1 applies is reduced by 50% of the annual amount of any payment received by the person or the person's partner for or in respect of that particular child. The payments referred to in point 1064-E8 do not result in a reduction.

1064-E8 No reduction is to be made under point 1064-E6 or 1064-E7 for a payment:

- (a) under this Act; or
- (b) of maintenance income; or
- (c) under the VEA; or
- (d) under an Aboriginal study assistance scheme; or
- (e) under the Assistance for Isolated Children Scheme.

Note: for *Aboriginal study assistance scheme* see subsection 23(1).

1064-E9 Examples of the kinds of payments that result in a reduction under points 1064-E6 and 1064-E7 are:

- (a) amounts received from State authorities or benevolent societies in respect of the *boarding out* of the child; or
- (b) amounts of superannuation or compensation paid in respect of the child; or
- (c) amounts (other than amounts covered by point 1064-E8 above) paid in respect of the child under educational schemes; or
- (e) foster care allowance payments made by a State welfare authority.

ORDINARY INCOME FREE AREA EXAMPLES (using rates to 30.6.91)

*Example 1:*

*Facts* Wayne and Mary are members of a couple. They both receive pensions. They have 2 dependent children—Max and Angela. Angela is being fostered by Wayne and Mary and they receive \$15 per week from the NSW Government by way of a foster care payment in respect of Angela.

*Application* The foster care payment calculated on a yearly basis is  $\$15 \times 52 = \$780$ . As point 1064-E7 applies to Wayne and Mary (they are covered by item 4 of Table E-1 in point 1064-E4), the



reduction is at the 50% rate (i.e. \$390 per year). The possible additional amount for Angela (\$312) is therefore reduced to nil.

The amount that Wayne gets for Max is not subject to reduction and is \$312 per year. Mary gets \$312 for Max as well.

Wayne's ordinary income free area is  $\$1,820 + \$312 = \$2,132$ .  
Mary's ordinary income free area is the same.

*Example 2:*

*Facts* The same facts as in example 1 except that Wayne and Mary receive only \$10 a week (\$520 a year) foster care payment for Angela.

*Application* The amount that each person would be allowed for Angela is:

$$\$312 - \frac{520}{2} = \$312 - 260 = \$52$$

Then each would have an ordinary income free area of  
 $\$1,820 + \$312 + \$52 = \$2,184$

*Pension reduction for ordinary income in excess of ordinary income free area*

1064-E10 A person's reduction for ordinary income is:

$$\text{Ordinary income excess} \times 0.4$$

*Ordinary income excess*

1064-E11 A person's ordinary income excess is the person's ordinary income less the person's ordinary income free area.

1064-E12 In this Module:

***dependent child***, in relation to a person, includes any child of the person who is under 18 and is receiving a youth allowance.

## **Module F—Ordinary income for the purposes of disability support pension**

[see Appendix for CPI adjusted figures]

*Application of this Module*

1064-F1 This Module applies only for the purposes of working out the rate of disability support pension payable to a person. It so applies to that person and, if the person is a member of a couple, to the person's partner.

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*Lump sum payments arising from termination of employment*

1064-F2 Subject to points 1064-F3 to 1064-F14 (inclusive), if:

- (a) a person's employment has been terminated; and
- (b) as a result the person is entitled to a lump sum payment from the person's former employer;

the person is taken to have received the lump sum payment on the day on which the person's employment was terminated.

*Directed termination payments excluded*

1064-F3 If:

- (a) a person's employment has been terminated; and
- (b) as a result the person is entitled to a lump sum payment from the person's former employer; and
- (c) the payment, or part of the payment, is a directed termination payment within the meaning of section 82-10F of the *Income Tax (Transitional Provisions) Act 1997*;

the payment, or that part, is to be disregarded in working out the ordinary income of the person for the purposes of Module E.

*Certain leave payments taken to be ordinary income—employment continuing*

1064-F4 If:

- (a) a person is employed; and
- (b) the person is on leave for a period; and
- (c) the person is or was entitled to receive a leave payment (whether as a lump sum payment, as a payment that is one of a series of regular payments or otherwise) in respect of a part or all of a leave period;

the person is taken to have received ordinary income for a period (the *income maintenance period*) equal to the leave period to which the leave payment entitlement relates.

*Certain payments taken to be ordinary income—employment terminated*

1064-F5 If:

- (a) a person's employment has been terminated; and

- (b) the person receives a termination payment (whether as a lump sum payment, as a payment that is one of a series of regular payments or otherwise);

the person is taken to have received ordinary income for a period (the *income maintenance period*) equal to the period to which the payment relates.

*More than one termination payment on a day*

1064-F6 If:

- (a) a person is covered by point 1064-F5; and
- (b) the person receives more than one termination payment on a day;

the income maintenance period is worked out by adding the periods to which the payments relate.

*Start of income maintenance period—employment continuing*

1064-F7 If a person is covered by point 1064-F4, the income maintenance period starts on the first day of the leave period to which the leave payment entitlement relates.

*Start of income maintenance period—employment terminated*

1064-F8 If a person is covered by point 1064-F5, the income maintenance period starts, subject to point 1064-F9, on the day on which the person is paid the termination payment.

*Commencement of income maintenance period where there is a second termination payment*

1064-F9 If:

- (a) a person who is covered by point 1064-F5 is subject to an income maintenance period (the *first period*); and
- (b) the person is paid another termination payment during that period (the *second termination payment*);

the income maintenance period for the second termination payment starts on the day after the end of the first period.

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*Leave payments or termination payments in respect of periods longer than a fortnight*

1064-F10 If:

- (a) a person receives a leave payment or termination payment; and
- (b) the payment is in respect of a period longer than a fortnight; the person is taken to receive in a payment fortnight or part of a payment fortnight an amount calculated by:
  - (c) dividing the amount received by the number of days in the period to which the payment relates (the **daily rate**); and
  - (d) multiplying the daily rate by the number of days in the payment fortnight that are also in the period.

1064-F11 If the Secretary is satisfied that a person is in severe financial hardship because the person has incurred unavoidable or reasonable expenditure while an income maintenance period applies to the person, the Secretary may determine that the whole, or any part, of the period does not apply to the person.

Note 1: For **in severe financial hardship** see subsection 19C(2) (person who is not a member of a couple) and subsection 19C(3) (person who is a member of a couple).

Note 2: For **unavoidable or reasonable expenditure** see subsection 19C(4).

Note 3: If an income maintenance period applies to a person, then, during that period:

- (a) the pension claimed may not be payable to the person; or
- (b) the amount of the pension payable to the person may be reduced.

*When a person receives a leave payment or a termination payment*

1064-F12 For the purposes of points 1064-F3 to 1064-F11 (inclusive), a person (the **first person**) is taken to receive a leave payment or termination payment if:

- (a) the payment is made to another person:
  - (i) at the direction of the first person or a court; or
  - (ii) on behalf of the first person; or
  - (iii) for the benefit of the first person; or
- (b) the first person waives or assigns his or her right to receive the payment.

*Single payment in respect of different kinds of termination payments*

- 1064-F13 If a person who is covered by point 1064-F5 receives a single payment in respect of different kinds of termination payments, then, for the purposes of the application of points 1064-F4 to 1064-F12 (inclusive):
- (a) each part of the payment that is in respect of a different kind of termination payment is taken to be a separate payment; and
  - (b) the income maintenance period in respect of the single payment is worked out by adding the periods to which the separate payments relate.

*Definitions*

- 1064-F14 In this Module:

***leave payment*** includes a payment in respect of sick leave, annual leave, maternity leave and long service leave.

***payment fortnight*** means a fortnight in respect of which a disability support pension is paid, or would be paid apart from the application of an income maintenance period, to a person.

***period to which the payment relates*** means:

- (a) if the payment is a leave payment—the leave period to which the payment relates; or
- (b) if the payment is a redundancy payment and is calculated as an amount equivalent to an amount of ordinary income that the person would (but for the redundancy) have received from the employment that was terminated—the period for which the person would have received that amount of ordinary income; or
- (c) if the payment is a redundancy payment and paragraph (b) does not apply—the period of weeks (rounded down to the nearest whole number) in respect of which the person would have received ordinary income, from the employment that was terminated, of an amount equal to the amount of the redundancy payment if:
  - (i) the person's employment had continued; and

- (ii) the person received ordinary income from the employment at the rate per week at which the person usually received ordinary income from the employment prior to the termination.

*redundancy payment* does not include a directed termination payment within the meaning of section 82-10F of the *Income Tax (Transitional Provisions) Act 1997*.

*termination payment* means:

- (a) a leave payment relating to a person's employment that has been terminated; or
- (b) a redundancy payment.

### Module G—Assets test

[see Appendix for CPI adjusted figures]

*Effect of assets on maximum payment rate*

1064-G1 This is how to work out the effect of a person's assets on the person's maximum payment rate:

*Method statement*

Step 1. Work out the value of the person's assets.

Note 1: for the treatment of the assets of members of a couple see point 1064-G2.

Note 2: for the assets that are to be disregarded in valuing a person's assets see section 1118.

Note 3: for the valuation of an asset that is subject to a charge or encumbrance see section 1121.

Step 2. Work out the person's assets value limit (see point 1064-G3 below).

Note: a person's assets value limit is the maximum value of assets the person can have without affecting the person's pension rate.

Step 3. Work out whether the value of the person's assets exceeds the person's assets value limit.

- Step 4. If the value of the person's assets does not exceed the person's assets value limit, the person's assets excess is nil.
- Step 5. If the value of the person's assets exceeds the person's assets value limit, the person's assets excess is the value of the person's assets less the person's assets value limit.
- Step 6. Use the person's assets excess to work out the person's reduction for assets using points 1064-G4 to 1064-G7 below.

Note 1: see point 1064-A1 (steps 9 and 10) for the significance of the person's reduction for assets.

Note 2: the application of the assets test is affected by provisions concerning:

- disposal of assets (sections 1123 to 1128);
- retirement villages (sections 1145 to 1157);
- financial hardship (sections 1129 and 1130);
- the pensions loans scheme (sections 1133 to 1144).

*Value of assets of members of couples*

1064-G2 For the purposes of this Module:

- (a) the value of the assets of a member of a couple is to be taken to be 50% of the sum of:
- (i) the value of the person's assets; and
  - (ii) the value of the person's partner's assets; and
- (b) the value of the assets of a particular kind of a member of a couple is to be taken to be 50% of the sum of:
- (i) the value of the person's assets of that kind; and
  - (ii) the value of the person's partner's assets of that kind.

*Assets value limit*

1064-G3 A person's assets value limit is worked out using Table G-1. Work out the person's family situation and home ownership situation. The assets value limit is the corresponding amount in column 3.

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<b>Table G-1—Assets value limit</b>			
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	
<b>Item</b>	<b>Person's family situation</b>	<b>Assets value limit</b>	
		<b>Column 3A</b>	<b>column 3B</b>
		<b>Either person or partner homeowner</b>	<b>Neither person nor partner homeowner</b>
1.	Not member of a couple	\$110,750	\$190,250
2.	Partnered (partner getting neither pension nor benefit)	\$78,750	\$118,500
3.	Partnered (partner getting pension or benefit)	\$78,750	\$118,500

Note 1: for *member of a couple, partnered (partner getting neither pension nor benefit)* and *partnered (partner getting pension or benefit)* see section 4.

Note 2: for *homeowner* see section 11.

Note 3: items 2 and 3 apply to members of illness separated and respite care couples.

Note 4: the assets value limits are indexed or adjusted annually in line with CPI increases (see sections 1191 to 1194 and 1203).

*Pension reduction for assets in excess of assets value limit*

1064-G4 A person's reduction for assets is worked out using Table G-2. Work out which family situation applies to the person. The reduction for assets is the amount per year worked out using the corresponding calculation in column 3.

<b>Table G-2—Reduction for assets</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Item</b>	<b>Person's family situation</b>	<b>Reduction</b>
1.	Not member of a couple	$\frac{\text{Assets excess} \times 9.75}{250}$



<b>Table G-2—Reduction for assets</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Item</b>	<b>Person's family situation</b>	<b>Reduction</b>
2.	Partnered (partner getting neither pension nor benefit)	$\frac{\text{Assets excess} \times 9.75}{250}$
3.	Partner (partner getting pension or benefit)	$\frac{\text{Assets excess} \times 9.75}{250}$

Note 1: for *member of a couple, partnered (partner getting neither pension nor benefit), partnered (partner getting benefit)* and *partnered (partner getting pension)* see section 4.

Note 4: for *assets excess* see point 1064-G5 below.

*Assets excess*

1064-G5 A person's *assets excess* is the value of the person's assets less the person's assets value limit.

1064-G7 In calculating a person's assets excess under point 1064-G5 disregard any part of the excess that is not a multiple of \$250.

## Module H—Remote area allowance

*Remote area allowance*

1064-H1 An amount by way of remote area allowance is to be added to a person's rate of pension if:

(aa) either:

- (i) the person's rate of pension apart from this point is greater than nil; or
- (ii) apart from this point the person's rate of pension would be nil merely because an advance pharmaceutical allowance has been paid to the person under:

(A) Part 2.23 of this Act; or

(B) Division 2 of Part VIIA of the Veterans' Entitlements Act; and

(a) the person's usual place of residence is situated in the remote area; and

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(b) the person is physically present in the remote area.

Note: for *remote area* and *physically present in the remote area* see section 14.

*Rate of remote area allowance*

1064-H2 The rate of remote area allowance payable to a person is worked out using Table H. Work out which family situation in the Table applies to the person. The rate of remote area allowance is the corresponding amount in column 3 plus an additional corresponding amount in column 5 for each FTB child, and each regular care child, of the person.

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**Table H—Remote area allowance**

<b>Column 1 Item</b>	<b>Column 2 Person's family situation</b>	<b>Column 3 Basic allowance per year</b>	<b>Column 4 Basic allowance per fortnight</b>	<b>Column 5 Additional allowance per year</b>	<b>Column 6 Additional allowance per fortnight</b>
1.	Not member of couple	\$473.20	\$18.20	\$189.80	\$7.30
2.	Partnered	\$405.60	\$15.60	\$189.80	\$7.30
3.	Member of illness separated couple	\$473.20	\$18.20	\$189.80	\$7.30
4.	Member of respite care couple	\$473.20	\$18.20	\$189.80	\$7.30
5.	Partnered (partner in gaol)	\$473.20	\$18.20	\$189.80	\$7.30

Note 1: For *member of couple*, *partnered*, *illness separated couple*, *respite care couple* and *partnered (partner in gaol)* see section 4.

*Special rule where partner has an FTB or regular care child but is not receiving a pension*

1064-H5 If:

- (a) a person who is a member of a couple is qualified for an amount by way of remote area allowance; and
- (b) the person's partner is not receiving a pension or benefit; and

(c) the person's partner has an FTB child or a regular care child; the child is taken, for the purposes of this Module, to be an FTB child, or a regular care child, (as the case requires) of the person.

*Special rule where partner has an FTB or regular care child but is not receiving additional allowance for the child*

1064-H6 If:

- (a) a person who is a member of a couple is qualified for an amount by way of remote area allowance; and
- (b) the person's partner has an FTB child or a regular care child; and
- (c) the person's partner is not receiving additional allowance for the child;

the child is taken, for the purposes of this Module, to be an FTB child, or a regular care child, (as the case requires) of the person.

*Special rule dealing with the death of an FTB or regular care child*

1064-H7 If an FTB child, or a regular care child, of a person dies, this Module has effect, for a period of 14 weeks after the death of the child, as if the child had not died.

Note: This point does not prevent this Module having the effect it would have had if the child would otherwise have ceased to be an FTB child, or a regular care child, during that 14 weeks.

## Part 3.3—Pension Rate Calculator B

### 1065 Rate of age and disability support pension and of disability wage supplement (blind people)

- (1) The rate of:
- (a) age pension payable to a person who is permanently blind; and
  - (b) disability support pension payable to a person who:
    - (i) is permanently blind; and
    - (ii) has turned 21;

is to be calculated in accordance with the Rate Calculator at the end of this section.

Note: Module A of the Rate Calculator establishes the overall rate calculation process and the remaining Modules provide for the calculation of the component amounts used in the overall rate calculation.

- (3) Where:
- (a) a person who is permanently blind has a relationship with a person of the opposite sex (*other person*); and
  - (b) the relationship between them is a marriage-like relationship in the Secretary's opinion (formed after the Secretary has had regard to all the circumstances of the relationship, including, in particular, the matters referred to in paragraphs 4(3)(a) to (e) and subsection 4(3A));
  - (c) either or both of them are under the age of consent applicable in the State or Territory in which they are living;

the rate of pension payable to the person who is permanently blind is not to exceed the rate at which it would be payable to the person if the other person were the person's partner.

Note: this provision has the effect of taking into account the ordinary income, maintenance income and assets of the partner in applying the ordinary income test, maintenance income test and assets test respectively.

*Rate limited for certain armed services widows*

(4) If:

- (a) an armed services widow is receiving a pension under Part II or IV of the Veterans' Entitlements Act at a rate determined under or by reference to subsection 30(1) of that Act; and
- (b) an age or disability support pension is payable to the widow;  
the rate of pension payable to the widow is not to exceed:
- (c) if:
  - (i) the widow has been receiving the payment referred to in paragraph (a) continuously since before 1 November 1986; and
  - (ii) immediately before 1 November 1986, the widow was receiving a payment referred to in paragraph (b) at a rate exceeding \$3,247.40; and
  - (iii) the pension referred to in paragraph (b) is of the same type as the one which was payable to the person before 1 November 1986;  
the rate of pension received by the widow immediately before 1 November 1986; and
- (d) in any other case—\$3,247.40.

Note: for *armed services widow* see subsection 4(1).

*Rate limited for certain armed services widowers*

(5) If:

- (a) an armed services widower is receiving a pension under Part II or IV of the Veterans' Entitlements Act at a rate determined under or by reference to subsection 30(1) of that Act; and
- (b) an age or disability support pension is payable to the widower;  
the rate of pension payable to the widower is not to exceed \$3,247.40.

Note: for *armed services widower* see subsection 4(1).

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*Rate limited for certain armed services widows and widowers*

(6) If:

(a) an armed services widow or an armed services widower has received a lump sum, or is receiving a weekly amount, mentioned in paragraph 234(1)(b) of the Military Rehabilitation and Compensation Act; and

(b) an age or disability support pension is payable to the widow or widower;

the rate of pension payable to the widow or widower is not to exceed \$3,247.40.

Note: For *armed services widow* and *armed services widower* see subsection 4(1).

## **Pension Rate Calculator B**

### **Module A—Overall rate calculation process**

*Method of calculating rate*

1065-A1 The rate of pension is a daily rate. That rate is worked out by dividing the annual rate calculated according to this Rate Calculator by 364 (fortnightly rates are provided for information only).

*Method statement*

Step 1. Work out what would be the person's rate of pension if Pension Rate Calculator A applied to the person: the result is called the *notional income/assets tested rate*.

Step 2. Work out the person's *maximum basic rate* using MODULE B below.

Step 2A. Work out the amount of pension supplement using Module BA below.

Step 3. Work out the amount per year (if any) of pharmaceutical allowance using MODULE C below.

Step 4. Add up the amounts obtained in Steps 2, 2A and 3: the result is called the *maximum payment rate*.

Step 5. Work out the *non-income/assets tested rate* by:

- (a) subtracting from the maximum payment rate any special employment advance deduction (see Part 3.16B); and
- (b) if there is any amount remaining, subtracting from that amount any advance payment deduction (see Part 3.16A); and
- (c) adding any amount payable by way of remote area allowance (see Module E).

Step 6. Compare the notional income/assets tested rate and the non-income/assets tested rate: whichever is the greater is the person's *rate of pension*.

Note 1: the person will also be qualified for a pharmaceutical allowance under Part 2.22.

Note 2: an amount of remote area allowance is to be added under Step 5 only if the person's rate of pension after Step 4 is greater than nil.

## **Module B—Maximum basic rate**

[see Appendix for CPI adjusted figures]

### *Maximum basic rate*

1065-B1 A person's maximum basic rate depends on the person's family situation. Work out which family situation in Table B applies to the person. The maximum basic rate is the corresponding amount in column 3 of the Table.

**Table B—Maximum basic rates**

<b>Column 1 Item</b>	<b>Column 2 Person's family situation</b>	<b>Column 3 Rate per year</b>	<b>Column 4 Rate per fortnight</b>
1.	Not member of couple	\$8,114.60	\$312.10
2.	Partnered	\$6,767.80	\$260.30
3.	Member of illness separated couple	\$8,114.60	\$312.10
4.	Member of respite care couple	\$8,114.60	\$312.10
5.	Partnered (partner in gaol)	\$8,114.60	\$312.10

Note 1: For *member of couple, partnered, illness separated couple, respite care couple* and *partnered (partner in gaol)* see section 4.

Note 2: the maximum basic rates are indexed 6 monthly in line with CPI increases (see sections 1191 to 1194).

## Module BA—Pension supplement

### *Pension supplement*

1065-BA1 The amount of a person's pension supplement depends on the person's maximum basic rate. There is a pension supplement amount for each maximum basic rate listed in the table in point 1065-B1.

### *Amount of pension supplement*

1065-BA2 The amount of a person's pension supplement is worked out by:

- calculating the amount (the *provisional supplement amount*) that is 4% of the person's 1 July 2000 maximum basic rate; and
- rounding off the provisional supplement amount in accordance with points 1065-BA4 to 1065-BA6.

Note: The pension supplement amounts are indexed 6 monthly in line with CPI increases (see sections 1191 to 1194).

1065-BA3 A person's *1 July 2000 maximum basic rate* is the maximum basic rate that would have been the person's maximum basic rate if the rate had not changed since 1 July 2000.



*Rounding off of provisional supplement amount*

- 1065-BA4 If a provisional supplement amount is a multiple of \$2.60, the amount of the pension supplement is the provisional supplement amount.
- 1065-BA5 If a provisional supplement amount is not a multiple of \$2.60, the amount of the pension supplement is the provisional supplement amount rounded up or down to the nearest multiple of \$2.60.
- 1065-BA6 If a provisional supplement amount is not a multiple of \$2.60, but is a multiple of \$1.30, the amount of the pension supplement is the provisional supplement amount rounded up to the nearest multiple of \$2.60.

**Module C—Pharmaceutical allowance**

[see Appendix for CPI adjusted figures]

*Qualification for pharmaceutical allowance*

- 1065-C1 Subject to points 1065-C2, 1065-C3, 1065-C4 and 1065-C6, an additional amount by way of pharmaceutical allowance is to be added to a person's maximum basic rate if the person is an Australian resident.

*No pharmaceutical allowance if person receiving pharmaceutical allowance under the Veterans' Entitlements Act or the Military Rehabilitation and Compensation Act*

- 1065-C2 Pharmaceutical allowance is not to be added to a person's maximum basic rate if the person is receiving pharmaceutical allowance under the Veterans' Entitlements Act or the Military Rehabilitation and Compensation Act.

*No pharmaceutical allowance if partner receiving pharmaceutical allowance under the Veterans' Entitlements Act or the Military Rehabilitation and Compensation Act and not a service pensioner*

- 1065-C3 Pharmaceutical allowance is not to be added to a person's maximum basic rate if:
- (a) the person is a member of a couple; and

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(b) the person's partner is receiving pharmaceutical allowance under the Veterans' Entitlements Act or the Military Rehabilitation and Compensation Act; and

(c) the person's partner is not receiving a service pension.

Note: if paragraphs (a), (b) and (c) apply to the person's partner, the partner is receiving pharmaceutical allowance under the VEA at the higher rate (rather than the person and the person's partner each receiving pharmaceutical allowance at the lower rate) or is receiving pharmaceutical allowance under the MRCA.

*No pharmaceutical allowance before advance payment period ends*

1065-C4 Pharmaceutical allowance is not to be added to a person's maximum basic rate if:

(a) the person has received an advance pharmaceutical allowance under:

(i) Part 2.23 of this Act; or

(ii) Division 2 of Part VIIA of the Veterans' Entitlements Act; and

(b) the person's advance payment period has not ended.

Note: for *advance payment period* see point 1065-C5.

*Advance payment period*

1065-C5 A person's advance payment period:

(a) starts on the day on which the advance pharmaceutical allowance is paid to the person; and

(b) ends after the number of paydays worked out using the following formula have passed:

$$\frac{\text{amount of advance} \times 26}{\text{pharmaceutical allowance rate}}$$

where:

*amount of advance* is the amount of the advance paid to the person.

*pharmaceutical allowance rate* is the yearly amount of pharmaceutical allowance which would be added to the person's maximum basic rate in working out the instalment for the day on which the advance is paid if pharmaceutical allowance were to be added to the person's maximum basic rate on that day.

*No pharmaceutical allowance if annual limit reached*

1065-C6 Pharmaceutical allowance is not to be added to a person's maximum basic rate if:

- (a) the person has received an advance pharmaceutical allowance during the current calendar year; and
- (b) the total amount paid to the person for that year by way of:
  - (i) pharmaceutical allowance; and
  - (ii) advance pharmaceutical allowance;

equals the total amount of pharmaceutical allowance that would have been paid to the person during that year if the person had not received any advance pharmaceutical allowance.

Note 1: for the amount *paid* to a person by way of pharmaceutical allowance see subsections 19A(2) to (6).

Note 2: the annual limit is affected by:

- how long during the calendar year the person was on pension or benefit;
- the rate of pharmaceutical allowance the person attracts at various times depending on the person's family situation.

