



Employment and Workplace Relations Legislation Amendment (Welfare to Work and Other Measures) Act 2005

Act No. 154 of 2005 as amended

This compilation was prepared on 27 March 2006

[This Act was amended by SLI 2006 No. 50]

Amendments from SLI 2006 No. 50

[Schedule 13 (item 1) amended Schedule 1 (item 6);
Schedule 13 (item 2) amended Schedule 2 (item 10);
Schedule 13 (items 3–5) amended Schedule 4 (item 7);
Schedule 13 (items 6 and 7) amended Schedule 5 (item 15);
Schedule 13 (items 8 and 9) amended Schedule 7 (item 28);
Schedule 13 (items 10 and 11) amended Schedule 8 (item 2);
Schedule 13 (item 12) amended Schedule 8 (item 3);
Schedule 13 (items 13 and 14) amended Schedule 10 (item 11);
Schedule 13 (items 15–22) amended Schedule 11 (item 2);
Schedule 13 (item 23) amended Schedule 11 (item 8);
Schedule 3 (items 1 to 23) commenced on 27 March 2006]

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

[Assented to 14 December 2005]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Employment and Workplace Relations Legislation Amendment (Welfare to Work and Other Measures) Act 2005*.

2 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	14 December 2005
2. Schedule 1, Part 1	1 July 2006.	1 July 2006
3. Schedule 1, Part 2	20 September 2006.	20 September 2006
4. Schedule 1, Part 3	Immediately after the commencement of Schedule 1 to the <i>Workplace Relations Amendment (Work Choices) Act 2005</i> .	27 March 2006
5. Schedule 2, Part 1	1 July 2006.	1 July 2006

Section 2

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
6. Schedule 2, Part 2	20 September 2006.	20 September 2006
7. Schedule 2, Part 3	1 July 2006.	1 July 2006
8. Schedule 3	20 September 2006.	20 September 2006
9. Schedule 4, Parts 1 and 2	1 July 2006.	1 July 2006
10. Schedule 4, Part 3	20 September 2006.	20 September 2006
11. Schedule 5, Part 1	The day on which this Act receives the Royal Assent.	14 December 2005
12. Schedule 5, items 3 to 14	1 July 2006.	1 July 2006
13. Schedule 5, item 15	Immediately after the commencement of Schedule 1 to the <i>Workplace Relations Amendment (Work Choices) Act 2005</i> .	27 March 2006
14. Schedule 5, items 16 to 44	1 July 2006.	1 July 2006
15. Schedule 5, Part 3	1 July 2006.	1 July 2006
16. Schedule 6 Part 1	1 July 2006.	1 July 2006
17. Schedule 6 Part 2	20 September 2006.	20 September 2006
18. Schedule 7, Part 1	The day on which this Act receives the Royal Assent.	14 December 2005
19. Schedule 7, items 3 to 27	1 July 2006.	1 July 2006
20. Schedule 7, item 28	Immediately after the commencement of Schedule 1 to the <i>Workplace Relations Amendment (Work Choices) Act 2005</i> .	27 March 2006
21. Schedule 7, items 29 to 72	1 July 2006.	1 July 2006
22. Schedule 7, Parts 3 and 4	1 July 2006.	1 July 2006

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
23. Schedule 8	1 July 2006.	1 July 2006
24. Schedule 9	20 September 2006.	20 September 2006
25. Schedule 10, items 1 to 10	1 July 2006.	1 July 2006
26. Schedule 10, item 11	Immediately after the commencement of Schedule 1 to the <i>Workplace Relations Amendment (Work Choices) Act 2005</i> .	27 March 2006
27. Schedule 10, items 12 to 42	1 July 2006.	1 July 2006
28. Schedule 10, Parts 2 and 3	1 July 2006.	1 July 2006
29. Schedule 11	1 July 2006.	1 July 2006
30. Schedule 12	20 September 2006.	20 September 2006
31. Schedule 13	1 July 2006.	1 July 2006
32. Schedule 14, Part 1	The day on which this Act receives the Royal Assent.	14 December 2005
33. Schedule 14, Part 2	1 July 2006.	1 July 2006
34. Schedule 15	1 July 2006.	1 July 2006
35. Schedule 16	20 September 2006.	20 September 2006
36. Schedule 17, Parts 1 to 5	1 July 2006.	1 July 2006
37. Schedule 17, Part 6	20 September 2006.	20 September 2006
38. Schedule 18, Part 1	1 July 2006.	1 July 2006
39. Schedule 18, Part 2	20 September 2006.	20 September 2006
40. Schedule 19, Parts 1 to 3	1 July 2006.	1 July 2006
41. Schedule 19, Part 4	20 September 2006.	20 September 2006
42. Schedule 20, Part 1	1 July 2006.	1 July 2006

Section 3

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
43. Schedule 20, Part 2	20 September 2006.	20 September 2006
44. Schedule 21	1 July 2006.	1 July 2006
45. Schedule 22, Part 1	The day on which this Act receives the Royal Assent.	14 December 2005
46. Schedule 22, Parts 2 to 4	1 July 2006.	1 July 2006
47. Schedule 22, Part 5	The day on which this Act receives the Royal Assent.	14 December 2005
48. Schedule 22, Part 6	20 September 2006.	20 September 2006
49. Schedule 23, items 1 to 5	1 July 2006.	1 July 2006
50. Schedule 23, items 6 and 7	The day on which this Act receives the Royal Assent.	14 December 2005

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

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

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Definitions and other interpretative provisions

Part 1—Amendments commencing on 1 July 2006

Social Security Act 1991

1 Subsection 5(1)

Insert:

principal carer, of a child, has the meaning given by subsections (15) to (24).

2 At the end of subsection 5(2)

Add:

Note: For paragraph (a), see also subsection (16).

3 At the end of section 5

Add:

Principal carer

(15) A person is the *principal carer* of a child if:

- (a) the child is a dependent child of the person; and
- (b) the child has not turned 16.

Note: The definition of *dependent child* in subsection (2) requires:

- (a) the adult to be legally responsible (whether alone or jointly with another person) for the day-to-day care, welfare and development of the child: subsection (16) deals with the circumstances in which a step-parent is taken to have such legal responsibility; and
- (b) a child to be in an adult's care: subsection (17) deals with the circumstances in which a child is taken to remain in an adult's care.

(16) For the purpose of determining whether a person is the *principal carer* of a child, the person is taken to be legally responsible (whether alone or jointly with another person) for the day-to-day care, welfare and development of the child if:

- (a) the person is the step-parent of the child; and

(b) the person is living with the child and a parent of the child;
and

(c) the person and the parent are members of the same couple.

This subsection does not, by implication, affect the determination of whether a person is taken to be legally responsible (whether alone or jointly with another person) for the day-to-day care, welfare and development of a child in cases to which this subsection does not apply.

(17) For the purpose of determining whether a person is the *principal carer* of a child, the child is taken to remain in the person's care if:

(a) at the start of a period not exceeding 8 weeks, the child leaves the person's care; and

(b) throughout the period, the child is the dependent child of another person; and

(c) the child returns, or the Secretary is satisfied that the child will return, to the first person's care at the end of the period.

This subsection does not, by implication, affect the determination of whether a child is in the care of a person in cases to which this subsection does not apply (for example, if the period exceeds 8 weeks).

(18) Only one person at a time can be the principal carer of a particular child.

(19) If the Secretary is satisfied that, but for subsection (18), 2 or more persons (*adults*) would be principal carers of the same child, the Secretary must:

(a) make a written determination specifying one of the adults as the principal carer of the child; and

(b) give a copy of the determination to each adult.

(20) The Secretary may make the determination even if all the adults have not claimed a social security payment that is based on, or would be affected by, the adult being the principal carer of the child.

(21) If a child:

(a) leaves Australia temporarily; and

(b) continues to be absent from Australia for more than 13 weeks;

a person cannot be the principal carer of the child at any time after the 13 weeks while the child remains absent from Australia unless, at that time:

- (c) the child is in the company of a person to whom Division 2 of Part 4.2 applies; and
 - (d) but for this subsection, the person would be the principal carer of the child; and
 - (e) the person's portability period (within the meaning of that Division) for a social security payment:
 - (i) that the person was receiving immediately before the person's absence from Australia; or
 - (ii) the person's claim for which was granted during the absence;has not ended.
- (22) For the purposes of subsection (21), in determining if an absence is temporary, regard must be had to the following factors:
- (a) the purpose of the absence;
 - (b) the intended duration of the absence;
 - (c) the frequency of such absences.

(23) If a child:

- (a) is born outside Australia; and
- (b) continues to be absent from Australia for a period of more than 13 weeks immediately following the child's birth;

a person cannot be the principal carer of the child at any time after the 13 weeks while the child remains absent from Australia unless, at that time:

- (c) the child is in the company of a person to whom Division 2 of Part 4.2 applies; and
- (d) but for this subsection, the person would be the principal carer of the child; and
- (e) the person's portability period (within the meaning of that Division) for a social security payment:
 - (i) that the person was receiving immediately before the person's absence from Australia; or
 - (ii) the person's claim for which was granted during the absence;has not ended.

(24) If:

- (a) a person is not the principal carer of a child because of subsection (21) (absence from Australia) or (23) (birth outside Australia), or because of a previous application of this subsection; and
 - (b) the child comes to Australia; and
 - (c) the child leaves Australia less than 13 weeks later;
- a person cannot be the principal carer of the child when the child leaves Australia as mentioned in paragraph (c).

4 After section 5A

Insert:

5B Registered and active foster carers

- (1) A person is a *registered and active foster carer* if the Secretary is satisfied that:
 - (a) the person meets the requirements (if any) of the law of the State or Territory in which the person resides that the person must meet in order to be permitted, under the law of that State or Territory, to provide foster care in that State or Territory; and
 - (b) the person is taken, in accordance with guidelines made under subsection (2), to be actively involved in providing foster care in that State or Territory.
- (2) The Secretary may, by legislative instrument, make guidelines setting out the circumstances in which persons are taken, for the purposes of the social security law, to be actively involved in providing foster care in that State or Territory.

5C Home educators

A person is a *home educator* of a child if the Secretary is satisfied that:

- (a) the child is receiving, in the person's home, education that wholly or substantially replaces the education that the child would otherwise receive by attending a school; and
- (b) the person meets the requirements (if any) of the law of the State or Territory in which the person resides that the person

- must meet in order to be permitted, under the law of that State or Territory, to provide that education to the child; and
- (c) the person is suitably involved in providing and supervising that education.

5D Distance educators

A person is a *distance educator* of a child if the Secretary is satisfied that:

- (a) the child is enrolled to receive education by undertaking a distance education curriculum; and
- (b) the child is undertaking that curriculum; and
- (c) the person is suitably involved in assisting and supervising the child in relation to that curriculum.

5 Subsection 7(7)

Omit “subparagraph 593(1)(g)(ii)”, substitute “subparagraphs 593(1)(g)(ii) and 593(1D)(b)(ii)”.

6 After section 16A

Insert:

16B Partial capacity to work

- (1) A person has a *partial capacity to work* if:
- (a) the person has a physical, intellectual or psychiatric impairment; and
- (b) the Secretary is satisfied that:
- (i) the impairment of itself prevents the person from doing 30 hours per week of work independently of a program of support within the next 2 years; and
- (ii) no training activity is likely (because of the impairment) to enable the person to do 30 hours per week of work independently of a program of support within the next 2 years.
- (2) A person is treated as doing work *independently of a program of support* if the Secretary is satisfied that to do the work the person:
- (a) is unlikely to need a program of support that:

- (i) is designed to assist the person to prepare for, find or maintain work; and
 - (ii) is funded (wholly or partly) by the Commonwealth or is of a type that the Secretary considers is similar to a program of support that is funded (wholly or partly) by the Commonwealth; or
 - (b) is likely to need such a program of support provided occasionally; or
 - (c) is likely to need such a program of support that is not ongoing.
- (3) In deciding whether he or she is satisfied as mentioned in paragraph (1)(b), the Secretary is to have regard to the guidelines (if any) determined and in force under subsection (4).
- (4) The Secretary may, by legislative instrument, determine guidelines to be complied with in deciding whether he or she is satisfied as mentioned in paragraph (1)(b).
- (5) In this section:

30 hours per week of work means work:

- (a) that is for at least 30 hours per week on wages that are at or above the relevant minimum wage; and
- (b) that exists in Australia, even if not within the person's locally accessible labour market.

training activity means one or more of the following activities, whether or not the activity is designed specifically for people with physical, intellectual or psychiatric impairments:

- (a) education;
- (b) pre-vocational training;
- (c) vocational training;
- (d) vocational rehabilitation;
- (e) work-related training (including on-the-job training).

7 Subsection 23(1) (before paragraph (a) of the definition of approved program of work supplement)

Insert:

- (aa) an amount under section 118 to a person receiving disability support pension; or

8 Subsection 23(1)

Insert:

austudy participation failure has the meaning given by section 576.

9 Subsection 23(1) (definition of CSP)

Repeal the definition.

10 Subsection 23(1)

Insert:

distance educator has the meaning given by section 5D.

11 Subsection 23(1)

Insert:

home educator has the meaning given by section 5C.

12 Subsection 23(1)

Insert:

newstart participation failure has the meaning given by section 624.

13 Subsection 23(1)

Insert:

Parenting Payment Activity Agreement has the meaning given by subsection 501(6).

14 Subsection 23(1)

Insert:

parenting payment participation failure has the meaning given by section 500ZA.

15 Subsection 23(1)

Insert:

partial capacity to work has the meaning given by section 16B.

16 Subsection 23(1)

Insert:

participation failure instalment period:

- (a) in relation to the payability of parenting payment—has the meaning given by subsection 500ZB(3); and
- (b) in relation to the payability of youth allowance—has the meaning given by subsection 550B(3); and
- (c) in relation to the payability of austudy payment—has the meaning given by subsection 576A(3); and
- (d) in relation to the payability of newstart allowance—has the meaning given by subsection 626(3); and
- (e) in relation to the payability of special benefit—has the meaning given by subsection 742(3).

17 Subsection 23(1)

Insert:

registered and active foster carer has the meaning given by section 5B.

18 Subsection 23(1)

Insert:

Reserves means:

- (a) the Naval Reserve; or
- (b) the Army Reserve; or
- (c) the Air Force Reserve.

19 Subsection 23(1) (paragraph (e) of the definition of *social security entitlement*)

Repeal the paragraph, substitute:

- (e) a parenting payment; or

20 Subsection 23(1)

Insert:

special benefit participation failure has the meaning given by section 740.

21 Subsection 23(1)

Insert:

subject to participation requirements: a person is subject to participation requirements if, because of paragraph 500(1)(c) or 500F(1)(f) or (2)(f), the person cannot be qualified for parenting payment unless the person meets any participation requirements that apply to the person under section 500A.

Note: Subsection 500F(4) limits the circumstances in which paragraph 500F(1)(f) or (2)(f) applies.

22 Subsection 23(1)

Insert:

transitional DSP applicant means a person:

- (a) who made a claim for a disability support pension on or after 11 May 2005 and before 1 July 2006; and
- (b) to whom, on or after 1 July 2006, a notice under subsection 63(2) or 64(2) of the Administration Act is given; and
- (c) who is required under the notice to undertake a specified activity for the purpose of reviewing his or her capacity to perform work.

23 Subsection 23(1)

Insert:

youth allowance participation failure has the meaning given by section 550.

