



Social Security Legislation Amendment (Carer Pension and Other Measures) Act 1995

No. 143 of 1995

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Social Security Legislation Amendment (Carer Pension and Other Measures) Act 1995

No. 143 of 1995

An Act to amend the *Social Security Act 1991*, the *Child Care Act 1972*, the *Data-matching Program (Assistance and Tax) Act 1990*, the *Farm Household Support Act 1992* and the *Income Tax Assessment Act 1936*, and for related purposes

[Assented to 12 December 1995]

The Parliament of Australia enacts:

Short title

1. This Act may be cited as the *Social Security Legislation Amendment (Carer Pension and Other Measures) Act 1995*.

Commencement

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

(2) Schedule 1 is taken to have commenced on 1 July 1995.

(3) The following provisions commence on 1 January 1996:

(a) Parts 1 and 3 of Schedule 2;

(b) items 1, 2 and 5 of Schedule 17.

(4) Schedule 3 commences on 1 January 1996, immediately after the commencement of Schedule 2 to the *Social Security Legislation Amendment (Family Measures) Act 1995*.

(5) Schedule 4 (except item 3) and Part 1 of Schedule 5 commence immediately before 20 March 1996.

(6) Item 3 of Schedule 4 is taken to have commenced on 1 January 1995, immediately after the commencement of the *Student Assistance (Youth Training Allowance—Transitional Provisions and Consequential Amendments) Act 1994*.

(7) Part 2 of Schedule 5 commences on 19 March 1996.

(8) Item 5 of Schedule 6 and Schedules 7 and 8 commence on 20 March 1996.

(9) Schedule 6 (except item 5) commences on 1 January 1997.

(10) Schedule 9 and Schedule 10 (except item 3) commence on 21 March 1996.

(11) Item 3 of Schedule 10 is taken to have commenced on 1 January 1992, immediately after the commencement of section 37 of the *Social Security Legislation Amendment Act (No. 3) 1991*.

(12) Schedule 11 commences on 1 July 1996.

(13) Schedule 12 commences on 1 July 1996, immediately after the commencement of Schedule 6 to the *Social Security and Veterans' Affairs Legislation Amendment Act 1995*.

(14) Schedule 13 commences on 1 September 1996.

(15) Schedule 14 is taken to have commenced on 1 July 1995, immediately after the commencement of Schedule 1 to the *Social Security (Parenting Allowance and Other Measures) Legislation Amendment Act 1994*.

(16) Items 1 and 2 of Schedule 18 commence on 1 March 1996.

Amendments

3. The Acts specified in the Schedules are amended in accordance with the applicable items of the Schedules, and the other items in the Schedules have effect according to their terms.

SCHEDULE 1

Section 3

**AMENDMENTS OF THE SOCIAL SECURITY ACT 1991 RELATING
TO ENTITLEMENTS OF SOCIAL SECURITY RECIPIENTS
OUTSIDE AUSTRALIA**

1. Subsection 43(2):

After “1218” insert “, 1218A, 1218B, 1218C”.

2. After subsection 80(5B):

Insert:

Favourable determination reversing cancellation due to departure certificate rules

“(6) If the favourable determination is made to reverse the effect of a determination that cancelled or suspended an age pension because the pension ceased to be payable under section 1218, the favourable determination takes effect on the day specified in the favourable determination. The day specified must be a day on or after the cancellation or suspension.”.

3. Subsection 81(3):

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

4. Section 81:

Add at the end:

Cancellation when payability ceases under departure certificate rules

“(7) If the adverse determination is made because pension ceased to be payable under section 1218, the day specified under paragraph (2)(b) may be on or after the day on which pension ceased to be payable under that section.”.

5. Section 97:

After “1218” insert “, 1218A, 1218B, 1218C”.

6. After subsection 146D(5B):

Insert:

Favourable determination reversing cancellation due to departure certificate rules

“(6) If the favourable determination is made to reverse the effect of a determination that cancelled or suspended a disability support pension because the pension ceased to be payable under section 1218, the favourable

SCHEDULE 1—continued

determination takes effect on the day specified in the favourable determination. The day specified must be a day on or after the cancellation or suspension.”.

7. Subsection 146E(3):

Omit “and (8)”, substitute “, (8) and (9)”.

8. Section 146E:

Add at the end:

Cancellation when payability ceases under departure certificate rules

“(9) If the adverse determination is made because pension ceased to be payable under section 1218, the day specified under paragraph (2)(b) may be on or after the day on which pension ceased to be payable under that section.”.

9. Paragraph 147(2)(b):

After “1218” insert “, 1218A, 1218B, 1218C”.

10. After subsection 184(5):

Insert:

Favourable determination reversing cancellation due to departure certificate rules

“(6) If the favourable determination is made to reverse the effect of a determination that cancelled or suspended a wife pension because the pension ceased to be payable under section 1218, the favourable determination takes effect on the day specified in the favourable determination. The day specified must be a day on or after the cancellation or suspension.”.

11. Subsection 185(3):

Omit “and (8)”, substitute “, (8) and (9)”.

12. Section 185:

Add at the end:

Cancellation when payability ceases under departure certificate rules

“(9) If the adverse determination is made because pension ceased to be payable under section 1218, the day specified under paragraph (2)(b) may be on or after the day on which pension ceased to be payable under that section.”.

SCHEDULE 1—continued

13. Paragraph 249(3)(b):

After “1218” insert “, 1218A, 1218B, 1218C”.

14. After subsection 299(5B):

Insert:

Favourable determination reversing cancellation due to departure certificate rules

“(6) If the favourable determination is made to reverse the effect of a determination that cancelled or suspended a sole parent pension because the pension ceased to be payable under section 1218, the favourable determination takes effect on the day specified in the favourable determination. The day specified must be a day on or after the cancellation or suspension.”.

15. Subsection 300(3):

Omit “and (8)”, substitute “, (8) and (9)”.

16. Section 300:

Add at the end:

Cancellation when payability ceases under departure certificate rules

“(9) If the adverse determination is made because pension ceased to be payable under section 1218, the day specified under paragraph (2)(b) may be on or after the day on which pension ceased to be payable under that section.”.

17. Subsection 315(2):

After “1218” insert “, 1218A, 1218B, 1218C”.

18. After subsection 354(5):

Insert:

Favourable determination reversing cancellation due to departure certificate rules

“(6) If the favourable determination is made to reverse the effect of a determination that cancelled or suspended a bereavement allowance because the allowance ceased to be payable under section 1218, the favourable determination takes effect on the day specified in the favourable determination. The day specified must be a day on or after the cancellation or suspension.”.

19. Subsection 355(3):

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

SCHEDULE 1—continued

20. Section 355:

Add at the end:

Cancellation when payability ceases under departure certificate rules

“(7) If the adverse determination is made because allowance ceased to be payable under section 1218, the day specified under paragraph (2)(b) may be on or after the day on which allowance ceased to be payable under that section.”.

21. Paragraph 362(3)(b):

After “1218” insert “, 1218A, 1218B, 1218C”.

22. After subsection 402(5):

Insert:

Favourable determination reversing cancellation due to departure certificate rules

“(6) If the favourable determination is made to reverse the effect of a determination that cancelled or suspended a widow B pension because the pension ceased to be payable under section 1218, the favourable determination takes effect on the day specified in the favourable determination. The day specified must be a day on or after the cancellation or suspension.”.

23. Subsection 403(3):

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

24. Section 403:

Add at the end:

Cancellation when payability ceases under departure certificate rules

“(7) If the adverse determination is made because pension ceased to be payable under section 1218, the day specified under paragraph (2)(b) may be on or after the day on which pension ceased to be payable under that section.”.

25. Paragraph 1213(2)(a):

After “1218” insert “, 1218A, 1218B, 1218C”.

26. Paragraph 1213A(4)(a):

After “1218” insert “, 1218A, 1218B, 1218C”.

SCHEDULE 1—continued

27. Paragraph 1214(2)(a):

After “1218” insert “, 1218A, 1218B, 1218C”.

28. Subsection 1214(5):

After “1218” insert “, 1218A, 1218B, 1218C”.

29. Section 1218:

Repeal the section, substitute:

Social security payments to recipient outside Australia without a departure certificate

Social security payments affected by this section

“1218.(1) This section and sections 1218A, 1218B and 1218C apply in relation to the following social security payments:

- (a) age pension;
- (b) disability support pension;
- (c) wife pension;
- (d) sole parent pension;
- (e) bereavement allowance;
- (f) widow B pension.

Qualification ceases after 6 months outside Australia

“(2) Subject to sections 1218A and 1218B, a person who is absent from Australia for more than 6 months ceases to be qualified for a social security payment 6 months after the person’s departure from Australia, unless the person has been given a departure certificate under section 1219 relating to the departure.

Effect of loss of qualification under subsection (2)

“(3) If a person ceases to be qualified for a social security payment as a result of subsection (2):

- (a) the person remains disqualified until the person becomes qualified again for the payment (either under subsection 1218C(1) or by any other means); and
- (b) the payment ceases to be payable to the person from the time the person ceased to be qualified until the time the person becomes qualified for the payment again.

SCHEDULE 1—continued

Continuation of qualification in circumstances beyond control of payment recipient

Secretary's specification of continuing qualification

“1218A.(1) A person is taken not to cease being qualified, or not to have ceased to have been qualified, for a social security payment as a result of subsection 1218(2) for a period of not more than 18 months specified in writing by the Secretary.

When Secretary may specify period of continuing qualification

“(2) The Secretary may specify in writing a period in relation to a person for the purposes of subsection (1) if the Secretary:

- (a) becomes aware of the person's departure less than 2 years after it occurred; and
- (b) considers that there are circumstances that were not within the person's control that justify the person continuing, or being taken to have continued, to be qualified during the specified period.

Continuation of qualification after end of period specified by Secretary

“(3) Subsection 1218(2) is taken never to have applied in relation to the person's departure if the Secretary is satisfied that the person was qualified for a social security payment continuously from the day of the person's departure until immediately before the end of the period specified by the Secretary in relation to the person.

Example 1:

Facts:

Joe receives age pension. He leaves Australia on 1 January 1996 without a departure certificate, intending to spend 2 months outside Australia. While outside Australia, he suffers a serious illness that prevents him from communicating with people in Australia and from returning to Australia. The Secretary finds out about Joe's departure on 1 May 1996 and sends a recipient statement notice to Joe's last known address in Australia. The notice is not returned and Joe's age pension is cancelled with effect from 1 July 1996. Joe returns to Australia on 28 January 1997. The Secretary finds out about Joe's illness on 1 February 1997, considers that Joe's illness is a circumstance beyond Joe's control and specifies that Joe should be taken not to have ceased to have been qualified for age pension for the period from 1 July 1996 until 28 January 1997 (inclusive).

Application:

Joe is qualified for age pension from 1 January 1996 until 28 January 1997 (inclusive), despite the fact that he was outside Australia and despite the cancellation of his pension with effect from 1 July 1996. (He continues to qualify for age pension once he is back in Australia on and after 28 January 1997.)

SCHEDULE 1—continued

Example 2:

Facts:

Jane receives age pension. She leaves Australia on 1 February 1996 without a departure certificate. The Secretary finds out about Jane's departure on 10 August 1996 and sends a recipient statement notice to Jane's last known address in Australia. On 25 August 1996, a major natural disaster strikes the remote region where Jane is. The disaster cuts all communications with the rest of the world and is expected to prevent people from leaving the region for several months. On 12 September 1996 the Secretary finds out from Jane's daughter how the natural disaster has affected the region where Jane is. The Secretary considers the natural disaster is a circumstance beyond Jane's control that justifies Jane continuing to be qualified for age pension from 1 August to 30 November 1996 (the day by which Jane could reasonably be expected to have provided information about her continuing qualification or to have returned to Australia). On 13 September 1996, the Secretary specifies under section 1218A that Jane should continue to be qualified for that period.

Application:

Jane is qualified for age pension from 1 February to 30 November 1996. (If Jane is still outside Australia after 30 November 1996, the question whether she qualifies for age pension then will depend on whether subsection 1218A(3) or section 1218B or 1218C applies to her.)

Continuation of qualification if recipient statement notice returned within 3 months

Secretary to send recipient statement notice to recipient who is outside Australia

“1218B.(1) If:

- (a) the Secretary becomes aware of a person's departure from Australia less than 12 months after the departure; and
- (b) the Secretary has reason to believe that the person may have been qualified for a social security payment at the time of the person's departure; and
- (c) the Secretary has not given the person a departure certificate relating to the person's departure; and
- (d) the Secretary is not aware that the person has returned to Australia within 6 months after the person's departure;

the Secretary must send a recipient statement notice to the person.

Continuing qualification if recipient statement notice is returned within 3 months

“(2) Subsection 1218(2) is taken never to have applied in relation to a particular departure by a person if:

SCHEDULE 1—continued

- (a) no more than 3 months after the Secretary first sent the person a recipient statement notice under subsection (1) of this section, the Secretary receives from the person a recipient statement notice that the Secretary sent to the person under that subsection; and
- (b) the Secretary is satisfied that the person would have been qualified for a social security payment from the day of the person's departure until the return of the notice if subsection 1218(2) had not applied to the person.

Restoration of payment on return of recipient statement notice after more than 3 months

“1218C.(1) A person who ceased to be qualified for a social security payment as a result of subsection 1218(2) (and has not become qualified again by any other means) becomes qualified again if:

- (a) more than 3 months after the Secretary first sent the person a recipient statement notice under subsection 1218B(1) but not more than 12 months after the person departed from Australia, the Secretary receives from the person a recipient statement notice that the Secretary sent to the person under that subsection; and
- (b) the Secretary is satisfied that the person would have been qualified for a social security payment from the day of the person's departure until the day that the Secretary received the returned notice if subsection 1218(2) had not applied to the person.

“(2) A person becomes qualified under subsection (1) on the day the Secretary receives the returned notice.”.

30. After subsection 1243(1):

Insert:

“(1A) In varying or substituting a decision under subsection (1), an authorised review officer may not exercise the Secretary's power under subsection 1218A(2) (which allows the Secretary to continue a person's qualification for a social security payment despite lack of a departure certificate, in circumstances beyond the person's control).”.

31. Subsection 1250(1):

Add at the end:

“(ka) under subsection 1218A(2) (continuation of social security payment despite lack of departure certificate, in circumstances beyond the control of the recipient of the payment).”.

SCHEDULE 1—continued

32. After subsection 1253(1):

Insert:

“(1A) In varying or substituting a decision under subsection (1), the SSAT may not exercise the Secretary’s power under subsection 1218A(2) (which allows the Secretary to continue a person’s qualification for a social security payment despite lack of a departure certificate, in circumstances beyond the person’s control).”.

33. After section 1294:

Insert in Division 2 of Part 6.4:

Limit on AAT’s power in reviewing a decision

“1294A. The AAT Act applies to the review under section 1283 of a decision as if the reference in subsection 43(1) of the AAT Act to all the powers and discretions conferred on the person who made the decision excluded the Secretary’s power under subsection 1218A(2) (which allows the Secretary to continue a person’s qualification for a social security payment despite lack of a departure certificate, in circumstances beyond the person’s control).”.

34. Subsection 1299(2):

Omit the subsection, substitute:

“(2) The Secretary cannot delegate:

- (a) the Secretary’s power under subsection 1218A(2) (continuation of social security payment despite lack of departure certificate, in circumstances beyond the control of the recipient of the payment);
- or
- (b) the Secretary’s power under paragraph 1314(1)(b) (disclosure of information).”.

35. Application of amendments

The amendments made by this Schedule extend to persons who departed from Australia on or after 1 January 1995 but before this item commenced.

SCHEDULE 2

Section 3

**AMENDMENTS OF THE CHILD CARE ACT 1972 AND THE
DATA-MATCHING PROGRAM (ASSISTANCE AND TAX) ACT 1990**

PART 1—AMENDMENTS OF THE CHILD CARE ACT 1972

1. Section 4:

Insert:

“*approved child care service* means:

- (a) an eligible child care centre; or
- (b) any other child care service, the operator of which receives from the Commonwealth a grant of a similar kind to grants made under section 12A.

fee relief beneficiary, in relation to a child who is receiving child care at an approved child care service, means a person who, if a grant were made to the operator of the service to enable the operator to allow fee relief for the child, would benefit from the fee relief.

partner has the same meaning as in the *Social Security Act 1991*.

Social Security Secretary means the Secretary to the Department of Social Security.”.

2. After section 12A:

Insert in Part III:

Provision of a persons’s tax file number

“12B.(1) The operator of an approved child care service may not allow fee relief for a child, to a person who is a fee relief beneficiary in relation to the child, from a grant if:

- (a) the person is requested under section 12D to:
 - (i) give the Social Security Secretary a written statement of the person’s tax file number; or
 - (ii) apply for a tax file number and give the Social Security Secretary a written statement of the person’s tax file number once it has been issued; and
- (b) the person has neither:
 - (i) given the Social Security Secretary a written statement of the person’s tax file number; nor
 - (ii) given the Social Security Secretary a declaration by the person in a form approved by the Social Security Secretary and satisfied either subsection (3) or (4).

“(2) If a person who is a fee relief beneficiary in relation to a child is requested under section 12D to:

SCHEDULE 2—continued

- (a) give the Social Security Secretary a written statement of the person's tax file number; or
- (b) apply for a tax file number and give the Social Security Secretary a written statement of the person's tax file number once it has been issued;

the person is not to be given an assessment of entitlement to fee relief for the child if the person has neither:

- (c) given the Social Security Secretary a written statement of the person's tax file number; nor
- (d) given the Social Security Secretary a declaration by the person in a form approved by the Social Security Secretary and satisfied either subsection (3) or (4).

“(3) A person satisfies this subsection if:

- (a) the person's 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 the person of the person's tax file number; and
- (b) the person has given the Social Security Secretary a document by the person that authorises the Commissioner of Taxation to tell the Social Security 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 of Taxation had not told the Social Security Secretary that the person has no tax file number.

“(4) A person satisfies this subsection if:

- (a) the person's declaration states that the person has applied for a tax file number; and
- (b) the person has given the Social Security Secretary a document by the person that authorises the Commissioner of Taxation to tell the Social Security Secretary:
 - (i) if the 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 of Taxation has not told the Social Security Secretary that the person has not applied for a tax file number; and

SCHEDULE 2—continued

- (d) the Commissioner of Taxation has not told the Social Security 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.

Provision of partner's tax file number

“12C.(1) Subject to subsection (5), the operator of an approved child care service may not allow fee relief for a child, to a person who is a fee relief beneficiary in relation to the child, from a grant if:

- (a) the person is a member of a couple; and
- (b) the person is requested under section 12E to give the Social Security Secretary a written statement of the tax file number of the person's partner; and
- (c) the person has neither:
 - (i) given the Social Security Secretary a written statement of the partner's tax file number; nor
 - (ii) given the Social Security Secretary a declaration by the partner in a form approved by the Social Security Secretary and satisfied either subsection (3) or (4).

“(2) If a person who is a fee relief beneficiary in relation to a child is requested under section 12D to give the Social Security Secretary a written statement of the tax file number of the person's partner, the person is not to be given an assessment of entitlement to fee relief for the child if the person has neither:

- (a) given the Social Security Secretary a written statement of the partner's tax file number; nor
- (b) given the Social Security Secretary a declaration by the partner in a form approved by the Social Security Secretary and satisfied either subsection (3) or (4).

“(3) A person satisfies this subsection if:

- (a) the partner's declaration states that the partner:
 - (i) has a tax file number but does not know what it is; and
 - (ii) has asked the Commissioner of Taxation to inform the partner of the partner's tax file number; and
- (b) the person has given the Social Security Secretary a document by the partner that authorises the Commissioner of Taxation to tell the Social Security Secretary:
 - (i) whether the partner has a tax file number; and

SCHEDULE 2—continued

- (ii) if the partner has a tax file number—the tax file number; and
- (c) the Commissioner of Taxation has not told the Social Security Secretary that the partner has no tax file number.

“(4) A person satisfies this subsection if:

- (a) the partner’s declaration states that an application by the partner for a tax file number is pending; and
- (b) the person has given the Social Security Secretary a document by the partner that authorises the Commissioner of Taxation to tell the Social Security Secretary:
 - (i) if the tax file number is issued to the partner—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 of Taxation has not told the Social Security Secretary that an application by the partner for a tax file number has been refused; and
- (d) the application for a tax file number has not been withdrawn.

“(5) The Social Security Secretary may waive the request for a statement of the partner’s tax file number if the Social Security Secretary is satisfied that:

- (a) the person does not know the partner’s tax file number; and
- (b) the person can obtain none of the following from the partner:
 - (i) the partner’s tax file number;
 - (ii) a statement of the partner’s tax file number;
 - (iii) a declaration by the partner under subparagraph (1)(c)(ii).

Social Security Secretary may request person who would benefit from fee relief to give statement of person’s tax file number

“12D.(1) If a person who is a fee relief beneficiary is in Australia, the Social Security Secretary may request but not compel the person:

- (a) if the person has a tax file number—to give the Social Security 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

SCHEDULE 2—continued

(ii) to give the Social Security Secretary a written statement of the person's tax file number after the Commissioner of Taxation has issued it.

“(2) A grant is not to be made to the operator of an approved child care service to enable the operator to allow fee relief for a child if:

- (a) a person who is a fee relief beneficiary in relation to the child has failed to satisfy a request made under subsection (1); and
- (b) the Social Security Secretary has not exempted the person from having to satisfy the request.

“(3) A person who is a fee relief beneficiary in relation to a child is not to be given an assessment of entitlement to fee relief for the child if:

- (a) the person has failed to satisfy a request made under subsection (1); and
- (b) the Social Security Secretary has not exempted the person from having to satisfy the request.

Note: In some cases the request can be satisfied by giving the Social Security Secretary a declaration by the person about the person's tax file number and an authority by the person to the Commissioner of Taxation to give the Social Security Secretary certain information about the person's tax file number (see subsections 12B(3) and (4)).

Social Security Secretary may request person who would benefit from fee relief to give statement of partner's tax file number

“12E.(1) If:

- (a) a person who is a fee relief beneficiary is a member of a couple; and
- (b) the person's partner is in Australia;

the Social Security Secretary may request but not compel the person to give the Social Security Secretary a written statement of the tax file number of the person's partner.

“(2) A grant is not to be made to the operator of an approved child care service to enable the operator to allow fee relief for a child if:

- (a) a person who is a fee relief beneficiary in relation to the child has failed to satisfy a request made under subsection (1); and
- (b) the Social Security Secretary has not exempted the person from having to satisfy the request.

“(3) A person who is a fee relief beneficiary in relation to a child is not to be given an assessment of entitlement to fee relief for the child if:

- (a) the person has failed to satisfy a request made under subsection (1); and
- (b) the Social Security Secretary has not exempted the person from having to satisfy the request.

SCHEDULE 2—continued

Note 1: In some cases the request can be satisfied by giving the Social Security Secretary a declaration by the partner about the partner's tax file number and an authority by the partner to the Commissioner of Taxation to give the Social Security Secretary certain information about the partner's tax file number (see subsections 12C(3) and (4)).

Note 2: The Social Security Secretary may waive the request in some cases (see subsection 12C(5)).”.

SCHEDULE 2—continued

**PART 2—AMENDMENTS OF THE DATA-MATCHING
PROGRAM (ASSISTANCE AND TAX) ACT 1990 COMMENCING
ON ROYAL ASSENT**

- 3. Section 3 (definition of *personal identity data*):**
Omit paragraphs (g) and (h).
- 4. Section 7 (paragraph 3 in Step 1):**
Omit the paragraph.
- 5. Section 7 (paragraph 4 in Step 1):**
Omit “either of the checks”, substitute “the check”.
- 6. Section 7 (after subparagraph 7(c) in Step 3):**
Insert:
“(ca) the date of the most recent assessment under the *Income Tax Assessment Act 1936* of the person’s declared income;
(cb) the amount of spouse rebate;”.
- 7. Section 7 (paragraph 10 in Step 4):**
Omit the paragraph.
- 8. Section 7 (paragraph 11 in Step 4):**
Omit “, after matching under paragraph 10,”.
- 9. After subsection 12(2A):**
Insert:
“(2B) After the end of each financial year, each agency must give the Privacy Commissioner and cause to be laid before each House of the Parliament a report including the matters relating to the data-matching program carried out during the financial year:
(a) that are specified in paragraphs 9(i) and 9(vi) of the guidelines issued by the Privacy Commissioner on 31 October 1994; or
(b) if the guidelines described in paragraph (a) are replaced—that are specified for the purposes of this subsection in the guidelines issued by the Privacy Commissioner as in force from time to time.
“(2C) After the 3-year period ending on 30 June 1998, and after each successive 3-year period, each agency must give the Minister responsible for the agency a report for presentation to the Parliament including all the details relating to the data-matching program carried out during the period:

SCHEDULE 2—continued

- (a) that are specified in guideline 12 of the guidelines issued by the Privacy Commissioner on 31 October 1994; or
- (b) if the guidelines described in paragraph (a) are replaced—that are specified for the purposes of this subsection in the guidelines issued by the Privacy Commissioner as in force from time to time.