*VEA and MRCA payments taken into account*

1065-C7 In points 1065-C5 and 1065-C6:

***advance pharmaceutical allowance*** includes advance pharmaceutical allowance under the Veterans' Entitlements Act.

***pharmaceutical allowance*** includes pharmaceutical allowance under the Veterans' Entitlements Act or the Military Rehabilitation and Compensation Act.

*Amount of pharmaceutical allowance*

1065-C8 The amount of pharmaceutical allowance is the amount per year worked out using the following Table:

<b>Pharmaceutical allowance amount table</b>			
<b>Column 1 Item</b>	<b>Column 2 Person's family situation</b>	<b>Column 3 Amount per year</b>	<b>Column 4 Amount per fortnight</b>
1.	Not member of couple	\$135.20	\$5.20
2.	Partnered	\$67.60	\$2.60
3.	Member of illness separated couple	\$135.20	\$5.20
4.	Member of respite care couple	\$135.20	\$5.20
5.	Partnered (partner getting service pension)	\$67.60	\$2.60
6.	Partnered (partner in gaol)	\$135.20	\$5.20

Note 1: For *member of couple, partnered, illness separated couple, respite care couple* and *partnered (partner in gaol)* see section 4.

Note 2: The amounts in column 3 are adjusted annually in line with CPI increases (see section 1206A).

## Module E—Remote area allowance

### *Remote area allowance*

1065-E1 An amount by way of remote area allowance is to be added to a person's rate of pension if:

(aa) either:

- (i) the person's rate of pension apart from this point is greater than nil; or
  - (ii) apart from this point the person's rate of pension would be nil merely because an advance pharmaceutical allowance has been paid to the person under:
    - (A) Part 2.23 of this Act; or
    - (B) Division 2 of Part VIIA of the Veterans' Entitlements Act; and
- (a) the person's usual place of residence is situated in the remote area; and
- (b) the person is physically present in the remote area.

Note: for *remote area* and *physically present in the remote area* see section 14.

*Rate of remote area allowance*

1065-E2 The rate of remote area allowance payable to a person is worked out using Table E. Work out which family situation in the Table applies to the person. The rate of remote area allowance is the corresponding amount in column 3 plus an additional corresponding amount in column 5 for each FTB child, and each regular care child, of the person.

**Table E—Remote area allowance**

Column 1 Item	Column 2 Person's family situation	Column 3 Basic allowance per year	Column 4 Basic allowance per fortnight	Column 5 Additional allowance per year	Column 6 Additional allowance per fortnight
1.	Not member of couple	\$473.20	\$18.20	\$189.80	\$7.30
2.	Partnered	\$405.60	\$15.60	\$189.80	\$7.30
3.	Member of illness separated couple	\$473.20	\$18.20	\$189.80	\$7.30
4.	Member of respite care couple	\$473.20	\$18.20	\$189.80	\$7.30
5.	Partnered (partner in gaol)	\$473.20	\$18.20	\$189.80	\$7.30

Note: For *member of couple*, *partnered*, *illness separated couple*, *respite care couple* and *partnered (partner in gaol)* see section 4.

*Special rule where partner has an FTB or regular care child but is not receiving a pension*

1065-E4 If:

- (a) a person who is a member of a couple is qualified for an amount by way of remote area allowance; and
- (b) the person's partner is not receiving a pension or benefit; and
- (c) the person's partner has an FTB child or a regular care child; the child is taken, for the purposes of this Module, to be an FTB child, or a regular care child, (as the case requires) of the person.

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*Special rule where partner has an FTB or regular care child but is not receiving additional allowance for the child*

1065-E5 If:

- (a) a person who is a member of a couple is qualified for an amount by way of remote area allowance; and
- (b) the person's partner has an FTB child or a regular care child; and
- (c) the person's partner is not receiving additional allowance for the child;

the child is taken, for the purposes of this Module, to be an FTB child, or a regular care child, (as the case requires) of the person.

*Special rule dealing with the death of an FTB or regular care child*

1065-E6 If an FTB child, or a regular care child, of a person dies, this Module has effect, for a period of 14 weeks after the death of the child, as if the child had not died.

Note: This point does not prevent this Module having the effect it would have had if the child would otherwise have ceased to be an FTB child, or a regular care child, during that 14 weeks.

## **Part 3.4—Pension Rate Calculator C**

### **1066 Rate of bereavement allowance and widow B pension**

(1) The rate of:

- (b) bereavement allowance; and
- (c) widow B pension;

is to be calculated in accordance with the Rate Calculator at the end of this section.

Note: Module A of the Rate Calculator establishes the overall rate calculation process and the remaining Modules provide for the calculation of the component amounts used in the overall rate calculation.

(3) If:

- (a) a person has a relationship with a person of the opposite sex (*other person*); and
- (b) the relationship between them is a marriage-like relationship in the Secretary's opinion (formed after the Secretary has had regard to all the circumstances of the relationship, including, in particular, the matters referred to in paragraphs 4(3)(a) to (e) and subsection 4(3A));
- (c) either or both of them are under the age of consent applicable in the State or Territory in which they are living;

the person's pension rate is not to exceed the rate at which it would be payable to the person if the other person were the person's partner.

Note 1: although there is only 1 maximum basic rate specified in point 1066-B1 of Pension Rate Calculator C, the ordinary income test (Module E) and assets test (Module G) do depend on whether the recipient is a member of a couple or not.

## Pension Rate Calculator C

### Module A—Overall rate calculation process

#### *Method of calculating rate*

- 1066-A1 The rate of pension is a daily rate. That rate is worked out by dividing the annual rate calculated according to this Rate Calculator by 364 (fortnightly rates are provided for information only).

#### *Method statement*

- Step 1. Work out the person's *maximum basic rate* using MODULE B below.
- Step 1A. Work out the amount of pension supplement using Module BA below.
- Step 2. Work out the amount per year (if any) of pharmaceutical allowance using MODULE C below.
- Step 3. Work out the amount per year (if any) for rent assistance in accordance with paragraph 1070A(b).
- Step 4. Add up the amounts obtained in Steps 1, 1A, 2 and 3: the result is called the *maximum payment rate*.
- Step 5. Apply the ordinary income test using MODULE E below to work out the income reduction.
- Step 8. Take the income reduction away from the maximum payment rate: the result is called the *income reduced rate*.
- Step 9. Apply the assets test using MODULE G below to work out the reduction for assets.
- Step 10. Take the reduction for assets away from the maximum payment rate: the result is called the *assets reduced rate*.



Step 11. Compare the income reduced rate and the assets reduced rate: the lower of the 2 rates, or the income reduced rate if the rates are equal, is the *provisional annual payment rate*.

Step 12. The *rate of pension* is the amount obtained by:

- (a) subtracting from the provisional annual payment rate any special employment advance deduction (see Part 3.16B); and
- (b) if there is any amount remaining, subtracting from that amount any advance payment deduction (see Part 3.16A); and
- (c) adding any amount payable by way of remote area allowance (see Module H).

Note 1: if a person's assets reduced rate is less than the person's income reduced rate, the person may be able to take advantage of provisions dealing with financial hardship (sections 1129 and 1130).

Note 1A: If a person's rate is, or is to be, an income reduced rate or an assets reduced rate, and at least one of those reduced rates is not a nil rate, the person may be able to take advantage of provisions dealing with the pension loans scheme (sections 1133AA to 1144).

Note 2: if a person's rate is reduced under Step 11, the order in which the reduction is to be made against the components of the maximum payment rate is laid down by section 1210 (maximum basic rate first, then rent assistance).

Note 3: although most of the categories of person whose rate is to be worked out using this Rate Calculator will not be members of a couple, some categories are persons who are members of a couple (see subparagraphs 249(1)(a)(ii) and (iii)).

Note 4: in some circumstances a person may also be qualified for a pharmaceutical allowance under Part 2.22.

Note 5: an amount of remote area allowance is to be added under Step 11 only if the person's rate of pension after Step 10 is greater than nil.

#### *Members of a couple*

1066-A2 If 2 people are members of a couple, they will be treated as pooling their resources (income and assets) and sharing them on a 50/50 basis (see points 1066-E2, 1066-F2 and 1066-G2).

## Module B—Maximum basic rate

[see Appendix for CPI adjusted figures]

### *Maximum basic rate*

1066-B1 A person's maximum basic rate is \$8,114.60 per year (\$312.10 per fortnight).

Note: the maximum basic rate is indexed 6 monthly in line with CPI increases (see sections 1191 to 1194).

## Module BA—Pension supplement

### *Pension supplement*

1066-BA1 The amount of a person's pension supplement depends on the person's maximum basic rate.

### *Amount of pension supplement*

1066-BA2 The amount of a person's pension supplement is worked out by:

- (a) calculating the amount (the **provisional supplement amount**) that is 4% of the person's 1 July 2000 maximum basic rate; and
- (b) rounding off the provisional supplement amount in accordance with points 1066-BA4 to 1066-BA6.

Note: The pension supplement amount is indexed 6 monthly in line with CPI increases (see sections 1191 to 1194).

1066-BA3 A person's **1 July 2000 maximum basic rate** is the maximum basic rate that would have been the person's maximum basic rate if the rate had not changed since 1 July 2000.

### *Rounding off of provisional supplement amount*

1066-BA4 If a provisional supplement amount is a multiple of \$2.60, the amount of the pension supplement is the provisional supplement amount.

1066-BA5 If a provisional supplement amount is not a multiple of \$2.60, the amount of the pension supplement is the provisional supplement amount rounded up or down to the nearest multiple of \$2.60.

- 1066-BA6 If a provisional supplement amount is not a multiple of \$2.60, but is a multiple of \$1.30, the amount of the pension supplement is the provisional supplement amount rounded up to the nearest multiple of \$2.60.

## **Module C—Pharmaceutical allowance**

[see Appendix for CPI adjusted figures]

### *Qualification for pharmaceutical allowance*

- 1066-C1 Subject to points 1066-C2, 1066-C3 and 1066-C5, an additional amount by way of pharmaceutical allowance is to be added to a person's maximum basic rate if the person is an Australian resident.

*No pharmaceutical allowance if person receiving pharmaceutical allowance under the Veterans' Entitlements Act or the Military Rehabilitation and Compensation Act*

- 1066-C2 Pharmaceutical allowance is not to be added to a person's maximum basic rate if the person is receiving pharmaceutical allowance under the Veterans' Entitlements Act or the Military Rehabilitation and Compensation Act.

Note: a person can receive both:

- (a) a disability pension under the VEA; and
- (b) a pension under this Act;

and pharmaceutical allowance might be built into the disability pension rate.

*No pharmaceutical allowance before advance payment period ends*

- 1066-C3 Pharmaceutical allowance is not to be added to a person's maximum basic rate if:

- (a) the person has received an advance pharmaceutical allowance under:
  - (i) Part 2.23 of this Act; or
  - (ii) Division 2 of Part VIIA of the Veterans' Entitlements Act; and
- (b) the person's advance payment period has not ended.

Note: for *advance payment period* see point 1066-C4.

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*Advance payment period*

1066-C4 A person's advance payment period:

- (a) starts on the day on which the advance pharmaceutical allowance is paid to the person; and
- (b) ends after the number of paydays worked out using the following formula have passed:

$$\frac{\text{amount of advance} \times 26}{\text{pharmaceutical allowance rate}}$$

where:

**amount of advance** is the amount of the advance paid to the person.

**pharmaceutical allowance rate** is the yearly amount of pharmaceutical allowance which would be added to the person's maximum basic rate in working out the instalment for the day on which the advance is paid if pharmaceutical allowance were to be added to the person's maximum basic rate on that day.

*No pharmaceutical allowance if annual limit reached*

1066-C5 Pharmaceutical allowance is not to be added to a person's maximum basic rate if:

- (a) the person has received an advance pharmaceutical allowance during the current calendar year; and
- (b) the total amount paid to the person for that year by way of:
  - (i) pharmaceutical allowance; and
  - (ii) advance pharmaceutical allowance;

equals the total amount of pharmaceutical allowance that would have been paid to the person during that year if the person had not received any advance pharmaceutical allowance.

Note 1: for the amount **paid** to a person by way of pharmaceutical allowance see subsections 19A(2) to (6).

Note 2: the annual limit is affected by:

- how long during the calendar year the person was on pension or benefit;
- the rate of pharmaceutical allowance the person attracts at various times depending on the person's family situation.

*VEA and MRCA payments taken into account*

1066-C6 In points 1066-C4 and 1066-C5:

***advance pharmaceutical allowance*** includes advance pharmaceutical allowance under the Veterans' Entitlements Act.

***pharmaceutical allowance*** includes pharmaceutical allowance under the Veterans' Entitlements Act or the Military Rehabilitation and Compensation Act.

*Amount of pharmaceutical allowance*

1066-C7 The amount of pharmaceutical allowance is \$135.20 per year (\$5.20 per fortnight).

Note: the annual amount is adjusted annually in line with CPI increases (see section 1206A).

**Module E—Ordinary income test**

[see Appendix for CPI adjusted figures]

*Effect of income on maximum payment rate*

1066-E1 This is how to work out the effect of a person's ordinary income on the person's maximum payment rate:

*Method statement*

Step 1. Work out the amount of the person's ordinary income on a yearly basis.

Note: for the treatment of the ordinary income of members of a couple see point 1066-E2.

Step 2. Work out the person's ordinary income free area (see points 1066-E4 to 1066-E7 below).

Note: a person's ordinary income free area is the amount of ordinary income that the person can have without any deduction being made from the person's maximum payment rate.

Step 3. Work out whether the person's ordinary income exceeds the person's ordinary income free area.

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Step 4. If the person's ordinary income does not exceed the person's ordinary income free area, the person's ordinary income excess is nil.

Step 5. If the person's ordinary income exceeds the person's ordinary income free area, the person's ordinary income excess is the person's ordinary income less the person's ordinary income free area.

Step 6. Use the person's ordinary income excess to work out the person's reduction for ordinary income using points 1066-E8 to 1066-E9 below.

Note 1: see point 1066-A1 (Steps 5 to 8) for the significance of the person's reduction for ordinary income.

Note 2: the application of the ordinary income test is affected by provisions concerning:

- the general concept of ordinary income (sections 1072 and 1073);
- business income (sections 1074 and 1075);
- deemed income from financial assets (sections 1076 to 1084);
- income from income streams (sections 1095 to 1099DAA);
- disposal of income (sections 1106 to 1112);

*Ordinary incomes of members of couples*

1066-E2 If a person is a member of a couple, add the couple's ordinary incomes (on a yearly basis) and divide by 2 to work out the amount of the person's ordinary income for the purposes of this Module.

*How to calculate a person's ordinary income free area*

1066-E4 A person's ordinary income free area is worked out using Table E. The ordinary income free area is the amount in column 1 plus an additional amount in column 3 for each dependent child of the person.

<b>Table E—Ordinary income free area</b>			
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>
<b>Basic free area per year</b>	<b>Basic free area per fortnight</b>	<b>Additional free area per year</b>	<b>Additional free area per fortnight</b>
\$2,080	\$80	\$639.60	\$24.60

Note 1: for *dependent child* see section 5 and point 1066-E10.

Note 2: the basic free area per year is indexed annually in line with CPI increases (see sections 1191 to 1194).

*Reduction of additional free area for dependent children*

1066-E5 The additional free area for a dependent child is reduced by the annual amount of any payment received by the person for or in respect of that particular child. The payments referred to in point 1066-E6 do not result in a reduction.

1066-E6 No reduction is to be made under point 1066-E5 for a payment:

- (a) under this Act; or
- (b) of maintenance income; or
- (c) under the Veterans' Entitlements Act; or
- (d) under an Aboriginal study assistance scheme; or
- (e) under the Assistance for Isolated Children Scheme.

Note: for *Aboriginal study assistance scheme* see subsection 23(1).

1066-E7 Examples of the kinds of payments that result in a reduction under point 1066-E5 are:

- (a) amounts received from State authorities or benevolent societies in respect of the *boarding out* of the child; or
- (b) amounts of superannuation or compensation paid in respect of the child; or
- (c) amounts (other than amounts covered by point 1066-E5 above) paid in respect of the child under educational schemes; or
- (e) foster care allowance payments made by a State welfare authority.

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ORDINARY INCOME FREE AREA EXAMPLE (using rates to 30.6.91)

*Example*

*Facts* Mary is a sole parent with 2 dependent children, Jim and Susan. Mary is getting a family allowance payment from another country for Jim at the rate of \$40 a month. On a yearly basis, this amounts to \$480.

*Application* Point 1066-E4 applies to Mary (see paragraph 1066-E7(d)). As a result, the possible additional free area per year for Jim (\$624) must be reduced by \$480.

Mary's ordinary income free area per year is therefore:

$$\$2,080 + \left[ \$624 - \$480 \right] + \$624 \text{ [for Susan]} = \$2,848$$

*Reduction for ordinary income*

1066-E8 A person's reduction for ordinary income is:

$$\text{Ordinary income excess} \times 0.4$$

*Ordinary income excess*

1066-E9 A person's ordinary income excess is the person's ordinary income less the person's ordinary income free area.

1066-E10 In this Module:

***dependent child***, in relation to a person, includes any child of the person who is under 18 and is receiving a youth allowance.

**Module G—Assets test**

[see Appendix for CPI adjusted figures]

*Effect of assets on maximum payment rate*

1066-G1 This is how to work out the effect of a person's assets on the person's maximum payment rate:



*Method statement*

Step 1. Work out the value of the person's assets.

Note 1: for the treatment of the assets of members of a couple see point 1066-G2.

Note 2: for the assets that are to be disregarded in valuing a person's assets see section 1118.

Note 3: for the valuation of an asset that is subject to a charge or encumbrance see section 1121.

Step 2. Work out the person's assets value limit (see point 1066-G3 below).

Note: a person's assets value limit is the maximum value of assets the person can have without affecting the person's pension rate.

Step 3. Work out whether the value of the person's assets exceeds the person's assets value limit.

Step 4. If the value of the person's assets does not exceed the person's assets value limit, the person's assets excess is nil.

Step 5. If the value of the person's assets exceeds the person's assets value limit, the person's assets excess is the value of the person's assets less the person's assets value limit.

Step 6. Use the person's assets excess to work out the person's reduction for assets using points 1066-G4 to 1066-G6 below.

Note 1: see point 1066-A1 (Steps 9 and 10) for the significance of the person's reduction for assets.

Note 2: the application of the assets test is affected by provisions concerning:

- disposal of assets (sections 1123 to 1128);
- retirement villages (sections 1145 to 1157);
- financial hardship (sections 1129 and 1130);
- the pension loans scheme (sections 1133 to 1144).

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*Value of assets of members of couples*

1066-G2 For the purposes of this Module:

- (a) the value of the assets of a member of a couple is to be taken to be 50% of the sum of:
  - (i) the value of the person’s assets; and
  - (ii) the value of the person’s partner’s assets; and
- (b) the value of the assets of a particular kind of a member of a couple is to be taken to be 50% of the sum of:
  - (i) the value of the person’s assets of that kind; and
  - (ii) the value of the person’s partner’s assets of that kind.

*Assets value limit*

1066-G3 A person’s assets value limit is worked out using Table G. Work out which family situation applies to the person. The assets value limit is the corresponding amount in column 3.

<b>Table G—Assets value limit</b>			
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	
<b>Item</b>	<b>Person’s family situation</b>	<b>Assets value limit</b>	
		<b>Column 3A</b>	<b>Column 3B</b>
		<b>Either person or partner homeowner</b>	<b>Neither person nor partner homeowner</b>
1.	Not member of a couple	\$110,750	\$190,250
2.	Partnered (partner getting neither pension nor benefit)	\$78,750	\$118,500
3.	Partnered (partner getting pension or benefit)	\$78,750	\$118,500

Note 1: for *member of a couple, partnered (partner getting neither pension nor benefit)* and *partnered (partner getting pension or benefit)* see section 4.

Note 2: for *homeowner* see section 11.

Note 3: the assets value limits are indexed or adjusted annually in line with CPI increases (see sections 1191 to 1194 and 1203).

*Pension reduction for assets in excess of assets value limit*

1066-G4 A person's reduction for assets is:

$$\frac{\text{Assets excess} \times 9.75}{250}$$

*Assets excess*

1066-G5 A person's assets excess is the value of the person's assets less the person's assets value limit.

1066-G6 In calculating a person's assets excess under points 1066-G4 and 1066-G5 disregard any part of that excess which is not a multiple of \$250.

## **Module H—Remote Area Allowance**

*Remote area allowance*

1066-H1 An amount by way of remote area allowance is to be added to a person's rate of pension if:

(aa) either:

- (i) the person's rate of pension apart from this point is greater than nil; or
- (ii) apart from this point the person's rate of pension would be nil merely because an advance pharmaceutical allowance has been paid to the person under:

(A) Part 2.23 of this Act; or

(B) Division 2 of Part VIIA of the Veterans' Entitlements Act; and

(a) the person's usual place of residence is situated in the remote area; and

(b) the person is physically present in the remote area.

Note: for *remote area* and *physically present in the remote area* see section 14.

*Rate of remote area allowance*

1066-H2 The rate of remote area allowance payable to a person is worked out using Table H. Work out which family situation in the Table applies to the person. The rate of remote area allowance is the

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corresponding amount in column 3 plus an additional corresponding amount in column 5 for each FTB child, and each regular care child, of the person.

**Table H—Remote area allowance**

<b>Column 1 Item</b>	<b>Column 2 Person's family situation</b>	<b>Column 3 Basic allowance per year</b>	<b>Column 4 Basic allowance per fortnight</b>	<b>Column 5 Additional allowance per year</b>	<b>Column 6 Additional allowance per fortnight</b>
1.	Not member of couple	\$473.20	\$18.20	\$189.80	\$7.30
2.	Partnered	\$405.60	\$15.60	\$189.80	\$7.30
3.	Partnered (partner in gaol)	\$473.20	\$18.20	\$189.80	\$7.30

Note: For *member of couple*, *partnered* and *partnered (partner in gaol)* see section 4.

*Special rule where partner has an FTB or regular care child but is not receiving a pension*

1066-H4 If:

- (a) a person who is a member of a couple is qualified for an amount by way of remote area allowance; and
- (b) the person's partner is not receiving a pension or benefit; and
- (c) the person's partner has an FTB child or a regular care child; the child is taken, for the purposes of this Module, to be an FTB child, or a regular care child, (as the case requires) of the person.

*Special rule where partner has an FTB or regular care child but is not receiving additional allowance for the child*

1066-H5 If:

- (a) a person who is a member of a couple is qualified for an amount by way of remote area allowance; and
- (b) the person's partner has an FTB child or a regular care child; and

(c) the person's partner is not receiving additional allowance for the child;

the child is taken, for the purposes of this Module, to be an FTB child, or a regular care child, (as the case requires) of the person.

*Special rule dealing with the death of an FTB or regular care child*

1066-H6 If an FTB child, or a regular care child, of a person dies, this Module has effect, for a period of 14 weeks after the death of the child, as if the child had not died.

Note: This point does not prevent this Module having the effect it would have had if the child would otherwise have ceased to be an FTB child, or a regular care child, during that 14 weeks.

## Part 3.4A—Pension Rate Calculator D

### 1066A Rate of disability support pension (people under 21 who are not blind)

- (1) The rate of disability support pension of a person who has not turned 21 is, subject to subsection (2), to be calculated in accordance with the Rate Calculator at the end of this section.

Note: Module A of the Rate Calculator establishes the overall rate calculation process and the remaining Modules provide for the calculation of the component amounts used in the overall rate calculation.

- (2) Subsection (1) does not apply if the person is permanently blind.

Note: the rate for a disability support pension payable to a person under 21 who is permanently blind is dealt with in section 1066B.

- (3) A person's disability support pension rate is not to exceed the rate at which a disability support pension would be payable to that person if the person's rate were calculated using Pension Rate Calculator A at the end of section 1064.

- (5) If:

- (a) a person has a relationship with a person of the opposite sex (*other person*); and
- (b) the relationship between them is a marriage-like relationship in the Secretary's opinion (formed after the Secretary has had regard to all the circumstances of the relationship, including, in particular, the matters referred to in paragraphs 4(3)(a) to (e) and subsection 4(3A));
- (c) either or both of them are under the age of consent applicable in the State or Territory in which they are living;

the person's disability support pension rate is not to exceed the rate at which it would be payable to the person if the other person were the person's partner.

Note: this provision has the effect of taking into account the ordinary income, maintenance income and assets of the partner in applying the ordinary income test, maintenance income test and assets test respectively.

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## Pension Rate Calculator D

### Module A—Overall rate calculation process

#### *Method of calculating rate*

1066A-A1 The rate of pension is a daily rate. That rate is worked out by dividing the annual rate calculated according to this Rate Calculator by 364 (fortnightly rates are provided for information only).

#### *Method statement*

- Step 1. Work out the person's *maximum basic rate* using MODULE B below.
- Step 2. Work out the amount per year for youth disability, Supplement using MODULE C below.
- Step 3. Work out the amount per year (if any) of pharmaceutical allowance using MODULE D below.
- Step 4. Work out the amount per year (if any) for rent assistance in accordance with paragraph 1070A(b).
- Step 5. Add up the amounts obtained in Steps 1, 2, 3 and 4: the result is called the *maximum payment rate*.  

Note: Module G contains provisions that may apply to working out, under this Rate Calculator, the ordinary income of a person, and the ordinary income of a partner of the person.
- Step 6. Apply the ordinary income test using MODULE F below to work out the income reduction.
- Step 9. Take the income reduction away from the maximum payment rate: the result is called the *income reduced rate*.
- Step 10. Apply the assets test using MODULE H below to work out the reduction for assets.

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Step 11. Take the reduction for assets away from the maximum payment rate: the result is called the *assets reduced rate*.

