



# Social Security Act 1991

No. 46, 1991

## Compilation No. 182

**Compilation date:** 27 November 2020

**Includes amendments up to:** Act No. 107, 2020

**Registered:** 7 January 2021

This compilation is in 5 volumes

Volume 1: sections 1–660M

**Volume 2: sections 660XAA–1067L**

Volume 3: sections 1068–1260

Schedule 1A

Volume 4: Endnotes 1–4

Volume 5: Endnote 5

Each volume has its own contents

Prepared by the Office of Parliamentary Counsel, Canberra

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## About this compilation

### **This compilation**

This is a compilation of the *Social Security Act 1991* that shows the text of the law as amended and in force on 27 November 2020 (the **compilation date**).

The notes at the end of this compilation (the **endnotes**) include information about amending laws and the amendment history of provisions of the compiled law.

### **Uncommenced amendments**

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register ([www.legislation.gov.au](http://www.legislation.gov.au)). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

### **Application, saving and transitional provisions for provisions and amendments**

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### **Editorial changes**

For more information about any editorial changes made in this compilation, see the endnotes.

### **Modifications**

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

### **Self-repealing provisions**

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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

### **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**

### **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 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—Jobseeker payment 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 jobseeker payment; 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 jobseeker payment 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 requirement in a Jobseeker Employment Pathway Plan; and



- (d) the person has not, within the last 12 months, received a payment under this Part.
- (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 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).

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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.

**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 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).

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**Part 2.13A** Education entry payment

**Division 11** Partner allowance recipients

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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.

**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

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(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.

**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

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- (b) a course that is provided for by a term (whether the term is required to be complied with or not) of the person's Youth Allowance Employment Pathway Plan.

**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**

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.

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- (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.

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**665ZZE Cessation of Division**

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 2.15—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 (1)(ca) (participation requirements); and
  - (bd) if the person is qualified for parenting payment but the payment is not payable because of the operation of any of the following provisions of the Administration Act:
    - (i) subsection 42AL(1) (payment suspension periods—persons other than declared program participants);

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- (ii) subsection 42AO(1) (unemployment preclusion periods—persons other than declared program participants);
- (iii) subsection 42AP(5) (post-cancellation non-payment periods—persons other than declared program participants);
- (iv) subsection 42P(1) (serious failures—declared program participants);
- (v) subsection 42S(1) (unemployment non-payment periods—declared program participants); and
- (c) the person is not disqualified for a jobseeker payment for the period because of the operation of section 596; and
- (d) if the person is qualified for a jobseeker payment but the payment is not payable to the person for the period—that result is not produced because of the operation of one or more of the following:
  - (i) subsection 42AL(1) of the Administration Act (payment suspension periods—persons other than declared program participants);
  - (ii) subsection 42AO(1) of that Act (unemployment preclusion periods—persons other than declared program participants);
  - (iia) subsection 42AP(5) of that Act (post-cancellation non-payment periods—persons other than declared program participants);
  - (iib) subsection 42P(1) of that Act (serious failures—declared program participants);
  - (iic) subsection 42S(1) of that Act (unemployment non-payment periods—declared program participants);
  - (iii) section 631 of this Act (person failing to comply with notification requirement);
  - (iv) section 633 of this Act (seasonal workers);
  - (v) section 634 of this Act (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 Employment Pathway Plans); 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 failure); or
  - (ii) section 553B (move to an area of lower employment prospects); or
  - (iii) subsection 42AL(1) of the Administration Act (payment suspension periods—persons other than declared program participants); or
  - (iv) subsection 42AO(1) of that Act (unemployment preclusion periods—persons other than declared program participants); or
  - (v) subsection 42AP(5) of that Act (post-cancellation non-payment periods—persons other than declared program participants); or
  - (vi) subsection 42P(1) of that Act (serious failures—declared program participants); or
  - (vii) subsection 42S(1) of that Act (unemployment non-payment periods—declared program participants); or
  - (viii) section 81 of that 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

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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: 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 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 a Special Benefit Employment Pathway Plan is not in force in relation to the person, the person is prepared to enter into such a plan; and
  - (c) at all times during the period when a Special Benefit Employment Pathway Plan is in force in relation to the person, the person is prepared to enter into another such plan instead of the existing plan; and
  - (d) if the person is required by the Secretary to enter into a Special Benefit Employment Pathway Plan in relation to the period or a part of the period, the person enters into that plan; and
  - (e) while a Special Benefit Employment Pathway Plan is in force in relation to the person, the person satisfies the Secretary that the person is complying with the requirements in the plan.
- (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).

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- (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 jobseeker payment 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 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.
- (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, income support supplement or a veteran payment; and
  - (b) the person claims a special benefit within 14 days of the day on which the last instalment of the person's social security pension, service pension, income support supplement or veteran payment 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.

Note: Subsection (6) operates when a person transfers from a social security pension, a service pension, income support supplement or a veteran payment 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 social security pension, service pension, income support supplement or veteran payment 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 social security pension, service pension, income support supplement or veteran payment was paid. The subsection aims to ensure that there is minimal disruption to a person's payments when a person transfers from a social security pension, a service pension, income support supplement or a veteran payment 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.

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- (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:
- (a) a prescribed State industrial authority within the meaning of the *Fair Work Act 2009*; or
  - (b) the Fair Work Commission or the Australian Industrial Relations Commission; or
  - (c) the Federal Court of Australia; or
  - (d) the Federal Circuit Court of Australia;

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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:

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- (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
  - (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 Employment Pathway Plan that is in force in relation to 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:
- (a) throughout the period, the person complies with the terms of a Special Benefit Employment Pathway Plan that is in force in relation to the person; and
  - (b) either:
    - (i) the person is included in a class of persons specified in an instrument made under subsection (11A); or
    - (ii) the Secretary determines that the person should be taken to satisfy the activity test in respect of that period.
- (11A) The Secretary may, by legislative instrument, specify classes of persons for the purposes of subparagraph (11)(b)(i).

- (12) If a person to whom this Subdivision applies fails to comply, throughout a period, with a requirement in a Special Benefit Employment Pathway Plan that is in force in relation to 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.

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- (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 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.

### **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

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- (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.

**731DAA Relief from activity test—death of person's partner**

*Claimants*

- (1) If:
  - (a) a person makes a claim for special benefit on or after the commencement of this section; and
  - (b) the person makes the claim after the death of the person's partner on or after the commencement of this section; and
  - (c) if the person is a man or a woman who was not pregnant when her partner died—the person makes the claim in the period of 14 weeks starting on the day of the death of the partner; and
  - (d) if the person is a woman who was pregnant when her partner died—the person makes the claim:
    - (i) in the period of 14 weeks starting on the day of the death of the partner; or

- (ii) in the period starting on the day of the death of the partner and ending when the child is born or the woman otherwise stops being pregnant;

whichever ends later;

then the person is not required to satisfy the activity test in respect of the period applicable under paragraph (c) or (d).

*Recipients*

(2) If:

- (a) a person is receiving special benefit on or after the commencement of this section; and
- (b) while the person is receiving special benefit, the person's partner dies on or after the commencement of this section; and
- (c) if the person is a man or a woman who was not pregnant when her partner died—the person notifies the Secretary of the person's partner's death in the period of 14 weeks starting on the day of the death of the partner; and
- (d) if the person is a woman who was pregnant when her partner died—the person notifies the Secretary of the person's partner's death:
  - (i) in the period of 14 weeks starting on the day of the death of the partner; or
  - (ii) in the period starting on the day of the death of the partner and ending when the child is born or the woman otherwise stops being pregnant; whichever ends later; and
- (e) the person is receiving special benefit on the day of the notification;

then the person is not required to satisfy the activity test in respect of the period applicable under paragraph (c) or (d).

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**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.
- (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) was subjected to domestic violence in the 26 weeks before the making of the determination; 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 relation to the person on or after 1 July 2010.
- (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

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- (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.

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:

- (a) the person is the principal carer of a child; and  
(b) the person is one or both of the following:  
(i) the principal carer of one or more other children;  
(ii) the main supporter of one or more secondary pupil children; and  
(c) there are 4 or more of the children of whom the person is the principal carer or main supporter.

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

Note 2: For *main supporter* see section 5G.

Note 3: For *secondary pupil child* see section 5F.

- (3B) The Secretary must make a determination under this section in relation to the person if the Secretary is satisfied that the person:

- (a) is not the principal carer of one or more children; and  
(b) is a registered and active foster carer; and  
(c) is providing foster care to a child temporarily in an emergency or to give respite to another person from caring for the child.

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

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

- (3C) The Secretary must make a determination under this section in relation to the person if the Secretary is satisfied that the person:
- (a) is the main supporter of one or more secondary pupil children; and
  - (b) is a home educator or distance educator of one or more of those children.

Note 1: For *main supporter* see section 5G.

Note 2: For *secondary pupil child* see section 5F.

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

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

- (3D) The Secretary must make a determination under this section in relation to the person if the Secretary is satisfied that:
- (a) the person is the principal carer of one or more children; and
  - (b) the person is a relative (other than a parent) of a child (the *kin child*); and
  - (c) there is a document that:
    - (i) provides for the kin child to live with the person for the care and wellbeing of the kin child; and
    - (ii) is prepared or accepted by an authority of a State or Territory that has responsibility for the wellbeing of children; and
  - (d) the person is acting in accordance with the document.

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

Note 2: For *relative (other than a parent)* see section 5E.

- (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.

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- (6) The period that the Secretary determines under this section, except subsection (3B), must be the lesser of:
  - (a) the period that the Secretary considers to be appropriate; or
  - (b) 12 months.
- (6A) The period that the Secretary determines under subsection (3B) in relation to the person must be the lesser of:
  - (a) the period:
    - (i) starting when the person starts to provide foster care to the child; and
    - (ii) ending 12 weeks, or a shorter period determined by the Secretary, after the person ceases to provide foster care to the child; and
  - (b) 12 months.
- (7) A period determined by the Secretary under this section in relation to the person 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 Employment Pathway Plan but has failed to enter that plan—when the person so failed; or
      - (ii) in any other case—when the person has entered into such a plan.

### **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:

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**Part 2.15** Special benefit

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

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- (a) the Secretary is satisfied that special circumstances, beyond the person's control, exist; and
  - (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.
- (1A) Subsection (1) does not apply to circumstances wholly or predominantly attributable to the person's misuse of alcohol or another drug, unless the person is a declared program participant.
- (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 subsections (2) and (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 relevant period in paid work that the Secretary regards as suitable.
- (2) Subsection (1) does not apply in relation to a person who has reached 55, but is under 60, years of age and to a period of 2 weeks (the *relevant period*) if that period begins before the end of 12 months starting on the day the person starts to receive special benefit. Instead the person is taken to satisfy the activity test in respect of the relevant period if the person:
- (a) 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 and that is at least 15 hours in the relevant period; or
  - (b) is engaged for at least 30 hours in the relevant period in paid work that the Secretary regards as suitable.

Note: Because of the definition of *receive* in section 23, this subsection applies separately in relation to each occasion the person starts to receive special benefit.

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- (2A) If special benefit ceases to be payable to a person for a period of less than 3 months (except because the special benefit was cancelled), then, for the purposes of subsection (2), the person is taken to be receiving special benefit during that period.
- (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 unpaid voluntary 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.
- (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.

**731HA Relief from activity test—persons who would be qualified for carer payment under section 197B, 197C, 197D or 197E**

*Person taken to satisfy the activity test*

- (1) A person to whom this Subdivision applies is taken to satisfy the activity test during any period during which:
  - (a) subsection (2) (personally providing care to another person) applies to the person; or
  - (b) subsection (3) (participating in the care in hospital of another person) applies to the person.

If subsection (3) applies to the person, subsection (4) sets out a limit on the period during which the person is taken to satisfy the activity test for participating in the care of a disabled adult in hospital.

*Personally providing care*

- (2) This subsection applies to the person if:
  - (a) if the provisions referred to in subsection (5) were disregarded, the person would qualify for a carer payment under section 197B, 197C, 197D or 197E (whether or not because of section 197F) for caring for one or more of the following or for persons who include the following:
    - (i) a child with a severe disability or severe medical condition;
    - (ii) a child who has a terminal condition;
    - (iii) a child with a disability or medical condition;
    - (iv) a lower ADAT score adult; and

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- (b) either:
- (i) the care is provided in a private residence that is the home of the person or persons for whom care is provided; or
  - (ii) if a section referred to in paragraph (a) applies to the person because of section 197F—the care is provided in a private residence that is a home of the person or persons for whom care is provided.

*Participating in care of person in hospital*

- (3) This subsection applies to the person if:
- (a) the person is participating in the care in hospital of another person (the *hospitalised person*); and
  - (b) it is reasonable to assume that, if the hospitalised person were not in hospital and the provisions referred to in subsection (5) were disregarded, the person would qualify under section 197B, 197C, 197D or 197E (whether or not because of section 197F) for a carer payment for caring for the hospitalised person, or for the hospitalised person and one or more other persons; and
  - (c) one of the following applies:
    - (i) the hospitalised person is terminally ill;
    - (ii) it is reasonable to expect that, upon leaving hospital, the hospitalised person will reside in a private residence that is the home of the hospitalised person.
- (4) The period, or the sum of the periods, for which a person to whom this Subdivision applies is taken to satisfy the activity test because of subsection (3) for participating in the care in hospital of a disabled adult 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.

Note: There is no limit for a hospitalised person who is a child.

*Disregard certain provisions of sections 197B, 197C, 197D and 197E*

- (5) For the purposes of paragraphs (2)(a) and (3)(b), disregard the following:
- (a) subsection 197B(3) and paragraphs 197B(4)(b), (c) and (d);
  - (b) subsection 197C(3) and paragraphs 197C(4)(b), (c) and (d);
  - (c) subsection 197D(3) and paragraphs 197D(4)(b), (c) and (d);
  - (d) subsection 197E(4) and paragraphs 197E(5)(b), (c) and (d).

*Meaning of expressions in this section*

- (6) An expression used in this section that is defined for the purposes of Part 2.5 has the same meaning in this section as it has in that Part.

**731HB Relief from activity test—persons who would be qualified for carer payment under section 197G or 197H**

*Person taken to satisfy the activity test*

- (1) A person to whom this Subdivision applies is taken to satisfy the activity test during any period during which subsection (2) (personally providing care to another person) applies to the person.

*Personally providing care during period determined*

- (2) This subsection applies to the person if:
- (a) if the provisions referred to in subsection (7) were disregarded, the person would qualify for a carer payment under section 197G or 197H for a period for caring for one or more of the following or for persons who include the following:
    - (i) a child with a severe disability or severe medical condition;
    - (ii) a child with a disability or medical condition;
    - (iii) a lower ADAT score adult; and
  - (b) either:

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- (i) the care is provided in a private residence that is the home of the person or persons for whom care is provided; or
- (ii) if the person would qualify for a carer payment because of section 197F—the care is provided in a private residence that is a home of the person or persons for whom care is provided.

*Relief from activity test during all of period determined (caring for person in hospital)*

- (3) A person to whom this Subdivision and subsection (4) apply is taken to satisfy the activity test during any period that does not exceed the period, or the sum of the periods, (as the case requires) determined under paragraph (4)(b).
- (4) This subsection applies to a person if:
  - (a) the person is participating in the care, in hospital, of one of the following persons (the ***hospitalised person***):
    - (i) a child with a severe disability or severe medical condition;
    - (ii) a child with a disability or medical condition;
    - (iii) a lower ADAT score adult; and
  - (b) the Secretary determines in writing that, if the hospitalised person were not in hospital and the provisions referred to in subsection (7) were disregarded, the person would qualify under section 197G or 197H for a carer payment for a period or periods for:
    - (i) the hospitalised person; or
    - (ii) the hospitalised person and one or more other persons; and
  - (c) it is reasonable to expect that, upon leaving hospital, the hospitalised person:
    - (i) will reside in a private residence that is the home of the hospitalised person; or
    - (ii) if the carer would qualify for a carer payment because of section 197F for the hospitalised person—will reside

in a private residence that is a home of the hospitalised person.

*Relief from activity test during balance of period determined  
(caring for person in hospital)*

- (5) A person to whom this Subdivision and subsection (6) apply is taken to satisfy the activity test during any period that does not exceed the balance of the period referred to in paragraph (6)(b).
- (6) This subsection applies to a person if:
- (a) subsection (2) applies to the person for a period for caring for one or more of the following or for persons who include the following:
    - (i) a child with a severe disability or medical condition;
    - (ii) a child with a disability or medical condition;
    - (iii) a lower ADAT score adult; and
  - (b) if the provisions referred to in subsection (7) were disregarded, the person would cease to qualify under section 197G or 197H for a carer payment for the balance of the period only because the person is participating in the care, in hospital, of:
    - (i) a child referred to in paragraph (a) of this subsection (the ***hospitalised person***); or
    - (ii) the hospitalised person and one or more other persons; and
  - (c) it is reasonable to expect that, upon leaving hospital, the hospitalised person:
    - (i) will reside in a private residence that is the home of the hospitalised person; or
    - (ii) if the carer would qualify for a carer payment because of section 197F for the hospitalised person—will reside in a private residence that is a home of the hospitalised person.

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*Disregard certain provisions of sections 197B, 197C and 197D*

- (7) For the purposes of paragraphs (2)(a), (4)(b) and (6)(b), disregard the following:
- (a) subsection 197B(3) and paragraphs 197B(4)(b), (c) and (d);
  - (b) subsection 197C(3) and paragraphs 197C(4)(b), (c) and (d);
  - (c) subsection 197D(3) and paragraphs 197D(4)(b), (c) and (d).

*Meaning of expressions*

- (8) An expression used in this section that is defined for the purposes of Part 2.5 has the same meaning in this section as it has in that Part.

**731J Relief from activity test—persons who would be qualified for carer payment under section 198 or for carer allowance**

*Qualification conditions for carer payment under section 198*

- (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) and (9); or
  - (b) the following apply:
    - (i) the person is participating in the care in hospital of another person (the ***hospitalised person***) who is a disabled adult or a dependent child of a disabled adult;
    - (ii) it is reasonable to assume that, if the hospitalised person were not in hospital, the carer would meet the qualification conditions for a carer payment set out in subsections 198(2), (3) and (9) for the hospitalised person or for the hospitalised person and one or more other persons;
    - (iii) 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) for participating in the care in hospital of a disabled adult 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.

Note: There is no limit for a hospitalised person who is a dependent child.

- (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.

*Carer allowance*

- (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

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- (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:
      - (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) for participating in the care in hospital of a disabled adult 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.
- Note: There is no limit for a hospitalised person who is a child.
- (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.

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- (1AA) Subsection (1) does not apply to sickness, or an accident, wholly or predominantly attributable to the person's dependence on alcohol or another drug, unless the person is a declared program participant.
- (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.
- (2) The cessation occurs:
- (a) if the person has been required to enter into a Special Benefit Employment Pathway Plan but has failed to enter that plan—when the person so failed; or

- (b) in any other case—when the person has entered into such a plan.

**Subdivision AB—Special Benefit Employment Pathway Plans  
for persons who are nominated visa holders**

**731L Special Benefit Employment Pathway Plans—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 Employment Pathway Plan.
- (2) If a Special Benefit Employment Pathway Plan is in force in relation to a person, the Secretary may require the person to enter into another plan instead of the existing one.
- (3) Subsections (1) and (2) do not apply to a person who, under section 731DAA, 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 Employment Pathway Plan notice of:
- (a) the requirement; and
  - (b) the places and times at which the plan is to be negotiated.
- (5) A Special Benefit Employment Pathway Plan must be in a form approved by the Secretary.

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**731M Special Benefit Employment Pathway Plans—terms**

*Suitable requirements*

- (1) Subject to subsection (2) and to sections 731N to 731Q, a Special Benefit Employment Pathway Plan that is in force in relation to a person is to contain one or more terms (the **requirements**) that:
  - (a) the person is required to comply with; and
  - (b) the Secretary regards as suitable for the person.
- (1A) A plan must not contain a requirement of a kind that the Secretary determines under subsection (1B).
- (1B) The Secretary must determine, by legislative instrument, kinds of requirements that plans must not contain.
- (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 plan under subsection (1).
- (2) A plan 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.

*Optional terms*

- (2A) A plan may also contain one or more terms that the person may, but is not required to, comply with.

*Approval of requirements*

- (3) The requirements in a plan are to be approved by the Secretary.
- (4) In considering whether to approve the requirements in a plan that will be in force in relation to a person, the Secretary is to have regard to:
- (a) the person's capacity to comply with the requirements; and
  - (b) the person's needs.
- (5) In having regard to a person's capacity to comply with the requirements in a plan, 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 to comply with the requirements;
  - (f) the financial costs (such as travel costs) of complying with the requirements, and the person's capacity to pay for such costs;
  - (g) any other matters that the Secretary or the person considers relevant in the circumstances.

*Variation, suspension, cancellation and review*

- (6) A plan that is in force in relation to a person:

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- (a) may be varied (in negotiation with the person) or suspended by the Secretary; and
- (b) must be cancelled by the Secretary if the person enters into another Special Benefit Employment Pathway Plan; and
- (c) may be reviewed from time to time by the Secretary at the request of the Secretary or the person; and
- (d) may be cancelled by the Secretary after a review under paragraph (c).

*Circumstances preventing or affecting compliance*

- (7) If a plan is in force in relation to a person, the person must notify the Secretary of any circumstances preventing or affecting the person's capacity to comply with the requirements in the plan.

**731N Special Benefit Employment Pathway Plans—principal carers**

- (1) A Special Benefit Employment Pathway Plan that:
  - (a) is in force in relation to 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 Employment Pathway Plans—people with partial capacity to work**

- (1) A Special Benefit Employment Pathway Plan that:
  - (a) is in force in relation to 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 Employment Pathway Plans—revocation of requirement to participate in approved program of work**

- (1) If a Special Benefit Employment Pathway Plan that is in force in relation to a person requires the person to participate in an approved program of work for income support payment, the Secretary may, by notice given to the person, 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 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.

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**731R Special Benefit Employment Pathway Plans—suspension of plans**

A Special Benefit Employment Pathway Plan that is in force in relation to 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 731DAA, 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 rate would be nil merely because:
  - (a) an election by the person under subsection 915A(1) (about quarterly energy supplement) or 1061VA(1) (about quarterly pension supplement) is in force; or
  - (b) the person has been paid an advance pharmaceutical allowance under the social security law.

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

- (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>Item</b>	<b>Person's family situation</b>	<b>Assets value limit</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	\$250,000	\$450,000
2.	Partnered (partner getting neither pension nor benefit)	\$375,000	\$575,000
3.	Partnered (partner getting pension or benefit)	\$187,500	\$287,500

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)).

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).

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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 pension, a service pension, income support supplement or a veteran payment; 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 pension, a service pension, income support supplement or a veteran payment; 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, income support supplement or a veteran payment.

(2) If:

- (a) a person is receiving special benefit; and
- (b) a social security pension, another social security benefit, a service pension, income support supplement or a veteran payment 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).

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- (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 is receiving the weekly amount mentioned in paragraph 234(1)(b) of the MRCA (including a reduced weekly amount because of a choice under section 236 of the MRCA) or has received a lump sum mentioned in subsection 236(5) 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).

**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.

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*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 Employment Pathway Plan; 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;
    - (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;

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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, 208 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 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, 208 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, 208 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 after the person first entered Australia.
- Note: For *permanent visa* see subsection 7(1).
- (8) Neither subsection (1) nor (2) applies to a person if:
- (a) the person is a refugee, or a former refugee, at the time the person made the claim for a special benefit; or
  - (b) the following apply:
    - (i) before the person made the claim for a special benefit, the person was a family member of another person at the time the other person became a refugee;
    - (ii) the person is a family member of that other person at the time the person made the claim for a special benefit or, if that other person has died, the person was a family member of that other person immediately before that other person died; or
  - (c) the person is an Australian citizen at the time the person made the claim for a special benefit.
- (9) For the purposes of subsection (8):
- (a) *family member* has the meaning given by subsection 7(6D);  
and

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- (b) *former refugee* has the meaning given by subsection 7(1);  
and
  - (c) *refugee* has the meaning given by subsection 7(6B).
- (10) Neither subsection (1) nor (2) applies to a person during the period covered by subsection 646(2).

**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 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—Activities that do not give rise to employment under certain industrial relations legislation**

**745L Activities that do not give rise to employment under certain industrial relations legislation**

A person who is a nominated visa holder is not to be taken to be one of the following merely because the person participates in an approved program of work for income support payment, or undertakes an activity (other than suitable paid work), in accordance with a term (including an optional term) of a Special Benefit Employment Pathway Plan under section 731M:

- (a) a worker carrying out work in any capacity for the Commonwealth, or an employee of the Commonwealth, for the purposes of the *Work Health and Safety Act 2011*;
- (b) an employee within the meaning of section 5 of the *Safety, Rehabilitation and Compensation Act 1988*;
- (c) an employee for the purposes of the *Superannuation Guarantee (Administration) Act 1992*;
- (d) an employee for the purposes of the *Fair Work Act 2009*.

**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

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- 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.
- (4) Subsection (2) does not apply to a person during the period covered by subsection 646(2).

**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.
- (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 jobseeker payment would be payable to the person if:
  - (a) the person were qualified for youth allowance, austudy payment or jobseeker payment; and
  - (b) youth allowance, austudy payment or jobseeker payment 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 jobseeker payment 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 a requirement in a Special Benefit Employment Pathway Plan that is in force in relation to the person.

**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

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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 prescribed State industrial authority within the meaning of the *Fair Work Act 2009*; or
  - (b) the Fair Work Commission or the Australian Industrial Relations Commission; or
  - (c) the Federal Court of Australia; or
  - (d) the Federal Circuit Court of Australia;

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, income support supplement or a veteran payment; 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.

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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 special benefit 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.

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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.

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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 or IIIA 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 or IIIA 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);

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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, jobseeker payment, special benefit, age pension, disability support pension, service pension, income support supplement or veteran payment; 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.

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(1B) For the purposes of paragraph (1)(c), the person's partner is taken to be receiving jobseeker payment if the person's partner would be receiving jobseeker payment except for:

- (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 or jobseeker payment 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) a prescribed State industrial authority within the meaning of the *Fair Work Act 2009*; or
  - (b) the Fair Work Commission or the Australian Industrial Relations Commission; or

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(c) the Federal Court of Australia; or

(d) the Federal Circuit Court of Australia;

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.

**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.
- (2) Subsection (1) does not apply to a person if the person's rate would be nil merely because:
  - (a) an election by the person under subsection 915A(1) (about quarterly energy supplement) or 1061VA(1) (about quarterly pension supplement) is in force; or
  - (b) the person has been paid an advance pharmaceutical allowance under the social security law.

**771HF Assets test—allowance not payable if assets value limit exceeded**

- (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:

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<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	\$187,500

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**Assets value limit table**

<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>
2.	Neither person nor partner a homeowner	\$287,500

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 or a veteran payment.
- (2) If:
  - (a) a person is receiving a partner allowance; and
  - (b) a social security pension, another social security benefit, a service pension or a veteran payment becomes payable to the person;a partner allowance is not payable to the person.

Note: 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.

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- (4) A partner allowance is not payable to a person if the person is receiving the weekly amount mentioned in paragraph 234(1)(b) of the MRCA (including a reduced weekly amount because of a choice under section 236 of the MRCA) or has received a lump sum mentioned in subsection 236(5) 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; 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 partner allowance.

Note: For *qualifying residence exemption* in relation to partner allowance, see paragraph 7(6AA)(f).

- (3) Subsection (1) does not apply to a person if:
- (a) the person is a refugee, or a former refugee, at the time the person made the claim for a partner allowance; or
  - (b) the following apply:
    - (i) before the person made the claim for a partner allowance, the person was a family member of another person at the time the other person became a refugee;
    - (ii) the person is a family member of that other person at the time the person made the claim for a partner allowance or, if that other person has died, the person was a family member of that other person immediately before that other person died; or
  - (c) the person is an Australian citizen at the time the person made the claim for a partner allowance.
- (4) For the purposes of subsection (3):
- (a) *family member* has the meaning given by subsection 7(6D); and
  - (b) *former refugee* has the meaning given by subsection 7(1); and
  - (c) *refugee* has the meaning given by subsection 7(6B).