Note: Section 34C of the *Acts Interpretation Act 1901* sets time limits for giving reports to Ministers and for presentation of reports to the Parliament.”.

10. Section 21:

Omit the section, substitute the following section:

Cessation of operation of Act

“**21.** Parts 1 and 2 of this Act, unless sooner repealed, shall cease to be in force on and from 22 January 1999.”.

SCHEDULE 2—continued

**PART 3—AMENDMENTS OF THE DATA-MATCHING
PROGRAM (ASSISTANCE AND TAX) ACT 1990 COMMENCING
ON 1 JANUARY 1996**

11. Section 3 (definition of *assistance agency*):

Before paragraph (b) insert:

“(a) the Department of Human Services and Health; or”.

12. Section 3 (paragraph (c) of definition of *personal assistance*):

Omit “or benefit”, substitute “, benefit or program”.

13. Section 3 (paragraph (c) of definition of *personal assistance*):

After subparagraph (xxivc) insert:

“(xxivd) Childcare assistance (fee relief);

(xxive) fee relief under the *Child Care Act 1972*.”.

SCHEDULE 3

Section 3

**AMENDMENTS OF THE SOCIAL SECURITY ACT 1991 RELATING
TO WAIVER OF DEBTS**

1. Section 1236A:

Repeal the section, substitute:

Application

“1236A.(1) Sections 1237, 1237A, 1237AA, 1237AAA, 1237AAB, 1237AAC and 1237AAD apply to:

- (a) debts arising on or after 1 January 1996; and
- (b) the amounts of debts arising before 1 January 1996 that were outstanding at the start of that day.

“(2) Section 1237AB applies to all debts, whenever incurred, owed to the Commonwealth and arising under this Act or under the *Social Security Act 1947*.”.

2. Sections 1237 and 1237A:

Repeal the sections, substitute:

Power to waive Commonwealth's right to recover debt

Secretary's limited power to waive

“1237.(1) On behalf of the Commonwealth, the Secretary may waive the Commonwealth's right to recover the whole or a part of a debt from a debtor only in the circumstances described in section 1237A, 1237AA, 1237AAA, 1237AAB, 1237AAC or 1237AAD.

When waiver takes effect

“(2) A waiver takes effect:

- (a) on the day specified in the waiver (whether that day is before, after or on the day on which the decision to waive is made); or
- (b) if the waiver does not specify when it takes effect—on the day on which the decision to waive is made.

Note: If the Secretary waives the Commonwealth's right to recover all or part of a debt, this is a permanent bar to recovery of the debt or part of the debt—the debt or part of the debt effectively ceases to exist.

Waiver of debt arising from error

Administrative error

“1237A.(1) The Secretary must waive the right to recover the proportion of a debt that is attributable solely to an administrative error made by the Commonwealth if the debtor received in good faith the payment or payments that gave rise to that proportion of the debt.

SCHEDULE 3—continued

Note: Subsection (1) does not allow waiver of a part of a debt that was caused partly by administrative error and partly by one or more other factors (such as error by the debtor).

Underestimating value of property

“(2) If:

- (a) a debt arose because the debtor or the debtor’s partner underestimated the value of particular property of the debtor or partner; and
- (b) the estimate was made in good faith; and
- (c) the value of the property was not able to be easily determined when the estimate was made;

the Secretary must waive the right to recover the proportion of the debt attributable to the underestimate.

Proportion of a debt

“(3) For the purposes of this section, a proportion of a debt may be 100% of the debt.

Waiver of debt relating to an offence

“1237AA.(1) If:

- (a) a debtor has been convicted of an offence that gave rise to a proportion of a debt; and
- (b) the court indicated in sentencing the debtor that it imposed a longer custodial sentence on the debtor because he or she was unable or unwilling to pay the debt;

the Secretary must waive the right to recover the proportion of the debt that arose in connection with the offence.

“(2) For the purposes of this section, a proportion of a debt may be 100% of the debt.

Waiver of small debt

“1237AAA.(1) The Secretary must waive the right to recover a debt if:

- (a) the debt is, or is likely to be, less than \$200; and
- (b) it is not cost effective for the Commonwealth to take action to recover the debt.

“(2) Subsection (1) does not apply if the debt is at least \$50 and could be recovered by deductions under section 1231 from a social security payment of the debtor.

SCHEDULE 3—continued

Waiver in relation to settlements

Settlement of civil action

“1237AAB.(1) If the Commonwealth has agreed to settle a civil action against a debtor for recovery of a debt for less than the full amount of the debt, the Secretary must waive the right to recover the difference between the debt and the amount that is the subject of the settlement.

Settlement of proceedings before the AAT

“(2) If the Secretary has agreed to settle proceedings before the AAT relating to recovery of a debt on the basis that the debtor will pay less than the full amount of the debt, the Secretary must waive the right to recover the difference between the debt and the amount that is the subject of the settlement.

Waiver where at least 80% of debt recovered and debtor cannot pay more

“(3) If:

- (a) the Commonwealth has recovered at least 80% of the original value of a debt from a debtor; and
- (b) the Commonwealth and the debtor agree that the recovery is in full satisfaction for the whole of the debt; and
- (c) the debtor cannot repay a greater proportion of the debt;

the Secretary must waive the remaining 20% or less of the value of the original debt.

Agreement for part-payment in satisfaction of outstanding debt

“(4) If the Secretary and a debtor agree that the debtor’s debt will be fully satisfied if the debtor pays the Commonwealth an agreed amount less than the amount of the debt outstanding at the time of the agreement (the *unpaid amount*), the Secretary must waive the right to recover the difference between the unpaid amount and the agreed amount.

Limits on agreement to accept part-payment in satisfaction of outstanding debt

“(5) The Secretary must not make an agreement described in subsection (4) unless the Secretary is satisfied that:

- (a) the debtor cannot repay more of the debt than the agreed amount; and
- (b) the agreed amount is at least the present value of the unpaid amount repaid in instalments whose amount and timing is determined by the Secretary; and
- (c) it would take at least a year to recover the unpaid amount under Part 5.3 if subsection (4) did not apply.

SCHEDULE 3—continued

Formula for working out present value of unpaid amount

“(6) For the purposes of subsection (5), the **present value of the unpaid amount** is the amount worked out in accordance with the following formula:

$$\frac{\text{annual repayment}}{\text{interest}} \times \left[1 - \frac{1}{(1 + \text{interest})^{\text{repayment period}}} \right]$$

where:

annual repayment is the amount of the debt that the Secretary believes would be recovered under Part 5.3 in a year if subsection (4) did not apply in relation to the debt.

interest is the annual rate of interest specified by the Minister in a written notice.

repayment period is the number of years needed to repay the unpaid amount if repayments equal to the annual repayment were made each year.

Example:

Facts:

Bill owed a debt of \$35,000 to the Commonwealth. After repaying \$5,000 (leaving an unpaid amount of \$30,000), he offers to make an immediate payment of a further \$20,000 in full satisfaction of the debt. The Secretary is satisfied that Bill cannot repay a larger amount of the debt than this. The Secretary believes that \$1,500 of the debt would be recovered under Part 5.3 in a year, at which rate it would take 20 years to repay the debt. The Minister has specified an interest rate of 5% a year for the purposes of subsection (6).

Application:

The Secretary can accept Bill's offer and make an agreement with him as described in subsection (4), because the \$20,000 is more than the present value of \$30,000 repaid over 20 years at a 5% interest rate (which is \$18,693.33 = (\$1,500 ÷ 0.05) × (1 - (1 ÷ (1 + 0.05)²⁰))). If the Secretary makes the agreement, the Secretary must waive \$10,000 of the debt (the difference between the unpaid amount of \$30,000 and the agreed amount of \$20,000).

Notice is a disallowable instrument

“(7) A notice described in the definition of **interest** in subsection (6) is a disallowable instrument.

Waiver where debtor or debtor's partner would have been entitled to an allowance

Waiver if there was an unclaimed entitlement to family payment or family allowance

“1237AAC.(1) If:

SCHEDULE 3—continued

- (a) a debt arises from overpayments made to the debtor; and
- (b) the debtor or the debtor's partner does not claim family payment or family allowance for the period when the overpayments were made; and
- (c) an amount of family payment or family allowance would have been payable for the period when the overpayments were made if the debtor or the debtor's partner had lodged a claim;

the Secretary must waive the right to recover the debt to the extent set out in subsection (2).

Amount of debt Secretary must waive

“(2) The Secretary must waive under subsection (1) the right to recover the amount of debt equal to the amount of family payment or family allowance that would have been payable to the debtor or the debtor's partner in the 3-year period ending on the day the overpayment is stopped if:

- (a) the overpayments had not been made to the debtor; and
- (b) the debtor or the debtor's partner had lodged a claim for the payment.

Reference to amount of family payment or family allowance is a reference to basic rate of payment or allowance only

“(3) For the purposes of subsection (2):

- (a) an amount of family payment is the minimum standard family payment rate plus any guardian allowance that is payable plus any large family supplement that is payable; and
- (b) an amount of family allowance does not include multiple birth allowance.

Waiver if there was an unclaimed entitlement to parenting allowance

“(4) If:

- (a) a debt arises from overpayments to the debtor; and
- (b) the Secretary is satisfied that the overpayments did not result wholly or partly from the debtor or another person knowingly:
 - (i) making a false statement or false representation; or
 - (ii) failing or omitting to comply with a provision of this Act or the 1947 Act; and
- (c) the debtor or the debtor's partner did not claim parenting allowance for the period (the *overpayment period*) when the overpayments were made; and
- (d) an amount of parenting allowance would have been payable for that period if the debtor or the debtor's partner had lodged a claim;

SCHEDULE 3—continued

the Secretary must waive the right to recover the debt to the extent set out in subsection (5).

Waiver of amount equal to notional entitlement to parenting allowance

“(5) The Secretary must waive under subsection (4) the right to recover the amount of debt equal to the amount of parenting allowance that would have been payable to the debtor or the debtor’s partner during so much of the overpayment period as was not earlier than 3 years before the day on which the overpayment is stopped if:

- (a) the overpayments had not been made to the debtor; and
- (b) the debtor or the debtor’s partner had lodged a claim for the allowance.

Calculating the amount equal to notional entitlement to parenting allowance

“(6) For the purposes of working out the amount of parenting allowance that would have been payable to the debtor or the debtor’s partner, the rate of parenting allowance for the debtor or the debtor’s partner:

- (a) if the Secretary is satisfied that the rate would have been greater than the maximum basic component if parenting allowance had been claimed—is taken to have been that greater rate; or
- (b) in any other case—is taken not to have exceeded the maximum basic component of parenting allowance specified at the relevant time in point 1068A-B6.

Waiver in special circumstances

“1237AAD. The Secretary may waive the right to recover all or part of a debt if the Secretary is satisfied that:

- (a) the debt did not result wholly or partly from the debtor or another person knowingly:
 - (i) making a false statement or a false representation; or
 - (ii) failing or omitting to comply with a provision of this Act or the 1947 Act; and
- (b) there are special circumstances (other than financial hardship alone) that make it desirable to waive; and
- (c) it is more appropriate to waive than to write off the debt or part of the debt.

Note: Section 1236 allows the Secretary to write off a debt on behalf of the Commonwealth.”.

3. After subsection 1240(3A):

Insert:

SCHEDULE 3—continued

“(3B) Despite subsection (3), an authorised review officer cannot review a decision of the Secretary on whether to exercise the Secretary’s power under section 1285A.”.

4. Subsection 1250(1):

Add at the end:

“; or (m) relating to the Secretary’s power under section 1285A to settle proceedings before the AAT.”.

5. After section 1285:

Insert in Division 1 of Part 6.4:

Secretary may settle proceedings before the AAT

“1285A.(1) The Secretary may agree with other parties to proceedings before the AAT that relate to recovering a debt to settle the proceedings. The agreement must be in writing.

“(2) If the proceedings are settled and the Secretary gives the AAT a copy of the agreement to settle the proceedings, the application for review of the decision that was the subject of the proceedings is taken to have been dismissed.”.

SCHEDULE 4

Section 3

**AMENDMENTS OF THE SOCIAL SECURITY ACT 1991 TO
INCREASE RENT ASSISTANCE THRESHOLDS AND FAMILY
PAYMENT RENT ASSISTANCE**

1. Part 3.16 (heading):

Add at the end “**AND ADJUSTMENT OF AMOUNTS**”.

2. Section 1189:

Add at the end:

“; and (d) one-off adjustments of certain amounts”.

3. Section 1190 (column 4 of item 18B of Table):

Omit “all amounts” (second occurring), substitute “rent threshold amounts”.

4. After Division 4 of Part 3.16:

Insert in Part 3.16:

“Division 5—One-off adjustments of certain amounts

**Rent assistance threshold for social security pensions increased
on 20 March 1996**

“1206D. This Act has effect as if, on 20 March 1996, each indexed amount of pension rent threshold that is substituted under subsection 1192(1) for another amount on that day were in turn replaced with an amount equal to the indexed amount plus \$130.00.

Note 1: For *indexed amount*, see section 1192.

Note 2: For *pension rent threshold*, see item 17A of the Table in section 1190.

**Rent assistance threshold for some social security payments
increased on 20 March 1996**

“1206E.(1) This section applies to the following kinds of rent threshold:

- (a) benefit rent threshold;
- (b) rent threshold SA (under 18);
- (c) family payment rent threshold.

Note 1: For *benefit rent threshold*, see item 18A of the Table in section 1190.

Note 2: For *rent threshold SA (under 18)*, see item 18B of the Table in section 1190.

Note 3: For *family payment rent threshold*, see item 19A of the Table in section 1190.

“(2) This Act has effect as if, on 20 March 1996, each indexed amount of rent threshold that is substituted under subsection 1192(1) for another amount on that day were in turn replaced with an amount equal to the indexed amount plus \$5.00.

Note: For *indexed amount*, see section 1192.

SCHEDULE 4—continued

Rent assistance for family payment increased on 20 March 1996

“1206F. This Act has effect as if, on 20 March 1996, each indexed amount of FP RA (rent assistance) that is substituted under subsection 1192(1) for another amount on that day were in turn replaced with an amount equal to the indexed amount plus \$5.00.

Note 1: For *indexed amount*, see section 1192.

Note 2: For *FP RA* and *rent assistance*, see item 19 of the Table in section 1190.

Increased rent assistance for pensioners with service pensioner partners with children

“1206G. This Act has effect as if, on 20 March 1996 after indexation, the indexed amount in each of the following provisions were increased by \$65.00:

- (a) column 4 of items 5 and 6 of Table D in point 1064-D5 (maximum rate of rent assistance for pensioners with service pensioner partners who have rent increased pension and one or more dependent children);
 - (b) column 4 of items 6 and 7 of Table EA in point 1066A-EA12 (maximum rate of rent assistance for pensioners with service pensioner partners who have rent increased pension and one or more dependent children);
 - (c) column 4 of items 6 and 7 of Table EB in point 1066A-EB13 (maximum rate of rent assistance for pensioners with service pensioner partners who have rent increased pension and one or more dependent children).”
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SCHEDULE 5

Section 3

**AMENDMENTS OF THE SOCIAL SECURITY ACT 1991 RELATING
TO PRESERVED RENT ASSISTANCE ENTITLEMENTS**

**PART 1—AMENDMENTS COMMENCING IMMEDIATELY
BEFORE 20 MARCH 1996**

1. After subclause 27(3) of Schedule 1A:

Insert:

“(3A) For the purposes of subclauses (1) and (3), the person’s *floor amount* is the amount worked out using the formula:

$$\text{preserved rent assistance} - \text{post-1995 increase}$$

where:

preserved rent assistance is the amount worked out under subclause (4);
post-1995 increase is the sum of the increases in the amount of the maximum fortnightly rate of any of the following payments to the person after 19 March 1996 (whether or not the type or amount of payment payable to the person varies after that day because the person’s circumstances change):

- (a) a social security benefit;
- (b) a social security pension;
- (c) family payment;
- (d) non-benefit parenting allowance;
- (e) child disability allowance;
- (f) double orphan pension;
- (g) mobility allowance;
- (h) youth training allowance.”.

2. Subclause 27(4) of Schedule 1A:

Omit “subclauses (1) and (3), the person’s **floor amount**”, substitute “subclause (3A), the person’s *preserved rent assistance*”.

3. Subclause 27(5) of Schedule 1A:

Omit the subclause, substitute:

“(5) Subclause (1) or (3) ceases to apply to a person’s pension, benefit or allowance rate when the amount of rent assistance that the person would be entitled to because of that subclause is less than, or equal to, the amount of rent assistance that the person is entitled to under this Act apart from this clause.”.

4. Subclause 27(6) of Schedule 1A:

Omit “(2)”, substitute “(3)”.

SCHEDULE 5—continued

5. Subclause 28(2) of Schedule 1A:

Omit “property owner”, substitute “homeowner”.

6. Subclause 28(3) of Schedule 1A:

Omit “subsection”, substitute “subclause”.

7. Clause 28 of Schedule 1A:

Add at the end:

“(4) If a person is entitled to rent assistance because of subclause (1) or (2), any amount that would (apart from this subclause) be payable to the person by way of rent assistance is to be reduced by the sum of the increases in the amount of the maximum fortnightly rate of any of the following payments to the person after 19 March 1996 (whether or not the type or amount of payment payable to the person varies after that day because the person’s circumstances change):

- (a) a social security benefit;
- (b) a social security pension;
- (c) family payment;
- (d) non-benefit parenting allowance;
- (e) child disability allowance;
- (f) double orphan pension;
- (g) mobility allowance;
- (h) youth training allowance.

“(5) Subclause (4) does not apply if the person is entitled to rent assistance because of subclause (1) or (2) and the amount payable by way of rent assistance is worked out under clause 63.

“(6) This clause ceases to apply (and cannot re-apply later) to a person if, as a result of the reduction required by subclause (4), no amount would be payable to the person by way of rent assistance.”.

8. After subclause 63(3) of Schedule 1A:

Insert:

“(3A) Subject to subclauses (7), (8) and (9), if this clause applies to a person, the amount by way of rent assistance to be used to calculate the person’s pension, benefit or payment rate is the amount (the *floor amount*) worked out using the formula:

preserved rent assistance – post-1995 increase

where:

SCHEDULE 5—continued

preserved rent assistance is the amount worked out under subclause (4);
post-1995 increase is the sum of the increases in the amount of the maximum fortnightly rate of any of the following payments to the person after 19 March 1996 or the later day (the ***application day***) this clause first applied to the person (whether or not the type or amount of payment payable to the person varies after 19 March 1996 or the application day because the person's circumstances change):

- (a) a social security benefit;
- (b) a social security pension;
- (c) family payment;
- (d) non-benefit parenting allowance;
- (e) child disability allowance;
- (f) double orphan pension;
- (g) mobility allowance;
- (h) youth training allowance.”.

9. Subclause 63(4) of Schedule 1A:

Omit “Subject to subclauses (7), (8) and (9), if subclause (1) or (3) applies to a person, the amount by way of rent assistance to be used to calculate the person's pension, benefit or payment rate”, substitute “For the purposes of subclause (3A), the ***preserved rent assistance***”.

10. Paragraph 63(4)(b) of Schedule 1A:

Omit “(the ‘***floor amount***’)”.

SCHEDULE 5—continued

PART 2—AMENDMENTS COMMENCING ON 19 MARCH 1996

11. Paragraph 27(3)(c) of Schedule 1A:

After “allowance” insert “or would not have ceased to apply to the person until then if the subsection had not been repealed”.

12. Paragraph 28(2)(c):

After “supplement” insert “or would have applied to the person at all those times if the subsection had not been repealed”.

13. Paragraph 63(8)(c) of Schedule 1A:

After “applies” insert “or would apply if it had not been repealed”.

14. Subclause 63(8) of Schedule 1A:

Omit “and the amount by way of rent assistance to be used to calculate the rate of the person’s partner’s pension under the *Veterans’ Entitlements Act 1986*”.

15. Paragraph 63(9)(d):

After “applies” insert “or would apply if it had not been repealed”.

16. Subclause 63(9):

Omit “or of the person’s partner’s pension under Part III of that Act”.

SCHEDULE 6

Section 3

**AMENDMENTS OF THE SOCIAL SECURITY ACT 1991 AND
INCOME TAX ASSESSMENT ACT 1936 TO PROVIDE FOR
RESIDENTIAL CARE ALLOWANCE**

**PART 1—AMENDMENTS OF THE SOCIAL SECURITY ACT
1991**

1. Section 3:

In the Index, insert the following entries in the appropriate alphabetical positions (determined on a letter-by-letter basis):

| | |
|---|----------|
| “excluded homeowner | 13A(1) |
| in residential care | 13A(5) |
| residential care charge | 13A(2) |
| residential care charge paid or payable | 13A(4)”. |

2. Paragraph 13(8)(b):

Omit the paragraph.

3. Paragraph 13(8)(c):

Omit “hospital; or”, substitute “hospital.”.

4. Paragraph 13(8)(d):

Omit the paragraph.

5. After section 13:

Insert:

Residential care allowance definitions

Definitions

“13A.(1) In this Act, unless the contrary intention appears:

excluded homeowner means a homeowner other than a person who:

- (a) is in residential care; and
- (b) is not residing in a retirement village.

Note 1: For ***retirement village*** see subsections 12(3) and (4).

Note 2: The transitional provisions in clause 28 of Schedule 1A provide that a person may not be an excluded homeowner even though the person resides in a retirement village.

in residential care has the meaning given by subsection (5).

residential care charge has the meaning given by subsection (2).

residential care charge paid or payable has a meaning affected by subsection (4).

SCHEDULE 6—continued

Residential care charge

“(2) Amounts payable for accommodation of a person in residential care are **residential care charge** if:

- (a) the amounts are payable every 3 months or more frequently; or
- (b) the amounts are payable at regular intervals greater than 3 months and the Secretary is satisfied that the amounts should be treated as residential care charge for the purposes of this Act.

Amounts that are not residential care charge

“(3) Despite subsection (2), the following amounts are not residential care charge:

- (a) amounts payable under a scheme established by a law of the Commonwealth, or of a State or Territory, to pay all or part of the costs of persons in residential care;
- (b) amounts payable for residential care of the person in residential care as compensation for an injury suffered by that person.

Note: For *in residential care* see subsection 13A(5).

Proportion of total charge that is residential care charge

“(4) For the purposes of this Act, if:

- (a) amounts are payable for accommodation and other services for a person who is in residential care; and
- (b) it is not possible to work out the part of each of those amounts that is paid or payable for accommodation;

the amount of **residential care charge paid or payable** for the person is taken to be two-thirds of each of the amounts mentioned in paragraph (a).

Note: For *in residential care* see subsection 13A(5).

When a person is in residential care

“(5) For the purposes of this Act, a person is **in residential care** if the person:

- (a) is residing in premises that are:
 - (i) an approved nursing home for the purposes of the *National Health Act 1953* or the *Nursing Homes Assistance Act 1974*;
or
 - (ii) an approved home for the purposes of the *Aged or Disabled Persons Care Act 1954*; or
 - (iii) an approved hostel for the purposes of the *Aged or Disabled Persons Hostels Act 1972*; or

SCHEDULE 6—continued

- (iv) made available for the accommodation of the person by an approved organisation providing hostel care services or personal care services to the person for the purposes of Part III of the *Aged or Disabled Persons Care Act 1954*; and
- (b) has resided, or in the Secretary's opinion is likely to reside, in premises described in paragraph (a) for at least 14 consecutive days.”.

6. Subsection 664A(4) (paragraph (b) of definition of *threshold amount*):

After “rent assistance” insert “or residential care allowance”.

7. Subsection 664C(4) (paragraph (b) of definition of *threshold amount*):

After “rent assistance” insert “or residential care allowance”.

8. Subsection 664E(4) (paragraph (b) of definition of *threshold amount*):

After “rent assistance” insert “or residential care allowance”.

9. Subsection 664G(4) (paragraph (b) of definition of *threshold amount*):

After “rent assistance” insert “or residential care allowance”.

10. Subsection 664HA(4) (paragraph (b) of definition of *threshold amount*):

After “rent assistance” insert “or residential care allowance”.

11. Point 796-C1 (Note):

Omit “rent assistance”, substitute “any rent assistance or residential care allowance and any”.