Step 12. Compare the income reduced rate and the assets reduced rate: the lower of the 2 rates, or the income reduced rate if the rates are equal, is the *provisional annual payment rate*.

Step 13. The *rate of pension* is the amount obtained by:

- (a) subtracting from the provisional annual payment rate any special employment advance deduction (see Part 3.16B); and
- (b) if there is any amount remaining, subtracting from that amount any advance payment deduction (see Part 3.16A); and
- (c) adding any amount payable by way of remote area allowance (see Module I).

Note 1: if a person's assets reduced rate is less than the person's income reduced rate, the person may be able to take advantage of provisions dealing with financial hardship (sections 1129 and 1130).

Note 2: if a person's rate is reduced under Step 12 the order in which the reduction is to be made against the components of the maximum payment rate is laid down by section 1210 (maximum basic rate and youth disability supplement first, then rent assistance).

Note 3: the rate calculation for a member of a couple is affected by the operation of points 1066A-A2.

Note 5: an amount of remote area allowance is to be added under Step 12 if the person's rate of pension after Step 11 is greater than nil.

*Members of a couple*

1066A-A2 Where 2 people are members of a couple, they will be treated as pooling their resources (income and assets) and sharing them on a 50/50 basis (see points 1066A-F2, 1066A-G3 and 1066A-H2 below). They will also be treated as sharing expenses (e.g. for rent) on a 50/50 basis (see section 1070V).



**Module B—Maximum basic rate**

[see Appendix for CPI adjusted figures]

*Maximum basic rate*

1066A-B1 A person’s maximum basic rate is to be worked out using Table B. Work out the family situation and whether the person has a dependent child. The maximum basic rate is the corresponding amount in column 3.

**Table B—Maximum basic rates**

Column 1 Item	Column 2 Person’s family situation	Column 3 Rate per year		Column 4 Rate per fortnight	
		Column 3A Person with depende nt child	Column 3B Person without dependent child	Column 4A Person with dependent child	Column 4B Person without dependent child
1	Not a member of a couple and person: (a) is under 18 years of age; and (b) is not independent; and (c) is not living away from the person’s parental home because of a medical condition of the person	\$9,575.80	\$4,001.40	\$368.30	\$153.90

**Chapter 3** General provisions relating to payability and rates

**Part 3.4A** Pension Rate Calculator D

**Module B** Maximum basic rate

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**Table B—Maximum basic rates**

Column 1 Item	Column 2 Person's family situation	Column 3 Rate per year		Column 4 Rate per fortnight	
		Column 3A Person with depende nt child	Column 3B Person without dependent child	Column 4A Person with dependent child	Column 4B Person without dependent child
2	Not a member of a couple and person: (a) is under 18 years of age; and (b) either: (i) is independent; or (ii) is living away from the person's parental home because of a medical condition of the person	\$9,575.80	\$7,308.60	\$368.30	\$281.10
3	Not a member of a couple and person: (a) has reached 18 years of age; and (b) is living at home of parent or parents; and (c) is not independent	\$9,575.80	\$4,810.00	\$368.30	\$185.00

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**Table B—Maximum basic rates**

Column 1 Item	Column 2 Person's family situation	Column 3 Rate per year		Column 4 Rate per fortnight	
		Column 3A Person with depende nt child	Column 3B Person without dependent child	Column 4A Person with dependent child	Column 4B Person without dependent child
4	Not a member of a couple and person: (a) has reached 18 years of age; and (b) either: (i) is not living at a home of parent or parents; or (ii) is living at a home of parent or parents, but is independent	\$9,575.80	\$7,308.60	\$368.30	\$281.10
5	Partnered	\$8,026.20	\$7,308.60	\$308.70	\$281.10
6	Member of illness separated couple, member of respite care couple or partnered (partner in gaol)	\$9,575.80	\$7,308.60	\$368.30	\$281.10

Note 1: For *member of a couple, partnered, illness separated couple, respite care couple* and *partnered (partner in gaol)* see section 4.

Note 2: For *dependent child* and *independent* see section 5.

Note 3: For *living away from the person's parental home* see subsection 23(4D).

Note 4: The rates in columns 3A and 3B are adjusted annually in line with CPI changes (see section 1198B).

## **Module C—Youth disability supplement**

[see Appendix for CPI adjusted figures]

### *Youth disability supplement*

1066A-C1 An amount by way of youth disability supplement is to be added to a person's rate. The rate of youth disability supplement is \$1,557.40 per year (\$59.90 per fortnight).

Note 1: the rate of youth disability supplement is adjusted annually in line with CPI increases (see section 1198C).

Note 2: on 1 January 1992 the rate of youth disability supplement is to be increased by \$111.80 (\$4.30 per fortnight), under section 45 of the *Social Security Legislation Amendment Act (No. 3) 1991*. This is in addition to the annual CPI indexation occurring on 1 January 1992.

## **Module D—Pharmaceutical allowance**

[see Appendix for CPI adjusted figures]

### *Qualification for pharmaceutical allowance*

1066A-D1 Subject to points 1066A-D2, 1066A-D3, 1066A-D4 and 1066A-D6, an additional amount by way of pharmaceutical allowance is to be added to a person's maximum basic rate if the person is an Australian resident.

*No pharmaceutical allowance if person receiving pharmaceutical allowance under the Veterans' Entitlements Act or the Military Rehabilitation and Compensation Act*

1066A-D2 Pharmaceutical allowance is not to be added to a person's maximum basic rate if the person is receiving pharmaceutical allowance under the Veterans' Entitlements Act or the Military Rehabilitation and Compensation Act.

*No pharmaceutical allowance if partner receiving pharmaceutical allowance under the Veterans' Entitlements Act or the Military Rehabilitation and Compensation Act and not a service pensioner*

1066A-D3 Pharmaceutical allowance is not to be added to a person's maximum basic rate if:

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

- (b) the person's partner is receiving pharmaceutical allowance under the Veterans' Entitlements Act or the Military Rehabilitation and Compensation Act; and
- (c) the person's partner is not receiving a service pension.

*No pharmaceutical allowance before advance payment period ends*

1066A-D4 Pharmaceutical allowance is not to be added to a person's maximum basic rate if:

- (a) the person has received an advance pharmaceutical allowance under:
  - (i) Part 2.23 of this Act; or
  - (ii) Division 2 of Part VIIA of the Veterans' Entitlements Act; and
- (b) the person's advance payment period has not ended.

Note: for *advance payment period* see point 1066A-D5.

*Advance payment period*

1066A-D5 A person's advance payment period:

- (a) starts on the day on which the advance pharmaceutical allowance is paid to the person; and
- (b) ends after the number of paydays worked out using the following formula have passed:

$$\frac{\text{amount of advance} \times 26}{\text{pharmaceutical allowance rate}}$$

where:

*amount of advance* is the amount of the advance paid to the person.

*pharmaceutical allowance rate* is the yearly amount of pharmaceutical allowance which would be added to the person's maximum basic rate in working out the instalment for the day on which the advance is paid if pharmaceutical allowance were to be added to the person's maximum basic rate on that day.

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*No pharmaceutical allowance if annual limit reached*

1066A-D6 Pharmaceutical allowance is not to be added to a person's maximum basic rate if:

- (a) the person has received an advance pharmaceutical allowance during the current calendar year; and
- (b) the total amount paid to the person for that year by way of:
  - (i) pharmaceutical allowance; and
  - (ii) advance pharmaceutical allowance;

equals the total amount of pharmaceutical allowance that would have been paid to the person during that year if the person had not received any advance pharmaceutical allowance.

Note 1: for the amount *paid* to a person by way of pharmaceutical allowance see subsections 19A(2) to (6).

Note 2: the annual limit is affected by:

- how long during the calendar year the person was on pension or benefit;
- the rate of pharmaceutical allowance the person attracts at various times depending on the person's family situation.

*VEA and MRCA payments taken into account*

1066A-D7 In points 1066A-D5 and 1066A-D6:

***advance pharmaceutical allowance*** includes advance pharmaceutical allowance under the Veterans' Entitlements Act.

***pharmaceutical allowance*** includes pharmaceutical allowance under the Veterans' Entitlements Act or the Military Rehabilitation and Compensation Act.

*Amount of pharmaceutical allowance*

1066A-D8 The amount of pharmaceutical allowance is the amount per year worked out using the following Table:

<b>Pharmaceutical allowance amount table</b>			
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>
<b>Item</b>	<b>Person's family situation</b>	<b>Amount per year</b>	<b>Amount per fortnight</b>
1.	Not member of couple	\$135.20	\$5.20
2.	Partnered	\$67.60	\$2.60
3.	Member of illness separated couple	\$135.20	\$5.20
4.	Member of respite care couple	\$135.20	\$5.20
5.	Partnered (partner getting service pension)	\$67.60	\$2.60
6.	Partnered (partner in gaol)	\$135.20	\$5.20

Note 1: For *member of couple, partnered, illness separated couple, respite care couple* and *partnered (partner in gaol)* see section 4.

Note 2: The amounts in column 3 are adjusted annually in line with CPI increases (see section 1206A).

## Module F—Ordinary income test

[see Appendix for CPI adjusted figures]

### *Effect of income on maximum payment rate*

1066A-F1 This is how to work out the effect of a person's ordinary income on the person's maximum payment rate:

#### *Method statement*

Step 1. Work out the amount of the person's ordinary income on a yearly basis.

Note 1: For the treatment of the ordinary income of members of a couple see point 1066A-F2.

Note 2: Module G contains provisions that may apply to working out, under this Rate Calculator, the ordinary income of a person, and the ordinary income of a partner of the person.

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**Step 2.** Work out the person's ordinary income free area (see points 1066A-F3 to 1066A-F8 below).

Note: a person's ordinary income free area is the amount of ordinary income that the person can have without any deduction being made from the person's maximum payment.

**Step 3.** Work out whether the person's ordinary income exceeds the person's ordinary income free area.

**Step 4.** If the person's ordinary income does not exceed the person's ordinary income free area, the person's ordinary income excess is nil.

**Step 5.** If the person's ordinary income exceeds the person's ordinary income free area, the person's ordinary income excess is the person's ordinary income less the person's ordinary income free area.

**Step 6.** Use the person's ordinary income excess to work out the person's reduction for ordinary income using points 1066A-F9 to 1066A-F11 below.

Note 1: see point 1066A-A1 (Steps 6 to 9) for the significance of the person's reduction for ordinary income.

Note 2: the application of the ordinary income test is affected by provisions concerning:

- the general concept of ordinary income (sections 1072 and 1073);
- business income (sections 1074 and 1075);
- deemed income from financial assets (sections 1076 to 1084);
- income from income streams (sections 1095 to 1099DAA);
- disposal of income (sections 1106 to 1112);

*Ordinary incomes of members of couples*

1066A-F2 If a person is a member of a couple, add the couple's ordinary incomes (on a yearly basis) and divide by 2 to work out the amount of the person's ordinary income for the purposes of this Module.



*Payment of arrears of periodic compensation payments*

1066A-F2A If:

- (a) at the time of an event that gives rise to an entitlement of a person to compensation, the person is receiving disability support pension; and
- (b) in relation to that entitlement, the person receives a payment of arrears of periodic compensation;

the person is taken to receive on each day in the periodic payments period an amount calculated by dividing the amount received by the number of days in the periodic payments period.

Note: for *periodic payments period* see section 17.

*How to calculate a person's ordinary income free area*

1066A-F3 A person's ordinary income free area is worked out using Table F-1. Work out which family situation in Table F-1 applies to the person. The ordinary income free area is the corresponding amount in column 3 plus an additional corresponding amount in column 5 for each dependent child of the person.

**Table F-1—Ordinary income free area**

<b>Column 1 Item</b>	<b>Column 2 Category of person</b>	<b>Column 3 Basic free area per year</b>	<b>Column 4 Basic free area per fortnight</b>	<b>Column 5 Additional free area per year</b>	<b>Column 6 Additional free area per fortnight</b>
1.	Not member of a couple	\$2,184	\$80	\$639.60	\$24.60
2.	Partnered (partner getting neither pension nor benefit)	\$1,924	\$70	\$639.60	\$24.60
3.	Partnered— (partner getting benefit)	\$1,924	\$70	\$639.60	\$24.60
4.	Partnered— (partner getting pension)	\$1,924	\$70	\$319.80	\$12.30

Note 1: for *member of a couple, partnered (partner getting neither pension nor benefit), partnered (partner getting benefit)* and *partnered (partner getting pension)* see section 4.

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Note 2: for *dependent child* see section 5 and point 1066A-F11.

Note 3: items 2, 3 and 4 of Table F-1 apply to members of illness separated couples.

Note 4: the basic free area limits are indexed annually in line with CPI increases (see sections 1191 to 1194).

*No additional free area for certain prescribed student children*

1066A-F4 No additional free area is to be added for a dependent child who:

- (a) has turned 18; and
- (b) is a prescribed student child;

unless the person whose rate is being calculated, or the person's partner, receives carer allowance for the child.

*Reduction of additional free area for dependent children*

1066A-F5 The additional free area for a dependent child of a person to whom item 1, 2 or 3 of Table F-1 applies is reduced by the annual amount of any payment received by the person or the person's partner for or in respect of that particular child. The payments referred to in point 1064-F7 do not result in a reduction.

1066A-F6 The additional free area for a dependent child of a person to whom item 4 of Table F-1 applies is reduced by 50% of the annual amount of any payment received by the person or the person's partner for or in respect of that particular child. The payments referred to in point 1066A-F7 do not result in a reduction.

1066A-F7 No reduction is to be made under point 1066A-F5 or 1066A-F6 for a payment:

- (a) under this Act; or
- (b) of maintenance income; or
- (c) under the VEA; or
- (d) under an Aboriginal study assistance scheme; or
- (e) under the Assistance for Isolated Children Scheme.

Note: for *Aboriginal study assistance scheme* see subsection 23(1).

1066A-F8 Examples of the kinds of payments that result in a reduction under points 1066A-F5 and 1066A-F6 are:

- (a) amounts received from State authorities or benevolent societies in respect of the *boarding out* of the child; or

- (b) amounts of superannuation or compensation paid in respect of the child; or
- (c) amounts (other than amounts covered by point 1066A-F7 above) paid in respect of the child under educational schemes; or
- (e) foster care allowance payments made by a State welfare authority.

ORDINARY INCOME FREE AREA EXAMPLES (using rates to 30.6.91)

*Example 1:*

*Facts* Wayne and Mary are members of a couple. They both receive pensions. They have 2 dependent children—Max and Angela. Angela is being fostered by Wayne and Mary and they receive \$15 per week from the NSW Government by way of a foster care payment in respect of Angela.

*Application* The foster care payment calculated on a yearly basis is  $\$15 \times 52 = \$780$ . As point 1066A-F6 applies to Wayne and Mary (they are covered by item 4 of Table F-1 in point 1066A-F3), the reduction is at the 50% rate (i.e. \$390 per year). The possible additional amount for Angela (\$312) is therefore reduced to nil.

The amount that Wayne gets for Max is not subject to reduction and is \$312 per year. Mary gets \$312 for Max as well.

Wayne's ordinary free area limit is  $\$1,820 + \$312 = \$2,132$ . Mary's ordinary free area limit is the same.

*Example 2:*

*Facts* The same facts as in Example 1 except that Wayne and Mary receive only \$10 a week (\$520 a year) foster care payment for Angela.

*Application* The amount that each person would be allowed for Angela is:

$$\$312 - \frac{\$520}{2} = \$312 - \$260 = \$52$$

Then each would have an ordinary free area limit of  $\$1,820 + \$312 + \$52 = \$2,184$ .

*Pension reduction for ordinary income in excess of ordinary income free area*

1066A-F9 A person's reduction for ordinary income is worked out using Table F-2. Work out which family situation applies to the person. The reduction for ordinary income is the amount per year worked out using the corresponding calculation in column 3.

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**Table F-2—Reduction for ordinary income**

<b>Column 1 Item</b>	<b>Column 2 Person's family situation</b>	<b>Column 3 Reduction</b>
1.	Not member of a couple	Ordinary income excess $\times$ 0.4
2.	Partnered (partner getting neither pension nor benefit)	Ordinary income excess $\times$ 0.4
3.	Partnered (partner getting benefit or pension)	Ordinary income excess $\times$ 0.4

Note 1: for *member of a couple, partnered (partner getting neither pension not benefit), partnered (partner getting benefit) and partnered (partner getting pension)* see section 4.

Note 3: for *ordinary income excess* see point 1066A-F10 below.

*Ordinary income excess*

1066A-F10 A person's *ordinary income excess* is the person's ordinary income less the person's ordinary income free area.

1066A-F11 In this Module:

*dependent child*, in relation to a person, includes any child of the person who is under 18 and is receiving a youth allowance.

**Module G—Payments taken to be ordinary income**

[see Appendix for CPI adjusted figures]

*Application of this Module*

1066A-G1 This Module applies to a person and, if the person is a member of a couple, the person's partner.

*Lump sum payments arising from termination of employment*

1066A-G2 Subject to points 1066A-G3 to 1066A-G14 (inclusive), if:

- (a) a person's employment has been terminated; and
- (b) as a result the person is entitled to a lump sum payment from the person's former employer;

the person is taken to have received the lump sum payment on the day on which the person's employment was terminated.

*Directed termination payments excluded*

1066A-G3 If:

- (a) a person's employment has been terminated; and
- (b) as a result the person is entitled to a lump sum payment from the person's former employer; and
- (c) the payment, or part of the payment, is a directed termination payment within the meaning of section 82-10F of the *Income Tax (Transitional Provisions) Act 1997*;

the payment, or that part, is to be disregarded in working out the ordinary income of the person for the purposes of Module F.

*Certain leave payments taken to be ordinary income—employment continuing*

1066A-G4 If:

- (a) a person is employed; and
- (b) the person is on leave for a period; and
- (c) the person is or was entitled to receive a leave payment (whether as a lump sum payment, as a payment that is one of a series of regular payments or otherwise) in respect of a part or all of a leave period;

the person is taken to have received ordinary income for a period (the *income maintenance period*) equal to the leave period to which the leave payment entitlement relates.

*Certain payments taken to be ordinary income—employment terminated*

1066A-G5 If:

- (a) a person's employment has been terminated; and
- (b) the person receives a termination payment (whether as a lump sum payment, as a payment that is one of a series of regular payments or otherwise);

the person is taken to have received ordinary income for a period (the *income maintenance period*) equal to the period to which the payment relates.

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*More than one termination payment on a day*

1066A-G6 If:

- (a) a person is covered by point 1066A-G5; and
- (b) the person receives more than one termination payment on a day;

the income maintenance period is worked out by adding the periods to which the payments relate.

*Start of income maintenance period—employment continuing*

1066A-G7 If a person is covered by point 1066A-G4, the income maintenance period starts on the first day of the leave period to which the leave payment entitlement relates.

*Start of income maintenance period—employment terminated*

1066A-G8 If a person is covered by point 1066A-G5, the income maintenance period starts, subject to point 1066A-G9, on the day on which the person is paid the termination payment.

*Commencement of income maintenance period where there is a second termination payment*

1066A-G9 If:

- (a) a person who is covered by point 1066A-G5 is subject to an income maintenance period (the **first period**); and
- (b) the person is paid another termination payment during that period (the **second termination payment**);

the income maintenance period for the second termination payment starts on the day after the end of the first period.

*Leave payments or termination payments in respect of periods longer than a fortnight*

1066A-G10 If:

- (a) a person receives a leave payment or termination payment; and
  - (b) the payment is in respect of a period longer than a fortnight;
- the person is taken to receive in a payment fortnight or part of a payment fortnight an amount calculated by:

- (c) dividing the amount received by the number of days in the period to which the payment relates (the *daily rate*); and
- (d) multiplying the daily rate by the number of days in the payment fortnight that are also in the period.

1066A-G11 If the Secretary is satisfied that a person is in severe financial hardship because the person has incurred unavoidable or reasonable expenditure while an income maintenance period applies to the person, the Secretary may determine that the whole, or any part, of the period does not apply to the person.

Note 1: For *in severe financial hardship* see subsection 19C(2) (person who is not a member of a couple) and subsection 19C(3) (person who is a member of a couple).

Note 2: For *unavoidable or reasonable expenditure* see subsection 19C(4).

Note 3: If an income maintenance period applies to a person, then, during that period:

- (a) the pension claimed may not be payable to the person; or
- (b) the amount of the pension payable to the person may be reduced.

*When a person receives a leave payment or a termination payment*

1066A-G12 For the purposes of points 1066A-G3 to 1066A-G11 (inclusive), a person (the *first person*) is taken to receive a leave payment or termination payment if:

- (a) the payment is made to another person:
  - (i) at the direction of the first person or a court; or
  - (ii) on behalf of the first person; or
  - (iii) for the benefit of the first person; or
- (b) the first person waives or assigns his or her right to receive the payment.

*Single payment in respect of different kinds of termination payments*

1066A-G13 If a person who is covered by point 1066A-G5 receives a single payment in respect of different kinds of termination payments, then, for the purposes of the application of points 1066A-G4 to 1066A-G12 (inclusive):

- (a) each part of the payment that is in respect of a different kind of termination payment is taken to be a separate payment; and

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- (b) the income maintenance period in respect of the single payment is worked out by adding the periods to which the separate payments relate.

*Definitions*

1066A-G14 In this Module:

***leave payment*** includes a payment in respect of sick leave, annual leave, maternity leave and long service leave.

***payment fortnight*** means a fortnight in respect of which a disability support pension is paid, or would be paid apart from the application of an income maintenance period, to a person.

***period to which the payment relates*** means:

- (a) if the payment is a leave payment—the leave period to which the payment relates; or
- (b) if the payment is a redundancy payment and is calculated as an amount equivalent to an amount of ordinary income that the person would (but for the redundancy) have received from the employment that was terminated—the period for which the person would have received that amount of ordinary income; or
- (c) if the payment is a redundancy payment and paragraph (b) does not apply—the period of weeks (rounded down to the nearest whole number) in respect of which the person would have received ordinary income, from the employment that was terminated, of an amount equal to the amount of the redundancy payment if:
  - (i) the person’s employment had continued; and
  - (ii) the person received ordinary income from the employment at the rate per week at which the person usually received ordinary income from the employment prior to the termination.

***redundancy payment*** does not include a directed termination payment within the meaning of section 82-10F of the *Income Tax (Transitional Provisions) Act 1997*.

***termination payment*** means:

- (a) a leave payment relating to a person’s employment that has been terminated; or



(b) a redundancy payment.

## **Module H—Assets test**

[see Appendix for CPI adjusted figures]

### *Effect of assets on maximum payment rate*

1066A-H1 This is how to work out the effect of a person's assets on the person's maximum payment rate:

#### *Method statement*

Step 1. Work out the value of the person's assets.

Note 1: for the treatment of the assets of members of a couple see point 1066A-H2.

Note 2: for the assets that are to be disregarded in valuing a person's assets see section 1118.

Note 3: for the valuation of an asset that is subject to a charge or encumbrance see section 1121.

Step 2. Work out the person's assets value limit (see point 1066A-H3 below).

Note: a person's assets value limit is the maximum value of assets the person can have without affecting the person's pension rate.

Step 3. Work out whether the value of the person's assets exceeds the person's assets value limit.

Step 4. If the value of the person's assets does not exceed the person's assets value limit, the person's assets excess is nil.

Step 5. If the value of the person's assets exceeds the person's assets value limit, the person's assets excess is the value of the person's assets less the person's assets value limit.

Step 6. Use the person's assets excess to work out the person's reduction for assets using points 1066A-H4 to 1066A-H7 below.

Note 1: see point 1066A-A1 Steps 10 and 11 for the significance of the person's reduction for assets.

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Note 2: the application of the assets test is affected by provisions concerning:

- disposal of assets (sections 1123 to 1128);
- retirement villages (sections 1145 to 1157);
- financial hardship (sections 1129 and 1130);
- the pensions loans scheme (sections 1133 to 1144).

*Value of assets of members of couples*

1066A-H2 For the purposes of this Module:

- (a) the value of the assets of a member of a couple is to be taken to be 50% of the sum of:
  - (i) the value of the person's assets; and
  - (ii) the value of the person's partner's assets; and
- (b) the value of the assets of a particular kind of a member of a couple is to be taken to be 50% of the sum of:
  - (i) the value of the person's assets of that kind; and
  - (ii) the value of the person's partner's assets of that kind.

*Assets value limit*

1066A-H3 A person's assets value limit is worked out using Table H-1. Work out the person's family situation and home ownership situation. The assets value limit is the corresponding amount in column 3.

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**Table H-1—Assets value limit**

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<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	
		<b>Assets value limit</b>	
<b>Item</b>	<b>Person's family situation</b>	<b>Column 3A</b>	<b>Column 3B</b>
		<b>Either person or partner homeowner</b>	<b>Neither person nor partner homeowner</b>
1.	Not member of a couple	\$110,750	\$190,250
2.	Partnered (partner getting neither pension nor benefit)	\$78,750	\$118,500
3.	Partnered (partner getting pension or benefit)	\$78,750	\$118,500

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- Note 1: for *member of a couple, partnered (partner getting neither pension nor benefit)* and *partnered (partner getting pension or benefit)* see section 4.
- Note 2: for *homeowner* see section 11.
- Note 3: items 2 and 3 apply to members of illness separated couples.
- Note 4: the assets value limits are indexed or adjusted annually in line with CPI increases (see sections 1191 to 1194 and 1203).

*Pension reduction for assets in excess of assets value limit*

1066A-H4 A person's reduction for assets is worked out using Table H-2. Work out which family situation applies to the person. The reduction for assets is the amount per year worked out using the corresponding calculation in column 3.