24 Paragraphs 28(2)(a) and (b)

After “under 21”, insert “and subsection (4) does not apply to them”.

25 At the end of subsection 28(2)

Add:

- ; and (c) if subsection (4) applies to the persons—more than 50 hours for each fortnight of their respective participation in the program.

26 At the end of section 28

Add:

- (4) This subsection applies to a person if:
 - (a) the person is under 60; and
 - (b) the Secretary determines that the person is a person to whom this subsection applies.
- (5) The Secretary may determine either one or both of the following by legislative instrument:
 - (a) matters that the Secretary is to take into account in making a determination under paragraph (4)(b);
 - (b) matters that the Secretary is not to take into account in making a determination under paragraph (4)(b).
- (6) A determination under subsection (5) does not, to the extent that it is a determination under paragraph (5)(a), limit the matters that the Secretary may take into account in making a determination under paragraph (4)(b).

Part 2—Amendments commencing on 20 September 2006

Social Security Act 1991

27 Subsection 16A(1) (after paragraph (a) of the definition of *seasonal work*)

Insert:

- (aa) work:
 - (i) that is intermittent; and
 - (ii) that is to be performed for a period of less than 12 months; and
 - (iii) that is to be performed for a specified period or a period that can reasonably be calculated by reference to the completion of a specified task; and
 - (iv) for which the person performing the work does not accrue leave entitlements; or

28 After subsection 16A(1)

Insert:

- (1A) Paragraph (aa) of the definition of *seasonal work* in subsection (1) does not apply to a person undertaking seasonal work if the person was receiving income support payments (whether or not the kind of payment received has changed over the period and whether any part of it occurred before or after the commencement of this section) in respect of a continuous period exceeding 12 months immediately before the person commenced the seasonal work.

29 Paragraph 16A(3)(b)

Omit “or special benefit”, substitute “, special benefit, parenting payment, disability support pension, sickness allowance, carer payment or austudy payment”.

30 Paragraph 16A(4)(b)

Omit “or special benefit”, substitute “, special benefit, disability support pension, sickness allowance, carer payment or austudy payment”.

31 Subsection 19C(2)

After “special benefit”, insert “, disability support pension, carer payment”.

32 Subsection 19C(2)

After “payment, benefit”, insert “, pension”.

33 Subsection 19C(3)

After “special benefit”, insert “, disability support pension, carer payment”.

34 Subsection 19C(3)

After “payment, benefit”, insert “, pension”.

35 Before paragraph 19C(8)(a)

Insert:

- (aa) in relation to disability support pension—means the rate worked out at:
 - (i) Step 4 of the Method statement in Module A of Pension Rate Calculator A; or
 - (ii) Step 5 of the Method statement in Module A of Pension Rate Calculator D; or
- (ab) in relation to carer payment—means the rate worked out at Step 4 of the Method statement in Module A of Pension Rate Calculator A; or

36 Subsection 23(1) (definition of *income maintenance period*)

After “has the meaning given in points”, insert “1064-F4 and 1064-F5, 1066A-G4 and 1066A-G5,”.

Part 3—Miscellaneous

37 Subsection 23(1)

Insert:

Australian Fair Pay and Conditions Standard has the same meaning as it has in the *Workplace Relations Act 1996*.

Schedule 2—Disability support pension

Part 1—Participation

Social Security Act 1991

1 At the end of subsection 94(1)

Add:

- ; and (f) the person is not qualified for disability support pension under section 94A.

2 Subsection 94(2)

Repeal the subsection, substitute:

- (2) A person has a *continuing inability to work* because of an impairment if the Secretary is satisfied that:
 - (a) the impairment is of itself sufficient to prevent the person from doing any work independently of a program of support within the next 2 years; and
 - (b) either:
 - (i) the impairment is of itself sufficient to prevent the person from undertaking a training activity during the next 2 years; or
 - (ii) if the impairment does not prevent the person from undertaking a training activity—such activity is unlikely (because of the impairment) to enable the person to do any work independently of a program of support within the next 2 years.

Note: For *work* see subsection (5).

3 Paragraph 94(3)(a)

Omit “educational or vocational training or on-the-job training”, substitute “a training activity”.

4 Paragraph 94(3)(b)

Omit “if subsection (4) does not apply to the person—”.

5 Subsection 94(4)

Repeal the subsection, substitute:

- (4) A person is treated as doing work *independently of a program of support* if the Secretary is satisfied that to do the work the person:
- (a) is unlikely to need a program of support that:
 - (i) is designed to assist the person to prepare for, find or maintain work; and
 - (ii) is funded (wholly or partly) by the Commonwealth or is of a type that the Secretary considers is similar to a program of support that is funded (wholly or partly) by the Commonwealth; or
 - (b) is likely to need such a program of support provided occasionally; or
 - (c) is likely to need such a program of support that is not ongoing.

6 Subsection 94(5) (definition of *educational or vocational training*)

Repeal the definition.

7 Subsection 94(5) (definition of *on-the-job training*)

Repeal the definition.

8 Subsection 94(5)

Insert:

training activity means one or more of the following activities, whether or not the activity is designed specifically for people with physical, intellectual or psychiatric impairments:

- (a) education;
- (b) pre-vocational training;
- (c) vocational training;
- (d) vocational rehabilitation;
- (e) work-related training (including on-the-job training).

9 Subsection 94(5) (paragraph (a) of the definition of *work*)

Omit “30”, substitute “15”.

10 After section 94

Insert:

94A Qualification for disability support pension—person transferring to that pension

Qualification

- (1) Subject to subsections (6) and (7), a person is qualified for a disability support pension if:
- (a) either:
 - (i) on or after 1 July 2006, the Secretary considered or reviewed the person's capacity to work in connection with a social security benefit or social security entitlement; or
 - (ii) if the person has previously qualified for disability support pension under this section—the Secretary last considered or reviewed the person's capacity to work in connection with a social security benefit or social security entitlement; and
 - (b) as at the date of that consideration or review, the Secretary was satisfied that the person had a current inability to work because of a physical, intellectual or psychiatric impairment; and
 - (c) immediately before qualifying for disability support pension under this section, the person was receiving a social security benefit or a social security entitlement (other than a disability support pension); and
 - (d) the person has a physical, intellectual or psychiatric impairment that is 20 points or more under the Impairment Tables; and
- Note: For Impairment Tables see subsection 23(1) and Schedule 1B.
- (e) after the end of a period of at least 2 years (the **2 year period**) since the date of the consideration or review, the Secretary reviews the person's capacity to work (the **2 year review**) in connection with the benefit or entitlement referred to in paragraph (c); and
 - (f) the 2 year review is the first review, after the end of the 2 year period, of the person's capacity to work in connection with that benefit or entitlement; and

- (g) the Secretary is satisfied that the person has a current inability to work because of the impairment mentioned in paragraph (d); and
- (h) the person has been receiving a social security benefit or a social security entitlement in respect of a continuous period between the date of the consideration or review and the date of the 2 year review (whether or not the kind of payment received has changed over the period); and

Note: For the determination of whether a person received income support payments in respect of a continuous period of at least 12 months see section 38B.

- (i) either:
 - (i) the person undertook such training activities during the 2 year period as were required under an agreement with the Secretary; or
 - (ii) if the person was not required (whether under an agreement with the Secretary or not) to undertake training activities during the 2 year period—the person undertook during that period the type and number of training activities that the Secretary considers were appropriate for the person; and
 - (j) the person meets the residency test in subsection (5); and
 - (k) the person has turned 16.
- (2) A person has a **current inability to work** because of an impairment if the Secretary is satisfied that the impairment is of itself sufficient to prevent the person from doing any work independently of a program of support.

Note: For **work** see subsection (8).

- (3) A person is treated as doing work **independently of a program of support** if the Secretary is satisfied that to do the work the person:
- (a) is unlikely to need a program of support that:
 - (i) is designed to assist the person to prepare for, find or maintain work; and
 - (ii) is funded (wholly or partly) by the Commonwealth or is of a type that the Secretary considers is similar to a program of support that is funded (wholly or partly) by the Commonwealth; or
 - (b) is likely to need such a program of support provided occasionally; or

- (c) is likely to need such a program of support that is not ongoing.
- (4) In deciding whether or not a person has a **current inability to work** because of an impairment, the Secretary is not to have regard to the availability to the person of work in the person's locally accessible labour market.
- (5) A person meets the residency test if the person:
 - (a) is an Australian resident at the time when the person first satisfies paragraph (1)(b); or
 - (b) has 10 years qualifying Australian residence, or has a qualifying residence exemption for a disability support pension; or
 - (c) is born outside Australia and, at the time when the person first satisfies paragraph (1)(b), the person:
 - (i) is not an Australian resident; and
 - (ii) is a dependent child of an Australian resident;and the person becomes an Australian resident while a dependent child of an Australian resident.

Note: For Australian resident, qualifying Australian residence and qualifying residence exemption see section 7.

Person not qualified in certain circumstances

- (6) A person is not qualified for a disability support pension on the basis of a current inability to work if the person brought about the inability with a view to obtaining:
 - (a) a disability support pension or a sickness allowance; or
 - (b) an exemption, because of the person's incapacity, from the requirement to satisfy the activity test for the purposes of a social security benefit or a social security entitlement (other than a disability support pension).

Note: A person who is receiving a disability support pension may be automatically transferred to the age pension if the person becomes qualified for the age pension (see section 12 of the Administration Act).

When person ceases to be qualified

- (7) Unless ceasing to be qualified for a disability support pension under this section sooner, a person ceases to be so qualified from

the date of effect of the first decision about the person's capacity to work following a review of that capacity.

Definitions

(8) In this section:

training activity means one or more of the following activities, whether or not the activity is designed specifically for people with physical, intellectual or psychiatric impairments:

- (a) education;
- (b) pre-vocational training;
- (c) vocational training;
- (d) vocational rehabilitation;
- (e) work-related training (including on-the-job training).

work means work:

- (a) that is for at least 15 hours per week on wages that are at or above the relevant minimum wage; and
- (b) that exists in Australia, even if not within the person's locally accessible labour market.

11 Paragraph 729(2A)(a)

After "94", insert ", 94A".

12 Paragraph 1061ZD(2)(b)

Omit "30", substitute "15".

13 Application and transitional provisions

- (1) The amendments of the *Social Security Act 1991* made by this Part apply in relation to any claim, and any payment of pension as a result of such a claim, by a person for a disability support pension made on or after 1 July 2006.
- (2) Subject to subitem (3), the *Social Security Act 1991* applies to any claim by a person for a disability support pension made before 1 July 2006, and any payment of pension as a result of such a claim, as if the amendments referred to in subitem (1) had not been made.
- (3) If:

Schedule 2 Disability support pension
Part 1 Participation

- (a) on or after 1 July 2006, a notice under subsection 63(2) or 64(2) of the Administration Act is given to a person who made a claim for a disability support pension on or after 11 May 2005 and before 1 July 2006; and
- (b) under the notice, the person is required to undertake a specified activity for the purpose of reviewing his or her capacity to perform work;

then the amendments of the *Social Security Act 1991* referred to in subitem (1) apply to the person from the date of the notice.

Part 2—Seasonal work preclusion period

Social Security Act 1991

14 At the end of Subdivision B of Division 1 of Part 2.3 of Chapter 2

Add:

104 Seasonal workers—preclusion period

- (1) This section applies if:
- (a) a person has lodged a claim for disability support pension; and
 - (b) the person qualifies, under section 94, for disability support pension; and
 - (c) at any time during the 6 months immediately before the day on which the person lodged the claim, the person, or the person's partner, has been engaged in seasonal work.

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

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

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

- (3) If the Secretary is satisfied that a person is in severe financial hardship because the person has incurred unavoidable or reasonable expenditure while the person is subject to a seasonal work preclusion period (whether in relation to the claim referred to in subsection (1) or any other claim under this Act):

(a) the Secretary may determine that the person is not subject to the whole, or any part, of the preclusion period; and

(b) the determination has effect accordingly.

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

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

15 Application provision

The amendment made by this Part applies in relation to claims for disability support pension made on or after 20 September 2006.

Part 3—Approved program of work supplement

Social Security Act 1991

16 At the end of Division 5 of Part 2.3 of Chapter 2

Add:

118 Approved program of work supplement

If a person:

- (a) is receiving a disability support pension; and
- (b) is participating in an approved program of work for income support payment;

the rate of the person's disability support pension is increased by an amount of \$20.80, to be known as the approved program of work supplement, for each fortnight during which the person participates in the program.

119 Approved program of work supplement not payable in certain circumstances

An approved program of work supplement is not payable to a person in respect of a fortnight if pensioner education supplement under Part 2.24A or under ABSTUDY is payable to the person in respect of a day in the fortnight.

120 Effect of participation in an approved program of work for income support payment

A person is not taken to be:

- (a) an employee within the meaning of section 9 of the *Occupational Health and Safety (Commonwealth Employment) Act 1991*; or
- (b) an employee within the meaning of section 5 of the *Safety, Rehabilitation and Compensation Act 1988*; or
- (c) an employee for the purposes of the *Superannuation Guarantee (Administration) Act 1992*; or

(d) an employee for the purposes of the *Workplace Relations Act 1996*;

merely by participating in an approved program of work for income support payment in accordance with the terms of an agreement with the Secretary for the purposes of this Part.

17 Subparagraph 1223(7)(b)(iv)

Before “parenting payment” (wherever occurring), insert “disability support pension,”.

Schedule 3—Carer payment

Social Security Act 1991

1 At the end of Subdivision B of Division 1 of Part 2.5 of Chapter 2

Add:

203 Seasonal workers—preclusion period

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

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

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

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

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

Schedule 3 Carer payment

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

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

2 Application provision

The amendment made by this Schedule applies in relation to claims for carer payment made on or after 20 September 2006.

Schedule 4—Parenting payment

Part 1—Participation

Social Security Act 1991

1 Paragraph 500(1)(a)

Omit “to 500H”, substitute “and 500F to 500H”.

2 Paragraph 500(1)(c)

Repeal the paragraph, substitute:

- (c) in a case where the person is not a member of a couple and does not have at least one PP child who has not turned 6—the person meets any participation requirements that apply to the person under section 500A; and

3 Subsection 500(4)

Repeal the subsection.

4 After section 500

Insert:

500A Participation requirements

The participation requirements are as follows:

- (a) the person must enter into a Parenting Payment Activity Agreement when the person is required by the Secretary under section 501 to do so;
- (b) while the agreement is in force the person must comply with its terms;
- (c) at any time while the agreement is in force the person must be prepared to enter into another such agreement, instead of the existing agreement, if required to do so by the Secretary under section 501;
- (d) the person must comply with any requirements that the Secretary notifies to the person under subsection 502(1).

5 Sections 500D to 500H

Repeal the sections, substitute:

500D PP child

- (1) A child is a **PP child** of a person if:
 - (a) the child is a child of the person; and
 - (b) the person is a member of a couple; and
 - (c) the child has not turned 6; and
 - (d) the person is the principal carer of the child.
- (2) A child is a **PP child** of a person if:
 - (a) the child is a child of the person; and
 - (b) the person is not a member of a couple; and
 - (c) the child has not turned 8; and
 - (d) the person is the principal carer of the child.
- (3) A child is a **PP child** of a person if:
 - (a) the child is a child of the person; and
 - (b) the child has not turned 16; and
 - (c) the person is the principal carer of the child; and
 - (d) the person is covered by the parenting payment transitional arrangement in relation to that child or any other child (see section 500F); and
 - (e) since 1 July 2006, there has not been any continuous period of more than 12 weeks during which the person has not at any time been covered by the parenting payment transitional arrangement in relation to that child or any other child (see section 500F).