12. Point 1064-A1 (Method statement):

Omit Step 3, substitute:

“*Step 3.* Work out the amount per year (if any) for either rent assistance (using MODULE D) or residential care allowance (using Part 3.12B).”.

13. Point 1064-A1 (Note 2):

After “rent assistance” insert “or residential care allowance”.

14. After paragraph 1064-D1(a):

Insert:

SCHEDULE 6—continued

“(b) the person’s rate of payment does not include an amount of residential care allowance; and”.

15. Point 1066-A1 (Method statement):

Omit Step 3, substitute:

“*Step 3.* Work out the amount per year (if any) for either rent assistance (using MODULE D) or residential care allowance (using Part 3.12B).”.

16. Point 1066-A1 (Note 2):

After “rent assistance” insert “or residential care allowance”.

17. After paragraph 1066-D1(a):

Insert:

“(aa) the person’s rate of payment does not include an amount of residential care allowance; and”.

18. Point 1066A-A1 (Method statement):

Omit Step 4, substitute:

“*Step 4.* Work out the amount per year (if any) for either rent assistance (using MODULE EA if the person is under 18, or MODULE EB if the person is at least 18) or residential care allowance (using Part 3.12B).”.

19. Point 1066A-A1 (Note 2):

After “rent assistance” insert “or residential care allowance”.

20. Point 1066A-EA2:

Add at the end:

“; and (i) the person’s rate of payment does not include an amount of residential care allowance.”.

21. Point 1066A-EB2:

Add at the end:

“; and (j) the person’s rate of payment does not include an amount of residential care allowance.”.

22. Point 1067-A1 (Method statement):

Omit Step 3, substitute:

“*Step 3.* Work out any applicable amount (if any) for either rent assistance (using MODULE F) or residential care allowance (using Part 3.12B).”.

SCHEDULE 6—continued

23. After paragraph 1067-F1(e):

Insert:

“(ea) the person’s rate of payment does not include an amount of residential care allowance; and”.

24. Point 1067E-A1 (Method statement):

Omit Step 3, substitute:

“*Step 3.* Work out the applicable amount (if any) for either rent assistance (using MODULE D) or residential care allowance (using Part 3.12B).”.

25. After paragraph 1067E-D1(c):

Insert:

“(ca) the person’s rate of payment does not include an amount of residential care allowance; and”.

26. Point 1068-A1 (Method statement):

Omit Step 3, substitute:

“*Step 3.* Work out the applicable amount (if any) for either rent assistance (using MODULE F) or residential care allowance (using Part 3.12B).”.

27. Point 1068-A1 (Note 1):

After “rent assistance” insert “or residential care allowance”.

28. After paragraph 1068-F1(c):

Insert:

“(ca) the person’s rate of payment does not include an amount of residential care allowance; and”.

29. Paragraph (b) of Step 4 of Method statement in point 1068A-A3:

After “(see Module F below)” insert “or residential care allowance (see Part 3.12B)”.

30. Point 1068A-A3 (Note):

After “rent assistance” insert “or residential care allowance”.

31. After paragraph 1068A-F1(d):

Insert:

“(da) the person’s rate of payment does not include an amount of residential care allowance; and”.

SCHEDULE 6—continued

32. Point 1069-A1 (Method statement):

Omit Step 1, substitute:

“*Step 1.* Add the amounts worked out under the following Modules:

- (a) MODULE B (standard family payment rate);
- (b) MODULE C (large family supplement);
- (c) MODULE D (multiple birth allowance);
- (d) MODULE F (guardian allowance).

Note: Module G may apply if 2 people who are not members of the same couple share the daily care and legal responsibility for a child.

Step 1A. Work out the amount (if any) of either rent assistance (using MODULE E) or residential care allowance (using Part 3.12B) and add the amount to the total from Step 1. The result is the person’s *gross family payment rate*.”.

33. After paragraph 1069-E2(1)(c):

Insert:

“(ca) an amount of residential care allowance is not being added to the person’s rate of payment; and”.

34. Paragraph 1069-K3(e):

After “rent assistance” insert “or residential care allowance”.

35. Point 1069-K3 (Note 1):

After “Part” insert “and residential care allowance is payable under Part 3.12B”.

36. Subsection 1147(2):

After “rent” insert “or residential care charge”.

37. After Part 3.12A:

Insert:

“PART 3.12B—RESIDENTIAL CARE ALLOWANCE

Basic qualifications for residential care allowance

“1157W.(1) An additional amount (*residential care allowance*) to help cover the cost of residential care charge is to be included in a person’s rate of payment in accordance with the relevant Rate Calculator if:

- (a) the person is in residential care; and
- (b) the periodic residential care charge for the person exceeds the amount (the *residential care charge threshold*) shown in column 3 of the relevant item of the Table in subsection 1157Y(2); and

SCHEDULE 6—continued

- (c) the person's rate of payment does not include an amount of rent assistance; and
- (d) the person is not an excluded homeowner; and
- (e) one of the subsections of section 1157X applies to the person.

Note 1: For *in residential care*, *residential care charge* and *excluded homeowner* see section 13A.

Note 2: For *periodic residential care charge* see subsection 1157Y(3).

“(2) Inclusion of residential care allowance in family payment under subsection (1) is subject to point 1069-K3.

Special qualifications for residential care allowance

Qualification for residential care allowance—Pension Rate Calculator A

“1157X.(1) This subsection applies to a person if:

- (a) the person's rate of payment is worked out using Pension Rate Calculator A; and
- (b) the person is in Australia; and
- (c) either of the following subparagraphs applies:
 - (i) neither the person nor the person's partner has a dependent child who is an FP child;
 - (ii) the person is a member of an illness separated couple, a respite care couple or a temporarily separated couple and is the partner of a person who is receiving family payment in respect of a dependent child who is an FP child.

Note 1: For *temporarily separated couple*, *illness separated couple* and *respite care couple* see section 4.

Note 2: For *FP child* see subsection 6(1).

Qualification for residential care allowance—Pension Rate Calculator C

“(2) This subsection applies to a person if:

- (a) the person's rate of payment is worked out using Pension Rate Calculator C; and
- (b) the person is in Australia; and
- (c) neither the person nor the person's partner has a dependent child who is an FP child.

Note: For *FP child* see subsection 6(1).

Qualification for residential care allowance—Pension Rate Calculator D (under 18)

“(3) This subsection applies to a person if:

- (a) the person's rate of payment is worked out using Pension Rate Calculator D; and

SCHEDULE 6—continued

- (b) the person is under 18; and
- (c) the person is not permanently blind; and
- (d) the person is:
 - (i) a member of a couple; or
 - (ii) in disability accommodation; or
 - (iii) a homeless person; or
 - (iv) an independent young person; or
 - (v) a person who is living away from the person's parental home because of a medical condition of the person; and
- (e) the person is in Australia; and
- (f) neither the person nor the person's partner has a dependent child who is an FP child.

Note 1: For *in disability accommodation* see subsection 23(4C).

Note 2: For *homeless person* and *independent young person* see subsection 5(1).

Note 3: For *FP child* see subsection 6(1).

*Qualification for residential care allowance—Pension Rate Calculator D
(18 or over)*

- “(4) This subsection applies to a person if:
- (a) the person's rate of payment is worked out using Pension Rate Calculator D; and
 - (b) the person is at least 18; and
 - (c) the person is not permanently blind; and
 - (d) the person is:
 - (i) a member of a couple; or
 - (ii) living permanently or indefinitely away from the person's parental home; or
 - (iii) in disability accommodation; and
 - (e) the person is in Australia; and
 - (f) neither the person nor the person's partner has a dependent child who is an FP child.

Note 1: For *in disability accommodation* see subsection 23(4C).

Note 2: For *FP child* see subsection 6(1).

Qualification for residential care allowance—Benefit Rate Calculator A

- “(5) This subsection applies to a person if:
- (a) the person's rate of payment is worked out using Benefit Rate Calculator A; and

SCHEDULE 6—continued

- (b) the person is:
 - (i) a member of a couple; or
 - (ii) a homeless person; or
 - (iii) an independent young person; and
- (c) the person will be in Australia throughout the period for which the payment is to be made; and
- (d) neither the person nor the person's partner has a dependent child who is an FP child.

Note 1: For *homeless person* and *independent young person* see subsection 5(1).

Note 2: For *FP child* see subsection 6(1).

Qualification for residential care allowance—Sickness Allowance Rate Calculator

- “(6) This subsection applies to a person if:
- (a) the person's rate of payment is worked out using the Sickness Allowance Rate Calculator; and
 - (b) the person will be in Australia throughout the period for which the payment is to be made; and
 - (c) neither the person nor the person's partner has a dependent child who is an FP child.

Note: For *FP child* see subsection 6(1).

Qualification for residential care allowance—Benefit Rate Calculator B

- “(7) This subsection applies to a person if:
- (a) the person's rate of payment is worked out using Benefit Rate Calculator B; and
 - (b) the person will be in Australia throughout the period for which the payment is to be made; and
 - (c) neither the person nor the person's partner has a dependent child who is an FP child.

Note: For *FP child* see subsection 6(1).

Qualification for residential care allowance—parenting allowance recipient

- “(8) This subsection applies to a person if:
- (a) the person is receiving parenting allowance; and
 - (b) the person will be in Australia throughout the period for which the payment of parenting allowance is to be made; and
 - (c) neither the person nor the person's partner has a dependent child who is an FP child.

Note: For *FP child* see subsection 6(1).

SCHEDULE 6—continued

Qualification for residential care allowance—family payment recipient

“(9) This subsection applies to a person if the person is receiving family payment and neither the person nor the person’s partner is receiving payments of incentive allowance.

Amount of residential care allowance

“1157Y.(1) The amount of residential care allowance for a person is worked out using the following formula, up to the maximum amount applicable to the person shown in column 4 of the Table in subsection (2):

$$3 \times \frac{\text{(periodic residential care charge – residential care charge threshold)}}{4}$$

Note 1: The maximum amount of residential care allowance, and the residential care charge threshold, for a person are set out in the Table in subsection 1157Y(2).

Note 2: For *periodic residential care charge* see subsection 1157Y(3).

“(2) The following Table sets out amounts of residential care charge threshold and maximum amounts of residential care allowance:

SCHEDULE 6—continued

**RESIDENTIAL CARE CHARGE THRESHOLD AND MAXIMUM
RESIDENTIAL CARE ALLOWANCE TABLE**

| column 1 | column 2 | column 3 | column 4 |
|----------|--|---|--|
| item | description of person | residential care charge threshold | maximum amount of residential care allowance |
| 1. | Person's rate of payment is worked out using Pension Rate Calculator A | \$1,627.60 | \$1,825.20 |
| 2. | Person's rate of payment is worked out using Pension Rate Calculator C | \$1,627.60 | \$1,825.20 |
| 3. | Person's rate of payment is worked out using Pension Rate Calculator D and person is under 18 | \$1,627.60 | \$1,825.20 |
| 4. | Person's rate of payment is worked out using Pension Rate Calculator D and person is at least 18 | \$1,627.60 | \$1,825.20 |
| 5. | Person's rate of payment is worked out using Benefit Rate Calculator A | \$62.60 | \$70.20 |
| 6. | Person's rate of payment is worked out using the Sickness Allowance Rate Calculator | \$62.60 | \$70.20 |
| 7. | Person's rate of payment is worked out using Benefit Rate Calculator B | \$62.60 | \$70.20 |
| 8. | Person's rate of payment is worked out using the Parenting Allowance Rate Calculator | \$62.60 | \$70.20 |
| 9. | Person's rate of payment is worked out using the Family Payment Rate Calculator and person has 1 or 2 FP children | \$83.40 | \$77.00 |
| 10. | Person's rate of payment is worked out using the Family Payment Rate Calculator and person has 3 or more FP children | \$83.40 | \$88.00 |

Note: Amounts in columns 3 and 4 of the Table in subsection 1157Y(2) are indexed 6 monthly in line with CPI increases (see sections 1191 to 1194).

“(3) The *periodic residential care charge* for a person is:

- (a) if the person's rate of payment is worked out using Pension Rate Calculator A, C or D—the annual residential care charge paid or payable for the person; or

SCHEDULE 6—continued

- (b) if the person’s rate of payment is worked out using Benefit Rate Calculator A or B, the Sickness Allowance Rate Calculator, the Parenting Allowance Rate Calculator or the Family Payment Rate Calculator—the fortnightly residential care charge paid or payable for the person.

Note: Subsection 13A(4) specifies how the amount of residential care charge paid or payable in certain cases is to be worked out.

“(4) If the Secretary makes a written determination specifying for the purposes of a particular entry in the Table in subsection (2) an amount greater than the amount shown in the entry, that entry has effect from the commencement of this Part as if the greater amount were substituted for the amount shown in the entry. The Secretary must not determine for an entry an amount greater than the amount of rent assistance threshold or maximum amount of rent assistance (as the case requires) corresponding to the situation described for the entry.

“(5) A determination is a disallowable instrument.

“(6) On and after 1 January 1997, subsection (2) has effect as if, immediately after indexation on 20 March 1996:

- (a) each of the amounts of residential care charge threshold shown in column 3 of items 1, 2, 3 and 4 of the Table in subsection (2) had been increased by \$130.00; and
- (b) each of the amounts of residential care charge threshold shown in column 3 of items 5, 6, 7, 8, 9 and 10 of the Table in subsection (2) had been increased by \$5.00; and
- (c) each of the amounts of maximum amount of residential care allowance shown in column 4 of items 8, 9 and 10 of the Table in subsection (2) had been increased by \$5.00.”.

38. Section 1190 (Table):

After item 19A insert:

“

| | | | |
|------|---|---|---|
| 19B. | Residential care allowance Maximum residential care allowance for social security pension | pension MRCA | [column 4 of items 1, 2, 3 and 4 of the Table in subsection 1157Y(2)] |
| 19C. | Residential care charge threshold rate for social security pension | pension residential care charge threshold | [column 3 of items 1, 2, 3 and 4 of the Table in subsection 1157Y(2)] |

SCHEDULE 6—continued

TABLE—continued

| | | | |
|------|--|---|--|
| 19D. | Maximum residential care allowance for social security benefit (other than sickness allowance payable to a person referred to in subsection 709(3)) or for parenting allowance | benefit MRCA | [column 4 of items 5, 7 and 8 of the Table in subsection 1157Y(2)] |
| 19E. | Maximum residential care allowance for sickness allowance payable to a person referred to in subsection 709(3) | MRCA SA (under 18) | [column 4 of item 6 of the Table in subsection 1157Y(2)] |
| 19F. | Residential care charge threshold for social security benefit (other than sickness allowance payable to a person referred to in subsection 709(3)) or for parenting allowance | benefit residential care charge threshold | [column 3 of items 5, 7 and 8 of the Table in subsection 1157Y(2)] |
| 19G. | Residential care charge threshold for sickness allowance payable to a person referred to in subsection 709(3) | residential care charge threshold SA (under 18) | [column 3 of item 6 of the Table in subsection 1157Y(2)] |
| 19H. | Maximum residential care allowance for family payment | FP MRCA | [column 4 of items 9 and 10 of the Table in subsection 1157Y(2)] |
| 19I. | Residential care charge threshold for family payment | FP residential care charge threshold | [column 3 of items 9 and 10 of the Table in subsection 1157Y(2)] |

”

39. Subsection 1191(1) (Table):

After item 13A insert:

“

| | | | | | |
|------|---|------------------|--------------|--|--------|
| 13B. | Residential care allowance pension MRCA | (a) 20 March | (a) December | highest June or December quarter before reference quarter (but not earlier than June quarter 1979) | \$5.20 |
| | | (b) 20 September | (b) June | | |

SCHEDULE 6—continued

| TABLE—continued | | | | | |
|------------------------|---|------------------|--------------|--|--------|
| 13C. | pension residential care charge threshold | (a) 20 March | (a) December | highest June or December quarter before reference quarter (but not earlier than June quarter 1979) | \$5.20 |
| | | (b) 20 September | (b) June | | |
| 13D. | benefit MRCA | (a) 20 March | (a) December | highest June or December quarter before reference quarter (but not earlier than June quarter 1979) | \$0.20 |
| | | (b) 20 September | (b) June | | |
| 13E. | MRCA SA (under 18) | (a) 20 March | (a) December | highest June or December quarter before reference quarter (but not earlier than June quarter 1979) | \$0.20 |
| | | (b) 20 September | (b) June | | |
| 13F. | benefit residential care charge threshold | (a) 20 March | (a) December | highest June or December quarter before reference quarter (but not earlier than June quarter 1979) | \$0.20 |
| | | (b) 20 September | (b) June | | |
| 13G. | residential care charge threshold SA (under 18) | (a) 20 March | (a) December | highest June or December quarter before reference quarter (but not earlier than June quarter 1979) | \$0.20 |
| | | (b) 20 September | (b) June | | |

SCHEDULE 6—continued

| TABLE—continued | | | | | |
|------------------------|--------------------------------------|------------------|--------------|--|--------|
| 13H. | FP MRCA | (a) 20 March | (a) December | highest June or December quarter before reference quarter (but not earlier than June quarter 1979) | \$0.20 |
| | | (b) 20 September | (b) June | | |
| 13I. | FP residential care charge threshold | (a) 20 March | (a) December | highest June or December quarter before reference quarter (but not earlier than June quarter 1979) | \$0.20 |
| | | (b) 20 September | (b) June | | |

40. Paragraph 1207(1)(a):

Omit “or the rent assistance Module of a Rate Calculator”, substitute “, the rent assistance Module of a Rate Calculator or Part 3.12B (which deals with residential care allowance)”.

41. Paragraph 1207(1)(c):

Omit “or the rent assistance Module”, substitute “, the rent assistance Module or Part 3.12B (residential care allowance)”.

42. Paragraph 1207(1)(d):

After “Module” insert “or Part 3.12B (residential care allowance)”.

43. Point 1210-A1 (Note 2):

After “rent assistance” insert “or residential care allowance”.

44. Subclauses 28(1) and (2) of Schedule 1A:

After “ineligible homeowner” insert “or excluded homeowner”.

Note: The heading to clause 28 of Schedule 1A is altered by inserting “and residential care allowance” after “assistance”.

45. Subclause 28(4) of Schedule 1A:

After “rent assistance” (wherever occurring) insert “or residential care allowance”.

46. Subclause 28(5) of Schedule 1A:

Omit the subclause, substitute:

SCHEDULE 6—continued

“(5) Subclause (4) does not apply if the person is entitled to rent assistance or residential care allowance because of subclause (1) or (2) and either:

- (a) the amount of rent assistance payable is worked out under clause 63;
or
- (b) the amount of residential care allowance payable is worked out under clause 63A.”.

47. Subclause 28(6) of Schedule 1A:

After “rent assistance” insert “or residential care allowance”.

48. Subclause 36(3) of Schedule 1A:

After “rent assistance” insert “or residential care allowance”.

49. After clause 63 of Schedule 1A:

Insert:

Residential care allowance for persons with rent assistance preserved under clause 63

“63A.(1) If clause 63 applies to a person immediately before the person starts to receive residential care allowance, the first amount of residential care allowance payable to the person is to equal the amount of rent assistance that would have been payable to the person under that clause when the person starts to receive residential care allowance had rent assistance continued to be payable to the person then.

“(2) Each later amount of residential care allowance payable to the person is to be worked out using the formula:

$$\text{initial residential care allowance} - \text{post-1996 increase}$$

where:

initial residential care allowance is the amount worked out under subclause (1).

post-1996 increase is the sum of the increases in the amount of the maximum fortnightly rate of any of the following payments to the person after 31 December 1996 or the later day (the application day) this clause first applied to the person (whether or not the type or amount of payment payable to the person varies after 31 December 1996 or the application day because the person’s circumstances change):

- (a) a social security benefit;
- (b) a social security pension;

SCHEDULE 6—continued

- (c) family payment;
- (d) non-benefit parenting allowance;
- (e) child disability allowance;
- (f) double orphan pension;
- (g) mobility allowance;
- (h) youth training allowance.

“(3) This clause does not apply (and cannot apply later) to a person when the amount of residential care allowance payable to the person under subclause (1) would be less than or equal to the amount of residential care allowance that would otherwise be payable to the person.

- “(4) This clause ceases to apply (and cannot re-apply) to a person if:
- (a) the person ceases to receive a social security pension, social security benefit or family payment; or
 - (b) the person ceases to be qualified for residential care allowance; or
 - (c) the Secretary considers that there is a significant change in the person’s circumstances that would affect the amount of residential care allowance that is payable to the person apart from this clause; or
 - (d) the amount of residential care allowance that would be payable to the person if this clause applied is less than or equal to the amount of residential care allowance that would otherwise be payable.”.

SCHEDULE 6—continued

**PART 2—AMENDMENT OF THE INCOME TAX ASSESSMENT
ACT 1936**

50. Subsection 24ABA(1) (Table):

After paragraph (a) in each item of the Table, insert:

“(aa) the amount included in the payment because residential care charge was paid or payable for the taxpayer;”.

SCHEDULE 7

Section 3

**AMENDMENTS OF THE SOCIAL SECURITY ACT 1991 TO
PROVIDE FOR IMMEDIATE RENT ASSISTANCE FOR THOSE
LEAVING HOME TO RECEIVE OR GIVE COMMUNITY-BASED
CARE**

1. Section 3:

Insert in the Index after the entry for “Impairment Tables”:

“in a care situation 13(9)”.

2. Subsection 13(1) (paragraphs (b) and (c) of definition of *ineligible homeowner*):

Omit the paragraphs, substitute:

“(b) a person who:

- (i) is absent from the person’s principal home, in relation to which the person is a homeowner; and
- (ii) is personally providing a substantial level of care in another private residence for another person who needs, or in the Secretary’s opinion is likely to need, that level of care in a private residence for at least 14 consecutive days; and
- (iii) has been absent from the principal home for less than 2 years while providing care as described in subparagraph (ii); or

(c) a person who is in a care situation but is not residing in a retirement village; or”.

3. Subsection 13(1) (Note after definition of *ineligible homeowner*):

After “subsection 4(9),” insert “for *in a care situation* see subsection 13(9),”.

4. After subparagraph 13(2)(a)(i):

Insert:

“(ia) as a condition of occupancy of premises, or of a part of premises, occupied by the person to allow him or her to provide personally a substantial level of care in a private residence for another person who needs, or in the Secretary’s opinion is likely to need, that level of care in a private residence for at least 14 consecutive days; or”.

5. Subparagraph 13(2)(a)(iii):

Omit the subparagraph, substitute:

SCHEDULE 7—continued

“(iii) if the person is in a care situation and the place where the person receives the care is the person’s principal home or would be the person’s principal home apart from subsection 11(7)—for accommodation in the place where the person receives care; or”.

6. After subsection 13(3):

Insert:

“(3A) If a person is in a care situation and the person’s principal home is not the place where the person receives the care, the person’s rent may be an amount described in any of the subparagraphs of paragraph 13(2)(a) that applies to the person but cannot include amounts described in different subparagraphs of paragraph 13(2)(a).

Note: Under subsection 11(7), the principal home of a person in a care situation may be a place other than the place where the person receives care.

“(3B) If an amount described in subparagraph 13(2)(a)(ia) and an amount described in another subparagraph of paragraph 13(2)(a) are payable by a person, the person’s rent may be an amount described in either of those subparagraphs but cannot include amounts described in different subparagraphs.

Note: Under subsection 11(7), premises occupied by a person as described in subparagraph 13(2)(a)(ia) may not be the person’s principal home.”.

7. Paragraph 13(7)(a):

Omit the paragraph, substitute:

“(a) a person in a care situation pays, or is liable to pay, amounts for accommodation and other services in the care situation; and”.

8. Section 13:

Add at the end:

“(9) For the purposes of this Act, unless the contrary intention appears, a person is *in a care situation* if:

- (a) the person is residing in a nursing home; or
- (b) the person needs and has been receiving a substantial level of care in a private residence for at least 14 consecutive days; or
- (c) in the Secretary’s opinion, the person needs and is likely to receive, a substantial level of care in a private residence for at least 14 consecutive days.”.

SCHEDULE 8

Section 3

AMENDMENTS OF THE SOCIAL SECURITY ACT 1991 TO EXTEND DISREGARD OF HOMES OF PERSONS WHO ARE RECEIVING OR GIVING COMMUNITY-BASED CARE OR ARE IN RESIDENTIAL CARE

1. Paragraph 11(7)(b):

Omit the paragraph, substitute:

“(b) if the person is in a care situation or residential care—the period of 2 years beginning when the person started to be in a care situation or residential care; and”.