<b>Table H-2—Reduction for assets</b>		
<b>Column 1 Item</b>	<b>Column 2 Person's family situation</b>	<b>Column 3 Reduction</b>
1.	Not member of couple	$\frac{\text{Assets excess} \times 9.75}{250}$
2.	Partnered (partner getting neither pension nor benefit)	$\frac{\text{Assets excess} \times 9.75}{250}$
3.	Partner (partner getting pension or benefit)	$\frac{\text{Assets excess} \times 9.75}{250}$

- Note 1: for *member of a couple, partnered (partner getting neither pension nor benefit), partnered (partner getting benefit)* and *partnered (partner getting pension)* see section 4.
- Note 3: for *assets excess* see point 1066A-H5 below.

*Assets excess*

1066A-H5 A person's *assets excess* is the value of the person's assets less the person's assets value limit.

1066A-H7 In calculating a person's assets excess under point 1066A-H5 disregard any part of the excess that is not a multiple of \$250.

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## Module I—Remote area allowance

### *Remote area allowance*

1066A-I1 An amount by way of remote area allowance is to be added to a person's rate of pension if:

(aa) either:

(i) the person's rate of pension apart from this point is greater than nil; or

(ii) apart from this point the person's rate of pension would be nil merely because an advance pharmaceutical allowance has been paid to the person under:

(A) Part 2.23 of this Act; or

(B) Division 2 of Part VIIA of the Veterans' Entitlements Act; and

(a) the person's usual place of residence is situated in the remote area; and

(b) the person is physically present in the remote area.

Note: for *remote area* and *physically present in the remote area* see section 14.

### *Rate of remote area allowance*

1066A-I2 The rate of remote area allowance payable to a person is worked out using Table I. Work out which family situation in the Table applies to the person. The rate of remote area allowance is the corresponding amount in column 3 plus an additional corresponding amount in column 5 for each FTB child, and each regular care child, of the person.

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**Table I—Remote area allowance**

<b>Column 1 Item</b>	<b>Column 2 Person's family situation</b>	<b>Column 3 Basic allowance per year</b>	<b>Column 4 Basic allowance per fortnight</b>	<b>Column 5 Additional allowance per year</b>	<b>Column 6 Additional allowance per fortnight</b>
1.	Not member of couple	\$473.20	\$18.20	\$189.80	\$7.30
2.	Partnered	\$405.60	\$15.60	\$189.80	\$7.30

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**Table I—Remote area allowance**

Column 1 Item	Column 2 Person's family situation	Column 3 Basic allowance per year	Column 4 Basic allowance per fortnight	Column 5 Additional allowance per year	Column 6 Additional allowance per fortnight
3.	Member of illness separated couple	\$473.20	\$18.20	\$189.80	\$7.30
4.	Member of respite care couple	\$473.20	\$18.20	\$189.80	\$7.30
5.	Partnered (partner in gaol)	\$473.20	\$18.20	\$189.80	\$7.30

Note: For *member of couple, partnered, illness separated couple, respite care couple* and *partnered (partner in gaol)* see section 4.

*Special rule where partner has an FTB or regular care child but is not receiving a pension*

1066A-I4 If:

- (a) a person who is a member of a couple is qualified for an amount by way of additional allowance; and
- (b) the person's partner is not receiving a pension or benefit; and
- (c) the person's partner has an FTB child or a regular care child; the child is taken, for the purposes of this Module, to be an FTB child, or a regular care child, (as the case requires) of the person.

*Special rule where partner has an FTB or regular care child but is not receiving additional allowance for the child*

1066A-I5 If:

- (a) a person who is a member of a couple is qualified for an amount by way of remote area allowance; and
- (b) the person's partner has an FTB child or a regular care child; and
- (c) the person's partner is not receiving additional allowance for the child; the child is taken, for the purposes of this Module, to be an FTB child, or a regular care child, (as the case requires) of the person.

**Chapter 3** General provisions relating to payability and rates

**Part 3.4A** Pension Rate Calculator D

**Module I** Remote area allowance

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*Special rule dealing with the death of an FTB or regular care child*

1066A-I6 If an FTB child, or a regular care child, of a person dies, this Module has effect, for a period of 14 weeks after the death of the child, as if the child had not died.

Note: This point does not prevent this Module having the effect it would have had if the child would otherwise have ceased to be an FTB child, or a regular care child, during that 14 weeks.

## **Part 3.4B—Pension Rate Calculator E**

### **1066B Rate of disability support pension and of disability wage supplement (people under 21 who are blind)**

- (1) The rate of disability support pension of a person who has not turned 21 and is permanently blind is to be calculated in accordance with the Rate Calculator at the end of this section.

Note: Module A of the Rate Calculator establishes the overall rate calculation process and the remaining Modules provide for the calculation of the component amounts used in the overall rate calculation.

- (2) A person's disability support pension rate is not to exceed the rate at which a disability support pension would be payable to that person if the person's rate were calculated using Pension Rate Calculator B at the end of section 1065.

- (4) Where:

- (a) a person who is permanently blind has a relationship with a person of the opposite sex (*other person*); and
- (b) the relationship between them is a marriage-like relationship in the Secretary's opinion (formed after the Secretary has had regard to all the circumstances of the relationship, including, in particular, the matters referred to in paragraphs 4(3)(a) to (e) and subsection 4(3A));
- (c) that other person is under the age of consent applicable in the State or Territory in which the person is living;

the rate of disability support pension payable to the person who is permanently blind is not to exceed the rate at which it would be payable to the person if the other person were the person's partner.

## Pension Rate Calculator E

### Module A—Overall rate calculation process

#### *Method of calculating rate*

- 1066B-A1 The rate of pension is a daily rate. That rate is worked out by dividing the annual rate calculated according to this Rate Calculator by 364 (fortnightly rates are provided for information only).

#### *Method statement*

- Step 1. Work out what would be the person's rate of pension if Pension Rate Calculator D applied to the person: the result is called the *notional income/assets tested rate*.
- Step 2. Work out the person's *maximum basic rate* using MODULE B below.
- Step 3. Work out the amount per year for youth disability supplement using MODULE C below.
- Step 4. Work out the amount per year (if any) of pharmaceutical allowance using MODULE D below.
- Step 5. Add up the amounts obtained in Steps 2, 3 and 4: the result is called the *maximum payment rate*.
- Step 6. Work out the *non-income/assets tested rate* by:
  - (a) subtracting from the maximum payment rate any special employment advance deduction (see Part 3.16B); and
  - (b) if there is any amount remaining, subtracting from that amount any advance payment deduction (see Part 3.16A); and



(c) adding any amount payable by way of remote area allowance (see Module F).

Step 7. Compare the notional income/assets tested rate and the non-income/assets tested rate; whichever is the greater is the person's *rate of pension*.

Note: an amount of remote area allowance is to be added under Step 6 only if the person's rate of pension after Step 5 is greater than nil.

### **Module B—Maximum basic rate**

[see Appendix for CPI adjusted figures]

#### *Maximum basic rate*

1066B-B1 A person's maximum basic rate is to be worked out using Table B. Work out the family situation and whether the person has a dependent child. The maximum basic rate is the corresponding amount in column 3 of the Table.

**Chapter 3** General provisions relating to payability and rates

**Part 3.4B** Pension Rate Calculator E

**Module B** Maximum basic rate

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**Table B—Maximum basic rates**

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<b>Column 1 Item</b>	<b>Column 2 Person's family situation</b>	<b>Column 3 Rate per year</b>		<b>Column 4 Rate per fortnight</b>	
		<b>Column 3A Person with depende nt child</b>	<b>Column 3B Person without dependent child</b>	<b>Column 4A Person with dependent child</b>	<b>Column 4B Person without dependent child</b>
1	Not a member of a couple and person: (a) is under 18 years of age; and (b) is not independent; and (c) is not living away from the person's parental home because of a medical condition of the person	\$9,575.80	\$4,001.40	\$368.30	\$153.90
2	Not a member of a couple and person: (a) is under 18 years of age; and (b) either: (i) is independent; or (ii) is living away from the person's parental home because of a medical condition of the person	\$9,575.80	\$7,308.60	\$368.30	\$281.10

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**Table B—Maximum basic rates**

Column 1 Item	Column 2 Person's family situation	Column 3 Rate per year		Column 4 Rate per fortnight	
		Column 3A Person with depende nt child	Column 3B Person without dependent child	Column 4A Person with dependent child	Column 4B Person without dependent child
3	Not a member of a couple and person: (a) has reached 18 years of age; and (b) is living at home of parent or parents; and (c) is not independent	\$9,575.80	\$4,810.00	\$368.30	\$185.00
4	Not a member of a couple and person: (a) has reached 18 years of age; and (b) either: (i) is not living at a home of parent or parents; or (ii) is living at a home of parent or parents, but is independent	\$9,575.80	\$7,308.60	\$368.30	\$281.10
5	Partnered	\$8,026.20	\$7,308.60	\$308.70	\$281.10
6	Member of illness separated couple, member of respite care couple or partnered (partner in gaol)	\$9,575.80	\$7,308.60	\$368.30	\$281.10

**Chapter 3** General provisions relating to payability and rates

**Part 3.4B** Pension Rate Calculator E

**Module C** Youth disability supplement

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Note 1: For *member of a couple, partnered, illness separated couple, respite care couple* and *partnered (partner in gaol)* see section 4.

Note: For *dependent child* and *independent* see section 5.

Note 3: For *living away from the person's parental home* see subsection 23(4D).

Note 4: The rates in columns 3A and 3B are adjusted annually in line with CPI changes (see section 1198B).

**Module C—Youth disability supplement**

[see Appendix for CPI adjusted figures]

*Youth disability supplement*

1066B-C1 An amount by way of youth disability supplement is to be added to a person's rate. The rate of youth disability supplement is \$1,557.40 per year (\$59.90 per fortnight).

Note: the rate of youth disability supplement is adjusted annually in line with CPI increases (see section 1198C).

**Module D—Pharmaceutical allowance**

[see Appendix for CPI adjusted figures]

*Qualification for pharmaceutical allowance*

1066B-D1 Subject to points 1066B-D2, 1066B-D3, 1066B-D4 and 1066B-D6, an additional amount by way of pharmaceutical allowance is to be added to a person's maximum basic rate if the person is an Australian resident.

*No pharmaceutical allowance if person receiving pharmaceutical allowance under the Veterans' Entitlements Act or the Military Rehabilitation and Compensation Act*

1066B-D2 Pharmaceutical allowance is not to be added to a person's maximum basic rate if the person is receiving pharmaceutical allowance under the Veterans' Entitlements Act or the Military Rehabilitation and Compensation Act.

*No pharmaceutical allowance if partner receiving pharmaceutical allowance under the Veterans' Entitlements Act or the Military Rehabilitation and Compensation Act and not a service pensioner*

1066B-D3 Pharmaceutical allowance is not to be added to a person's maximum basic rate if:

- (a) the person is a member of a couple; and
- (b) the person's partner is receiving pharmaceutical allowance under the Veterans' Entitlements Act or the Military Rehabilitation and Compensation Act; and
- (c) the person's partner is not receiving a service pension.

Note: if paragraphs (a), (b) and (c) apply to the person's partner, the partner is receiving pharmaceutical allowance under the VEA at the higher rate (rather than the person and the person's partner each receiving pharmaceutical allowance at the lower rate).

*No pharmaceutical allowance before advance payment period ends*

1066B-D4 Pharmaceutical allowance is not to be added to a person's maximum basic rate if:

- (a) the person has received an advance pharmaceutical allowance under:
  - (i) Part 2.23 of this Act; or
  - (ii) Division 2 of Part VIIA of the Veterans' Entitlements Act; and
- (b) the person's advance payment period has not ended.

Note: for *advance payment period* see point 1066B-D5.

*Advance payment period*

1066B-D5 A person's advance payment period:

- (a) starts on the day on which the advance pharmaceutical allowance is paid to the person; and
- (b) ends after the number of paydays worked out using the following formula have passed:

$$\frac{\text{amount of advance} \times 26}{\text{pharmaceutical allowance rate}}$$

where:

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**amount of advance** is the amount of the advance paid to the person.

**pharmaceutical allowance rate** is the yearly amount of pharmaceutical allowance which would be added to the person's maximum basic rate in working out the instalment for the day on which the advance is paid if pharmaceutical allowance were to be added to the person's maximum basic rate on that day.

*No pharmaceutical allowance if annual limit reached*

1066B-D6 Pharmaceutical allowance is not to be added to a person's maximum basic rate if:

- (a) the person has received an advance pharmaceutical allowance during the current calendar year; and
- (b) the total amount paid to the person for that year by way of:
  - (i) pharmaceutical allowance; and
  - (ii) advance pharmaceutical allowance;

equals the total amount of pharmaceutical allowance that would have been paid to the person during that year if the person had not received any advance pharmaceutical allowance.

Note 1: for the amount **paid** to a person by way of pharmaceutical allowance see subsections 19A(2) to (6).

Note 2: the annual limit is affected by:

- how long during the calendar year the person was on pension or benefit;
- the rate of pharmaceutical allowance the person attracts at various times depending on the person's family situation.

*VEA and MRCA payments taken into account*

1066B-D7 In points 1066B-D5 and 1066B-D6:

**advance pharmaceutical allowance** includes advance pharmaceutical allowance under the Veterans' Entitlements Act.

**pharmaceutical allowance** includes pharmaceutical allowance under the Veterans' Entitlements Act or the Military Rehabilitation and Compensation Act.

*Amount of pharmaceutical allowance*

1066B-D8 The amount of pharmaceutical allowance is the amount per year worked out using the following Table:

<b>Pharmaceutical allowance amount table</b>			
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>
<b>Item</b>	<b>Person's family situation</b>	<b>Amount per year</b>	<b>Amount per fortnight</b>
1.	Not member of couple	\$135.20	\$5.20
2.	Partnered	\$67.60	\$2.60
3.	Member of illness separated couple	\$135.20	\$5.20
4.	Member of respite care couple	\$135.20	\$5.20
5.	Partnered (partner getting service pension)	\$67.60	\$2.60
6.	Partnered (partner in gaol)	\$135.20	\$5.20

Note 1: For *member of couple, partnered, illness separated couple, respite care couple* and *partnered (partner in gaol)* see section 4.

Note 2: The amounts in column 3 are adjusted annually in line with CPI increases (see section 1206A).

## Module F—Remote area allowance

*Remote area allowance*

1066B-F1 An amount by way of remote area allowance is to be added to a person's rate of pension if:

(aa) either:

- (i) the person's rate of pension apart from this point is greater than nil; or
- (ii) apart from this point the person's rate of pension would be nil merely because an advance pharmaceutical allowance has been paid to the person under:
  - (A) Part 2.23 of this Act; or
  - (B) Division 2 of Part VIIA of the Veterans' Entitlements Act; and

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- (a) the person's usual place of residence is situated in the remote area; and
- (b) the person is physically present in the remote area.

Note: for *remote area* and *physically present in the remote area* see section 14.

*Rate of remote area allowance*

1066B-F2 The rate of remote area allowance payable to a person is worked out using Table F. Work out which family situation in the Table applies to the person. The rate of remote area allowance is the corresponding amount in column 3 plus an additional corresponding amount in column 5 for each FTB child, and each regular care child, of the person.

<b>Table F—Remote area allowance</b>					
<b>Column 1 Item</b>	<b>Column 2 Person's family situation</b>	<b>Column 3 Basic allowance per year</b>	<b>Column 4 Basic allowance per fortnight</b>	<b>Column 5 Additional allowance per year</b>	<b>Column 6 Additional allowance per fortnight</b>
1.	Not member of couple	\$473.20	\$18.20	\$189.80	\$7.30
2.	Partnered	\$405.60	\$15.60	\$189.80	\$7.30
3.	Member of illness separated couple	\$473.20	\$18.20	\$189.80	\$7.30
4.	Member of respite care couple	\$473.20	\$18.20	\$189.80	\$7.30
5.	Partnered (partner in gaol)	\$473.20	\$18.20	\$189.80	\$7.30

Note 1: For *member of couple, partnered, illness separated couple, respite care couple* and *partnered (partner in gaol)* see section 4.



*Special rule where partner has an FTB or regular care child but is not receiving a pension*

1066B-F4 If:

- (a) a person who is a member of a couple is qualified for an amount by way of remote area allowance; and
- (b) the person's partner is not receiving a pension or benefit; and
- (c) the person's partner has an FTB child or a regular care child; the child is taken, for the purposes of this Module, to be an FTB child, or a regular care child, (as the case requires) of the person.

*Special rule where partner has an FTB or regular care child but is not receiving additional allowance for the child*

1066B-F5 If:

- (a) a person who is a member of a couple is qualified for an amount by way of remote area allowance; and
- (b) the person's partner has an FTB child or a regular care child; and
- (c) the person's partner is not receiving additional allowance for the child;

the child is taken, for the purposes of this Module, to be an FTB child, or a regular care child, (as the case requires) of the person.

*Special rule dealing with the death of an FTB or regular care child*

1066B-F6 If an FTB child, or a regular care child, of a person dies, this Module has effect, for a period of 14 weeks after the death of the child, as if the child had not died.

Note: This point does not prevent this Module having the effect it would have had if the child would otherwise have ceased to be an FTB child, or a regular care child, during that 14 weeks.

## Part 3.5—Youth Allowance Rate Calculator

### 1067 Definitions

#### *General definitions*

(1) In this Part:

***accommodated independent person*** has the meaning given by section 1067B.

***independent*** has the meaning given by section 1067A.

Note: This definition also applies in Parts 2.11, 3.4A, 3.4B and 3.7.

***in State care*** has the meaning given by subsection 1067A(8).

***in supported State care***, in relation to a person, means being a person in State care in respect of whom both of the following apply:

- (a) the person qualifies for payments under a law of, or a non-statutory scheme administered by, a State or Territory for the making of any payments by, or by the authority of, the State or Territory to or in respect of the person for his or her upkeep;
- (b) such payments are being made.

***in unsupported State care***, in relation to a person, means being a person in State care in respect of whom either of the following applies:

- (a) the person does not qualify for payments under a law of, or a non-statutory scheme administered by, a State or Territory for the making of any payments by, or by the authority of, the State or Territory to or in respect of the person for his or her upkeep;
- (b) the person qualifies, but such payments are not being made.

***living at home*** has the meaning given by section 1067E.

***long term income support student*** has the meaning given by section 1067F.

*member of a YA couple*, in sections 1067A and 1067B, has the meaning given by section 1067C.

*premises or lodgings* means accommodation of any kind for which rent (within the meaning of subsection 13(2)) is payable.

*required to live away from home* has the meaning given by section 1067D.

### **1067A When a person is regarded as independent**

#### *Application*

- (1) This section applies to determine whether a person is to be regarded as independent for the purposes of this Part and Parts 2.11, 3.4A, 3.4B and 3.7. A person is not to be regarded as independent except as provided by this section.

#### *Member of a YA couple*

- (2) A person is independent if the person is, or has been, a member of a YA couple (see section 1067C).

#### *Person with a dependent child*

- (3) A person is independent if:
  - (a) the person has a natural or adoptive child who is wholly or substantially dependent on the person or his or her partner; or
  - (b) the person previously had a natural or adoptive child who was wholly or substantially dependent on the person or on a person who, at the time, was the person's partner.

#### *Person aged 25 years or more*

- (4) A person is independent if the person is at least 25 years old. This age will be progressively reduced over time.

#### *Orphan*

- (5) A person is independent if both of the person's parents are dead, whether or not the person is dependent, or was last dependent, on someone other than his or her parents.

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*If parents cannot exercise responsibilities*

- (6) A person is independent if both of the person's parents are (or, if the person has only one parent, that parent is):
- (a) serving a prison sentence; or
  - (b) mentally incapacitated and likely to remain so incapacitated for an indefinite period; or
  - (c) living in a nursing home and likely to remain there for an indefinite period; or
  - (d) missing;
- whether or not the person is dependent, or was last dependent, on someone other than a parent of the person.

*Refugee*

- (7) A person is independent if the person:
- (a) is the holder, within the meaning of the Migration (1993) Regulations, of a Group 1.3 entry permit (permanent resident) (refugee and humanitarian); or
  - (b) while the holder of such a permit, was granted Australian citizenship.

However, a person is not independent under this subsection if the person has a parent living in Australia, or is wholly or substantially dependent on someone else on a long-term basis.

*Person in State care*

- (8) A person is independent if the person is not living with a parent, and:
- (a) the person is in the guardianship, care or custody of a court, a Minister, or a Department, of the Commonwealth, a State or a Territory; or
  - (b) there is a current direction from such a court, Minister or Department placing the person in the guardianship, care or custody of someone who is not the person's parent; or
  - (c) the person stopped being in a situation described in paragraph (a) or (b) only because of his or her age.

A person to whom this subsection applies is taken, for the purposes of this Part to be *in State care*.

*Unreasonable to live at home*

- (9) A person is independent if:
- (a) the person cannot live at the home of either or both of his or her parents:
    - (i) because of extreme family breakdown or other similar exceptional circumstances; or
    - (ii) because it would be unreasonable to expect the person to do so as there would be a serious risk to his or her physical or mental well-being due to violence, sexual abuse or other similar unreasonable circumstances; or
    - (iii) because the parent or parents are unable to provide the person with a suitable home owing to a lack of stable accommodation; and
  - (b) the person is not receiving continuous support, whether directly or indirectly and whether financial or otherwise, from a parent of the person or from another person who is acting as the person's guardian on a long-term basis; and
  - (c) the person is not receiving, on a continuous basis, any payments in the nature of income support (other than a social security benefit) from the Commonwealth, a State or a Territory.

*People who are self-supporting*

- (10) A person is independent if the person has supported himself or herself through paid work consisting of:
- (a) full-time employment of at least 30 hours per week for at least 18 months during any period of 2 years; or
  - (b) part-time employment of at least 15 hours per week for at least 2 years since the person last left secondary school; or
  - (c) a period or periods of employment over an 18 month period since the person last left secondary school, earning the person at least the equivalent of 75% of:
    - (i) the maximum rate of pay under Wage Level A of the Australian Pay and Classification Scale generally applicable to trainees; or
    - (ii) that maximum rate as varied or replaced from time to time by the Australian Fair Pay Commission; that applied at the start of the period of employment.

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*People who are disadvantaged*

- (11) A person is independent if the person:
- (a) is at least 18 years old; and
  - (b) has had full-time employment of at least 30 hours per week for a period of at least 12 months, or for periods that total at least 12 months; and
  - (c) does not live at the home of either or both of his or her parents; and
  - (d) in the Secretary's opinion, is specially disadvantaged with respect to education or employment; and
  - (e) is not receiving financial support, whether directly or indirectly, from a parent of the person or from another person who is acting as the person's guardian on a long-term basis.

Note: For *parent* see section 5 (paragraph (a) of that definition).

*People with a partial capacity to work*

- (12) A person is independent if the person:
- (a) has turned 16; and
  - (b) has a partial capacity to work; and
  - (c) is not undertaking full-time study and is not a new apprentice.

Note 1: For *partial capacity to work* see section 16B.

Note 2: For *undertaking full-time study* see section 541B.

Note 3: For *new apprentice* see subsection 23(1).

**1067B Accommodated independent person**

A person is taken to be an *accommodated independent person* for the purposes of this Part if, and only if, the person:

- (a) is independent; and
- (b) lives at the home of either or both of his or her parents; and
- (c) is not, and has never been, a member of a YA couple (see section 1067C); and
- (d) does not have a natural or adoptive child who is wholly or substantially dependent on the person or his or her partner; and

- (e) has never had a natural or adoptive child who was wholly or substantially dependent on the person or on a person who, at the time, was the person's partner; and
- (f) is not a person who:
  - (i) qualified for the independent living allowance under the AUSTUDY scheme, as in force immediately before the commencement of Schedule 11 to the *Social Security Legislation Amendment (Youth Allowance Consequential and Related Measures) Act 1998*, only under AUSTUDY Regulation 68, as in force at that time; and
  - (ii) had not, at that time, turned 25.

Note: For *parent* see section 5 (paragraph (a) of that definition).

### **1067C Member of a YA couple**

#### *Current member of a YA couple*

- (1) Subject to this section, a person is a ***member of a YA couple*** for the purposes of sections 1067A and 1067B if:
  - (a) the person is legally married to another person and is not, in the Secretary's opinion (formed as mentioned in subsection (3)), living separately and apart from the other person on a permanent or indefinite basis; or
  - (b) all of the following conditions are met:
    - (i) the person has a relationship with a person of the opposite sex (***partner***);
    - (ii) the person is not legally married to the partner;
    - (iii) the relationship has existed for a continuous period of at least 12 months;
    - (iv) in the Secretary's opinion (formed as mentioned in subsections (3) and (4)), the relationship is, and has for a continuous period of at least 12 months been, a marriage-like relationship;
    - (v) if, at the time the relationship became a marriage-like relationship, the person and the partner were living in Australia—both the person and the partner were over the age of consent applicable in the State or Territory in which they lived at that time;

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- (vi) if, at the time the relationship became a marriage-like relationship, the person and the partner were living outside Australia—both the person and the partner were over the age of consent applicable in the State or Territory in which they first lived after that time;
- (vii) the person and the partner are not within a prohibited relationship for the purposes of section 23B of the *Marriage Act 1961*.