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

500E Prospective determinations for some recipients

- (1) A person is qualified for parenting payment for a period determined by the Secretary if:
 - (a) the person is receiving parenting payment; and
 - (b) the Secretary considers at the start of the period that:
 - (i) the person may reasonably be expected to satisfy the qualification requirements for parenting payment (see sections 500 to 500C) during the period; and

- (ii) it is reasonable to expect that parenting payment will be payable to the person for the period; and
 - (iii) the person will comply with the Act during the period; and
 - (c) except where the person is a CDEP Scheme participant in respect of the period, the person is not indebted at the start of the period to the Commonwealth under or as a result of this Act; and
 - (d) the Secretary is satisfied that the person should be qualified under this section for a parenting payment for the period.
- (2) The Minister:
- (a) must determine, by legislative instrument, guidelines for making decisions under paragraph (1)(b); and
 - (b) may revoke or vary the determination.
- If the Minister revokes a determination, the Minister must determine, by legislative instrument, guidelines that take effect immediately after the revocation.

6 After Subdivision A of Division 1 of Part 2.10 of Chapter 2

Insert:

Subdivision AA—Parenting payment transitional arrangement

500F When a person is covered by the parenting payment transitional arrangement

Person is not a member of a couple

- (1) Subject to subsection (3), a person is covered by the parenting payment transitional arrangement in relation to a child if:
- (a) immediately before 1 July 2006, the person was not a member of a couple; and
 - (b) immediately before 1 July 2006, that child (or any other child) was a PP child of the person in respect of whom:
 - (i) a determination under section 37 of the Administration Act was in force granting a claim for a parenting payment to the person; or

- (ii) a determination under section 80, 81 or 82 of the Administration Act was in force suspending payment of a parenting payment to the person; and

Note: Section 500G expands the scope of subparagraph (i). Subsection 500G(4) deals with the effect of backdated start dates on that subparagraph.

- (c) the person is not a member of a couple; and
- (d) in a case where the child has not turned 8—the person is qualified for parenting payment in relation to the child; and
- (e) in a case where the child has turned 8—the person would be qualified for parenting payment in relation to the child if the child had not turned 8; and
- (f) the person meets any participation requirements that apply to the person under section 500A.

Person is a member of a couple

- (2) Subject to subsection (3), a person is covered by the parenting payment transitional arrangement in relation to a child if:
 - (a) immediately before 1 July 2006, the person was a member of a couple; and
 - (b) immediately before 1 July 2006, that child (or any other child) was a PP child of the person in respect of whom:
 - (i) a determination under section 37 of the Administration Act was in force granting a claim for a parenting payment to the person; or
 - (ii) a determination under section 80, 81 or 82 of the Administration Act was in force suspending payment of a parenting payment to the person; and

Note: Section 500G expands the scope of subparagraph (i). Subsection 500G(4) deals with the effect of backdated start dates on that subparagraph.

- (c) the person is a member of a couple; and
- (d) in a case where the child has not turned 6—the person is qualified for parenting payment in relation to the child; and
- (e) in a case where the child has turned 6—the person would be qualified for parenting payment in relation to the child if the child had not turned 6; and
- (f) the person meets any participation requirements that apply to the person under section 500A.

Parenting payment transitional arrangement taken never to have covered person

- (3) If:
- (a) but for this subsection, a person would be covered by the parenting payment transitional arrangement in relation to a child; and
 - (b) the Secretary determines that the person's parenting payment is to be cancelled with effect from a day before 1 July 2006; the person is taken never to have been covered by that arrangement.

Circumstances in which participation requirements need not be met

- (4) Paragraph (1)(f) or (2)(f) (as the case requires) does not apply to the person:
- (a) before 1 July 2007; or
 - (b) while the person has a PP child who has not turned 7.

Note: For **PP child** see section 500D.

500G When determinations are taken to be in force

Expanded scope of subparagraphs 500F(1)(b)(i) and (2)(b)(i)

- (1) A reference in subparagraph 500F(1)(b)(i) or (2)(b)(i) to a determination under section 37 of the Administration Act that is in force granting a claim for a parenting payment to a person includes a reference to a determination that:
- (a) would have been made granting a claim for that payment to the person; and
 - (b) would have been in force;
- but for one or more of the circumstances specified in an instrument made under subsection (2).
- (2) The Secretary may specify, by legislative instrument, circumstances to which subsection (1) applies. The Secretary may specify different circumstances in relation to each of the subparagraphs referred to in subsection (1).
- (3) A reference in subparagraph 500F(1)(b)(i) or (2)(b)(i) to a determination under section 37 of the Administration Act that is in

force granting a claim for a parenting payment to a person includes a reference to a determination that would have been in force, but for the operation of subsection 500(4) as in force immediately before 1 July 2006.

Backdated start date

- (4) If:
- (a) a determination is made on or after 1 July 2006 under section 37 of the Administration Act granting a claim for a parenting payment to a person; and
 - (b) the person's start date in relation to the payment is before 1 July 2006; and
 - (c) the Secretary has not determined that the parenting payment is to be cancelled with effect from a day before 1 July 2006;
- the determination is taken, for the purposes of subparagraph 500F(1)(b)(i) or (2)(b)(i), to have been in force immediately before 1 July 2006.

500H The effect of cancellation

- (1) A reference in paragraph 500F(1)(d) or (e) or (2)(d) or (e) to a person being qualified for parenting payment does not include a reference to a person if:
 - (a) the person's parenting payment has been cancelled; and
 - (b) no determination is in force granting another claim for parenting payment to the person.
- (2) A reference in subsection (1) to the cancellation of a person's parenting payment does not include a reference to a cancellation of that payment because of one or more of the circumstances specified in an instrument made under subsection (3).
- (3) The Secretary may, by legislative instrument, specify circumstances to which subsection (1) applies. The Secretary may specify different circumstances in relation to one or more of the paragraphs referred to in subsection (1).
- (4) For the purposes of paragraph (1)(b), a determination granting another claim for parenting payment to a person is taken to be in force from the person's start date in relation to that parenting payment.

7 Division 2 of Part 2.10 of Chapter 2

Repeal the Division, substitute:

Division 2—Parenting Payment Activity Agreements

501 Parenting Payment Activity Agreements

- (1) The Secretary may require a person who is subject to participation requirements to enter into a Parenting Payment Activity Agreement under this section.

Note: For when a person is *subject to participation requirements* see subsection 23(1).

- (2) The Secretary may require a person who is a party to a Parenting Payment Activity Agreement under this section that is in force to enter into another such agreement instead of the existing one.
- (3) Subject to subsection (4), subsections (1) and (2) do not apply to a person at any time during which the person is covered by a participation exemption under Division 3A.
- (4) If a person is covered by a participation exemption under Division 3A only because of the application of section 502H, subsections (1) and (2) apply to the person only if subsection 502J(1) applies to the person.
- (5) The Secretary is to give a person who is required to enter into a Parenting Payment Activity Agreement notice of:
- (a) the requirement; and
 - (b) the places and times at which the agreement is to be negotiated.
- (6) A Parenting Payment Activity Agreement is a written agreement in a form approved by the Secretary. The agreement is between the person and the Secretary.

501A Parenting Payment Activity Agreement—terms

- (1) Subject to subsections (2) and (3) and sections 501B to 501E, a Parenting Payment Activity Agreement with a person is to require the person to undertake one or more activities that the Secretary regards as suitable for the person.

- (2) If a Parenting Payment Activity Agreement requires a person, during a period, to engage for at least 30 hours per fortnight in paid work that the Secretary regards as suitable, the agreement must not require the person to undertake any other activities.
- (3) An agreement must not contain a requirement of a kind that the Secretary determines under subsection (4).
- (4) The Secretary must determine, by legislative instrument, kinds of requirements that agreements must not contain.
- (4A) To avoid doubt, a determination under subsection (4) does not limit the Secretary's discretion to exclude other kinds of requirements from a particular agreement under subsection (1).
- (5) The terms of an agreement, which include the specification of the activities that the person is to be required to undertake, are to be approved by the Secretary.
- (6) In considering whether to approve the terms of an agreement with a person, the Secretary is to have regard to the person's capacity to comply with the proposed agreement and the person's needs.
- (7) In having regard to a person's capacity to comply with an agreement, the Secretary is to take into account, but is not limited to, the following matters:
 - (a) the person's education, experience, skills and age;
 - (b) the impact of any disability, illness, mental condition or physical condition of the person on the person's ability to work, to look for work or to participate in training activities;
 - (c) the state of the local labour market and the transport options available to the person in accessing that market;
 - (d) the participation opportunities available to the person;
 - (e) the family and caring responsibilities of the person;
 - (f) the length of travel time required for compliance with the agreement;
 - (g) the financial costs of compliance with the agreement, such as travel costs, and the capacity to pay for such compliance;
 - (h) any other matters that the Secretary or the person considers relevant in the circumstances.
- (8) An agreement with a person:

- (a) may be varied (in negotiation with the person) or suspended; and
 - (b) if another Parenting Payment Activity Agreement is made with the person, may be cancelled; and
 - (c) may be reviewed from time to time at the request of either party to the agreement; and
 - (d) may be cancelled by the Secretary after a review under paragraph (c).
- (9) A recipient of parenting payment who is a party to an agreement is to notify the Secretary of any circumstances preventing or affecting the recipient's compliance with the agreement.

501B Parenting Payment Activity Agreements—requirement to look for work of appropriate number of hours per week

- (1) A Parenting Payment Activity Agreement that requires a person to undertake, as an activity, looking for part-time paid work that the Secretary regards as suitable must require the person to undertake looking for such part-time paid work of at least the appropriate number of hours per week.
- (2) The appropriate number of hours per week is:
 - (a) 15; or
 - (b) such other number as the Secretary determines to be appropriate having regard to the person's circumstances.

501C Parenting Payment Activity Agreements—people with partial capacity to work

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

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

- (2) The appropriate number of hours per week is:
 - (a) 15; or

- (b) such other number as the Secretary determines to be appropriate having regard to the person's circumstances.

501D Parenting Payment Activity Agreements—requirement to participate in an approved program of work

- (1) A Parenting Payment Activity Agreement between the Secretary and a person must not require the person to participate in an approved program of work for income support payment if:
 - (a) either:
 - (i) if the person's rate of parenting payment is worked out under the Pension PP (Single) Rate Calculator in section 1068A—because of the application of Module E of that rate calculator, the person is receiving a parenting payment at a rate that has been reduced; or
 - (ii) if the person's rate of parenting payment is worked out under the Benefit PP (Partnered) Rate Calculator in section 1068B—because of the application of Module D of that rate calculator, the person is receiving a parenting payment at a rate that has been reduced; or
 - (b) in the Secretary's opinion:
 - (i) it has been established that there is medical evidence that the person has an illness, disability or injury that would be aggravated by the conditions in which the work would be performed; or
 - (ii) performing the work in the conditions in which the work would be performed would constitute a risk to health or safety or would contravene a law of the Commonwealth, a State or a Territory relating to occupational health and safety; or
 - (c) the person is at least 50 years of age and is not a person to whom subsection 28(4) applies.
- (2) The Secretary may, by notice given to a person whom a Parenting Payment Activity Agreement requires to participate in an approved program of work for income support payment, revoke the requirement to participate in the program if the Secretary:
 - (a) is satisfied that:
 - (i) if the person's rate of parenting payment is worked out under the Pension PP (Single) Rate Calculator in section 1068A—because of the application of Module E

- of that rate calculator, the person is receiving a parenting payment at a rate that has been reduced; or
- (ii) if the person's rate of parenting payment is worked out under the Benefit PP (Partnered) Rate Calculator in section 1068B—because of the application of Module D of that rate calculator, the person is receiving a parenting payment at a rate that has been reduced; or
- (b) forms the opinion that:
- (i) it has been established that there is medical evidence that the person has an illness, disability or injury that would be aggravated by the conditions in which the work would be performed; or
 - (ii) performing the work in the conditions in which the work would be performed would constitute a risk to health or safety or would contravene a law of the Commonwealth, a State or a Territory relating to occupational health and safety; or
- (c) is satisfied that the person is at least 50 years of age and is not a person to whom subsection 28(4) applies.
- (3) Upon the Secretary so notifying the person, the requirement is taken to have been revoked with effect from the day specified in the notice.
- (4) A person is not to be taken, merely by participating in an approved program of work for income support payment in accordance with the terms of a Parenting Payment Activity Agreement under this section, to be:
- (a) an employee within the meaning of section 9 of the *Occupational Health and Safety (Commonwealth Employment) Act 1991*; or
 - (b) an employee within the meaning of section 5 of the *Safety, Rehabilitation and Compensation Act 1988*; or
 - (c) an employee for the purposes of the *Superannuation Guarantee (Administration) Act 1992*; or
 - (d) an employee for the purposes of the *Workplace Relations Act 1996*.

501E Parenting Payment Activity Agreements—suspension of agreements in cases of domestic violence etc.

A Parenting Payment Activity Agreement between the Secretary and a person is taken to be suspended during any period during which the person is covered by a participation exemption under Division 3A because of section 502C or 502D.

Division 3—Additional participation requirements

502 Secretary may impose additional participation requirements

- (1) Subject to sections 502A and 502B, if the Secretary is of the opinion that, throughout a period, a person who:
- (a) is subject to participation requirements; and
 - (b) is not covered by a participation exemption under Division 3A;
- should undertake particular paid work, other than paid work that is unsuitable to be done by the person, the Secretary may notify the person that the person is required to act in accordance with the opinion.

Note 1: For when a person is *subject to participation requirements* see subsection 23(1).

Note 2: See subsection (4) on what paid work is unsuitable.

- (2) To avoid doubt, the work that the person is required to undertake under subsection (1) may involve a number of hours per week that differs from the number of hours of work per week that the person is required to seek to comply with a Parenting Payment Activity Agreement between the Secretary and the person.
- (3) The person can be taken not to have complied with requirements notified to the person under subsection (1) whether or not the person has complied with requirements to enter into a Parenting Payment Activity Agreement and comply with its terms.
- (4) Subject to subsections (7) and (8), for the purposes of this section, particular paid work is unsuitable for a person if and only if, in the Secretary's opinion:
- (a) the person lacks the particular skills, experience or qualifications that are needed to perform the work and no training will be provided by the employer; or

- (b) it has been established that there is medical evidence that the person has an illness, disability or injury that would be aggravated by the conditions in which the work would be performed; or
- (c) the person does not have access to appropriate care and supervision, for the one or more children for whom the person is the principal carer, at the times when the person would be required to undertake the work; or

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

- (d) performing the work in the conditions in which the work would be performed would constitute a risk to health or safety and would contravene a law of the Commonwealth, a State or a Territory relating to occupational health and safety; or
 - (e) the work would be covered by the Australian Fair Pay and Conditions Standard, but the terms and conditions for the work would be less generous than the minimum terms and conditions for the work under the Australian Fair Pay and Conditions Standard; or
 - (f) the work would not be covered by the Australian Fair Pay and Conditions Standard, but, if it were so covered, the terms and conditions for the work would be less generous than the minimum terms and conditions for the work under the Australian Fair Pay and Conditions Standard; or
 - (g) commuting between the person's home and the place of work would be unreasonably difficult; or
 - (h) the work would require enlistment in the Defence Force or the Reserves; or
 - (i) the work requires the person to move from a home in one place to a home in another place; or
 - (j) for any other reason, the work is unsuitable for the person.
- (4A) The Secretary must, by legislative instrument, determine matters that the Secretary must take into account in deciding whether, for the purposes of paragraph (4)(j), particular paid work is unsuitable for a person.
- (4B) To avoid doubt, a determination under subsection (4A) does not limit the matters that the Secretary may take into account in deciding whether, for the purposes of paragraph (4)(j), particular paid work is unsuitable for a person.