### **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.

### **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.

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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 jobseeker payment would be payable to the person if:
  - (a) the person were qualified for youth allowance, austudy payment or jobseeker payment; and
  - (b) youth allowance, austudy payment or jobseeker payment 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

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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, income support supplement or a veteran payment—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

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- (e) the deceased partner had continued to receive jobseeker payment, special benefit, age pension, disability support pension, 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 jobseeker payment immediately before he or she died, the rate of partner allowance is the rate at which jobseeker payment would have been payable to the surviving partner if:
    - (i) the surviving partner had been qualified for jobseeker payment; 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

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 age pension or disability support pension immediately before he or she died, the rate of partner allowance is the rate at which jobseeker payment would have been payable to the surviving partner if:
- (i) the surviving partner had been qualified for jobseeker payment; 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,

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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), (5) or (6) (whichever applies).

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Note: The subsection that you use depends on whether the deceased partner was receiving a job search allowance, jobseeker payment, special benefit, age pension or disability support pension 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 jobseeker payment*

- (3) If, immediately before the deceased partner died, he or she was receiving jobseeker payment, the surviving partner's notional rate is the amount of jobseeker payment that would have been payable to the surviving partner on the surviving partner's payday immediately before the first available bereavement adjustment payday if:



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- (a) a jobseeker payment 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 age pension or disability support pension, the surviving partner's notional rate is the amount of jobseeker payment 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) jobseeker payment 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.

**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

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(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
- (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 or IIIA 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

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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 or IIIA 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**

In spite of any other provision of this Part, a person is not to be granted a special needs age pension or special needs disability 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.

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**773 Qualification for special needs disability support pension**

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)).

**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 or a veteran payment.

(2) If:

- (a) a person is receiving a special needs pension; and
- (b) another social security pension, a social security benefit, a service pension or a veteran payment 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.

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

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- (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 is receiving the weekly amount mentioned in paragraph 234(1)(b) of the MRCA (including a reduced weekly amount because of a choice under section 236 of the MRCA) or has received a lump sum mentioned in subsection 236(5) 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.
- (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 pension if:
  - (a) the person became qualified for the pension because of the death of the person's former partner; and

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- (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.

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**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

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(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
- (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—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, income support supplement or a veteran payment; 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.



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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
    - (iia) was receiving a youth training allowance; or

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- (iii) was receiving a service pension, income support supplement or a veteran payment.
- (6) A person is taken to satisfy the requirements of paragraph (5)(b) if:
  - (a) the person was receiving one or a combination of the payments referred to in that paragraph for a continuous period of 12 months; or
  - (b) the person was receiving one or a combination of the payments referred to in that paragraph for 46 weeks of the previous 52.

**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, income support supplement or a veteran payment—the amount that would have been payable to the partner under Part III, IIIA or IIIAA 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.

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- 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***.
- 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:

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- (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 or IIIA 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 or IIIA 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:

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(A) is not receiving a social security pension; and

(C) is not receiving a service pension, income support supplement or a veteran payment; 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: For the 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

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- (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

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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
4	Member of respite care couple	\$1,400.00
5	Partnered (partner in gaol)	\$1,400.00

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

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- (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**

### **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.

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### *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

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- (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:
- (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.

## Part 2.18A—Clean energy payments

### Division 1—Clean energy advances

#### Subdivision A—Qualifying for clean energy advances

#### 914 Recipients of certain social security payments

*Qualification for days 14 May 2012 to 30 June 2012*

- (1) The Secretary may, on a day during the period starting on 14 May 2012 and ending on 30 June 2012, determine that a person is qualified for a clean energy advance if, on that day:
  - (a) the person receives one of the social security payments set out in subsection (4); and
  - (b) the person's rate of payment is greater than nil; and
  - (ba) the person is residing in Australia; and
  - (c) the person is in Australia.

*Qualification for days 1 July 2012 to 19 March 2013*

- (2) The Secretary may determine that a person is qualified for a clean energy advance if, on a day during the period starting on 1 July 2012 and ending on 19 March 2013:
  - (a) the person receives one of the social security payments set out in subsection (4); and
  - (b) the person's rate of payment is greater than nil; and
  - (ba) the person is residing in Australia; and
  - (c) the person is in Australia.
- (3) A determination under subsection (2) must specify the first day during the period set out in that subsection for which the person:
  - (a) satisfies paragraphs (2)(a), (b) and (ba); and
  - (b) is in Australia, disregarding any temporary absence from Australia for a continuous period not exceeding 6 weeks.



*Clean energy qualifying payments*

- (4) The social security payments (the ***clean energy qualifying payments***) are as follows:
- (a) age pension;
  - (b) benefit PP (partnered);
  - (c) bereavement allowance;
  - (d) carer payment;
  - (e) disability support pension (other than for a person who is under 21 with no dependent children);
  - (f) newstart allowance;
  - (g) pension PP (single);
  - (h) partner allowance;
  - (i) seniors supplement;
  - (j) sickness allowance;
  - (k) special benefit, whose rate is worked out as if the person were qualified for newstart allowance;
  - (l) widow allowance;
  - (m) widow B pension;
  - (n) wife pension.

**914A Recipients of austudy, youth allowance, some disability support pensions and some special benefits**

*Qualification for days 14 May 2012 to 30 June 2012*

- (1) The Secretary may, on a day during the period starting on 14 May 2012 and ending on 30 June 2012, determine that a person is qualified for a clean energy advance if, on that day:
- (a) the person receives one of the social security payments set out in subsection (5); and
  - (b) the person's rate of payment is greater than nil; and
  - (ba) the person is residing in Australia; and
  - (c) the person is in Australia.

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*Qualification for days 1 July 2012 to 30 June 2013*

- (2) The Secretary may determine that a person is qualified for a clean energy advance if, on a day during the period starting on 1 July 2012 and ending on 30 June 2013:
- (a) the person receives one of the social security payments set out in subsection (5); and
  - (b) the person's rate of payment is greater than nil; and
  - (ba) the person is residing in Australia; and
  - (c) the person is in Australia.

*Qualification for days 1 July 2013 to 31 December 2013*

- (3) The Secretary may determine that a person is qualified for a clean energy advance if, on a day during the period starting on 1 July 2013 and ending on 31 December 2013:
- (a) the person receives one of the social security payments set out in subsection (5); and
  - (b) the person's rate of payment is greater than nil; and
  - (ba) the person is residing in Australia; and
  - (c) the person is in Australia.

*First day of qualification under subsection (2) or (3)*

- (4) A determination under subsection (2) or (3) must specify the first day during the period set out in that subsection for which the person:
- (a) satisfies paragraphs (a), (b) and (ba) of that subsection; and
  - (b) is in Australia, disregarding any temporary absence from Australia for a continuous period not exceeding 6 weeks.

*Clean energy qualifying payments*

- (5) The social security payments (the ***clean energy qualifying payments***) are as follows:
- (a) austudy payment;

- (b) disability support pension for a person who is under 21 with no dependent children;
- (c) special benefit, whose rate is worked out as if the person were qualified for austudy payment or youth allowance;
- (d) youth allowance.

#### **914B Disregard nil rate in certain circumstances**

- (1) For the purposes of section 914 or 914A, a person is taken to receive a social security payment at a rate greater than nil even if the person's rate would be nil merely because:
  - (a) an election by the person under subsection 1061VA(1) is in force; or
  - (b) the person has been paid an advance pharmaceutical allowance under the social security law.
- (2) For the purposes of section 914 or 914A, if a social security payment is payable to a person because of subsection 23(1D), the person is taken to receive that payment at a rate greater than nil.

#### **914C Limits on qualifying for multiple advances**

- (1) A person cannot qualify for more than one clean energy advance under section 914.
- (2) A person can qualify for at most 2 clean energy advances under section 914A:
  - (a) one under either subsection 914A(1) or (2); and
  - (b) one under subsection 914A(3).
- (3) A person who has qualified for a clean energy advance under subsection 914(1) or 914A(1) cannot qualify for a clean energy advance under the other of those subsections.

Note 1: Further limits may be determined under section 918.

Note 2: Top-up payments of clean energy advance may be payable under Subdivision C if the person's circumstances change during the person's clean energy advance period.

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**Subdivision B—Amount of a clean energy advance**

**914D Amount of a clean energy advance**

- (1) On the day (the *decision day*) that the Secretary determines that a person (the *recipient*) is qualified for a clean energy advance, the Secretary must work out the amount of the advance.

Note: The advance will be paid in a lump sum as soon as is reasonably practicable (see section 47D of the Administration Act).

- (2) The amount of the advance is the result of the following formula rounded up to the nearest multiple of \$10:

Clean energy advance daily rate × Number of advance days

**914E Clean energy advance daily rate**

- (1) The recipient's *clean energy advance daily rate* is worked out as follows:

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**Working out the recipient's *clean energy advance daily rate***

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	<b>If the recipient's clean energy qualifying payment is:</b>	<b>Use this provision:</b>
1	(a) age pension; or (b) bereavement allowance; or (c) disability support pension to which neither subsection 1066A(1) nor 1066B(1) applies; or (d) wife pension; or (e) carer payment; or (f) seniors supplement; or (g) widow B pension; or (h) another payment, and the recipient reached pension age on or before the decision day	subsection (2)

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**Working out the recipient's clean energy advance daily rate**

	<b>If the recipient's clean energy qualifying payment is:</b>	<b>Use this provision:</b>
2	one of the following payments, and the recipient is under pension age on the decision day: (a) newstart allowance, if the recipient's maximum basic rate is worked out under point 1068-B5; (b) pension PP (single); (c) youth allowance, if the recipient's maximum basic rate is worked out under point 1067G-B3A	subsection (3)
3	one of the following payments, and the recipient is under pension age on the decision day: (a) newstart allowance, if the recipient's maximum basic rate is not worked out under point 1068-B5; (b) sickness allowance; (c) partner allowance; (d) widow allowance; (e) benefit PP (partnered); (f) special benefit, whose rate is worked out as if the recipient were qualified for newstart allowance	subsection (4)
4	disability support pension to which subsection 1066A(1) or 1066B(1) applies	subsection (5)
5	one of the following payments, and the recipient is under pension age on the decision day: (a) austudy payment; (b) youth allowance, if: (i) the recipient's maximum basic rate is not worked out under point 1067G-B3A; and (ii) the recipient's rate of youth allowance is not worked out by adding a youth disability supplement; (c) special benefit, whose rate is worked out as if the recipient were qualified for austudy payment or youth allowance	subsection (6)
6	youth allowance, whose rate is worked out by adding a youth disability supplement	subsection (7)

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Note: For *recipient* and *decision day*, see subsection 914D(1).

*Rate for payments set out in item 1 of the table*

- (2) The recipient's **clean energy advance daily rate** is worked out by:
- (a) working out 1.7% of the total of:
    - (i) double the maximum basic rate under Pension Rate Calculator A, worked out for 1 July 2012 for a person who is partnered; and
    - (ii) the combined couple rate of pension supplement for 1 July 2012; and
  - (b) rounding the result of paragraph (a) up or down to the nearest multiple of \$5.20 (rounding up if that result is not a multiple of \$5.20 but is a multiple of \$2.60); and
  - (c) adding \$5.20 to the result of paragraph (b); and
  - (d) applying the applicable percentage in the following table to the result of paragraph (c); and
  - (e) rounding the result of paragraph (d) up or down to the nearest multiple of \$2.60 (rounding up if that rate is not a multiple of \$2.60 but is a multiple of \$1.30); and
  - (f) dividing the result of paragraph (e) by 364.

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<b>Percentage to be applied</b>		
<b>Item</b>	<b>Recipient's family situation on the advance qualification day</b>	<b>Use this %</b>
1	Not a member of a couple	66.33%
2	Partnered	50%
3	Member of an illness separated couple	66.33%
4	Member of a respite care couple	66.33%
5	Partnered (partner in gaol)	66.33%

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Note: This subsection covers payments covered by Pension Rate Calculator A, B or C, seniors supplement, recipients of other payments who have reached pension age and recipients of pensions covered by clause 146 of Schedule 1A.

*Rate for payments set out in item 2 of the table*

- (3) The recipient's **clean energy advance daily rate** is worked out by:
- (a) working out 1.7% of the total of the maximum basic rate, and the pension supplement basic amount, for the clean energy qualifying payment, worked out:
    - (i) for 1 July 2012; and
    - (ii) for a person in circumstances the same as the recipient's on the advance qualification day; and
  - (b) rounding the result of paragraph (a) up or down to the nearest multiple of \$2.60 (rounding up if that result is not a multiple of \$2.60 but is a multiple of \$1.30); and
  - (c) adding \$5.20 to the result of paragraph (b); and
  - (d) dividing the result of paragraph (c) by 364.

*Rate for payments set out in item 3 of the table*

- (4) The recipient's **clean energy advance daily rate** is worked out by:
- (a) working out 1.7% of the maximum basic rate for the clean energy qualifying payment, worked out:
    - (i) for 1 July 2012; and
    - (ii) for a person in circumstances the same as the recipient's on the advance qualification day; and
  - (b) rounding the result of paragraph (a) up or down to the nearest multiple of 10 cents (rounding up if that result is not a multiple of 10 cents but is a multiple of 5 cents); and
  - (c) adding 20 cents to the result of paragraph (b); and
  - (d) dividing the result of paragraph (c) by 14.

*Rate for payments set out in item 4 of the table*

- (5) The recipient's **clean energy advance daily rate** is worked out by:
- (a) working out 1.7% of the total of the maximum basic rate, and the youth disability supplement, for the clean energy qualifying payment, worked out:
    - (i) for the first day of the recipient's clean energy advance period; and

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- (ii) for a person in circumstances the same as the recipient's on the advance qualification day; and
- (b) rounding the result of paragraph (a) up or down to the nearest multiple of \$2.60 (rounding up if that result is not a multiple of \$2.60 but is a multiple of \$1.30); and
- (c) adding \$5.20 to the result of paragraph (b); and
- (d) dividing the result of paragraph (c) by 364.

*Rate for payments set out in item 5 of the table*

- (6) The recipient's **clean energy advance daily rate** is worked out by:
  - (a) working out 1.7% of the maximum basic rate for the clean energy qualifying payment, worked out:
    - (i) for the first day of the recipient's clean energy advance period; and
    - (ii) for a person in circumstances the same as the recipient's on the advance qualification day; and
  - (b) rounding the result of paragraph (a) up or down to the nearest multiple of 10 cents (rounding up if that result is not a multiple of 10 cents but is a multiple of 5 cents); and
  - (c) adding 20 cents to the result of paragraph (b); and
  - (d) dividing the result of paragraph (c) by 14.

*Rate for payments set out in item 6 of the table*

- (7) The recipient's **clean energy advance daily rate** is worked out by:
  - (a) working out 1.7% of the total of the maximum basic rate, and the youth disability supplement, for the clean energy qualifying payment, worked out:
    - (i) for the first day of the recipient's clean energy advance period; and
    - (ii) for a person in circumstances the same as the recipient's on the advance qualification day; and
  - (b) rounding the result of paragraph (a) up or down to the nearest multiple of 10 cents (rounding up if that result is not a multiple of 10 cents but is a multiple of 5 cents); and



- (c) adding 20 cents to the result of paragraph (b); and
- (d) dividing the result of paragraph (c) by 14.

### **914F** *Number of advance days*

The recipient's *number of advance days* is the number of days in the recipient's clean energy advance period that are on or after:

- (a) if the recipient qualifies for the clean energy advance before 1 July 2012—1 July 2012; or
- (b) otherwise—the advance qualification day.

## **Subdivision C—Top-up payments of clean energy advance**

### **914G** *Top-up payments of clean energy advance*

- (1) The Minister may by legislative instrument determine that persons:
  - (a) who have been paid the amount (the *original payment*) of a specified clean energy advance worked out under Subdivision B in relation to a clean energy qualifying payment (the *original qualifying payment*); and
  - (b) whose circumstances change, within a period specified in the instrument, in a way that is specified in the instrument and is covered by subsection (2) or (3);qualify for a further payment, of the amount worked out in accordance with the instrument, of clean energy advance.
- (2) This subsection covers a person's circumstances changing in a way such that:
  - (a) on the day (the *change day*) the change happens, the person was still receiving the original qualifying payment; and
  - (b) had the amount of the original payment been worked out by reference to the person's circumstances on the change day (rather than those on the advance qualification day), a greater clean energy advance daily rate would have been used for working out that amount than the rate actually used for working out that amount.

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- (3) This subsection covers a change in a person's circumstances that, apart from a multiple qualification exclusion, would (if any necessary administrative decisions were made) qualify the person for a clean energy bonus, under an Act or a scheme, relating to a payment other than the original qualifying payment.
- (4) For the purposes of subsection (3), a **multiple qualification exclusion** is an instrument that:
- (a) provides a person is not qualified for a clean energy bonus under an Act or a scheme because of the person's qualification for or receipt of the original payment or the original qualifying payment; and
  - (b) is made under:
    - (i) section 918; or
    - (ii) section 424L of the MRCA; or
    - (iii) section 65A of the Veterans' Entitlements Act;or is an instrument establishing qualifications for a clean energy bonus under a scheme.
- (5) An instrument under subsection (1) may provide for:
- (a) different periods for changes in circumstances depending on different changes in circumstances; and
  - (b) different ways of working out further amounts of the original payment depending on different changes in circumstances.

## Division 2—Quarterly energy supplement

### 915 When quarterly energy supplement is payable

Quarterly energy supplement is payable to a person for each day for which an election by the person under subsection 915A(1) or 1061VA(1) is in force in relation to a social security payment the person is receiving.

Note: Section 918 may affect the person's qualification for quarterly energy supplement.

### 915A Electing to receive quarterly energy supplement

(1) If:

- (a) Part 2.25C (about quarterly pension supplement) does not apply to a person in relation to a social security payment the person is receiving; and
- (b) energy supplement is used to work out the rate of that social security payment;

the person may, in a manner or way approved by the Secretary, make an election to receive the person's energy supplement under this Division as a separate social security payment.

Note: The person could make an election under subsection 1061VA(1) if Part 2.25C applies to the person in relation to the social security payment. That election would cause quarterly energy supplement to be payable (see section 915).

- (2) An election comes into force as soon as practicable after it is made.
- (3) An election ceases to be in force if the person ceases to receive a social security payment (a *main payment*) calculated using a Rate Calculator that has an energy supplement Module.
- (4) The person may, in a manner or way approved by the Secretary, revoke an election. A revocation takes effect as soon as practicable after it happens.

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**915B Rate of quarterly energy supplement**

- (1) The person's daily rate of quarterly energy supplement, for a particular day, is:
  - (a) if the Rate Calculator for the main payment received on that day produces an annual rate— $1/364$  of the amount that, apart from this Division, would be the person's energy supplement for that day; or
  - (b) if the Rate Calculator for the main payment received on that day produces a fortnightly rate— $1/14$  of the amount that, apart from this Division, would be the person's energy supplement for that day.
- (2) This section has effect subject to subsection 1210(3A).

## Division 4—Essential medical equipment payment

### 917A Definitions

In this Division:

**EMEP residence** has the meaning given by subsection 917C(1).

**essential medical equipment payment:**

- (a) means an essential medical equipment payment under this Division (except in section 917F); and
- (b) in section 917F—has the meaning given by that section.

**medical equipment**, in relation to a person who satisfies the medical needs requirement under paragraph 917C(1)(b), means the heating or cooling system (as the case requires) of the residence described in that paragraph.

**person with medical needs** has the meaning given by paragraph 917C(2)(b).

### 917B Qualification for essential medical equipment payment

- (1) A person (the **claimant**) is qualified for an essential medical equipment payment for an income year if:
    - (a) the Secretary is satisfied that the claimant satisfies each of the following on the EMEP test day:
      - (i) the medical needs requirement in section 917C;
      - (ii) the concession card requirement in section 917D;
      - (iii) the energy account requirement in section 917E; and
    - (b) a medical practitioner has (subject to subsection (2)) certified that:
      - (i) the claimant meets the medical needs requirement under subsection 917C(1) on a day; or
      - (ii) another specified person meets the medical needs requirement under subsection 917C(1) on a day;
- (as the case requires); and

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- (c) the claimant is not prevented from receiving an essential medical equipment payment by section 917F; and
  - (d) the claimant is not a dependent child of another person on the EMEP test day; and
  - (e) the claimant is in Australia on the EMEP test day.
- (2) Paragraph (1)(b) does not apply if the Secretary is otherwise satisfied that the claimant or another specified person meets the medical needs requirement in section 917C.

*Meaning of EMEP test day*

- (3) For the purposes of subsection (1), the **EMEP test day** is either:
- (a) the day in the income year referred to in subsection (1) on which the claimant makes the claim for the payment; or
  - (b) an anniversary (in the income year referred to in subsection (1)) of the day on which the claimant made a claim for the payment if:
    - (i) the claimant made the claim in a previous income year; and
    - (ii) since the claimant made the claim, the Secretary has not determined that the claimant has ceased to be qualified for the payment.

Note 1: Under section 11 of the Administration Act, a person is required to make a claim for a social security payment.

Note 2: For additional rules relating to the claim, see section 19 of the Administration Act.

*Determining qualification for later income years*

- (4) In determining whether a person is qualified for an essential medical equipment payment for an income year after the income year in which the claim for the payment is made, the Secretary:
- (a) may act on the basis of the documents and information in his or her possession; and
  - (b) is not required to conduct any inquiries or investigations into the matter or to require (whether under this Act or otherwise)

the giving of any information or the production of any document.

- (5) Despite subsection (4), the Secretary may require a further certification for the purposes of paragraph (1)(b), or further information or a further document for the purposes of subsection (2), in an income year after the income year in which the claim is made.

### **917C The medical needs requirement**

#### *Person who has medical needs*

- (1) A person satisfies the medical needs requirement on a day if:
- (a) the person has a medical condition on that day, and as a result:
    - (i) the person requires the use of specified essential medical equipment in a residence (the **EMEP residence**) that is the person's home and is either a private residence or a specified residence; and
    - (ii) the person uses that equipment in that residence; or
  - (b) the person has a specified medical condition on that day, and as a result:
    - (i) the person is unable to regulate his or her body temperature; and
    - (ii) additional heating or cooling is required, in a residence (the **EMEP residence**) that is the person's home and is either a private residence or a specified residence, to manage the person's condition; and
    - (iii) the person uses additional heating or cooling in that residence.

#### *Caring for a person who has medical needs*

- (2) A person (the **carer**) also satisfies the medical needs requirement on a day if:
- (a) the carer provides care and attention on a regular and ongoing basis for a person; and

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- (b) the person (the *person with medical needs*) satisfies the medical needs requirement under subsection (1) on the day; and
- (c) the person with medical needs is specified in the certification under subparagraph 917B(1)(b)(ii) or is the person specified for the purposes of subsection 917B(2) (as the case requires); and
- (d) the carer's home is the EMEP residence that is the home of the person with medical needs.

*Legislative instrument*

- (3) The Minister may, by legislative instrument, specify:
  - (a) essential medical equipment for the purposes of paragraph (1)(a); and
  - (b) medical conditions for the purposes of paragraph (1)(b); and
  - (c) residences for the purposes of paragraphs (1)(a) and (b).

**917D The concession card requirement**

A person satisfies the concession card requirement on a day if:

- (a) the person is a holder of a concession card, or the person's name is included on a concession card, on that day; or
- (b) both of the following apply:
  - (i) the person satisfies the medical needs requirement under subsection 917C(2) (caring for a person) on that day in relation to a person with medical needs;
  - (ii) the person with medical needs is a holder of a concession card, or the name of the person with medical needs is included on a concession card, on that day.

**917E The energy account requirement**

- (1) A person satisfies the energy account requirement on a day if:
  - (a) on that day, the energy account for the relevant EMEP residence is in the name of that person; or



- (b) on that day, the energy account for the relevant EMEP residence is in the name of that person's partner; or
  - (c) the person contributes (whether wholly or partly) to paying the energy account for the relevant EMEP residence; or
  - (d) if the person is not the person with medical needs—the person with medical needs contributes (whether wholly or partly) to paying the energy account for the relevant EMEP residence.
- (2) For the purposes of subsection (1), an **energy account** for a residence means any account for:
- (a) electricity; or
  - (b) any other specified form of energy;
- that is supplied to the residence.
- (3) The Minister may, by legislative instrument, specify forms of energy for the purposes of paragraph (2)(b).

#### **917F Availability of payments**

- (1) No essential medical equipment payment may be made for an income year in relation to medical equipment that is used in an EMEP residence if an essential medical equipment payment has already been made for that income year in relation to the same equipment and the same residence.
- (2) No more than 2 essential medical equipment payments may be made in relation to the same medical equipment for an income year (subject to subsection (1)).
- (3) Essential medical equipment payments for an income year may not be made, in relation to a person with medical needs, in relation to more than 2 EMEP residences.

#### *Meaning of essential medical equipment payment*

- (4) In this section, an **essential medical equipment payment** means an essential medical equipment payment under this Division or Division 3 of Part IIIE of the Veterans' Entitlements Act.

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**917G Amount of payment**

The amount of an essential medical equipment payment for an income year is \$140.

Note: The amount specified is indexed on each 1 July (see sections 1190 and 1191).

**917H Non-receipt of social security payment**

- (1) This section applies for the purposes of a provision of this or another Act if:
  - (a) the provision provides a benefit (whether the benefit is a pension, benefit, payment, supplement or any other sort of benefit) if a person meets specified criteria; and
  - (b) one of the specified criteria is that the person is receiving a social security payment, or is a recipient of a social security payment.
- (2) For the purposes of the provision, a person is not taken to be receiving a social security payment, or to be a recipient of a social security payment, merely because the person receives an essential medical equipment payment.

## **Division 5—Multiple qualification exclusions**

### **918 Multiple qualification exclusions**

- (1) The Minister may by legislative instrument determine that persons in circumstances specified in the instrument cannot qualify for a clean energy bonus under this Act that is specified in the instrument.
- (2) Those circumstances must relate to persons' qualification for or receipt of one or more of the following:
  - (a) a clean energy bonus under this Act;
  - (b) a clean energy bonus under the MRCA;
  - (c) a clean energy bonus under the Veterans' Entitlements Act;
  - (d) a clean energy bonus under a scheme (however described), whether or not the scheme is provided for, by or under an Act.
- (3) An instrument under subsection (1) has effect according to its terms, despite any other provision of this Act.

## 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) and section 954B.

*Disability Care Load Assessment (Child) Determination* has the meaning given by subsection 38E(1).

*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
  - (d) because of the disability from which the care receiver is suffering, the care receiver receives care and attention on a daily basis from:
    - (i) if the person is a member of a couple—the person, the person's partner or the person together with another person (whether or not the person's partner); or
    - (ii) if the person is not a member of a couple—the person or the person together with another person;in a private home that is the residence of the person and the care receiver; and
  - (e) either of the following applies:
    - (i) the disability from which the care receiver is suffering is declared, under subsection 38E(3), to be a recognised disability for the purposes of this section;
    - (ii) the person has been given a qualifying rating of intense under the Disability Care Load Assessment (Child) Determination for caring for the care receiver; and
  - (f) the person is an Australian resident; and
  - (g) the person satisfies the carer allowance income test under section 957A.

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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
  - (d) because of the disability from which each care receiver is suffering, each care receiver receives care and attention on a daily basis from:
    - (i) if the person is a member of a couple—the person, the person's partner or the person together with another person (whether or not the person's partner); or
    - (ii) if the person is not a member of a couple—the person or the person together with another person;in a private home that is the residence of the person and each care receiver; and
  - (e) the person has been given a qualifying rating of intense under the Disability Care Load Assessment (Child) Determination for caring for the care receivers; and
  - (f) the person is an Australian resident; and
  - (g) the person satisfies the carer allowance income test under section 957A.