*Former member of a YA couple*

- (2) Subject to this section, a person has been a ***member of a YA couple*** for the purposes of sections 1067A and 1067B if:
  - (a) the person has been legally married to another person (whether or not they are still legally married) and was not, in the Secretary's opinion (formed as mentioned in subsection (3)), living separately and apart from the other person, on a permanent or indefinite basis, at all times while so married; or
  - (b) all of the following conditions are met:
    - (i) the person had a relationship with a person of the opposite sex (***partner***);
    - (ii) the person was not legally married to the partner;
    - (iii) the relationship existed for a continuous period of at least 12 months;
    - (iv) in the Secretary's opinion (formed as mentioned in subsections (3) and (4)), the relationship between the person and the partner was, and had for a continuous period of at least 12 months or, in special circumstances determined by the Secretary, at least 6 months been, a marriage-like relationship;
    - (v) if, at the time the relationship became a marriage-like relationship, the person and the partner were living in Australia—both the person and the partner were over the age of consent applicable in the State or Territory in which they lived at that time;
    - (vi) if, at the time the relationship became a marriage-like relationship, the person and the partner were living outside Australia—both the person and the partner were over the age of consent applicable in the State or Territory in which they first lived after that time;



- (vii) the person and the partner were not within a prohibited relationship for the purposes of section 23B of the *Marriage Act 1961*.

*Criteria for forming opinion about relationship*

- (3) In forming an opinion about the relationship between 2 people for the purposes of paragraph (1)(a), subparagraph (1)(b)(iv), paragraph (2)(a) or subparagraph (2)(b)(iv), the Secretary is to have regard to all the circumstances of the relationship including, in particular, the matters referred to in subsection 4(3).

*People living separately and apart*

- (4) The Secretary must not form the opinion that the relationship between a person and his or her partner is, or was, a marriage-like relationship if the person is, or was at the time in question, living separately and apart from the partner on a permanent or indefinite basis.

*Moving to a State or Territory with a higher age of consent*

- (5) For the purposes of calculating the period of 2 years referred to in subparagraphs (1)(b)(iii) and (iv) and (2)(b)(iii) and (iv), any period during which the couple in question lived in a State or Territory in which one or both of them was under the age of consent is to be disregarded.

Note: A prohibited relationship for the purposes of section 23B of the *Marriage Act 1961* is a relationship between a person and:

- (a) an ancestor of the person; or
- (b) a descendant of the person; or
- (c) a brother or sister of the person (whether of the whole blood or the part-blood).

## **1067D Person required to live away from home**

*When a person is taken to be required to live away from home*

- (1) A person is taken to be required to live away from home for the purposes of this Part if, and only if:
- (a) the person is not independent; and

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- (b) the person does not live at the home of either or both his or her parents; and
- (c) the Secretary determines that:
  - (i) the person needs to live away from home for the purpose of education, training, searching for employment or doing anything else in preparation for getting employment; or
  - (ii) the likelihood of the person's getting employment will be significantly increased if the person lives away from home; or
  - (iii) the person needs to live away from home because the person is a new apprentice.

Note: For *parent* see section 5 (paragraph (a) of that definition).

*Secretary may have regard to advice from case manager*

- (2) In making a determination under paragraph (1)(c), the Secretary may have regard to any advice given by a case manager to whom the person has been referred under Part 4.3 of the *Employment Services Act 1994*.

*Matters to which Secretary is to have regard*

- (3) In making a determination under subparagraph (1)(c)(ii), the Secretary is to have regard to:
  - (a) the overall employment prospects for young people in the areas where the home is situated and in the area where the person is living; and
  - (b) matters relating to the person that would affect the likelihood of the person's getting employment in those areas.

**1067E Person living at home**

If a person:

- (a) is not independent; and
- (b) is not taken by section 1067D to be required to live away from home;

the person is taken for the purposes of this Part to be living at home.

**1067F Long term income support student**

- (1) A person is a *long term income support student* if the person:
- (a) is at least 21 years old; and
  - (ba) does not have a dependent child; and
  - (c) is either:
    - (i) undertaking full-time study in respect of a course of education that the person had commenced after turning 21; or
    - (ii) a new apprentice and became a new apprentice after turning 21; and
  - (d) has, for at least 26 weeks out of the period of 39 weeks that ended when the person commenced to undertake the full-time study or became a new apprentice, been receiving one or more of the following:
    - (i) newstart allowance;
    - (ii) sickness allowance;
    - (iii) youth allowance (disregarding youth allowance received while the person was undertaking full-time study);
    - (iv) special benefit;
    - (v) disability support pension;
    - (vi) wife pension;
    - (vii) carer payment;
    - (viii) bereavement allowance;
    - (ix) disability wage supplement;
    - (x) pension PP (single);
    - (xi) sole parent pension;
    - (xii) benefit parenting allowance;
    - (xiii) benefit PP (partnered).
- (2) A person is also a *long term income support student* if the person:
- (a) is at least 21 years old; and
  - (c) does not have English as a first language; and
  - (d) is undertaking a course in English, being a course that the Secretary has approved.

### **1067G Rate of youth allowance**

*Youth allowance rate calculator*

- (1) The rate of youth allowance of a person referred to in section 556 is to be calculated in accordance with the Rate Calculator in this section.

*Limit on rate of allowance*

- (2) If:
- (a) a person is living with another person as the spouse of the other person on a genuine domestic basis although not legally married to the other person; and
  - (b) the other person is of the opposite sex; and
  - (c) either or both of them are under the age of consent that applies in the State or Territory in which they are living;
- the rate of the person's youth allowance is not to be more than the rate at which the allowance would be payable to the person if the other person were the person's partner.

### **Youth Allowance Rate Calculator**

#### **Module A—Overall rate calculation process** [see Note 5]

*Method of calculating rate*

- 1067G-A1 The rate of allowance is a daily rate. That rate is worked out by dividing the fortnightly rate calculated according to this Rate Calculator by 14.

*Method statement*

- Step 1. Work out the person's maximum basic rate using Module B below.
- Step 2. Work out the amount a fortnight (if any) of pharmaceutical allowance using Module C below.
- Step 2A. Work out the amount per fortnight (if any) for youth disability supplement using Module D below.

- Step 3. Work out the applicable amount per fortnight (if any) for rent assistance in accordance with paragraph 1070A(a).
- Step 4. Add up the amounts obtained in Steps 1 to 3: the result is the *maximum payment rate*.
- Step 8. If the person is not independent and the parental income test applies to the person (see points 1067G-F2 and 1067G-F3 in Module F below), work out the *reduction for parental income* using that Module and take the reduction away from the maximum payment rate: the result is the *parental income test reduced rate*.
- Step 9. If the parental income test reduced rate is nil, then youth allowance is not payable to the person and the following steps are to be disregarded.
- Step 10. If the person is not independent and the family actual means test applies to the person (see Module G below), work out the person's *reduction for actual means* using that Module and take the reduction away from the maximum payment rate: the result is the *actual means test reduced rate*.
- Step 11. If the actual means test reduced rate is nil, then youth allowance is not payable to the person and the following steps are to be disregarded.
- Step 12. Apply the income test using Module H below to work out the person's income reduction.
- Step 13. Take the person's income reduction away from:
- (a) if the person is not independent and Steps 8 and 10 did not apply to the person—the maximum payment rate; or
  - (b) if the person is not independent and Step 8 applied to the person but Steps 9 and 10 did not—the parental income test reduced rate; or

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- (c) if the person is not independent and Step 10 applied to the person but Steps 8 and 11 did not—the actual means test reduced rate; or
- (d) if the person is not independent and Steps 8 and 10 applied to the person but Steps 9 and 11 did not—the parental income test reduced rate, or (if the actual means test reduced rate is lower) the actual means test reduced rate; or
- (e) if the person is independent—the maximum payment rate;

the result is the *provisional fortnightly payment rate*.

Note: If a person's rate is reduced under Step 8, 10 or 13, the order in which the reduction is to be made is laid down by section 1210 (maximum basic rate first, then rent assistance, then pharmaceutical allowance).

Step 14. The *rate of allowance* is the amount obtained by:

- (a) subtracting from the provisional fortnightly payment rate any special employment advance deduction (see Part 3.16B); and
- (b) if there is any amount remaining, subtracting from that amount any advance payment deduction (see Part 3.16A); and
- (c) except where the person is a CDEP Scheme participant in respect of the whole or a part of the period for which the rate of allowance is being worked out, adding any amount payable by way of remote area allowance (see Module K).

**Module B—Maximum basic rate**

[see Appendix for CPI adjusted figures]

*Maximum basic rate*

1067G-B1 The maximum basic rate of a person other than a person who is a CDEP Scheme participant in respect of the whole or a part of the

period for which the maximum basic rate is being worked out is to be worked out as follows:

- (a) if the person is not independent (see section 1067A) and is not a long term income support student (see section 1067F)—use Table BA;
- (b) if the person is independent and is not a long term income support student—use Table BB or point 1067G-B3A;
- (c) if the person is a long term income support student—use Table BC.

The maximum basic rate of a person who is a CDEP Scheme participant in respect of the whole or a part of the period for which the maximum basic rate is being worked out is nil (see section 552C).

*Person who is not independent*

1067G-B2 If the person is not independent (see section 1067A) and is not a long term income support student (see section 1067F), work out whether the person:

- (a) lives at home (see section 1067E); or
- (b) is required to live away from home (see section 1067D).

The person's maximum basic rate is the amount in column 3 of the table that corresponds to the person's situation as described in column 2 of the table.

**Table BA—Maximum basic rates (people who are not independent)**

Column 1 Item	Column 2 Person's situation	Column 3 Rate
1	Lives at home and not yet 18 years old	\$145.40
2	Lives at home and at least 18 years old	\$174.80
3	Required to live away from home	\$265.50

Note: The rates in column 3 are indexed annually in line with CPI increases (see sections 1191-1194).

*Person who is independent*

1067G-B3 If the person is independent (see section 1067A) and is not a long term income support student (see section 1067F), work out:

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- (a) whether the person is an accommodated independent person (see section 1067B); and
- (b) if the person is not an accommodated independent person, whether the person:
  - (i) is in supported State care (see section 1067); or
  - (ii) is in unsupported State care (see section 1067); or
  - (iii) is a member of a couple (see section 4); or
  - (iv) has a dependent child (see subsections 5(2) to (9)).

The person's maximum basic rate is the amount in column 3 of the table that corresponds to the person's situation as described in column 2 of the table.

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**Table BB—Maximum basic rates (people who are independent)**

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Column 1 Item	Column 2 Person's situation	Column 3 Rate
1	Accommodated independent person and not yet 18 years old	\$145.40
2	Accommodated independent person and at least 18 years old	\$174.80
3	In supported State care and not yet 18 years old	\$145.40
4	In supported State care and at least 18 years old	\$174.80
5	In unsupported State care	\$265.50
6	Not a member of a couple and has a dependent child	\$347.80
7	Member of a couple and has a dependent child	\$291.60
8	Not an accommodated independent person, not in supported State care, not in unsupported State care and does not have a dependent child	\$265.50

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Note: The rates in column 3 are indexed annually in line with CPI increases (see sections 1191-1194).



*Certain children treated as dependent children if in recipient's care for at least minimum period*

- 1067G-B3AA For the purposes of point 1067G-B3, the maximum basic rate for a person receiving youth allowance is worked out as if the person had a dependent child if:
- (a) the person is not undertaking full-time study and is not a new apprentice; and
  - (b) either:
    - (i) the person is legally responsible (whether alone or jointly with another person) for the day-to-day care, welfare and development of a child under 16; or
    - (ii) under a family law order, registered parenting plan or parenting plan that is in force, a child under 16 is supposed to live or spend time with the person; and
  - (c) the child is in the person's care for at least 14% of:
    - (i) the instalment period in relation to which the maximum basic rate is being worked out; or
    - (ii) if the Secretary, under point 1067G-B3AB, determines another period for the person for the purposes of this subparagraph—that other period; and
  - (d) none of subsections 5(3), (6) and (7) prevents the child from being a dependent child of the person.

Note 1: For *undertaking full-time study* see section 541B.

Note 2: For *new apprentice, family law order, registered parenting plan* and *parenting plan* see subsection 23(1).

1067G-B3AB The Secretary may, in writing, determine a period of either 14 days or 28 days for the purposes of subparagraph 1067G-B3AA(c)(ii). In making the determination, the Secretary must have regard to the guidelines (if any) determined under point 1067G-B3AD.

1067G-B3AC A determination made under point 1067G-B3AB is not a legislative instrument.

1067G-B3AD The Secretary may, by legislative instrument, determine guidelines to be complied with when making a determination under point 1067G-B3AB.

1067G-B3A Despite point 1067G-B3, if a person:

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- (a) is independent (see section 1067A) and is not a long term income support student (see section 1067F); and
- (b) is not a member of a couple; and
- (c) has an exemption under section 542FA because of a determination in relation to the person under subsection 542FA(3) or (3A);

the person's maximum basic rate is the amount worked out as follows:

Pension PP (Single) maximum basic amount

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where:

*pension PP (Single) maximum basic amount* is the sum of:

- (a) the amount that would have been the person's maximum basic rate under Module B of the Pension PP (Single) Rate Calculator if the person was receiving parenting payment; and
- (b) the amount that would have been the person's pension supplement under Module BA of the Pension PP (Single) Rate Calculator if the person was receiving parenting payment.

Note 1: A person's maximum basic rate under Module B of the Pension PP (Single) Rate Calculator is indexed 6 monthly in line with increases in Male Total Average Weekly Earnings (see section 1195).

Note 2: A person's pension supplement amount under Module BA of the Pension PP (Single) Rate Calculator is indexed 6 monthly in line with CPI increases (see sections 1191 to 1194).

*Long term income support student*

1067G-B4 If the person is a long term income support student (see section 1067F), work out:

- (a) whether the person is independent (see section 1067A); and
- (b) if the person is not independent, whether the person:
  - (i) lives at home (see section 1067E); or
  - (ii) is required to live away from home (see section 1067D); and
- (c) if the person is independent, whether the person is an accommodated independent person (see section 1067B); and
- (d) whether the person is a member of a couple (see section 4).

The person's maximum basic rate is the amount in column 3 of the table that corresponds to the person's situation as described in column 2 of the table.

<b>Table BC—Maximum basic rates (long term income support students)</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Item</b>	<b>Person's situation</b>	<b>Rate</b>
1	Not independent, lives at home and not a member of a couple	\$227.20
2	Not independent, required to live away from home and not a member of a couple	\$341.40
3	Accommodated independent person and not a member of a couple	\$227.20
4	Independent, not an accommodated independent person and not a member of a couple	\$341.40
5	Member of a couple	\$308.70

Note: The rates in column 3 are indexed annually in line with CPI increases (see sections 1191-1194).

Note: The rates in column 3 are indexed annually in line with CPI increases (see sections 1191-1194).

## **Module C—Pharmaceutical allowance**

[see Appendix for CPI adjusted figures]

### *Qualification for pharmaceutical allowance*

1067G-C1 Subject to points 1067G-C2 and 1067G-C2A, an amount by way of pharmaceutical allowance is to be added to a person's maximum basic rate if the person:

- (a) has a partial capacity to work; or
- (b) is the principal carer of at least one child and is not a member of a couple; or
- (c) has a temporary incapacity exemption under section 542A.

Note 1: For *partial capacity to work* see section 16B.

Note 2: For *principal carer* see subsections 5(15) to (24).

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*No pharmaceutical allowance if partner receiving pharmaceutical allowance under the Veterans' Entitlements Act or the Military Rehabilitation and Compensation Act and not a service pensioner*

1067G-C2 Pharmaceutical allowance is not to be added to a person's maximum basic rate if:

- (a) the person is a member of a couple; and
- (b) the person's partner is receiving pharmaceutical allowance under the Veterans' Entitlements Act or the Military Rehabilitation and Compensation Act; and
- (c) the person's partner is not receiving a service pension.

Note: If paragraphs (a), (b) and (c) apply to the person's partner, the partner is receiving pharmaceutical allowance under the Veterans' Entitlements Act at the higher rate (rather than the person and the person's partner each receiving pharmaceutical allowance at the lower rate).

*No pharmaceutical allowance for full-time students and new apprentices without temporary incapacity exemptions*

1067G-C2A Pharmaceutical allowance is not to be added to a person's maximum basic rate if the person:

- (a) does not have a temporary incapacity exemption under section 542A; and
- (b) is undertaking full-time study or is a new apprentice.

Note 1: For *undertaking full-time study* see section 541B.

Note 2: For *new apprentice* see subsection 23(1).

*Amount of pharmaceutical allowance*

1067G-C3 The amount of pharmaceutical allowance is the amount a fortnight worked out using the following table:

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<b>Column 1 Item</b>	<b>Column 2 Person's family situation</b>	<b>Column 3 Amount a fortnight</b>
1	Not a member of a couple	\$5.40
2	Partnered	\$2.70
3	Member of an illness separated couple	\$5.40

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**Table C—Pharmaceutical allowance amounts**

<b>Column 1 Item</b>	<b>Column 2 Person's family situation</b>	<b>Column 3 Amount a fortnight</b>
4	Member of a respite care couple	\$5.40
5	Partnered (partner getting service pension)	\$2.70
6	Partnered (partner in gaol)	\$5.40

Note 1: For *member of a couple, partnered, illness separated couple, respite care couple* and *partnered (partner in gaol)* see section 4.

Note 2: The amounts in column 3 are indexed or adjusted annually in line with CPI increases on 1 January (see sections 1191 to 1194 and 1206A).

## **Module D—Youth disability supplement**

### *Youth disability supplement*

1067G-D1 If a person:

- (a) has a partial capacity to work; and
- (b) has not turned 21;

an amount by way of youth disability supplement is to be added to a person's rate. The rate of youth disability supplement is \$92.40 per fortnight.

Note 1: For *partial capacity to work* see section 16B.

Note 2: The rate of youth disability supplement is adjusted annually in line with CPI increases (see section 1198C).

1067G-D2 If:

- (a) an amount by way of youth disability supplement is to be added to a person's rate of youth allowance under point 1067G-D1; and
- (b) the sum of:
  - (i) the person's maximum basic rate of youth allowance; and
  - (ii) the amount of youth disability supplement;would exceed the maximum basic rate of newstart allowance for a person with a partial capacity to work;

the rate of youth disability supplement is to be reduced (but not below zero) by the amount of the excess.

Note: For *partial capacity to work*, see section 16B.

## Module F—Parental income test

### Submodule 1—Effect of parental income on maximum payment rate

#### *General*

1067G-F1 This is how to work out the effect (if any) of the income of a person's parent or parents on the person's maximum payment rate in respect of a particular youth allowance payment period.

#### *Method statement*

- Step 1. Work out whether the parental income test applies to the person using Submodule 2.
- Step 2. If the parental income test applies to the person, identify the appropriate tax year using Submodule 3.
- Step 3. Work out the person's combined parental income for the appropriate tax year using Submodule 4.
- Step 4. Work out the person's parental income free area using Submodule 5.
- Step 5. If the person's combined parental income is equal to or less than the person's parental income free area, the parental income test does not affect the maximum payment rate of youth allowance and Step 6 is to be disregarded.
- Step 6. If the person's combined parental income exceeds the person's parental income free area, use Submodule 6 to work out the ***person's reduction for parental income*** for the purposes of Step 8 of the Method statement in point 1067G-A1.

## Submodule 2—Application of parental income test

### *Persons affected by the parental income test*

1067G-F2 Subject to point 1067G-F3, the parental income test applies to the person if the person is not independent.

### *Parent receiving Commonwealth benefit*

1067G-F3 The parental income test does not apply to the person while a parent of the person:

- (a) is receiving a payment of pension, benefit, allowance or compensation referred to in Module L; or
- (b) is receiving a payment under Part 5 or 6 of the *Farm Household Support Act 1992*; or
- (c) is receiving ABSTUDY and:
  - (ii) has a partner who is receiving ABSTUDY; or
  - (iii) is a single parent; or
- (d) is a person to whom section 1061ZK applies by virtue of subsection 1061ZK(5); or
- (e) is a person to whom section 1061ZO applies by virtue of subsection 1061ZO(2), (3) or (4).

## Submodule 3—Appropriate tax year

### *Appropriate tax year*

1067G-F4 Subject to this Submodule, the **appropriate tax year** for a youth allowance payment period is the base tax year for that period.

### *Base tax year*

1067G-F5 The **base tax year** for a youth allowance payment period is the tax year that ended on 30 June in the calendar year that came immediately before the calendar year in which the period ends.

Example: A youth allowance payment period ends on 25 January 1999—this day occurs in the calendar year 1 January 1999 to 31 December 1999—the calendar year that came immediately before this one is the calendar year 1 January 1998 to 31 December 1998—the base tax year is the tax year that ended on 30 June 1998 (i.e. the year of income that began on 1 July 1997).

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*Change to appropriate tax year because of increase in combined parental income*

1067G-F6 If a person's combined parental income under Submodule 4 for the tax year following the base tax year exceeds:

- (a) 125% of the person's combined parental income under that Submodule for the base tax year; and
- (b) 125% of the person's parental income free area under Submodule 5;

the appropriate tax year, for the purpose of applying this Module to the person in respect of a youth allowance payment period that ends after 30 September in a year, is the tax year following the base tax year.

*Change to appropriate tax year at person's request*

1067G-F7 If:

- (aa) a person's combined parental income for the tax year following the base tax year is substantially less than it was in the base tax year and is likely to continue to be so for 2 years after the later of:
  - (i) 1 January in the tax year following the base tax year; or
  - (ii) the day on which the combined parental income is reduced; and
- (a) the person requests the Secretary to make a determination under point 1067G-F8; and
- (b) as a result, the Secretary determines under that point that, for the purpose of applying this Module to the person in respect of a youth allowance payment period that ends on or after:
  - (i) the day on which the request is made; or
  - (ii) 1 January in a year;whichever day is later, the appropriate tax year is the tax year following the base tax year;

the appropriate tax year, for that purpose, is the tax year following the base tax year.



*Person may ask Secretary to change appropriate tax year*

1067G-F8 If:

- (a) youth allowance:
  - (i) is not payable to a person because the rate of youth allowance because of this Module is nil; or
  - (ii) is payable at a reduced rate because of this Module; and
- (b) the person gives the Secretary an estimate of the person's combined parental income under Submodule 4 for the tax year following the base tax year; and
- (c) the person requests the Secretary to make a determination under this point; and
- (d) the person agrees that the person's rate of youth allowance is to be recalculated if the person's actual combined parental income for that tax year exceeds the amount that the person estimated;

the Secretary must determine that, for the purpose of applying this Module to the person in respect of a youth allowance payment period that ends on or after:

- (e) the day on which the request is made; or
- (f) 1 January in a year;

whichever day is later, the appropriate tax year is the tax year following the base tax year.

*Form of request*

1067G-F9 A request under point 1067G-F8 must be made in writing in accordance with a form approved by the Secretary.

## **Submodule 4—Combined parental income**

*Combined parental income*

1067G-F10 For the purposes of this Module, a person's ***combined parental income*** for a particular tax year is the sum of the following amounts (***income components***) in respect of each of the person's parents:

- (a) the parent's taxable income for that year;
- (b) the parent's adjusted fringe benefits total for that year;
- (c) the parent's target foreign income for that year;
- (d) the parent's total net investment loss for that year;

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- (e) the parent's reportable superannuation contributions (within the meaning of the *Income Tax Assessment Act 1997*) for that year.

Note 1: The combined parental income may be affected by amounts of maintenance paid or received (see points 1067G-F20 and 1067G-F21).

Note 2: For *taxable income* see subsection 23(1).

Note 3: For *adjusted fringe benefits total* see subpoint 1067G-F11(2).

Note 4: For *target foreign income* see subpoint 1067G-F11(3).

Note 5: For *total net investment loss*, see subsection 10B(2).

*Income components for tax year*

1067G-F11(1) A parent's *taxable income* for a tax year is:

- (a) the parent's assessed taxable income for that year; or
- (b) if the parent does not have an assessed taxable income for that year—the accepted estimate, in respect of the parent, of taxable income for that year.

1067G-F11(2) A parent's *adjusted fringe benefits total* for a tax year is the amount worked out using the formula:

$$\text{Reportable fringe benefits total} \times \left[ 1 - \text{FBT rate} \right]$$

where:

**FBT rate** is the rate of tax set by the *Fringe Benefits Tax Act 1986* for the FBT year (as defined in the *Fringe Benefits Tax Assessment Act 1986*) beginning on the 1 April just before the start of the tax year.

**reportable fringe benefits total** is the amount that the Secretary is satisfied is the parent's reportable fringe benefits total (as defined in the *Fringe Benefits Tax Assessment Act 1986*) for the year of income that is the tax year.

1067G-F11(3) A parent's *target foreign income* for a tax year is the accepted estimate of the amount of the parent's foreign income (as defined in section 10A) for the tax year that is not:

- (a) taxable income; or
- (b) received in the form of a fringe benefit (as defined in the *Fringe Benefits Tax Assessment Act 1986*, as it applies of its own force or because of the *Fringe Benefits Tax (Application*

*to the Commonwealth) Act 1986) in relation to the parent as employee (as defined in the *Fringe Benefits Tax Assessment Act 1986) and a year of tax.**

*Assessed taxable income*

- 1067G-F12 A parent's **assessed taxable income** for a tax year at a particular time is the most recent of:
- (a) if, at that time, the Commissioner of Taxation has made an assessment or an amended assessment of that taxable income—that taxable income according to the assessment or amended assessment; or
  - (b) if, at that time, a tribunal has amended an assessment or an amended assessment made by the Commissioner—that taxable income according to the amendment made by the tribunal; or
  - (c) if, at that time, a court has amended an assessment or an amended assessment made by the Commissioner or an amended assessment made by a tribunal—that taxable income according to the amendment made by the court.

*Accepted estimate*

- 1067G-F13 An **accepted estimate** of an income component or an amount described in subpoint 1067G-F11(3), in respect of a parent, for a tax year is that income component or amount according to the most recent notice given under point 1067G-F14 and accepted by the Secretary for the purposes of this Module.