2. Subparagraph 11(7)(c)(i):

Omit “residing in a nursing home”, substitute “in a care situation or residential care”.

3. Paragraph 11(7)(d):

Omit the paragraph, substitute:

“(d) if:

- (i) the person is in a care situation or residential care; and
- (ii) the person’s partner dies while in a care situation or residential care; and
- (iii) the person’s partner had been in a care situation or residential care for less than 2 years;

the period of 2 years beginning at the time the person’s partner started to be in a care situation or residential care; and”.

4. Subparagraphs 11(7)(e)(i) and (ii):

Omit “residing in a nursing home”, substitute “in a care situation or residential care”.

5. Application of amendments made by items 1, 2, 3 and 4

Subsection 11(7) of the *Social Security Act 1991* (as amended by items 1, 2, 3 and 4) extends to periods beginning before the commencement of this item. However, the amendments made by those items do not affect a person’s entitlement (or lack of entitlement) to an amount by way of rent assistance in relation to a time before the commencement of this item.

SCHEDULE 8—continued

6. Subsection 11(7):

Add at the end:

“; and (f) any period of up to 2 years while the person is absent from the residence and is personally providing a substantial level of care in another private residence for another person who needs, or in the Secretary’s opinion is likely to need, that level of care in a private residence for at least 14 consecutive days.”.

7. Application of amendment made by item 6

Paragraph 11(7)(f) of the *Social Security Act 1991* extends to periods that began when a person started to provide a substantial level of care before the commencement of this item. However, the amendment made by item 6 does not affect a person’s entitlement (or lack of entitlement) to an amount by way of rent assistance in relation to a time before the commencement of this item.

8. Subsection 11(7):

Omit the Note, substitute:

“Note: For *in a care situation*, see subsection 13(9); for *in residential care* see subsection 13A(5).”.

SCHEDULE 9

Section 3

**AMENDMENTS OF THE SOCIAL SECURITY ACT 1991 TO
CONTINUE PAYMENT OF CARER PENSION AFTER PERSON
RECEIVING CARE IS ADMITTED TO AN INSTITUTION**

1. Section 211:

Add at the end:

“Note 3: For the impact on payment of carer pension when a person ceases to be qualified in certain circumstances, see section 225AA.”.

2. Paragraph 225(1)(c):

After “section” insert “225AA,”.

3. Before section 225A:

Insert in Subdivision B of Division 8 of Part 2.5:

**Effect on carer pension when person being cared for by carer is
admitted to an institution**

“225AA.(1) This section applies if:

- (a) a carer pension is payable to a person (the *carer*) who has ordinarily been providing constant care for a severely handicapped person; and
- (b) the carer ceases to be qualified for the pension because the carer ceases to provide constant care for the severely handicapped person because the person is admitted permanently to an institution where care is provided for the person.

“(2) The carer pension continues to be payable to the carer on each of the first 7 pension paydays after the carer ceases to be qualified, and then ceases to be payable.”.

SCHEDULE 10

Section 3

**AMENDMENTS OF THE SOCIAL SECURITY ACT 1991 TO
PROVIDE CARER PENSION FOR PERSONS CARING FOR
PERSONS WHO DO NOT RECEIVE PENSIONS OR BENEFITS**

1. Section 3:

After the entry in the Index relating to “care” insert:
“care receiver 23(1)”.

2. Subsection 19B(1):

Omit “section”, substitute “sections 198N (exemption from care receiver assets test) and”.

3. Subsection 19B(1):

After “Subdivision AA” insert “of Division 2”.

4. Subsection 23(1) (paragraph (d) of definition of *recipient notification notice*):

Omit “section 222”, substitute “subsection 222(1)”.

5. Subsection 23(1):

Insert:

“*care receiver* means a person referred to in subsection 198(1B).”.

6. Subparagraph 198(1)(d)(ii):

After “test)” insert “or subsection (1B) (description of care receiver)”.

7. After subsection 198(1A):

Insert:

“(1B) This subsection applies to a severely handicapped person if the person:

- (a) requires constant care; and
- (b) is at least 16; and
- (c) is an Australian resident; and
- (d) is not receiving a social security pension, social security benefit or service pension; and
- (e) passes the income test under section 198A; and
- (f) either:
 - (i) passes the assets test under section 198D; or
 - (ii) is the subject of a decision in force under subsection 198N(2), (3) or (4) that the person is taken to satisfy subparagraph (i).

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

SCHEDULE 10—continued

8. After section 198:

Insert in Subdivision A of Division 1 of Part 2.5:

Income test

Passing the income test

“198A.(1) A care receiver passes the income test if his or her taxable income worked out under section 198B for the appropriate tax year determined under section 198C is not more than \$61,020.00 (the *income ceiling*).

Note: The income ceiling is indexed (see sections 1190, 1191 and 1194).

Some grounds for failing income test

“(2) A care receiver does not pass the income test if:

- (a) the care receiver does not have an assessed taxable income or an accepted estimated taxable income for the appropriate tax year; or
- (b) any partner of the care receiver does not have an assessed taxable income or an accepted estimated taxable income for the appropriate tax year.

Initial income ceiling

“(3) If the Secretary determines in writing that the income ceiling should be more than \$61,020.00, subsection (1) has effect from the commencement of this section as if it specified that higher amount.

Limit on determination of initial income ceiling

“(4) The Secretary must not determine an amount more than the basic ceiling amount taken to be specified in column 1 of Table H1 in Module H of the Family Payment Rate Calculator on 1 January 1996 after indexation.

Determination is disallowable

“(5) A determination is a disallowable instrument.

Taxable income

Taxable income of care receiver and partner

“198B.(1) For the purposes of this Subdivision:

- (a) if a care receiver is a member of a couple, the care receiver’s taxable income includes the taxable income of the care receiver’s partner; and
- (b) a person’s *taxable income* for a tax year is:
 - (i) the person’s assessed taxable income for the tax year; or

SCHEDULE 10—continued

- (ii) if the Commissioner of Taxation has not made an assessment of the person's taxable income for the tax year—the person's accepted estimated taxable income for the tax year.

Assessed taxable income

“(2) At a particular time, a person's *assessed taxable income* for a tax year is the taxable income according to whichever of the following was made most recently:

- (a) an assessment of the person's taxable income for the tax year made by the Commissioner of Taxation;
- (b) an amended assessment of the person's taxable income for the tax year made by the Commissioner of Taxation;
- (c) an amendment made by a tribunal of an assessment or amended assessment of the person's taxable income for the tax year made by the Commissioner of Taxation;
- (d) an amendment made by a court of:
 - (i) an assessment or amended assessment of the person's taxable income for the tax year made by the Commissioner of Taxation; or
 - (ii) an amended assessment of the person's taxable income for the tax year made by a tribunal.

Estimating taxable income

“(3) A person may give the Secretary a written estimate of the person's taxable income for a tax year.

Accepting estimate of taxable income

- “(4) The Secretary may accept the estimate only if:
- (a) the person does not have an assessed taxable income for the tax year; and
 - (b) one of the following applies:
 - (i) the tax year has not ended;
 - (ii) the Secretary is satisfied that the person is not required to lodge a return of income for the tax year under the Income Tax Assessment Act;
 - (iii) the Secretary is satisfied that the person has lodged, or proposes to lodge, a return of income for the tax year under the Income Tax Assessment Act; and
 - (c) the Secretary is satisfied that the estimate is reasonable.

SCHEDULE 10—continued

Accepted estimated taxable income

“(5) A person’s *accepted estimated taxable income* for a tax year is the taxable income according to the estimate that was most recently given to the Secretary by the person under subsection (3) and accepted by the Secretary.

Nil amounts of taxable income

“(6) For the purposes of this Subdivision, a person’s assessed taxable income or accepted estimate of taxable income may be a nil amount.

Appropriate tax year

Appropriate tax year in ordinary cases

“198C.(1) Subject to this section, the appropriate tax year for a carer pension payday is the base tax year for that payday.

Note: For *base tax year* see subsection (6).

Change of appropriate tax year on request

“(2) If:

- (a) carer pension would not be payable to a person (the *carer*) because a care receiver would not pass the income test under subsection 198A(1) apart from this subsection; and
- (b) the carer or the care receiver gives the Secretary a written request to treat the care receiver as if the tax year in which the request is given were the appropriate tax year; and
- (c) the care receiver’s taxable income for the tax year in which the request is made is likely to be less than the income ceiling;

the appropriate tax year, for the purposes of applying subsection 198A(1) to the care receiver for a payday on or after the day on which the request is given, is the tax year in which the request is made.

Note 1: For *taxable income* see subsection 198B(1).

Note 2: For *income ceiling* see subsection 198A(1).

Current tax year to be retained for consecutive calendar years in certain circumstances

“(3) If:

- (a) carer pension is payable to a person:
 - (i) on the last carer pension payday in one calendar year; and
 - (ii) on the first carer pension payday in the next calendar year;
 because the person cares for a person to whom subsection 198(1B) applies (the *care recipient*); and

SCHEDULE 10—continued

- (b) the carer pension is payable on the last carer pension payday in the earlier of the 2 calendar years because, as a result of a request under paragraph (2)(b), the care recipient's appropriate tax year is the tax year in which that payday occurs (the *current tax year*); and
- (c) the care recipient's taxable income for the current tax year is less than the care recipient's taxable income for the base tax year;

the care recipient's appropriate tax year, as from the beginning of the later calendar year, is the current tax year and not the base tax year unless the care recipient's taxable income for the base tax year is less than the income ceiling.

Note 1: For *base tax year* see subsection (6).

Note 2: For *income ceiling* see subsection 198A(1).

Change to appropriate tax year because of notifiable event

“(4) For the purposes of section 198A, if:

- (a) a notifiable event occurs in relation to a care receiver; and
- (b) the care receiver's taxable income for the tax year in which the notifiable event occurs exceeds the income ceiling;

the appropriate tax year is the tax year in which the notifiable event occurs.

Note 1: For *notifiable event* see subsection (6).

Note 2: For *taxable income* see subsection 198B(1).

Note 3: For *income ceiling* see subsection 198A(1).

Note 4: The effect of subsection (4) is that the person caring for the person mentioned in the subsection will cease to be qualified for carer pension because the person mentioned in the subsection will not pass the income test under subsection 198A(1).

Change to appropriate tax year because of effect of notifiable event on taxable income for later tax year

“(5) For the purposes of section 198A, if:

- (a) a notifiable event occurs in relation to a care receiver; and
- (b) the care receiver's taxable income for the tax year in which the notifiable event occurs (the *event tax year*) does not exceed the income ceiling; and
- (c) the care receiver's taxable income for the tax year that follows the event tax year is likely to exceed the income ceiling;

the appropriate tax year is the year that follows the event tax year.

Note 1: For *notifiable event* see subsection (6).

Note 2: For *taxable income* see subsection 198B(1).

Definitions

“(6) For the purposes of this section:

SCHEDULE 10—continued

- (a) the **base tax year** for a carer pension payday is the tax year that ended on 30 June in the calendar year immediately before the calendar year in which the carer pension payday falls; and
- (b) a **notifiable event** is an event or change of circumstances that:
 - (i) is specified in a notice under subsection 222(1A); and
 - (ii) is described by the notice as a notifiable event.

Example: Suppose 4 April 1996 is a carer pension payday. It falls in the calendar year 1 January to 31 December 1996, so the base tax year for that payday is the tax year that ended on 30 June 1995 (i.e. the year of income beginning on 1 July 1994).

Assets test

Passing the assets test

“198D.(1) A care receiver passes the assets test if the total value of the following assets is less than \$376,750:

- (a) the care receiver’s assets;
- (b) if the care receiver has a partner—any assets of the partner;
- (c) if the care receiver or the care receiver’s partner has one or more FP children—any assets of the FP children.

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

Determination of initial assets limit

“(2) If the Secretary makes a determination specifying an amount more than \$376,750 for the purposes of subsection (1), that subsection has effect from its commencement as if it specified the larger amount.

Limit on determination

“(3) The Secretary must not make a determination specifying an amount more than the amount taken to be specified by paragraph 838(1)(d) (the assets value limit for family payment) on 1 January 1996 after indexation.

Determination is disallowable

“(4) A determination under subsection (2) is a disallowable instrument.

Working out the value of assets

“198E. For the purposes of subsection 198D(1), the value of assets is to be worked out in accordance with:

- (a) Part 3.12, except Divisions 2, 3 and 4 of that Part; and
- (b) sections 198F to 198M (inclusive).

Note: Sections 198F to 198M (inclusive) make special provision for the assets test for care receivers in relation to subjects covered more generally by Division 2 of Part 3.12.

SCHEDULE 10—continued

Disposal of assets—care receiver assets test

“198F.(1) For the purposes of this Division, a person *disposes of assets* of the person if:

- (a) the person engages in a course of conduct that directly or indirectly:
 - (i) destroys all or some of the person’s assets; or
 - (ii) disposes of all or some of the person’s assets; or
 - (iii) diminishes the value of all or some of the person’s assets; and
- (b) one of the following subparagraphs is satisfied:
 - (i) the person receives no consideration in money or money’s worth for the destruction, disposal or diminution;
 - (ii) the person receives inadequate consideration in money or money’s worth for the destruction, disposal or diminution;
 - (iii) the Secretary is satisfied that the person’s purpose, or dominant purpose, in engaging in that course of conduct was to enable another person who provides care for the person to obtain a carer pension.

“(2) If, under subsection 1147(1A), the value of a granny flat interest is less than the amount paid, or agreed to be paid, for the interest, then, for the purposes of this section, so much of the amount paid, or agreed to be paid, as exceeds the value of the interest is not consideration for the interest.

Note: For *granny flat interest* see subsection 12A(2).

Amount of disposition—care receiver assets test

“198G. If a person disposes of assets, the *amount of the disposition* is:

- (a) if the person receives no consideration for the destruction, disposal or diminution—an amount equal to:
 - (i) the value of the assets that are destroyed; or
 - (ii) the value of the assets that are disposed of; or
 - (iii) the amount of the diminution in the value of the assets whose value is diminished; or
- (b) if the person receives consideration for the destruction, disposal or diminution—an amount equal to:
 - (i) the value of the assets that are destroyed; or
 - (ii) the value of the assets that are disposed of; or
 - (iii) the amount of the diminution in the value of the assets whose value is diminished;

less the amount of the consideration received by the person in respect of the destruction, disposal or diminution.

SCHEDULE 10—continued

Disposal of assets in pre-pension years—individual care receivers

“198H.(1) This section applies in determining whether a person (the *carer*) qualifies for a carer pension when claiming it for caring for a care receiver who is not a member of a couple when the claim is made.

“(2) If:

- (a) the care receiver has disposed of an asset of the care receiver during a pre-pension year of the carer; and
- (b) the amount of that disposition, or the sum of that amount and of the amounts (if any) of other dispositions of assets previously made by the care receiver during that pre-pension year, exceeds \$10,000;

the lesser of the following amounts is to be included in the value of the care receiver’s assets for the period of 5 years that starts on the day on which the disposition took place:

- (c) the amount of the first-mentioned disposition;
- (d) the amount by which the sum of the amount of the first-mentioned disposition of assets and of the amounts (if any) of other dispositions of assets previously made by the care receiver during that pre-pension year exceeds \$10,000.

Note 1: For *disposes of assets* see section 198F.

Note 2: For *amount of disposition* see section 198G.

“(3) In this section:

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

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

Disposal of assets—individual care receivers

“198J.(1) This section applies in determining whether a person (the *carer*) who has been receiving a carer pension for caring for a care receiver who is not a member of a couple continues to qualify for the pension.

“(2) If:

- (a) the care receiver has disposed of an asset of the care receiver during a pension year of the carer; and
- (b) the amount of that disposition, or the sum of that amount and of the amounts (if any) of other dispositions of assets previously made by the care receiver during that pension year, exceeds \$10,000;

the lesser of the following amounts is to be included in the value of the care receiver’s assets for the period of 5 years that starts on the day on which the disposition takes place:

SCHEDULE 10—continued

- (c) the amount of the first-mentioned disposition;
- (d) the amount by which the sum of the amount of the first-mentioned disposition of assets, and of the amounts (if any) of other dispositions of assets previously made by the person during that pension year, exceeds \$10,000.

Note 1: For *disposes of assets* see section 198F.

Note 2: For *amount of disposition* see section 198G.

“(3) In this section:

pension year, in relation to a carer, means:

- (a) the 12 months starting on the day the carer pension first became payable to the carer; or
- (b) any preceding or following period of 12 months.

Disposal of assets in pre-pension years—members of couples including care receivers

Application

“198K.(1) This section applies in determining whether a person (the *carer*) qualifies for a carer pension when claiming it for caring for a care receiver who is a member of a couple when the claim is made.

Increase in value of assets of care receiver and of care receiver’s partner

“(2) Subject to subsections (3) and (4), if:

- (a) the care receiver or the care receiver’s partner has disposed of an asset during a pre-pension year of the carer; and
- (b) the amount of that disposition, or the sum of that amount and the amounts (if any) of other dispositions of assets previously made by the care receiver or the partner during that pre-pension year, exceeds \$10,000;

the lesser of the following amounts is to be included in the value of both the assets of the care receiver and the assets of the partner, for the period of 5 years that starts on the day on which the disposition took place:

- (c) 50% of the amount of the first-mentioned disposition;
- (d) 50% of the amount by which the sum of the amount of the first-mentioned disposition and of the amounts (if any) of other dispositions of assets previously made by the care receiver or the care receiver’s partner during that pre-pension year exceeds \$10,000.

Note 1: For *disposes of assets* see section 198F.

Note 2: For *amount of disposition* see section 198G.

SCHEDULE 10—continued

Effect of separation of couple after disposal of care receiver's asset

“(3) If:

- (a) an amount is included under subsection (2) in the value of both the assets of the care receiver and the assets of the care receiver's partner because of a disposition of an asset by the care receiver; and
- (b) the care receiver and the partner cease to be members of the same couple (either because the partner dies or for another reason);

the amount that was included in the value of the partner's assets because of that disposition is to be included in the assets of the care receiver.

Effect of separation of couple after disposal of partner's asset

“(4) If:

- (a) an amount is included under subsection (2) in the value of both the assets of the care receiver and the assets of the care receiver's partner because of a disposition of an asset by the partner; and
- (b) the care receiver and the partner cease to be members of the same couple (either because the partner dies or for another reason);

the amount that was included in the value of the care receiver's assets because of that disposition is no longer to be included in the assets of the care receiver.

Pre-pension year

“(5) In this section:

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

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

Disposal of assets—members of couples including care receivers

Application

“198L.(1) This section applies in determining whether a person (the ***carer***) who has been receiving a carer pension for caring for a care receiver who is a member of a couple continues to qualify for the pension.

Increase in value of assets of care receiver and of care receiver's partner

“(2) Subject to subsections (3) and (4), if:

- (a) the care receiver or the care receiver's partner disposed of an asset during a pension year of the carer; and

SCHEDULE 10—continued

- (b) the amount of that disposition, or the sum of that amount and the amounts (if any) of other dispositions of assets previously made by the care receiver or the care receiver's partner during that pension year, exceeds \$10,000;

the lesser of the following amounts is to be included in the value of both the assets of the care receiver and the assets of the partner, for the period of 5 years that starts on the day on which the disposition took place:

- (c) 50% of the amount of the first-mentioned disposition;
- (d) 50% of the amount by which the sum of the amount of the first-mentioned disposition and of the amounts (if any) of other dispositions of assets previously made by the care receiver or the care receiver's partner during that pre-pension year exceeds \$10,000.

Note 1: For *disposes of assets* see section 198F.

Note 2: For *amount of disposition* see section 198G.

Effect of separation of couple after disposal of care receiver's asset

“(3) If:

- (a) an amount is included under subsection (2) in the value of both the assets of the care receiver and the assets of the care receiver's partner because of a disposition of an asset by the care receiver; and
- (b) the care receiver and the partner cease to be members of the same couple (either because the partner dies or for another reason);

the amount that was included in the value of the partner's assets because of that disposition is to be included in the assets of the care receiver.

Effect of separation of couple after disposal of partner's asset

“(4) If:

- (a) an amount is included under subsection (2) in the value of both the assets of the care receiver and the assets of the care receiver's partner because of a disposition of an asset by the partner; and
- (b) the care receiver and the partner cease to be members of the same couple (either because the partner dies or for another reason);

the amount that was included in the value of the care receiver's assets because of that disposition is no longer to be included in the assets of the care receiver.

Pension year

“(5) In this section:

pension year, in relation to a carer, means:

SCHEDULE 10—continued

- (a) the 12 months starting on the day the carer pension first became payable to the carer; or
- (b) any preceding or following period of 12 months.

Certain dispositions to be disregarded for care receiver assets test

“198M. This Division does not apply to a disposition of an asset by a person (the *disposer*):

- (a) more than 5 years before the time when another person (the *carer*) became qualified for a carer pension:
 - (i) because the carer was providing care for the disposer and the disposer was a care receiver; or
 - (ii) because the carer was providing care for the person who was the disposer’s partner at the time of the disposition and that person was a care receiver; or
- (b) less than 5 years before the time referred to in paragraph (a) but before the time when the disposer could, in the Secretary’s opinion, reasonably have expected that the carer would become qualified for carer pension for a reason described in paragraph (a); or
- (c) before 9 May 1995.

Exemption from care receiver assets test

Application

“198N.(1) If:

- (a) subparagraph 198(1B)(f)(i) would disqualify for carer pension a person caring for a care receiver; and
- (b) the care receiver lodges with the Department, in a form approved by the Secretary, a request that the care receiver be taken to satisfy subparagraph 198(1B)(f)(i); and
- (c) the request includes a written estimate of the care receiver’s taxable income for the current financial year under subsection 198B(3); and
- (d) the Secretary accepts the estimate under subsection 198B(4);

the following provisions of this section have effect.

Failing assets test but passing special income test

“(2) The Secretary may decide that the care receiver is taken to satisfy subparagraph 198(1B)(f)(i) if:

- (a) the value of the care receiver’s assets is more than \$376,750 and not more than \$559,250; and
- (b) the value of the care receiver’s liquid assets is less than the liquid assets limit; and

SCHEDULE 10—continued

- (c) the amount of the care receiver's accepted estimated taxable income for the current financial year is less than the threshold amount worked out under subsection (6).

Note 1: The asset values specified in paragraph (2)(a) are indexed each year on 1 January (see sections 1190 and 1191).

Note 2: For calculating the value of assets and liquid assets see paragraph (5)(a).

Note 3: For *liquid assets* see subsection 19B(1).

Note 4: For *liquid assets limit* see paragraph (5)(b).

Note 5: For *accepted estimated taxable income* see subsection 198B(5).

Failing assets and special income tests

“(3) The Secretary may decide that the care receiver is taken to satisfy subparagraph 198(1B)(f)(i) if the value of the care receiver's assets is more than \$376,750 and not more than \$559,250 and:

- (a) the value of the care receiver's liquid assets is equal to or greater than the liquid assets limit; or
- (b) the amount of the care receiver's accepted estimated taxable income for the current financial year is equal to or more than the threshold amount worked out under subsection (6).

Note 1: The asset values specified in subsection (3) are indexed each year on 1 January (see sections 1190 and 1191).

Note 2: For calculating the value of assets and liquid assets see paragraph (5)(a).

Note 3: For *liquid assets* see subsection 19B(1).

Note 4: For *liquid assets limit* see paragraph (5)(b).

Note 5: For *accepted estimated taxable income* see subsection 198B(5).

Failing assets test by large margin but passing special income test

“(4) The Secretary may decide that the care receiver is taken to satisfy subparagraph 198(1B)(f)(i) if:

- (a) the value of the care receiver's assets is more than \$559,250; and
- (b) the value of the care receiver's liquid assets is less than the liquid assets limit; and
- (c) the amount of the care receiver's accepted estimated taxable income for the current financial year is less than the threshold amount worked out under subsection (6).

Note 1: The asset values specified in paragraph (4)(a) are indexed each year on 1 January (see sections 1190 and 1191).

Note 2: For calculating the value of assets and liquid assets see paragraph (5)(a).

Note 3: For *liquid assets* see subsection 19B(1).

Note 4: For *liquid assets limit* see paragraph (5)(b).

Note 5: For *accepted estimated taxable income* see subsection 198B(5).

Definitions—assets and income

“(5) For the purposes of this section:

SCHEDULE 10—continued

- (a) the value of the care receiver's assets or liquid assets is the sum of the values of the assets or liquid assets (as the case requires) of the following people:
- (i) the care receiver;
 - (ii) if the care receiver has a partner—the partner;
 - (iii) if the care receiver or the care receiver's partner has one or more FP children—those FP children; and
- (b) the *liquid assets limit* for a care receiver is:
- (i) if the care receiver is a member of a couple—\$10,000; or
 - (ii) if the care receiver is not a member of a couple—\$6,000; and
- (c) the care receiver's *taxable income* for a particular financial year is the care receiver's taxable income for that year as worked out under section 198B.