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.

**953A Remaining qualified for carer allowance up to 3 months after child turns 16**

*Single child*

- (1) If:
- (a) a person is qualified for carer allowance under subsection 953(1) for a disabled child; and
  - (b) the child turns 16; and
  - (c) apart from the child turning 16, the person would remain qualified for carer allowance under that subsection for that child;

then the person remains qualified for carer allowance under that subsection for that child until:

- (d) if the child is assessed and rated and given a score under the Adult Disability Assessment Tool before the end of the period of 3 months beginning on the day the child turned 16—the end of the day before the day the child is given that score; or
- (e) otherwise—the end of the period of 3 months beginning on the day the child turned 16.

*Two children*

- (2) If:
- (a) a person is qualified for carer allowance under subsection 953(2) for 2 disabled children; and
  - (b) on a particular day (the *relevant day*), either or both of those children turn 16; and
  - (c) apart from either or both of those children turning 16, the person would remain qualified for carer allowance under that subsection for those children;

then the person remains qualified for carer allowance under that subsection for those children until:

- (d) if either or both of those children are assessed and rated and given a score under the Adult Disability Assessment Tool before the end of the period of 3 months beginning on the

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relevant day—the end of the day before the day the first such score is given to one of those children; or

- (e) otherwise—the end of the period of 3 months beginning on the relevant day.
- (3) Subsection (2) can apply only once in relation to the same 2 disabled children.

**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; and
  - (g) the person satisfies the carer allowance income test under section 957A.

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
  - (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
  - (ea) the person satisfies the carer allowance income test under section 957A; and
  - (f) the person's work in providing the care and attention is not on wages that are at or above the relevant minimum wage; and
  - (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).

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- 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.

*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.

**954B Qualification for carer allowance—receiving carer payment for caring for child or children**

While:

- (a) a person is receiving a carer payment for caring for one or more persons (the *care receiver* or *care receivers*) other than:
- (i) a care receiver referred to in subparagraph 197D(1)(a)(i); or
  - (ii) a care receiver referred to in paragraph 198(2)(a) or (d);
- and
- (b) the person is not, apart from this section, qualified for carer allowance for the care receiver or care receivers;
- the person is qualified for carer allowance for each care receiver.

Note: For the effect of 2 people being qualified for carer allowance for the same care receiver, see sections 964 and 965.

**955 Qualification for carer allowance—hospitalisation**

*Participating in care of person in hospital*

- (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, under section 953, 954 or 954A, 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:

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- (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) for disabled adult*

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

Note: There is no limit for a hospitalised person who is a child.

**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, under section 953, 954 or 954A, 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, under section 953, 954 or 954A, 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.

*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 under section 953 for carer allowance for a care receiver who is a disabled child or for care receivers who are 2 disabled children; and

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- (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).

**957A Carer allowance income test**

- (1) This is how to work out whether a person satisfies the carer allowance income test on a day (the *test day*).

*Method statement*

Step 1. Work out the amount of the person's adjusted taxable income for the reference tax year.

Note 1: Section 957B deals with how to work out adjusted taxable income.

Note 2: For *reference tax year* see subsections (2) and (3).

Step 2. If, on the test day, the person is a member of a couple, work out the amount of the person's partner's adjusted taxable income for the reference tax year applicable under step 1.

Note 1: Section 957B deals with how to work out adjusted taxable income.

Note 2: For *reference tax year* see subsections (2) and (3).

Step 3. If, on the test day, the person is not a member of a couple, the person has reached the minimum age

mentioned in section 301-10 of the *Income Tax Assessment Act 1997* and the person has at least one long-term financial asset, work out the person's deemed income amount under subsection 957D(1).

Note: For *long-term financial asset* see subsection (5).

Step 4. If, on the test day, the person is a member of a couple and the person, or the person's partner, or both, have reached the minimum age mentioned in section 301-10 of the *Income Tax Assessment Act 1997* and have at least one long-term financial asset, work out the person's deemed income amount under subsection 957D(2).

Note: For *long-term financial asset* see subsection (5).

Step 5. Work out the sum of the amounts at steps 1, 2, 3 and 4 (as applicable).

Step 6. The person satisfies the carer allowance income test if the amount at step 5 is less than \$250,000.

*Reference tax year*

- (2) For the purposes of this section, a person's *reference tax year* is:
- (a) if the person has received a notice of assessment of the person's taxable income for the base tax year—the base tax year; or
  - (b) otherwise—the tax year immediately preceding the base tax year.

Note: For *base tax year* see subsection (4).

- (3) However, if the person has informed the Secretary in writing that the person wishes to have the person's qualification for carer allowance determined by reference to the person's adjusted taxable income for the tax year (the *current tax year*) in which the test day occurred, the person's *reference tax year* is the current tax year.
- (4) The *base tax year* is the tax year immediately preceding the tax year in which the test day occurred.

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Note: For *tax year* see subsection 23(1).

*Long-term financial asset*

- (5) For the purposes of this Subdivision, a ***long-term financial asset*** is:
- (a) a financial investment within the meaning of paragraph (i) of the definition of ***financial investment*** in subsection 9(1), where the asset-tested income stream (long term) arises under a complying superannuation plan (within the meaning of the *Income Tax Assessment Act 1997*) that is not a constitutionally protected fund (within the meaning of that Act); or
  - (b) a financial investment within the meaning of paragraph (j) of the definition of ***financial investment*** in subsection 9(1).

**957B Adjusted taxable income**

- (1) For the purposes of this Subdivision, a person's ***adjusted taxable income*** for a particular tax year is the sum of the following amounts (each of which is an ***income component***):
- (a) the person's taxable income for that year, disregarding the person's assessable FHSS released amount (within the meaning of the *Income Tax Assessment Act 1997*) for that year;
  - (b) the person's fringe benefits value for that year;
  - (c) the person's target foreign income for that year;
  - (d) the person's total net investment loss for that year;
  - (e) the person's tax free pensions or benefits for that year;
  - (f) the person's reportable superannuation contributions for that year;

less the amount of the person's deductible child maintenance expenditure (the ***deductible component***) for that year.

Note: For *tax year* see subsection 23(1).



*Taxable income*

- (2) For the purposes of this section, a person's **taxable income** for a particular tax year is:
- (a) the person's assessed taxable income for that year; or
  - (b) if the person does not have an assessed taxable income for that year—the person's accepted estimate of taxable income for that year.

Note: For **accepted estimate** see section 957C.

- (3) For the purposes of this section, a person's **assessed taxable income** for a particular 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.

*Fringe benefits value*

- (4) For the purposes of this section, a person's **fringe benefits value** for a particular tax year is the person's accepted estimate of the amount by which the total of the assessable fringe benefits received or to be received by the person in the tax year exceeds \$1,000.

Note 1: For **assessable fringe benefit** see subsection 10A(2) and Part 3.12A.

Note 2: For **accepted estimate** see section 957C.

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*Target foreign income*

- (5) For the purposes of this section, a person's **target foreign income** for a particular tax year is the person's accepted estimate of the amount of the person's target foreign income for that year.

Note 1: For **target foreign income** see subsection 10A(2).

Note 2: For **accepted estimate** see section 957C.

*Total net investment loss*

- (6) For the purposes of this section, a person's **total net investment loss** for a particular tax year is the person's accepted estimate of the amount of the person's total net investment loss (within the meaning of the *Income Tax Assessment Act 1997*) for that year.

Note: For **accepted estimate** see section 957C.

*Tax free pensions or benefits*

- (7) For the purposes of this section, a person's **tax free pensions or benefits** for a particular tax year is the person's accepted estimate of the total of the person's tax free pensions or benefits (worked out under clause 7 of Schedule 3 to the *A New Tax System (Family Assistance) Act 1999*) for that year.

Note: For **accepted estimate** see section 957C.

*Reportable superannuation contributions*

- (8) For the purposes of this section, a person's **reportable superannuation contributions** for a particular tax year is the person's accepted estimate of the amount of the person's reportable superannuation contributions (within the meaning of the *Income Tax Assessment Act 1997*) for that year.

Note: For **accepted estimate** see section 957C.

*Deductible child maintenance expenditure*

- (9) For the purposes of this section, a person's **deductible child maintenance expenditure** for a particular tax year is the person's

accepted estimate of the amount worked out under subclause 8(1) of Schedule 3 to the *A New Tax System (Family Assistance) Act 1999* for the person for that year.

Note: For *accepted estimate* see section 957C.

### 957C Accepted estimates

- (1) For the purposes of section 957B, a person's *accepted estimate* of an income component, or the deductible component, for a particular tax year is that income component, or deductible component, according to the most recent notice given by the person to the Secretary under subsection (2) and accepted by the Secretary for the purposes of this section.

Note: For *income component* and *deductible component* see subsection 957B(1).

- (2) A person may give the Secretary a notice, in a form approved by the Secretary, setting out the person's estimate of an income component, or the deductible component, of the person for a tax year.
- (3) The notice is to contain, or be accompanied by, such information as is required by the form to be contained in it or to accompany it, as the case may be.
- (4) The Secretary is to accept a notice only if the Secretary is satisfied that the estimate is reasonable.

### 957D Income from long-term financial assets

*Person is not a member of a couple*

- (1) This is how to work out the person's deemed income amount under this subsection:

<i>Method statement</i>
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Step 1. Work out the total value of all of the person's long-term financial assets on the test day.

Note: For *long-term financial asset* see subsection 957A(5).

Step 2. Work out under section 1076 the amount of ordinary income the person would be taken to receive per year on the financial assets:

(a) on the assumption that the only financial assets of the person were the financial assets referred to in step 1; and

(b) on the assumption that the total value of the person's financial assets were the amount at step 1.

Step 3. The result at step 2 is the person's *deemed income amount*.

*Person is a member of a couple*

- (2) This is how to work out the person's deemed income amount under this subsection:

*Method statement*

Step 1. If, on the test day, the person has reached the minimum age mentioned in section 301-10 of the *Income Tax Assessment Act 1997*, work out the total value of all of the person's long-term financial assets on the test day.

Note: For *long-term financial asset* see subsection 957A(5).

Step 2. If, on the test day, the person's partner has reached the minimum age mentioned in section 301-10 of the *Income Tax Assessment Act 1997*, work out the total value of all of the person's partner's long-term financial assets on the test day.

- Step 3. Work out under section 1077 the amount of ordinary income the couple would be taken to receive per year on the financial assets:
- (a) on the assumption that section 1077 applied to the person and the person's partner; and
  - (b) on the assumption that the only financial assets of the person and the person's partner were the financial assets referred to in steps 1 and 2 (as applicable); and
  - (c) on the assumption that the total value of the couple's financial assets were the sum of the amounts at steps 1 and 2 (as applicable).
- Step 4. The result at step 3 is the person's *deemed income amount*.

### **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

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- (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) both members of the couple are qualified under section 953, 954 or 954A for carer allowance—each of them has made a claim for carer allowance (whether or not one of them is receiving carer allowance); and
  - (ba) only one of the members of the couple is qualified under section 953, 954 or 954A for carer allowance—that member has made a claim for carer allowance (whether or not one of them is receiving carer allowance);the Secretary is to make a declaration:
  - (c) stating that the Secretary is satisfied that each of them is qualified for carer allowance for the care receiver or care receivers; and
  - (d) naming one of them as the member of the couple to whom carer allowance is payable for the care receiver or care receivers.
- (3) If such a declaration is made, carer allowance for the care receiver or care receivers to which the declaration relates is not payable to the member of the couple who is not named in the declaration as mentioned in paragraph (2)(d).

- (4) The Secretary is to give notice of the declaration to each of the members of the couple involved.
- (5) In making the declaration, the Secretary must have regard to whether one member of the couple is the primary carer for the care receiver or care receivers.

### **966 Newly arrived resident's waiting period**

- (1) A person is subject to a newly arrived resident's waiting period if the person:
  - (a) has entered Australia; and
  - (b) has not been an Australian resident and in Australia for a period of, or periods totalling, 52 weeks.

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

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

Note: For *qualifying residence exemption* in relation to carer allowance see paragraph 7(6AA)(f).

- (3) Subsection (1) does not apply to a person if, at the time the person made the claim for carer allowance, the person holds a visa that is in a class of visas determined by the Minister for the purposes of subsection 201AA(5).
- (4) Subsection (1) does not apply to a person if:
  - (a) the person is receiving a social security pension or a social security benefit; or
  - (b) the person is receiving farm household allowance under the *Farm Household Support Act 2014*; or
  - (c) parental leave pay, or dad and partner pay, under the *Paid Parental Leave Act 2010* is payable to the person.
- (5) Subsection (1) does not apply to a person if:
  - (a) the person is a refugee, or a former refugee, at the time the person made the claim for carer allowance; or
  - (b) the following apply:

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- (i) before the person made the claim for carer allowance, the person was a family member of another person at the time the other person became a refugee;
  - (ii) the person is a family member of that other person at the time the person made the claim for carer allowance or, if that other person has died, the person was a family member of that other person immediately before that other person died; or
  - (c) the person is an Australian citizen at the time the person made the claim for carer allowance.
- (6) For the purposes of subsection (5):
- (a) *family member* has the meaning given by subsection 7(6D); and
  - (b) *former refugee* has the meaning given by subsection 7(1); and
  - (c) *refugee* has the meaning given by subsection 7(6B).

**967 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) 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, 52 weeks.



**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 under section 953, apart from subsection 957(4) (care receiver undertakes training etc.), the person's fortnightly rate of carer allowance for that period is to be reduced by the following amount:

Number of training days × Daily rate of carer allowance  
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;

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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 or adult)**

### **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 or section 954B) 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

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- (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;
- 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:

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- (a) a person is receiving carer allowance (other than because of this section or section 954B) 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 BA—Death of disabled adult**

**992LA Continued carer allowance during bereavement rate continuation period where disabled adult dies**

- (1) If:
    - (a) a person is receiving carer allowance (other than because of this section) for a care receiver who is a disabled adult; and
    - (b) the disabled adult dies; and
    - (c) the person is receiving an income support payment (other than carer payment) at the time of the death of the disabled adult; and
    - (d) the person is not qualified for a payment under a provision of this Act (other than this section), or of the Veterans' Entitlements Act, in respect of the death of the disabled adult;
- the person is qualified for carer allowance during the bereavement rate continuation period as if the disabled adult had not died and had received the care and attention referred to in paragraph 954(1)(d) or 954A(1)(d) (as the case may be).

Note: For *bereavement rate continuation period* see subsection 21(2).

- (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 disabled adult died.

### **992LB Lump sum payable in some circumstances**

If:

- (a) a person is qualified for carer allowance under section 992LA in relation to a disabled adult who has died; and
- (b) the first available bereavement adjustment payday occurs before the end of the bereavement period;

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 carer allowance was payable to the person immediately before the disabled adult 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).

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**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 under Subdivision BA in relation to the death of a disabled adult; 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) or 992LA(2), as the case requires, if the person had not died;
- (f) any lump sum that would have been payable to the person under section 992K or 992LB, as the case requires, 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 under Subdivision BA in relation to the death of a disabled adult; or

- (ii) would have been so qualified if the person had not died;

there is payable, to such person as the Secretary thinks appropriate, an amount equal to the sum of the following amounts:



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

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## 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) either:
    - (i) the instalment was for a care receiver who was a disabled child or for care receivers who were 2 disabled children; or
    - (ii) the instalment was for a care receiver referred to in paragraph 954B(a).
- (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.

**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.

*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.

*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.

*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.

*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.

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## Part 2.19B—Carer supplement

### 992X Carer supplement

#### *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 1 July in the 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 in the year, both instalments are qualifying instalments for carer supplement for the year 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
5	Both of the following apply:	\$600

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**Amount of carer supplement**

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<b>Item</b>	<b>If:</b>	<b>Include this amount in the total:</b>
	(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	

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*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.

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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.

*Effect of nil rates of carer payment, partner service pension and carer service pension*

- (3A) If:
- (a) a person:
    - (i) is not paid an instalment of carer payment under this Act in respect of a period that includes 1 July in a year because the person's rate of that payment in respect of that period is nil; or
    - (ii) is not paid an instalment of partner service pension or carer service pension under the Veterans' Entitlements Act in respect of a period that includes 1 July in a year because the person's rate of that pension in respect of that period is nil; and
  - (b) the person's rate of that payment or pension in respect of that period is worked out having regard to an income test module of a rate calculator in this Act or the Veterans' Entitlements Act; and
  - (c) either:
    - (i) if subparagraph (a)(i) applies—the person has employment income (within the meaning of this Act) in respect of that period; or
    - (ii) if subparagraph (a)(ii) applies—the person has employment income (within the meaning of section 46AB of the Veterans' Entitlements Act) in respect of that period; and
  - (d) the person would have been paid an instalment of that payment or pension in respect of that period if all of the person's income, and all of the person's partner's income (if any), in respect of that period were disregarded;



the person is taken, for the purposes of this section, to have been paid an instalment of that payment or pension in respect of that period.

*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.

- (3) If a young person (other than an adopted child) is a relationship child of a person because he or she is a child of the person, and of

another person, within the meaning of the *Family Law Act 1975*, the person and the other person are taken to be the young person's only parents for the purposes of this section.

**994 Double orphan—refugee**

- (1) 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).

- (2) If a young person (other than an adopted child) is a relationship child of a person because he or she is a child of the person, and of another person, within the meaning of the *Family Law Act 1975*, the person and the other person are taken to be the young person's only parents for the purposes of this section.

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**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.
- (3) If a young person (other than an adopted child) is a relationship child of a person because he or she is a child of the person, and of another person, within the meaning of the *Family Law Act 1975*, the person and the other person are taken to be the young person's only parents for the purposes of this section.

**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.

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## 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;



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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.

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(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.

*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.

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**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:

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- (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

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- (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 jobseeker payment, 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;
  - (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;

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- (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

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- (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, or an employment pathway plan that is in force in relation to 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 30 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 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
  - (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 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.

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*Jobseeker payment, youth allowance or parenting payment recipients*

- (6) A person satisfies this subsection if:
- (a) the person:
    - (i) is receiving jobseeker payment; 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, or an employment pathway plan that is in force in relation to 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 jobseeker payment; 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 jobseeker payment, youth allowance or parenting payment ceased to be payable to the person because the rate of the payment or allowance 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).

*Jobseeker payment, youth allowance, disability support pension and parenting payment recipients*

- (8) A person satisfies this subsection if:
  - (a) the person:
    - (i) is receiving jobseeker payment; 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
  - (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

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- (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 jobseeker payment; 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 jobseeker payment, youth allowance, disability support pension or parenting payment ceased to be payable to the person because the rate of the payment, allowance or pension 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.

### **1038 Mobility allowance not payable when person is NDIS participant**

A mobility allowance is not payable to a person if:

- (a) the person is an NDIS participant; and
- (b) an NDIS plan is in effect for the NDIS participant; and
- (c) the NDIS plan contains a statement specifying the reasonable and necessary supports that will be funded under the National

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Disability Insurance Scheme (within the meaning of the *National Disability Insurance Scheme Act 2013*).

**1039AA Newly arrived resident's waiting period**

- (1) Subject to this section, a person who:
- (a) enters Australia; and
  - (b) has not been an Australian resident and in Australia for a period of, or periods totalling, 208 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* in relation to mobility allowance, see paragraph 7(6AA)(f).

- (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 refugee, or a former refugee, at the time the person made the claim for a mobility allowance; or
  - (b) the following apply:
    - (i) before the person made the claim for a mobility allowance, the person was a family member of another person at the time the other person became a refugee;
    - (ii) the person is a family member of that other person at the time the person made the claim for a mobility allowance or, if that other person has died, the person was a family member of that other person immediately before that other person died; or
  - (c) the person is an Australian citizen at the time the person made the claim for a mobility allowance.

- (6) For the purposes of subsection (5):

- (a) *family member* has the meaning given by subsection 7(6D);  
and
- (b) *former refugee* has the meaning given by subsection 7(1);  
and
- (c) *refugee* has the meaning given by subsection 7(6B).

**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, 208 weeks.

## Division 2—Rate of mobility allowance

### 1044 Rate of mobility allowance

(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: The rate of mobility allowance is indexed annually in line with CPI increases (see sections 1191 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 jobseeker payment for a reason other than the application of section 601 or 605 of this Act, or subsection 42AL(1), 42AO(1), 42AP(5), 42P(1) or 42S(1), 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 subsection 42AL(1), 42AO(1), 42AP(5), 42P(1) or 42S(1), or section 81, of the Administration Act; or

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- (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 an employment pathway plan that is in force in relation to 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 jobseeker payment for a reason other than the application of section 601 or 605 of this Act, or subsection 42AL(1), 42AO(1), 42AP(5), 42P(1) or 42S(1), 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 subsection 42AL(1), 42AO(1), 42AP(5), 42P(1) or 42S(1), or section 81, of the Administration Act; or
- (ia) to receive parenting payment for a reason other than the application of section 500J of this Act, or



- subsection 42AL(1), 42AO(1), 42AP(5), 42P(1) or 42S(1), 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, 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
  - (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.

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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
- (c) jobseeker payment; 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.
- (2A) Language, literacy and numeracy supplement is not payable to a person in respect of a fortnight if a training supplement or a National Green Jobs Corps supplement is payable to the person in respect of the 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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**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 lodged; 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.

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*Disqualification—age and disability support pensions and carer payment*

- (3) A person is not qualified for an advance payment of an age pension, disability support pension or carer payment if:
- (a) the maximum amount of advance payment to which the person would be entitled under Division 4 is less than  $\frac{1}{52}$  of the person's advance payment qualifying amount; or
  - (b) the amount of an advance payment of a social security entitlement that the person received in full (whether as a single lump sum or in instalments) more than 12 months ago has not been fully repaid; or
  - (c) 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.

The amount worked out under paragraph (a) must be rounded to the nearest cent (rounding 0.5 cents upwards).

Note 1: Paragraph (a) does not prevent payment of an advance payment in instalments of less than the amount worked out under that paragraph.

Note 2: For *advance payment qualifying amount*, see subsection 23(1).

*Disqualification—other social security entitlements*

- (4) A person is not qualified for an advance payment of a social security entitlement not covered by subsection (3) if:
- (a) the maximum amount of advance payment to which the person would be entitled under Division 4 is less than \$250; or
  - (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.

Note: Paragraph (a) does not prevent payment of an advance payment in instalments of less than \$250.

- (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.

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## **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 lodged.
- (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.

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## **Division 4—Amount of advance payment**

### **1061ECA Amount of advance payment—age and disability support pensions and carer payment**

*Application*

- (1) The amount of an advance payment of any of the following social security pensions is worked out according to this section:
  - (a) age pension;
  - (b) disability support pension;
  - (d) carer payment.

*Amount of advance*

- (2) The amount of the advance payment is the smaller 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 as follows:

*Method statement*

- Step 1. Work out  $\frac{3}{52}$  of the person's advance payment qualifying amount.
- Step 2. Work out the annual rate at which the social security pension was payable to the person on the last payday before the application for the advance payment was lodged, disregarding:
  - (a) any amount payable by way of remote area allowance; and
  - (b) so much of the person's pension supplement amount (if any) as is equal to the person's minimum pension supplement amount; and

- (c) the person's energy supplement (if any).
- Step 3. Work out the smaller of the result of step 1 and 7.5% of the result of step 2.
- Step 4. Subtract the following from the result of step 3:
- (a) each advance payment (if any) of a social security entitlement paid to the person during any of the 13 fortnights immediately before the application for the current advance payment was lodged;
- (b) each other advance payment (if any) of a social security entitlement paid to the person that has not been fully repaid.
- Step 5. The result of step 4 (rounded to the nearest cent (rounding 0.5 cents upwards)) is the maximum amount of advance payment payable to the person.

Note 1: The amount of the advance payment will be more than the minimum qualifying amount for the person (see paragraph 1061A(3)(a)).

Note 2: For *advance payment qualifying amount*, see subsection 23(1).

### **1061ED Amount of advance payment—pension PP (single)**

#### *Application*

- (1) The amount of an advance payment of pension PP (single) is worked out according to this section.

#### *Amount of advance*

- (2) 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.

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Note: The amount of the advance payment will be at least \$250 (see paragraph 1061A(4)(a)).

*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** means:

- (a) if the person was receiving pension PP (single) on the last payday before the application for the advance payment was lodged—the rate at which the pension was payable under the Pension PP (Single) Rate Calculator to the person on that payday, disregarding any amount payable by way of remote area allowance; or
- (b) if the person was receiving benefit PP (partnered) on the last payday before the application for the advance payment was lodged—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 application for the advance payment was lodged, disregarding 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 pension PP (single). 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 or jobseeker payment is worked out according to this section.

#### *Amount of advance*

- (2) 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.

Note: The amount of the advance payment will be at least \$250 (see paragraph 1061A(4)(a)).

#### *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 jobseeker payment*

- (4) For the purpose of paragraph (2)(b), the maximum amount of advance payment of benefit PP (partnered), youth allowance,

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austudy payment or jobseeker payment 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 lodged, 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 jobseeker payment—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 lodged, 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 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:



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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.

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## **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).

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- (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 Parts 3B and 3D 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:

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- (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
- (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.

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- (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;
- 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.
- (3) Even though a person is qualified for an advance pharmaceutical allowance, the allowance is not payable to the person if

pharmaceutical allowance is not used to work out the rate of the person's social security pension.

## **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:  
(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**

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).



## **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.

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**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
  - (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.

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**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).

**1061JIA Qualification—national health emergency**

- (1) A person is qualified for a crisis payment if:
  - (a) on the day on which the claim for the crisis payment is made:
    - (i) the person has made a claim (whether on the same day or on an earlier day) for a social security pension or benefit; and
    - (ii) the person is qualified for the pension or benefit; and
  - (b) the person satisfies the requirements determined in an instrument under subsection (2).
- (2) The Minister may, by legislative instrument, determine requirements for the purposes of paragraph (1)(b). The Minister must be satisfied that the requirements relate to a national health emergency.
- (3) Without limiting subsection (2), the requirements may depend on the Secretary being satisfied of one or more specified matters.

**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, a Disaster Recovery Allowance 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, a Disaster Recovery Allowance 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, 1061JI or 1061JIA in respect of a circumstance if the Secretary is satisfied that:

- (a) the person is qualified under the ABSTUDY scheme for a crisis payment in respect of that same circumstance; and

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- (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, or is under 21 and has one or more dependent children);
  - (iii) carer pension;the Rate Calculator at the end of section 1064; or
- (b) for age pension and disability support pension (recipient has turned 21, or is under 21 and has one or more dependent children) if the recipient is blind—the Rate Calculator at the end of section 1065; or

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- (d) for disability support pension if the recipient is under 21, is not blind and does not have any dependent children—the Rate Calculator at the end of section 1066A; or
- (e) for disability support pension if the recipient is under 21, is blind and does not have any dependent children—the Rate Calculator at the end of section 1066B; or
- (f) for the following:
  - (i) jobseeker payment;
  - (ii) widow allowance;
  - (iv) partner allowance;
  - (v) mature age allowance granted under Part 2.12B;the Rate Calculator at the end of section 1068; 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
- (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.

Note: For *dependent child* see section 5.



## **Part 2.23B—Disaster Recovery Allowance**

### **Division 1—Qualification for Disaster Recovery Allowance**

#### **1061KA Qualification for Disaster Recovery Allowance**

- (1) A person is qualified for a Disaster Recovery Allowance if:
- (a) the person is at least 16 years of age; 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); and
  - (c) under subsection 36A(1), the Minister determines that an event is a Part 2.23B major disaster; and
  - (d) if the person is under 22 years of age—the Secretary is satisfied that subsection (2) of this section does not apply in relation to the person; and
  - (e) the Secretary is satisfied that subsection (3) or (4) of this section applies in relation to the person; and
  - (f) the Secretary is satisfied that the person has suffered a loss of income as a direct result of the event; and
  - (g) the person is not receiving a social security entitlement; and
  - (h) the person is not receiving a payment prescribed in an instrument under subsection (5) of this section; and
  - (i) the Secretary is satisfied that the person satisfies the requirements (if any) prescribed in an instrument under subsection (6) of this section; and
  - (j) the person's rate of Disaster Recovery Allowance, worked out under section 1061KC, is greater than nil at the time the claim for payment of Disaster Recovery Allowance is determined by the Secretary.