*Notice estimating income component*

- 1067G-F14 A notice setting out an estimate of an income component or an amount described in subpoint 1067G-F11(3), for a tax year, of a parent of a person claiming or receiving youth allowance may be given to the Secretary by:
- (a) the parent; or
  - (b) the person claiming or receiving youth allowance.
- However, if the parent gives a notice, any notice given, in respect of the same income component or amount and the same tax year, by the person claiming or receiving youth allowance is taken not to be, or not to have been, given.

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*Acceptance of notice*

1067G-F15 The Secretary is to accept a notice referred to in point 1067G-F14 for the purposes of this Module only if the Secretary is satisfied that the estimate is reasonable.

*Income reduced by maintenance paid by a parent*

1067G-F20 A parent's combined parental income for a tax year is reduced by an amount equal to any maintenance paid during the tax year by the parent:

- (a) for the upkeep of a child of the parent if the parent does not have care of the child; or
- (b) to a former partner of the parent.

*Income increased by maintenance paid to a parent*

1067G-F21 A parent's combined parental income for a tax year is increased by an amount equal to any maintenance paid during the tax year to the parent:

- (a) for the upkeep of a child of the parent if the parent has care of the child; or
- (b) by a former partner of the parent.

**Submodule 5—Parental income free area**

[see Appendix for CPI adjusted figures]

*Parental income free area*

1067G-F22 For the purposes of this Module, a person's **parental income free area** is the sum of:

- (a) \$23,400; and
- (b) any additional amounts, applying under this Submodule, for any children (other than the person) of a parent of the person.

*Additional amounts for children*

1067G-F23 Unless an additional amount applies under point 1067G-F24, an additional amount applies for a child of a parent of the person who is wholly or substantially dependent on the parent, as follows:

- (a) \$3,792 for a child who:

- (i) is at least 16 years of age but has not yet attained the maximum age for youth allowance under section 543B (disregarding subsection 543B(2)); and
  - (ii) is not independent (see section 1067A); and
  - (iii) is not receiving a pension, benefit, allowance or compensation referred to in Module L;
- (b) \$3,792 for a dependent child in respect of whom a boarding allowance or second home allowance is payable under the Assistance for Isolated Children Scheme;
- (c) \$1,230 for a dependent child who:
- (i) is under 16 years of age; and
  - (ii) is not a child referred to in paragraph (b);
- (d) \$2,562 for a dependent child who:
- (i) is under 16 years of age; and
  - (ii) is additional to the child referred to in paragraph (c); and
  - (iii) is not a child referred to in paragraph (b).

*Additional amounts for certain tertiary students*

- 1067G-F24 An additional amount of \$7,585 applies for a child (*student*) of a person's parent if:
- (a) the student is at least 16 years of age but is not yet 25 years of age; and
  - (b) the student is undertaking full-time study in a course of study or instruction determined, under section 5D of the *Student Assistance Act 1973*, to be a tertiary course for the purposes of that Act; and
  - (c) the student is not independent (see section 1067A); and
  - (d) the student is required to live away from home (see section 1067D); and
  - (e) the parent has one or more other children in respect of whom paragraphs (a), (b), (c) and (d) apply.

*Parents paying maintenance*

- 1067G-F25 For the purposes of this Submodule, a child is not a dependent child of a person's parent if the parent pays maintenance for the child.

## **Submodule 6—Reduction for parental income**

### *Reduction for parental income*

1067G-F26 A person's reduction for parental income is the amount obtained by dividing by 26 the person's annual parental income excess under point 1067G-F27.

### *Annual parental income excess*

1067G-F27 Subject to point 1067G-F28, the person's annual parental income excess is the amount obtained by dividing by 4 the difference between:

- (a) the person's combined parental income (see Submodule 4) for the appropriate tax year in question; and
- (b) the person's parental income free area (see Submodule 5).

### *Rounding off*

1067G-F28 For the purposes of point 1067G-F27:

- (a) if the amount obtained under that point is an amount of dollars and cents—the amount of cents is to be disregarded; and
- (b) if the amount so obtained is less than \$1—the amount obtained is taken to be nil.

## **Module G—Family actual means test**

### **Submodule 1—Preliminary**

#### *How to work out effect of actual means of a person's family on maximum payment rate*

1067G-G1 This is how to work out the effect (if any) of the actual means of a person's family on the person's maximum payment rate in respect of a particular youth allowance payment period.

#### *Method statement*

Step 1. Work out whether the family actual means test applies to the person using Submodule 2.

- Step 2. If the family actual means test applies to the person, identify the appropriate tax year in relation to the person using Submodule 3.
- Step 3. Work out the actual means of the person's family for that year using Submodule 4.
- Step 4. Work out the person's family actual means free area using Submodule 5.
- Step 5. Work out the person's reduction for family actual means for that year using Submodule 6.

### **Submodule 2—Persons to whom family actual means test applies**

#### *General provision*

1067G-G2 Subject to point 1067G-G3, the family actual means test applies to a person who:

- (a) claims or receives youth allowance; and
- (b) is not independent; and
- (c) has a parent who is a designated parent.

#### *Exceptions*

1067G-G3(1) The family actual means test does not apply to a person:

- (a) while a family member of the person is receiving exceptional circumstances relief payment; or
- (b) for so much of the calendar year in which the relief payment is received as follows the cessation of the relief payment.

(2) In subpoint (1):

***exceptional circumstances relief payment*** means:

- (a) exceptional circumstances relief payment under the *Farm Household Support Act 1992*; or
- (b) drought relief payment under that Act as in force immediately before the commencement of the *Farm Household Support Amendment (Restart and Exceptional Circumstances) Act 1997*.

### Submodule 3—Identification of appropriate tax year

*Meaning of appropriate tax year*

- 1067G-G4 The **appropriate tax year** in relation to a person for a youth allowance payment period is:
- (a) the base tax year for the period; or
  - (b) if a determination of a tax year is made by the Secretary under point 1067G-G6 in relation to the person in respect of the period—the tax year specified in the determination.

*Person who may request Secretary to determine appropriate tax year*

- 1067G-G5(1) This point applies to a person who claims or receives youth allowance if the following conditions are satisfied.
- (2) The first condition is that, except for this point, youth allowance:
    - (a) would not be payable to the person because the rate of youth allowance is calculated to be nil; or
    - (b) would be calculated to be payable at a reduced rate.
  - (3) The second condition is that the person gives to the Secretary, in writing:
    - (a) evidence, or an estimate, that the amount of the actual means of the person's family for the tax year (the **following tax year**) immediately after the base tax year is substantially less than it was in the base tax year:
      - (i) because of a circumstance or event that is beyond the control of the person and the person's family members; or
      - (ii) because the person or a family member of the person is undertaking full-time study in the following tax year; or
      - (iii) because a designated parent of the person has ceased to be a parent of the kind referred to in paragraph 10B(3)(c), (d), (e), (f) or (g); and
    - (b) if subparagraph (a)(i) applies—evidence of the circumstance or event concerned;and, if the person gives an estimate as referred to in paragraph (a), the person agrees, in writing, to the person's rate of youth allowance being recalculated if the actual means of the person's



family for the following tax year exceed the amount of the estimate.

- (4) For the purposes of subparagraph (3)(a)(i), an expected decrease in the profitability of a business is not ordinarily to be taken to be a circumstance or event that is beyond the control of the person and the person's family members.
- (5) The third condition is that the person's family actual means are unlikely to increase beyond the amount evidenced, or estimated, under paragraph (3)(a) for the 2 years beginning on the later of the following days:
  - (a) 1 January in the following tax year; or
  - (b) the day on which the amount of the family's actual means was reduced.

*Making of request*

1067G-G6(1) A person to whom point 1067G-G5 applies may request the Secretary, in accordance with a form approved by the Secretary, to make a determination under this point in relation to a youth allowance payment period.

- (2) If:
  - (a) the person makes such a request; and
  - (b) the youth allowance payment period to which the request relates ends on or after the later of:
    - (i) the day on which the request is made; or
    - (ii) 1 January in a year;the Secretary must determine, subject to subpoint (3), that the appropriate tax year for the person in relation to the youth allowance payment period is the tax year immediately after the base tax year.
- (3) If the request is based on an estimate, the Secretary may make a determination only if he or she is satisfied that the estimate is current and reasonable.

## Submodule 4—Actual means of person's family

### *How to work out the actual means of person's family*

1067G-G7(1) To work out the actual means of the family of a person (the **claimant/recipient**) for the appropriate tax year, first calculate, in accordance with this Submodule, the actual means of the claimant/recipient and the actual means of each family member of the claimant/recipient and then apply the formula in subpoint 1067G-G13(1) using the results of those calculations.

- (2) A reference in any of the following provisions of this Submodule to a **relevant person** is a reference to the claimant/recipient or a family member of the claimant/recipient.

### *Meaning of actual means*

1067G-G8(1) Subject to point 1067G-G9, the **actual means** of a relevant person for the appropriate tax year is an amount equal to the total spending and savings of the person in that tax year.

- (2) An amount of spending or savings is taken to have been spent or saved in the appropriate tax year if the Secretary considers that the amount should be so taken.

### *Amounts not included in actual means of a relevant person*

1067G-G9(1) This point applies in working out the actual means, for the appropriate tax year, of a relevant person.

- (2) The following amounts spent or saved in the appropriate tax year by the person are not included in the actual means of the person:
- (a) spending or savings from any income assistance received by the person in that tax year;
  - (b) spending for the maintenance of:
    - (i) a child of the person if the person does not have legal responsibility for the day-to-day care, welfare and development of the child; or
    - (ii) a former partner of the person;
  - (e) if the person has a disability—spending to acquire, or modify, property to assist the person to cope with the disability;

- (f) spending or savings from any arm's length loan received by the person in that tax year;
  - (g) spending to repay a loan received by the person in that tax year that is not an arm's length loan, or to pay interest on the loan;
  - (h) spending or savings from the proceeds of any liquidation of assets of the person that were held at the beginning of that year;
  - (i) spending or savings from the amount of any windfall gain that is not a gift to the person;
  - (j) spending or savings, of not more than \$6,000, from income that is exempt income under item 1.4 of the table in section 51-5 of the *Income Tax Assessment Act 1997*;
  - (k) spending or savings from any part of a lump sum compensation payment made to the person on which tax is not payable under the *Income Tax Assessment Act 1936* or the *Income Tax Assessment Act 1997*.
- (3) Also, the actual means of the person do not include the following amounts:
- (a) subject to subpoint (4), an amount equal to the amount of the income or resources of a business of the person that is deductible under the *Income Tax Assessment Act 1936*, or the *Income Tax Assessment Act 1997* because the amount was, or will be, necessarily incurred in carrying on the business;
  - (b) an amount equal to the amount of any reduction in liquid assets of the person held at the beginning of the appropriate tax year and not accounted for by spending of a kind referred to in subpoint (2);
  - (c) if the person spent an amount in the appropriate tax year in boarding away from home one or more family members who fulfilled either or both of the following conditions at any time during the year:
    - (i) the family member qualified for the boarding allowance under the AIC scheme;
    - (ii) the family member was a secondary student who was not independent and was required to live away from home;
- an amount of \$5,274 for each such family member.

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- (4) The reference in paragraph (3)(a) to the amount of the income or resources of a business of the person that is deductible does not include:
- (a) the amount of any losses from the business that are carried forward from a tax year earlier than the appropriate tax year; or
  - (b) the reportable superannuation contributions (within the meaning of the *Income Tax Assessment Act 1997*) of each of the following people for the appropriate tax year:
    - (i) the person;
    - (ii) each family member of the person.

*Amounts not included in actual means of a family member of claimant/recipient*

- 1067G-G10 In working out the actual means, for the appropriate tax year, of a family member of the claimant/recipient, being a family member of a kind referred to in subparagraph 23(15)(b)(i), (ii) or (iii), spending or savings from any income of the family member from employment (except so much of such spending or savings as exceeds \$6,000) is not included.

*Powers of Secretary to determine fair market value*

- 1067G-G12(1) If the Secretary considers that an amount of spending that would otherwise be included in the actual means of a relevant person does not represent the fair market value of the matter or thing to which the spending related:
- (a) the Secretary must determine the fair market value of the matter or thing; and
  - (b) an amount equal to the value so determined is taken to be the amount of the spending.
- (2) If the Secretary considers that spending by a person other than a family member of a relevant person is spending for the benefit of the relevant person:
- (a) the Secretary must determine the fair market value of the matter or thing to which the spending related; and
  - (b) an amount equal to the value so determined is taken to be an amount of spending by the relevant person.

*Actual means of family of claimant/recipient*

1067G-G13(1) The actual means of the family of a claimant/recipient for the appropriate tax year is the amount worked out using the formula:

$$2 \left[ \frac{\text{GAM}}{2} + \text{TNITML} \right] + \text{TNIL}$$

(2) In this section:

**after-tax income**, in relation to a parent of the claimant/recipient for the appropriate tax year, means the gross income of the parent for that year less any income tax or medicare levy payable in respect of the parent's taxable income for that year.

**GAM (gross actual means)**, in relation to the claimant/recipient's family for the appropriate tax year, means the total of the amounts of the actual means, for that year, of the claimant/recipient and of each of the family members of the claimant/recipient.

**NITML (notional income tax/medicare levy)**, in relation to a parent of the claimant/recipient for the appropriate tax year, means the sum of:

- (a) the amount of income tax, before any rebates that would be notionally payable by the parent for that year; and
  - (b) the amount of medicare levy that would be notionally payable by the parent for that year if none of the parent's children who are children referred to in paragraph 23(15)(b) had an adjusted taxable income within the meaning of the *A New Tax System (Family Assistance) Act 1999* in that year;
- that would result in the after-tax income of the parent for that year being an amount equal to one-half of GAM of the claimant/recipient's family for that year.

**TNIL (total net investment loss)** means the sum of the total net investment losses of each of the parents of the claimant/recipient in the appropriate tax year.

**TNITML (total notional income tax/medicare levy)** means the total of the amounts of NITML in relation to each of the parents of the claimant/recipient for the appropriate tax year.

### Submodule 5—Family actual means free area

#### *Family actual means free area*

1067G-G14 A person's **family actual means free area** is the amount that is the person's parental income free area worked out under Submodule 5 of Module F.

### Submodule 6—Reduction for family actual means

#### *Reduction for family actual means*

1067G-G15(1) A person's **reduction for family actual means** for the appropriate tax year is the amount obtained by dividing by 26 the person's family actual means excess for that year.

- (2) A person's **family actual means excess** for the appropriate tax year is the amount worked out using the formula:

$$\frac{\text{Actual family means} - \text{Actual means free area}}{4}$$

where:

**actual family means** means the actual means of the person's family for that year.

**actual means free area** means the person's family actual means free area.

- (3) If the amount worked out under subsection (2) is an amount of dollars and cents, disregard the amount of cents.
- (4) If the amount worked out under subsection (2) is less than \$1, the amount is taken to be nil.

### Module H—Income test

#### *Effect of ordinary income on maximum payment rate*

1067G-H1 This is how to work out the effect of a person's ordinary income, and the ordinary income of a partner of the person, on the person's maximum payment rate:

*Method statement*

- Step 1. Work out the amount of the person's ordinary income on a fortnightly basis (where appropriate, taking into account the matters provided for in points 1067G-H2 to 1067G-H25).
- Step 2. If the person is a member of a couple, work out the partner income free area using point 1067G-H26.
- Note: The partner income free area is the maximum amount of ordinary income the person's partner can have without affecting the person's benefit.
- Step 3. Use point 1067G-H27 to work out the person's partner income excess. (If there is no partner income excess under that point, the person's partner income excess is taken to be nil.)
- Step 4. Use the person's partner income excess to work out the person's partner income reduction using point 1067G-H28.
- Step 5. Use point 1067G-H30 to work out the person's ordinary income excess. (If there is no ordinary income excess under that point, the person's ordinary income excess is taken to be nil.)
- Step 6. Use the person's ordinary income excess to work out the person's ordinary income reduction using points 1067G-H31, 1067G-H32 and 1067G-H33.
- Step 7. Add the person's partner income reduction and ordinary income reduction: the result is the ***person's income reduction*** referred to in Step 12 of the Method statement in point 1067G-A1.

Note 1: For ***ordinary income*** see subsection 8(1).

Note 2: The application of the income test is affected by provisions concerning:

- (a) the general concept of ordinary income (sections 1072 and 1073);
- (b) business income (sections 1074 and 1075);

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- (c) deemed income from financial assets (sections 1076 to 1084A);
- (d) income streams (sections 1095 to 1099DAA);
- (e) disposal of income (sections 1106 to 1112);

*Ordinary income of members of certain couples*

1067G-H2 If a person is a member of a couple and the person's partner is receiving a social security pension, a service pension, income support supplement or a rehabilitation allowance, the person's ordinary income is taken to be one half of the sum of:

- (a) the amount that would be the person's ordinary income if he or she were not a member of a couple; and
- (b) the amount that would be the ordinary income of the person's partner if the partner were not a member of a couple.

*Friendly society amounts*

1067G-H3 The ordinary income of a person:

- (a) who has a temporary incapacity exemption under section 542A; or
- (b) who is a partner of a person who has a temporary incapacity exemption under that section;

is not to include any amount received from an approved friendly society in respect of the incapacity to which the temporary incapacity exemption relates.

*Lump sum payments arising from termination of employment*

1067G-H4 Subject to points 1067G-H10 to 1067G-H20 (inclusive), if:

- (a) a person's employment has been terminated; and
- (b) as a result the person is entitled to a lump sum payment from the person's former employer;

the person is taken to have received the lump sum payment on the day on which the person's employment was terminated.

*Ordinary income to include certain sick leave entitlements*

1067G-H5 If a person is qualified for youth allowance and has a temporary incapacity exemption under section 542A, the person's ordinary income is taken to include an amount equal to the amount in respect of sick leave worked out under points 1067G-H6, 1067G-H7 and 1067G-H8.



*Sick leave entitlements*

1067G-H6 If:

- (a) a person has sick leave entitlements on a day that the person is incapacitated for work; and
- (b) the person has the right to claim payment from the person's employer by way of sick leave payment in respect of that day; and
- (c) the person's employer is able to pay the person the person's sick leave payment in respect of that day; and
- (d) the person is not receiving a leave payment (other than a sick leave payment) in respect of that day;

the person is, for the purposes of this point, taken to have received a sick leave payment equal to the person's sick leave entitlements in respect of that day, assuming that the person does not exercise any rights the person may have in relation to the amount to be paid in respect of that day.

*Subsequent consecutive applications of point 1067G-H6*

1067G-H7 If point 1067G-H6 has applied to a person in respect of a day, then, for the purposes of any subsequent consecutive applications of the point, the person's sick leave entitlements are to be taken to be reduced by a day.

*Sick leave payments already included in ordinary income*

1067G-H8 A person's ordinary income is not to include a payment received by the person in respect of sick leave to the extent that an amount equal to the payment has been included in the person's ordinary income under point 1067G-H5.

*Granting of allowance after a cancellation*

1067G-H9 If:

- (a) point 1067G-H5 has applied to a person while the person was qualified for youth allowance and had a temporary incapacity exemption under section 542A; and
- (b) that allowance has ceased to be payable under Subdivision B of Division 9 of Part 2.11, or has been cancelled under Subdivision E of that Division; and

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- (c) at least 6 weeks after the day on which the youth allowance ceased to be payable or was cancelled, the person is granted youth allowance, and has a temporary incapacity exemption under section 542A, again;
- point 1067G-H5 applies to the person in respect of the person's sick leave entitlements.

*Directed termination payments excluded*

1067G-H10 If:

- (a) a person's employment has been terminated; and
  - (b) as a result the person is entitled to a lump sum payment from the person's former employer; and
  - (c) the payment, or part of the payment, is a directed termination payment within the meaning of section 82-10F of the *Income Tax (Transitional Provisions) Act 1997*;
- the payment, or that part, is to be disregarded in working out the ordinary income of the person for the purposes of this Module.

*Certain leave payments taken to be ordinary income—employment continuing*

1067G-H11 If:

- (a) a person is employed; and
  - (b) the person is on leave for a period; and
  - (c) the person is or was entitled to receive a leave payment (whether as a lump sum payment, as a payment that is one of a series of regular payments or otherwise) in respect of a part or all of a leave period;
- the person is taken to have received ordinary income for a period (the *income maintenance period*) equal to the leave period to which the leave payment entitlement relates.

*Certain termination payments taken to be ordinary income*

1067G-H12 If:

- (a) a person's employment has been terminated; and
- (b) the person receives a termination payment (whether as a lump sum payment, as a payment that is one of a series of regular payments or otherwise);

the person is taken to have received ordinary income for a period (the *income maintenance period*) equal to the period to which the payment relates.

*More than one termination payment on a day*

1067G-H13 If:

- (a) the person is covered by point 1067G-H12; and
- (b) the person receives more than one termination payment on a day;

the income maintenance period is worked out by adding the periods to which the payments relate.

*Start of income maintenance period—employment continuing*

1067G-H14 If the person is covered by point 1067G-H11, the income maintenance period starts on the first day of the leave period to which the leave payment entitlement relates.

*Start of income maintenance period—employment terminated*

1067G-H14A Subject to point 1067G-H14C, if the person is covered by point 1067G-H12, the income maintenance period starts, subject to point 1067G-H14B, on the day the person is paid the termination payment.

*Commencement of income maintenance period where there is a second termination payment*

1067G-H14B If a person who is covered by point 1067G-H12 is subject to an income maintenance period (the *first period*) and the person is paid another termination payment during that period (the *second leave payment*), the income maintenance period for the second termination payment commences the day after the end of the first period.

*Start of income maintenance period where liquid assets test waiting period applies*

1067G-H14C If a person to whom point 1067G-H14A applies is subject to a liquid assets test waiting period, the income maintenance period is taken to have started on the day on which the liquid assets test waiting period started.

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*Leave payments or termination payments in respect of periods longer than a fortnight*

1067G-H15 Subject to points 1067G-H5 to 1067G-H9 (inclusive), if:

- (a) a person receives a leave payment or termination payment; and
- (b) the payment is in respect of a period greater than a fortnight; the person is taken to receive in a payment fortnight or part of a payment fortnight an amount calculated by:
  - (c) dividing the amount received by the number of days in the period to which the payment relates (*daily rate*); and
  - (d) multiplying the daily rate by the number of days in the payment fortnight that are also in the period.

1067G-H16 If the Secretary is satisfied that a person is in severe financial hardship because the person has incurred unavoidable or reasonable expenditure while an income maintenance period applies to the person, the Secretary may determine that the whole, or any part, of the period does not apply to the person.

Note 1: For *in severe financial hardship* see subsection 19C(2) (person who is not a member of a couple) and subsection 19C(3) (person who is a member of a couple).

Note 2: For *unavoidable or reasonable expenditure* see subsection 19C(4).

Note 3: If an income maintenance period applies to a person, then, during that period:

- (a) the allowance claimed may not be payable to the person; or
- (b) the amount of the allowance payable to the person may be reduced.

*When a person receives a leave payment or a termination payment*

1067G-H17 For the purposes of points 1067G-H6 to 1067G-H16 (inclusive), a person (*first person*) is taken to receive a leave payment or termination payment if the payment is made to another person:

- (a) at the direction of the first person or a court; or
- (b) on behalf of the first person; or
- (c) for the benefit of the first person; or
- (d) the first person waives or assigns the first person's right to receive the payment.

*Single payment in respect of different kinds of termination payments*

1067G-H18 If a person who is covered by point 1067G-H12 receives a single payment in respect of different kinds of termination payments, then, for the purposes of the application of points 1067G-H11 to 1067G-H17 (inclusive), each part of the payment that is in respect of a different kind of termination payment is taken to be a separate payment and the income maintenance period in respect of the single payment is worked out by adding the periods to which the separate payments relate.

*Definitions*

1067G-H19 In points 1067G-H11 to 1067G-H18 (inclusive):

***payment fortnight*** means a fortnight in respect of which a youth allowance is paid, or would be paid apart from the application of an income maintenance period, to a person.

***period to which the payment relates*** means:

- (a) if the payment is a leave payment—the leave period to which the payment relates; or
- (b) if the payment is a redundancy payment and is calculated as an amount equivalent to an amount of ordinary income that the person would (but for the redundancy) have received from the employment that was terminated—the period for which the person would have received that amount of ordinary income; or
- (c) if the payment is a redundancy payment and paragraph (b) does not apply—the period of weeks (rounded down to the nearest whole number) in respect of which the person would have received ordinary income, from the employment that was terminated, of an amount equal to the amount of the redundancy payment if:
  - (i) the person's employment had continued; and
  - (ii) the person received ordinary income from the employment at the rate per week at which the person usually received ordinary income from the employment prior to the termination.

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**redundancy payment** does not include a directed termination payment within the meaning of section 82-10F of the *Income Tax (Transitional Provisions) Act 1997*.

**termination payment** means:

- (a) a leave payment relating to a person's employment that has been terminated; or
- (b) a redundancy payment.

*Meaning of leave payment*

1067G-H20 In points 1067G-H5 to 1067G-H19 (inclusive):

**leave payment** includes a payment in respect of sick leave, annual leave, maternity leave and long service leave.

*Ordinary income includes certain periodical payments from relatives*

1067G-H21 Subject to point 1067G-H22 (and despite paragraph 8(8)(z)), a person's ordinary income for the purposes of this Module includes a periodical payment or benefit by way of gift or allowance from the father, mother, son, daughter, brother or sister of the person.

*Board and lodging*

1067G-H22 A person's ordinary income is not to include a payment to the person for board or lodging provided by the person to the person's father, mother, son, daughter, brother or sister.