- (5) A person has, for the purposes of paragraph (4)(c), access to appropriate care and supervision for a child at a particular time if, at that time:
- (a) the child could be provided with care by an approved child care service (within the meaning of the Family Assistance Administration Act), and provision of that care would, in the Secretary's opinion, be appropriate in the circumstances; or
 - (b) the child could be provided with other care that the person considers to be suitable; or
 - (c) the child could be attending school, and attendance at that school would, in the Secretary's opinion, be appropriate in the circumstances.
- (6) For the purposes of paragraph (4)(c), a time when the person would be required to undertake the work includes reasonable amounts of time that would be needed for the person to travel from the person's home to the place of work and from the place of work to the person's home.
- (7) If:
- (a) a person seeks work in an area (the *new area*) that is outside the area (the *old area*) in which the person's home is situated; and
 - (b) the person is offered permanent work (whether or not work of the kind sought) in the new area;
- the work offered is not unsuitable for the person because of paragraph (4)(g) or (i) unless:
- (c) the person is under the age of 18; or
 - (d) the person or the person's partner is pregnant; or
 - (e) the person or the person's partner has a severe medical condition and the condition makes it unreasonable for the person to accept the offer; or
 - (f) the acceptance of the offer would jeopardise the current employment, or the employment prospects, of the person's partner; or
 - (g) the person or the person's partner has a child under the age of 16 years who is living with them or is living somewhere else in the old area; or
 - (h) the person or the person's partner has significant caring responsibilities in the old area; or

- (i) the educational, cultural or religious background of the person makes it unreasonable for the person to accept the offer; or
 - (j) it is more appropriate for the person to participate in education or training than to accept the offer; or
 - (k) the person would suffer severe financial hardship if the person were to accept the offer.
- (8) Without affecting what would otherwise constitute a person seeking work outside the area in which the person's home is situated, if a person, when seeking employment through an employment service provider, represents to the provider that the person is willing to undertake work outside the area in which the person's home is situated, the person is taken for the purposes of subsection (7) to seek work outside the area at the time when the representation is made.
- (9) A reference in subsection (4) to remuneration for work is a reference to any income derived from the work that is income from personal exertion.

Note: For *income from personal exertion* see subsection 8(1).

502A People 55 and over who are engaged in work

- (1) Subject to subsection (2), the Secretary must not notify under subsection 502(1) a person in respect of a period (the ***relevant period***) if the person has reached 55 years and:
- (a) is engaged in approved unpaid voluntary work for an approved organisation for at least 30 hours in the period; or
 - (b) is engaged, for at least 30 hours in the period in a combination of:
 - (i) approved unpaid voluntary work for an approved organisation; and
 - (ii) suitable paid work for another person; or
 - (c) is engaged for at least 30 hours in the period in paid work that the Secretary regards as suitable.

- (2) This section does not apply to a person in respect of a day in a relevant period if, in respect of the person, having regard to the opportunities, or possible opportunities, for employment that become available to the person on or before the day, the Secretary considers that this section is not to apply to the person in respect of that day.
- (3) For the purposes of this section:
 - (a) approved voluntary unpaid work is work that has been approved by the Secretary for the purposes of this section; and
 - (b) an approved organisation is an organisation that has been approved by the Secretary for the purposes of this section.

502B Persons engaged in suitable paid work for at least 30 hours per fortnight

The Secretary must not notify under subsection 502(1) a person who is engaged for at least 30 hours per fortnight in paid work that the Secretary regards as suitable.

Division 3A—Participation exemptions

502C Domestic violence etc.

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

- (2A) The Secretary must, by legislative instrument, specify matters that the Secretary must take into account in deciding whether there are special circumstances relating to a person's family that make it appropriate to make a determination under this section.
- (2B) To avoid doubt, an instrument made under subsection (2A) does not limit the matters that the Secretary may take into account in making a determination under subsection (2).
- (3) The period that the Secretary determines under this section must be the lesser of:
 - (a) the period that the Secretary considers to be appropriate; or
 - (b) 16 weeks.
- (4) Any such period may be followed by one or more other periods (not exceeding 16 weeks) determined under this section in relation to the person.
- (5) The period that the Secretary determines under this section must, despite subsection (3), be 16 weeks if the determination:
 - (a) is made on grounds referred to in paragraph (2)(a) (or on grounds that include those grounds); and
 - (b) is the first determination made on those grounds (or on grounds that include those grounds) in connection with the particular cessation referred to in subparagraph (2)(a)(i).
- (6) The Secretary may revoke a determination under this section in relation to a person if the Secretary is satisfied that the grounds on which the determination was made no longer exist.
- (7) Subsection (6) does not affect any operation that subsection 33(3) of the *Acts Interpretation Act 1901* has in relation to a determination under this section.

502D People with disabled children and other circumstances

- (1) A person is covered by a participation exemption under this Division in respect of a period that the Secretary determines under this section in relation to the person.
- (2) The Secretary may make a determination under this section in relation to the person if the Secretary is satisfied that the person is the principal carer of one or more children:

- (a) who suffer from a physical, intellectual or psychiatric disability or illness; and
- (b) whose care needs are such that the person should, for the period specified in the determination, not be required to meet participation requirements.

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

- (3) The Secretary must make a determination under this section in relation to the person if the Secretary is satisfied that the person is the principal carer of one or more children, and that:
 - (a) the person is a registered and active foster carer; or
 - (b) the person is a home educator of that child, or one or more of those children; or
 - (c) the person is a distance educator of that child, or one or more of those children.

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

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

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

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

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

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

- (4) The Secretary may make a determination under this section in relation to the person if the Secretary is satisfied that:
 - (a) the person is a person included in a class of persons specified under subsection (5); and
 - (b) the person's circumstances are such that the person should not be required to meet any of the participation requirements.
- (5) The Secretary may, by legislative instrument, specify classes of persons in respect of whom determinations under this section may be made.
- (6) The period that the Secretary determines under this section must be the lesser of:
 - (a) the period that the Secretary considers to be appropriate; or
 - (b) 12 months.

- (7) Any such period may be followed by one or more other periods (not exceeding 12 months) determined under this section in relation to the person.
- (8) The Secretary may revoke a determination under this section in relation to a person if the Secretary is satisfied that the grounds on which the determination was made no longer exist.
- (9) Subsection (8) does not affect any operation that subsection 33(3) of the *Acts Interpretation Act 1901* has in relation to a determination under this section.

502E Training camps

A person is covered by a participation exemption under this Division in respect of a period when the person is attending a training camp as a member of:

- (a) the Naval Reserve; or
- (b) the Army Reserve; or
- (c) the Air Force Reserve.

502F Special circumstances

- (1) A person is covered by a participation exemption under this Division in respect of a period if:
 - (a) the Secretary is satisfied that special circumstances, beyond the person's control, exist; and
 - (b) the Secretary is satisfied that in those circumstances it would be unreasonable to expect the person to meet participation requirements for that period.
- (2) The period referred to in subsection (1) is not to exceed 13 weeks.
- (3) If:
 - (a) the Secretary makes a number of determinations under any one or more of the following provisions:
 - (i) subsection 525AA(3) of this Act as previously in force;
 - (ii) subsection 542H(1) of this Act;
 - (iii) subsection 603A(1) of this Act;
 - (iv) subsection 731E(1) of this Act;
 - (v) subsection (1) of this section; and

- (b) the periods to which the determinations relate form a continuous period;

the continuous period is not to exceed 13 weeks, unless the Secretary determines otherwise, having regard to the continued existence, or likely continued existence, of the special circumstances on which the last preceding determination was based.

502G Pre-natal and post-natal relief

- (1) A pregnant woman is covered by a participation exemption under this Division for the period that starts 6 weeks before the woman's expected date of confinement and ends on the day on which the woman gives birth to the child (whether or not the child is born alive).
- (2) If a woman gives birth to a child (whether or not the child is born alive), the woman is covered by a participation exemption under this Division for the period that starts on the day on which she gives birth to the child and ends 6 weeks after that day.

502H Temporary incapacity

- (1) Subject to sections 502J and 502K, a person is covered by a participation exemption under this Division in respect of a period if:
- (a) throughout the period the person is incapacitated for work because of sickness or an accident; and
 - (b) the incapacity is caused wholly, or virtually wholly, by a medical condition arising from the sickness or accident; and
 - (c) the incapacity is, or is likely to be, of a temporary nature; and
 - (d) the person has, whether before or after the commencement of this section, given the Secretary a certificate of a medical practitioner, in a form approved by the Secretary, stating:
 - (i) the medical practitioner's diagnosis; and
 - (ii) the medical practitioner's prognosis; and
 - (iii) that the person is incapacitated for work; and
 - (iv) the period for which the person is incapacitated for work; and

- (e) the Secretary is satisfied that the incapacity has not been brought about with a view to obtaining an exemption from meeting the participation requirements.

- (2) In this section:

work, in relation to a person, means work (whether full-time, part-time, permanent or casual) that:

- (a) is of a kind that the person could, in the Secretary's opinion, be reasonably expected to do; and
- (b) is for at least 8 hours per week on wages that are at or above the relevant minimum wage.

502J Time limit for temporary incapacity exemption—Secretary satisfied person can undertake activity

- (1) Section 502H ceases to apply to a person if the Secretary is satisfied that, although the person meets the requirements of that section, the person should undertake one or more activities that the Secretary regards as suitable for the person.
- (2) The cessation occurs:
 - (a) if the person has failed to comply with a requirement to enter into a Parenting Payment Activity Agreement—when the person so failed; or
 - (b) in any other case—when the person has entered into such an agreement.
- (3) This section does not prevent section 502H ceasing to apply to a person under section 502K.

502K Time limit for temporary incapacity exemption—end of person's maximum exemption period

- (1) Section 502H ceases to apply to a person if the person's maximum exemption period ends.
- (2) Subject to this section, a person's maximum exemption period is:
 - (a) if the person has, whether before or after the commencement of this section, given the Secretary a medical certificate for the purpose of enabling the Secretary to decide whether section 502H applies to the person—the lesser of the following periods:

- (i) the period stated in the certificate as the period for which the person would be incapacitated for work;
 - (ii) the period of 13 weeks that started or starts on the first day of the period so stated in the certificate; or
 - (b) otherwise—the period of 4 weeks that started or starts on the day determined by the Secretary to have been the day on which the person’s incapacity for work began.
- (3) If:
- (a) section 502H applies to a person; and
 - (b) the person has, whether before or after the commencement of this section, given the Secretary a certificate of a medical practitioner that states the matters listed in paragraph 502H(1)(d) and is in accordance with the form approved under that paragraph; and
 - (c) the Secretary is satisfied that the person’s incapacity for work will continue after the end of the person’s maximum exemption period;
- the Secretary may extend the person’s maximum exemption period by a period that is not more than the lesser of the following periods:
- (d) a period equal to the period stated in the certificate as the period for which the person would be incapacitated for work;
 - (e) 13 weeks.
- (4) If:
- (a) section 502H applied to a person; and
 - (b) within 14 days after the end of the person’s maximum exemption period the person gives the Secretary a certificate of a medical practitioner that states the matters listed in paragraph 502H(1)(d) and is in accordance with a form approved under that paragraph; and
 - (c) the Secretary is satisfied that the person’s incapacity for work has continued after the end of the person’s maximum exemption period and that the incapacity will continue;
- the Secretary may extend the maximum exemption period by a period that is not more than the lesser of the following periods:
- (d) a period equal to the period stated in the certificate as the period for which the person would be incapacitated for work;
 - (e) 13 weeks.

(5) If:

- (a) section 502H applies to a person; and
- (b) the person gives the Secretary written evidence (other than a certificate referred to in paragraph (3)(b)) that the person's incapacity for work will continue after the end of the person's maximum exemption period; and
- (c) the Secretary is satisfied that:
 - (i) the person's circumstances make it unreasonable to expect the person to obtain a certificate referred to in paragraph (3)(b) before the end of the maximum exemption period; and
 - (ii) the person's incapacity for work will continue after the end of the person's maximum exemption period;

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

(6) If:

- (a) section 502H applied to a person; and
- (b) within 14 days after the end of the person's maximum exemption period the person gives the Secretary written evidence (other than a certificate referred to in paragraph (4)(b)) that the person's incapacity for work will continue after the end of the person's maximum exemption period; and
- (c) the Secretary is satisfied that:
 - (i) the person's circumstances make it unreasonable to expect the person to obtain a certificate referred to in paragraph (4)(b); and
 - (ii) the person's incapacity for work has continued after the end of the person's maximum exemption period and that the incapacity will continue;

the Secretary may extend the maximum exemption period by a period of not more than 4 weeks from the end of the previous maximum exemption period.

(7) If:

- (a) section 502H applies to a person; and
- (b) the person has, whether before or after the commencement of this section, given the Secretary a certificate referred to in

paragraph (3)(b) before the end of the person's maximum exemption period; and

- (c) before the end of the person's maximum exemption period, the Secretary does not satisfy himself or herself that the person's incapacity for work will continue after the end of that period; and
- (d) the sole or dominant cause of the Secretary failing so to satisfy himself or herself is an act or omission of an officer of the Department;

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

- (8) This section does not prevent section 502H ceasing to apply to a person under section 502J.

Part 2—Compliance

Social Security Act 1991

8 After section 500I

Insert:

500J Situations where payment not payable for failure to comply with certain requirements

Parenting payment is not payable to a person if the person refuses or fails, without reasonable excuse, to comply with a requirement made of the person under section 67, 68 or 192 of the Administration Act.

9 Subdivision C of Division 1 of Part 2.10 of Chapter 2

Repeal the Subdivision, substitute:

Subdivision C—Situations where payment not payable because of parenting payment participation failure

500ZA Parenting payment participation failures

- (1) A person commits a *parenting payment participation failure* if the person is subject to participation requirements and the person:
 - (a) fails to comply with a requirement:
 - (i) that was notified to the person under subsection 63(2) or 64(2) of the Administration Act; and
 - (ii) that was reasonable; and
 - (iii) the notification of which included a statement to the effect that a failure to comply with the requirement could constitute a parenting payment participation failure; or
 - (b) fails to comply with a requirement to enter into a Parenting Payment Activity Agreement; or
 - (c) fails to comply with a term of a Parenting Payment Activity Agreement between the Secretary and the person; or

- (d) fails to comply with a requirement that the Secretary notifies to the person under subsection 502(1); or
- (e) fails to attend a job interview; or
- (f) fails:
 - (i) to commence, complete or participate in an approved program of work for income support payment that the person is required to undertake; or
 - (ii) to comply with the conditions of such a program; or
- (g) fails to continue his or her involvement in a labour market program because he or she:
 - (i) voluntarily ceases to take part in the program; or
 - (ii) is dismissed from the program for misconduct; or
- (h) fails to comply with a requirement to undertake another activity referred to in paragraph 500ZB(1)(b).