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*Qualification rule for persons under 22 years of age*

- (2) This subsection applies in relation to a person if:
- (a) on the day of the determination under subsection 36A(1), the person is wholly or substantially dependent on another person (except the person's partner); and
  - (b) on that day, the person is not a parent of another person; and
  - (c) the person's income in the financial year in which that day occurs will not be more than \$6,403.

*Qualification rule if affected industries and areas*

- (3) This subsection applies in relation to a person if:
- (a) under paragraph 36A(5)(a), the Minister specifies, in a determination under section 36A, one or more industries affected by the event and one or more areas affected by the event; and
  - (b) the person earns, derives or receives income from one of those industries and the person does so by working in one of those areas.

*Qualification rule if affected areas only*

- (4) This subsection applies in relation to a person if:
- (a) under paragraph 36A(5)(b), the Minister specifies, in a determination under section 36A, one or more areas affected by the event; and
  - (b) either or both of the following apply:
    - (i) the person earns, derives or receives income from one of those areas and the person does so by working in one of those areas;
    - (ii) the person resides in one of those areas.

*Legislative instruments*

- (5) The Minister may, in writing, prescribe payments for the purposes of paragraph (1)(h).

- (6) The Minister may, in writing, prescribe requirements for the purposes of paragraph (1)(i).
- (7) An instrument made under subsection (5) or (6) is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the instrument.

**1061KB Disaster Recovery Allowance not payable if assurance of support in force**

A person is not qualified for a Disaster Recovery Allowance if the Secretary is satisfied that at the time the person would otherwise have been so qualified:

- (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).

## **Division 2—Rate of Disaster Recovery Allowance**

### **1061KC Rate of Disaster Recovery Allowance**

- (1) The rate of a person's Disaster Recovery Allowance is a daily rate. That rate is worked out by dividing the fortnightly rate worked out in accordance with an instrument under subsection (2) by 14.
- (2) The Minister must, by legislative instrument, specify a method for working out the fortnightly rate of Disaster Recovery Allowance for the purposes of subsection (1).
- (3) That fortnightly rate may be nil.

#### *Maximum rates*

- (4) For a person who is under 22 years of age, that fortnightly rate is not to exceed the maximum basic rate of youth allowance that would be payable to the person if:
  - (a) the person were qualified for youth allowance; and
  - (b) youth allowance were payable to the person.
- (5) For a person who is at least 22 years of age, that fortnightly rate is not to exceed the maximum basic rate of jobseeker payment that would be payable to the person if:
  - (a) the person were qualified for jobseeker payment; and
  - (b) jobseeker payment were payable to the person.

## **Division 3—Other matters**

### **1061KD Period that Disaster Recovery Allowance is payable**

A person's Disaster Recovery Allowance is payable to the person for a period of 13 weeks.

### **1061KE Non-receipt of social security payment**

- (1) This section applies for the purposes of a provision of this or another Act if:
  - (a) the provision provides a benefit (whether the benefit is a pension, benefit, payment, supplement or any other sort of benefit) if a person meets specified criteria; and
  - (b) one of the specified criteria is that the person is receiving a social security payment, or is a recipient of a social security payment.
- (2) For the purposes of the provision, a person is not taken to be receiving a social security payment, or to be a recipient of a social security payment, merely because the person receives a Disaster Recovery Allowance.

## 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 (disallowance) of the *Legislation 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.

**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 (disallowance) of the *Legislation 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.

### **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.

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**Part 2.24** Australian Government Disaster Recovery Payment

**Division 2** Amount of Australian Government Disaster Recovery Payment

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- (6) A determination made under this section is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the determination.

## **Division 3—Recoverable payments etc.**

### **1061PAAA Recoverable payments**

- (1) If, apart from this subsection, the Commonwealth does not have power under the social security law to pay an amount (the *relevant amount*) to a person (the *recipient*) purportedly as an Australian Government Disaster Recovery Payment, then the Commonwealth may pay the relevant amount to the recipient.

#### *Recovery*

- (2) If a payment is made under subsection (1) to the recipient, the relevant amount:
- (a) is a debt due to the Commonwealth by the recipient; and
  - (b) may be recovered by the Secretary, on behalf of the Commonwealth, in a court of competent jurisdiction.

### **1061PAAB Recoverable death payments**

- (1) If, apart from this subsection, the Commonwealth does not have power under the social security law to pay an amount (the *relevant amount*) in any of the following circumstances:
- (a) the relevant amount is deposited to an account kept in the name of a deceased person;
  - (b) the relevant amount is deposited to an account kept in the names of a deceased person and another person;
  - (c) the relevant amount is paid by way of a cheque made out to a deceased person;
- the Commonwealth may pay the relevant amount in the circumstances mentioned in paragraph (a), (b) or (c), so long as:
- (d) on the last day on which changes could reasonably be made to the payment of the relevant amount, no Department official knew that the deceased person had died; and
  - (e) apart from this subsection, the relevant amount would have been payable as an Australian Government Disaster

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Recovery Payment to the deceased person if the deceased person had not died.

Note: For *Department official*, see section 1061PAAE.

- (2) If a payment is made under subsection (1), the relevant amount is taken to have been paid to the deceased person's estate.

*Recovery*

- (3) If a payment is made under subsection (1), the relevant amount:
- (a) is a debt due to the Commonwealth by the legal personal representative of the deceased person; and
  - (b) may be recovered by the Secretary, on behalf of the Commonwealth, in a court of competent jurisdiction.

**1061PAAC Reports about recoverable payments and recoverable death payments**

- (1) During the applicable publication period for a reporting period, the Secretary must cause to be published, in such manner as the Secretary thinks fit, a report that sets out:
- (a) both:
    - (i) the number of payments made under subsection 1061PAAA(1) during the reporting period; and
    - (ii) the total amount of those payments; and
  - (b) both:
    - (i) the number of payments made under subsection 1061PAAB(1) during the reporting period; and
    - (ii) the total amount of those payments.
- (2) However, a report is not required if:
- (a) the number mentioned in subparagraph (1)(a)(i) is zero; and
  - (b) the number mentioned in subparagraph (1)(b)(i) is zero.

*Deferred reporting*

- (3) Paragraph (1)(a) of this section does not require a report to deal with a payment unless, before the preparation of the report, a Department official was aware the payment was made under subsection 1061PAAA(1).

Note: For **Department official**, see section 1061PAAE.

- (4) Paragraph (1)(b) of this section does not require a report to deal with a payment unless, before the preparation of the report, a Department official was aware the payment was made under subsection 1061PAAB(1).

Note: For **Department official**, see section 1061PAAE.

- (5) For the purposes of this section, if:
- (a) a payment was made under subsection 1061PAAA(1) or 1061PAAB(1) in a reporting period; and
  - (b) either:
    - (i) because of subsection (3) of this section, paragraph (1)(a) of this section did not require a report to deal with the payment; or
    - (ii) because of subsection (4) of this section, paragraph (1)(b) of this section did not require a report to deal with the payment; and
  - (c) during a later reporting period, a Department official becomes aware that the payment was made under subsection 1061PAAA(1) or 1061PAAB(1), as the case may be;

the payment is subject to a **deferred reporting obligation** in relation to the later reporting period.

Note: For **Department official**, see section 1061PAAE.

- (6) If one or more payments made under subsection 1061PAAA(1) during a reporting period are subject to a deferred reporting obligation in relation to a later reporting period, the Secretary must, during the applicable publication period for the later reporting period:

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- (a) prepare a report that sets out:
    - (i) the number of those payments; and
    - (ii) the total amount of those payments; and
    - (iii) the reporting period during which the payments were made; and
  - (b) if a report is required under subsection (1) in relation to the later reporting period—include the paragraph (a) report in the subsection (1) report; and
  - (c) if paragraph (b) does not apply—publish, in such manner as the Secretary thinks fit, the paragraph (a) report.
- (7) If one or more payments made under subsection 1061PAAB(1) during a reporting period are subject to a deferred reporting obligation in relation to a later reporting period, the Secretary must, during the applicable publication period for the later reporting period:
- (a) prepare a report that sets out:
    - (i) the number of those payments; and
    - (ii) the total amount of those payments; and
    - (iii) the reporting period during which the payments were made; and
  - (b) if a report is required under subsection (1) in relation to the later reporting period—include the paragraph (a) report in the subsection (1) report; and
  - (c) if paragraph (b) does not apply—publish, in such manner as the Secretary thinks fit, the paragraph (a) report.

*Reporting period*

- (8) For the purposes of this section, a **reporting period** is:
- (a) a financial year; or
  - (b) if a shorter recurring period is prescribed in an instrument under subsection (9)—that period.
- (9) The Minister may, by legislative instrument, prescribe a recurring period for the purposes of paragraph (8)(b).

*Applicable publication period*

- (10) For the purposes of this section, the ***applicable publication period*** for a reporting period is the period of:
- (a) 4 months; or
  - (b) if a lesser number of months is prescribed, in relation to the reporting period, in an instrument under subsection (11)—that number of months;
- beginning immediately after the end of the reporting period.
- (11) The Minister may, by legislative instrument, prescribe a number of months, in relation to a reporting period, for the purposes of paragraph (10)(b).

**1061PAAD Review of decisions**

Part 4 of the *Social Security (Administration) Act 1999* does not apply to a decision under this Division.

**1061PAAE Department official**

For the purposes of this Division, ***Department official*** means a person:

- (a) who:
  - (i) is an official (within the meaning of the *Public Governance, Performance and Accountability Act 2013*) of the Department; or
  - (ii) is a Departmental employee (within the meaning of the *Human Services (Centrelink) Act 1997*); and
- (b) whose duties consist of, or include, matters relating to Australian Government Disaster Recovery Payments.

## Part 2.24AA—Australian Victim of Terrorism Overseas Payment

### Division 1—Qualification for Australian Victim of Terrorism Overseas Payment

#### 1061PAA Qualification for Australian Victim of Terrorism Overseas Payment

*Qualification for AVTOP*

- (1) A person is qualified for an Australian Victim of Terrorism Overseas Payment if:
- (a) the person is a primary victim or a secondary victim of a declared overseas terrorist act; and
  - (b) the person and the person's close family members were not involved in the commission of the terrorist act; and
  - (c) the person:
    - (i) is an Australian resident on the day the terrorist act occurred; or
    - (ii) is covered by a determination under subsection (6).

Note: For declared overseas terrorist act see section 35B.

*Meaning of primary victim*

- (2) A person is a **primary victim** of a declared overseas terrorist act if the person:
- (a) was in the place where the terrorist act occurred; and
  - (b) was harmed (within the meaning of the *Criminal Code*) as a direct result of the terrorist act.

*Meaning of secondary victim*

- (3) A person is a **secondary victim** of a declared overseas terrorist act if the person is a close family member of a person who:



- (a) was in the place where the terrorist act occurred; and
- (b) died, before the end of 2 years starting on the day the terrorist act occurred, as a direct result of the terrorist act.

*Meaning of close family members*

- (4) The following are a person's *close family members*:
  - (a) the person's partner;
  - (b) the person's child;
  - (c) the person's parent;
  - (d) the person's sibling;
  - (e) the person's legal guardian.

*Meaning of involved*

- (5) A person was *involved* in the commission of a declared overseas terrorist act if the person:
  - (a) aided, abetted, counselled or procured the terrorist act; or
  - (b) induced the terrorist act, whether through threats or promises or otherwise; or
  - (c) was in any way (directly or indirectly) knowingly concerned in, or a party to, the terrorist act; or
  - (d) conspired with others to effect the terrorist act.

*Ministerial determination*

- (6) The Minister may, by legislative instrument, determine a specified class of persons for the purposes of subparagraph (1)(c)(ii).

**1061PAB Whether a person can be qualified for more than one AVTOP in relation to the same terrorist act**

*Only one AVTOP for primary victim as primary victim*

- (1) A person cannot be qualified as a primary victim for more than one AVTOP in relation to the same declared overseas terrorist act.

**Chapter 2** Pensions, benefits and allowances

**Part 2.24AA** Australian Victim of Terrorism Overseas Payment

**Division 1** Qualification for Australian Victim of Terrorism Overseas Payment

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*Only one AVTOP for secondary victims for same family member*

- (2) A person cannot be qualified as a secondary victim for more than one AVTOP in relation to the same close family member.

*When victims can qualify for more than one AVTOP*

- (3) A person can be qualified for more than one AVTOP in relation to the same declared overseas terrorist act if the person:
- (a) is a primary victim and a secondary victim of the terrorist act (whether as a secondary victim in relation to one, or more than one, close family member); or
  - (b) is a secondary victim of the terrorist act in relation to more than one close family member.

## **Division 2—Payability of Australian Victim of Terrorism Overseas Payment to secondary victims**

### **1061PAC When AVTOP for secondary victims is not payable**

If:

- (a) a person makes a claim for an AVTOP as a secondary victim in relation to a close family member who has died as a direct result of a declared overseas terrorist act; and
- (b) either:
  - (i) before the claim was made, one or more persons were granted an AVTOP as secondary victims in relation to the close family member; or
  - (ii) the Secretary had notified the person under subsection 35B(2) of the Administration Act of the person's entitlement to make a claim, but the person did not make the claim before the day specified in the notice;

then the AVTOP is not payable to the person.

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### **Division 3—Amount of Australian Victim of Terrorism Overseas Payment**

#### **1061PAD Amount of AVTOP for a primary victim**

- (1) The Secretary must determine the amount of an AVTOP payable to a person who is a primary victim of a declared overseas terrorist act.
- (2) The determination must be made in accordance with subsection (3) and the AVTOP Principles under section 1061PAF.
- (3) The amount must not exceed \$75,000.

#### **1061PAE Amount of AVTOP for a secondary victim**

*Secretary to determine amount of AVTOP*

- (1) The Secretary must determine the amount of an AVTOP (the **relevant AVTOP**) payable to a person who is a secondary victim in relation to a close family member who has died as a direct result of a declared overseas terrorist act.
- (2) The determination must be made in accordance with subsections (3) to (5) and the AVTOP Principles under section 1061PAF.
- (3) The amount must not exceed \$75,000.

*Limit on total payments in relation to close family member*

- (4) If the person is not the only secondary victim who has made a claim as a secondary victim in relation to the close family member, then, when working out the amount of the relevant AVTOP, the Secretary must ensure that the sum of all the AVTOPs (including the relevant AVTOP) that are paid in relation to the close family member does not exceed \$75,000.

*Limit on total payments to secondary victim*

- (5) If:
- (a) the person is also a secondary victim of the terrorist act in relation to one or more other close family members; and
  - (b) an AVTOP has been paid to the person in relation to any of those other family members;
- then, when working out the amount of the relevant AVTOP, the Secretary must ensure that the sum of all the AVTOPs (including the relevant AVTOP) that are paid to the person as a secondary victim of the terrorist act does not exceed \$75,000.

**1061PAF AVTOP Principles**

- (1) The Minister must, by legislative instrument, determine the principles (the **AVTOP Principles**) to be applied for the purposes of determining the amount of an AVTOP payable to a person in relation to a declared overseas terrorist act.
- (2) Without limiting subsection (1), the AVTOP Principles may provide that the following factors are to be taken into account when determining the amount of the payment:
  - (a) for a primary victim:
    - (i) the nature of the injury or disease suffered as a direct result of the terrorist act; and
    - (ii) the duration of the injury or disease; and
    - (iii) the impact of the injury or disease on the person's bodily and mental functions; and
    - (iv) the impact of the injury or disease on the person's life; and
    - (v) the likelihood of the person suffering future loss, injury or disease as a direct result of the terrorist act; and
    - (vi) the circumstances in which the injury or disease was incurred; and
    - (vii) whether the person was directed by an official of Australia or a foreign country not to go to the place where the terrorist act occurred;

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- (b) for a secondary victim in relation to a close family member who has died:
    - (i) whether the person was dependant on the close family member; and
    - (ii) the nature of the relationship between the person and the close family member; and
    - (iii) the circumstances in which the close family member died; and
    - (iv) whether the close family member was directed by an official of Australia or a foreign country not to go to the place where the terrorist act occurred; and
    - (v) whether there are other persons who have made a claim for an AVTOP as a secondary victim in relation to the close family member; and
    - (vi) if there are such other secondary victims and the person and each of the other secondary victims agree on the amount of the AVTOP that each should be paid—that agreement; and
    - (vii) if there are such other secondary victims and the person and each of the other secondary victims have not agreed on the amount of the AVTOP that each should be paid—whether the person has also made a claim as a secondary victim of the terrorist act in relation to another close family member;
  - (c) for a primary victim or a secondary victim:
    - (i) whether there was travel advice on an Australian government website advising against travelling to the foreign country, region or place where the terrorist act occurred; and
    - (ii) whether the person has been paid or is likely to be paid an amount by the Commonwealth, a State, a Territory, a foreign country or any other person or entity in relation to the terrorist act.
- (3) The AVTOP Principles may specify circumstances in which the amount of an AVTOP is nil.

## **Division 4—Other**

### **1061PAG Consultation on the AVTOP Principles**

- (1) Before determining the AVTOP Principles under section 1061PAF, the Minister must consult with representatives of the following groups (the *consultation groups*):
  - (a) victims of overseas terrorist acts and their families;
  - (b) community or welfare organisations;
  - (c) health professionals;
  - (d) international humanitarian agencies;
  - (e) any other persons the Minister considers appropriate to consult.
- (2) The Minister must also consult representatives of the consultation groups each year after the year in which the AVTOP Principles commence.
- (3) A failure to consult as required by this section does not affect the validity of the AVTOP Principles.

### **1061PAH AVTOP is not compensation or damages**

For the purposes of any law of the Commonwealth, a payment of AVTOP is not to be treated as being a payment of compensation or damages.

## 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 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 National Employment Standards, 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

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- (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):

**industrial instrument** means an award, determination 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.

**National Employment Standards** has the same meaning as in the *Fair Work Act 2009*.

### **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

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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
    - (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 jobseeker payment 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:

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- (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, the weekly amount mentioned in paragraph 234(1)(b) of the Military Rehabilitation and Compensation Act (including a reduced weekly amount because of a choice under section 236 of that Act) or a lump sum mentioned in subsection 236(5) of that 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
- (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.

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**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.
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*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:

Study undertaken

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

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- 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:
    - (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;

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- (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.

*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 payment 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;
  - (c) a carer payment;
  - (d) a pension (PP) single;
  - (da) subject to subsection (2A), a youth allowance;
  - (db) subject to subsection (2B), a jobseeker payment;
  - (dc) subject to subsection (2D), a benefit PP (partnered);
  - (f) a widow allowance;
  - (g) in the case of a person who is a sole parent—a special benefit.
- (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:

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- (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
  - (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 subsection (2BA) or (2BB) applies.

(2BA) This subsection 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 a jobseeker 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; 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
- (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 qualified both for:
- (i) a jobseeker 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).

(2BB) This subsection applies if the person receiving the payment is the principal carer of at least one child and is not a member of a couple.

Note: 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 subparagraph (2A)(b)(i) and subsection (2BB), 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:

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- (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 jobseeker payment 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
- (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).

*Payments under the Veterans’ Entitlements Act*

- (3) The payments 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;
- (bb) a veteran payment;
- (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) the weekly amount mentioned in paragraph 234(1)(b) of the Military Rehabilitation and Compensation Act (including a reduced weekly amount because of a choice under section 236 of that 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.

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**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 child, adopted child or relationship child who is wholly or substantially dependent on the person or his or her partner; or
  - (b) the person previously had a natural child, adopted child or relationship 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.

*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

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- 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.

*Parents of relationship children*

- (8) If a person (other than a person who is an adopted child) is a relationship child of another person because he or she is a child of the other person, and of a third person, within the meaning of the *Family Law Act 1975*, the other person and the third person are taken to be the person's only parents for the purposes of subsections (3), (4), (5), (6) and (7).

**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 6 weeks.

*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 6 weeks; and
  - (b) leaves Australia before the end of 6 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; and
  - (b) has not been an Australian resident in Australia for a period of, or periods totalling, 208 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* in relation to austudy payment, see paragraph 7(6AA)(f).

##### *Exception—other*

- (3) Subsection (1) does not apply to a person if:
  - (a) the person is a refugee, or a former refugee, at the time the person made the claim for a pensioner education supplement;or



- (b) the following apply:
    - (i) before the person made the claim for a pensioner education supplement, the person was a family member of another person at the time the other person became a refugee;
    - (ii) the person is a family member of that other person at the time the person made the claim for a pensioner education supplement or, if that other person has died, the person was a family member of that other person immediately before that other person died; or
  - (c) the person is an Australian citizen at the time the person made the claim for a pensioner education supplement.
- (4) For the purposes of subsection (3):
- (a) **family member** has the meaning given by subsection 7(6D);  
and
  - (b) **former refugee** has the meaning given by subsection 7(1);  
and
  - (c) **refugee** has the meaning given by subsection 7(6B).

#### **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 the person first became an Australian resident; and
- (b) ends when the person has been an Australian resident in Australia for a period of, or periods totalling, 208 weeks after that day.

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

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### **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;
    - (iv) a veteran payment;

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

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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: 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 jobseeker payment; and
  - (b) the person:
    - (i) has a partial capacity to work; or

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(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.

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 jobseeker payment; 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 jobseeker payment; 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, jobseeker payment, 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
  - (c) the person has turned 60; and
  - (d) the person is a telephone subscriber.

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 3: 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 or jobseeker payment; 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 *telephone subscriber* see subsection (5).

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

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Note 3: For the determination of the continuous period in respect of which a person received income support payments see section 38B.

(3C) If:

- (a) a person has been receiving a social security pension; and
- (b) the person ceases to receive the pension 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.

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.

(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 jobseeker payment 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 jobseeker payment 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) jobseeker payment;
    - (ii) widow allowance;
    - (iii) partner 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).

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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
- (d) the person's partner:
  - (i) is receiving jobseeker payment; or
  - (ii) was receiving jobseeker payment 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 jobseeker payment while the person:
  - (i) has been the principal carer of at least one child; and
  - (ii) has been a member of a couple;

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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.
- (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.

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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 if:

- (a) the person is receiving a social security payment for which a pension supplement amount is used to work out the rate of the payment, with a pension supplement amount that is more than the person's pension supplement basic amount; or
- (b) the following subparagraphs apply to the person:
  - (i) the person is qualified for the telephone allowance because of the application of subsection 1061Q(3C), (3F) or (3G) to the person in relation to a social security payment the person has ceased to receive;
  - (ii) immediately before the cessation of the payment, a pension supplement amount was used to work out the rate of the payment;
  - (iii) that pension supplement amount was more than the person's pension supplement basic amount; or
- (c) an election by the person under subsection 1061VA(1) is in force; or
- (d) the person is receiving energy supplement under Part 2.25B of this Act or Part VIIAD of the Veterans' Entitlements Act; or
- (e) the person is receiving MRCA supplement under section 221 or 245 of the Military Rehabilitation and Compensation Act; or
- (f) the person is receiving veterans supplement under section 118B of the Veterans' Entitlements Act; or
- (g) both:
  - (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 veterans supplement under either subsection 118B(2) of the Veterans'

Entitlements Act or a determination under  
subsection 5R(1) of that Act.

- Note 1: For the purposes of subparagraph (b)(i), subsections 1061Q(3C) and (3G) have an extended application (see subsections 1061Q(3D), (3E) and (3H)).
- Note 2: For *member of a couple, illness separated couple, temporarily separated couple* and *respite care couple*, see section 4.
- Note 3: Subsection 118B(2) of the Veterans' Entitlements Act covers certain categories of World War I veterans.
- Note 4: The relevant determination under subsection 5R(1) of the Veterans' Entitlements Act provides eligibility for veterans supplement to certain categories of World War I Australian mariners.

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## Division 2—Rate of telephone allowance

### 1061S Standard rate of telephone allowance

- (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:

Standard rate of telephone allowance		
Column 1 Item	Column 2 Person's situation	Column 3 Rate per year
1.	Not member of a couple	\$88.00
3.	Partnered (partner getting neither social security pension nor social security benefit), and partner not a holder of a seniors health card	\$44.00
4.	Partnered, and: (a) partner getting pension or benefit; or (b) partner is a holder of a seniors health card; and: (c) partner is not getting telephone allowance; and (d) if the partner were taken to be qualified for telephone allowance, section 1061R would not prevent telephone allowance from being payable to the partner	\$88.00
5.	Partnered, and: (a) partner getting pension or benefit; or (b) partner is a holder of a seniors health card; and:	\$44.00

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<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>
	(c) partner is getting telephone allowance; or  (d) if the partner were taken to be qualified for telephone allowance, section 1061R would prevent telephone allowance from being payable to the partner	
6.	Member of an illness separated, temporarily separated or respite care couple	\$88.00
7.	Partnered, and: (a) partner not getting veterans supplement under section 118B of the Veterans' Entitlements Act; and (b) partner not getting MRCA supplement under section 221 or 245 of the Military Rehabilitation and Compensation Act	\$88.00
8.	Partnered, and: (a) partner getting veterans supplement under section 118B of the Veterans' Entitlements Act; or (b) partner getting MRCA supplement under section 221 or 245 of the Military Rehabilitation and Compensation Act	\$44.00
9.	Partnered (partner in gaol)	\$88.00

Note: The amounts in column 3 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, item 3 does not apply to the person.

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- (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 6 weeks; and
  - (b) was the holder of a seniors health card immediately before leaving Australia.

**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</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	\$132.00
3.	Partnered (partner getting neither social security pension nor social security benefit), and partner not a holder of a seniors health card	\$66.00
4.	Partnered, and: (a) partner getting pension or benefit; or (b) partner is a holder of a seniors health card; and: (c) partner is not getting telephone allowance; and (d) if the partner were taken to be qualified for telephone allowance, section 1061R would not prevent telephone allowance from being payable to the partner	\$132.00



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<b>Increased 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>
5.	Partnered, and: (a) partner getting pension or benefit; or (b) partner is a holder of a seniors health card; and: (c) partner is getting telephone allowance at the increased rate; or (d) if the partner were taken to be qualified for telephone allowance, section 1061R would prevent telephone allowance from being payable to the partner	\$66.00
6.	Member of an illness separated, temporarily separated or respite care couple	\$132.00
7.	Partnered, and: (a) partner not getting veterans supplement under section 118B of the Veterans' Entitlements Act; and (b) partner not getting MRCA supplement under section 221 or 245 of the Military Rehabilitation and Compensation Act	\$132.00
8.	Partnered, and: (a) partner getting veterans supplement under section 118B of the Veterans' Entitlements Act; or (b) partner getting MRCA supplement under section 221 or 245 of the Military Rehabilitation and Compensation Act	\$66.00

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<b>Increased 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>
9.	Partnered (partner in gaol)	\$132.00
10.	Partnered (partner getting pension or benefit) and partner getting telephone allowance at the standard rate	\$88.00

Note: The amounts in column 3 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 applies to a person, item 3 does not apply to the person.
- (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 6 weeks; and
  - (b) was the holder of a seniors health card immediately before leaving Australia.

**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:
  - (c) has reached pension age and is receiving an income support payment; or
  - (d) is receiving a disability support pension or carer payment.

*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**

- (1) 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 partner allowance, a disability support pension or a carer payment; and
  - (c) either:
    - (i) is in Australia; or
    - (ii) is temporarily absent from Australia and has been so for a continuous period not exceeding 6 weeks.
- (2) Even though a person is qualified for utilities allowance, the allowance is not payable to the person:
  - (a) if the person is receiving a social security payment for which a pension supplement amount is used to work out the rate of the payment, with a pension supplement amount that is more than the person's pension supplement basic amount; or
  - (b) if the person is receiving energy supplement under Part 2.25B; or
  - (c) if an election by the person under subsection 1061VA(1) is in force.