Note: For *liquid assets* see subsection 19B(1).

Working out the threshold amount

“(6) For the purposes of paragraphs (2)(c), (3)(b) and (4)(c), the threshold amount is the amount worked out using the following formula:

$$(\mathbf{MBR} \times 2) \quad + \quad (624 \times \mathbf{FPC})$$

where:

MBR is the maximum basic rate of age pension payable, as at the last 1 January, to a person who has a partner.

FPC is the number of FP children of the care receiver or the care receiver's partner (if the care receiver has a partner).

Note: For the maximum basic rate of age pension see point 1064-B1 of Pension Rate Calculator A in section 1064.

Determination of initial amounts

“(7) If the Secretary determines in writing that a specified higher amount is to be substituted for a specified amount in subsection (2), (3) or (4), that subsection has effect from the commencement of this section as if the subsection specified that higher amount. The Secretary must not determine an amount greater than the corresponding amount taken to be specified by subsection 1132A(1A), (1B) or (1C) on 1 January 1996 after indexation. A determination under this subsection is a disallowable instrument.

SCHEDULE 10—continued

Date of effect of favourable decision under section 198N

Date of effect

“198P.(1) If the Secretary decides, under subsection 198N(2), (3) or (4), that a care receiver is taken to satisfy subparagraph 198(1B)(f)(i), the day on which that decision takes effect is worked out under this section.

Basic rule

“(2) Subject to subsections (3), (4) and (5), the decision takes effect on the day on which the decision was made or on such later or earlier day (not being a day more than 3 months before the decision was made) as is specified in the decision.

Notified decision—review sought within 3 months

“(3) If:

- (a) a decision (the *previous decision*) is made under subsection 198N(2), (3) or (4) about a care receiver; and
- (b) notice of the making of the previous decision is given to the care receiver or the person caring for the care receiver; and
- (c) within 3 months after the notice is given, a person applies to the Secretary under section 1240 for review of the previous decision; and
- (d) a decision favourable to the person caring for the care receiver (the *favourable decision*) is made as a result of the application for review;

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

Notified decision—review sought after 3 months

“(4) If:

- (a) a decision (the *previous decision*) is made under subsection 198N(2), (3) or (4) about a care receiver; and
- (b) notice of the making of the previous decision is given to the care receiver or the person caring for the care receiver; and
- (c) more than 3 months after the notice is given, a person applies to the Secretary under section 1240 for review of the previous decision; and
- (d) a decision favourable to the person caring for the care receiver (the *favourable decision*) is made as a result of the application for review;

the favourable decision takes effect on the day on which the person sought the review.

SCHEDULE 10—continued

Decision not notified

“(5) If:

- (a) a decision (the *previous decision*) is made under subsection 198N(2), (3) or (4) about a care receiver; and
- (b) notice of the making of the previous decision is not given to either the care receiver or the person caring for the care receiver; and
- (c) a person applies to the Secretary under section 1240 for review of the previous decision; and
- (d) a decision favourable to the person caring for the care receiver (the *favourable decision*) is made as a result of the application for review; the favourable decision takes effect on the day on which the previous decision took effect.

Date of effect of adverse decision under section 198N

“198Q. If the Secretary decides under subsection 198N(2), (3) or (4) that a care receiver is not taken to satisfy subparagraph 198(1B)(f)(i), the decision takes effect:

- (a) on the day on which the care receiver’s request under section 198N was lodged with the Department; or
- (b) if the care receiver’s request under section 198N was lodged after the Secretary had rejected a claim for carer pension by a person caring for the care receiver—on the day on which the decision to reject the claim took effect.”.

9. After subsection 222(1):

Insert:

“(1A) If a person is being paid a carer pension because he or she is providing constant care for a person to whom subsection 198(1B) applies (the *care recipient*), the Secretary may give the care recipient a notice that requires the care recipient to inform the Department if:

- (a) a specified event or change of circumstances occurs; or
- (b) the care recipient becomes aware that a specified event or change of circumstances is likely to occur.”.

10. Subsection 222(2):

After “subsection (1)” insert “or (1A)”.

11. After subsection 222(3A):

Insert:

“(3B) A notice under subsection (1A):

SCHEDULE 10—continued

- (a) must be in writing; and
- (b) may describe the event or change of circumstances specified in the notice as a notifiable event for the purposes of section 198C; and
- (c) may be given personally or by post; and
- (d) must specify how the care recipient is to give the information to the Department; and
- (e) must specify the period within which the care recipient is to give the information to the Department.

However, a notice is not invalid merely because it fails to comply with paragraph (d).”.

12. Subsection 222(4):

After “paragraph (3)(d)” insert “or (3B)(e)”.

13. Paragraph 222(4)(b):

After “person” insert “to whom the notice is given”.

14. Sections 226 and 227:

Repeal the sections, substitute:

Automatic termination where notification obligations are met

“226. If:

(a) either:

(i) a person who is receiving a carer pension is given a notice under subsection 222(1); or

(ii) a care receiver being cared for by a person who is receiving a carer pension is given a notice under subsection 222(1A); and

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

(c) the event or change in circumstances occurs; and

(d) the person to whom the notice is given informs the Department of the occurrence of the event or change in circumstances within the notification period in accordance with the notice; and

(e) because of the occurrence of the event or change in circumstances:

(i) the person receiving carer pension ceases to be qualified for the pension; or

(ii) the carer pension would, but for this section, cease to be payable to that person; and

SCHEDULE 10—continued

(f) the carer pension is not cancelled before the end of the notification period;

the carer pension continues to be payable to the person until the end of the notification period and then ceases to be payable to the person.

Note: If the person receiving the pension informs the Department, within the notification period, of an event or change in circumstances that reduces the rate of the person's pension, there is no automatic rate reduction and a determination under section 230 must be made in order to bring the rate reduction into effect.

Automatic termination where notification obligations are not met

“227. If:

(a) either:

(i) a person who is receiving a carer pension is given a notice under subsection 222(1); or

(ii) a care receiver being cared for by a person who is receiving a carer pension is given a notice under subsection 222(1A); and

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

(c) the event or change in circumstances occurs; and

(d) the person to whom the notice is given does not inform the Department of the occurrence of the event or change in circumstances within the notification period in accordance with the notice; and

(e) because of the occurrence of the event or the change in circumstances:

(i) the person receiving the carer pension ceases to be qualified for the pension; or

(ii) the carer pension ceases to be payable to that person;

the carer pension ceases to be payable to the person immediately after the day on which the event or change in circumstances occurs.”.

15. Subsection 234(3):

Omit “and (8)”, substitute “, (8), (9), (10) and (11)”.

16. Section 234:

Add at the end:

SCHEDULE 10—continued

Cancellation or suspension—amendment of assessed taxable income

“(9) If:

- (a) the Secretary makes a determination (the *earlier determination*) that a person (the *carer*) is entitled to carer pension because the carer is providing care for a person to whom subsection 198(1B) applies (the *care recipient*); and
- (b) the determination is based on an assessment of the care recipient’s taxable income for a tax year; and
- (c) the assessment is subsequently amended by the Commissioner of Taxation, a tribunal or a court; and
- (d) the taxable income for that year according to the assessment as amended is more than the income ceiling (under section 198A); and
- (e) the Secretary makes a determination under section 231 cancelling or suspending the pension;

the day specified under paragraph (2)(b) must be the day on which the earlier determination took effect.

Note: This subsection results in overpayments for the period between the earlier determination and the later determination. These overpayments might be recoverable under Chapter 5 (Overpayments and debt recovery).

Cancellation or suspension—underestimate of taxable income

“(10) If:

- (a) the Secretary makes a determination (the *earlier determination*) that a person (the *carer*) is entitled to carer pension because the carer is providing care for a person to whom subsection 198(1B) applies (the *care recipient*); and
- (b) in making the determination, the Secretary had regard to the care recipient’s taxable income for a tax year; and
- (c) that taxable income is or includes an amount estimated by the care recipient or the care recipient’s partner; and
- (d) the Commissioner of Taxation subsequently makes an assessment of that taxable income; and
- (e) the amount assessed by the Commissioner is more than the income ceiling (under section 198A); and
- (f) the Secretary makes a determination under section 231 cancelling or suspending the carer pension;

the day specified under paragraph (2)(b) must be the day on which the earlier determination took effect.

Note: This subsection results in overpayments for the period between the earlier determination and the later determination. These overpayments might be recoverable under Chapter 5 (Overpayments and debt recovery).

SCHEDULE 10—continued

Cancellation or suspension—care receiver's taxable income exceeding income ceiling

“(11) If:

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

the day specified under paragraph (2)(b) must be:

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

Note: If the event of the care receiver's taxable income exceeding the income ceiling was specified as a notifiable event in a notice given to the carer or the care receiver under section 222, this subsection will not apply, because the Secretary will not need to make a determination under section 231, as the pension will be cancelled automatically by section 226 or 227.”

17. Subsection 1118(1):

Omit “subparagraph 263(1)(d)(iv)”, substitute “sections 198J and 198L, subparagraph 263(1)(d)(iv)”.

18. Subsection 1118(2A):

After “sections” insert “198F to 198M or”.

19. Subsection 1119(1):

Omit “subparagraph 263(1)(c)(iv)”, substitute “sections 198J and 198L, subparagraph 263(1)(d)(iv)”.

20. After section 1127:

Insert:

Division does not apply for purposes of care receiver assets test

“1127A. This Division does not apply for the purposes of the assets test set out in Subdivision A of Division 1 of Part 2.5 (care receiver assets test).”

SCHEDULE 10—continued

21. After section 1130:

Insert:

Division does not apply for purposes of care receiver assets test

“1130A. This Division does not apply for the purposes of the assets test set out in Subdivision A of Division 1 of Part 2.5 (care receiver assets test).”.

22. After section 1144:

Insert in Division 4 of Part 3.12:

Division does not apply for purposes of care receiver assets test

“1144A.(1) This Division does not apply for the purposes of the assets test set out in Subdivision A of Division 1 of Part 2.5 (care receiver assets test).

“(2) This section is for the avoidance of doubt.”.

23. Paragraph 1150(3)(e):

Omit “subsection”, substitute “section 198J, subsection”.

24. Paragraphs 1151(3)(e) and 1152(3)(e):

Omit “subsection”, substitute “section 198L, subsection”.

25. Subparagraphs 1152(5)(e)(iii) and 1153(3)(c)(iii):

Omit “subsection”, substitute “section 198L, subsection”.

26. Paragraph 1154(4)(e):

Omit “subsection”, substitute “section 198L, subsection”.

27. Section 1190 (Indexed and Adjusted Amounts Table):

After item 20 insert:

| | | | |
|-------|----------------------------------|-------------------|------------------------|
| “20A. | Income ceiling for care receiver | CP income ceiling | [Subsection 198A(1)]”. |
|-------|----------------------------------|-------------------|------------------------|

28. Section 1190 (Indexed and Adjusted Amounts Table):

After item 27 insert:

| | | | |
|-------|--|---------|--|
| “27A. | Assets value limit for care receiver | CP AVL | [Subsection 198D(1)] |
| 27B. | Assets value hardship limits for care receiver | CP HAVL | [Subsections 198N(2), (3) and (4)—all amounts]”. |

29. Section 1191 (CPI Indexation Table):

After item 14 insert:

SCHEDULE 10—continued

| | | | | | |
|-------|-------------------|-----------|------|---|--|
| “14A. | CP income ceiling | 1 January | June | most recent June quarter before reference quarter | not applicable—see subsection 1194(3A)”. |
|-------|-------------------|-----------|------|---|--|

30. Section 1191 (CPI Indexation Table):

After item 20 insert:

| | | | | | |
|-------|---------|-----------|------|---|------------|
| “20A. | CP AVL | 1 January | June | most recent June quarter before reference quarter | \$250.00 |
| 20B. | CP HAVL | 1 January | June | most recent June quarter before reference quarter | \$250.00”. |

31. Subsection 1194(3):

After “subsections” insert “(3A),”.

32. After subsection 1194(3):

Insert:

“(3A) If a provisional indexed amount for CP income ceiling is not a multiple of \$1.00, the indexed amount is the provisional indexed amount rounded up to the nearest multiple of \$1.00.”.

33. Subsection 1223(1):

After “(1A)” insert “, (1B)”.

34. After subsection 1223(1A):

Insert:

Some carer pension overpayments are not debts

“(1B) If:

- (a) an amount has been paid to a person (the *carer*) by way of carer pension because the carer was providing care for a care receiver; and
- (b) the amount was paid on the basis that the carer was qualified for carer pension when the carer was not qualified:
 - (i) because an estimate of the care receiver’s income was an underestimate; or
 - (ii) because an assessment or amended assessment of the care receiver’s income had been amended as described in paragraph 198B(2)(b), (c) or (d); or
 - (iii) because of the occurrence, or the likelihood of the occurrence, of a notifiable event of whose occurrence or likely occurrence the care receiver had not informed the Department;

the amount is not a debt due to the Commonwealth.

SCHEDULE 10—continued

Some carer pension overpayments are debts if carer knew about care receiver's affairs

“(1C) Despite subsection (1B), an amount described in subsection (1B) is a debt due to the Commonwealth if it was reasonable for the carer to know that:

- (a) the estimate of the care receiver's income was incorrect; or
- (b) the assessment or amended assessment of the care receiver's income had been amended; or
- (c) the care receiver should have informed the Department of the occurrence, or of the likelihood of the occurrence, of the notifiable event;

as the case requires.”.

3460

*Social Security Legislation Amendment
(Carer Pension and Other Measures) No. 143, 1995*

SCHEDULE 11

Section 3

**AMENDMENT OF THE SOCIAL SECURITY ACT 1991 TO
REMOVE REQUIREMENT FOR CARER PENSIONER TO LIVE
WITH, OR NEXT TO, PERSON CARED FOR**

1. Paragraph 198(1)(c):

Omit the paragraph.

SCHEDULE 12

Section 3

**ADVANCE PAYMENTS OF SOME SOCIAL SECURITY PENSIONS
AND SOCIAL SECURITY BENEFITS**

1. Section 3:

After the entry relating to “social security benefit” in the Index insert:
“social security entitlement 23(1)”.

2. Subsection 23(1):

Insert:

“*social security entitlement* means:

- (a) an age pension; or
- (b) a disability support pension; or
- (c) a wife pension; or
- (d) a carer pension; or
- (e) a sole parent pension; or
- (f) a widow B pension; or
- (g) a widow allowance; or
- (h) a disability wage supplement; or
- (i) a job search allowance; or
- (j) a newstart allowance; or
- (k) a mature age allowance; or
- (l) a mature age partner allowance.”.

3. Paragraph 67(1)(b):

Omit the paragraph, substitute:

“(b) either or both of the following apply:

- (i) instalments of age pension payable to the person (whether on the person’s own behalf or not) are being paid to the credit of the account;
- (ii) an advance payment of age pension payable to the person (whether on the person’s own behalf or not) has been paid to the credit of the account; and”.

4. Subsection 67(2) (Step 1 in Method statement):

Omit “of age pension payable to the person”, substitute “payable to the person in respect of age pension or advance payment of age pension”.

5. Subsection 67(3) (Note):

Omit all the words after “amounts”.

SCHEDULE 12—continued

6. Paragraph 129(1)(b):

Omit the paragraph, substitute:

“(b) either or both of the following apply:

- (i) instalments of disability support pension payable to the person (whether on the person’s own behalf or not) are being paid to the credit of the account;
- (ii) an advance payment of disability support pension payable to the person (whether on the person’s own behalf or not) has been paid to the credit of the account; and”.

7. Subsection 129(2) (Step 1 in Method statement):

Omit “of disability support pension payable to the person”, substitute “payable to the person in respect of disability support pension or advance payment of disability support pension”.

8. Subsection 129(3) (Note):

Omit all the words after “amounts”.

9. Paragraph 171(1)(b):

Omit the paragraph, substitute:

“(b) either or both of the following apply:

- (i) instalments of wife pension payable to the person (whether on the person’s own behalf or not) are being paid to the credit of the account;
- (ii) an advance payment of wife pension payable to the person (whether on the person’s own behalf or not) has been paid to the credit of the account; and”.

10. Subsection 171(2) (Step 1 in Method statement):

Omit “of wife pension payable to the person”, substitute “payable to the person in respect of wife pension or advance payment of wife pension”.

11. Subsection 171(3) (Note):

Omit all the words after “amounts”.

12. Paragraph 221(1)(b):

Omit the paragraph, substitute:

“(b) either or both of the following apply:

- (i) instalments of carer pension payable to the person (whether on the person’s own behalf or not) are being paid to the credit of the account;

SCHEDULE 12—continued

- (ii) an advance payment of carer pension payable to the person (whether on the person's own behalf or not) has been paid to the credit of the account; and".

13. Subsection 221(2) (Step 1 in Method statement):

Omit "of carer pension payable to the person", substitute "payable to the person in respect of carer pension or advance payment of carer pension".

14. Subsection 221(3) (Note):

Omit all the words after "amounts".

15. Paragraph 281(1)(b):

Omit the paragraph, substitute:

"(b) either or both of the following apply:

- (i) instalments of sole parent pension payable to the person (whether on the person's own behalf or not) are being paid to the credit of the account;
- (ii) an advance payment of sole parent pension payable to the person (whether on the person's own behalf or not) has been paid to the credit of the account; and".

16. Subsection 281(2) (Step 1 in Method statement):

Omit "of sole parent pension payable to the person", substitute "payable to the person in respect of sole parent pension or advance payment of sole parent pension".

17. Subsection 281(3) (Note):

Omit all the words after "amounts".

18. Paragraph 388(1)(b):

Omit the paragraph, substitute:

"(b) either or both of the following apply:

- (i) instalments of widow B pension payable to the person (whether on the person's own behalf or not) are being paid to the credit of the account;
- (ii) an advance payment of widow B pension payable to the person (whether on the person's own behalf or not) has been paid to the credit of the account; and".

19. Subsection 388(2) (Step 1 in Method statement):

Omit "of widow B pension payable to the person", substitute "payable to the person in respect of widow B pension or advance payment of widow B pension".

SCHEDULE 12—continued

20. Subsection 388(3) (Note):

Omit all the words after “amounts”.

21. Paragraph 408HB(1)(b):

Omit the paragraph, substitute:

“(b) either or both of the following apply:

- (i) instalments of widow allowance payable to the person (whether on the person’s own behalf or not) are being paid to the credit of the account;
- (ii) an advance payment of widow allowance payable to the person (whether on the person’s own behalf or not) has been paid to the credit of the account; and”.

22. Subsection 408HB(2) (Step 1 in Method statement):

Omit “of widow allowance payable to the person”, substitute “payable to the person in respect of widow allowance or advance payment of widow allowance”.

23. Subsection 408HB(3) (Note):

Omit all the words after “amounts”.

24. Paragraph 443(1)(b):

Omit the paragraph, substitute:

“(b) either or both of the following apply:

- (i) instalments of disability wage supplement payable to the person (whether on the person’s own behalf or not) are being paid to the credit of the account;
- (ii) an advance payment of disability wage supplement payable to the person (whether on the person’s own behalf or not) has been paid to the credit of the account; and”.

25. Subsection 443(2) (Step 1 in Method statement):

Omit “of disability wage supplement payable to the person”, substitute “payable to the person in respect of disability wage supplement or advance payment of disability wage supplement”.

26. Subsection 443(3) (Note):

Omit all the words after “amounts”.

27. Subsection 566(1):

Omit “, and an advance of a person’s job search allowance,”.

SCHEDULE 12—continued

- 28. Subsection 566(2):**
Omit “, or of an advance of a person’s job search allowance,”.
- 29. Subsection 566(3):**
Omit “or advance is”, substitute “are”.
- 30. Division 5A of Part 2.11:**
Repeal the Division.
- 31. Subsection 571(1):**
Omit “or an advance payment of job search allowance”.
- 32. Subsections 571(2) and (3):**
Omit “or from an advance payment of job search allowance”.
- 33. Subsection 649(1):**
Omit “, and an advance of a person’s newstart allowance,”.
- 34. Subsection 649(2):**
Omit “, or of an advance of a person’s newstart allowance,”.
- 35. Subsection 649(3):**
Omit “or advance is”, substitute “are”.
- 36. Division 5A of Part 2.12:**
Repeal the Division.
- 37. Subsection 654(1):**
Omit “or an advance payment of newstart allowance”.
- 38. Subsections 654(2) and (3):**
Omit “or from an advance payment of newstart allowance”.
- 39. Paragraph 660XHB(1)(b):**
Omit the paragraph, substitute:
“(b) either or both of the following apply:
(i) instalments of mature age allowance or mature age partner allowance payable to the person (whether on the person’s own behalf or not) are being paid to the credit of the account;
(ii) an advance payment of mature age allowance or mature age partner allowance payable to the person (whether on the person’s own behalf or not) has been paid to the credit of the account; and”.

SCHEDULE 12—continued

40. Subsection 660XHB(2) (Step 1 in Method statement):

Omit “of mature age allowance or mature age partner allowance payable to the person”, substitute “payable to the person in respect of mature age allowance, mature age partner allowance or advance payment of mature age allowance or mature age partner allowance”.

41. Subsection 660XHB(3) (Note):

Omit all the words after “amounts”.

42. Paragraph 660YHB(1)(b):

Omit the paragraph, substitute:

“(b) either or both of the following apply:

- (i) instalments of mature age allowance payable to the person (whether on the person’s own behalf or not) are being paid to the credit of the account;
- (ii) an advance payment of mature age allowance payable to the person (whether on the person’s own behalf or not) has been paid to the credit of the account; and”.

43. Subsection 660YHB(2) (Step 1 in Method statement):

Omit “of mature age allowance payable to the person”, substitute “payable to the person in respect of mature age allowance or advance payment of mature age allowance”.

44. Subsection 660YHB(3) (Note):

Omit all the words after “amounts”.

45. After Part 2.21:

Insert:

**“PART 2.22—ADVANCE PAYMENTS OF SOCIAL SECURITY
ENTITLEMENTS**

“Division 1—Qualification for advance payment

Qualification for advance payment

Qualifications

“1061A.(1) Subject to subsection (4), 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

SCHEDULE 12—continued

- (b) throughout the qualifying period under subsection (2), the person has been receiving:
 - (i) if the person is applying for an advance payment of job search allowance or newstart allowance—job search allowance, newstart allowance or youth training allowance; or
 - (ii) if the person is applying for an advance payment of any other social security entitlement—a social security pension, a social security benefit or a service pension; and
- (c) the Secretary is satisfied that the advance payment will be used for the permitted purpose under subsection (3); 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, section 864A deals with family payment advance, section 1047A deals with mobility allowance advance and Part 2.23 deals with advance pharmaceutical allowance.

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

Qualifying period

- “(2) For the purposes of paragraph (1)(b) the qualifying period is:
- (a) if the person is seeking an advance payment of job search allowance or newstart allowance of more than \$500—the 6 months immediately before the person’s application for the advance payment; or
 - (b) in any other case—the 3 months immediately before the person’s application for the advance payment.

Permitted purpose

- “(3) For the purposes of paragraph (1)(c) the permitted purpose is:
- (a) for an advance payment of job search allowance or newstart allowance of not more than \$500—to help the person search for work or participate in activities related to finding paid employment; or
 - (b) for an advance payment of job search allowance or newstart allowance of more than \$500—to help the person comply with any of the following agreements that the person has entered into:
 - (i) a Job Search Activity Agreement;
 - (ii) a Newstart Activity Agreement;
 - (iii) a Case Management Activity Agreement (within the meaning of the *Employment Services Act 1994*); or

SCHEDULE 12—continued

- (c) for an advance payment of any other social security entitlement—to help meet the living or capital expenses of the person or a family member of the person.

Note: For *family member* see subsection 23(1).

Disqualification

- “(4) A person is not qualified for an advance payment if:
- (a) the maximum amount of advance payment to which the person would be entitled under Division 4 is less than \$250; or
 - (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 owes a debt to the Commonwealth under Part 5.2.

“Division 2—Applying for advance payment

Application

“1061B. 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.

Form of application

“1061C.(1) The application must be in writing and must be in accordance with a form approved by the Secretary.

- “(2) The application must specify:
- (a) the amount of advance payment sought; and
 - (b) why the person wants the advance payment.

Lodgment of application

“1061D.(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.

Application may be withdrawn

“1061E.(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.

SCHEDULE 12—continued

“(2) An application that is withdrawn is taken not to have been made.