Note: For when a person is *subject to participation requirements* see subsection 23(1).

- (2) Despite subsection (1), a failure of a kind referred to in that subsection is not a parenting payment participation failure if the person satisfies the Secretary that the person had a reasonable excuse for the failure.
- (2A) The Secretary must, by legislative instrument, determine matters that the Secretary must take into account in deciding whether, for the purposes of subsection (2), a person had a reasonable excuse for committing a parenting payment participation failure.
- (2B) To avoid doubt, a determination under subsection (2A) does not limit the matters that the Secretary may take into account in deciding whether, for the purposes of subsection (2), a person had a reasonable excuse for committing the parenting payment participation failure referred to in subsection (1).
- (3) Despite subsection (1), if a failure of a kind referred to in that subsection occurs in an instalment period of the person in which the person has already committed a parenting payment participation failure, the failure is not a parenting payment participation failure if:
 - (a) the instalment period is the person's first instalment period for parenting payment; or

- (b) the instalment period is not the person's first instalment period for parenting payment, and:
 - (i) the person did not commit a parenting payment participation failure in the immediately preceding instalment period of the person; or
 - (ii) in respect of each parenting payment participation failure that the person committed in the immediately preceding instalment period of the person, the person acted in accordance with a requirement of the Secretary that was notified in respect of that failure.
- (4) Subsection (1) does not apply to a failure if the person is a new apprentice.

Note: For *new apprentice* see subsection 23(1).
- (5) Paragraph (1)(f) does not apply to a failure if:
 - (a) the person is under 60; and
 - (b) a determination under paragraph 28(4)(b) is in force in relation to the person.

500ZB Payment not payable because of parenting payment participation failure

- (1) A parenting payment is not payable to a person, for the period starting in accordance with section 500ZC and ending in accordance with section 500ZD, if:
 - (a) the person commits a parenting payment participation failure; and
 - (b) the Secretary requires the person:
 - (i) to comply with the requirement, or undertake the activity, to which the parenting payment participation failure relates; or
 - (ii) to comply with a particular requirement, or undertake a particular activity, in place of the requirement or activity to which the failure relates;
during the participation failure instalment period for the failure, or at a particular time during that period; and
 - (c) the person fails to comply with the requirement.
- (2) This section does not apply in relation to the failure if:

- (a) the Secretary is satisfied that the person had a reasonable excuse for the failure referred to paragraph (1)(c); or
 - (b) the Secretary is for any other reason satisfied that subsection (1) should not apply to the failure.
- (2A) The Secretary must, by legislative instrument, determine matters that the Secretary must take into account in deciding whether, for the purposes of paragraph (2)(a), a person had a reasonable excuse for a failure of a kind referred to in paragraph (1)(c).
- (2B) To avoid doubt, a determination under subsection (2A) does not limit the matters that the Secretary may take into account in deciding whether, for the purposes of paragraph (2)(a), a person had a reasonable excuse for the failure referred to in paragraph (1)(c).
- (3) The *participation failure instalment period* for the parenting payment participation failure is the next instalment period of the person to start after the day on which the Secretary first became aware that the person committed the failure.
- (4) This section does not apply to a parenting payment participation failure if section 500ZE applies to the failure.

500ZC When the period of non-payment starts

The period for which parenting payment is not payable to the person because of section 500ZB is taken to have started at the start of the participation failure instalment period for the parenting payment participation failure.

500ZD When the period of non-payment ends

The period for which parenting payment is not payable to the person because of section 500ZB ends when:

- (a) in accordance with a requirement of the Secretary that the person comply with the requirement, or undertake the activity, to which the parenting payment participation failure related, the person has complied with the requirement or undertaken the activity; or
- (b) in accordance with a requirement of the Secretary that the person undertake another activity in place of the requirement or activity to which the parenting payment participation

failure related, the person has undertaken the other activity;
or

- (c) in accordance with a requirement of the Secretary that the person comply with another requirement in place of the requirement or activity to which the parenting payment participation failure related, the person has complied with the other requirement.

Subdivision CA—Situations where payment not payable because of repeated or more serious failure

500ZE Payment not payable because of repeated or more serious failure

- (1) A parenting payment is not payable to a person, for the period of 8 weeks starting in accordance with section 500ZF, if the person:
 - (a) commits a parenting payment participation failure (the *repeated failure*), having committed parenting payment participation failures (the *earlier failures*) on 2 or more other occasions during the period of 12 months preceding that failure; or
 - (b) is unemployed due, either directly or indirectly, to a voluntary act of the person; or
 - (c) is unemployed due to the person's misconduct as a worker; or
 - (d) has refused or failed, without reasonable excuse, to accept a suitable offer of employment; or
 - (e) fails:
 - (i) to commence, complete or participate in an approved program of work for income support payment that the person is required to undertake; or
 - (ii) to comply with the conditions of such a program.
- (1A) The Secretary must, by legislative instrument, determine matters that the Secretary must take into account in deciding whether, for the purposes of paragraph (1)(d), a person had a reasonable excuse for refusing or failing to accept a suitable offer of employment.
- (1B) To avoid doubt, a determination under subsection (1A) does not limit the matters that the Secretary may take into account in deciding whether, for the purposes of paragraph (1)(d), a person

had a reasonable excuse for refusing or failing to accept a suitable offer of employment referred to in that paragraph.

- (2) For the purposes of paragraph (1)(a), disregard any earlier failure that is a failure to which subsection 500ZB(1) does not apply because of subsection 500ZB(2).
- (3) Subsection (1) does not apply in relation to the repeated failure if the Secretary is for any other reason satisfied that subsection (1) should not apply to the failure.
- (4) Paragraph (1)(b) does not apply if the Secretary is satisfied that the person's voluntary act was reasonable.
- (5) Paragraph (1)(e) applies only if:
 - (a) the person is under 60; and
 - (b) a determination under paragraph 28(4)(b) is in force in relation to the person.

500ZF When the period of non-payment starts

- (1) The period for which parenting payment is not payable to the person because of paragraph 500ZE(1)(a) is taken to start, or to have started:
 - (a) if the repeated failure occurs during a participation failure instalment period for an earlier failure—at the start of the participation failure instalment period for the earlier failure; or
 - (b) otherwise—at the start of the next instalment period of the person to start after the day on which the Secretary first became aware that the person committed the failure.

Note: For *participation failure instalment period* see subsection 500ZB(3).
- (2) The period for which parenting payment is not payable to the person because of section 500ZE (other than because of paragraph 500ZE(1)(a)) starts on the day the Secretary determines that section 500ZE applies to the person.
- (3) However, if:
 - (a) section 500ZE would not apply to the person but for the application of paragraph 500ZE(1)(b) or (c), or both; and

(b) at the time of the voluntary act or misconduct in question, the person was not receiving parenting payment;
the period for which parenting payment is not payable to the person starts at the time the person became unemployed as a result of the voluntary act or misconduct.

10 Termination of participation agreement breach non-payment periods

To avoid doubt, any participation agreement breach non-payment period that, immediately before the commencement of this item, is in force comes to an end on that commencement.

11 Subdivision B of Division 4 of Part 2.10 of Chapter 2

Repeal the Subdivision.

12 Termination of participation agreement breach rate reduction periods

To avoid doubt, any participation agreement breach rate reduction period that, immediately before the commencement of this item, is in force comes to an end on that commencement.

Part 3—Seasonal work preclusion period

Social Security Act 1991

13 Paragraph 500Z(1)(a)

Omit “who is a member of a couple”.

14 Application provision

The amendment made by this Part applies in relation to claims for parenting payment made on or after 20 September 2006.

Schedule 5—Youth allowance

Part 1—RapidConnect

Social Security Act 1991

1 Subsection 544A(1)

Repeal the subsection, substitute:

Requirement to enter into agreement

- (1) Subject to this section, the Secretary may require a person who is not a party to a Youth Allowance Activity Agreement to enter into such an agreement if:
 - (a) the person is receiving, or has made a claim for, a youth allowance; or
 - (b) the Department is contacted by or on behalf of the person in relation to a claim for a youth allowance.

2 At the end of Subdivision A of Division 2 of Part 2.11 of Chapter 2

Add:

547AA Youth allowance not payable if person fails to attend interview etc. in certain circumstances

General

- (1) A youth allowance is not payable to a person if:
 - (a) before or after the person made a claim for a youth allowance, the Department is contacted by or on behalf of the person in relation to a claim for a youth allowance; and
 - (b) as a result of the contact, the Department required the person to do one or both of the following:
 - (i) attend an interview with a specified person or organisation at a time and place specified in the requirement;
 - (ii) enter into a Youth Allowance Activity Agreement; and

- (c) the person fails to comply with that requirement, or those requirements; and
- (d) the person is not undertaking full-time study and is not a new apprentice.

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

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

Secretary may decide that this section does not apply

- (2) This section does not apply to a person if the Secretary is satisfied, in accordance with any guidelines under subsection (3), that it should not apply to the person.
- (3) The Secretary may, by legislative instrument, make guidelines to be complied with in deciding under subsection (2) whether this section applies to a person.

When this section ceases to apply

- (4) This section ceases to apply:
 - (a) when the person complies with:
 - (i) that requirement, or those requirements; or
 - (ii) any requirements that the Secretary has required the person to undertake in place of that requirement, or those requirements; or
 - (b) at such earlier time as the Secretary determines, in accordance with any guidelines under subsection (5).
- (5) The Secretary may, by legislative instrument, make guidelines to be complied with in making determinations under paragraph (4)(b).

This section is unaffected by date of claim

- (6) To avoid doubt, the fact that a person is taken, because of section 13 of the Administration Act, to have made a claim for a youth allowance on the day on which the Department was contacted by or on behalf of the person in relation to the claim does not affect the operation of this section.

Part 2—Participation

Social Security Act 1991

3 After section 540AA

Insert:

540AB Qualification for youth allowance—claimants with medical conditions affecting their capacity to work

General rule

- (1) Subject to this Subdivision, a person is qualified for a youth allowance in respect of the period starting in accordance with subsection (2) and ending in accordance with subsection (3) if:
 - (a) the person satisfies the Secretary that throughout the period the person is unemployed; and
 - (b) throughout the period, the person is of youth allowance age (see Subdivision D); and
 - (c) the person has made a claim, or is taken to have made a claim, for youth allowance; and
 - (d) the person satisfies the Secretary that it is likely that the person has a permanent medical condition that would prevent the person from undertaking full-time work; and
 - (e) the person satisfies the Secretary that it would be unreasonable to expect the person to satisfy the activity test until an assessment of the person's capacity to work has been undertaken; and
 - (f) throughout the period, the person:
 - (i) is an Australian resident; or
 - (ii) is exempt from the residence requirement within the meaning of subsection 7(7).

Note 1: Subdivision G provides for prospective qualification for youth allowance.

Note 2: Division 2 sets out situations in which youth allowance is not payable even if the person qualifies for it.

Period for which person is qualified

- (2) The period for which the person is qualified for a youth allowance under this section starts:
- (a) if the person is already receiving youth allowance when the Secretary becomes aware of the medical condition referred to in paragraph (1)(d)—when the Secretary becomes aware of the medical condition; or
 - (b) otherwise—when the person made, or is taken to have made, the claim for youth allowance.
- (3) The period for which the person is qualified for a youth allowance under this section ends:
- (a) if the person has failed to comply with a requirement to enter into a Youth Allowance Activity Agreement—on the day on which the person so failed; or
 - (b) in any other case—when the person enters into a Youth Allowance Activity Agreement.

Extending the meaning of who is unemployed

- (4) The Secretary may, for the purposes of this section, treat a person as being unemployed throughout a period if:
- (a) during the period, the person undertakes:
 - (i) paid work that, in the Secretary's opinion, is suitable for the person to undertake; or
 - (ii) any other activity;as a result of which he or she would, but for this subsection, not be taken to be unemployed; and
 - (b) the Secretary is of the opinion that, taking into account:
 - (i) the nature of the work or other activity; and
 - (ii) the duration of the work or other activity; and
 - (iii) any remuneration received for the work or other activity; and
 - (iv) any other matters relating to the work or other activity, or to the person's circumstances, that the Secretary considers relevant;the activity should be disregarded.
- (5) However, the activity must not be or include an activity of a kind that the Secretary determines under subsection (6).

- (6) The Secretary may determine, by legislative instrument, kinds of activities that are not to be taken into account for the purposes of subsection (4).

4 Paragraphs 541(1)(c) and (d)

Repeal the paragraphs, substitute:

- (c) throughout the period, the person complies with the terms of a Youth Allowance Activity Agreement applying to the person.

5 Subsection 541(1) (notes 1 and 2)

Repeal the notes, substitute:

Note: See section 541D on paid work that is unsuitable.

6 Subsection 541(1A)

Omit “CSP”, substitute “PSP”.

7 After subsection 541(1A)

Insert:

Certain principal carers and people with partial capacity to work

(1B) A person who:

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

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

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

Note 2: For *partial capacity to work* see section 16B.

8 Subsections 541(2) and (2A)

Repeal the subsections, substitute:

Requirement to undertake paid work

(2) A person also satisfies the activity test in respect of a period if:

- (a) the Secretary is of the opinion that, throughout the period, the person should undertake particular paid work, other than paid work that is unsuitable to be done by the person; and

Note: See section 541D on paid work that is unsuitable.

- (b) the Secretary notifies the person that the person is required to act in accordance with the opinion; and
 - (c) the person complies, throughout the period, with the Secretary's requirement.
- (2A) To avoid doubt, the work that the person is required to undertake under subsection (2) may involve a number of hours per week that differs from the number of hours of work per week that the person is required to seek to comply with a Youth Allowance Activity Agreement between the Secretary and the person.
- (2B) A person cannot be taken to satisfy the activity test throughout a period if the person fails to comply with a requirement under subsection (2):
- (a) whether or not the person complies with subsection (1) or (1A); and
 - (b) whether or not another provision of this Act under which the activity test is satisfied, or taken to be satisfied, applies (or would apart from this section apply) to the person.

9 Saving certain notices under subsection 541(2)

If:

- (a) before the commencement of this item, the Secretary had notified a person under subsection 541(2) of the *Social Security Act 1991* that the person was required to act in accordance with an opinion of the Secretary of the kind referred to in paragraph 541(2)(a) of that Act; and
- (b) at the time of that commencement, the period to which the requirement relates had not come to an end;

the notice continues in force after that commencement as if it were a notice under paragraph 541(2)(b) of that Act as amended by this Act.

10 Paragraphs 541A(a) and (b)

Omit "to take reasonable steps".

11 Section 541A (note)

Repeal the note.

12 Section 541C

Repeal the section.

13 After paragraph 541D(1)(b)

Insert:

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

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

14 Paragraph 541D(1)(d)

Repeal the paragraph.