#### **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, income support supplement or a veteran payment is payable to the person on that day; or
  - (b) energy supplement under Part VIIAD of the Veterans' Entitlements Act is payable in relation to that day; 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.
- (3) In this section:

*utilities allowance test day* means:

- (a) 20 March; and
- (b) 20 June; and
- (c) 20 September; and
- (d) 20 December.

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**Part 2.25A** Utilities allowance

**Division 2** Rate of utilities allowance

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**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—Energy supplement**

### **Division 1—Qualification and payability**

#### **1061U Qualification for energy supplement**

- (1) A person is qualified for energy supplement if the person is the holder of a seniors health card.

*Exceptions*

- (2) Subject to subsections (4), (6) and (8), subsection (1) applies to a person on or after the commencement of this subsection only if on 19 September 2016:
- (a) energy supplement was payable to the person under section 1061UA; or
  - (b) energy supplement was payable to the person under section 118PA of the Veterans' Entitlements Act.

Note: For subsection (1) to apply to the person on a day on or after that commencement, the person needs to be the holder of a seniors health card on that day.

- (3) Subject to subsection (8), if:
- (a) energy supplement was payable to a person under section 1061UA, or under section 118PA of the Veterans' Entitlements Act, on 19 September 2016; and
  - (b) energy supplement ceases to be payable to the person under either of those sections on or after 20 September 2016;
- then subsection (1) of this section does not apply, and never again applies, to the person from:
- (c) if the cessation occurred before the commencement of this subsection—the start of the day this subsection commences; or
  - (d) if the cessation occurred on or after the commencement of this subsection—the start of the day of that cessation.

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- (4) If:
- (a) a person was not qualified for energy supplement under subsection (1) on 19 September 2016; and
  - (b) on 19 September 2016 the person was receiving an income support payment where energy supplement was used to work out the rate of that payment; and
  - (c) on a day (the *cessation day*) on or after the commencement of this subsection the person ceases to be in receipt of any income support payment; and
  - (d) on the day before the cessation day the person was receiving an income support payment where energy supplement was used to work out the rate of that payment; and
  - (e) the person is required to make a claim for a seniors health card in order for such a card to be granted to the person;
- the person can become qualified for energy supplement under subsection (1) only if the person makes a claim for a seniors health card within the period of 6 weeks beginning on the cessation day.
- (5) Subject to subsection (8), if:
- (a) as a result of a claim mentioned in subsection (4), a seniors health card is issued to a person on a day; and
  - (b) energy supplement ceases to be payable to the person under section 1061UA on or after that day;
- then subsection (1) of this section does not apply, and never again applies, to the person from the start of the day of that cessation.
- (6) If:
- (a) a person was not qualified for energy supplement under subsection (1) on 31 December 2016; and
  - (b) on that day, the person was receiving a social security pension and an amount of energy supplement was added to the rate of that pension; and
  - (c) under subsection 1061ZJA(3) or (4), the Secretary issued a seniors health card to the person;
- the person can become qualified for energy supplement under subsection (1) of this section because of holding that card.



- (7) Subject to subsection (8), if:
- (a) as mentioned in paragraph (6)(c), a seniors health card is issued to a person on a day; and
  - (b) energy supplement ceases to be payable to the person under section 1061UA on or after that day;
- then subsection (1) of this section does not apply, and never again applies, to the person from:
- (c) if the cessation occurred before the commencement of this subsection—the start of the day this subsection commences; or
  - (d) if the cessation occurred on or after the commencement of this subsection—the start of the day of that cessation.
- (8) If:
- (a) on a day on or after 20 September 2016 the person ceases to hold a seniors health card under the Administration Act or the Veterans' Entitlements Act; and
  - (b) on that day the person receives an income support payment where energy supplement is used to work out the rate of that payment; and
  - (c) on a day (the *cessation day*) on or after the commencement of this subsection, the person ceases to be in receipt of any income support payment; and
  - (d) on the day before the cessation day the person was receiving an income support payment where energy supplement was used to work out the rate of that payment; and
  - (e) the person is required to make a claim for a seniors health card in order for such a card to be granted to the person;
- the person can become qualified for energy supplement under subsection (1) only if the person makes a claim for a seniors health card within the period of 6 weeks beginning on the cessation day.

### **1061UA When energy supplement is payable**

- (1) Energy supplement is payable to a person in relation to each day on which the person is qualified for the supplement.

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- (2) However, energy supplement is not payable to the person in relation to a day if:
- (a) before that day:
    - (i) the person had elected not to be covered by this Part;  
and
    - (ii) that election had not been withdrawn; or
  - (b) subsection 55(5) (failing to nominate a bank account) of the Administration Act applies to the person.

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## Division 2—Rate of energy supplement

### 1061UB Rate of energy supplement

- (1) If subsection (2) applies to the person on a day, the person's daily rate of energy supplement, for that day, is  $\frac{1}{364}$  of the amount worked out using the following table:

Energy supplement		
Item	Person's family situation	Amount of energy supplement
1	Not a member of a couple	\$366.60
2	Partnered	\$275.60
3	Member of an illness separated couple	\$366.60
4	Member of a respite care couple	\$366.60
5	Partnered (partner in gaol)	\$366.60

- (2) This subsection applies to a person on a day if on that day the person is residing in Australia and either:
- (a) is in Australia; or
  - (b) is temporarily absent from Australia and has been so for a continuous period not exceeding 6 weeks.

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## Part 2.25C—Quarterly pension supplement

### 1061V When this Part applies

- (1) This Part applies to a person if:
  - (a) a pension supplement amount is used to work out the rate of the person's social security payment (the *main payment*); and
  - (b) the annual rate of that pension supplement amount is more than the person's pension supplement basic amount.

Note: A pension supplement amount that is more than the person's pension supplement basic amount contains a minimum component. The person may elect under this Part to receive that minimum component on a quarterly basis as a separate social security payment.

- (2) For the purposes of paragraph (1)(b), if the Rate Calculator for the main payment produces a fortnightly rate, then multiply the person's pension supplement amount by 26 to get the annual rate of that pension supplement amount.
- (3) For the purposes of subsection (1), it does not matter if the rate of the person's main payment would become nil were an election by the person under subsection 1061VA(1) to come into force.

### 1061VA Quarterly pension supplement

- (1) The person may, in a manner or way approved by the Secretary, make an election to receive the person's minimum pension supplement amount on a quarterly basis as a separate social security payment.
- (2) An election comes into force as soon as practicable after it is made.
- (2A) An election ceases to be in force if the main payment ceases to be payable to the person.

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- (3) The person may, in a manner or way approved by the Secretary, revoke an election. A revocation takes effect as soon as practicable after it happens.
- (4) Quarterly pension supplement is payable to the person in relation to each day on which an election is in force.

**1061VB Rate of quarterly pension supplement**

- (1) The person's annual rate of quarterly pension supplement is the person's minimum pension supplement amount.
- (2) The person's daily rate of quarterly pension supplement is worked out by dividing the person's annual rate by 364.
- (3) This section has effect subject to subsection 1210(3).

## Part 2.26—Fares allowance

Note: Section 19A contains many of the definitions that are relevant to the provisions of this Part.

### 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 Employment Pathway Plan 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

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- (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.

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

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- (b) during the study year and before the journey was made the person became independent because of subsection 1067A(4), (10) or (14); 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



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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.

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- (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	50.0
2	Rotary	more than 800 but not more than 1,300	60.0
3	Rotary	more than 1,300	61.0
4	Not rotary	not more than 1,600	50.0
5	Not rotary	more than 1,600 but not more than 2,600	60.0
6	Not rotary	more than 2,600	61.0

- (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.

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- (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.
- (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.

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Note: In 2007, the text of the annexure as in force on 23 July 2007 was accessible through the Australian Government website at [www.workplace.gov.au](http://www.workplace.gov.au).

**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:

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- (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).

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**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

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- (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

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- (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, 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 social security pension is payable to the person for that day.
- (1A) Paragraph (1)(a) does not apply to a carer payment payable to the person because the person is qualified for that payment for that day under section 197G or 197H or subsection 198AA(4) or (5) (whether or not because of section 197F).
- (1B) Subject to subsection (3), a person is qualified for a pensioner concession card on a day if:
  - (a) immediately before 1 January 2017, the person was receiving a social security pension; and
  - (b) the Secretary is satisfied that the rate of that pension was nil on 1 January 2017 because of the operation of the amendments made by Part 1 of Schedule 3 to the *Social Services Legislation Amendment (Fair and Sustainable Pensions) Act 2015*; and
  - (c) the person is not otherwise qualified for a pensioner concession card on 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) jobseeker payment; or

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- (ii) partner allowance; or
  - (iii) widow allowance; or
  - (iv) benefit PP (partnered); 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 jobseeker payment; 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.

(2E) Subject to subsection (3), a woman is qualified for a pensioner concession card on a day if, on that day:

- (a) the woman is receiving a jobseeker payment; and
- (b) the woman's jobseeker payment rate is worked out under section 654.

(3) Subject to subsections (4) and (5), subsections (1), (1B), (2), (2A), (2B), (2D) and (2E) only apply to a person in relation to a day on which 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 6 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 social security agreement between Australia and New Zealand.

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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 6 weeks (see Division 4).

- (5) In spite of subsection (3), if:
- (a) paragraphs (1B)(a), (b) and (c) are satisfied in relation to a person; and
  - (b) the person was receiving the social security pension immediately before 1 January 2017 solely because of the operation of the scheduled international social security agreement between Australia and New Zealand;
- subsection (1B) applies to a person in relation to a day on which the person is in Australia.

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 6 weeks (see Division 4).

**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

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- (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.

(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 6 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 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 6 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 30 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.

**Chapter 2A** Benefits and concessions other than payments

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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 6 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 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
  - (b) a jobseeker payment 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 6 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.

**1061ZDA Extended qualification rule: former recipient of pension  
PP (single)**

- (1) If:
- (a) a pension PP (single) has been payable to a person; and
  - (b) the person ceases to be qualified for that payment because, on a day, the person's youngest child turns 8; and
  - (c) apart from this subsection, the person would cease to be qualified for a pensioner concession card on that day;
- then, subject to subsections (2) and (3), the person is qualified for a pensioner concession card for the period of 12 weeks starting on that day.

*Other qualification for pensioner concession card*

- (2) If, during that 12-week period, the person receives an instalment of:
- (a) a youth allowance while subsection 1061ZA(2A) applies to the person; or
  - (b) a jobseeker payment while subsection 1061ZA(2B) applies to the person; or
  - (c) a benefit PP (partnered) while subsection 1061ZA(2D) applies to the person; or
  - (d) 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.

*Person must be in Australia*

- (3) Subject to subsection (4), 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 6 weeks (see Division 4).

- (4) Despite subsection (3), this section applies to a person in relation to a day if:
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- (a) the person is in Australia on that day; and
- (b) the pension PP (single) that had been payable to the person was payable 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 6 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, 1061ZDA or 1061ZEB.
- (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
  - (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); 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
- (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:
- (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 jobseeker payment—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 jobseeker payment; 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
  - (j) the day the person would cease to be qualified for a pensioner concession card as mentioned in paragraph (g) for

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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)(ia) 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.

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 6 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 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 6 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 jobseeker payment; 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, jobseeker payment 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 6 weeks (see Division 4).

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- (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 jobseeker payment 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).

- (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) and sections 1061ZJA and 1061ZJB, 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 income test; and
  - (e) is not receiving a social security pension or benefit; and
  - (f) is not receiving a service pension, income support supplement or a veteran payment; 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 19 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 subsection 77(1) of that Act.

- (3) In subsection (2):

*reference tax year* has the same meaning as in the Seniors Health Card Income Test Calculator.

### **1061ZH Newly arrived resident's waiting period**

- (1) Subject to this section, for the purposes of this Division, a person who:
- (a) has entered Australia; 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, 208 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.

Note: For *qualifying residence exemption* in relation to a seniors health card, see paragraph 7(6AA)(f).

- (3) Subsection (1) does not apply to a person if:
- (a) the person is a refugee, or a former refugee, at the time the person made the claim for a seniors health card; or
  - (b) the following apply:
    - (i) before the person made the claim for a seniors health card, the person was a family member of another person at the time the other person became a refugee;
    - (ii) the person is a family member of that other person at the time the person made the claim for a seniors health card or, if that other person has died, the person was a family member of that other person immediately before that other person died; or
  - (c) the person is an Australian citizen at the time the person made the claim for a seniors health card.

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- (4) For the purposes of subsection (3):
- (a) *family member* has the meaning given by subsection 7(6D);  
and
  - (b) *former refugee* has the meaning given by subsection 7(1);  
and
  - (c) *refugee* has the meaning given by subsection 7(6B).

**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, 208 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.

**1061ZJA Modifications if person's rate of social security pension is nil on 1 January 2017**

- (1) This section applies in relation to a person if:
- (a) immediately before 1 January 2017, the person was receiving a social security pension; and
  - (b) the Secretary is satisfied that the rate of that pension is nil on 1 January 2017 because of the operation of the amendments made by Part 1 of Schedule 3 to the *Social Services*

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*Legislation Amendment (Fair and Sustainable Pensions) Act 2015.*

*Seniors health card income test does not apply*

- (2) In determining whether the person is qualified for a seniors health card at any time on or after 1 January 2017, paragraph 1061ZG(1)(d) does not apply to the person.

*Automatic issue of seniors health card*

- (3) If the person is qualified for a seniors health card on 1 January 2017, the Secretary must issue a seniors health card to the person.

Note: The person does not need to make a claim for the card.

- (4) If:

- (a) on 1 January 2017, the person is outside Australia; and
- (b) the person returns to Australia before the end of the period of 19 weeks beginning on the day the person left Australia; and
- (c) the person is qualified for a seniors health card on the day the person returns to Australia;

the Secretary must issue a seniors health card to the person.

Note 1: The person does not need to make a claim for the card.

Note 2: If the person returns to Australia after the end of that 19-week period, the person will need to make a claim for a seniors health card.

**1061ZJB Other modifications because of Veterans' Entitlements Act**

If section 118XA of the Veterans' Entitlements Act applies in relation to a person, then, in determining whether the person is qualified for a seniors health card under this Division at any time on or after 1 January 2017, paragraph 1061ZG(1)(d) does not apply to the person.

## 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;
  - (e) the carer satisfies the carer allowance income test under section 957A.
- (3A) This section applies to a person on a day if a person is qualified under section 197G or 197H or subsection 198AA(4) or (5) (whether or not because of section 197F) for a carer payment on that day.



- (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 that is greater than nil (disregarding reductions (if any) under clause 5 of that Schedule); 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), (2D) or (2E)) on a day if on that day the person is receiving:
- (a) a youth allowance; or
  - (b) an austudy payment; or
  - (c) a jobseeker payment; or
  - (d) a partner allowance; or
  - (e) a widow allowance; or
  - (f) benefit PP (partnered); or
  - (h) special benefit.
- (6) This section applies to a person on a day if on that day:
- (a) the person is receiving a payment under the ABSTUDY Scheme that includes an amount identified as living allowance, where the person satisfies the eligibility criteria for that payment; or

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- (b) another person, on behalf of the person, is receiving a payment under the ABSTUDY Scheme that includes an amount identified as living allowance.
- (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.

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(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 jobseeker payment; 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

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because of receiving jobseeker payment, 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 payment or 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) jobseeker payment;
- (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
  - (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); 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
  - (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:

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- (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
- (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.
- (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

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- (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 6 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:

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- (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 card in other circumstances**

**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 6 weeks (see Division 4).

- (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



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- (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 6 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 6 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

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- (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 this section, for the purposes of this Division, a person who has entered Australia 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 an FTB child; 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, 208 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).

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Note: For paragraph (a): for *qualifying residence exemption* in relation to a health care card, see paragraph 7(6AA)(f).

- (3) Subsection (1) does not apply to a person if:
- (a) the person is a refugee, or a former refugee, at the time the person made the claim for a health care card; or
  - (b) the following apply:
    - (i) before the person made the claim for a health care card, the person was a family member of another person at the time the other person became a refugee;
    - (ii) the person is a family member of that other person at the time the person made the claim for a health care card or, if that other person has died, the person was a family member of that other person immediately before that other person died; or
  - (c) the person is an Australian citizen at the time the person made the claim for a health care card.
- (4) For the purposes of subsection (3):
- (a) *family member* has the meaning given by subsection 7(6D); and
  - (b) *former refugee* has the meaning given by subsection 7(1); and
  - (c) *refugee* has the meaning given by subsection 7(6B).

**1061ZR Duration of newly arrived resident's waiting period**

- (1) Subject to subsection (2), 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, 208 weeks.

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(2) 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 applied for a visa that is in a class of visas determined by the Minister for the purposes of paragraph 739A(3)(b);

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 for periods totalling, 208 weeks after that day.

**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) For a concession card (other than a seniors health card), throughout so much (if any) of the period of absence as occurs after the end of the period of 6 weeks beginning on the day the person leaves Australia, the person is not qualified for the concession card.

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- (2A) For a concession card that is a seniors health card, throughout so much (if any) of the period of absence as occurs after the end of the period of 19 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;
  - (b) the following:
    - (i) for a concession card (other than a seniors health card)—the period of 6 weeks beginning on the day the person leaves Australia;
    - (ii) for a concession card that is a seniors health card—the period of 19 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 1061ZC, 1061ZD, 1061ZDA, 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 6 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.
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- (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 2AA—Student start-up loans

### Part 2AA.1—Introduction

#### 1061ZVAA Simplified outline of this Chapter

Student start-up loans are social security payments that are income-contingent loans.

Broadly, full-time students who are receiving youth allowance or austudy might be qualified for a student start-up loan. A person can qualify for up to 2 loans each calendar year. To receive a loan, a person must make a claim before the end of the relevant period for each loan.

Once the person's income exceeds the minimum repayment income under the *Higher Education Support Act 2003* and the person has finished repaying any debt under that Act and certain other income-contingent loan schemes, the person must start repaying debt in relation to student start-up loans.



## **Part 2AA.2—Qualification for and amount of student start-up loan**

### **1061ZVBA Simplified outline of this Part**

Broadly, full-time students who are receiving youth allowance or austudy might be qualified for a student start-up loan. A person can qualify for up to 2 loans each calendar year.

### **1061ZVBB Qualification for student start-up loan**

#### *Receiving youth allowance*

- (1) A person is qualified for a student start-up loan for a qualification period if:
  - (a) on the person's qualification test day for the period:
    - (i) the person is qualified for youth allowance and youth allowance is payable to the person; and
    - (ii) the person is receiving youth allowance and would be receiving youth allowance if steps 2 and 3 of the method statement in point 1067G-A1 of the Youth Allowance Rate Calculator were disregarded for the purposes of working out the person's rate of that allowance; and
    - (iii) the person is qualified for youth allowance under section 540 in circumstances where paragraph 541(1)(a) (about full-time study) applies and the relevant course of education is an approved scholarship course; and
  - (b) the Secretary is satisfied that the person is not likely to receive the amount or value of a disqualifying education costs scholarship in the period of 6 months starting immediately after that qualification test day; and
  - (c) the person notifies the Secretary of the person's tax file number.

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Note 1: For *approved scholarship course*, see section 592M.

Note 2: If the condition in subparagraph (a)(iii) is no longer met in a certain period starting on the qualification test day, the amount of the loan might become an immediately recoverable debt, rather than an income-contingent SSL debt: see subsection 1223ABF(1).

*Receiving austudy payment*

- (2) A person is qualified for a student start-up loan for a qualification period if:
- (a) on the person's qualification test day for the period:
    - (i) the person is qualified for austudy payment and austudy payment is payable to the person; and
    - (ii) the person is receiving austudy payment and would be receiving austudy payment if steps 2 and 2A of the method statement in point 1067L-A1 of the Austudy Payment Rate Calculator were disregarded for the purposes of working out the person's rate of that payment; and
    - (iii) the person is qualified for austudy payment under section 568 in circumstances where subsection 569(1) (about qualifying study) applies and the relevant course of education is an approved scholarship course; and
  - (b) the Secretary is satisfied that the person is not likely to receive the amount or value of a disqualifying education costs scholarship in the period of 6 months starting immediately after that qualification test day; and
  - (c) the person notifies the Secretary of the person's tax file number.

Note 1: For *approved scholarship course*, see section 592M.

Note 2: The person might incur a debt if the condition in subparagraph (a)(iii) is no longer met in a certain period starting on the qualification test day: see subsection 1223ABF(1).

*Qualification test day*

- (3) A person's *qualification test day* for a qualification period is the earliest of the following:

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- (a) the day the Secretary determines the person's claim for a student start-up loan for the qualification period;
- (b) if the approved scholarship course ends in the qualification period—the last day of the approved scholarship course;
- (c) the last day of the qualification period.

**1061ZVBC Circumstances in which person is not qualified for student start-up loan**

Despite section 1061ZVBB, a person is not qualified for a student start-up loan for a qualification period if:

- (a) immediately before the person's qualification test day for the period:
  - (i) a determination is in effect that the person is qualified for a student start-up loan for the qualification period; or
  - (ii) a determination is in effect that the person is qualified for an ABSTUDY student start-up loan under the *Student Assistance Act 1973* for the qualification period; or
- (b) in the period of 6 months ending immediately before that qualification test day, the person:
  - (i) has received a payment known as a student start-up scholarship payment under the scheme referred to in section 117 of the *Veterans' Entitlements Act*; or
  - (ii) has received a payment known as a student start-up scholarship payment under the scheme referred to in section 258 of the *Military Rehabilitation and Compensation Act*; or
  - (iii) has received the amount or value of a disqualifying education costs scholarship; or
  - (iv) was entitled to the amount or value of a disqualifying education costs scholarship but has not received the full entitlement only because the scholarship was suspended.

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**Part 2AA.2** Qualification for and amount of student start-up loan

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**1061ZVBD Amount of student start-up loan**

The amount of a student start-up loan for which a person is qualified is \$1,025.

Note: The amount of the loan is to be indexed on each 1 January in line with CPI increases (see sections 1190 to 1194).

## **Part 2AA.3—Indebtedness**

### **Division 1—Introduction**

#### **1061ZVCA Simplified outline of this Part**

A person incurs an SSL debt if the person receives a student start-up loan (except in certain circumstances when the loan is required to be recovered as a social security debt under this Act).

Each SSL debt is incorporated into the person's accumulated SSL debt. This accumulated SSL debt forms the basis for working out the amounts the person is obliged to repay.

## Division 2—Incurring SSL debts

### 1061ZVDA SSL debts

- (1) A person incurs an SSL debt to the Commonwealth if the person is paid a student start-up loan for a qualification period.
- (2) The SSL debt is incurred by the person on the later of:
  - (a) the day the person was paid the loan; and
  - (b) the day after the person's enrolment test day for the qualification period.

Note: For *enrolment test day*, see subsection (5).

- (3) The amount of the person's SSL debt is the amount of the loan, reduced by any amount repaid before the day on which the debt is incurred.
- (4) Despite subsection (1), an SSL debt is not incurred, and is taken never to have been incurred, in relation to a loan if:
  - (a) the loan has been fully repaid before the day on which the SSL debt in respect of the loan would be incurred; or
  - (b) the amount of the loan is a debt under section 1223 or 1223ABF; or
  - (c) the Secretary has formed an opinion under subsection 1223ABF(3) in relation to the loan (relating to exceptional circumstances beyond the person's control).
- (5) A person's *enrolment test day*, for a qualification period, is the earliest of the following days:
  - (a) if the relevant approved scholarship course ends in the qualification period—the last day of that approved scholarship course;
  - (b) the last day of the qualification period;
  - (c) the 35th day of the period starting on whichever of the following applies:

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- (i) if the person's qualification test day for the qualification period was before the first day of the relevant approved scholarship course—the first day of that approved scholarship course;
- (ii) otherwise—the qualification test day.

Note: For *approved scholarship course*, see section 592M.

**1061ZVDB SSL debt discharged by death**

Upon the death of a person who owes an SSL debt to the Commonwealth, the debt is taken to have been paid.

Note: SSL debts are not provable in bankruptcy: see subsection 82(3AB) of the *Bankruptcy Act 1966*.

**1061ZVDC Notice to Commissioner**

- (1) If a person incurs an SSL debt, the Secretary must give the Commissioner a notice specifying the amount of the debt incurred by the person.
- (2) The Secretary may include in the notice any other details the Commissioner requests for the purpose of ensuring the Commissioner has the information needed to exercise powers or perform functions of the Commissioner under this Act.

## Division 3—Working out accumulated SSL debts

### 1061ZVEA Simplified outline of this Division

There are 2 stages to working out a person's accumulated SSL debt for a financial year.

In stage 1, the person's former accumulated SSL debt is worked out by adjusting the preceding financial year's accumulated SSL debt to take account of:

- (a) the HELP debt indexation factor for 1 June in that financial year; and
- (b) the debts that the person incurs during the last 6 months of the preceding financial year; and
- (c) voluntary SSL repayments of the debt; and
- (d) compulsory SSL repayment amounts in respect of the debt.

In stage 2, the person's accumulated SSL debt is worked out from:

- (a) the person's former accumulated SSL debt; and
- (b) the SSL debts that the person incurs during the first 6 months of the financial year; and
- (c) voluntary SSL repayments of those debts.

### 1061ZVEB Stage 1—working out a former accumulated SSL debt

- (1) A person's *former accumulated SSL debt*, in relation to the person's accumulated SSL debt for a financial year, is worked out by multiplying:
  - (a) the amount worked out using the following method statement; by
  - (b) the HELP debt indexation factor for 1 June in that financial year.



*Method statement*

- Step 1. Take the person's accumulated SSL debt for the immediately preceding financial year. (This amount is taken to be zero if the person has no accumulated SSL debt for that financial year.)
- Step 2. Add the sum of all of the SSL debts (if any) that the person incurred during the last 6 months of the immediately preceding financial year.
- Step 3. Subtract the sum of the amounts by which the person's debts referred to in steps 1 and 2 are reduced because of any voluntary SSL repayments that have been made during the period:
  - (a) starting on 1 June in the immediately preceding financial year; and
  - (b) ending immediately before the next 1 June.
- Step 4. Subtract the sum of all of the person's compulsory SSL repayment amounts that:
  - (a) were assessed during that period (excluding any assessed as a result of a return given before that period); or
  - (b) were assessed after the end of that period as a result of a return given before the end of that period.
- Step 5. Subtract the sum of the amounts by which any compulsory SSL repayment amount of the person is increased (whether as a result of an increase in the person's taxable income of an income year or otherwise) by an amendment of an assessment made during that period.

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Step 6. Add the sum of the amounts by which any compulsory SSL repayment amount of the person is reduced (whether as a result of a reduction in the person's taxable income of an income year or otherwise) by an amendment of an assessment made during that period.

- (2) For the purposes of this section, an assessment, or an amendment of an assessment, is taken to have been made on the day specified in the notice of assessment, or notice of amended assessment, as the date of issue of that notice.

**1061ZVEC Stage 2—working out an accumulated SSL debt**

- (1) A person's *accumulated SSL debt*, for a financial year, is worked out as follows:

$$\text{Former accumulated SSL debt} + \text{SSL debts incurred} - \text{SSL debt repayments}$$

where:

*former accumulated SSL debt* is the person's former accumulated SSL debt in relation to that accumulated SSL debt.

*SSL debt repayments* is the sum of all of the voluntary SSL repayments (if any) paid, on or after 1 July in the financial year and before 1 June in that year, in reduction of the SSL debts incurred in that year.

*SSL debts incurred* is the sum of the amounts of all of the SSL debts (if any) that the person incurred during the first 6 months of the financial year.

- (2) The person incurs the accumulated SSL debt on 1 June in the financial year.

**1061ZVED Rounding of amounts**

- (1) If, apart from this section, a person's accumulated SSL debt would be an amount consisting of a number of whole dollars and a number of cents, disregard the number of cents.
- (2) If, apart from this section, a person's accumulated SSL debt would be an amount of less than \$1.00, the person's accumulated SSL debt is taken to be zero.