*Ordinary income generally taken into account when first earned, derived or received*

1067G-H23 Subject to points 1067G-H23A, 1067-H23B, 1067G-H24 and 1067G-H25 and section 1073, ordinary income is to be taken into account in the fortnight in which it is first earned, derived or received.

*Claimant or recipient receives lump sum amount for remunerative work*

1067G-H23A If a person whose claim for youth allowance has been granted receives, after the claim was made, a lump sum amount that:

- (a) is paid to him or her in relation to remunerative work; and

- (b) is not a payment to which point 1067G-H24 applies; and
  - (c) is not an exempt lump sum;
- the person is, for the purposes of this Module, taken to receive one fifty-second of that amount as ordinary income during each week in the 12 months commencing on the day on which the person becomes entitled to receive that amount.

*Partner of claimant or recipient receives lump sum amount for remunerative work*

1067G-H23B If:

- (a) a person whose claim for youth allowance has been granted is a member of a couple; and
  - (b) after the person had made the claim, the person's partner receives a lump sum amount that:
    - (i) is paid to him or her in relation to remunerative work; and
    - (ii) is not a payment to which point 1067G-H24 applies; and
    - (iii) is not an exempt lump sum;
- the partner is, for the purposes of this Module, taken to receive one fifty-second of that amount as ordinary income during each week in the 12 months commencing on the day on which the partner becomes entitled to receive that amount.

*Operation of points 1067G-H23A and 1067G-H23B*

1067G-H23C Points 1067G-H23A and 1067G-H23B have effect even if the person who has made the claim:

- (a) is subject to a liquid assets test waiting period or an income maintenance period in respect of the allowance claimed; or
  - (b) is subject to a seasonal work preclusion period;
- during the period of 12 months referred to in those points.

*Ordinary income received at intervals longer than one fortnight*

1067G-H24 Subject to points 1067G-H10 to 1067G-H20 (inclusive), if:

- (a) a person receives a number of ordinary income payments; and
- (b) each payment is in respect of a period (*work period*) that is greater than a fortnight; and

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(c) there is reasonable predictability or regularity as to the timing of the payments; and

(d) there is reasonable predictability as to the quantum of the payments;

the person is taken to receive in a fortnight falling within, or overlapping with, a work period an amount calculated by:

(e) dividing the amount received by the number of days in the work period (*daily rate*); and

(f) multiplying the daily rate by the number of days in the fortnight that are also within the work period.

*Payment of arrears of periodic compensation payments*

1067G-H25 If:

(a) at the time of an event that gives rise to an entitlement of a person to compensation, the person is receiving youth allowance; and

(b) in relation to that entitlement, the person receives a payment of arrears of periodic compensation;

the person is taken to receive, in a fortnight falling within, or overlapping with, the periodic payments period, an amount calculated by:

(c) dividing the amount received by the number of days in the periodic payments period (*daily rate*); and

(d) multiplying the daily rate by the number of days in the fortnight that are also within the periodic payments period.

Note: For *periodic payments period* see section 17.

*Partner income free area*

1067G-H26 The partner income free area for a person is:

(a) if the person's partner is not receiving a social security benefit and has not turned 21—the amount of income of the partner (rounded up to the nearest dollar) beyond which youth allowance would not be payable to the partner if the partner were qualified for a youth allowance and were not undertaking full-time study (see section 541B); or

(b) if the person's partner is not receiving a social security benefit and has turned 21—the amount of income of the partner (rounded up to the nearest dollar) beyond which



newstart allowance would not be payable to the partner if the partner were qualified for a newstart allowance; or

- (c) if the person's partner is receiving a social security benefit—the amount of income of the partner (rounded up to the nearest dollar) beyond which that benefit would not be payable to the partner.

*Partner income excess*

1067G-H27 If:

- (a) a person is a member of a couple; and
- (b) the person's partner is not receiving a social security pension, service pension, income support supplement or a rehabilitation allowance; and
- (c) the partner's ordinary income exceeds the partner income free area for the partner;

then:

- (d) the person has a partner income excess; and
- (e) the person's partner income excess is the amount by which the partner's ordinary income exceeds the partner income free area.

*Partner income reduction*

1067G-H28 If a person has a partner income excess, the person's partner income reduction is an amount equal to 60% of the person's partner income excess.

Example:

Facts: Alice's partner Martin has an ordinary income of \$800. Assume that the partner income free area under point 1067G-H26 is \$640.

Result: Martin's ordinary income exceeds the partner income free area. Alice therefore has a partner income excess under point 1067G-H27 of:

$$\$800 - \$640 = \$160$$

Alice's partner income reduction under point 1067G-H28 is therefore:

$$60\% \times \$160 = \$96$$

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*Ordinary income free area*

1067G-H29 A person's ordinary income free area is:

- (a) if the person is undertaking full-time study at any time in the fortnight in respect of which a youth allowance may be payable—\$236; or
- (aa) if the person is a new apprentice at any time in the fortnight in respect of which a youth allowance may be payable—\$236; or
- (b) otherwise—\$62.

*Ordinary income excess*

1067G-H30 If a person's ordinary income exceeds the person's ordinary income free area:

- (a) the person has an ordinary income excess; and
- (b) the person's ordinary income excess is the amount by which the person's ordinary income exceeds the person's ordinary income free area.

*Ordinary income reduction*

1067G-H31 If a person has an ordinary income excess, the person's ordinary income reduction is the sum of:

- (a) the person's lower range reduction (if any)(see point 1067G-H32); and
- (b) the person's upper range reduction (if any) (see point 1067G-H33).

*Lower range reduction*

1067G-H32 The person's lower range reduction is an amount equal to 50% of the part of the person's ordinary income excess that does not exceed:

- (a) if the person is undertaking full-time study at any time in the fortnight in respect of which a youth allowance may be payable—\$80; or
- (b) if the person is a new apprentice at any time in the fortnight in respect of which a youth allowance may be payable—\$80; or
- (c) otherwise—\$188.

*Upper range reduction*

1067G-H33 The person's upper range reduction is an amount equal to 60% of the part (if any) of the person's ordinary income excess that exceeds:

- (a) if the person is undertaking full-time study at any time in the fortnight in respect of which a youth allowance may be payable—\$80; or
- (b) if the person is a new apprentice at any time in the fortnight in respect of which a youth allowance may be payable—\$80; or
- (c) otherwise—\$188.

**Module J—Student income bank**

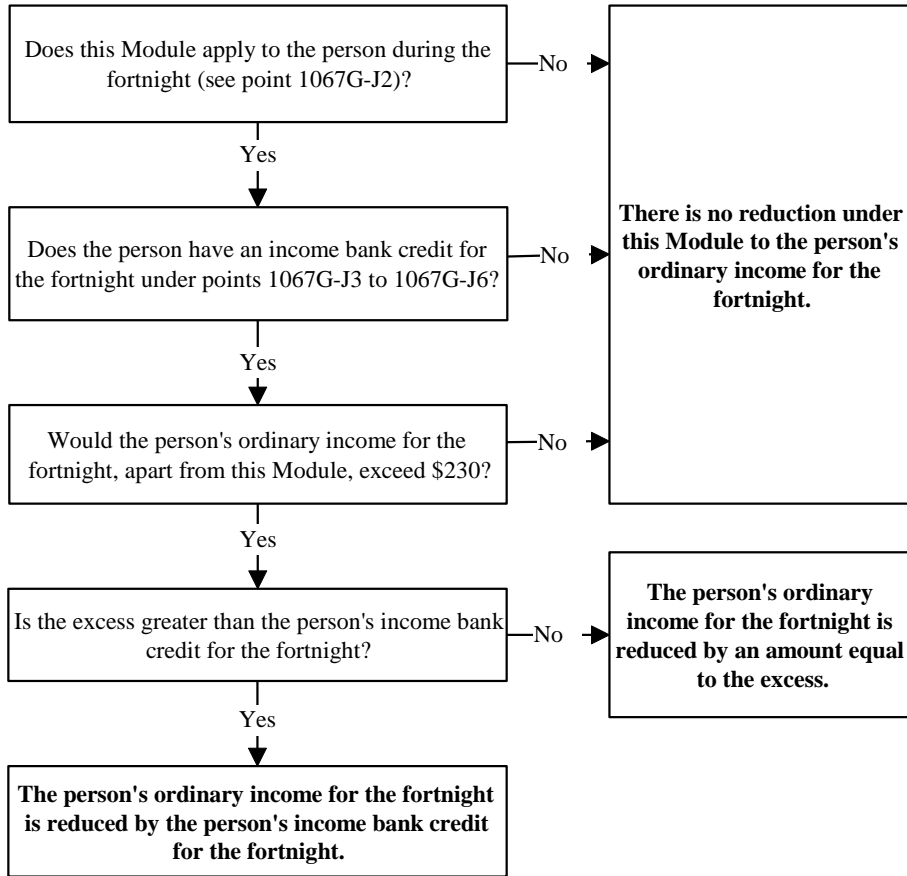
*Student income bank*

1067G-J1 A person's ordinary income under Module H may be reduced under this Module. This diagram sets out how to work out:

- (a) whether the person's ordinary income for a particular fortnight, in respect of which youth allowance may be payable to the person, is to be reduced; and
- (b) if it is to be reduced, the amount of the reduction.

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*Application of this Module*

1067G-J2 This Module applies to a person during a particular fortnight, in respect of which youth allowance may be payable to the person, if the person is undertaking full-time study (see section 541B) or is a new apprentice (see subsection 23(1)) at any time during the fortnight.

*Income bank credit*

1067G-J3 A person's income bank credit for a particular income bank fortnight of the person is to be worked out as follows:

*Method statement*

- Step 1. Assume that the person's income bank credit, at the time this Module starts applying to the person, is an opening balance of zero.
- Step 2. If, for the person's first income bank fortnight, the person has an income credit under point 1067G-J4, add it to the opening balance.
- Step 3. For each subsequent income bank fortnight of the person, up to but not including the fortnight in question, either:
- (a) if the person has an income credit for that fortnight under point 1067G-J4 and the person is not a new apprentice—add it to the balance of the person's income bank credit in respect of all the previous fortnights, but not so as to increase the balance beyond \$6,000; or
  - (aa) if the person has an income credit for that fortnight under point 1067G-J4 and the person is a new apprentice—add it to the balance of the person's income bank credit in respect of all the previous fortnights, but not so as to increase the balance beyond \$1,000; or
  - (b) if the person has, in respect of that fortnight, drawn from the person's income bank credit under point 1067G-J5—deduct from that balance the amount drawn, but not so as to reduce the balance below zero.

The result is the person's income bank credit for the fortnight in question.

*Income credit*

1067G-J4 For the purposes of point 1067G-J3, if the amount that would, apart from this Module, be the person's ordinary income for an income bank fortnight of the person is less than \$236:

- (a) the person has an income credit for that fortnight; and

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- (b) the income credit is an amount equal to the difference between \$236 and the first-mentioned amount.

*Drawing from income bank credit*

- 1067G-J5 For the purposes of point 1067G-J3, if the amount that would, apart from this Module, be the person's ordinary income for an income bank fortnight of the person is greater than \$236:
- (a) the person is taken to have drawn from the person's income bank credit in respect of that fortnight; and
  - (b) the amount drawn is taken to be an amount equal to the difference between the first-mentioned amount and \$236.

*Income bank fortnight*

- 1067G-J6 For the purposes of this Module, an income bank fortnight of a person is any fortnight, in respect of which youth allowance may be payable to the person, during the whole or a part of which this Module applies to the person.

*Opening balance following cancellation of another social security pension or benefit*

- 1067G-J7 If:

- (a) a person ceases to be a working credit participant because of a determination to cancel, or an automatic cancellation of, the person's social security pension or social security benefit; and
- (b) the person had a working credit balance greater than nil immediately before the date of effect of the determination or cancellation; and
- (c) the person makes a claim, or is taken to have made a claim, for a youth allowance; and
- (d) the Secretary determines that the claim is to be granted with effect from a day within 12 months after the date of effect mentioned in paragraph (b); and
- (e) the person becomes a person to whom this Module applies on a day (the *module application day*), being either the day with effect from which the claim is granted or a day following that day;

the working credit balance mentioned in paragraph (b) becomes the opening balance of the income bank credit applicable to the person on the module application day.

*Opening balance following suspension of youth allowance*

1067G-J8 If:

- (a) a person ceases to be a working credit participant because of a determination to suspend the person's youth allowance; and
- (b) the person had a working credit balance greater than nil immediately before the date of effect of the determination; and
- (c) within 12 months after the date of effect of the determination:
  - (i) the person commences to undertake full-time study or becomes a new apprentice; and
  - (ii) the payment of the person's youth allowance is resumed; and
- (d) the person becomes a person to whom this module applies on the day with effect from which the person's youth allowance is resumed;

the working credit balance mentioned in paragraph (b) becomes the opening balance of the income bank credit applicable to the person on the day mentioned in paragraph (d).

*Opening balance following suspension and subsequent cancellation of another social security pension or benefit*

1067G-J9 If:

- (a) a person ceases to be a working credit participant because of a determination to suspend the person's social security pension or social security benefit; and
- (b) while the person's pension or benefit is suspended, there is a determination to cancel the person's pension or benefit; and
- (c) the person had a working credit balance greater than nil immediately before the date of effect of the suspension determination; and
- (d) the person makes a claim, or is taken to have made a claim, for a youth allowance; and
- (e) the Secretary determines that the claim is to be granted with effect from a day within 12 months after the date of effect mentioned in paragraph (c); and

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- (f) the person becomes a person to whom this Module applies on a day (the ***module application day***), being either the day with effect from which the claim is granted or a day following that day;

the working credit balance mentioned in paragraph (c) becomes the opening balance of the income bank credit applicable to the person on the module application day.

*Opening balance following commencement of full-time study by youth allowance recipient*

1067G-J10 If:

- (a) a person is receiving youth allowance and is not undertaking full-time study; and
- (b) the person commences to undertake full-time study; and
- (c) either because of a determination made as a result of the commencement or, if no determination is necessary, because of the commencement itself, the person, on a day (the ***module application day***):
- (i) ceases to be a working credit participant; and
  - (ii) becomes a person to whom this Module applies; and
- (d) the person had a working credit balance greater than nil immediately before the module application day;

the working credit balance mentioned in paragraph (d) becomes the opening balance of the income bank credit applicable to the person on the module application day.

*Opening balance following commencement as a new apprentice by youth allowance recipient*

1067G-J11 If:

- (a) a person is receiving youth allowance and is not a new apprentice; and
- (b) the person becomes a new apprentice; and
- (c) either because of a determination made as a result of the commencement or, if no determination is necessary, because of the commencement itself, the person, on a day (the ***module application day***):
- (i) ceases to be a working credit participant; and
  - (ii) becomes a person to whom this Module applies; and



(d) the person had a working credit balance greater than nil immediately before the module application day;  
 the working credit balance mentioned in paragraph (d) becomes the opening balance of the income bank credit applicable to the person on the module application day.

**Module K—Remote area allowance**

*Remote area allowance—person physically in remote area*

- 1067G-K1 An amount by way of remote area allowance is to be added to a person’s rate of youth allowance if:
- (a) the person’s rate of youth allowance apart from this point is greater than nil; and
  - (b) the person’s usual place of residence is situated in the remote area; and
  - (c) the person is physically present in the remote area.

Note 1: For **remote area** see subsection 14(1).  
 Note 2: A person may be considered to be physically present in a remote area during temporary absences (see subsection 14(2)).

*Rate of remote area allowance*

1067G-K2 A person’s rate of remote area allowance is worked out using Table K. Work out which family situation in the table applies to the person. The rate of remote area allowance is the corresponding amount in column 3 plus an additional corresponding amount in column 4 for each FTB child, and each regular care child, of the person.

<b>Table K—Remote area allowance</b>			
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>
<b>Item</b>	<b>Person’s family situation</b>	<b>Basic allowance</b>	<b>Additional allowance for each FTB child and regular care child</b>
1	Not a member of a couple	\$18.20	\$7.30

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<b>Table K—Remote area allowance</b>			
<b>Column 1 Item</b>	<b>Column 2 Person’s family situation</b>	<b>Column 3 Basic allowance</b>	<b>Column 4 Additional allowance for each FTB child and regular care child</b>
2	Partnered	\$15.60	\$7.30
3	Member of an illness separated couple	\$18.20	\$7.30
4	Partnered (partner in gaol)	\$18.20	\$7.30

Note: For *member of a couple, partnered, illness separated couple* and *partnered (partner in gaol)* see section 4.

*Meaning of remote area allowance*

1067G-K3 In Table K, remote area allowance means an amount added to a person’s youth allowance by way of remote area allowance.

*In remote area*

1067G-K4 For the purposes of Table K, a person is in the remote area if:

- (a) the person’s usual place of residence is in the remote area; and
- (b) the person is physically present in the remote area.

*Special rule if partner has an FTB or regular care child but is not receiving a pension*

1067G-K6 If:

- (a) an additional allowance is to be included in the rate of remote area allowance for a person who is a member of a couple; and
- (b) the person’s partner is not receiving a social security pension or social security benefit; and
- (c) the person’s partner has an FTB child or a regular care child; the child is taken, for the purposes of this Module, to be an FTB child, or a regular care child, (as the case requires) of the person.

*Special rule if partner has an FTB or regular care child but is not receiving additional allowance for the child*

1067G-K7 If:

- (a) an additional allowance is to be included in the rate of remote area allowance for a person who is a member of a couple; and
- (b) the person's partner has an FTB child or a regular care child; and
- (c) the person's partner is not receiving additional allowance for the child;

the child is taken, for the purposes of this Module, to be an FTB child, or a regular care child, (as the case requires) of the person.

*Special rule dealing with the death of an FTB or regular care child*

1067G-K9 If an FTB child, or a regular care child, of a person dies, this Module has effect, for a period of 14 weeks after the death of the child, as if the child had not died.

Note: This point does not prevent this Module having the effect it would have had if the child would otherwise have ceased to be an FTB child, or a regular care child, during that 14 weeks.

## **Module L—Table of pensions, benefits, allowances and compensation**

<b>Table of pensions, benefits, allowances and compensation</b>		
<b>Item</b>	<b>Type of pension, benefit, allowance and compensation</b>	
1	Age pension	(Part 2.2)
2	Service pension (age)	(Section 36 of the Veterans' Entitlements Act)
3	Defence widow's pension—if the widow has no dependent children	(Section 70 of the Veterans' Entitlements Act)
4	War widow's pension—if the widow has no dependent children	(Section 13 of the Veterans' Entitlements Act)
4A	Compensation for an armed services widow who has no dependent children	(Paragraph 234(1)(b) of the Military Rehabilitation and Compensation Act)
5	Bereavement allowance	(Part 2.7)

**Chapter 3** General provisions relating to payability and rates

**Part 3.5** Youth Allowance Rate Calculator

**Module L** Table of pensions, benefits, allowances and compensation

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<b>Table of pensions, benefits, allowances and compensation</b>		
<b>Item</b>	<b>Type of pension, benefit, allowance and compensation</b>	
6	Wife pension—if husband is receiving age pension	(Part 2.4)
7	Service pension (partner)—if partner is receiving service pension (age)	(Section 38 of the Veterans' Entitlements Act)
7A	Income support supplement	(section 45A of the Veterans' Entitlements Act)
8	Mature age allowance	(Part 2.12A or 2.12B)
9	Mature age partner allowance	(Part 2.12A or 2.12B)
10	Rehabilitation allowance	(Clause 35 of Schedule 1A)
11	Commonwealth allowance	(New Enterprise Incentive Scheme (NEIS))
12	Carer payment	(Part 2.5)
13	Service pension (carer)	(Section 39 of the Veterans' Entitlements Act)
14	Defence widow's pension—if the widow has a dependent child	(Section 70 of the Veterans' Entitlements Act)
15	Disability support pension	(Part 2.3)
16	Service pension (invalidity)	(Section 37 of the Veterans' Entitlements Act)
17	Pension PP (single)	(Part 2.10)
18	Widow B pension	(Part 2.8)
20	War widow's pension—if the widow has a dependent child	(Section 13 of the Veterans' Entitlements Act)
20A	Compensation for an armed services widow who has a dependent child	(Paragraph 234(1)(b) of the Military Rehabilitation and Compensation Act)
21	Wife pension—if husband is receiving a disability support pension	(Part 2.4 as in force on 11 November 1991)
22	Wife's service pension—if husband is receiving an invalidity service pension	(Section 40 of the Veterans' Entitlements Act)
23	Newstart allowance	(Part 2.12)
24	Sickness allowance	(Part 2.14)
25	Special benefit	(Part 2.15)
26	Benefit PP (partnered)	(Part 2.10)
27	Austudy payment	(Part 2.11A)

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## Part 3.5A—Austudy Payment Rate Calculator

### 1067H Definitions

In this Part:

*living at home* has the meaning given by section 1067J.

*long term income support student* has the meaning given by section 1067K.

### 1067J Person living at home

A person *lives at home* if the person lives at the home of either or both of his or her parents.

Note: For parent see section 5 (paragraph (a) of the definition of *parent*).

### 1067K Long term income support student

- (1) A person is a *long term income support student* if the person:
  - (b) does not have a dependent child; and
  - (c) is either:
    - (i) undertaking study (whether as a full-time student or as a concessional study-load student) in respect of a course of education that the person has commenced after turning 21; or
    - (ii) a new apprentice and became a new apprentice after turning 21; and
  - (d) has, for at least 26 weeks in the period of 39 weeks that ended when the person commenced to undertake the study or became a new apprentice, been receiving one or more of the following:
    - (i) newstart allowance;
    - (ii) sickness allowance;
    - (iii) special benefit;
    - (iv) disability support pension;
    - (v) wife pension;
    - (vi) carer payment;

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- (vii) bereavement allowance;
- (viii) disability wage supplement;
- (ix) pension PP (single);
- (x) sole parent pension;
- (xi) benefit parenting allowance;
- (xii) benefit PP (partnered).

Note 1: For *dependent child* see subsections 5(2) to (9).

Note 2: For *full-time student* and *concessional study-load student* see sections 569C and 569D.

- (2) A person is also a *long term income support student* if the person:
- (b) does not have a dependent child; and
  - (c) does not have English as a first language; and
  - (d) is undertaking a course in English, being a course that the Secretary has approved.

Note: For *dependent child* see subsections 5(2) to (9).

### **1067L Rate of austudy payment**

#### *Austudy Payment Rate Calculator*

- (1) The rate of austudy payment of a person referred to in section 581 is to be calculated in accordance with the Rate Calculator in this section.

#### *Limit on rate of payment*

- (2) If:
- (a) a person is living with another person as the spouse of the other person on a genuine domestic basis although not legally married to the other person; and
  - (b) the other person is of the opposite sex and under the age of consent that applies in the State or Territory in which they are living;

the rate of the person's austudy payment is not to be more than the rate at which the austudy payment would be payable to the person if the other person were the person's partner.

## Austudy Payment Rate Calculator

### Module A—Overall rate calculation process

#### *Method of calculating rate*

1067L-A1 The rate of payment is a daily rate. That rate is worked out by dividing the fortnightly rate calculated according to this Rate Calculator by 14.

#### *Method statement*

- Step 1. Work out the person's maximum basic rate using Module B below.
- Step 2. Work out the amount a fortnight (if any) of pharmaceutical allowance using Module C below.
- Step 2A. Work out the applicable amount per fortnight (if any) for rent assistance in accordance with paragraph 1070A(a).
- Step 3. Add up the amounts obtained in Steps 1, 2 and 2A: the result is the ***maximum payment rate***.
- Step 4. Apply the income test using Module D below to work out the person's income reduction.
- Step 5. Take away the person's income reduction from the maximum payment rate: the result is the ***provisional fortnightly payment rate***.

Note: If a person's rate is reduced under this step, the order in which the reduction is to be made is laid down by section 1210 (maximum basic rate first, then pharmaceutical allowance).

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Step 6. The *rate of payment* is the amount obtained by:

- (a) subtracting from the provisional fortnightly payment rate any special employment advance deduction (see Part 3.16B); and
- (b) if there is any amount remaining, subtracting from that amount any advance payment deduction (see Part 3.16A); and
- (c) adding any amount payable by way of remote area allowance (see Module F).

**Module B—Maximum basic rate**

[see Appendix for CPI adjusted figures]

*Maximum basic rate*

1067L-B1 A person's maximum basic rate is to be worked out as follows:

- (a) if the person is not a long term income support student (see section 1067K)—use Table BA;
- (b) if the person is a long term income support student—use point 1067L-B3.

*Person who is not a long term income support student*

1067L-B2(1) If the person is not a long term income support student (see section 1067K), work out:

- (a) whether the person is a member of a couple (see section 4); and
- (b) whether the person has a dependent child (see subsections 5(2) to (9)); and
- (c) if the person is not a member of a couple, whether the person has a YA child (see subpoint (2)).

The person's maximum basic rate is the amount in column 3 of the table that corresponds to the person's situation as described in column 2 of the table.



**Table BA—Maximum basic rates (persons who are not long term income support students)**

Column 1 Item	Column 2 Person's situation	Column 3 Rate
1	Does not have a dependent child or a YA child	\$281.10
2	Is a member of a couple and has a dependent child	\$308.70
3	Is not a member of a couple and has a dependent child or YA child	\$368.30

Note: The rates in column 3 are indexed annually in line with CPI increases (see sections 1191-1194).

(2) In this point:

*YA child*, in relation to a person who is not a member of a couple, means a child who is receiving youth allowance, is under 18 years of age and would be a dependent child of the person if he or she were not receiving the allowance.