“(3) A withdrawal may be made orally or in writing.

“Division 3—Determination of application and payment of advance payment

Secretary to determine application

“1061EA.(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.

Payment of advance payment

“1061EB.(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 instalments specified in the determination on the days specified in the determination.

Use of advance payment of job search allowance or newstart allowance

“1061EC. An advance payment of job search allowance or of newstart allowance is to be paid on condition that it, or other money of the person, is spent as specified in the application for the advance payment.

“Division 4—Amount of advance payment

Amount of advance payment—social security pensions

Application

“1061ED.(1) The amount of an advance payment of a social security pension is calculated according to this section.

Amount of advance

“(2) Subject to section 1061EH, the amount of the advance payment is the smallest of the following amounts:

SCHEDULE 12—continued

- (a) the amount of advance payment sought;
- (b) the maximum amount of advance payment payable to the person as worked out under subsection (3);
- (c) \$500.

Formula for maximum amount of advance under paragraph (2)(b)

“(3) For the purposes of paragraph (2)(b), the maximum amount of advance payment payable to the person is the amount worked out using the following formula:

$$6\% \times \text{annual payment rate}$$

where:

annual payment rate is the rate of social security pension payable under the relevant Pension 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.

Rounding

“(4) Amounts worked out under subsection (3) must be rounded to the nearest cent (rounding 0.5 cents upwards).

Example:

Facts:

Geoff has, at all times during the past 5 months, been receiving age pension. His annual payment rate is \$4,680. He applies for an advance payment of \$290.

Application:

The maximum amount of advance payment payable to Geoff is worked out under subsection (3) as follows: $6\% \times \$4680 = \280.80 . This is the smallest of the 3 amounts referred to in subsection (2). Geoff can therefore be paid an advance payment of \$280.80.

Amount of advance payment—widow allowance and mature age allowance under Part 2.12B

Application

“1061EE.(1) The amount of an advance payment of widow allowance, or of mature age allowance under Part 2.12B, is calculated according to this section.

Amount of advance

“(2) Subject to section 1061EH, the amount of the advance payment is the smallest of the following amounts:

SCHEDULE 12—continued

- (a) the amount of advance payment sought;
- (b) the maximum amount of advance payment payable to the person as worked out under subsection (3);
- (c) \$500.

Formula for maximum amount of advance under paragraph (2)(b)

“(3) For the purposes of paragraph (2)(b), the maximum amount of advance payment payable to the person is the amount worked out using the following formula:

$$6\% \times \text{fortnightly payment rate} \times 26$$

where:

fortnightly payment rate is the fortnightly rate of widow allowance or of mature age allowance under Part 2.12B (as the case requires) payable under Benefit Rate Calculator B to the person on the last payday before the application for the advance payment was made, excluding any amount payable by way of remote area allowance.

Rounding

“(4) Amounts worked out under subsection (3) must be rounded to the nearest cent (rounding 0.5 cents upwards).

Example:

Facts:

Veronique has, at all times during the past 4 months, been receiving widow allowance. Her fortnightly payment rate is \$200. She applies for an advance payment of \$300.

Application:

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.

Amount of advance—short-term recipients of job search allowance or newstart allowance

Application

“1061EF.(1) This section applies to the calculation of the amount of an advance payment of job search allowance or of newstart allowance if the applicant for the advance payment has been receiving a job search allowance, a newstart allowance or a youth training allowance, or 2 or more of those allowances sequentially, for at least 3 months, but less than 6 months, immediately before the application.

SCHEDULE 12—continued

Amount of advance

“(2) Subject to section 1061EH, the amount of the advance payment is the smallest of the following amounts:

- (a) the amount of advance payment sought;
- (b) the maximum amount of advance payment payable to the person as worked out under subsection (3);
- (c) \$500.

Formula for maximum amount of advance under paragraph (2)(b)

“(3) For the purposes of paragraph (2)(b), the maximum amount of advance payment payable to the person is the amount worked out using the following formula:

$$14\% \times \text{fortnightly payment rate} \times 13$$

where:

fortnightly payment rate is the fortnightly rate of benefit payable under the relevant Benefit 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.

Rounding

“(4) Amounts worked out under subsection (3) must be rounded to the nearest cent (rounding 0.5 cents upwards).

Example 1:

Facts:

George has, at all times during the past 5 months, been receiving a newstart allowance. His fortnightly payment rate is \$140. He applies for an advance payment of \$290.

Application:

The maximum amount of advance payment payable to George is worked out under subsection (3) as follows: $14\% \times \$140 \times 13 = \254.80 . This is the smallest of the 3 amounts referred to in subsection (2). George can therefore be paid an advance payment of \$254.80.

Example 2:

Facts:

Carol has, at all times during the past 4 months, been receiving a newstart allowance. Her fortnightly payment rate is \$255. She applies for an advance payment of \$430.

Application:

The maximum amount of advance payment payable to Carol is worked out under subsection (3) as follows: $14\% \times \$255 \times 13 = \464.10 . The smallest of the 3 amounts referred to in subsection (2) is \$430. Carol can therefore be paid an advance payment of \$430.

SCHEDULE 12—continued

Amount of advance—long-term job search allowance or newstart allowance recipients

Application

“1061EG.(1) This section applies to the calculation of the amount of an advance payment of job search allowance or of newstart allowance if the applicant for the advance payment has been receiving a job search allowance, a newstart allowance or a youth training allowance, or 2 or more of those allowances sequentially, throughout the 6 months immediately before the application.

Amount of advance

“(2) Subject to section 1061EH, the amount of the advance payment is the smallest of the following amounts:

- (a) the amount of advance payment sought;
- (b) the maximum amount of advance payment payable to the person as worked out under subsection (3);
- (c) \$1,000.

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:

$$14\% \times \text{fortnightly payment rate} \times 26$$

where:

fortnightly payment rate is the fortnightly rate of benefit payable under the relevant Benefit 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.

Rounding

“(4) Amounts worked out under subsection (3) must be rounded to the nearest cent (rounding 0.5 cents upwards).

Example 1:

Facts:

Angela has, at all times during the past 8 months, been receiving a newstart allowance. Her fortnightly payment rate is \$88. She applies for an advance payment of \$295.

Application:

The maximum amount of advance payment payable to Angela is worked out under subsection (3) as follows: $14\% \times \$88 \times 26 = \320.22 . The smallest of the 3 amounts referred to in subsection (2) is \$295. Angela can therefore be paid an advance payment of \$295.

SCHEDULE 12—continued

Example 2:

Facts:

Philip has, at all times during the past 10 months, been receiving either a job search allowance or a newstart allowance. His fortnightly payment rate is \$239. He applies for an advance payment of \$915.

Application:

The maximum amount of advance payment payable to Philip is worked out under subsection (3) as follows: $14\% \times \$239 \times 26 = \869.96 . This is the smallest of the 3 amounts referred to in subsection (2). Philip can therefore be paid an advance payment of \$869.96.

Minimum amount of advance payment

“1061EH.(1) An advance payment is not payable if it would be less than \$250.

“(2) Subsection (1) does not prevent payment of an advance payment in instalments of less than \$250.

Example:

Facts:

Sarah has, at all times during the past 14 weeks, been receiving sole parent pension. Her annual payment rate is \$7,800. She applies for an advance payment of \$470.

Application:

The maximum amount of advance payment payable to Sarah is worked out under subsection 1061ED(3) as follows: $6\% \times \$7,800 = \468 . The Secretary directs that the advance payment be paid in 2 equal instalments. Sarah therefore receives 2 instalments of \$234 each.

“Division 5—Payment of advance payment

Advance payment to be paid to person or nominee

“1061EI.(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.

Payment into bank account etc.

“1061EJ.(1) An amount that is to be paid to a person under section 1061EI may only be paid in accordance with this section.

SCHEDULE 12—continued

“(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, credit union account or building society account nominated and maintained by the person.

“(3) The account may be an account that is maintained by the person either alone or jointly or in common with another person.

“(4) Where the person has not nominated an account for the purposes of subsection (2), then, subject to subsections (5) and (7), the amount is not to be paid.

“(5) Where:

- (a) an amount has not been paid because of subsection (4); and
 - (b) the person nominates an account for the purposes of subsection (2);
- the amount is to be paid under subsection (2).

“(6) The Secretary may direct that the whole or a part of the amount be paid to the person in a different way from that provided for by subsection (2).

“(7) If the Secretary gives a direction under subsection (6), the amount is to be paid in accordance with the direction.

“Division 6—Protection of advance payment

Advance payment to be absolutely inalienable

Inalienability

“1061EK.(1) Subject to subsections (2) and (3) and section 1359, 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.

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

SCHEDULE 12—continued

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

Repayment of advance payment

“1061EL.(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.”.

46. Point 1064-A1 (Step 11 of Method statement):

Omit the Step, substitute:

“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 payment rate*.

Step 12. The rate of pension is the difference between:

- (a) the provisional payment rate; and
 - (b) any advance payment deduction (see Part 3.12B);
- plus any amount payable by way of remote area allowance (see MODULE H).”.

47. Point 1065-A1 (Step 5 of Method statement):

Omit the Step, substitute:

SCHEDULE 12—continued

- “*Step 5.* Subtract from the maximum payment rate any advance payment deduction (see Part 3.12B) and add to the difference any amount payable by way of remote area allowance (see MODULE E); the sum is the *non-income/assets tested rate.*”.
- 48. Point 1066-A1 (Step 11 of Method statement):**
Omit the Step, substitute:
- “*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 payment rate.*
- Step 12.* The rate of pension is the difference between:
- (a) the provisional payment rate; and
 - (b) any advance payment deduction (see Part 3.12B);
- plus any amount payable by way of remote area allowance (see MODULE H).”.
- 49. Point 1066A-A1 (Step 12 of Method statement):**
Omit the Step, substitute:
- “*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 payment rate.*
- Step 13.* The rate of pension is the difference between:
- (a) the provisional payment rate; and
 - (b) any advance payment deduction (see Part 3.12B);
- plus any amount payable by way of remote area allowance (see MODULE I).”.
- 50. Point 1066B-A1 (Step 6 of Method statement):**
Omit the Step, substitute:
- “*Step 6.* Subtract from the maximum payment rate any advance payment deduction (see Part 3.12B) and add to the difference any amount payable by way of remote area allowance (see MODULE F); the sum is the *non-income/assets tested rate.*”.
- 51. Point 1067-A1 (paragraph (b) of Step 11 of Method statement):**
Omit “MODULE J below”, substitute “Part 3.12B”.
- 52. Section 1067 (Benefit Rate Calculator A):**
Omit Module J.
- 53. Point 1068-A1 (paragraph (b) of Step 9 of Method statement):**
Omit “MODULE H below”, substitute “Part 3.12B”.

SCHEDULE 12—continued

54. Section 1068 (Benefit Rate Calculator B):

Omit Module H.

55. After Part 3.12A:

Insert:

“PART 3.12B—ADVANCE PAYMENT DEDUCTIONS

Advance payment deduction

“1206H.(1) Subject to subsection (2) and section 1206L, an advance payment deduction is to be made from the rate of a social security entitlement that is payable to a person if:

- (a) the person has received an advance payment, or an instalment of an advance payment, of that social security entitlement or of another social security entitlement that was previously payable to the person; and
- (b) the person has not yet repaid the whole of the advance payment or instalment; and
- (c) the amount of the advance payment or instalment that has not been repaid is not a debt under subsection 1224E(1).

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

“(2) An advance payment deduction is not to be made from a person’s rate on:

- (a) the payday on which the advance payment is paid; or
- (b) the payday on which the first instalment of the advance payment is paid;

as the case requires.

Amount of advance payment deduction—basic calculation

“1206J. Subject to sections 1206K, 1206L, 1206M and 1206N, the advance payment deduction for an advance payment of a social security entitlement is worked out as follows:

- (a) if the full amount of the advance payment did not exceed, or (in the case of an advance payment being paid in instalments) will not when fully paid exceed, \$500—by dividing the full amount of the advance payment by 13;
- (b) if the full amount of the advance payment exceeded, or (in the case of an advance payment being paid in instalments) will when fully paid exceed, \$500—by dividing the full amount of the advance payment by 26.

SCHEDULE 12—continued

Example:

Facts:

Anne has been paid an advance payment of \$450. The maximum amount of advance payment payable to her was \$514.51.

Application:

Because the advance payment was less than \$500, Anne's advance payment deduction is worked out under paragraph 1206J(a) as follows: $\$450 \div 13 = \34.62 .

Person may request larger advance payment deduction

“1206K.(1) Subject to subsection (2) and sections 1206L, 1206M and 1206N, a person's advance payment deduction is increased to a larger amount if the person asks the Secretary in writing for the advance payment deduction to be the larger amount.

“(2) Subsection (1) does not apply if the Secretary is satisfied that the person would suffer severe financial hardship if the advance payment deduction were the larger amount.

Reduction of advance payment deduction in cases of severe financial hardship

Reduction

“1206L.(1) Subject to subsection (2) and sections 1206M and 1206N, if:

- (a) the person applies in writing to the Secretary for an advance payment deduction to be decreased, or to be stopped, because of severe financial hardship; and
- (b) the Secretary is satisfied that:
 - (i) the person's circumstances are exceptional and could not reasonably have been foreseen at the time of the person's application for the advance payment; and
 - (ii) the person would suffer severe financial hardship if the advance payment deduction that would otherwise apply were to continue;

the Secretary may determine in writing that, for the period specified in the determination, the advance payment deduction is to be a lesser amount (which may be a nil amount) specified in the determination.

Review of reduction

“(2) At any time while the determination is in force, the Secretary may:

SCHEDULE 12—continued

(a) vary the determination so as to require to be deducted from the person's rate an advance payment deduction larger than the deduction (if any) previously applying under the determination, but smaller than the deduction applying immediately prior to the determination; or

(b) revoke the determination;

but only if the Secretary is satisfied that the person would not suffer severe financial hardship because of the variation or revocation.

Variation or revocation in writing

“(3) A variation or revocation of a determination must be in writing.

The final advance payment deduction

Final advance payment deduction not to exceed unpaid amount

“1206M.(1) If an advance payment deduction that would otherwise be deducted from a person's rate exceeds the part of the advance payment that the person has not yet repaid (by previous deductions under this Part or otherwise), the amount of that advance payment deduction equals the part that the person has not yet repaid.

Example:

Facts:

Assume that, in the example at the end of section 1206J, Anne has requested that the advance payment deduction be the larger amount of \$55 (see section 1206K), so that the advance payment of \$450 will be repaid sooner.

Application:

If \$55 is deducted from Anne's fortnightly rate of benefit, \$440 will have been repaid after 8 successive fortnights, leaving \$10 unpaid. Under section 1206M, the final advance payment deduction will be \$10.

This section subject to section 1206N

“(2) This section has effect subject to section 1206N.

Provisional payment rate insufficient to cover advance payment deduction

“1206N.(1) If the provisional payment rate referred to in the relevant Rate Calculator is less than the advance payment deduction would be apart from this subsection, the advance payment deduction is taken to be equal to the provisional payment rate.

“(2) If:

SCHEDULE 12—continued

- (a) a person's rate of pension is the notional income/assets tested rate referred to in the Method statement in point 1065-A1 in Pension Rate Calculator B; and
 - (b) the provisional payment rate worked out for the person using Pension Rate Calculator A in accordance with Step 1 of the Method statement in point 1065-A1 in Pension Rate Calculator B is less than the advance payment deduction would be apart from this subsection;
- the advance payment deduction is taken to be equal to the provisional payment rate referred to in paragraph (b).

“(3) If:

- (a) a person's rate of pension is the non-income/assets tested rate referred to in the Method statement in point 1065-A1 in Pension Rate Calculator B; and
 - (b) the maximum payment rate for the person worked out in Step 4 of that Method statement is less than the advance payment deduction would be apart from this subsection;
- the advance payment deduction is taken to be equal to the maximum payment rate referred to in paragraph (b).

“(4) If:

- (a) a person's rate of pension is the notional income/assets tested rate referred to in the Method statement in point 1066B-A1 in Pension Rate Calculator E; and
 - (b) the provisional payment rate worked out for the person using Pension Rate Calculator D in accordance with Step 1 of the Method statement in point 1066B-A1 in Pension Rate Calculator E is less than the advance payment deduction would be apart from this subsection;
- the advance payment deduction is taken to be equal to the provisional payment rate referred to in paragraph (b).

“(5) If:

- (a) a person's rate of pension is the non-income/assets tested rate referred to in the Method statement in point 1066B-A1 in Pension Rate Calculator E; and
 - (b) the maximum payment rate for the person worked out in Step 5 of that Method statement is less than the advance payment deduction would be apart from this subsection;
- the advance payment deduction is taken to be equal to the maximum payment rate referred to in paragraph (b).

SCHEDULE 12—continued

Rounding of amounts

“1206P. Amounts worked out under this Part must be rounded to the nearest cent (rounding 0.5 cents upwards).”.

56. Subsection 1222(1) (Note 1, dot point relating to section 1224E debts):

Omit “job search allowance and newstart allowance;”, substitute “social security entitlements;”.

57. Subsection 1222(2) (column 2 of item 5D of Table):

Omit “job search allowance and newstart allowance”, substitute “social security entitlements”.

58. Subsection 1222(2):

Add at the end:

“Note 2: For *social security entitlement* see subsection 23(1).”.

59. Subsection 1224E(1):

Omit the subsection, substitute:

“(1) If:

- (a) a person has received an advance payment of a social security entitlement (the *first entitlement*) or an instalment of such an advance payment; and
- (b) the first entitlement ceases to be payable to the person; and
- (c) when the first entitlement ceases to be payable, the person has not repaid the whole of the advance payment or instalment; and
- (d) the person does not receive another social security entitlement immediately after the first entitlement ceases to be payable;

the amount that has not been repaid is a debt due to the Commonwealth.

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

Note: The heading to section 1224E is altered by omitting “job search allowance and newstart allowance” and substituting “social security entitlements”.

60. Subsection 1224E(3):

Omit the subsection.

61. Schedule 1A:

Add at the end:

Advance payments applied for or made before 1 July 1996

“90.(1) If a person applied for an advance payment of job search allowance or newstart allowance before 1 July 1996 and the person’s application had not been determined before that day, the application is taken to be an application under Part 2.22 of this Act.

SCHEDULE 12—continued

“(2) If a person’s application for an advance payment of job search allowance or newstart allowance was granted before 1 July 1996 but the advance payment or an instalment of the advance payment had not been paid to the person before that day, the advance payment or instalment is to be paid under Part 2.22 of this Act.

“(3) If an advance payment, or an instalment of an advance payment, of job search allowance or newstart allowance was paid before 1 July 1996 but was not repaid before that day, the relevant Benefit Rate Calculator as in force on 1 July 1996 and Part 3.12B of this Act apply to repayment of the advance payment or instalment.

“(4) For the purposes of subclause (3):

- (a) a determination made before 1 July 1996 under a provision of Module J of Benefit Rate Calculator A or Module H of Benefit Rate Calculator B continues in force as if it had been made under the corresponding provision in Part 3.12B; and
- (b) a determination made under paragraph 1067-J5(d) or 1068-H5(d) is taken to be a determination under subsection 1206L(1) specifying that the advance payment deduction is a nil amount for the period specified in the determination.

“(5) The amendments of section 1224E made by Schedule 12 to the *Social Security Legislation Amendment (Carer Pension and Other Measures) Act 1995* do not affect the existence or recovery of a debt arising from an advance payment of job search allowance or newstart allowance that was made before 1 July 1996.”.

SCHEDULE 13

Section 3

**AMENDMENT OF THE SOCIAL SECURITY ACT 1991 TO
INCREASE GUARDIAN ALLOWANCE****1. Section 1069 (Module F of Family Payment Rate Calculator):**

Add at the end:

Increase in rate of guardian allowance on 1 September 1996

“1069-F9. The amount of guardian allowance specified in point 1069-F7 is increased by \$4.00 on 1 September 1996.

Note: The amount specified in point 1069-F7 immediately before 1 September 1996 will be affected by indexation taking place under Part 3.16 on 1 January 1996.”.

SCHEDULE 14

Section 3

**AMENDMENTS OF THE SOCIAL SECURITY ACT 1991 RELATING
TO PARENTING ALLOWANCE**

- 1. Section 1068A (Module G, point 1068A-G2):**
Omit.
 - 2. Section 1068A (Module G, point 1068A-G3, Table G):**
 - (a) Omit from column 2 of item 1 “, 3,”.
 - (b) Omit item 3.
 - (c) Omit Note 2.
 - 3. Subclause 78(1) of Schedule 1A:**
Omit.
 - 4. Subclause 78(2) of Schedule 1A:**
 - (a) Add at the end of paragraph (2)(b) “and”.
 - (b) Insert at the beginning of paragraph (2)(d) “if the person notifies the Department that he or she wishes the claim to be regarded as a claim for home child care allowance—”.
-

SCHEDULE 15

Section 3

**AMENDMENTS OF THE SOCIAL SECURITY ACT 1991 RELATING
TO COMPENSATION RECOVERY**

- 1. Paragraph 1163A(c):**
Omit “and”.
- 2. Paragraph 1163A(d):**
Omit.
- 3. Paragraph 1163A(e):**
Omit, substitute:
“(e) the person had not received:
 (i) the lump sum; or
 (ii) if the lump sum is to be paid in instalments—any of the
 instalments; and”.
- 4. Section 1163A:**
Add at the end:

“(2) This section does not apply in respect of a lump sum to which a person is entitled if section 1165 applies in respect of the lump sum.”.
- 5. Paragraph 1166(4)(b):**
Omit “or a youth training allowance”, substitute “, a youth training allowance, or a compensation affected pension under the Veterans’ Entitlements Act,”.
- 6. Subsection 1166(4):**
Add at the end:

“Note: A compensation affected pension under the Veterans’ Entitlements Act is an invalidity service pension, a partner service pension or a carer service pension.”.
- 7. Paragraph 1166(4A)(b):**
Omit “or a youth training allowance”, substitute “, a youth training allowance, or a compensation affected pension under the Veterans’ Entitlements Act,”.
- 8. Subparagraph 1166(4A)(d)(ii):**
After “youth training allowance” insert “or compensation affected pension under the Veterans’ Entitlements Act”.

SCHEDULE 15—continued

9. Subsection 1166(4A):

Add at the end:

“Note: A compensation affected pension under the Veterans’ Entitlements Act is an invalidity service pension, a partner service pension or a carer service pension.”.

10. Paragraph 1168(3A)(b):

Omit “or a youth training allowance”, substitute “, a youth training allowance or a compensation affected pension under the Veterans’ Entitlements Act”.

11. Subsection 1168(3A):

Add at the end:

“Note: A compensation affected pension under the Veterans’ Entitlements Act is an invalidity service pension, a partner service pension or a carer service pension.”.

12. Paragraph 1168(3B)(b):

Omit “or a youth training allowance”, substitute “, a youth training allowance or a compensation affected pension under the Veterans’ Entitlements Act”.

13. Subsection 1168(3B):

Add at the end:

“Note: A compensation affected pension under the Veterans’ Entitlements Act is an invalidity service pension, a partner service pension or a carer service pension.”.

14. Paragraph 1170(4)(b):

Omit “or a youth training allowance”, substitute “, a youth training allowance, or a compensation affected pension under the Veterans’ Entitlements Act,”.

15. Subsection 1170(4):

Add at the end:

“Note: A compensation affected pension under the Veterans’ Entitlements Act is an invalidity service pension, a partner service pension or a carer service pension.”.

16. Paragraph 1170(4A)(b):

Omit “or a youth training allowance”, substitute “, a youth training allowance, or a compensation affected pension under the Veterans’ Entitlements Act,”.

17. Subparagraph 1170(4A)(d)(ii):

After “youth training allowance” insert “or compensation affected pension under the Veterans’ Entitlements Act”.

SCHEDULE 15—continued

18. Subsection 1170(4A):

Add at the end:

“Note: A compensation affected pension under the Veterans’ Entitlements Act is an invalidity service pension, a partner service pension or a carer service pension.”.

19. Subparagraph 1174(6)(c)(ii):

After “youth training allowance” insert “or compensation affected pension under the Veterans’ Entitlements Act”.

20. Subsection 1174(6):

Add at the end:

“Note: A compensation affected pension under the Veterans’ Entitlements Act is an invalidity service pension, a partner service pension or a carer service pension.”.