**1061ZVEE Accumulated SSL debt discharges earlier debts**

- (1) The accumulated SSL debt that a person incurs on 1 June in a financial year discharges, or discharges the unpaid part of:
  - (a) any SSL debt that the person incurred during the calendar year immediately preceding that day; and
  - (b) any accumulated SSL debt that the person incurred on the immediately preceding 1 June.
- (2) Nothing in subsection (1) affects the application of Division 2 of this Part or sections 1061ZVEB and 1061ZVEC.

**1061ZVEF Accumulated SSL debt discharged by death**

- (1) Upon the death of a person who has an accumulated SSL debt, the accumulated SSL debt is taken to be discharged.
- (2) To avoid doubt, this section does not affect any compulsory SSL repayment amounts required to be paid in respect of the accumulated SSL debt, whether or not those amounts were assessed before the person's death.

Note: Accumulated SSL debts are not provable in bankruptcy: see subsection 82(3AB) of the *Bankruptcy Act 1966*.

## Part 2AA.4—Discharge of indebtedness

### Division 1—Introduction

#### 1061ZVFA Simplified outline of this Part

A person who owes a debt to the Commonwealth under this Chapter may make voluntary SSL repayments.

The person is required to make repayments once the person's income exceeds the minimum repayment income under the *Higher Education Support Act 2003* and the person has finished repaying any debt under that Act and certain other income-contingent loan schemes.

The amount of the repayments is based on the person's income.

The Commissioner makes assessments of repayment amounts, which are collected in the same way as amounts of income tax.

#### 1061ZVFB Debts under this Chapter

- (1) The debts under this Chapter are:
  - (a) SSL debts; and
  - (b) accumulated SSL debts.
- (2) To avoid doubt, debts that arise under the following sections are not debts under this Chapter:
  - (a) section 1223 (Debts arising from lack of qualification, overpayment etc.);
  - (b) section 1223ABF (Debts in respect of student start-up loans).

## **Division 2—Voluntary discharge of indebtedness**

### **1061ZVGA Voluntary SSL repayments in respect of debts**

- (1) A person may at any time make a payment in respect of a debt that the person owes to the Commonwealth under this Chapter.
- (2) The payment must be made to the Commissioner.

### **1061ZVGB Application of voluntary SSL repayments**

- (1) Any money a person pays under this Division to meet the person's debts to the Commonwealth under this Chapter is to be applied in payment of those debts as the person directs at the time of the payment.
- (2) If the person has not given any directions, or the directions given do not adequately deal with the matter, any money available is to be applied as follows:
  - (a) first, in discharge or reduction of any accumulated SSL debt of the person;
  - (b) second, in discharge or reduction of:
    - (i) any SSL debt of the person; or
    - (ii) if there is more than one such debt, those debts in the order in which they were incurred.

### **1061ZVGC 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 Chapter; and

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- (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.

## **Division 3—Compulsory discharge of indebtedness**

### **Subdivision A—Liability to repay amounts**

#### **1061ZVHA Liability to repay amounts**

- (1) If:
- (a) a person's HELP repayment income for an income year exceeds the minimum HELP repayment income for the income year; and
  - (b) on 1 June immediately preceding the making of an assessment in respect of the person's income of that income year, the person had an accumulated SSL debt;

the person is liable to pay to the Commonwealth, in accordance with this Division, so much of the person's repayable SSL debt for the income year as does not exceed the amount worked out using the formula:

$$\frac{\text{Applicable percentage of repayment income}}{\text{Relevant income-contingent loans liability}}$$

where:

***applicable percentage of repayment income*** means the amount that is the percentage of the person's HELP repayment income applicable under the table in section 154-20 of the *Higher Education Support Act 2003*.

***relevant income-contingent loans liability*** means the amount that is the sum of the following:

- (a) the sum of any amounts the person is liable to pay under section 154-1 or 154-16 of the *Higher Education Support Act 2003* in respect of the income year;
- (aa) the sum of any amounts the person is liable to pay under section 23EA or 23EC of the *VET Student Loans Act 2016* in respect of the income year;

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- (b) the sum of any amounts the person is liable to pay under section 1061ZZEZ of this Act, or section 12ZK of the *Student Assistance Act 1973*, in respect of the income year.
- (2) A person is not liable under this section to pay an amount for an income year if the amount worked out under subsection (1) is zero or less.
- (3) 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.

**1061ZVHB Repayable SSL debt for an income year**

- (1) A person's **repayable SSL debt** for an income year is:
  - (a) the person's accumulated SSL debt referred to in paragraph 1061ZVHA(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 1061ZVHC to be payable in respect of that debt;the amount (if any) remaining after deducting from that debt any amounts referred to in subparagraph (i) or (ii).
- (2) A reference in paragraph (1)(b) of this section 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.



## **Subdivision B—Assessments**

### **1061ZVHC Commissioner may make assessments**

The Commissioner may, from any information in the Commissioner's possession, whether from a return or otherwise, make an assessment of:

- (a) the person's accumulated SSL debt on 1 June immediately before the making of the assessment; and
- (b) the amount required to be paid in respect of the person's repayable SSL debt under section 1061ZVHA.

### **1061ZVHD Notification of notices of assessment of tax**

If:

- (a) the Commissioner is required to serve on a person a notice of assessment in respect of the person's income of an income year under section 174 of the *Income Tax Assessment Act 1936*; and
- (b) the Commissioner has made, in respect of the person, an assessment under paragraph 1061ZVHC(b) of this Act of the amounts referred to in that paragraph; and
- (c) notice of the assessment under that paragraph has not been served on the person;

notice of the assessment under that paragraph may be served by specifying the amounts concerned in the notice referred to in paragraph (a).

### **1061ZVHE Commissioner may defer making assessments**

- (1) A person may apply in the approved form to the Commissioner for deferral of the making of an assessment in respect of the person under section 1061ZVHC.
- (2) The application must specify:
  - (a) the income year for which the deferral is being sought; and
  - (b) the reasons for seeking the deferral.

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- (3) The income year specified in the application must be:
  - (a) the income year in which the person makes the application;  
or
  - (b) the immediately preceding income year; or
  - (c) the immediately succeeding income year.
- (4) The Commissioner may, on application by a person under this section, defer making an assessment in respect of the person under section 1061ZVHC if the Commissioner is of the opinion that:
  - (a) if the assessment were 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 defer making the assessment.
- (5) The Commissioner may defer making the assessment for any period that he or she thinks appropriate.
- (6) The Commissioner must, as soon as practicable after an application is made under this section:
  - (a) consider the matter to which the application relates; and
  - (b) notify the applicant of the Commissioner's decision on the application.

Note: Deferrals of making assessments, or refusals of applications, are reviewable under Division 2A of Part 4 of the Administration Act.

**1061ZVHF Commissioner may amend assessments**

- (1) A person may apply in the approved form to the Commissioner for an amendment of an assessment made in respect of the person under section 1061ZVHC so that:
  - (a) the amount payable under the assessment is reduced; or
  - (b) no amount is payable under the assessment.
- (2) The application:
  - (a) must be made within 2 years after the day on which the Commissioner gives notice of the assessment to the person;  
or

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- (b) must specify the reasons justifying a later application.
- (3) The Commissioner may, on application by a person under this section, amend an assessment made in respect of the person under section 1061ZVHC so that:
- (a) the amount payable under the assessment is reduced; or
  - (b) no amount is payable under the assessment;
- if the Commissioner is of the opinion that:
- (c) payment of the assessed amount has caused or would cause serious hardship to the person; or
  - (d) there are other special reasons that make it fair and reasonable to make the amendment.
- (4) The Commissioner must, as soon as practicable after an application is made under this section:
- (a) consider the matter to which the application relates; and
  - (b) notify the applicant of the Commissioner's decision on the application.

Note: Amendments of assessments, or refusals of applications, are reviewable under Division 2A of Part 4 of the Administration Act.

## Part 2AA.5—Tax administration matters

### 1061ZVJA Simplified outline of this Part

The Secretary and the Commissioner may share information about tax file numbers for the purposes of administering student start-up loans. The Commissioner is also responsible for the recovery of debts under this Chapter and has functions and powers to fulfil that responsibility relating to returns, assessments, collection and other administrative matters.

### 1061ZVJB Verification of tax file numbers

- (1) The Secretary may provide to the Commissioner a tax file number that a person has notified to the Secretary for the purposes of paragraph 1061ZVBB(1)(c) or (2)(c), for the purpose of verifying that the number is the person's tax file number.
- (2) If the Commissioner is satisfied that the number is the person's tax file number, the Commissioner may give the Secretary a written notice informing the Secretary accordingly.

### 1061ZVJC When person with tax file number incorrectly notifies number

- (1) If the Commissioner is satisfied:
  - (a) that the tax file number that a person has notified to the Secretary for the purposes of paragraph 1061ZVBB(1)(c) or (2)(c):
    - (i) has been cancelled or withdrawn since the notification was given; or
    - (ii) is otherwise wrong; and
  - (b) that the person has a tax file number;

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the Commissioner may give to the Secretary written notice of the incorrect notification and of the person's tax file number.

- (2) That number is taken to be the number that the person notified to the Secretary.

**1061ZVJD When person without tax file number incorrectly notifies number**

- (1) If:
- (a) the Commissioner is satisfied that the tax file number that a person notified to the Secretary for the purposes of paragraph 1061ZVBB(1)(c) or (2)(c):
    - (i) has been cancelled since the notification was given; or
    - (ii) is for any other reason not the person's tax file number;and
  - (b) the Commissioner is not satisfied that the person has a tax file number;

the Commissioner may give to the Secretary a written notice informing the Secretary accordingly.

- (2) The Commissioner must give a copy of any notice under subsection (1) to the person concerned, together with a written statement of the reasons for the decision to give the notice.

Note: Decisions to give notice under subsection (1) are reviewable under section 202F of the *Income Tax Assessment Act 1936*.

**1061ZVJE When tax file numbers are altered**

- (1) If the Commissioner issues, to a person who has notified a tax file number to the Secretary for the purposes of paragraph 1061ZVBB(1)(c) or (2)(c), a new tax file number in place of a tax file number that has been withdrawn, the Commissioner may give to the Secretary a written notice informing the Secretary accordingly.
- (2) That new number is taken to be the number that the person notified to the Secretary.

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**1061ZVJF When tax file numbers are cancelled**

- (1) If the Commissioner cancels a tax file number issued to a person who has notified the tax file number to the Secretary for the purposes of paragraph 1061ZVBB(1)(c) or (2)(c), the Commissioner may give to the Secretary a written notice informing the Secretary accordingly.
- (2) The Commissioner must give a copy of any notice under subsection (1) to the person concerned, together with a written statement of the reasons for the decision to give the notice.

Note: Decisions to give notice under subsection (1) are reviewable under section 202F of the *Income Tax Assessment Act 1936*.

**1061ZVJG Returns, assessments, collection and recovery**

Subject to Part 2AA.4 and this Part:

- (a) Part IV of the *Income Tax Assessment Act 1936*; and
- (b) Division 5 of the *Income Tax Assessment Act 1997*; and
- (c) Part 4-15 in Schedule 1 to the *Taxation Administration Act 1953*;

apply, so far as they are capable of application, in relation to a compulsory SSL repayment amount of a person 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*.

**1061ZVJH Charges and civil 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 SSL 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) paragraphs 1061ZVBB(1)(c) and (2)(c), and Parts 2AA.3 and 2AA.4 and this Part, were income tax laws.

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- (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.

**1061ZVJJ 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 SSL repayment amount of a person as if the compulsory SSL repayment amount were income tax.

**1061ZVJK 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 SSL repayment amount of a person as if the compulsory SSL repayment amount were income tax.

**1061ZVJL Administration of this Chapter**

The Commissioner has the general administration of:

- (a) paragraphs 1061ZVBB(1)(c) and (2)(c); and
- (b) Parts 2AA.3 and 2AA.4 and this Part; and
- (c) Division 2A of Part 4 of the Administration Act (Internal review of certain Commissioner decisions relating to student start-up loans).

Note: One effect of this is that these provisions are taxation laws for the purposes of the *Taxation Administration Act 1953*.

**Chapter 2B** Student Financial Supplement Scheme

**Part 2B.1** Establishment of scheme

**Division 1** Preliminary

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## **Chapter 2B—Student Financial Supplement Scheme**

Note: Section 19AB contains many of the definitions that are relevant to the provisions of this Chapter.

### **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.

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**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:

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- (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
  - (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

**Chapter 2B** Student Financial Supplement Scheme

**Part 2B.1** Establishment of scheme

**Division 2** Eligibility to obtain financial supplement

**Section 1061ZZAB**

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- (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, austudy 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.

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**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.



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- (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.
- (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.
- (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.

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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

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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



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- (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 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.

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*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.

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**Division 8** Obtaining or increasing financial supplement by trading back youth allowance, austudy payment or pensioner education supplement

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**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

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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).
- (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:

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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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- (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.

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**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.

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- (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

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(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;

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:

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- (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.

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- (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
  - (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 commits 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

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- (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.

**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 commits 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  
(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.

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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 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:

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- (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:

$$\text{Principal sum} - \left( \text{Amounts repaid} + \text{Amounts previously notionally repaid} \right)$$

*Meaning of expressions used in formula*

- (3) For the purpose of applying the formula in subsection (2) immediately 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.

**amounts repaid** means the total of the amounts repaid under the contract before the repayment time.

**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).

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*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

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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.

## **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:

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- (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.

**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:
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- (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
  - (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);

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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.

**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.

### **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).

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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

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**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.
  
- (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:

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**Part 2B.2** Payments of financial supplement under scheme to stop in certain circumstances

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- (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).

**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.

**Chapter 2B** Student Financial Supplement Scheme

**Part 2B.2** Payments of financial supplement under scheme to stop in certain circumstances

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- (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.

**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

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- (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.

**Chapter 2B** Student Financial Supplement Scheme

**Part 2B.2** Payments of financial supplement under scheme to stop in certain circumstances

**Division 3** Payments to stop if person ceases to be eligible to obtain financial supplement

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**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:
  - (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
  - (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.

**Chapter 2B** Student Financial Supplement Scheme

**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.

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- (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.

**Chapter 2B** Student Financial Supplement Scheme

**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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**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
  - (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.
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- (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.

*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:

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- (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:

Principal sum – (Amounts repaid + 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**

#### **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.

#### **1061ZZENA Extent of Commissioner of Taxation's general administration of this Part**

The Commissioner of Taxation has the general administration of this Part to the following extent:

- (a) Divisions 2 and 4;
- (b) Division 5;
- (c) Divisions 6 to 8;
- (d) section 1061ZZFO.

Note: One effect of this is that this Part is to that extent a taxation law for the purposes of the *Taxation Administration Act 1953*.

## **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.

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- (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*);
- 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:
- $$(\text{Adjusted accumulated FS debt} \times \text{Indexation factor}) + \text{Later FS debts}$$
- (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:

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$$\text{Accumulated FS debt} - \left( \begin{array}{l} \text{FSA} \\ \text{debts} \end{array} + \text{Repayments} + \begin{array}{l} \text{Increases in} \\ \text{FSA debts} \end{array} - \begin{array}{l} \text{Reductions in} \\ \text{FSA debts} \end{array} \right)$$

(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

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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.

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.

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**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.

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**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 matter mentioned by the Commissioner that was, or was required to be, set out in a notice under section 1061ZZEV or 1061ZZEW.

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**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, disregarding the person's assessable FHSS released amount (within the meaning of the *Income Tax Assessment Act 1997*) 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:

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- (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

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- (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.

**1061ZZFD Amounts payable to the Commonwealth**

- (1) The amount that a person is liable to pay under section 1061ZZEZ, in respect of:
- (a) the 2019-20 income year; or
  - (b) a later income year;
- is the amount worked out using the formula:

$$\frac{\text{Applicable percentage of repayment income}}{\text{Relevant income-contingent loans liability}}$$

where:

***applicable percentage of repayment income*** means 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 worked out in respect of the income year using the table in section 154-20 of the *Higher Education Support Act 2003*.

***relevant income-contingent loans liability*** means the amount that is the sum of the following:

- (a) the sum of any amounts the person is liable to pay under section 154-1 or 154-16 of the *Higher Education Support Act 2003* in respect of the income year;
- (b) the sum of any amounts the person is liable to pay under section 23EA or 23EC of the *VET Student Loans Act 2016* in respect of the income year.

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- (2) For the purposes of subsection (1), assume that the reference in the table in section 154-20 of the *Higher Education Support Act 2003* to the person's repayment income is a reference to the person's repayment income within the meaning of section 1061ZZFA of this Act.
- (3) A person is not liable under this section to pay an amount for an income year if the amount worked out under subsection (1) is zero or less.



## **Division 6—Application of tax legislation**

### **1061ZZFG Application of tax legislation**

Part IV of the *Income Tax Assessment Act 1936*, Division 5 of the *Income Tax Assessment Act 1997*, 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.

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**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).

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**Division 8—Commissioner of Taxation may delay assessment**

**1061ZZFJ Commissioner of Taxation may delay assessment**

- (1) The Commissioner of Taxation may, on application in the approved form 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.
- (4) In this section:

*approved form* has the meaning given by section 388-50 in Schedule 1 to the *Taxation Administration Act 1953*.

**1061ZZFK Commissioner of Taxation may amend assessment**

- (1) The Commissioner of Taxation may, on application in the approved form 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.

(3) In this section:

*approved form* has the meaning given by section 388-50 in Schedule 1 to the *Taxation Administration Act 1953*.

**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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**Part 2B.3** Repayment of financial supplement through taxation system after termination date

**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



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- (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

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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.

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- (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).

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- (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 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;



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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.

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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.

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## 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.

<b>Determinations</b>	
<b>Provision(s)</b>	<b>Things to be specified</b>
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 *Legislation Act 2003*.

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

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

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

- (3) Before making a determination specifying a thing described in item 4 or 5 of the table in subsection (1), the Minister must ask the Minister administering 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

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section provides that a person who contravenes certain provisions of that Act about false or misleading statements commits 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 and disability support pensions and carer payment (people who are not blind)

- (1) The rate of:
- (a) age pension; and
  - (b) disability support pension of a person who has turned 21, or of a person who has not turned 21 and has one or more dependent children; and
  - (d) carer payment;
- 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).

Note 3: For *dependent child* see section 5.

- (2) Subsection (1) does not apply to a person's age or disability support pension 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 another person, whether of the same sex or a different sex (*other person*); and
  - (b) the relationship between them is a de facto relationship in the Secretary's opinion (formed after the Secretary has had

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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: 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;
  - (iv) a carer payment;

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;

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 is receiving the weekly amount mentioned in paragraph 234(1)(b) of the MRCA (including a reduced weekly amount because of a choice under section 236 of the MRCA) or has received a lump sum mentioned in subsection 236(5) of the MRCA; and
- (b) one of the following is payable to the widow or widower:
  - (i) an age pension;
  - (ii) a disability support pension;
  - (iv) a carer payment;

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 1B. Work out the energy supplement (if any) 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, 1B 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 2: Section 1210 deals with the application of income and assets test reductions.
- 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 1173) or because the person or the person's partner is receiving a foreign pension (see scheduled international social security agreements at section 1208).

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**Part 3.2** Pension Rate Calculator A

**Module B** Maximum basic rate

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Note 7: Clause 146 of Schedule 1A may affect the provisional annual payment rate in step 11.

*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**

*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**

<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 adjusted 6 monthly: see sections 1191 to 1198A.

## Module BA—Pension supplement

### *Pension supplement*

1064-BA1 A pension supplement amount is to be added to the person's maximum basic rate.

### *Residents in Australia etc.*

1064-BA2 If the person is residing in Australia and:

- (a) is in Australia; or
- (b) is temporarily absent from Australia and has been so for a continuous period not exceeding 6 weeks;

the person's pension supplement amount is:

- (c) if an election by the person under subsection 1061VA(1) is in force—the amount worked out under point 1064-BA4; and
- (d) otherwise—the amount worked out under point 1064-BA3.

### *Residents in Australia etc.—no election in force*

1064-BA3 The person's pension supplement amount is the amount worked out by:

- (a) applying the applicable percentage in the following table to the combined couple rate of pension supplement; and
- (b) if:
  - (i) the person is not partnered; and
  - (ii) the amount resulting from paragraph (a) is not a multiple of \$2.60;

rounding the amount up or down to the nearest multiple of \$2.60 (rounding up if the amount is not a multiple of \$2.60 but is a multiple of \$1.30).

<b>Item</b>	<b>Person's family situation</b>	<b>Use this %</b>
1	Not member of couple	66.33%
2	Partnered	50%
3	Member of illness separated couple	66.33%

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Item	Person's family situation	Use this %
4	Member of respite care couple	66.33%
5	Partnered (partner in gaol)	66.33%

Note: For *combined couple rate of pension supplement*, see subsection 20A(1).

*Residents in Australia etc.—election in force*

1064-BA4 The person's pension supplement amount is the amount worked out as follows:

- (a) work out the amount for the person under point 1064-BA3 as if the election were not in force;
- (b) from that amount, subtract the person's minimum pension supplement amount.

*Persons absent from Australia for more than 6 weeks*

1064-BA5 If the person is not covered by point 1064-BA2, the person's pension supplement amount is the person's pension supplement basic amount.

### Module C—Energy supplement

1064-C1 An energy supplement is to be added to the person's maximum basic rate if the person is residing in Australia and:

- (a) is in Australia; or
- (b) is temporarily absent from Australia and has been so for a continuous period not exceeding 6 weeks.

Note: Section 918 may affect the addition of the energy supplement.

1064-C2 However, this Module does not apply if quarterly energy supplement is payable to the person.

1064-C3 The person's energy supplement is the amount worked out using the following table:



<b>Energy supplement</b>		
<b>Item</b>	<b>Person's family situation</b>	<b>Amount of energy supplement</b>
1	Not a member of a couple	\$366.60
2	Partnered	\$275.60
3	Member of an illness separated couple	\$366.60
4	Member of a respite care couple	\$366.60
5	Partnered (partner in gaol)	\$366.60

## **Module E—Ordinary income test**

### *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 point 1064-E4 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 1064-E10 to 1064-E12 below.

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);
- the work bonus (section 1073AA);
- business income (sections 1074 and 1075);
- income from financial assets (including income streams (short term) and certain income streams (long term)) (Division 1B of Part 3.10);
- income from income streams not covered by Division 1B of Part 3.10 (Division 1C of Part 3.10);
- disposal of income (sections 1106 to 1111).

*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:

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- (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 or carer 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*

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.

**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
1.	Not member of a couple	\$2,080	\$80
2.	Partnered (partner getting neither pension nor benefit)	\$1,820	\$70
3.	Partnered (partner getting benefit)	\$1,820	\$70
4.	Partnered (partner getting pension)	\$1,820	\$70

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: 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).

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*Pension reduction for ordinary income in excess of ordinary income free area*

1064-E10 A person's reduction for ordinary income is:

Ordinary income excess  $\times$  0.5

*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.

**Module F—Ordinary income for the purposes of disability support pension**

*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.

*Lump sum payments arising from termination of employment*

1064-F2 Subject to points 1064-F4 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.

*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.

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*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.

*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-F4 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, but does not include:

- (a) an instalment of parental leave pay; or
- (b) dad and partner pay.

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**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 termination payment and is calculated as an amount equivalent to an amount of ordinary income that the person would (but for the termination) 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 termination 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 termination 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** includes a payment in lieu of notice.

**termination payment** includes:

- (a) a redundancy payment; and
- (b) a leave payment relating to a person's employment that has been terminated; and
- (c) any other payment that is connected with the termination of a person's employment.



## Module G—Assets test

### *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.

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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) and financial hardship (sections 1129 and 1130).

*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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**Table G-1—Assets value limit**

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Column 1	Column 2	Column 3	
		Assets value limit	
Item	Person's family situation	Column 3A Either person or partner homeowner	column 3B Neither person nor partner homeowner
1.	Not member of a couple	\$250,000	\$450,000
2.	Partnered (partner getting neither pension	\$187,500	\$287,500

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**Table G-1—Assets value limit**

Column 1	Column 2	Column 3	
Item	Person's family situation	<u>Assets value limit</u>	
		Column 3A	column 3B
		Either person or partner homeowner	Neither person nor partner homeowner
	nor benefit)		
3.	Partnered (partner getting pension or benefit)	\$187,500	\$287,500

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.

**Table G-2—Reduction for assets**

Column 1	Column 2	Column 3
Item	Person's family situation	Reduction
1.	Not member of a couple	$\frac{\text{Assets excess} \times 19.5}{250}$

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**Table G-2—Reduction for assets**

<b>Column 1 Item</b>	<b>Column 2 Person's family situation</b>	<b>Column 3 Reduction</b>
2.	Partnered (partner getting neither pension nor benefit)	$\frac{\text{Assets excess} \times 19.5}{250}$
3.	Partner (partner getting pension or benefit)	$\frac{\text{Assets excess} \times 19.5}{250}$

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 election by the person under subsection 1061VA(1) is in force; 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*

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.

**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: For *member of couple*, *partnered*, *illness separated couple*, *respite care couple* and *partnered (partner in gaol)* see section 4.

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*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 (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; and
  - (c) disability support pension payable to a person who:
    - (i) is permanently blind; and
    - (ii) has not turned 21; and
    - (iii) has one or more dependent children;

is 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: For *dependent child* see section 5.

- (3) Where:
- (a) a person who is permanently blind has a relationship with another person, whether of the same sex or a different sex (*other person*); and
  - (b) the relationship between them is a de facto 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;

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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).

*Rate limited for certain armed services widows and widowers*

- (6) If:

- (a) an armed services widow or an armed services widower is receiving the weekly amount mentioned in paragraph 234(1)(b) of the MRCA (including a reduced weekly amount because of a choice under section 236 of the MRCA) or has received a lump sum mentioned in subsection 236(5) of the MRCA; 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).

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*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 energy supplement (if any) 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

### *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.

<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 adjusted 6 monthly: see sections 1191 to 1198A.

## Module BA—Pension supplement

### *Pension supplement*

1065-BA1 A pension supplement amount is to be added to the person's maximum basic rate.

### *Residents in Australia etc.*

1065-BA2 If the person is residing in Australia and:

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- (a) is in Australia; or
  - (b) is temporarily absent from Australia and has been so for a continuous period not exceeding 6 weeks;
- the person's pension supplement amount is:
- (c) if an election by the person under subsection 1061VA(1) is in force—the amount worked out under point 1065-BA4; and
  - (d) otherwise—the amount worked out under point 1065-BA3.

*Residents in Australia etc.—no election in force*

- 1065-BA3 The person's pension supplement amount is the amount worked out by:
- (a) applying the applicable percentage in the following table to the combined couple rate of pension supplement; and
  - (b) if:
    - (i) the person is not partnered; and
    - (ii) the amount resulting from paragraph (a) is not a multiple of \$2.60;rounding the amount up or down to the nearest multiple of \$2.60 (rounding up if the amount is not a multiple of \$2.60 but is a multiple of \$1.30).

Item	Person's family situation	Use this %
1	Not member of couple	66.33%
2	Partnered	50%
3	Member of illness separated couple	66.33%
4	Member of respite care couple	66.33%
5	Partnered (partner in gaol)	66.33%

Note: For *combined couple rate of pension supplement*, see subsection 20A(1).

*Residents in Australia etc.—election in force*

- 1065-BA4 The person's pension supplement amount is the amount worked out as follows:
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- (a) work out the amount for the person under point 1065-BA3 as if the election were not in force;
- (b) from that amount, subtract the person's minimum pension supplement amount.

*Persons absent from Australia for more than 6 weeks*

1065-BA5 If the person is not covered by point 1065-BA2, the person's pension supplement amount is the person's pension supplement basic amount.