15 Paragraphs 541D(1)(e) and (f)

Repeal the paragraphs, substitute:

- (e) the work would be covered by the Australian Fair Pay and Conditions Standard, but the terms and conditions for the work would be less generous than the minimum terms and conditions for the work under the Australian Fair Pay and Conditions Standard; or
- (f) the work would not be covered by the Australian Fair Pay and Conditions Standard, but, if it were so covered, the terms and conditions for the work would be less generous than the minimum terms and conditions for the work under the Australian Fair Pay and Conditions Standard; or

16 After subsection 541D(1)

Insert:

- (1AA) A person has, for the purposes of paragraph (1)(ba), access to appropriate care and supervision for a child at a particular time if, at that time:
 - (a) the child could be provided with care by an approved child care service (within the meaning of the Family Assistance Administration Act), and provision of that care would, in the Secretary's opinion, be appropriate in the circumstances; or
 - (b) the child could be provided with other care that the person considers to be suitable; or

(c) the child could be attending school, and attendance at that school would, in the Secretary's opinion, be appropriate in the circumstances.

(1AB) For the purposes of paragraph (1)(ba), a time when the person would be required to undertake the work includes reasonable amounts of time that would be needed for the person to travel from the person's home to the place of work and from the place of work to the person's home.

(1AC) The Secretary must, by legislative instrument, determine matters that the Secretary must take into account in deciding whether, for the purposes of paragraph (1)(i), particular paid work is unsuitable for a person.

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

17 Subsections 541D(2) and (3)

Repeal the subsections.

18 Sections 541E and 541F

Repeal the sections.

19 Paragraph 542(d)

Repeal the paragraph, substitute:

- (d) the person has a domestic violence or other special family circumstances exemption under section 542F; or
- (da) the person has a disabled children or other family circumstances exemption under section 542FA; or
- (db) the person has a new claimants exemption under section 542FB; or

20 Paragraph 542B(1)(d)

Omit "take reasonable steps to".

21 Subsection 542B(2)

Omit "take reasonable steps to".

22 Subsection 542B(3)

Repeal the subsection.

23 After section 542B

Insert:

542BA Time limit for temporary incapacity exemptions—capacity to undertake activity

General

- (1) A person ceases to have a temporary incapacity exemption if the Secretary is satisfied that, although the person meets the requirements of section 542A, the person should undertake one or more activities that the Secretary regards as suitable for the person.

When cessation occurs

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

Section 542C unaffected by this section

- (3) This section does not prevent a person ceasing to have a temporary incapacity exemption under section 542C.

24 At the end of section 542C

Add:

Section 542BA unaffected by this section

- (8) This section does not prevent a person ceasing to have a temporary incapacity exemption under section 542BA.

Note: The heading to section 542C is altered by adding at the end “—**maximum exemption period**”.

25 Section 542F

Repeal the section, substitute:

542F Domestic violence or other special family circumstances exemption

General

- (1) A person has a domestic violence or other special family circumstances exemption in respect of a period that the Secretary determines under this section in relation to the person.

Circumstances in which a determination may be made

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

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

- (2A) The Secretary must, by legislative instrument, specify matters that the Secretary must take into account in deciding whether there are special circumstances relating to a person's family that make it appropriate to make a determination under this section.
- (2B) To avoid doubt, an instrument made under subsection (2A) does not limit the matters that the Secretary may take into account in making a determination under subsection (2).

Duration of period

- (3) The period that the Secretary determines under this section must be the lesser of:
-

- (a) the period that the Secretary considers to be appropriate; or
 - (b) 16 weeks.
- (4) Any such period may be followed by one or more other periods (not exceeding 16 weeks) determined under this section in relation to the person.
- (5) The period that the Secretary determines under this section must, despite subsection (3), be 16 weeks if the determination:
- (a) is made on grounds referred to in paragraph (2)(a) (or on grounds that include those grounds); and
 - (b) is the first determination made on those grounds (or on grounds that include those grounds) in connection with the particular cessation referred to in subparagraph (2)(a)(ii).

Revocation of determination

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

542FA Disabled children or other family circumstances exemption

General

- (1) A person has a disabled children or other family circumstances exemption in respect of a period that the Secretary determines under this section in relation to the person.

Circumstances in which a determination may be made

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

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

- (3) The Secretary must make a determination under this section in relation to the person if the Secretary is satisfied that the person is the principal carer of one or more children, and that:
- (a) the person is a registered and active foster carer; or
 - (b) the person is a home educator of that child, or one or more of those children; or
 - (c) the person is a distance educator of that child, or one or more of those children.

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

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

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

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

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

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

- (4) The Secretary may make a determination under this section in relation to the person if the Secretary is satisfied that:
- (a) the person is a person included in a class of persons specified under subsection (5); and
 - (b) the person's circumstances are such that the person should not be required to satisfy the activity test for the period.
- (5) The Secretary may, by legislative instrument, specify classes of persons in respect of whom determinations under this section may be made.

Duration of period

- (6) The period that the Secretary determines under this section must be the lesser of:
- (a) the period that the Secretary considers to be appropriate; or
 - (b) 12 months.
- (7) Any such period may be followed by one or more other periods (not exceeding 12 months) determined under this section in relation to the person.

Revocation of determination

- (8) The Secretary may revoke a determination under this section in relation to a person if the Secretary is satisfied that the grounds on which the determination was made no longer exist.
- (9) Subsection (8) does not affect any operation that subsection 33(3) of the *Acts Interpretation Act 1901* has in relation to a determination under this section.

542FB New claimants exemption

General

- (1) A person has a new claimants exemption in respect of the period to which subsection (4) applies if:
 - (a) during the period, the person undertakes:
 - (i) paid work that, in the Secretary's opinion, is suitable for the person to undertake; or
 - (ii) any other activity; and
 - (b) the Secretary is of the opinion that, taking into account:
 - (i) the nature of the work or other activity; and
 - (ii) the duration of the work or other activity; and
 - (iii) any remuneration received for the work or other activity; and
 - (iv) any other matters relating to the work or other activity, or to the person's circumstances, that the Secretary considers relevant;it would be unreasonable to expect the person to satisfy the activity test for the period.

Work or other activities that are not to be taken into account

- (2) However, the work or other activity must not be or include any work or other activity of a kind that the Secretary determines under subsection (3).
- (3) The Secretary may determine, by legislative instrument, kinds of work or other activity that are not to be taken into account for the purposes of subsection (1).

Duration of period

- (4) This subsection applies to the period:
- (a) starting:
 - (i) when the person made a claim, or is taken to have made a claim, for youth allowance; or
 - (ii) when the person started to undertake the work or other activity;whichever happens later; and
 - (b) ending:
 - (i) if the person has been required to enter into a Youth Allowance Activity Agreement but has failed to enter that agreement—when the person so failed; or
 - (ii) in any other case—when the person has entered into such an agreement.

26 Paragraph 544(1)(b)

Omit “take reasonable steps, to the satisfaction of the Secretary, to”.

Note: The heading to subsection 544(1) is deleted.

27 Paragraph 544(1)(b) (note)

Repeal the note.

28 Subsections 544(2) and (2A)

Repeal the subsections.

29 At the end of section 544

Add:

- (4) For the purposes of this Part, if:
- (a) a person starts to receive youth allowance on a particular day; and
 - (b) immediately before that day, the person was a party to a Parenting Payment Activity Agreement; and
 - (c) the period covered by the agreement ends after that day;
- the agreement has effect on and after that day as if it were a Youth Allowance Activity Agreement.

30 Paragraph 544A(2)(a)

Repeal the paragraph.

Note: The heading to subsection 544A(2) is replaced by the heading “*Persons who have certain exemptions etc. are not to be required to enter agreements*”.

31 After paragraph 544A(2)(b)

Insert:

- (ba) has a domestic violence or other special family circumstances exemption under section 542F; or
- (bb) has a disabled children or other family circumstances exemption under section 542FA; or

32 After subsection 544A(2)

Insert:

Persons who have a temporary incapacity exemption

- (2A) A person who has a temporary incapacity exemption under section 542A is not to be required to enter into a Youth Allowance Activity Agreement unless subsection 542BA(1) applies to the person.

33 Subsection 544A(4)

Omit “a notice in writing”, substitute “notice”.

34 Paragraph 544A(4)(c)

Omit “set out in the notice”.

35 Subsection 544B(1)

Repeal the subsection, substitute:

Suitable activities

- (1) Subject to sections 544C and 544D, a Youth Allowance Activity Agreement with a person is to require the person to undertake one or more activities that the Secretary regards as suitable for the person.
- (1A) However, an agreement must not require the person to undertake an activity of a kind that the Secretary determines under subsection (1B).

(1B) The Secretary must determine, by legislative instrument, kinds of activities that agreements must not require persons to undertake.

(1C) To avoid doubt, a determination under subsection (1B) does not limit the Secretary's discretion to exclude other kinds of requirements from a particular agreement under subsection (1).

36 Application of subsection 544B(1A)

Subsection 544B(1A) of the *Social Security Act 1991* as amended by this Act does not apply to any Youth Allowance Activity Agreement entered into before the commencement of this item.

37 Paragraph 544B(4)(a)

Repeal the paragraph, substitute:

(a) the person's education, experience, skills and age;

(aa) the impact of any disability, illness, mental condition or physical condition of the person on the person's ability to work, to look for work or to participate in training activities;

38 Paragraph 544B(4)(e)

Omit “, by reference to what constitutes unreasonably difficult commuting for the purposes of paragraph 541D(1)(g)”.

39 Subsections 544B(5A) to (5C)

Repeal the subsections.

40 After subsection 544B(7)

Insert:

Revocation of requirement to participate in an approved program of work

(7A) The Secretary may, by notice given to a person whom a Youth Allowance Activity Agreement requires to participate in an approved program of work for income support payment, revoke the requirement to participate in the program if the Secretary:

(a) is satisfied that the person is undertaking full-time study; or

(b) is satisfied that the person is a person to whom paragraph (7)(c) applies; or

- (c) forms the opinion that subparagraph (7)(d)(i) or (ii) applies in relation to the performance of that work by the person.

41 Sections 544C to 544E

Repeal the sections, substitute:

544C Youth Allowance Activity Agreements—principal carers

- (1) A Youth Allowance Activity Agreement that:
- (a) is between the Secretary and a person who is the principal carer of at least one child; and
- Note: For *principal carer* see subsections 5(15) to (24).
- (b) requires the person to undertake, as an activity, looking for part-time paid work that the Secretary regards as suitable; must require the person to undertake looking for such part-time work of at least the appropriate number of hours per week.
- (2) The appropriate number of hours per week is:
- (a) 15; or
 - (b) such other number as the Secretary determines to be appropriate having regard to the person's circumstances.

544D Youth Allowance Activity Agreements—people with partial capacity to work

- (1) A Youth Allowance Activity Agreement that:
- (a) is between the Secretary and a person who has a partial capacity to work; and
- Note: For *partial capacity to work* see section 16B.
- (b) requires the person to undertake, as an activity, looking for part-time paid work that the Secretary regards as suitable; must require the person to undertake looking for part-time work of at least the appropriate number of hours per week.
- (2) The appropriate number of hours per week is:
- (a) 15; or
 - (b) such other number as the Secretary determines to be appropriate having regard to the person's circumstances.

544E Youth Allowance Activity Agreements—suspension of agreements for people with certain exemptions

A Youth Allowance Activity Agreement between the Secretary and a person is taken to be suspended during any period in respect of which the person:

- (a) has a domestic violence or other special family circumstances exemption under section 542F; or
- (b) has a disabled children or other family circumstances exemption under section 542FA.

42 Subsection 546(1)

After “for a period”, insert “determined by the Secretary”.

43 Paragraph 546(1)(d)

Repeal the paragraph, substitute:

- (d) the Secretary is satisfied that the person should be qualified under this section for youth allowance for the period.

44 Subsections 546(3) to (7)

Repeal the subsections.

Part 3—Compliance

Social Security Act 1991

45 At the end of Subdivision A of Division 2 of Part 2.11 of Chapter 2

Add:

547AB Situations where allowance not payable for failure to comply with certain requirements

A youth allowance is not payable to a person if the person refuses or fails, without reasonable excuse, to comply with a requirement made of the person under section 67, 68 or 192 of the Administration Act.

46 Subdivision D of Division 2 of Part 2.11 of Chapter 2

Repeal the Subdivision, substitute:

Subdivision D—Situations where allowance not payable because of youth allowance participation failure

550 Youth allowance participation failures

Meaning of youth participation failure

- (1) A person commits a *youth allowance participation failure* if the person:
 - (a) fails to comply with a requirement:
 - (i) that was notified to the person under subsection 63(2) or 64(2) of the Administration Act; and
 - (ii) that was reasonable; and
 - (iii) the notification of which included a statement to the effect that a failure to comply with the requirement could constitute a youth allowance participation failure; or
 - (b) fails to satisfy the activity test; or

- (c) fails to comply with a requirement to enter into a Youth Allowance Activity Agreement; or
- (d) fails to comply with a term of a Youth Allowance Activity Agreement between the Secretary and the person; or
- (e) fails to attend a job interview; or
- (f) fails:
 - (i) to commence, complete or participate in an approved program of work for income support payment that the person is required to undertake; or
 - (ii) to comply with the conditions of such a program; or
- (g) fails to continue his or her involvement in a labour market program because he or she:
 - (i) voluntarily ceases to take part in the program; or
 - (ii) is dismissed from the program for misconduct; or
- (h) is issued with a notice under subsection 550A(1) and fails to comply with it within the period specified in the notice; or
- (i) fails to comply with subsection 550A(2); or
- (j) fails to comply with a requirement included in a Youth Allowance Activity Agreement between the Secretary and the person to:
 - (i) undertake a certain number of job searches per fortnight; and
 - (ii) keep a record of the person's job searches in a document referred to in the agreement as a job seeker diary; and
 - (iii) return the job seeker diary to the Department at the end of the period specified in the agreement; or
- (k) fails to comply with a requirement to undertake another activity referred to in paragraph 550B(1)(b).

Reasonable excuse

- (2) Despite subsection (1), a failure of a kind referred to in that subsection is not a youth allowance participation failure if the person satisfies the Secretary that the person had a reasonable excuse for the failure.
- (2A) The Secretary must, by legislative instrument, determine matters that the Secretary must take into account in deciding whether, for the purposes of subsection (2), a person had a reasonable excuse for committing a youth allowance participation failure.

- (2B) To avoid doubt, a determination under subsection (2A) does not limit the matters that the Secretary may take into account in deciding whether, for the purposes of subsection (2), a person had a reasonable excuse for committing the youth allowance participation failure referred to in subsection (1).

Subsequent failures in the same instalment period

- (3) Despite subsection (1), if a failure of a kind referred to in that subsection occurs in an instalment period of the person in which the person has already committed a youth allowance participation failure, the failure is not a youth allowance participation failure if:
- (a) the instalment period is the person's first instalment period for youth allowance; or
 - (b) the instalment period is not the person's first instalment period for youth allowance, and:
 - (i) the person did not commit a youth allowance participation failure in the immediately preceding instalment period of the person; or
 - (ii) in respect of each youth allowance participation failure that the person committed in the immediately preceding instalment period of the person, the person acted in accordance with a requirement of the Secretary notified in respect of that failure.

Failures covered by section 547AA

- (4) Despite subsection (1), a failure of a kind referred to in that subsection is not a youth allowance participation failure if it results in youth allowance not being payable to the person under section 547AA.

Full-time study

- (5) Paragraphs (1)(c) to (j) do not apply to a failure if the person is undertaking full-time study.

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

New apprentices

- (6) Subsection (1) does not apply to a failure if the person is a new apprentice.

Note: For *new apprentice* see subsection 23(1).