*Person who is a long term income support student*

1067L-B3 If the person is a long term income support student (see section 1067K), work out whether the person is a member of a couple (see section 4).

The person's maximum basic rate is the amount in column 3 of the table that corresponds to the person's situation as described in column 2 of the table.

**Table BB—Maximum basic rates (persons who are long term income support students)**

Column 1 Item	Column 2 Person's situation	Column 3 Rate
1	Is a member of a couple	\$308.70
2	Is not a member of a couple	\$341.40

## Module C—Pharmaceutical allowance

[see Appendix for CPI adjusted figures]

### *Qualification for pharmaceutical allowance*

1067L-C1 Subject to point 1067L-C2, an amount by way of pharmaceutical allowance is to be added to a person's maximum basic rate if:

- (b) the person has turned 60; and
- (c) the person has been receiving income support payments in respect of a continuous period of at least 9 months (whether or not the kind of payment received has changed over the period and whether the period or any part of it occurred before or after the commencement of this paragraph).

Note 1: For *income support payment* see subsection 23(1).

Note 2: For the determination of the continuous period in respect of which a person received income support payments see section 38B.

*No pharmaceutical allowance if partner receiving pharmaceutical allowance under the Veterans' Entitlements Act or the Military Rehabilitation and Compensation Act and not a service pensioner*

1067L-C2 Pharmaceutical allowance is not to be added to a person's maximum basic rate if:

- (a) the person is a member of a couple; and
- (b) the person's partner is receiving pharmaceutical allowance under the Veterans' Entitlements Act or the Military Rehabilitation and Compensation Act; and
- (c) the person's partner is not receiving a service pension.

Note: If paragraphs (a), (b) and (c) apply to the person's partner, the partner is receiving pharmaceutical allowance under the Veterans' Entitlements Act at the higher rate (rather than the person and the person's partner each receiving pharmaceutical allowance at the lower rate).

### *Amount of pharmaceutical allowance*

1067L-C3 The amount of pharmaceutical allowance is the amount per fortnight worked out using the following table:

**Table C—Pharmaceutical allowance amounts**

<b>Column 1 Item</b>	<b>Column 2 Person's family situation</b>	<b>Column 3 Amount per fortnight</b>
1	Not a member of a couple	\$5.40
2	Partnered	\$2.70
3	Member of an illness separated couple	\$5.40
4	Member of a respite care couple	\$5.40
5	Partnered (partner getting service pension)	\$2.70
6	Partnered (partner in gaol)	\$5.40

Note 1: For *member of a couple, partnered, illness separated couple, respite care couple* and *partnered (partner in gaol)* see section 4.

Note 2: The amounts in column 3 are indexed or adjusted annually in line with CPI increases on 1 January (see sections 1191 to 1194 and 1206A).

## **Module D—Income test**

### *Effect of ordinary income on maximum payment rate*

1067L-D1 This is how to work out the effect of:

- (a) a person's ordinary income; and
  - (b) the ordinary income of a partner of the person;
- on the person's maximum payment rate:

#### *Method statement*

Step 1. Work out the amount of the person's ordinary income on a fortnightly basis (where appropriate, taking into account the matters provided for in points 1067L-D2 to 1067L-D24).

Step 2. If the person is a member of a couple, work out the partner income free area using point 1067L-D25.

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Note: The partner income free area is the maximum amount of ordinary income the person's partner can have without affecting the person's benefit.

- Step 3. Use point 1067L-D26 to work out the person's partner income excess. (If there is no partner income excess under that point, the person's partner income excess is taken to be nil.)
- Step 4. Use the person's partner income excess to work out the person's partner income reduction using point 1067L-D27.
- Step 5. Use point 1067L-D29 to work out the person's ordinary income excess. (If there is no ordinary income excess under that point, the person's ordinary income excess is taken to be nil.)
- Step 6. Use the person's ordinary income excess to work out the person's ordinary income reduction using points 1067L-D30, 1067L-D31 and 1067L-D32.
- Step 7. Add the person's partner income reduction and ordinary income reduction: the result is the **person's income reduction** referred to in Step 4 of the Method statement in point 1067L-A1.

Note 1: For **ordinary income** see subsection 8(1).

Note 2: The application of the income test is affected by provisions concerning the following:

- (a) the general concept of ordinary income (sections 1072 and 1073);
- (b) business income (sections 1074 and 1075);
- (c) deemed income from financial assets (sections 1076 to 1084A);
- (d) income from income streams (sections 1096 to 1099DAA);
- (e) disposal of income (sections 1106 to 1112).

*Ordinary income of members of certain couples*

1067L-D2 If a person is a member of a couple and the person's partner is receiving a social security pension, a service pension, income

support supplement or a rehabilitation allowance, the person's ordinary income is taken to be one half of the sum of:

- (a) the amount that would be the person's ordinary income if he or she were not a member of a couple; and
- (b) the amount that would be the ordinary income of the person's partner if the partner were not a member of a couple.

*Lump sum payments arising from termination of employment*

1067L-D3 Subject to points 1067L-D4 to 1067L-D16 (inclusive), if:

- (a) a person's employment has been terminated; and
- (b) as a result the person is entitled to a lump sum payment from the person's former employer;

the person is taken to have received the lump sum payment on the day on which the person's employment was terminated.

*Directed termination payments excluded*

1067L-D4 If:

- (a) a person's employment has been terminated; and
- (b) as a result the person is entitled to a lump sum payment from the person's former employer; and
- (c) the payment, or part of the payment, is a directed termination payment within the meaning of section 82-10F of the *Income Tax (Transitional Provisions) Act 1997*;

the payment, or that part, is to be disregarded in working out the ordinary income of the person for the purposes of this Module.

*Certain leave payments taken to be ordinary income—employment continuing*

1067L-D5 If:

- (a) a person is employed; and
- (b) the person is on leave for a period; and
- (c) the person is or was entitled to receive a leave payment (whether as a lump sum payment, as a payment that is one of a series of regular payments or otherwise) in respect of a part or all of a leave period;

the person is taken to have received ordinary income for a period (the *income maintenance period*) equal to the leave period to which the leave payment entitlement relates.

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*Certain termination payments taken to be ordinary income*

1067L-D6 If:

- (a) a person's employment has been terminated; and
- (b) the person receives a termination payment (whether as a lump sum payment, as a payment that is one of a series of regular payments or otherwise);

the person is taken to have received ordinary income for a period (the *income maintenance period*) equal to the period to which the payment relates.

*More than one termination payment on a day*

1067L-D7 If:

- (a) the person is covered by point 1067L-D6; and
- (b) the person receives more than one termination payment on a day;

the income maintenance period is worked out by adding the periods to which the payments relate.

*Start of income maintenance period—employment continuing*

1067L-D8 If the person is covered by point 1067L-D5, the income maintenance period starts on the first day of the leave period to which the leave payment entitlement relates.

*Start of income maintenance period—employment terminated*

1067L-D9 Subject to point 1067L-D10A, if the person is covered by point 1067L-D6, the income maintenance period starts, subject to point 1067L-D10, on the day on which the person is paid the termination payment.

*Commencement of income maintenance period where there is a second termination payment*

1067L-D10 If:

- (a) a person who is covered by point 1067L-D6 is subject to an income maintenance period (the *first period*); and
- (b) the person is paid another termination payment during that period (the *second leave payment*);

the income maintenance period for the second termination payment starts on the day after the end of the first period.

*Start of income maintenance period where liquid assets test waiting period applies*

1067L-D10A If a person to whom point 1067L-D10 applies is subject to a liquid assets test waiting period, the income maintenance period is taken to have started on the day on which the liquid assets test waiting period started.

*Leave payments or termination payments in respect of periods longer than a fortnight*

1067L-D11 If:

- (a) a person receives a leave payment or termination payment; and
- (b) the payment is in respect of a period longer than a fortnight; the person is taken to receive in a payment fortnight or part of a payment fortnight an amount calculated by:
  - (c) dividing the amount received by the number of days in the period to which the payment relates (*daily rate*); and
  - (d) multiplying the daily rate by the number of days in the payment fortnight that are also in the period.

1067L-D12 If the Secretary is satisfied that a person is in severe financial hardship because the person has incurred unavoidable or reasonable expenditure while an income maintenance period applies to the person, the Secretary may determine that the whole, or any part, of the period does not apply to the person.

Note 1: For *in severe financial hardship* see subsection 19C(2) (person who is not a member of a couple) and subsection 19C(3) (person who is a member of a couple).

Note 2: For *unavoidable or reasonable expenditure* see subsection 19C(4).

Note 3: If an income maintenance period applies to a person, then, during that period:

- (a) the allowance claimed may not be payable to the person; or
- (b) the amount of the allowance payable to the person may be reduced.

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*When a person receives a leave payment or a termination payment*

1067L-D13 For the purposes of points 1067L-D4 to 1067L-D12 (inclusive), a person (**first person**) is taken to receive a leave payment or termination payment if:

- (a) the payment is made to another person:
  - (i) at the direction of the first person or a court; or
  - (ii) on behalf of the first person; or
  - (iii) for the benefit of the first person; or
- (b) the first person waives or assigns his or her right to receive the payment.

*Single payment in respect of different kinds of termination payments*

1067L-D14 If a person who is covered by point 1067L-D6 receives a single payment in respect of different kinds of termination payments, then, for the purposes of the application of points 1067L-D5 to 1067L-D13 (inclusive):

- (a) each part of the payment that is in respect of a different kind of termination payment is taken to be a separate payment; and
- (b) the income maintenance period in respect of the single payment is worked out by adding the periods to which the separate payments relate.

*Definitions*

1067L-D15 In points 1067L-D5 to 1067L-D14 (inclusive):

**payment fortnight** means a fortnight in respect of which an austudy payment is paid, or would be paid apart from the application of an income maintenance period, to a person.

**period to which the payment relates** means:

- (a) if the payment is a leave payment—the leave period to which the payment relates; or
- (b) if the payment is a redundancy payment and is calculated as an amount equivalent to an amount of ordinary income that the person would (but for the redundancy) have received from the employment that was terminated—the period for



which the person would have received that amount of ordinary income; or

- (c) if the payment is a redundancy payment and paragraph (b) does not apply—the period of weeks (rounded down to the nearest whole number) in respect of which the person would have received ordinary income, from the employment that was terminated, of an amount equal to the amount of the redundancy payment if:
- (i) the person's employment had continued; and
  - (ii) the person received ordinary income from the employment at the rate per week at which the person usually received ordinary income from the employment prior to the termination.

**redundancy payment** does not include a directed termination payment within the meaning of section 82-10F of the *Income Tax (Transitional Provisions) Act 1997*.

**termination payment** means:

- (a) a leave payment relating to a person's employment that has been terminated; or
- (b) a redundancy payment.

*Meaning of leave payment*

1067L-D16 In points 1067L-D4 to 1067L-D15 (inclusive):

**leave payment** includes a payment in respect of sick leave, annual leave, maternity leave and long service leave.

*Ordinary income includes certain periodical payments from relatives*

1067L-D17 Subject to point 1067L-D18 (and despite paragraph 8(8)(z)), a person's ordinary income for the purposes of this Module includes a periodical payment or benefit by way of gift or allowance from the father, mother, son, daughter, brother or sister of the person.

*Board and lodging*

1067L-D18 A person's ordinary income is not to include a payment to the person for board or lodging provided by the person to the person's father, mother, son, daughter, brother or sister.

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*Ordinary income generally taken into account when first earned, derived or received*

1067L-D19 Subject to points 1067L-D20, 1067L-D21, 1067L-D23 and 1067L-D24 and section 1073, ordinary income is to be taken into account in the fortnight in which it is first earned, derived or received.

*Claimant or recipient receives lump sum amount for remunerative work*

1067L-D20 If a person whose claim for austudy payment has been granted receives, after the claim was made, a lump sum amount that:

- (a) is paid to him or her in relation to remunerative work; and
- (b) is not a payment to which point 1067L-D21 applies; and
- (c) is not an exempt lump sum;

the person is, for the purposes of this Module, taken to receive one fifty-second of that amount as ordinary income during each week in the 12 months commencing on the day on which the person becomes entitled to receive that amount.

*Partner of claimant or recipient receives lump sum amount for remunerative work*

1067L-D21 If:

- (a) a person whose claim for austudy payment has been granted is a member of a couple; and
- (b) after the person has made the claim, the person's partner receives a lump sum amount that:
  - (i) is paid to him or her in relation to remunerative work; and
  - (ii) is not a payment to which point 1067L-D23 applies; and
  - (iii) is not an exempt lump sum;

the partner is, for the purposes of this Module, taken to receive one fifty-second of that amount as ordinary income during each week in the 12 months commencing on the day on which the partner becomes entitled to receive that amount.

*Operation of points 1067L-D20 and 1067L-D21*

1067L-D22 Points 1067L-D20 and 1067L-D21 have effect even if the person who has made the claim:

- (a) is subject to a liquid assets test waiting period or an income maintenance period in respect of the allowance claimed; or
  - (b) is subject to a seasonal work preclusion period;
- during the period of 12 months referred to in those points.

*Ordinary income received at intervals longer than one fortnight*

1067L-D23 Subject to points 1067L-D4 to 1067L-D16 (inclusive), if:

- (a) a person receives a number of ordinary income payments; and
- (b) each payment is in respect of a period (**work period**) that is greater than a fortnight; and
- (c) there is reasonable predicability or regularity as to the timing of the payments; and
- (d) there is reasonable predicability as to the quantum of the payments;

the person is taken to receive in a fortnight falling within, or overlapping with, a work period an amount calculated by:

- (e) dividing the amount received by the number of days in the work period (**daily rate**); and
- (f) multiplying the daily rate by the number of days in the fortnight that are also within the work period.

*Payment of arrears of periodic compensation payments*

1067L-D24 If:

- (a) at the time of an event that gives rise to an entitlement of a person to compensation, the person is receiving an austudy payment; and
- (b) in relation to that entitlement, the person receives a payment of arrears of periodic compensation;

the person is taken to receive, in a fortnight falling within, or overlapping with, the periodic payments period, an amount calculated by:

- (c) dividing the amount received by the number of days in the periodic payments period (**daily rate**); and

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- (d) multiplying the daily rate by the number of days in the fortnight that are also within the periodic payments period.

Note: For *periodic payments period* see section 17.

*Partner income free area*

1067L-D25 The partner income free area for a person is:

- (a) if the person's partner is not receiving a social security benefit and has not turned 21—the amount of income of the partner (rounded up to the nearest dollar) beyond which youth allowance would not be payable to the partner if the partner were qualified for a youth allowance and were not undertaking full-time study (see section 541B); or
- (b) if the person's partner is not receiving a social security benefit and has turned 21—the amount of income of the partner (rounded up to the nearest dollar) beyond which newstart allowance would not be payable to the partner if the partner were qualified for a newstart allowance; or
- (c) if the person's partner is receiving a social security benefit—the amount of income of the partner (rounded up to the nearest dollar) beyond which that benefit would not be payable to the partner.

*Partner income excess*

1067L-D26 If:

- (a) a person is a member of a couple; and
- (b) the person's partner is not receiving a social security pension, service pension, income support supplement or a rehabilitation allowance; and
- (c) the partner's ordinary income exceeds the partner income free area for the partner;

then:

- (d) the person has a partner income excess; and
- (e) the person's partner income excess is the amount by which the partner's ordinary income exceeds the partner income free area.

*Partner income reduction*

1067L-D27 If a person has a partner income excess, the person's partner income reduction is an amount equal to 60% of the person's partner income excess.

Example:

Facts: Alice's partner Martin has an ordinary income of \$800. Assume that the partner income free area under point 1067L-D25 is \$640.

Result: Martin's ordinary income exceeds the partner income free area. Alice therefore has a partner income excess under point 1067L-D26 of:

$$\$800 - \$640 = \$160$$

Alice's partner income reduction under point 1067L-D27 is therefore:

$$60\% \times \$160 = \$96$$

*Ordinary income free area*

1067L-D28 A person's ordinary income free area is \$236.

*Ordinary income excess*

1067L-D29 If a person's ordinary income exceeds the person's ordinary income free area:

- (a) the person has an ordinary income excess; and
- (b) the person's ordinary income excess is the amount by which the person's ordinary income exceeds the person's ordinary income free area.

*Ordinary income reduction*

1067L-D30 If a person has an ordinary income excess, the person's ordinary income reduction is the sum of:

- (a) the person's lower range reduction (if any) (see point 1067L-D31); and
- (b) the person's upper range reduction (if any) (see point 1067L-D32).

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*Lower range reduction*

1067L-D31 The person's lower range reduction is an amount equal to 50% of the part of the person's ordinary income excess that does not exceed \$80.

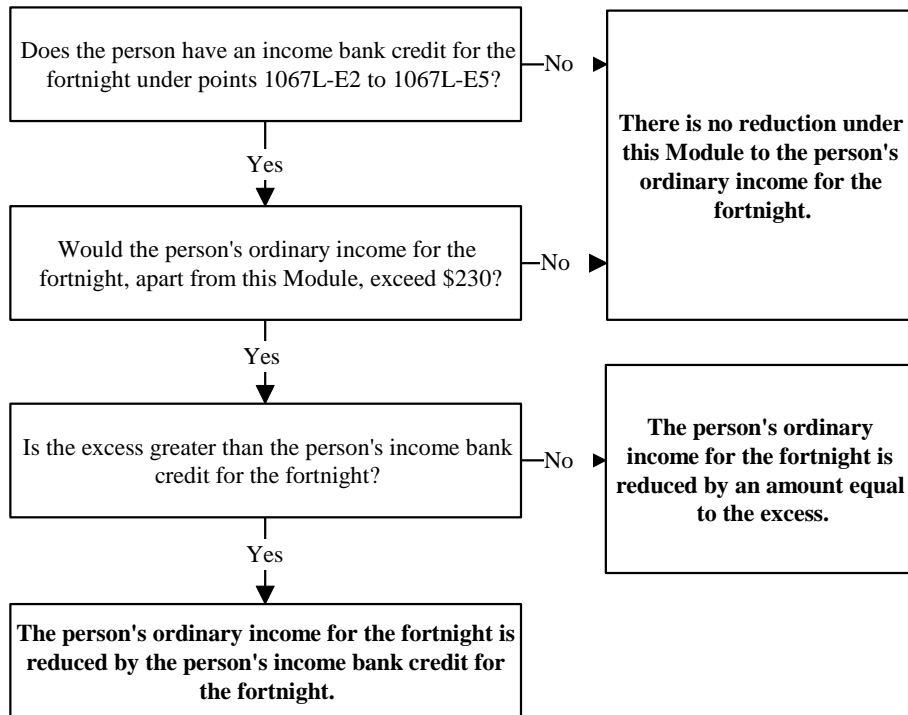
*Upper range reduction*

1067L-D32 The person's upper range reduction is an amount equal to 60% of the part (if any) of the person's ordinary income excess that exceeds \$80.

**Module E—Student income bank**

*Student income bank*

- 1067L-E1 A person's ordinary income under Module D may be reduced under this Module. This diagram sets out how to work out:
- (a) whether the person's ordinary income for a particular fortnight in respect of which austudy payment may be payable to the person, is to be reduced; and
  - (b) if it is to be reduced, the amount of the reduction.



*Income bank credit*

1067L-E2 A person's income bank credit for a particular income bank fortnight of the person is to be worked out as follows:

*Method statement*

- Step 1. Assume that the person's income bank credit, at the time this Module starts applying to the person, is an opening balance of zero.
- Step 2. If, for the person's first income bank fortnight, the person has an income credit under point 1067L-E3, add it to the opening balance.

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Step 3. For each subsequent income bank fortnight of the person, up to but not including the fortnight in question, either:

(a) if the person has an income credit for that fortnight under point 1067L-E3 and the person is not a new apprentice—add it to the balance of the person’s income bank credit in respect of all the previous fortnights, but not so as to increase the balance beyond \$6,000; or

(aa) if the person has an income credit for that fortnight under point 1067L-E3 and the person is a new apprentice—add it to the balance of the person’s income bank credit in respect of all the previous fortnights, but not so as to increase the balance beyond \$1,000; or

(b) if the person has, in respect of that fortnight, drawn from the person’s income bank credit under point 1067L-E4—deduct from that balance the amount drawn, but not so as to reduce the balance below zero.

The result is the person’s income bank credit for the fortnight in question.

*Income credit*

1067L-E3 For the purposes of point 1067L-E2, if the amount that would, apart from this Module, be the person’s ordinary income for an income bank fortnight of the person is less than \$236:

- (a) the person has an income credit for that fortnight; and
- (b) the income credit is an amount equal to the difference between \$236 and the first-mentioned amount.

*Drawing from income bank credit*

1067L-E4 For the purposes of point 1067L-E2, if the amount that would, apart from this Module, be the person’s ordinary income for an income bank fortnight of the person is greater than \$236:



- (a) the person is taken to have drawn from the person's income bank credit in respect of that fortnight; and
- (b) the amount drawn is taken to be an amount equal to the difference between the first-mentioned amount and \$236.

*Income bank fortnight*

1067L-E5 For the purposes of this Module, an income bank fortnight of a person is any fortnight in respect of which an austudy payment may be payable to the person.

*Opening balance following cancellation of another social security pension or benefit*

1067L-E6 If:

- (a) a person ceases to be a working credit participant because of a determination to cancel, or an automatic cancellation of, the person's social security pension or social security benefit; and
- (b) the person had a working credit balance greater than nil immediately before the date of effect of the determination or cancellation; and
- (c) the person makes a claim, or is taken to have made a claim, for an austudy payment; and
- (d) the Secretary determines that the claim is to be granted with effect from a day within 12 months after the date of effect mentioned in paragraph (b); and
- (e) the person becomes a person to whom this Module applies on a day (the *module application day*), being either the day with effect from which the claim is granted or a day following that day; and
- (f) the person has not reached pension age before the module application day;

the working credit balance mentioned in paragraph (b) becomes the opening balance of the income bank credit applicable to the person on the module application day.

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*Opening balance following suspension and subsequent cancellation of another social security pension or benefit*

1067L-E7 If:

- (a) a person ceases to be a working credit participant because of a determination to suspend the person's social security pension or social security benefit; and
- (b) while the person's pension or benefit is suspended, there is a determination to cancel the person's pension or benefit; and
- (c) the person had a working credit balance greater than nil immediately before the date of effect of the suspension determination; and
- (d) the person makes a claim, or is taken to have made a claim, for an austudy payment; and
- (e) the Secretary determines that the claim is to be granted with effect from a day within 12 months after the date of effect mentioned in paragraph (c); and
- (f) the person becomes a person to whom this Module applies on a day (the *module application day*), being either the day with effect from which the claim is granted or a day following that day; and
- (g) the person has not reached pension age before the module application day;

the working credit balance mentioned in paragraph (c) becomes the opening balance of the income bank credit applicable to the person on the module application day.

**Module F—Remote area allowance** [see Note 8]

*Remote area allowance—person physically in remote area*

1067L-F1 An amount by way of remote area allowance is to be added to a person's rate of austudy payment if:

- (a) the person's rate of austudy payment apart from this point is greater than nil; and
- (b) the person's usual place of residence is situated in the remote area; and
- (c) the person is physically present in the remote area.

Note 1: For *remote area* see subsection 14(1).

Note 2: A person may be considered to be physically present in a remote area during temporary absences (see subsection 14(2)).

*Rate of remote area allowance*

1067L-F2 A person's rate of remote area allowance is worked out using Table F. Work out which family situation in the table applies to the person. The rate of remote area allowance is the corresponding amount in column 3 plus the additional corresponding amount in column 4 for each FTB child, and each regular care child, of the person.

<b>Table F—Remote area allowance</b>			
<b>Column 1 Item</b>	<b>Column 2 Person's family situation</b>	<b>Column 3 Basic allowance</b>	<b>Column 4 Additional allowance for each FTB child and regular care child</b>
1	Not a member of a couple	\$18.20	\$7.30
2	Partnered	\$15.60	\$7.30
3	Member of an illness separated couple	\$18.20	\$7.30
4	Partnered (partner in gaol)	\$18.20	\$7.30

Note: For *member of a couple, partnered, illness separated couple* and *partnered (partner in gaol)* see section 4.

*Meaning of remote area allowance*

1067L-F3 In Table F, remote area allowance means an amount added to a person's austudy payment by way of remote area allowance.

*In remote area*

1067L-F4 For the purposes of Table F, a person is in the remote area if:

- (a) the person's usual place of residence is in the remote area; and
- (b) the person is physically present in the remote area.

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*Special rule if partner has an FTB or regular care child but is not receiving a pension*

1067L-F6 If:

- (a) an additional allowance is to be included in the rate of remote area allowance for a person who is a member of a couple; and
- (b) the person's partner is not receiving a social security pension or social security benefit; and
- (c) the person's partner has an FTB child or a regular care child; the child is taken, for the purposes of this Module, to be an FTB child, or a regular care child, (as the case requires) of the person.

*Special rule if partner has an FTB or regular care child but is not receiving additional allowance for the child*

1067L-F7 If:

- (a) an additional allowance is to be included in the rate of remote area allowance for a person who is a member of a couple; and
  - (b) the person's partner has a child to whom point 1067L-F8 applies; and
  - (c) the person's partner is not receiving additional allowance for the child;
- the child is taken, for the purposes of this Module, to be an FTB child, or a regular care child, (as the case requires) of the person.

*Special rule dealing with the death of an FTB or regular care child*

1067L-F9 If an FTB child, or a regular care child, of a person dies, this Module has effect, for a period of 14 weeks after the death of the child, as if the child had not died.

Note: This point does not prevent this Module having the effect it would have had if the child would otherwise have ceased to be an FTB child, or a regular care child, during that 14 weeks.