### **Module C—Energy supplement**

- 1065-C1 An energy supplement is to be added to the person's maximum basic rate if the person is residing in Australia and:
- (a) is in Australia; or
  - (b) is temporarily absent from Australia and has been so for a continuous period not exceeding 6 weeks.

Note: Section 918 may affect the addition of the energy supplement.

- 1065-C2 However, this Module does not apply if quarterly energy supplement is payable to the person.
- 1065-C3 The person's energy supplement is the amount worked out using the following table:

<b>Energy supplement</b>		
<b>Item</b>	<b>Person's family situation</b>	<b>Amount of energy supplement</b>
1	Not a member of a couple	\$366.60
2	Partnered	\$275.60
3	Member of an illness separated couple	\$366.60
4	Member of a respite care couple	\$366.60
5	Partnered (partner in gaol)	\$366.60

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## 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 election by the person under subsection 1061VA(1) is in force; 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.

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**Table E—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 E—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>
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.

*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

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(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 3.4A—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:
- (a) the person is permanently blind; or
  - (b) the person has one or more dependent children.

Note 1: The rate for a disability support pension payable to a person under 21 who is permanently blind is dealt with in section 1066B.

Note 2: For *dependent child* see section 5.

Note 3: The rate for a disability support pension payable to a person under 21 who has one or more dependent children is dealt with in section 1064 or 1065.

- (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 another person, whether of the same sex or a different sex (*other person*); and
  - (b) the relationship between them is a de facto 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));

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(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.

## **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 1A. Work out the energy supplement (if any) using Module BA 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, 1A, 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.

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

**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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(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: Section 1210 deals with the application of income and assets test reductions.

Note 3: The rate calculation for a member of a couple is affected by the operation of point 1066A-A2.

*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, 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**

*Maximum basic rate*

1066A-B1 A person's maximum basic rate is to be worked out using Table B. Work out the family situation. The maximum basic rate is the corresponding amount in column 3.

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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>
1	Not a member of a couple and person: (a) is under 18 years of age; and (b) is not independent; and	\$4,001.40	\$153.90

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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
	(c) is not living away from the person's parental home because of a medical condition of the person		
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	\$7,308.60	\$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	\$4,810.00	\$185.00

**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**

<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>
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	\$7,308.60	\$281.10
5	Partnered	\$7,308.60	\$281.10
6	Member of illness separated couple, member of respite care couple or partnered (partner in gaol)	\$7,308.60	\$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 *independent* see section 5.

Note 3: For *living away from the person's parental home* see subsection 23(4D).

Note 4: The rates in column 3 are adjusted annually in line with CPI changes (see section 1198B).

## Module BA—Energy supplement

1066A-BA1 An energy supplement is to be added to the person's maximum basic rate if the person is residing in Australia and:

- (a) is in Australia; or
- (b) is temporarily absent from Australia and has been so for a continuous period not exceeding 6 weeks.

However, this Module does not apply if quarterly energy supplement is payable to the person.

Note: Section 918 may affect the addition of the energy supplement.

1066A-BA2 The person's energy supplement is the amount worked out using the following table:

<b>Energy supplement</b>		
<b>Item</b>	<b>Person's family situation for maximum basic rate</b>	<b>Amount of energy supplement</b>
1	If the person's maximum basic rate is worked out under item 1 of the table in point 1066A-B1	\$153.40
2	If the person's maximum basic rate is worked out under item 2, 4, 5 or 6 of the table in point 1066A-B1	\$236.60
3	If the person's maximum basic rate is worked out under item 3 of the table in point 1066A-B1	\$171.60

## Module C—Youth disability supplement

### *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: The rate of youth disability supplement is adjusted annually in line with CPI increases (see section 1198C).

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## Module D—Pharmaceutical allowance

### *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 certain supplements under other Acts*

1066A-D2 Pharmaceutical allowance is not to be added to a person's maximum basic rate if the person is receiving:

- (a) veterans supplement under section 118A of the Veterans' Entitlements Act; or
- (b) MRCA supplement under section 300 of the Military Rehabilitation and Compensation Act; or
- (c) pharmaceutical supplement under Part 3A of the *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) Act 2006*; or
- (d) pharmaceutical supplement under Part 4 of the *Treatment Benefits (Special Access) Act 2019*.

### *No pharmaceutical allowance if partner receiving certain supplements under other Acts*

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:
  - (i) veterans supplement under section 118A of the Veterans' Entitlements Act; or
  - (ii) MRCA supplement under section 300 of the Military Rehabilitation and Compensation Act; or
  - (iii) pharmaceutical supplement under Part 3A of the *Australian Participants in British Nuclear Tests and*



*British Commonwealth Occupation Force (Treatment Act 2006); or*

- (iv) pharmaceutical supplement under Part 4 of the *Treatment Benefits (Special Access) Act 2019*; and
- (c) the person's partner is not receiving a service pension or a veteran payment.

*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 Part 2.23 of this 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.

*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

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5.	Partnered (partner getting service pension)	\$67.60	\$2.60
6.	Partnered (partner in gaol)	\$135.20	\$5.20

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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

### *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.

Step 2. Work out the person's ordinary income free area (see point 1066A-F3 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.

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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 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);
- income from financial assets (including income streams (short term) and certain income streams (long term)) (Division 1B of Part 3.10);
- income from income streams not covered by Division 1B of Part 3.10 (Division 1C of Part 3.10);
- disposal of income (sections 1106 to 1111).

*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

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(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.

<b>Table F-1—Ordinary income free area</b>			
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>
<b>Item</b>	<b>Category of person</b>	<b>Basic free area per year</b>	<b>Basic free area per fortnight</b>
1.	Not member of a couple	\$2,184	\$80
2.	Partnered (partner getting neither pension nor benefit)	\$1,924	\$70
3.	Partnered—(partner getting benefit)	\$1,924	\$70
4.	Partnered—(partner getting pension)	\$1,924	\$70

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: 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).

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*Pension reduction for ordinary income in excess of ordinary income free area*

1066A-F9 A person's reduction for ordinary income is:

Ordinary income excess  $\times$  0.5

*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.

**Module G—Payments taken to be ordinary income**

*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-G4 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.

*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.

*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.

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*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



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- (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-G4 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
- (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, but does not include:

- (a) an instalment of parental leave pay; or
- (b) dad and partner pay.

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**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 termination payment and is calculated as an amount equivalent to an amount of ordinary income that the person would (but for the termination) 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 termination 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 termination 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** includes a payment in lieu of notice.

**termination payment** includes:

- (a) a redundancy payment; and
- (b) a leave payment relating to a person's employment that has been terminated; and
- (c) any other payment that is connected with the termination of a person's employment.

## Module H—Assets test

### *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.

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Note 1: See point 1066A-A1 Steps 10 and 11 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) and financial hardship (sections 1129 and 1130).

*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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Column 1	Column 2	Column 3	
		Column 3A	Column 3B
Item	Person's family situation	Assets value limit Either person or partner homeowner	Assets value limit Neither person nor partner homeowner
1.	Not member of a couple	\$250,000	\$450,000
2.	Partnered (partner getting neither pension	\$187,500	\$287,500

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**Table H-1—Assets value limit**

Column 1 Item	Column 2 Person's family situation	Column 3 Assets value limit	
		Column 3A Either person or partner homeowner	Column 3B Neither person nor partner homeowner
	nor benefit)		
3.	Partnered (partner getting pension or benefit)	\$187,500	\$287,500

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 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.

**Table H-2—Reduction for assets**

Column 1 Item	Column 2 Person's family situation	Column 3 Reduction
1.	Not member of couple	$\frac{\text{Assets excess} \times 19.5}{250}$

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**Table H-2—Reduction for assets**

<b>Column 1 Item</b>	<b>Column 2 Person's family situation</b>	<b>Column 3 Reduction</b>
2.	Partnered (partner getting neither pension nor benefit)	$\frac{\text{Assets excess} \times 19.5}{250}$
3.	Partner (partner getting pension or benefit)	$\frac{\text{Assets excess} \times 19.5}{250}$

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.

## 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

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allowance has been paid to the person under Part 2.23 of this 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.

**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
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.

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*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.

*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 (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.

- (1A) Subsection (1) does not apply if the person has one or more dependent children.

Note 1: The rate for a disability support pension payable to a person under 21 who has one or more dependent children is dealt with in section 1065.

Note 2: For *dependent child* see section 5.

- (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 another person, whether of the same sex or a different sex (*other person*); and
- (b) the relationship between them is a de facto 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));

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(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 2A. Work out the energy supplement (if any) using Module BA 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, 2A, 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

### *Maximum basic rate*

1066B-B1 A person's maximum basic rate is to be worked out using Table B. Work out the family situation. 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**

<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 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	\$4,001.40	\$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	\$7,308.60	\$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
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	\$4,810.00	\$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	\$7,308.60	\$281.10
5	Partnered	\$7,308.60	\$281.10
6	Member of illness separated couple, member of respite care couple or partnered (partner in gaol)	\$7,308.60	\$281.10

Note 1: For *member of a couple, partnered, illness separated couple, respite care couple* and *partnered (partner in gaol)* see section 4.

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Note 2: For *independent* see section 5.

Note 3: For *living away from the person's parental home* see subsection 23(4D).

Note 4: The rates in column 3 are adjusted annually in line with CPI changes (see section 1198B).

## Module BA—Energy supplement

1066B-BA1 An energy supplement is to be added to the person's maximum basic rate if the person is residing in Australia and:

- (a) is in Australia; or
- (b) is temporarily absent from Australia and has been so for a continuous period not exceeding 6 weeks.

However, this Module does not apply if quarterly energy supplement is payable to the person.

Note: Section 918 may affect the addition of the energy supplement.

1066B-BA2 The person's energy supplement is the amount worked out using the following table:

<b>Energy supplement</b>		
<b>Item</b>	<b>Person's family situation for maximum basic rate</b>	<b>Amount of energy supplement</b>
1	If the person's maximum basic rate is worked out under item 1 of the table in point 1066B-B1	\$153.40
2	If the person's maximum basic rate is worked out under item 2, 4, 5 or 6 of the table in point 1066B-B1	\$236.60
3	If the person's maximum basic rate is worked out under item 3 of the table in point 1066B-B1	\$171.60

## **Module C—Youth disability supplement**

### *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**

### *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 certain supplements under other Acts*

1066B-D2 Pharmaceutical allowance is not to be added to a person's maximum basic rate if the person is receiving:

- (a) veterans supplement under section 118A of the Veterans' Entitlements Act; or
- (b) MRCA supplement under section 300 of the Military Rehabilitation and Compensation Act; or
- (c) pharmaceutical supplement under Part 3A of the *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) Act 2006*; or
- (d) pharmaceutical supplement under Part 4 of the *Treatment Benefits (Special Access) Act 2019*.

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*No pharmaceutical allowance if partner receiving certain supplements under other Acts*

- 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:
    - (i) veterans supplement under section 118A of the Veterans' Entitlements Act; or
    - (ii) MRCA supplement under section 300 of the Military Rehabilitation and Compensation Act; or
    - (iii) pharmaceutical supplement under Part 3A of the *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) Act 2006*; or
    - (iv) pharmaceutical supplement under Part 4 of the *Treatment Benefits (Special Access) Act 2019*; and
  - (c) the person's partner is not receiving a service pension or a veteran payment.

*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 Part 2.23 of this 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:

**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.

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*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

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allowance has been paid to the person under Part 2.23 of this 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*

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.

**Table F—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

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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*

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, 2.11B, 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.

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*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, 2.11B, 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 child, adoptive child or relationship child who is wholly or substantially dependent on the person or his or her partner; or
  - (b) the person previously had a natural child, adoptive child or relationship child who was wholly or substantially dependent on the person or on a person who, at the time, was the person's partner.

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*Person at least a certain age*

- (4) For the purposes of Parts 2.11 and 2.11B, this Part and section 1070G, a person is independent at a time in a period specified in an item of the table if at the time the person is at least the age specified in the item:

<b>Age when person becomes independent</b>		
<b>Item</b>	<b>Period</b>	<b>Age</b>
1	The period starting at the start of 1 April 2010 and ending at the end of 31 December 2010	24 years
2	The year 2011	23 years
3	A year after 2011	22 years

- (4A) For the purposes of Parts 3.4A, 3.4B and 3.7, except section 1070G, a person is independent if the person is at least 25 years old.

*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.

*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.

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*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



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- 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 on average 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) for the purposes of Parts 3.4A, 3.4B and 3.7, except section 1070G—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 a transitional Australian Pay and Classification Scale or modern award generally applicable to trainees; or
    - (ii) that maximum rate as varied or replaced from time to time by the Fair Work Commission;that applied at the start of the period of employment; or
  - (d) for the purposes of Parts 2.11 and 2.11B, this Part and section 1070G—a period or periods of employment over a 14 month period since the person last left secondary school, earning the person at least the equivalent of 75% of:

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- (i) the maximum rate of pay under Wage Level A of a transitional Australian Pay and Classification Scale or modern award generally applicable to trainees; or
  - (ii) that maximum rate as varied or replaced from time to time by the Fair Work Commission;
- that applied at the start of the period of employment.
- (10A) For the purposes of determining whether a person is to be regarded as independent for the purposes of Part 2.11 or 2.11B, this Part or section 1070G:
- (a) paragraph (10)(b) does not apply unless subsection (10E) applies to the person because of paragraph (10E)(d); and
  - (b) paragraph (10)(d) does not apply unless subsection (10E) applies to the person because of paragraph (10E)(e).
- (10E) This subsection applies to a person if:
- (a) the person's family home is:
    - (i) in a location categorised under the Remoteness Structure as Inner Regional Australia, Outer Regional Australia, Remote Australia or Very Remote Australia; or
    - (ii) on Norfolk Island; and
  - (b) the person is required to live away from home (see section 1067D); and
  - (c) the person is undertaking full-time study (see section 541B); and
  - (d) in relation to paragraph (10)(b)—the person's combined parental income (as defined in point 1067G-F10) for:
    - (i) the last tax year that ended before the start of the 2 years referred to in that paragraph; or
    - (ii) the appropriate tax year worked out under Submodule 3 of Module F of the Youth Allowance Rate Calculator in section 1067G;
- is less than the threshold amount (see subsection (10K)) for the person for that tax year; and

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- (e) in relation to paragraph (10)(d)—the person’s combined parental income (as defined in point 1067G-F10) for:
  - (i) the last tax year that ended before the start of the 14-month period referred to in that paragraph; or
  - (ii) the appropriate tax year worked out under Submodule 3 of Module F of the Youth Allowance Rate Calculator in section 1067G;is less than the threshold amount (see subsection (10K)) for the person for that tax year.
- (10F) For the purposes of paragraph (10E)(a), **Remoteness Structure** means the Remoteness Structure described in:
  - (a) the document titled “Australian Statistical Geography Standard (ASGS): Volume 5 - Remoteness Structure, July 2011”, published by the Australian Statistician and as amended from time to time; or
  - (b) any replacement document that is published by the Australian Statistician and that is in effect in accordance with subsection (10G); or
  - (c) any document that is determined by the Secretary in an instrument under subsection (10H) and that is in effect in accordance with subsection (10J).
- (10G) If a replacement document mentioned in paragraph (10F)(b) is published by the Australian Statistician:
  - (a) the replacement document takes effect on the first 1 January or 1 July to occur after the day of that publication and then has effect as amended from time to time; and
  - (b) the document in effect immediately before that publication is taken to continue to have effect until the end of the day before that 1 January or 1 July.
- (10H) The Secretary may, by notifiable instrument, determine a document for the purposes of paragraph (10F)(c). The Secretary may do so only if the Australian Statistician has notified the Secretary that the Australian Statistician will no longer be publishing replacement documents mentioned in paragraph (10F)(b).

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- (10J) A document determined in an instrument under subsection (10H) takes effect on the day specified in the determination and then has effect as amended from time to time.
- (10K) For the purposes of paragraphs (10E)(d) and (e) and (14)(d), the **threshold amount** for the person (the **primary person**) for a tax year is the sum of the following:
- (a) \$160,000;
  - (b) \$10,000 for each person who is a related person (see subsection (10L)) of the primary person on:
    - (i) subject to subparagraph (ii)—30 June of that tax year; or
    - (ii) if that tax year is the tax year following the base tax year because of point 1067G-F7 or 1067G-F8—the day the request was made.
- (10L) For the purposes of paragraph (10K)(b), a person (the **first person**) is a **related person** of the primary person on a day if on that day:
- (a) the first person is aged under 22; and
  - (b) a parent of the first person is also a parent of the primary person; and
  - (c) none of the following applies to the first person:
    - (i) the first person is living away from the home of each parent covered by paragraph (b) and the first person is a member of a YA couple under subsection 1067C(1);
    - (ii) the first person is living away from the home of each parent covered by paragraph (b) and the first person has a natural child, adoptive child or relationship child who is wholly or substantially dependent on the first person or the first person's partner (if any);
    - (iii) the first person is receiving youth allowance or disability support pension and the first person is independent under subsection (9);
    - (iv) the first person is in State care.

Note: For **parent**, see paragraph (b) of the definition of **parent** in subsection 5(1).

*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).

*Parents of relationship children*

- (13) If a person (other than a person who is an adopted child) is a relationship child of another person because he or she is a child of the other person, and of a third person, within the meaning of the *Family Law Act 1975*, the other person and the third person are taken to be the person's only parents for the purposes of subsections (5), (6), (7), (8), (9) and (11).

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*Agricultural work*

- (14) A person is independent if:
- (a) paragraph 541(1)(a) (about full time study) applies in relation to the person; and
  - (b) the person undertook qualifying agricultural work between 30 November 2020 and 31 December 2021; and
  - (c) the gross earnings of the person for that work are at least \$15,000; and
  - (d) the person's combined parental income (as defined in point 1067G-F10) for the 2019-2020 tax year or 2018-2019 tax year is less than the threshold amount (see subsection (10K)) for the person for that tax year.
- (15) For the purposes of this section, **qualifying agricultural work** is work of a kind determined in an instrument under subsection (16).
- (16) The Secretary of the Department administered by the Minister administering the *Social Security (International Agreements) Act 1999* may, by legislative instrument, determine kinds of work for the purposes of subsection (15).

**1067B Accommodated independent person**

- (1) A person is taken to be an **accommodated independent person** for the purposes of Part 2.11B and 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 child, adoptive child or relationship child who is wholly or substantially dependent on the person or his or her partner; and
  - (e) has never had a natural child, adoptive child or relationship child who was wholly or substantially dependent on the person or on a person who, at the time, was the person's partner; and

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- (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).

- (2) If a person (other than a person who is an adopted child) is a relationship child of another person because he or she is a child of the other person, and of a third person, within the meaning of the *Family Law Act 1975*, the other person and the third person are taken to be the person's only parents for the purposes of paragraph (1)(b).

### 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
  - (aa) both of the following conditions are met:
    - (i) a relationship between the person and another person (whether of the same sex or a different sex) is registered under a law of a State or Territory prescribed for the purposes of section 2E of the *Acts Interpretation Act 1901* as a kind of relationship prescribed for the purposes of that section;
    - (ii) the person is not, in the Secretary's opinion (formed as mentioned in subsection (3)), living separately and apart

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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 another person, whether of the same sex or a different 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 de facto relationship;
  - (v) if, at the time the relationship became a de facto 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 de facto 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.

*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
  - (aa) both of the following conditions are met:



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- (i) a relationship between the person and another person (whether of the same sex or a different sex) was registered under a law of a State or Territory prescribed for the purposes of section 2E of the *Acts Interpretation Act 1901* as a kind of relationship prescribed for the purposes of that section (whether or not the relationship is still registered);
  - (ii) the person 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 the relationship was registered; or
- (b) all of the following conditions are met:
- (i) the person had a relationship with another person, whether of the same sex or a different 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 de facto relationship;
  - (v) if, at the time the relationship became a de facto 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 de facto 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.
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*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)(aa)(ii), subparagraph (1)(b)(iv), paragraph (2)(a), subparagraph (2)(aa)(ii) 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 de facto 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.

**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 Part 2.11B and this Part if, and only if:
- (a) the person is not independent; and
  - (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

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- (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).

*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.

*Parents of relationship children*

- (4) If a person (other than a person who is an adopted child) is a relationship child of another person because he or she is a child of the other person, and of a third person, within the meaning of the *Family Law Act 1975*, the other person and the third person are taken to be the person's only parents for the purposes of paragraph (1)(b).

### **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.

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**1067F Long term income support student**

- (1) A person is a *long term income support student* if the person:
- (a) is at least 22 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 22; or
    - (ii) a new apprentice and became a new apprentice after turning 22; 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) jobseeker payment;
    - (iii) youth allowance (disregarding youth allowance received while the person was undertaking full-time study);
    - (iv) special benefit;
    - (v) disability support pension;
    - (vii) carer payment;
    - (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 22 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 (whether the persons are the same sex or different sexes); 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

#### *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 1A. Work out the energy supplement (if any) using Module BA below.

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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, work out the person's **reduction for parental income** using Module E.

Step 12. Apply the income test using Module H below to work out the person's income reduction.

Step 13. Take away from the maximum payment rate the greatest of the following that apply:

(a) the person's reduction for parental income;

(c) the person's income reduction.

(If a reduction described in paragraph (a) applies, and is not less than any other reduction that applies, take away from the maximum payment rate the first-mentioned reduction.) The result is the **provisional fortnightly payment rate**. If that rate is nil because of the taking away of a reduction described in paragraph (a) then youth allowance is not payable to the person.

Note: If a person's maximum payment rate is reduced under this step, section 1210 sets the order in which the components of that rate are to be reduced.

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**

### *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).

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*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.

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**Table BA—Maximum basic rates (people who are not independent)**

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<b>Column 1 Item</b>	<b>Column 2 Person's situation</b>	<b>Column 3 Rate</b>
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

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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:

- (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.

<b>Table BB—Maximum basic rates (people who are independent)</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	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

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

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- (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:

- (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:

$$\frac{\text{Pension PP (Single) maximum basic amount}}{26}$$

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: 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).

***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).

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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 to 1194).

### Module BA—Energy supplement

1067G-BA1 An energy supplement is to be added to the person's (the *recipient's*) maximum basic rate if the recipient is residing in Australia and:

- (a) is in Australia; or
- (b) is temporarily absent from Australia and has been so for a continuous period not exceeding 6 weeks.

However, this Module does not apply if quarterly energy supplement is payable to the recipient.

Note: Section 918 may affect the addition of the energy supplement.

*General case—recipient not covered by point 1067G-B3A and youth disability supplement not added*

1067G-BA2 The recipient's energy supplement is the amount worked out using the following table if:

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- (a) the recipient is not covered by point 1067G-B3A; and  
 (b) an amount of youth disability supplement is not added under Module D to the recipient's rate.

<b>Energy supplement</b>		
<b>Item</b>	<b>Recipient's family situation for maximum basic rate</b>	<b>Amount of energy supplement</b>
1	If the recipient's maximum basic rate is worked out under item 1 of the table in point 1067G-B2	\$3.90
2	If the recipient's maximum basic rate is worked out under item 2 of the table in point 1067G-B2	\$4.60
3	If the recipient's maximum basic rate is worked out under item 3 of the table in point 1067G-B2	\$7.00
4	If the recipient's maximum basic rate is worked out under item 1 or 3 of the table in point 1067G-B3	\$3.90
5	If the recipient's maximum basic rate is worked out under item 2 or 4 of the table in point 1067G-B3	\$4.60
6	If the recipient's maximum basic rate is worked out under item 5 of the table in point 1067G-B3	\$7.00
7	If the recipient's maximum basic rate is worked out under item 6 of the table in point 1067G-B3	\$9.20
8	If the recipient's maximum basic rate is worked out under item 7 of the table in point 1067G-B3	\$7.70
9	If the recipient's maximum basic rate is worked out under item 8 of the table in point 1067G-B3	\$7.00

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<b>Energy supplement</b>		
<b>Item</b>	<b>Recipient's family situation for maximum basic rate</b>	<b>Amount of energy supplement</b>
10	If the recipient's maximum basic rate is worked out under item 1 or 3 of the table in point 1067G-B4	\$5.70
11	If the recipient's maximum basic rate is worked out under item 2 or 4 of the table in point 1067G-B4	\$8.60
12	If the recipient's maximum basic rate is worked out under item 5 of the table in point 1067G-B4	\$7.70

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*Recipient covered by point 1067G-B3A*

1067G-BA3 If the recipient is covered by point 1067G-B3A, the recipient's energy supplement is \$12.00.

*Youth disability supplement added to the recipient's rate*

1067G-BA4 If an amount of youth disability supplement is added under Module D to the recipient's rate, the recipient's energy supplement is the amount worked out using the following table:

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<b>Energy supplement</b>		
<b>Item</b>	<b>Recipient's family situation for maximum basic rate</b>	<b>Amount of energy supplement</b>
1	If the recipient's maximum basic rate is worked out under item 1 of the table in point 1067G-B2	\$5.90
2	If the recipient's maximum basic rate is worked out under item 2 of the table in point 1067G-B2	\$6.60
3	If the recipient's maximum basic rate is worked out under item 3 of the table in point 1067G-B2	\$8.50

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<b>Energy supplement</b>		
<b>Item</b>	<b>Recipient's family situation for maximum basic rate</b>	<b>Amount of energy supplement</b>
4	If the recipient's maximum basic rate is worked out under item 1 or 3 of the table in point 1067G-B3	\$5.90
5	If the recipient's maximum basic rate is worked out under item 2 or 4 of the table in point 1067G-B3	\$6.60
6	If the recipient is a member of a couple and the recipient's maximum basic rate is worked out under item 5 or 8 of the table in point 1067G-B3	\$7.70
6A	If the recipient is not a member of a couple and the recipient's maximum basic rate is worked out under item 5 or 8 of the table in point 1067G-B3	\$8.50
7	If the recipient's maximum basic rate is worked out under item 6 of the table in point 1067G-B3	\$9.20
8	If the recipient's maximum basic rate is worked out under item 7 of the table in point 1067G-B3	\$7.70

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## **Module C—Pharmaceutical allowance**

### *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.

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Note 2: For *principal carer* see subsections 5(15) to (24).

*No pharmaceutical allowance if partner receiving certain supplements under other Acts*

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:
  - (i) veterans supplement under section 118A of the Veterans' Entitlements Act; or
  - (ii) MRCA supplement under section 300 of the Military Rehabilitation and Compensation Act; or
  - (iii) pharmaceutical supplement under Part 3A of the *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) Act 2006*; or
  - (iv) pharmaceutical supplement under Part 4 of the *Treatment Benefits (Special Access) Act 2019*; and
- (c) the person's partner is not receiving a service pension or a veteran payment.

*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:

<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
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 22;

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:

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- (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 jobseeker payment 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 E—Person's reduction for parental income

*Person's reduction for parental income*

1067G-E1 This is how to work out the person's *reduction for parental income* for the purposes of the method statement in point 1067G-A1.

*Method statement*

Step 1. Work out the *MIT reducible amount* by subtracting the base FTB child rate in point 1067G-E2 from the maximum FTB child rate in point 1067G-E3 and then multiplying the result by:

$$\frac{14}{365}$$

Step 2. Apply the parental income test in Module F to work out the parental income test result for the person.

- Step 3. If the parental income test result is equal to or more than the MIT reducible amount, the person's ***reduction for parental income*** is the parental income test result.
- Step 4. If the parental income test result is less than the person's MIT reducible amount, apply the maintenance income test in Module GA to work out the maintenance income test result for the person.
- Step 5. Add the parental income test result to the maintenance income test result to get the person's ***notional reduction***.
- Step 6. If the notional reduction is less than or equal to the MIT reducible amount, the person's ***reduction for parental income*** is the notional reduction.
- Step 7. If the notional reduction is more than the MIT reducible amount, the person's ***reduction for parental income*** is the MIT reducible amount.

*Base FTB child rate*

1067G-E2 The ***base FTB child rate*** is the amount that would be the base FTB child rate within the meaning of the Family Assistance Act, if the person were an FTB child of a parent of the person.