Failures relating to participation in approved programs of work

- (7) Paragraph (1)(f) does not apply to a failure if:
- (a) the person is under 60; and
 - (b) a determination under paragraph 28(4)(b) is in force in relation to the person.

Effect of paragraph (1)(j)

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

550A Requiring a person to apply for job vacancies

General

- (1) The Secretary may notify a person in writing (other than a person who is undertaking full-time study or who is a new apprentice) that the person must apply for a particular number of advertised job vacancies in the period stated in the notice, being a period of not less than 14 days.

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

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

Statements confirming job applications

- (2) The person must give the Secretary a written statement from each employer whose job vacancy the person applied for that confirms that the person applied for the job vacancy.

Form of statements

- (3) The statement from the employer must be in a form approved by the Secretary.

Exemption from giving the Secretary statements

- (4) Subsection (2) does not apply to a person if the Secretary is satisfied that there are special circumstances in which it is not reasonable to expect the person to give the statement referred to in that subsection.

550B Allowance not payable because of youth allowance participation failure

General

- (1) A youth allowance is not payable to a person, for the period starting in accordance with section 550C and ending in accordance with section 550D, if:
- (a) the person commits a youth allowance participation failure; and
 - (b) the Secretary requires the person:
 - (i) to comply with the requirement, or undertake the activity, to which the youth allowance participation failure relates; or
 - (ii) to comply with a particular requirement, or undertake a particular activity, in place of the requirement or activity to which the failure relates;during the participation failure instalment period for the failure, or at a particular time during that period; and
 - (c) the person fails to comply with the requirement.
- However, paragraphs (b) and (c) do not apply in relation to a youth allowance participation failure of a kind referred to in paragraph 550(1)(h), (i) or (j).

Reasonable excuse etc.

- (2) This section does not apply in relation to the failure if:
- (a) the Secretary is satisfied that the person had a reasonable excuse for the failure referred to paragraph (1)(c); or
 - (b) the Secretary is for any other reason satisfied that subsection (1) should not apply to the failure.
- (2A) The Secretary must, by legislative instrument, determine matters that the Secretary must take into account in deciding whether, for the purposes of paragraph (2)(a), a person had a reasonable excuse for a failure of a kind referred to in paragraph (1)(c).
- (2B) To avoid doubt, a determination under subsection (2A) does not limit the matters that the Secretary may take into account in deciding whether, for the purposes of paragraph (2)(a), a person had a reasonable excuse for the failure referred to in paragraph (1)(c).

Meaning of participation failure instalment period

- (3) The *participation failure instalment period* for the youth allowance participation failure is:
- (a) if the failure is a failure of a kind referred to in paragraph 550(1)(h) or (i), the next instalment period of the person to start after the end of the period specified in the notice under subsection 550A(1) to which the failure relates; or
 - (b) if the failure is a failure of a kind referred to in paragraph 550(1)(j), the next instalment period of the person to start after the end of the period referred to in subparagraph 550(1)(j)(iii); or
 - (c) otherwise—the next instalment period of the person to start after the day on which the Secretary first became aware that the person committed the failure.

Failures covered by section 551

- (4) This section does not apply to a youth allowance participation failure if section 551 applies to the failure.

550C When the period of non-payment starts

The period for which youth allowance is not payable to the person because of section 550B is taken to have started at the start of the participation failure instalment period for the youth allowance participation failure.

550D When the period of non-payment ends

The period for which youth allowance is not payable to the person because of section 550B ends when:

- (a) in accordance with a requirement of the Secretary that the person comply with the requirement, or undertake the activity, to which the youth allowance participation failure related, the person has complied with the requirement or undertaken the activity; or
- (b) in accordance with a requirement of the Secretary that the person undertake another activity in place of the requirement or activity to which the youth allowance participation failure related, the person has undertaken the other activity; or

- (c) in accordance with a requirement of the Secretary that the person comply with another requirement in place of the requirement or activity to which the youth allowance participation failure related, the person has complied with the other requirement.

Subdivision E—Situations where allowance not payable because of repeated or more serious failure

551 Allowance not payable because of repeated or more serious failure

General

- (1) A youth allowance is not payable to a person, for the period of 8 weeks starting in accordance with section 551A, if the person:
 - (a) commits a youth allowance participation failure (the ***repeated failure***), having committed youth allowance participation failures (the ***earlier failures***) on 2 or more other occasions during the period of 12 months preceding that failure; or
 - (b) is unemployed due, either directly or indirectly, to a voluntary act of the person; or
 - (c) is unemployed due to the person's misconduct as a worker; or
 - (d) has refused or failed, without reasonable excuse, to accept a suitable offer of employment; or
 - (e) fails:
 - (i) to commence, complete or participate in an approved program of work for income support payment that the person is required to undertake; or
 - (ii) to comply with the conditions of such a program.
- (1A) The Secretary must, by legislative instrument, determine matters that the Secretary must take into account in deciding whether, for the purposes of paragraph (1)(d), a person had a reasonable excuse for refusing or failing to accept a suitable offer of employment.
- (1B) To avoid doubt, a determination under subsection (1A) does not limit the matters that the Secretary may take into account in deciding whether, for the purposes of paragraph (1)(d), a person

had a reasonable excuse for refusing or failing to accept a suitable offer of employment referred to in that paragraph.

Reasonable excuse etc.

- (2) For the purposes of paragraph (1)(a), disregard any earlier failure that is a failure to which subsection 550B(1) does not apply because of subsection 550B(2).
- (3) Subsection (1) does not apply in relation to the repeated failure if the Secretary is for any other reason satisfied that subsection (1) should not apply to the failure.

Full-time study and new apprentices

- (4) Paragraphs (1)(b) to (e) do not apply to a failure if the person:
 - (a) is undertaking full-time study; or
 - (b) is a new apprentice.

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

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

Unemployment due to voluntary act

- (5) Paragraph (1)(b) does not apply if the Secretary is satisfied that the person's voluntary act was reasonable.

Failures relating to participation in approved programs of work

- (6) Paragraph (1)(e) applies only if:
 - (a) the person is under 60; and
 - (b) a determination under paragraph 28(4)(b) is in force in relation to the person.

551A When the period of non-payment starts

Repeated failures

- (1) The period for which youth allowance is not payable to the person because of paragraph 551(1)(a) is taken to start, or to have started:
 - (a) if the repeated failure is a failure of a kind referred to in paragraph 550(1)(h), (i) or (j)—at the start of the

participation failure instalment period for the repeated failure; or

- (b) if paragraph (a) of this subsection does not apply and the repeated failure occurs during a participation failure instalment period for an earlier failure—at the start of the participation failure instalment period for the earlier failure; or
- (c) otherwise—at the start of the next instalment period of the person to start after the day on which the Secretary first became aware that the person committed the failure.

Note: For *participation failure instalment period* see subsection 550B(3).

Other failures

- (2) The period for which youth allowance is not payable to the person because of section 551 (other than because of paragraph 551(1)(a)) starts on the day the Secretary determines that section 551 applies to the person.
- (3) However, if:
 - (a) section 551 would not apply to the person but for the application of paragraph 551(1)(b) or (c), or both; and
 - (b) at the time of the voluntary act or misconduct in question, the person was not receiving youth allowance;the period for which youth allowance is not payable to the person starts at the time the person became unemployed as a result of the voluntary act or misconduct.

47 Saving provision relating to activity test breaches

- (1) If:
 - (a) as a result of an activity test breach committed by the person before the commencement of this item, an activity test non-payment period applied to the person under Subdivision D of Division 2 of Part 2.11 of the *Social Security Act 1991*; and
 - (b) on that commencement, the activity test non-payment period had not ended;the activity test non-payment period continues to apply to the person after that commencement as if that Subdivision had not been repealed by this Act.

- (2) In this item:
activity test breach has the same meaning as it had in section 550A of the *Social Security Act 1991* before the commencement of this item.

48 Transitional provision relating to repeated breaches

- (1) The reference in paragraph 551(1)(a) of the *Social Security Act 1991* as amended by this Act to youth allowance participation failures committed by a person during the period of 12 months preceding a youth allowance participation failure includes a reference to any activity test failures committed by the person:
- (a) during that period of 12 months; and
 - (b) before the commencement of this item.

- (2) In this item:
activity test failure means any activity test breach (within the meaning of section 550A of the *Social Security Act 1991*) that:
- (a) was constituted by a failure of a kind referred to in paragraph 550A(1)(a) or (b) of that Act; and
 - (b) was committed by the person as a result of which an activity test penalty period applied to the person, before the commencement of this item, under:
 - (i) Subdivision D of Division 2 of Part 2.11 of that Act; or
 - (ii) Subdivision B of Division 5 of Part 2.11 of that Act.

49 Subdivision A of Division 5 of Part 2.11 of Chapter 2 (heading)

Repeal the heading.

50 Subdivision B of Division 5 of Part 2.11 of Chapter 2

Repeal the Subdivision.

51 Saving provision relating to activity test breach rate reductions

- (1) If:
- (a) as a result of an activity test breach committed by the person before the commencement of this item, an activity test breach rate reduction period applied to the person under Subdivision

B of Division 5 of Part 2.11 of the *Social Security Act 1991*;
and

- (b) on that commencement, the activity test breach rate reduction period had not ended;

the activity test breach rate reduction period continues to apply to the person after that commencement as if that Subdivision had not been repealed by this Act.

- (2) The fact that an activity test breach rate reduction period is applying to the person because of this item does not prevent the application to the person, at the same time, of a period during which youth allowance is not payable because of Subdivision D or E of Division 2 of Part 2.11 of the *Social Security Act 1991* as amended by this Act.
- (3) In this item:
activity test breach has the same meaning as it had in section 550A of the *Social Security Act 1991* before the commencement of this item.

52 Subdivision C of Division 5 of Part 2.11 of Chapter 2 (heading)

Repeal the heading.

53 Sections 558 to 558G

Repeal the sections.

54 Saving provision relating to administrative breaches

- (1) If:
- (a) as a result of an administrative breach committed by the person before the commencement of this item, an administrative breach rate reduction period applied to the person under section 558 of the *Social Security Act 1991*; and
- (b) on that commencement, the administrative breach rate reduction period had not ended;
- the administrative breach rate reduction period continues to apply to the person after that commencement as if that section had not been repealed by this Act.
- (2) In this item:

administrative breach means any refusal or failure by the person as a result of which an administrative breach rate reduction period applied to the person, before the commencement of this item, under section 558 of the *Social Security Act 1991*.

55 Saving provision relating to sections 558A to 558G

(1) If:

- (a) as a result of an administrative breach committed by the person before the commencement of this item, an administrative breach rate reduction period applied to the person under:
 - (i) section 558 of the *Social Security Act 1991*; or
 - (ii) subsection 63(4) or 64(4) of the *Social Security (Administration) Act 1999*; and
- (b) on that commencement, the administrative breach rate reduction period had not ended;

sections 558A to 558G of the *Social Security Act 1991* continue to apply to the administrative breach rate reduction period after that commencement as if they had not been repealed by this Act.

(2) The fact that an administrative breach rate reduction period is applying to the person because of this item does not prevent the application to the person, at the same time, of a period during which youth allowance is not payable because of Subdivision D or E of Division 2 of Part 2.11 of the *Social Security Act 1991* as amended by this Act.

(3) In this item:

administrative breach means any refusal, failure or non-compliance by the person as a result of which an administrative breach rate reduction period applied to the person, before the commencement of this item, under:

- (a) section 558 of the *Social Security Act 1991*; or
- (b) subsection 63(4) or 64(4) of the *Social Security (Administration) Act 1999*.

Schedule 6—Austudy payment

Part 1—Compliance

Social Security Act 1991

1 At the end of Subdivision A of Division 2 of Part 2.11A of Chapter 2

Add:

572A Situations where austudy payment not payable for failure to comply with certain requirements

Austudy payment is not payable to a person if the person refuses or fails, without reasonable excuse, to comply with a requirement made of the person under section 67, 68 or 192 of the Administration Act.

2 Subdivision E of Division 2 of Part 2.11A of Chapter 2

Repeal the Subdivision, substitute:

Subdivision E—Situations where austudy payment not payable because of austudy participation failure

576 Austudy participation failures

Meaning of austudy participation failure

- (1) A person commits an *austudy participation failure* if the person:
 - (a) fails to comply with a requirement:
 - (i) that was notified to the person under subsection 63(2) or 64(2) of the Administration Act; and
 - (ii) that was reasonable; and
 - (iii) the notification of which included a statement to the effect that a failure to comply with the requirement could constitute an austudy participation failure; or
 - (b) fails to satisfy the activity test; or
 - (c) fails to comply with a requirement to undertake another activity referred to in paragraph 576A(1)(b).

Reasonable excuse

- (2) Despite subsection (1), a failure of a kind referred to in that subsection is not an austudy participation failure if the person satisfies the Secretary that the person had a reasonable excuse for the failure.
- (2A) The Secretary must, by legislative instrument, determine matters that the Secretary must take into account in deciding whether, for the purposes of subsection (2), a person had a reasonable excuse for committing an austudy participation failure.
- (2B) To avoid doubt, a determination under subsection (2A) does not limit the matters that the Secretary may take into account in deciding whether, for the purposes of subsection (2), a person had a reasonable excuse for committing the austudy participation failure referred to in subsection (1).

Subsequent failures in the same instalment period

- (3) Despite subsection (1), if a failure of a kind referred to in that subsection occurs in an instalment period of the person in which the person has already committed an austudy participation failure, the failure is not an austudy participation failure if:
 - (a) the instalment period is the person's first instalment period for austudy payment; or
 - (b) the instalment period is not the person's first instalment period for austudy payment, and:
 - (i) the person did not commit an austudy participation failure in the immediately preceding instalment period of the person; or
 - (ii) in respect of each austudy participation failure that the person committed in the immediately preceding instalment period of the person, the person acted in accordance with a requirement of the Secretary that was notified in respect of that failure.

576A Allowance not payable because of austudy participation failure

General

- (1) Austudy payment is not payable to a person, for the period starting in accordance with section 576B and ending in accordance with section 576C, if:
- (a) the person commits an austudy participation failure; and
 - (b) the Secretary requires the person:
 - (i) to comply with the requirement, or undertake the activity, to which the austudy participation failure relates; or
 - (ii) to comply with a particular requirement, or undertake a particular activity, in place of the requirement or activity to which the failure relates;
- during the participation failure instalment period for the failure, or at a particular time during that period; and
- (c) the person fails to comply with the requirement.

Reasonable excuse etc.

- (2) This section does not apply in relation to the failure if:
- (a) the Secretary is satisfied that the person had a reasonable excuse for the failure referred to paragraph (1)(c); or
 - (b) the Secretary is for any other reason satisfied that subsection (1) should not apply to the failure.
- (2A) The Secretary must, by legislative instrument, determine matters that the Secretary must take into account in deciding whether, for the purposes of paragraph (2)(a), a person had a reasonable excuse for a failure of a kind mentioned in paragraph (1)(c).
- (2B) To avoid doubt, a determination under subsection (2A) does not limit the matters that the Secretary may take into account in deciding whether, for the purposes of paragraph (2)(a), a person had a reasonable excuse for the failure referred to in paragraph (1)(c).

Meaning of participation failure instalment period

- (3) The *participation failure instalment period* for the austudy participation failure is the next instalment period of the person to start after the day on which the Secretary first became aware that the person committed the failure.