SCHEDULE 16

Section 3

AMENDMENTS OF THE SOCIAL SECURITY ACT 1991 RELATING
TO CHANGE OF BENEFIT DURING WAITING PERIOD

1. Section 537:

- (a) Omit "A", substitute "Subject to subsection (2), a".
- (b) Add at the end:

"(2) If:

- (a) after the commencement of this subsection, a person becomes temporarily incapacitated for work and claims sickness allowance; and
- (b) because of sections 690 to 692 (unused annual leave waiting period), sickness allowance is not payable to the person for a period starting on the person's provisional commencement day; and
- (c) during that period the person ceases to be incapacitated for work and claims job search allowance;

the person's unused annual leave waiting period is taken to have started on the person's sickness allowance provisional commencement day or the day after the day on which the person's employment ended, whichever was the earlier."

2. Section 539:

Add at the end:

"(5) If:

- (a) after the commencement of this subsection, a person becomes unemployed and claims youth training allowance; and
- (b) because of sections 96 and 97 of the *Student and Youth Assistance Act 1973* (ordinary waiting period), youth training allowance is not payable to the person for a period starting on the day (the **applicable day**) applicable to the person under subparagraph (i), (ii) or (iii), as the case may be:
 - (i) if the person is not subject to a youth training allowance unused annual leave waiting period and is not disqualified for youth training allowance under section 72 of that Act (liquid assets test)—the person's youth training allowance provisional commencement day; or

SCHEDULE 16—continued

- (ii) if the person is subject to a youth training allowance unused annual leave waiting period and is not disqualified for youth training allowance under section 72 of that Act (liquid assets test)—the day after the day on which the person’s youth training allowance unused annual leave waiting period ends; or
 - (iii) if the person is disqualified for youth training allowance under section 72 of that Act (liquid assets test)—the day after the day on which the person’s youth training allowance liquid assets waiting period ends; and
- (c) during that period the person claims job search allowance; then, despite subsections (1), (2) and (3), the person’s ordinary waiting period is a period of 7 days starting on the applicable day.

“(6) If:

- (a) after the commencement of this subsection, a person becomes temporarily incapacitated for work and claims sickness allowance; and
- (b) because of sections 693 and 694 (ordinary waiting period), sickness allowance is not payable to the person for a period starting on the day (the *applicable day*) applicable to the person under subparagraph (i), (ii) or (iii), as the case may be:
 - (i) if the person is not subject to a sickness allowance unused annual leave waiting period and is not disqualified for sickness allowance under section 676 (liquid assets test)—the person’s sickness allowance provisional commencement day; or
 - (ii) if the person is subject to a sickness allowance unused annual leave waiting period and is not disqualified for sickness allowance under section 676 (liquid assets test)—the day after the day on which the person’s sickness allowance unused annual leave waiting period ends; or
 - (iii) if the person is disqualified for sickness allowance under section 676 (liquid assets test)—the day after the day on which the person’s sickness allowance liquid assets waiting period ends; and
- (c) during that period the person ceases to be incapacitated for work and claims job search allowance; then, despite subsections (1), (2) and (3), the person’s ordinary waiting period is a period of 7 days starting on the applicable day.”.

SCHEDULE 16—continued

3. Section 541:

After subsection (3) insert:

“(3A) If:

- (a) after the commencement of this subsection, a person becomes temporarily incapacitated for work and claims sickness allowance; and
- (b) because of sections 695 and 696 (education leavers waiting period—non-secondary school leavers), sickness allowance is not payable to the person for a period starting on the person’s provisional commencement day; and
- (c) during that period the person ceases to be incapacitated for work and claims job search allowance;

then, despite subsections (1), (2) and (3), the person’s education leavers waiting period is taken to have started on the person’s sickness allowance provisional commencement day.

“(3B) If:

- (a) after the commencement of this subsection, a person becomes unemployed and claims youth training allowance; and
- (b) because of sections 98 and 99 of the *Student and Youth Assistance Act 1973* (education leavers waiting period), youth training allowance is not payable to the person for a period starting on the person’s provisional commencement day; and
- (c) during that period the person claims job search allowance;

then, despite subsections (1), (2) and (3), the person’s education leavers waiting period is taken to have started on the person’s youth training allowance provisional commencement day.”.

4. Section 619:

- (a) Omit “A”, substitute “Subject to subsection (2), a”.
- (b) Add at the end:

“(2) If:

- (a) after the commencement of this subsection, a person becomes temporarily incapacitated for work and claims sickness allowance; and
- (b) because of sections 690 to 692 (unused annual leave waiting period), sickness allowance is not payable to the person for a period starting on the person’s provisional commencement day; and

SCHEDULE 16—continued

(c) during that period the person ceases to be incapacitated for work and claims newstart allowance;

the person's unused annual leave waiting period is taken to have started on the person's sickness allowance provisional commencement day or the day after the day on which the person's employment ended, whichever was the earlier."

5. Section 621:

Add at the end:

"(5) If:

(a) after the commencement of this subsection, a person becomes unemployed and claims youth training allowance; and

(b) because of sections 96 and 97 of the *Student and Youth Assistance Act 1973* (ordinary waiting period), youth training allowance is not payable to the person for a period starting on the day (the *applicable day*) applicable to the person under subparagraph (i), (ii) or (iii), as the case may be:

(i) if the person is not subject to a youth training allowance unused annual leave waiting period and is not disqualified for youth training allowance under section 72 of that Act (liquid assets test)—the person's youth training allowance provisional commencement day; or

(ii) if the person is subject to a youth training allowance unused annual leave waiting period and is not disqualified for youth training allowance under section 72 of that Act (liquid assets test)—the day after the day on which the person's youth training allowance unused annual leave waiting period ends; or

(iii) if the person is disqualified for youth training allowance under section 72 of that Act (liquid assets test)—the day after the day on which the person's youth training allowance liquid assets waiting period ends; and

(c) during that period the person claims newstart allowance;

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

"(6) If:

(a) after the commencement of this subsection, a person becomes unemployed and claims job search allowance; and

SCHEDULE 16—continued

(b) because of sections 538 and 539 (ordinary waiting period), job search allowance is not payable to the person for a period starting on the day (the *applicable day*) applicable to the person under subparagraph (i), (ii) or (iii), as the case may be:

- (i) if the person is not subject to a job search allowance unused annual leave waiting period and is not disqualified for job search allowance under section 519 (liquid assets test)—the person's job search allowance provisional commencement day; or
- (ii) if the person is subject to a job search allowance unused annual leave waiting period and is not disqualified for job search allowance under section 519 (liquid assets test)—the day after the day on which the person's job search allowance unused annual leave waiting period ends; or
- (iii) if the person is disqualified for job search allowance under section 519 (liquid assets test)—the day after the day on which the person's job search allowance liquid assets waiting period ends; and

(c) during that period the person claims newstart allowance;

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

“(7) If:

- (a) after the commencement of this subsection, a person becomes temporarily incapacitated for work and claims sickness allowance; and
- (b) because of sections 693 and 694 (ordinary waiting period), sickness allowance is not payable to the person for a period starting on the day (the *applicable day*) applicable to the person under subparagraph (i), (ii) or (iii), as the case may be:
 - (i) if the person is not subject to a sickness allowance unused annual leave waiting period and is not disqualified for sickness allowance under section 676 (liquid assets test)—the person's sickness allowance provisional commencement day; or
 - (ii) if the person is subject to a sickness allowance unused annual leave waiting period and is not disqualified for sickness allowance under section 676 (liquid assets test)—the day after the day on which the person's sickness allowance unused annual leave waiting period ends; or

SCHEDULE 16—continued

- (iii) if the person is disqualified for sickness allowance under section 676 (liquid assets test)—the day after the day on which the person’s sickness allowance liquid assets waiting period ends; and
 - (c) during that period the person ceases to be incapacitated for work and claims newstart allowance;
- then, despite subsections (1), (2) and (3), the person’s ordinary waiting period is a period of 7 days starting on the applicable day.”.

6. Section 692:

- (a) Omit “A”, substitute “Subject to subsection (2), a”.
- (b) Add at the end:

“(2) If:

- (a) after the commencement of this subsection, a person becomes unemployed and claims job search allowance, newstart allowance or youth training allowance; and
 - (b) because of sections 535 to 537 or sections 617 to 619 of this Act or sections 93 to 95 of the *Student and Youth Assistance Act 1973* (unused annual leave waiting period), the allowance is not payable to the person for a period starting on the day after the day on which the person’s employment ended; and
 - (c) during that period the person becomes temporarily incapacitated for work and claims sickness allowance;
- the person’s unused annual leave waiting period is taken to have started on the day after the day on which the person’s employment ended.”.

7. Section 694:

Add at the end:

“(5) If:

- (a) after the commencement of this subsection, a person becomes unemployed and claims job search allowance; and
- (b) because of sections 538 and 539 (ordinary waiting period), job search allowance is not payable to the person for a period starting on the day (the *applicable day*) applicable to the person under subparagraph (i), (ii) or (iii), as the case may be:

SCHEDULE 16—continued

- (i) if the person is not subject to a job search allowance unused annual leave waiting period and is not disqualified for job search allowance under section 519 (liquid assets test)—the person’s job search allowance provisional commencement day; or
 - (ii) if the person is subject to a job search allowance unused annual leave waiting period and is not disqualified for job search allowance under section 519 (liquid assets test)—the day after the day on which the person’s job search allowance unused annual leave waiting period ends; or
 - (iii) if the person is disqualified for job search allowance under section 519 (liquid assets test)—the day after the day on which the person’s job search allowance liquid assets waiting period ends; and
- (c) during that period the person becomes temporarily incapacitated for work and claims sickness allowance;
- then, despite subsections (1), (2) and (3), the person’s ordinary waiting period is a period of 7 days starting on the applicable day.

“(6) If:

- (a) after the commencement of this subsection, a person becomes unemployed and claims newstart allowance; and
- (b) because of sections 620 and 621 (ordinary waiting period), newstart allowance is not payable to the person for a period starting on the day (the *applicable day*) applicable to the person under subparagraph (i), (ii) or (iii), as the case may be:
 - (i) if the person is not subject to a newstart allowance unused annual leave waiting period and is not disqualified for newstart allowance under section 598 (liquid assets test)—the person’s newstart allowance provisional commencement day; or
 - (ii) if the person is subject to a newstart allowance unused annual leave waiting period and is not disqualified for newstart allowance under section 598 (liquid assets test)—the day after the day on which the person’s newstart allowance unused annual leave waiting period ends; or
 - (iii) if the person is disqualified for newstart allowance under section 598 (liquid assets test)—the day after the day on which the person’s newstart allowance liquid assets waiting period ends; and

SCHEDULE 16—continued

(c) during that period the person becomes temporarily incapacitated for work and claims sickness allowance;
then, despite subsections (1), (2) and (3), the person's ordinary waiting period is a period of 7 days starting on the applicable day.

“(7) If:

(a) after the commencement of this subsection, a person becomes unemployed and claims youth training allowance; and

(b) because of sections 96 and 97 of the *Student and Youth Assistance Act 1973* (ordinary waiting period), youth training allowance is not payable to the person for a period starting on the day (the *applicable day*) applicable to the person under subparagraph (i), (ii) or (iii), as the case may be:

(i) if the person is not subject to a youth training allowance unused annual leave waiting period and is not disqualified for youth training allowance under section 72 of that Act (liquid assets test)—the person's youth training allowance provisional commencement day; or

(ii) if the person is subject to a youth training allowance unused annual leave waiting period and is not disqualified for youth training allowance under section 72 of that Act (liquid assets test)—the day after the day on which the person's youth training allowance unused annual leave waiting period ends; or

(iii) if the person is disqualified for youth training allowance under section 72 of that Act (liquid assets test)—the day after the day on which the person's youth training allowance liquid assets waiting period ends; and

(c) during that period the person becomes temporarily incapacitated for work and claims sickness allowance;

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

8. Section 696:

After subsection (3) insert:

“(3A) If:

(a) after the commencement of this subsection, a person becomes unemployed and claims job search allowance; and

SCHEDULE 16—continued

(b) because of sections 540 and 541 (education leavers waiting period—non-secondary school leavers), job search allowance is not payable to the person for a period starting on the person’s provisional commencement day; and

(c) during that period the person claims sickness allowance; then, despite subsections (1), (2) and (3), the person’s education leavers waiting period is taken to have started on the person’s job search allowance provisional commencement day.

“(3B) If:

(a) after the commencement of this subsection, a person becomes unemployed and claims youth training allowance; and

(b) because of sections 98 and 99 of the *Student and Youth Assistance Act 1973* (education leavers waiting period—non-secondary school leavers), youth training allowance is not payable to the person for a period starting on the person’s provisional commencement day; and

(c) during that period the person claims sickness allowance; then, despite subsections (1), (2) and (3), the person’s education leavers waiting period is taken to have started on the person’s youth training allowance provisional commencement day.”.

SCHEDULE 17

Section 3

**AMENDMENTS OF THE SOCIAL SECURITY ACT 1991 RELATING
TO SICKNESS ALLOWANCE**

1. Subsection 666(1A):

Omit “A person is qualified”, substitute “Subject to subsection (1B), a person is qualified”.

2. After subsection 666(1A):

Insert:

“(1B) In determining whether a person is qualified for sickness allowance in respect of a period under subsection (1A):

(a) if, disregarding subsection 1067B(2), the person is to be regarded as independent for the purposes of Part 3.5A—subsection (1A) of this section has effect as if paragraph (f) were omitted; or

(b) if, throughout the period:

(i) the person lives at a home of either of his or her parents; and

(ii) the parent with whom the person lives is receiving a social security pension, a social security benefit, a service pension or payments under a prescribed educational scheme;

subsection (1A) of this section has effect as if subparagraphs (f)(iii) and (h)(i) and (ii) were omitted.

Note: For *prescribed educational scheme* see subsection 5(1).”.

3. Subparagraph 666(5)(c)(iii):

Omit “section.”, substitute “section; or”.

4. Subsection 666(5):

Add at the end:

“(d) if:

(i) the person’s incapacity for work is caused by a medical condition (whether the same as or different from the medical condition referred to in subsection (4)); and

(ii) arrangements have been made for the person to undergo surgery in respect of the condition; and

(iii) the surgery is expected to result in the person’s incapacity for work ceasing within 104 weeks from the date on which the person’s claim for sickness allowance in respect of the incapacity was granted.”.

5. Subsection 667(4A):

Omit, substitute:

SCHEDULE 17—continued

“(4A) This subsection applies to a person during a period if, before the period begins, the person has reached the age of 15 years but has not reached the age of 16 years and:

- (a) if, disregarding subsection 1067B(2), the person is to be regarded as independent for the purposes of Part 3.5A—the person satisfies paragraphs 666(1A)(g) and (h); or
- (b) if, throughout the period:
 - (i) the person lives at a home of either of his or her parents; and
 - (ii) the parent with whom the person lives is receiving a social security pension, a social security benefit, a service pension or payments under a prescribed educational scheme;the person satisfies subparagraph 666(1A)(f)(i) or (ii), paragraph 666(1A)(g) and subparagraphs 666(1A)(h)(iii) and (iv); or
- (c) in any other case—the person satisfies paragraphs 666(1A)(f), (g) and (h).

6. Paragraph 704(1)(d):

Omit “work; and”, substitute “work.”.

7. Paragraph 704(1)(e):

Omit.

SCHEDULE 18

Section 3

**AMENDMENTS OF THE SOCIAL SECURITY ACT 1991 RELATING
TO BEREAVEMENT PAYMENTS**

1. Paragraphs 235(1)(a) and (b):

Omit, substitute:

- “(a) a person is receiving a carer pension because the person ordinarily cares for another person who is not the first person’s partner; and
- (b) the first person is caring for the other person or has temporarily ceased to care for that person; and”.

2. Paragraphs 236A(1)(a) and (b):

Omit, substitute:

- “(a) a person is receiving a carer pension because the person ordinarily cares for another person who is not the first person’s partner; and
- (b) the first person is caring for the other person or has temporarily ceased to care for that person; and”.

3. Subparagraph 771NU(1)(c)(i):

Omit “deceased” (last occurring), substitute “surviving”.

4. Section 897:

After “starts on” insert “the day after”.

5. Subsection 992AA(1):

After “starts on” insert “the day after”.

6. Section 1034AA:

After “starts on” insert “the day after”.

SCHEDULE 19

Section 3

**AMENDMENTS OF THE SOCIAL SECURITY ACT 1991 RELATING
TO NOMINATION OF BANK ACCOUNTS FOR PAYMENTS OF
PENSIONS OR BENEFITS**

1. Subsections 62(4) and (5):

Omit.

2. Section 62:

Add at the end:

“(8) If, at the end of the period (the *preliminary period*) of 28 days starting on the day on which the age pension became payable to the person:

(a) the person has not nominated an account for the purposes of subsection (2); and

(b) the Secretary has not given a direction under subsection (6) in relation to payments of the pension to the person;

the pension ceases to be payable to the person.

“(9) If the person nominates an account for the purposes of subsection (2) after the end of the preliminary period, then, subject to this Part, the age pension again becomes payable to the person and is so payable:

(a) if the nomination was made within 3 months after the end of the preliminary period—on and from the first day after the end of that period; or

(b) otherwise—on and from the day on which the nomination was made.”.

3. Subsections 124(4) and (5):

Omit.

4. Section 124:

Add at the end:

“(8) If, at the end of the period (the *preliminary period*) of 28 days starting on the day on which the disability support pension became payable to the person:

(a) the person has not nominated an account for the purposes of subsection (2); and

(b) the Secretary has not given a direction under subsection (6) in relation to payments of the pension to the person;

the pension ceases to be payable to the person.

SCHEDULE 19—continued

“(9) If the person nominates an account for the purposes of subsection (2) after the end of the preliminary period, then, subject to this Part, the disability support pension again becomes payable to the person and is so payable:

- (a) if the nomination was made within 3 months after the end of the preliminary period—on and from the first day after the end of that period; or
- (b) otherwise—on and from the day on which the nomination was made.”.

5. Subsections 166(4) and (5):

Omit.

6. Section 166:

Add at the end:

“(8) If, at the end of the period (the *preliminary period*) of 28 days starting on the day on which the wife pension became payable to the woman:

- (a) the woman has not nominated an account for the purposes of subsection (2); and
- (b) the Secretary has not given a direction under subsection (6) in relation to payments of the pension to the woman;

the pension ceases to be payable to the woman.

“(9) If the woman nominates an account for the purposes of subsection (2) after the end of the preliminary period, then, subject to this Part, the wife pension again becomes payable to the woman and is so payable:

- (a) if the nomination was made within 3 months after the end of the preliminary period—on and from the first day after the end of that period; or
- (b) otherwise—on and from the day on which the nomination was made.”.

7. Subsections 216(4) and (5):

Omit.

8. Section 216:

Add at the end:

“(8) If, at the end of the period (the *preliminary period*) of 28 days starting on the day on which the carer pension became payable to the person:

SCHEDULE 19—continued

- (a) the person has not nominated an account for the purposes of subsection (2); and
- (b) the Secretary has not given a direction under subsection (6) in relation to payments of the pension to the person;

the pension ceases to be payable to the person.

“(9) If the person nominates an account for the purposes of subsection (2) after the end of the preliminary period, then, subject to this Part, the carer pension again becomes payable to the person and is so payable:

- (a) if the nomination was made within 3 months after the end of the preliminary period—on and from the first day after the end of that period; or
- (b) otherwise—on and from the day on which the nomination was made.”.

9. Subsections 276(4) and (5):

Omit.

10. Section 276:

Add at the end:

“(8) If, at the end of the period (the *preliminary period*) of 28 days starting on the day on which the sole parent pension became payable to the person:

- (a) the person has not nominated an account for the purposes of subsection (2); and
- (b) the Secretary has not given a direction under subsection (6) in relation to payments of the pension to the person;

the pension ceases to be payable to the person.

“(9) If the person nominates an account for the purposes of subsection (2) after the end of the preliminary period, then, subject to this Part, the sole parent pension again becomes payable to the person and is so payable:

- (a) if the nomination was made within 3 months after the end of the preliminary period—on and from the first day after the end of that period; or
- (b) otherwise—on and from the day on which the nomination was made.”.

11. Subsections 335(4) and (5):

Omit.

SCHEDULE 19—continued

12. Section 335:

Add at the end:

“(8) If, at the end of the period (the *preliminary period*) of 28 days starting on the day on which the bereavement allowance became payable to the person:

- (a) the person has not nominated an account for the purposes of subsection (2); and
- (b) the Secretary has not given a direction under subsection (6) in relation to payments of the allowance to the person;

the allowance ceases to be payable to the person.

“(9) If the person nominates an account for the purposes of subsection (2) after the end of the preliminary period, then, subject to this Part, the bereavement allowance again becomes payable to the person and is so payable:

- (a) if the nomination was made within 3 months after the end of the preliminary period—on and from the first day after the end of that period; or
- (b) otherwise—on and from the day on which the nomination was made.”.

13. Subsections 383(4) and (5):

Omit.

14. Section 383:

Add at the end:

“(8) If, at the end of the period (the *preliminary period*) of 28 days starting on the day on which the widow B pension became payable to the woman:

- (a) the woman has not nominated an account for the purposes of subsection (2); and
- (b) the Secretary has not given a direction under subsection (6) in relation to payments of the pension to the woman;

the pension ceases to be payable to the woman.

“(9) If the woman nominates an account for the purposes of subsection (2) after the end of the preliminary period, then, subject to this Part, the widow B pension again becomes payable to the woman and is so payable:

- (a) if the nomination was made within 3 months after the end of the preliminary period—on and from the first day after the end of that period; or

SCHEDULE 19—continued

(b) otherwise—on and from the day on which the nomination was made.”.

15. Subsections 408GF(4) and (5):

Omit.

16. Section 408GF:

Add at the end:

“(8) If, at the end of the period (the *preliminary period*) of 28 days starting on the day on which the widow allowance became payable to the person:

(a) the person has not nominated an account for the purposes of subsection (2); and

(b) the Secretary has not given a direction under subsection (6) in relation to payments of the allowance to the person;

the allowance ceases to be payable to the person.

“(9) If the person nominates an account for the purposes of subsection (2) after the end of the preliminary period, then, subject to this Part, the widow allowance again becomes payable to the person and is so payable:

(a) if the nomination was made within 3 months after the end of the preliminary period—on and from the first day after the end of that period; or

(b) otherwise—on and from the day on which the nomination was made.”.

17. Subsections 439(4) and (5):

Omit.

18. Section 439:

Add at the end:

“(8) If, at the end of the period (the *preliminary period*) of 28 days starting on the day on which the disability wage supplement became payable to the person:

(a) the person has not nominated an account for the purposes of subsection (2); and

(b) the Secretary has not given a direction under subsection (6) in relation to payments of the supplement to the person;

the supplement ceases to be payable to the person.

SCHEDULE 19—continued

“(9) If the person nominates an account for the purposes of subsection (2) after the end of the preliminary period, then, subject to this Part, the disability wage supplement again becomes payable to the person and is so payable:

- (a) if the nomination was made within 3 months after the end of the preliminary period—on and from the first day after the end of that period; or
- (b) otherwise—on and from the day on which the nomination was made.”.

19. Subsections 567(4) and (5):

Omit.

20. Section 567:

Add at the end:

“(8) If, at the end of the period (the *preliminary period*) of 28 days starting on the day on which the job search allowance became payable to the person:

- (a) the person has not nominated an account for the purposes of subsection (2); and
- (b) the Secretary has not given a direction under subsection (6) in relation to payments of the allowance to the person;

the allowance ceases to be payable to the person.

“(9) If the person nominates an account for the purposes of subsection (2) after the end of the preliminary period, then, subject to this Part, the job search allowance again becomes payable to the person and is so payable:

- (a) if the nomination was made within 3 months after the end of the preliminary period—on and from the first day after the end of that period; or
- (b) otherwise—on and from the day on which the nomination was made.”.

21. Subsections 650(4) and (5):

Omit.

22. Section 650:

Add at the end:

“(8) If, at the end of the period (the *preliminary period*) of 28 days starting on the day on which the newstart allowance became payable to the person:

SCHEDULE 19—continued

- (a) the person has not nominated an account for the purposes of subsection (2); and
- (b) the Secretary has not given a direction under subsection (6) in relation to payments of the allowance to the person;

the allowance ceases to be payable to the person.

“(9) If the person nominates an account for the purposes of subsection (2) after the end of the preliminary period, then, subject to this Part, the newstart allowance again becomes payable to the person and is so payable:

- (a) if the nomination was made within 3 months after the end of the preliminary period—on and from the first day after the end of that period; or
- (b) otherwise—on and from the day on which the nomination was made.”.

23. Subsections 660XGF(4) and (5):

Omit.

24. Section 660XGF:

Add at the end:

“(8) If, at the end of the period (the *preliminary period*) of 28 days starting on the day on which the mature age allowance or mature age partner allowance became payable to the person:

- (a) the person has not nominated an account for the purposes of subsection (2); and
- (b) the Secretary has not given a direction under subsection (6) in relation to payments of the allowance to the person;

the allowance ceases to be payable to the person.