*Maximum FTB child rate*

1067G-E3 The ***maximum FTB child rate*** is the amount specified for item 2 in column 2 of the table in clause 7 of Schedule 1 to the Family Assistance Act.

Note: The amount is indexed under Schedule 4 of the Family Assistance Act.

## Module F—Parental income test

### Submodule 1—Parental income test result

#### *Parental income test result*

1067G-F1 This is how to work out the parental income test result for a person for the purposes of the method statement in point 1067G-E1.

#### *Method statement*

- Step 1. Work out whether the person is exempt from the parental income test using Submodule 2. If the person is exempt, go to step 5.
- Step 2. If the person is not exempt, 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:
  - (a) the person's combined parental income does not exceed the person's parental income free area; or
  - (b) the person is exempt from the parental income test;then the ***parental income test result*** for the person is nil.
- Step 6. If the person's combined parental income exceeds the person's parental income free area, then the ***parental income test result*** for the person is the amount worked out using Submodule 6.

## Submodule 2—Exemption from parental income test

### *Parent receiving Commonwealth benefit*

1067G-F3 A person is exempt from the parental income test while a parent of the person:

- (a) is receiving a payment of pension, benefit, allowance or compensation referred to in Module L; or
- (c) is receiving a payment under the ABSTUDY Scheme.

## 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).

### *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;

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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, disregarding each parent's assessable FHSS released amount (within the meaning of the *Income Tax Assessment Act 1997*) 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;
- (da) the parent's tax free pensions or benefits for that year (worked out in accordance with clause 7 of Schedule 3 to the Family Assistance Act);

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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 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:

Section 57A employer  
fringe benefits total + Other employer  
fringe benefits total

where:

**other employer fringe benefits total** is the amount that is the sum of the following:

- (a) each of the parent's reportable fringe benefits amounts for the tax year under section 135P of the *Fringe Benefits Tax Assessment Act 1986*;  
(b) each of the parent's reportable fringe benefits amounts for the tax year under section 135Q of the *Fringe Benefits Tax Assessment Act 1986*, to the extent that section relates to the parent's employment by an employer described in section 58 of that Act.

**section 57A employer fringe benefits total** is the amount that is the sum of each of the parent's individual quasi-fringe benefits amounts for the tax year under section 135Q of the *Fringe Benefits Tax Assessment Act 1986*, to the extent that section relates to the



parent's employment by an employer described in section 57A of that Act.

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.

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*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.

*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.

**Submodule 5—Parental income free area**

*Parental income free area*

1067G-F22 For the purposes of this Module, a person's **parental income free area** for a time in a calendar year is an amount equal to the income free area under clause 38N of Schedule 1 to the *A New Tax System (Family Assistance) Act 1999*, as affected by indexation under Schedule 4 to that Act, on 1 January in the calendar year.

Note: The parental income free area is not indexed under this Act because it is affected by indexation under the *A New Tax System (Family Assistance) Act 1999*.

### **Submodule 6—If person’s combined parental income exceeds parental income free area**

#### *Having parental income in common*

- 1067G-F26 For the purposes of this Submodule, 2 or more persons have parental income in common if:
- (a) the parental income test applies to each of them; and
  - (b) a parent of one of the persons is also a parent of each of the other persons.

Note: See also points 1067G-F30 and 1067G-F31, which extend the situations in which a person will have parental income in common with other persons.

#### *Person who does not have parental income in common with anyone else*

- 1067G-F27 Work out a person’s parental income test result using the following formula and point 1067G-F29 if:
- (a) the person does not have parental income in common with anyone else; and
  - (b) the person’s combined parental income (see Submodule 4) for the appropriate tax year exceeds the person’s parental income free area (see Submodule 5):

The excess  
130

Note: Dividing by 130 is equivalent to dividing by 26 (for 26 fortnights in a year) and dividing again by 5 (so that the parental income test result is only 20 cents for each dollar of the excess).

#### *Person who has parental income in common with someone else*

- 1067G-F28 Work out a person’s parental income test result using the following formula and point 1067G-F29 if:
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- (a) the person has parental income in common with one or more other persons; and
- (b) the person's combined parental income (see Submodule 4) for the appropriate tax year exceeds the person's parental income free area (see Submodule 5):

$$\frac{\text{The excess}}{130} \times \frac{\text{Person's maximum payment rate under Module A}}{\text{Total of maximum payment rate of each person who has parental income in common}}$$

Note: Dividing by 130 is equivalent to dividing by 26 (for 26 fortnights in a year) and dividing again by 5.

*Rounding the parental income test result*

1067G-F29 If the result of the formula in whichever of points 1067G-F27 and 1067G-F28 applies is not a multiple of 10 cents, round the result to the nearest 10 cents (rounding a multiple of 5 cents upwards).

*Extension to recipients under ABSTUDY or Assistance for Isolated Children Scheme*

1067G-F30 This Submodule applies in relation to a person in respect of whom a payment is made under the ABSTUDY Scheme or the Assistance for Isolated Children Scheme and to whom a parental income test under that scheme applies as if:

- (a) the parental income test under this Module applied to the person; and
- (b) the total of the amounts described in the following table as relevant to the person were the maximum payment rate for the person for the purposes of this Submodule.

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**Amounts included in total treated as maximum payment rate**

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<b>Item</b>	<b>If this allowance is being paid in respect of the person</b>	<b>This amount is relevant to the person</b>
1	Living allowance under the ABSTUDY Scheme	The person's maximum payment rate of the living allowance
2	Group 2 school fees allowance	$\frac{1}{26}$ of the school fees allowance

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**Amounts included in total treated as maximum payment rate**

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<b>Item</b>	<b>If this allowance is being paid in respect of the person</b>	<b>This amount is relevant to the person</b>
	under the ABSTUDY Scheme	amount subject to income testing
3	Additional boarding allowance under the Assistance for Isolated Children Scheme	$\frac{1}{26}$ of the maximum rate of the additional boarding allowance

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Note: This Submodule does not (of its own force) affect the amount payable to the person under the ABSTUDY Scheme or the Assistance for Isolated Children Scheme.

*Extension to FTB children and regular care children*

1067G-F31 In working out a person's (the **recipient's**) parental income test result for the purposes of this Module:

- (a) an FTB child, or a regular care child, of someone who is a parent of the recipient is taken to be a person (a **relevant sibling**) who has parental income in common with the recipient; and
- (b) in using the formula in point 1067G-F28 for the recipient, the maximum payment rate for relevant siblings is  $\frac{14}{365}$  of the amount worked out under point 1067G-F32.

Note: For **FTB child** and **regular care child**, see section 23.

1067G-F32 For the purposes of paragraph 1067G-F31(b), the amount worked out under this point is the amount that would, at the time the recipient's rate of youth allowance is worked out, be the parent's maximum rate:

- (a) under step 1 of the method statement in clause 3 of Schedule 1 to the Family Assistance Act (having regard only to clauses 7 and 11 for the purposes of paragraph (a) of that step); or
- (b) if the only relevant sibling is a regular care child—under step 1 of the method statement in clause 28A of Schedule 1 to the Family Assistance Act.

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1067G-F33 In working out the parent's maximum rate for the purposes of point 1067G-F32:

- (a) assume that the parent has made a claim for payment of family tax benefit by instalment in accordance with the Family Assistance Administration Act; and
- (b) assume that the parent has not made an election under subsection 58A(1) of the Family Assistance Act; and
- (c) make any other assumption that the Minister, by legislative instrument, specifies.

1067G-F34 Work out the amount under point 1067G-F32 for one parent only.

1067G-F35 Count the amount worked out under point 1067G-F32 once only in using the formula in point 1067G-F28 for a recipient, regardless of how many relevant siblings the recipient has.

## Module GA—Maintenance income test

### Submodule 1—Maintenance income test result

#### *Maintenance income test result*

1067G-GA1 This is how to work out the maintenance income test result for a person for the purposes of the method statement in point 1067G-E1.

#### *Method statement*

- Step 1. Work out whether the person is exempt from the maintenance income test using Submodule 2. If the person is exempt, go to step 5.
- Step 2. If the person is not exempt, work out the annualised amount of maintenance income for a parent of the person (the *parent's maintenance income*) using Submodule 3.
- Step 3. Work out the parent's maintenance income free area using Submodule 4.

- Step 4. Work out whether the parent's maintenance income exceeds the parent's maintenance income free area.
- Step 5. If:
- (a) the parent's maintenance income does not exceed the parent's maintenance income free area; or
  - (b) the person is exempt from the maintenance income test;
- then the ***maintenance income test result*** for the person is nil.
- Step 6. If the parent's maintenance income exceeds the parent's maintenance income free area, multiply the excess by 0.5. The result, divided by 26, is the ***maintenance income test result*** for the person.

### **Submodule 2—Exemption from maintenance income test**

#### *Parent exempt from FTB maintenance income test*

1067G-GA2 A person is exempt from the maintenance income test if paragraphs 19B(a) and (b) of Schedule 1 to the Family Assistance Act apply to the person's parent or to the parent's partner.

### **Submodule 3—Annualised amount of maintenance income for parent of a person**

#### *Annualised amount of maintenance income*

1067G-GA3 Work out the annualised amount of maintenance income for a parent of the person as if step 1 of the method statement in clause 20 of Schedule 1 to the Family Assistance Act applied. In doing so:

- (a) assume that the person is an FTB child of the parent; and

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- (b) assume that paragraphs (a), (b), (c) and (d) are not in the step; and
- (c) only take into account maintenance income received in relation to the person; and
- (d) in working out whether maintenance income is received in relation to the person, have regard to the considerations that would apply under the Family Assistance Act; and
- (e) have regard to maintenance income for the income year in respect of which the person's rate of youth allowance is being worked out.

### Submodule 4—Maintenance income free area

*Main rule*

1067G-GA4 The ***maintenance income free area*** for a parent of a person is:

- (a) the column 2 amount (see point 1067G-GA7); or
- (b) if another point in this Submodule applies—the amount worked out in the point.

*If there are other siblings including an FTB child*

1067G-GA5 This point applies if the parent of the person is also the parent of:

- (a) an FTB child in relation to whom the parent receives maintenance income; or
- (b) both:
  - (i) an FTB child in relation to whom the parent receives maintenance income; and
  - (ii) another person who is receiving youth allowance and in relation to whom the parent receives maintenance income.

The ***maintenance income free area*** for the parent is the column 3 amount (see point 1067G-GA7).

*If there are other siblings but no FTB child*

1067G-GA6 This point applies if the parent of the person:

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- (a) is also the parent of another person (an *other recipient*) who is receiving youth allowance and in relation to whom the parent receives maintenance income; and
- (b) is not the parent of an FTB child in relation to whom the parent receives maintenance income.

The *maintenance income free area* for the parent is worked out using this formula:

$$\frac{\text{Column 2 amount} + \text{Column 3 amount for each other recipient}}{1 + \text{Number of other recipients}}$$

*Definitions of column 2 amount and column 3 amount*

1067G-GA7 In this Submodule:

**column 2 amount** means the amount specified for item 1 in column 2 of the table in clause 22 of Schedule 1 to the Family Assistance Act.

**column 3 amount** means the amount specified for item 1 in column 3 of the table in clause 22 of Schedule 1 to the Family Assistance Act.

Note: The amounts are indexed under Schedule 4 of the Family Assistance Act.

*Receiving maintenance income in relation to a person*

1067G-GA8 In working out whether a parent of a person receives maintenance income in relation to an FTB child or other person, have regard to the considerations that would apply under the Family Assistance Act.

## **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:

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*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);
  - (c) income from financial assets (including income streams (short term) and certain income streams (long term)) (Division 1B of Part 3.10);
  - (d) income from income streams not covered by Division 1B of Part 3.10 (Division 1C of Part 3.10);
  - (e) disposal of income (sections 1106 to 1111).

*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 veteran payment, 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-H11 to 1067G-H20 (inclusive), if:
- (a) a person's employment has been terminated; and

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(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
- (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.

*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.

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*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.

*Exception to points 1067G-H11 and 1067G-H12*

1067G-H12A Point 1067G-H11 or 1067G-H12 does not apply in relation to a person's entitlement referred to in paragraph 1067G-H11(c) or in relation to a person's termination payment referred to in paragraph 1067G-H12(b) if:

- (a) the person makes a claim for youth allowance on or after the commencement of this point; and
- (b) the person makes the claim after the death of the person's partner on or after the commencement of this point; and
- (c) if the person is a man or a woman who was not pregnant when her partner died—the person makes the claim in the period of 14 weeks starting on the day of the death of the partner; and
- (d) if the person is a woman who was pregnant when her partner died—the person makes the claim:
  - (i) in the period of 14 weeks starting on the day of the death of the partner; or
  - (ii) in the period starting on the day of the death of the partner and ending when the child is born or the woman otherwise stops being pregnant;whichever ends later; and
- (e) the entitlement referred to in paragraph 1067G-H11(c) arose, or the termination payment referred to in paragraph 1067G-H12(b) was paid, in the period applicable under paragraph (c) or (d) of this point.

*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 termination payment and is calculated as an amount equivalent to an amount of ordinary income that the person would (but for the termination) 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 termination 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 termination payment if:
  - (i) the person's employment had continued; and

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- (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* includes a payment in lieu of notice.

*termination payment* includes:

- (a) a redundancy payment; and
- (b) a leave payment relating to a person's employment that has been terminated; and
- (c) any other payment that is connected with the termination of a person's employment.

*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, but does not include:

- (a) an instalment of parental leave pay; or
- (b) dad and partner pay.

*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 a parent, child, brother or sister of the person.

*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

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(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-H11 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
- (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 22—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 22—the amount of income of the partner (rounded up to the nearest dollar) beyond which jobseeker payment would not be payable to the partner if the partner were qualified for a jobseeker payment; 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.

1067G-H26A For the purposes of paragraph 1067G-H26(a), disregard steps 2, 2A and 3 of the method statement in point 1067G-A1.

1067G-H26B For the purposes of paragraph 1067G-H26(b), disregard steps 2 and 3 of the method statement in point 1068-A1.

*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, a service pension, income support supplement or a veteran payment; 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

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- (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:

$$60\% \times \$160 = \$96$$

*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—\$400; 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—\$400; or
- (b) otherwise—\$143.

*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—\$107.

*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:

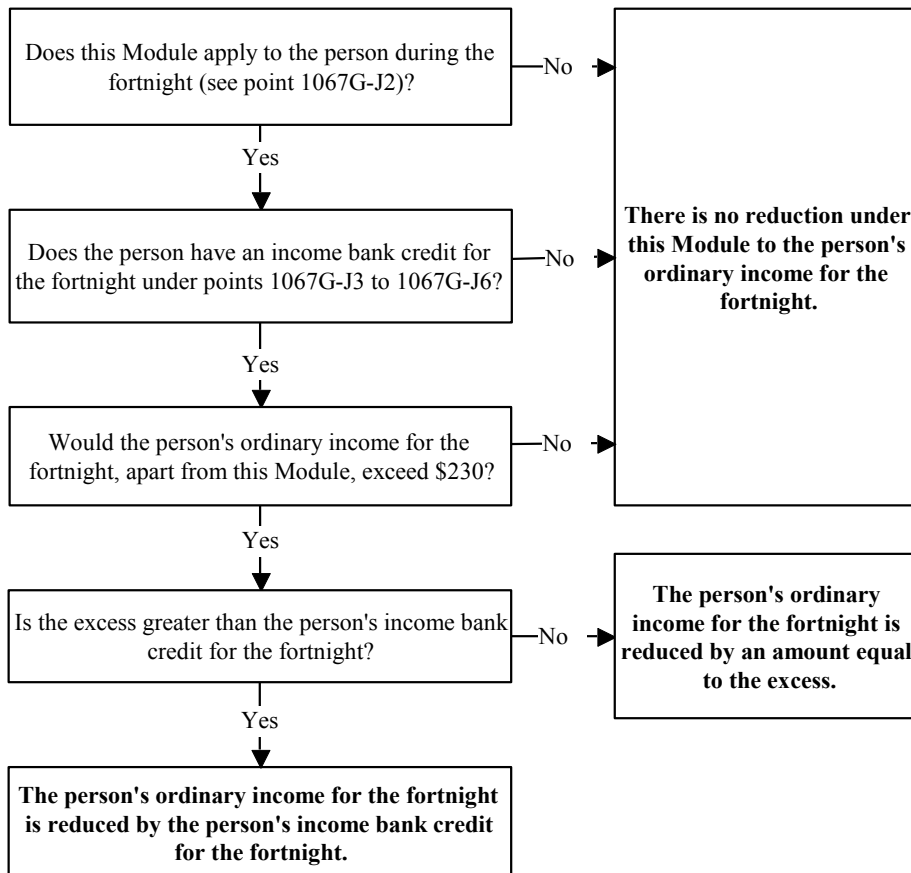
- (a) if the person is undertaking full-time study at any time in the fortnight in respect of which a youth allowance may be payable—\$80; or
- (b) if the person is a new apprentice at any time in the fortnight in respect of which a youth allowance may be payable—\$80; or
- (c) otherwise—\$107.

## 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.





*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 \$10,000; or

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- (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 the ordinary income free area (see paragraph 1067G-H29(a) or (aa)):

- (a) the person has an income credit for that fortnight; and
- (b) the income credit is an amount equal to the difference between the ordinary income free area (see paragraph 1067G-H29(a) or (aa)) 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 the ordinary income free area (see paragraph 1067G-H29(a) or (aa)):

- (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 the ordinary income free area (see paragraph 1067G-H29(a) or (aa)).

*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.

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*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

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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
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.

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*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) or subsection 236(5) of the Military Rehabilitation and Compensation Act)
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)
7B	Veteran payment	(section 45SB of the Veterans' Entitlements Act)
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)
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	(Paragraph 234(1)(b) or

**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>	
	widow who has a dependent child	subsection 236(5) of the Military Rehabilitation and Compensation Act)
22	Wife's service pension—if husband is receiving an invalidity service pension	(Section 40 of the Veterans' Entitlements Act)
23	Jobseeker payment	(Part 2.12)
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

- (1) 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*).

- (2) If a person (other than a person who is an adopted child) is a relationship child of another person because he or she is a child of the other person, and of a third person, within the meaning of the *Family Law Act 1975*, the other person and the third person are taken to be the person's only parents for the purposes of subsection (1).

### 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

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- (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) jobseeker payment;
  - (iii) special benefit;
  - (iv) disability support pension;
  - (vi) carer payment;
  - (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 (whether the persons are the same sex or different sexes); and

(b) the other person is 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 1A. Work out the pension supplement amount (if any) using Module BA below.
- Step 1B. Work out the energy supplement (if any) using Module BB 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, 1A, 1B, 2 and 2A: the result is the ***maximum payment rate***.

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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.

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**

### *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:

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- (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).

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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 BB—Maximum basic rates (persons who are 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	Is a member of a couple	\$308.70
2	Is not a member of a couple	\$341.40

## Module BA—Pension supplement

### *Pension supplement*

1067L-BA1 A pension supplement amount is to be added to the person's maximum basic rate if the person is residing in Australia, has reached pension age and:

- (a) is in Australia; or
- (b) is temporarily absent from Australia and has been so for a continuous period not exceeding 6 weeks.

1067L-BA2 The person's pension supplement amount is:

- (a) if an election by the person under subsection 1061VA(1) is in force—the amount worked out under point 1067L-BA4; and
- (b) otherwise—the amount worked out under point 1067L-BA3.

### *Amount if no election in force*

1067L-BA3 The person's pension supplement amount is the amount worked out by:

- (a) applying the applicable percentage in the following table to the combined couple rate of pension supplement; and
- (b) dividing the result by 26; and
- (c) if:
  - (i) the person is not partnered; and



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- (ii) the amount resulting from paragraph (b) is not a multiple of 10 cents;  
rounding the amount up or down to the nearest multiple of 10 cents (rounding up if the amount is not a multiple of 10 cents but is a multiple of 5 cents).

<b>Item</b>	<b>Person's family situation</b>	<b>Use this %</b>
1	Not member of couple	66.33%
2	Partnered	50%
3	Member of illness separated couple	66.33%
4	Member of respite care couple	66.33%
5	Partnered (partner in gaol)	66.33%

Note: For *combined couple rate of pension supplement*, see subsection 20A(1).

*Amount if election in force*

- 1067L-BA4 The person's pension supplement amount is the amount worked out as follows:
- (a) work out the amount for the person under point 1067L-BA3 as if the election were not in force;
  - (b) from that amount, subtract  $\frac{1}{26}$  of the person's minimum pension supplement amount.

## **Module BB—Energy supplement**

1067L-BB1 An energy supplement is to be added to the person's (the *recipient's*) maximum basic rate if the recipient is residing in Australia and:

- (a) is in Australia; or
- (b) is temporarily absent from Australia and has been so for a continuous period not exceeding 6 weeks.

However, this Module does not apply if quarterly energy supplement is payable to the recipient.

Note: Section 918 may affect the addition of the energy supplement.

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*Recipient has reached pension age*

1067L-BB2 If the recipient has reached pension age, the recipient's energy supplement is the amount worked out using the following table:

<b>Energy supplement</b>		
<b>Item</b>	<b>Recipient's family situation</b>	<b>Amount of energy supplement</b>
1	Not a member of a couple	\$14.10
2	Partnered	\$10.60
3	Member of an illness separated couple	\$14.10
4	Member of a respite care couple	\$14.10
5	Partnered (partner in gaol)	\$14.10

*Recipient has not reached pension age*

1067L-BB3 If the recipient has not reached pension age, the recipient's energy supplement is worked out using the following table:

<b>Energy supplement</b>		
<b>Item</b>	<b>Recipient's family situation for maximum basic rate</b>	<b>Amount of energy supplement</b>
1	If the recipient's maximum basic rate is worked out under item 1 of the table in subpoint 1067L-B2(1)	\$7.00
2	If the recipient's maximum basic rate is worked out under item 2 of the table in subpoint 1067L-B2(1)	\$7.70
3	If the recipient's maximum basic rate is worked out under item 3 of the table in subpoint 1067L-B2(1)	\$9.20
4	If the recipient's maximum basic rate is worked out under item 1 of the table in point 1067L-B3	\$7.70

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<b>Energy supplement</b>		
<b>Item</b>	<b>Recipient's family situation for maximum basic rate</b>	<b>Amount of energy supplement</b>
5	If the recipient's maximum basic rate is worked out under item 2 of the table in point 1067L-B3	\$8.60

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## **Module C—Pharmaceutical allowance**

### *Qualification for pharmaceutical allowance*

1067L-C1 Subject to points 1067L-C1A and 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 person receiving pension supplement*

1067L-C1A Pharmaceutical allowance is not to be added to a person's maximum basic rate if a pension supplement amount has been added to that rate.

### *No pharmaceutical allowance if partner receiving certain supplements under other Acts*

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

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- (b) the person's partner is receiving:
  - (i) veterans supplement under section 118A of the Veterans' Entitlements Act; or
  - (ii) MRCA supplement under section 300 of the Military Rehabilitation and Compensation Act; or
  - (iii) pharmaceutical supplement under Part 3A of the *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) Act 2006*; or
  - (iv) pharmaceutical supplement under Part 4 of the *Treatment Benefits (Special Access) Act 2019*; and
- (c) the person's partner is not receiving a service pension or a veteran payment.

*Amount of pharmaceutical allowance*

1067L-C3 The amount of pharmaceutical allowance is the amount per fortnight worked out using the following table:

<b>Table C—Pharmaceutical allowance amounts</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Item</b>	<b>Person's family situation</b>	<b>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.

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.

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- 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) income from financial assets (including income streams (short term) and certain income streams (long term)) (Division 1B of Part 3.10);
- (d) income from income streams not covered by Division 1B of Part 3.10 (Division 1C of Part 3.10);
- (e) disposal of income (sections 1106 to 1111).

*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 veteran payment, 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.

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*Lump sum payments arising from termination of employment*

- 1067L-D3 Subject to points 1067L-D5 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.

*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.

*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
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- (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.



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*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.

*When a person receives a leave payment or a termination payment*

1067L-D13 For the purposes of points 1067L-D5 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

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- (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 termination payment and is calculated as an amount equivalent to an amount of ordinary income that the person would (but for the termination) 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 termination 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

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was terminated, of an amount equal to the amount of the termination 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** includes a payment in lieu of notice.

**termination payment** includes:

- (a) a redundancy payment; and
- (b) a leave payment relating to a person's employment that has been terminated; and
- (c) any other payment that is connected with the termination of a person's employment.

*Meaning of leave payment*

1067L-D16 In points 1067L-D5 to 1067L-D15 (inclusive):

**leave payment** includes a payment in respect of sick leave, annual leave, maternity leave and long service leave, but does not include:

- (a) an instalment of parental leave pay; or
- (b) dad and partner pay.

*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 a parent, child, brother or sister of the person.

*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.

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*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-D5 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 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*

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
- (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.

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*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 22—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 22—the amount of income of the partner (rounded up to the nearest dollar) beyond which jobseeker payment would not be payable to the partner if the partner were qualified for a jobseeker payment; 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.

1067L-D25A For the purposes of paragraph 1067L-D25(a), disregard steps 2, 2A and 3 of the method statement in point 1067G-A1.

1067L-D25B For the purposes of paragraph 1067L-D25(b), disregard steps 2 and 3 of the method statement in point 1068-A1.

*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, a service pension, income support supplement or a veteran payment; 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

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- (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 \$400.

*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:

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- (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).

*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.

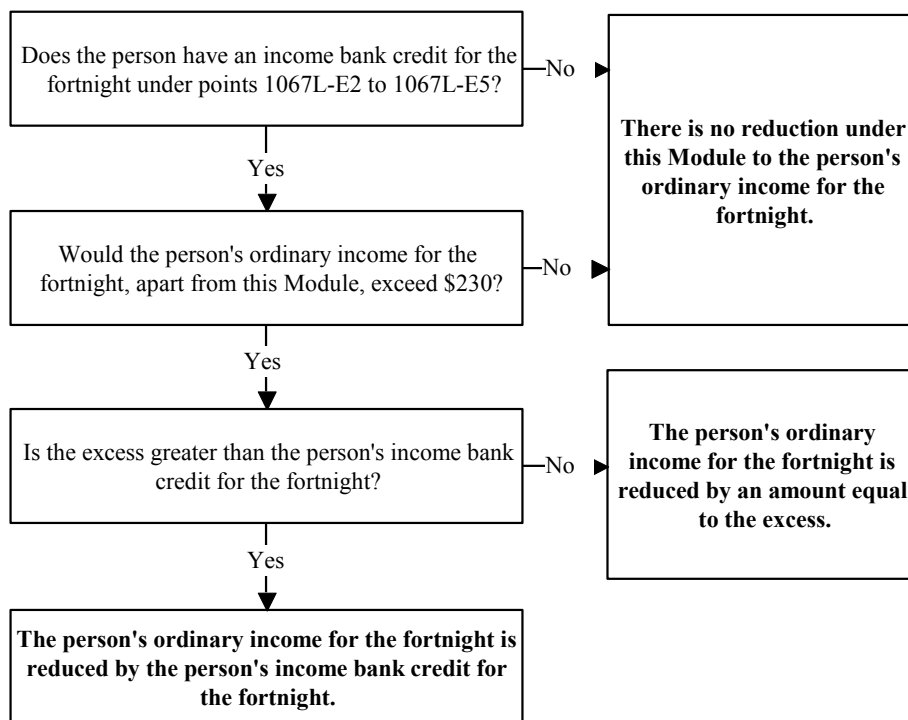
**Module E—Student income bank**

*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.



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*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 \$10,000; 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 the ordinary income free area (see point 1067L-D28):

- (a) the person has an income credit for that fortnight; and
- (b) the income credit is an amount equal to the difference between the ordinary income free area (see point 1067L-D28) 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 the ordinary income free area (see point 1067L-D28):
- (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 the ordinary income free area (see point 1067L-D28).

*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

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(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.

*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

### *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.

**Table F—Remote area allowance**

<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

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**Table F—Remote area allowance**

<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>
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.

*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

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(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 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*

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.