“(9) If the person nominates an account for the purposes of subsection (2) after the end of the preliminary period, then, subject to this Part, the mature age allowance or mature age partner allowance again becomes payable to the person and is so payable:

- (a) if the nomination was made within 3 months after the end of the preliminary period—on and from the first day after the end of that period; or
- (b) otherwise—on and from the day on which the nomination was made.”.

25. Subsections 720(4) and (5):

Omit.

SCHEDULE 19—continued

26. Section 720:

Add at the end:

“(8) If, at the end of the period (the *preliminary period*) of 28 days starting on the day on which the sickness allowance became payable to the person:

- (a) the person has not nominated an account for the purposes of subsection (2); and
- (b) the Secretary has not given a direction under subsection (6) in relation to payments of the allowance to the person;

the allowance ceases to be payable to the person.

“(9) If the person nominates an account for the purposes of subsection (2) after the end of the preliminary period, then, subject to this Part, the sickness allowance again becomes payable to the person and is so payable:

- (a) if the nomination was made within 3 months after the end of the preliminary period—on and from the first day after the end of that period; or
- (b) otherwise—on and from the day on which the nomination was made.”.

27. Subsections 753(4) and (5):

Omit.

28. Section 753:

Add at the end:

“(8) If, at the end of the period (the *preliminary period*) of 28 days starting on the day on which the special benefit became payable to the person:

- (a) the person has not nominated an account for the purposes of subsection (2); and
- (b) the Secretary has not given a direction under subsection (6) in relation to payments of the benefit to the person;

the benefit ceases to be payable to the person.

“(9) If the person nominates an account for the purposes of subsection (2) after the end of the preliminary period, then, subject to this Part, the special benefit again becomes payable to the person and is so payable:

- (a) if the nomination was made within 3 months after the end of the preliminary period—on and from the first day after the end of that period; or

SCHEDULE 19—continued

(b) otherwise—on and from the day on which the nomination was made.”.

29. Subsections 771KK(4) and (5):

Omit.

30. Section 771KK:

Add at the end:

“(8) If, at the end of the period (the *preliminary period*) of 28 days starting on the day on which the partner allowance became payable to the person:

- (a) the person has not nominated an account for the purposes of subsection (2); and
- (b) the Secretary has not given a direction under subsection (6) in relation to payments of the allowance to the person;

the allowance ceases to be payable to the person.

“(9) If the person nominates an account for the purposes of subsection (2) after the end of the preliminary period, then, subject to this Part, the partner allowance again becomes payable to the person and is so payable:

- (a) if the nomination was made within 3 months after the end of the preliminary period—on and from the first day after the end of that period; or
- (b) otherwise—on and from the day on which the nomination was made.”.

31. Subsections 802(4) and (5):

Omit.

32. Section 802:

Add at the end:

“(8) If, at the end of the period (the *preliminary period*) of 28 days starting on the day on which the special needs pension became payable to the person:

- (a) the person has not nominated an account for the purposes of subsection (2); and
- (b) the Secretary has not given a direction under subsection (6) in relation to payments of the pension to the person;

the pension ceases to be payable to the person.

SCHEDULE 19—continued

“(9) If the person nominates an account for the purposes of subsection (2) after the end of the preliminary period, then, subject to this Part, the special needs pension again becomes payable to the person and is so payable:

- (a) if the nomination was made within 3 months after the end of the preliminary period—on and from the first day after the end of that period; or
- (b) otherwise—on and from the day on which the nomination was made.”.

33. Subsections 866(4) and (5):

Omit.

34. Section 866:

Add at the end:

“(8) If, at the end of the period (the *preliminary period*) of 28 days starting on the day on which the family payment became payable to the recipient:

- (a) the recipient has not nominated an account for the purposes of subsection (2); and
- (b) the Secretary has not given a direction under subsection (6) in relation to payments of the family payment to the recipient;

the family payment ceases to be payable to the recipient.

“(9) If the recipient nominates an account for the purposes of subsection (2) after the end of the preliminary period, then, subject to this Part, the family payment again becomes payable to the recipient and is so payable:

- (a) if the nomination was made within 3 months after the end of the preliminary period—on and from the first day after the end of that period; or
- (b) otherwise—on and from the day on which the nomination was made.”.

35. Subsections 943(4) and (5):

Omit.

36. Section 943:

Add at the end:

“(8) If, at the end of the period (the *preliminary period*) of 28 days starting on the day on which the parenting allowance became payable to the person:

SCHEDULE 19—continued

- (a) the person has not nominated an account for the purposes of subsection (2); and
- (b) the Secretary has not given a direction under subsection (6) in relation to payments of the allowance to the person;

the allowance ceases to be payable to the person.

“(9) If the person nominates an account for the purposes of subsection (2) after the end of the preliminary period, then, subject to this Part, the parenting allowance again becomes payable to the person and is so payable:

- (a) if the nomination was made within 3 months after the end of the preliminary period—on and from the first day after the end of that period; or
- (b) otherwise—on and from the day on which the nomination was made.”.

37. Subsections 972(4) and (5):

Omit.

38. Section 972:

Add at the end:

“(8) If, at the end of the period (the *preliminary period*) of 28 days starting on the day on which the child disability allowance became payable to the person:

- (a) the person has not nominated an account for the purposes of subsection (2); and
- (b) the Secretary has not given a direction under subsection (6) in relation to payments of the allowance to the person;

the allowance ceases to be payable to the person.

“(9) If the person nominates an account for the purposes of subsection (2) after the end of the preliminary period, then, subject to this Part, the child disability allowance again becomes payable to the person and is so payable:

- (a) if the nomination was made within 3 months after the end of the preliminary period—on and from the first day after the end of that period; or
- (b) otherwise—on and from the day on which the nomination was made.”.

39. Subsections 1015(4) and (5):

Omit.

SCHEDULE 19—continued

40. Section 1015:

Add at the end:

“(8) If, at the end of the period (the *preliminary period*) of 28 days starting on the day on which the double orphan pension became payable to the person:

- (a) the person has not nominated an account for the purposes of subsection (2); and
- (b) the Secretary has not given a direction under subsection (6) in relation to payments of the pension to the person;

the pension ceases to be payable to the person.

“(9) If the person nominates an account for the purposes of subsection (2) after the end of the preliminary period, then, subject to this Part, the double orphan pension again becomes payable to the person and is so payable:

- (a) if the nomination was made within 3 months after the end of the preliminary period—on and from the first day after the end of that period; or
- (b) otherwise—on and from the day on which the nomination was made.”.

41. Subsections 1049(4) and (5):

Omit.

42. Section 1049:

Add at the end:

“(8) If, at the end of the period (the *preliminary period*) of 28 days starting on the day on which the mobility allowance became payable to the person:

- (a) the person has not nominated an account for the purposes of subsection (2); and
- (b) the Secretary has not given a direction under subsection (6) in relation to payments of the allowance to the person;

the allowance ceases to be payable to the person.

“(9) If the person nominates an account for the purposes of subsection (2) after the end of the preliminary period, then, subject to this Part, the mobility allowance again becomes payable to the person and is so payable:

- (a) if the nomination was made within 3 months after the end of the preliminary period—on and from the first day after the end of that period; or

SCHEDULE 19—continued

(b) otherwise—on and from the day on which the nomination was made.”.

43. Subsections 1061VB(4) and (5):

Omit.

44. Section 1061VB:

Add at the end:

“(8) If, at the end of the period (the *preliminary period*) of 28 days starting on the day on which the telephone allowance became payable to the person:

- (a) the person has not nominated an account for the purposes of subsection (2); and
- (b) the Secretary has not given a direction under subsection (6) in relation to payments of the allowance to the person;

the allowance ceases to be payable to the person.

“(9) If the person nominates an account for the purposes of subsection (2) after the end of the preliminary period, then, subject to this Part, the telephone allowance again becomes payable to the person and is so payable:

- (a) if the nomination was made within 3 months after the end of the preliminary period—on and from the first day after the end of that period; or
 - (b) otherwise—on and from the day on which the nomination was made.”.
-

SCHEDULE 20

Section 3

**AMENDMENTS OF THE SOCIAL SECURITY ACT 1991 RELATING
TO MAINTENANCE****1. Paragraph 252(1)(a):**

After “maintenance” insert “or to claim or apply for maintenance”.

2. Paragraph 777A(1)(a):

After “maintenance” insert “or to claim or apply for maintenance”.

SCHEDULE 21

Section 3

**AMENDMENTS OF THE SOCIAL SECURITY ACT 1991 RELATING
TO PROTECTION OF SOCIAL SECURITY PAYMENTS**

1. Section 566:

Repeal, substitute:

Job search allowance or advance to be paid to person or nominee

“566.(1) Subject to subsection (3), instalments of a person’s job search allowance, and an advance of a person’s job search allowance, are to be paid to the person.

“(2) The Secretary may direct that the whole or part of the instalments of a person’s job search allowance, or of an advance of a person’s job search allowance, is to be paid to someone else on behalf of the person.

“(3) If the Secretary gives a direction under subsection (2), the instalments or advance is to be paid in accordance with the direction.”.

2. Subsection 571(1):

After “job search allowance” insert “or an advance payment of job search allowance”.

3. Subsections 571(2) and (3):

After “the instalments of job search allowance” insert “or from an advance payment of job search allowance”.

4. Paragraph 572(1)(b):

Omit, substitute:

“(b) either or both of the following apply:

- (i) instalments of job search allowance payable to the person (whether on the person’s own behalf or not) are being paid to the credit of the account;
- (ii) an advance payment of job search allowance payable to the person (whether on the person’s own behalf or not) has been paid to the credit of the account; and”.

5. Subsection 572(2):

Omit from Step 1 in the Method statement “total amount of job search allowance payable to the person”, substitute “total amount payable to the person in respect of job search allowance or advance payment of job search allowance”.

6. Subsection 572(3) (Note):

Omit, substitute:

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

SCHEDULE 21—continued

7. Section 649:

Repeal, substitute:

Newstart allowance or advance to be paid to person or nominee

“649.(1) Subject to subsection (3), instalments of a person’s newstart allowance, and an advance of a person’s newstart allowance, are to be paid to the person.

“(2) The Secretary may direct that the whole or part of the instalments of a person’s newstart allowance, or of an advance of a person’s newstart allowance, is to be paid to someone else on behalf of the person.

“(3) If the Secretary gives a direction under subsection (2), the instalments or advance is to be paid in accordance with the direction.”.

8. Subsection 654(1):

After “newstart allowance” insert “or an advance payment of newstart allowance”.

9. Subsections 654(2) and (3):

After “the instalments of newstart allowance” insert “or from an advance payment of newstart allowance”.

10. Paragraph 655(1)(b):

Omit, substitute:

“(b) either or both of the following apply:

- (i) instalments of newstart allowance payable to the person (whether on the person’s own behalf or not) are being paid to the credit of the account;
- (ii) an advance payment of newstart allowance payable to the person (whether on the person’s own behalf or not) has been paid to the credit of the account; and”.

11. Subsection 655(2):

Omit from Step 1 in the Method statement “total amount of newstart allowance payable to the person”, substitute “total amount payable to the person in respect of newstart allowance or advance payment of newstart allowance”.

12. Subsection 655(3):

Omit the Note, substitute:

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

SCHEDULE 21—continued

13. After section 665AA:

Insert in Part 2.13:

Employment entry payment to be absolutely inalienable

“665AB.(1) Subject to subsections (2) and (3) and section 1359, an employment 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 employment 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.

Note: The Secretary must make a deduction from a person’s employment entry payment if requested by the Commissioner of Taxation (see section 1359).

“(3) The Secretary may make a deduction from a person’s employment 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.

Effect of garnishee or attachment order

“665AC.(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 employment entry payment payable to the person (whether on the person’s own behalf or not) has been paid to the credit of the account during the 4-week period immediately before the court order came into force;

the court order does not apply to the saved amount (if any) in the account.

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

| <i>Method statement</i> | |
|-------------------------|---|
| <i>Step 1.</i> | Work out the amount of employment entry payment paid to the credit of the account as mentioned in paragraph (1)(c). |
| <i>Step 2.</i> | 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 <i>saved amount</i> . |

“(3) This section applies to an account whether it is maintained by a person:

SCHEDULE 21—continued

- (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.”.

14. After Division 12 of Part 2.13A:

Insert:

“Division 13—Protection of education entry payment

Education entry payment to be absolutely inalienable

“665ZY.(1) Subject to subsections (2) and (3) and section 1359, 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.

Note: The Secretary must make a deduction from a person’s education entry payment if requested by the Commissioner of Taxation (see section 1359).

“(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.

Effect of garnishee or attachment order

“665ZZ.(1) If:

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

the court order does not apply to the saved amount (if any) in the account.

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

SCHEDULE 21—continued

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.”.

15. Subsection 870(1):

After “family payment” insert “or a family payment advance”.

16. Subsections 870(2) and (3):

After “family payment” insert “or from a family payment advance”.

17. Paragraph 871(1)(b):

Omit, substitute:

“(b) either or both of the following apply:

- (i) instalments of family payment payable to the recipient (whether on the recipient’s own behalf or not) are being paid to the credit of the account;
- (ii) a family payment advance payable to the recipient (whether on the recipient’s own behalf or not) has been paid to the credit of the account; and”.

18. Subsection 871(2):

Omit from Step 1 in the Method statement “total amount of family payment payable to the recipient”, substitute “total amount payable to the recipient in respect of family payment or family payment advance”.

19. Subsection 1052(1):

After “mobility allowance” insert “or an advance payment of mobility allowance”.

20. Subsections 1052(2) and (3):

After “the instalments of mobility allowance” insert “or from an advance payment of mobility allowance”.

SCHEDULE 21—continued

21. Paragraph 1053(1)(b):

Omit, substitute:

“(b) either or both of the following apply:

- (i) instalments of mobility allowance payable to the person (whether on the person’s own behalf or not) are being paid to the credit of the account;
- (ii) an advance payment of mobility allowance payable to the person (whether on the person’s own behalf or not) has been paid to the credit of the account; and”.

22. Subsection 1053(2):

Omit from Step 1 in the Method statement “total amount of mobility allowance payable to the person”, substitute “total amount payable to the person in respect of mobility allowance or advance payment of mobility allowance”.

23. Subsection 1053(3):

Add at the end:

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

24. After Division 3 of Part 2.23:

Insert:

“Division 4—Protection of advance pharmaceutical allowance

Advance pharmaceutical allowance to be absolutely inalienable

“1061JE.(1) Subject to subsections (2) and (3) and section 1359, an advance pharmaceutical allowance 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 advance pharmaceutical allowance 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.

Note: The Secretary must make a deduction from a person’s advance pharmaceutical allowance if requested by the Commissioner of Taxation (see section 1359).

“(3) The Secretary may make a deduction from a person’s advance pharmaceutical allowance 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.

SCHEDULE 21—continued

Effect of garnishee or attachment order

“1061JF.(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 advance pharmaceutical allowance payable to the person (whether on the person’s own behalf or not) has been paid to the credit of the account during the 4-week period immediately before the court order came into force;

the court order does not apply to the saved amount (if any) in the account.

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

| <i>Method statement</i> | |
|-------------------------|---|
| <i>Step 1.</i> | Work out the amount of advance pharmaceutical allowance paid to the credit of the account as mentioned in paragraph (1)(c). |
| <i>Step 2.</i> | 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 <i>saved amount</i> . |

“(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.”.

25. After section 1061NA:

Insert:

Disaster relief payment to be absolutely inalienable

“1061NB.(1) Subject to subsections (2) and (3) and section 1359, a disaster relief 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 a disaster relief 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.

Note: The Secretary must make a deduction from a person’s disaster relief payment if requested by the Commissioner of Taxation (see section 1359).

SCHEDULE 21—continued

“(3) The Secretary may make a deduction from a person’s disaster relief 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.

Effect of garnishee or attachment order

“1061NC.(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) a disaster relief payment payable to the person (whether on the person’s own behalf or not) has been paid to the credit of the account during the 4-week period immediately before the court order came into force;

the court order does not apply to the saved amount (if any) in the account.

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

Method statement

- Step 1.* Work out the amount of disaster relief 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.”.

26. Paragraph 1359(a):

After “instalments of” insert “, or make a deduction from,”.

SCHEDULE 22

Section 3

**AMENDMENTS OF THE SOCIAL SECURITY ACT 1991 RELATING
TO LABOUR MARKET PROGRAMS**

1. Paragraph 5(6)(c):

Omit “Force”, substitute “Market”.

Note: The heading to subsection 5(6) is altered by omitting “Force” and substituting “Market”.

2. Paragraph 8(8)(r):

Omit “the Labour Force Programs”, substitute “Labour Market Programs”.

3. Paragraph 8(8)(s):

Omit, substitute:

“(s) in the case of a person who is receiving a social security pension, a social security benefit, a youth training allowance or a service pension and is in part-time training, or engaged in part-time work experience, under a program included in the programs known as Labour Market Programs—a payment received by the person under that program in respect of the person’s expenses associated with his or her participation in the training or work experience;”.

4. Paragraph 831A(3)(b):

Omit “Force”, substitute “Market”.

5. Paragraph 926(b):

Omit “the Labour Force Programs”, substitute “Labour Market Programs”.

6. Paragraph 1228(2)(d):

Omit “Force”, substitute “Market”.

7. Subsection 1228(2) (Note):

Omit “Force”, substitute “Market”.

8. Sub-subparagraph 23(1)(a)(ii)(B) of Schedule 1A:

Omit, substitute:

“(B) payments under a program included in the programs known as Labour Force Programs or Labour Market Programs; and”.

Note: The heading to clause 23 of Schedule 1A is altered by omitting “and Labour Force Program” and substituting “, Labour Force Program and Labour Market Program”.

9. Sub-subparagraph 23(2)(a)(ii)(B) of Schedule 1A:

Omit, substitute:

SCHEDULE 22—continued

“(B) payments under a program included in the programs known as Labour Force Programs or Labour Market Programs; and”.

10. Sub-subparagraph 23(3)(a)(ii)(B) of Schedule 1A:

Omit, substitute:

“(B) payments under a program included in the programs known as Labour Force Programs or Labour Market Programs; and”.

11. Sub-subparagraph 23(4)(a)(ii)(B) of Schedule 1A:

Omit, substitute:

“(B) payments under a program included in the programs known as Labour Force Programs or Labour Market Programs; and”.

SCHEDULE 23

Section 3

**AMENDMENTS OF THE SOCIAL SECURITY ACT 1991 RELATING
TO CROSS-REFERENCES IN PENALTY PROVISIONS TO THE
CRIMES ACT 1914**

1. Amendment of Notes relating to the *Crimes Act 1914*:

Omit the Note to each of the following provisions, substitute:

“Note: Subsection 4B(2) of the *Crimes Act 1914* allows a court that convicts an individual of an offence to impose a fine instead of, or in addition to, a term of imprisonment. The maximum fine that a court can impose on the individual is worked out by multiplying the maximum term of imprisonment (in months) by 5, and then multiplying the resulting number by the amount of a penalty unit. The amount of a penalty unit is stated in section 4AA of that Act.”:

subsection 68(5)
subsection 69(5)
subsection 132(5)
subsection 133(5)
subsection 172(5)
subsection 173(5)
subsection 222(5)
subsection 223(5)
subsection 284(5)
subsection 285(5)
subsection 341(5)
subsection 342(5)
subsection 389(5)
subsection 390(5)
subsection 408JB(8)
subsection 408JC(6)
subsection 446(8)
subsection 447(6)
subsection 574(5)
subsection 575(5)
subsection 657(5)
subsection 658(5)
subsection 660XIC(7)
subsection 660XID(6)
subsection 727(5)
subsection 728(5)
subsection 759(5)
subsection 760(5)
subsection 771MC(8)
subsection 771MD(6)

SCHEDULE 23—continued

subsection 808(5)
subsection 809(5)
subsection 872(6)
subsection 873(5)
subsection 943(7)
subsection 944(6)
subsection 978(5)
subsection 979(5)
subsection 1023(5)
subsection 1024(5)
subsection 1054(5)
subsection 1055(5)
subsection 1061Y(6)
subsection 1061Z(5)
subsection 1061ZK(5)
subsection 1061ZL(5)
subsection 1272(2)
section 1350.

2. Amendment of Notes relating to the *Crimes Act 1914*:

Omit the Note to each of the following provisions, substitute:

“Note 1: Subsection 4B(2) of the *Crimes Act 1914* allows a court that convicts an individual of an offence to impose a fine instead of, or in addition to, a term of imprisonment. The maximum fine that a court can impose on the individual is worked out by multiplying the maximum term of imprisonment (in months) by 5, and then multiplying the resulting number by the amount of a penalty unit. The amount of a penalty unit is stated in section 4AA of that Act.

Note 2: If a body corporate is convicted of the offence, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a maximum fine of an amount that is 5 times the maximum fine that could be imposed on an individual convicted of the same offence.”;

section 1173
subsection 1176(1)
section 1178
subsection 1182(1)
subsection 1304(7)
subsection 1305(5)
subsection 1306(5)
subsection 1307(10).

SCHEDULE 23—continued

3. Amendment of Notes relating to the *Crimes Act 1914*:

Omit Note 1 to each of the following provisions, substitute:

“Note 1: Subsection 4B(2) of the *Crimes Act 1914* allows a court that convicts an individual of an offence to impose a fine instead of, or in addition to, a term of imprisonment. The maximum fine that a court can impose on the individual is worked out by multiplying the maximum term of imprisonment (in months) by 5, and then multiplying the resulting number by the amount of a penalty unit. The amount of a penalty unit is stated in section 4AA of that Act.

Note 1A: If a body corporate is convicted of the offence, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a maximum fine of an amount that is 5 times the maximum fine that could be imposed on an individual convicted of the same offence.”:

subsection 1233(3)

subsection 1311(2)

section 1312A

section 1312B

section 1316

subsection 1316A(1)

subsection 1318(2).

SCHEDULE 24

Section 3

OTHER AMENDMENTS OF THE SOCIAL SECURITY ACT 1991

1. Section 3:

Omit:

“benevolent home 23(1)”.

2. Subsection 5(1) (definition of *prescribed educational scheme*):

Omit paragraph (d).

3. Paragraph 13(8)(a):

Omit “a benevolent home or in”.

4. Subsection 13(8):

Omit the Note at the end of the subsection.

5. Subsection 23(1) (definition of *benevolent home*):

Omit.

6. Section 34:

Repeal.

7. Subsection 35(3):

Omit.

8. Section 60:

Repeal.

9. Section 122:

Repeal.

10. Section 164:

Repeal.

11. Section 274:

Repeal.

12. Section 381:

Repeal.

13. Subsection 676(1):

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

SCHEDULE 24—continued

14. Section 676:

Add at the end:

“(7) If the Secretary is satisfied that the application of subsection (1) to a person will cause undue long term disadvantage or significant hardship to the person, the Secretary may:

- (a) waive the application of that subsection to the person; and
- (b) authorise the payment of sickness allowance to the person.”.

15. Subsection 832(2):

Omit.

SCHEDULE 25

Section 3

AMENDMENTS OF THE FARM HOUSEHOLD SUPPORT ACT 1992

1. Amendment of Notes relating to the *Crimes Act 1914*:

Add at the end of each of the following provisions:

“Note: Subsection 4B(2) of the *Crimes Act 1914* allows a court that convicts an individual of an offence to impose a fine instead of, or in addition to, a term of imprisonment. The maximum fine that a court can impose on the individual is worked out by multiplying the maximum term of imprisonment (in months) by 5, and then multiplying the resulting number by the amount of a penalty unit. The amount of a penalty unit is stated in section 4AA of that Act.”:

subsections 41(5) and (6)

subsections 42(5) and (6)

subsection 50A(1).

2. Amendment of Notes relating to the *Crimes Act 1914*:

Add at the end of each of the following provisions:

“Note 1: Subsection 4B(2) of the *Crimes Act 1914* allows a court that convicts an individual of an offence to impose a fine instead of, or in addition to, a term of imprisonment. The maximum fine that a court can impose on the individual is worked out by multiplying the maximum term of imprisonment (in months) by 5, and then multiplying the resulting number by the amount of a penalty unit. The amount of a penalty unit is stated in section 4AA of that Act.

Note 2: If a body corporate is convicted of the offence, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a maximum fine of an amount that is 5 times the maximum fine that could be imposed on an individual convicted of the same offence.”:

subsection 54(7)

subsection 54(8).

[Minister's second reading speech made in—
House of Representatives on 25 October 1995
Senate on 27 November 1995]