Failures covered by section 577

- (4) This section does not apply to an austudy participation failure if section 577 applies to the failure.

576B When the period of non-payment starts

The period for which austudy payment is not payable to the person because of section 576A is taken to have started at the start of the participation failure instalment period for the austudy participation failure.

576C When the period of non-payment ends

The period for which austudy payment is not payable to the person because of section 576A ends when:

- (a) in accordance with a requirement of the Secretary that the person comply with the requirement, or undertake the activity, to which the austudy participation failure related, the person has complied with the requirement or undertaken the activity; or
- (b) in accordance with a requirement of the Secretary that the person undertake another activity in place of the requirement or activity to which the austudy participation failure related, the person has undertaken the other activity; or
- (c) in accordance with a requirement of the Secretary that the person comply with another requirement in place of the requirement or activity to which the austudy participation failure related, the person has complied with the other requirement.

Subdivision F—Situations where payment not payable because of repeated failure

577 Payment not payable because of repeated failure

General

- (1) Austudy payment is not payable to a person, for the period of 8 weeks starting in accordance with section 577A, if the person commits an austudy participation failure (the *repeated failure*), having committed austudy participation failures (the *earlier failures*) on 2 or more other occasions during the period of 12 months preceding that failure.

Reasonable excuse etc.

- (2) Disregard any earlier failure that is a failure to which subsection 576A(1) does not apply because of subsection 576A(2).
- (3) Subsection (1) does not apply in relation to the repeated failure if the Secretary is for any other reason satisfied that subsection (1) should not apply to the failure.

577A When the period of non-payment starts

The period for which austudy payment is not payable to the person is taken to start, or to have started:

- (a) if the repeated failure occurs during a participation failure instalment period for an earlier failure—at the start of the participation failure instalment period for the earlier failure; or
- (b) otherwise—at the start of the next instalment period of the person to start after the day on which the Secretary first became aware that the person committed the failure.

Note: For *participation failure instalment period* see subsection 576A(3).

3 Saving provision relating to activity test non-payment periods

- (1) If:
 - (a) as a result of an activity test breach committed by the person before the commencement of this item, an activity test

non-payment period applied to the person under Subdivision E of Division 2 of Part 2.11A of the *Social Security Act 1991*; and

- (b) on that commencement, the activity test non-payment period had not ended;

the activity test non-payment period continues to apply to the person after that commencement as if that Subdivision had not been repealed by this Act.

- (2) In this item:

activity test breach has the same meaning as it had in section 576A of the *Social Security Act 1991* before the commencement of this item.

4 Transitional provision relating to repeated breaches

- (1) The reference in subsection 577(1) of the *Social Security Act 1991* as amended by this Act to austudy participation failures committed by a person during the period of 12 months preceding an austudy participation failure includes a reference to any activity test failures committed by the person:

- (a) during that period of 12 months; and
(b) before the commencement of this item.

- (2) In this item:

activity test failure means any activity test breach (within the meaning of section 576A of the *Social Security Act 1991*) that:

- (a) was constituted by a failure of a kind referred to in paragraph 576A(1)(a) of that Act; and
(b) was committed by the person as a result of which an activity test penalty period applied to the person, before the commencement of this item, under:
(i) Subdivision E of Division 2 of Part 2.11A of that Act;
or
(ii) Subdivision B of Division 5 of Part 2.11A of that Act.

5 Subdivision A of Division 5 of Part 2.11A of Chapter 2 (heading)

Repeal the heading.

6 Subdivisions B and C of Division 5 of Part 2.11A of Chapter 2

Repeal the Subdivisions.

7 Saving provision relating to activity test breach rate reduction periods

(1) If:

- (a) as a result of an activity test breach committed by the person before the commencement of this item, an activity test breach rate reduction period applied to the person under Subdivision B of Division 5 of Part 2.11A of the *Social Security Act 1991*; and
- (b) on that commencement, the activity test breach rate reduction period had not ended;

the activity test breach rate reduction period continues to apply to the person after that commencement as if that Subdivision had not been repealed by this Act.

(2) The fact that an activity test breach rate reduction period is applying to the person because of this item does not prevent the application to the person, at the same time, of a period during which austudy payment is not payable because of Subdivision E or F of Division 2 of Part 2.11A of the *Social Security Act 1991* as amended by this Act.

(3) In this item:

activity test breach has the same meaning as it had in section 576A of the *Social Security Act 1991* before the commencement of this item.

8 Saving provision relating to administrative breach rate reduction periods

(1) If:

- (a) as a result of an administrative breach committed by the person before the commencement of this item, an administrative breach rate reduction period applied to the person under section 583 of the *Social Security Act 1991*; and
- (b) on that commencement, the administrative breach rate reduction period had not ended;

the administrative breach rate reduction period continues to apply to the person after that commencement as if that section had not been repealed by this Act.

(2) In this item:

administrative breach means any refusal or failure by the person as a result of which an administrative breach rate reduction period applied to the person, before the commencement of this item, under section 583 of the *Social Security Act 1991*.

9 Saving provision relating to sections 583A to 583G

(1) If:

- (a) as a result of an administrative breach committed by the person before the commencement of this item, an administrative breach rate reduction period applied to the person under section 583 of the *Social Security Act 1991*; and
- (b) on that commencement, the administrative breach rate reduction period had not ended;

sections 583A to 583G of the *Social Security Act 1991* continue to apply to the administrative breach rate reduction period after that commencement as if they had not been repealed by this Act.

(2) The fact that an administrative breach rate reduction period is applying to the person because of this item does not prevent the application to the person, at the same time, of a period during which austudy payment is not payable because of Subdivision E or F of Division 2 of Part 2.11A of the *Social Security Act 1991* as amended by this Act.

(3) In this item:

administrative breach means any refusal, failure or non-compliance by the person as a result of which an administrative breach rate reduction period applied to the person, before the commencement of this item, under section 583 of the *Social Security Act 1991*.

Part 2—Seasonal work preclusion period

Social Security Act 1991

10 After section 575E

Insert:

575EA Seasonal workers—preclusion period

Application

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

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

Exclusion during seasonal work preclusion period

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

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

Exemption in cases of severe financial hardship

- (3) If the Secretary is satisfied that a person is in severe financial hardship because the person has incurred unavoidable or reasonable expenditure while the person is subject to a seasonal work preclusion period (whether in relation to the claim referred to in subsection (1) or any other claim under this Act):

(a) the Secretary may determine that the person is not subject to the whole, or any part, of the preclusion period; and

(b) the determination has effect accordingly.

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

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

11 Point 1067L-D22

Repeal the point, substitute:

Operation of points 1067L-D20 and 1067L-D21

1067L-D22 Points 1067L-D20 and 1067L-D21 have effect even if the person who has made the claim:

(a) is subject to a liquid assets test waiting period or an income maintenance period in respect of the allowance claimed; or

(b) is subject to a seasonal work preclusion period;

during the period of 12 months referred to in those points.

12 Application provision

The amendments made by this Part apply in relation to claims for austudy payment made on or after 20 September 2006.

Schedule 7—Newstart allowance

Part 1—RapidConnect

Social Security Act 1991

1 Subsection 605(1)

Repeal the subsection, substitute:

- (1) Subject to this section, the Secretary may require a person who is not a party to a Newstart Activity Agreement to enter into such an agreement if:
 - (a) the person is receiving, or has made a claim for, a newstart allowance; or
 - (b) the Department is contacted by or on behalf of the person in relation to a claim for a newstart allowance.

2 At the end of Subdivision D of Division 1 of Part 2.12 of Chapter 2

Add:

615 Newstart allowance not payable if person fails to attend interview etc. in certain circumstances

- (1) A newstart allowance is not payable to a person if:
 - (a) before or after the person made a claim for a newstart allowance, the Department is contacted by or on behalf of the person in relation to a claim for a newstart allowance; and
 - (b) as a result of the contact, the Department required the person to do one or both of the following:
 - (i) attend an interview with a specified person or organisation at a time and place specified in the requirement;
 - (ii) enter into a Newstart Activity Agreement; and
 - (c) the person fails to comply with that requirement, or those requirements.

- (2) This section does not apply to a person if the Secretary is satisfied, in accordance with any guidelines under subsection (3), that it should not apply to the person.
- (3) The Secretary may, by legislative instrument, make guidelines to be complied with in deciding under subsection (2) whether this section applies to a person.
- (4) This section ceases to apply:
 - (a) when the person complies with:
 - (i) that requirement, or those requirements; or
 - (ii) any requirements that the Secretary has required the person to undertake in place of that requirement, or those requirements; or
 - (b) at such earlier time as the Secretary determines, in accordance with any guidelines under subsection (5).
- (5) The Secretary may, by legislative instrument, make guidelines to be complied with in making determinations under paragraph (4)(b).
- (6) To avoid doubt, the fact that a person is taken, because of section 13 of the Administration Act, to have made a claim for a newstart allowance on the day on which the Department was contacted by or on behalf of the person in relation to the claim does not affect the operation of this section.

Part 2—Participation

Social Security Act 1991

3 Paragraph 593(1)(c)

Omit “subsection 604(1)”, substitute “subsection 605(1)”.

4 Paragraph 593(1)(d)

Omit “subsection 604(1)”, substitute “subsection 605(1) or (2)”.

5 Paragraph 593(1)(f)

Omit “is taking reasonable steps to comply with”, substitute “is complying with”.

6 Paragraph 593(1)(f) (note)

Repeal the note.

7 Subsection 593(1) (note 3)

Omit “604 to 607”, substitute “605 and 606”.

8 After subsection 593(1C)

Insert:

- (1D) Subject to sections 596, 596A and 598, a person is qualified for a newstart allowance, in respect of the period starting in accordance with subsection (1E) and ending in accordance with subsection (1F), if:
- (a) the person satisfies the Secretary that throughout the period the person is unemployed; and
 - (b) throughout the period the person:
 - (i) has reached the age of 21 years and has not reached the pension age; and
 - (ii) is an Australian resident or is exempt from the residence requirement within the meaning of subsection 7(7); and
 - (c) the person was not in receipt of a youth allowance during the period; and

- (d) the person has made, or is taken to have made, a claim for newstart allowance; and
 - (e) the person satisfies the Secretary that it is likely that the person has a permanent medical condition that would prevent the person from undertaking full-time work; and
 - (f) the person satisfies the Secretary that it would be unreasonable to expect the person to satisfy the activity test until an assessment of the person's capacity to work has been undertaken.
- (1E) The period for which the person is qualified for a newstart allowance under subsection (1D) starts:
- (a) if the person is already receiving newstart allowance when the Secretary becomes aware of the medical condition referred to in paragraph (1D)(e)—when the Secretary becomes aware of the medical condition; or
 - (b) otherwise—when the person made, or is taken to have made, the claim for newstart allowance.
- (1F) The period for which the person is qualified for a newstart allowance under subsection (1D) ends:
- (a) if the person has failed to comply with a requirement to enter into a Newstart Activity Agreement—on the day on which the person so failed; or
 - (b) in any other case—when the person enters into a Newstart Activity Agreement.

9 Paragraph 593(2)(c)

Omit “subsection 604(1)”, substitute “subsection 605(1)”.

10 Paragraph 593(2)(d)

Omit “subsection 604(1)”, substitute “subsection 605(1) or (2)”.

11 Paragraph 593(2)(f)

Omit “is taking reasonable steps to comply with”, substitute “is complying with”.

12 Paragraph 593(2)(f) (note)

Repeal the note.

13 Subsection 593(2) (note 2)

Omit “604 to 607”, substitute “605 and 606”.

14 Subsections 593(2A) and (2B)

Repeal the subsections.

15 Subsections 595(1) to (2)

Repeal the subsections, substitute:

- (1) The Secretary may treat a person as being unemployed throughout a period if:
- (a) during the period, the person undertakes:
 - (i) paid work that, in the Secretary’s opinion, is suitable for the person to undertake; or
 - (ii) any other activity;as a result of which he or she would, but for this subsection, not be taken to be unemployed; and
 - (b) the Secretary is of the opinion that, taking into account:
 - (i) the nature of the work or other activity; and
 - (ii) the duration of the work or other activity; and
 - (iii) any remuneration received for the work or other activity; and
 - (iv) any other matters relating to the work or other activity, or to the person’s circumstances, that the Secretary considers relevant;the activity should be disregarded.

Note: The person may, under subsection 603(3), also be treated as satisfying the activity test.

- (1A) However, the work or other activity must not be or include any work or other activity of a kind that the Secretary determines under subsection (1B).
- (1B) The Secretary may determine, by legislative instrument, kinds of work or other activity that are not to be taken into account for the purposes of subsection (1).
- (2) A person complying with a Newstart Activity Agreement, or with a requirement under subsection 601(1A), may be treated by the Secretary as being unemployed.

16 Paragraph 595(3)(a)

Omit “subsection 601(2)”, substitute “subsection 601(1A)”.

17 Paragraph 598(8)(b)

Omit “the CSP or”.

18 Subsection 600(1)

After “for a period”, insert “determined by the Secretary”.

19 Paragraph 600(1)(d)

Repeal the paragraph, substitute:

- (d) the Secretary is satisfied that the person should be qualified under this section for a newstart allowance for the period.

20 Subsections 600(3) to (7)

Repeal the subsections.

21 Subsection 601(1)

Omit “(3)”, substitute “(5)”.

22 Subsection 601(1) (note 1)

Repeal the note, substitute:

Note 1: For situations in which a person is taken to satisfy, or is not required to satisfy, the activity test see:

- (a) section 603 (persons attending training camps or in remote areas);
- (b) section 603A (special circumstances);
- (c) section 603AA (persons 55 and over who are engaged in work);
- (d) section 603AB (certain principal carers and people with partial capacity to work).

23 Subsections 601(1A) to (2)

Repeal the subsections, substitute:

(1A) A person also satisfies the activity test in respect of a period if:

- (a) the Secretary is of the opinion that, throughout the period, the person should undertake particular paid work, other than paid work that is unsuitable to be done by the person; and

Note: See subsection (2A) on what paid work is unsuitable.

- (b) the Secretary notifies the person that the person is required to act in accordance with that opinion; and
 - (c) the person complies, throughout the period, with the Secretary's requirement.
- (1B) To avoid doubt, the work that the person is required to undertake under subsection (1A) may involve a number of hours per week that differs from the number of hours of work per week that the person is required to seek to comply with a Newstart Activity Agreement between the Secretary and the person.
- (2) A person cannot be taken to satisfy the activity test throughout a period if the person fails to comply with a requirement under subsection (1A):
- (a) whether or not the person complies with subsection (1), (4) or (6A); and
 - (b) whether or not another provision of this Act under which the activity test is satisfied, or taken to be satisfied, applies (or would apart from this section apply) to the person.

24 Saving certain notices under subsection 601(2)

If:

- (a) before the commencement of this item, the Secretary had notified a person under paragraph 601(2)(b) of the *Social Security Act 1991* that the person was required to act in accordance with an opinion of the Secretary of the kind referred to in subparagraph 601(2)(a)(i) of that Act; and
- (b) at the time of that commencement, the period to which the requirement relates had not come to an end;

the notice continues in force after that commencement as if it were a notice under paragraph 601(1A)(b) of that Act as amended by this Act.

25 Subsection 601(2A)

Omit "subparagraph (2)(a)(i)", substitute "paragraph (1A)(a)".

26 After paragraph 601(2A)(b)

Insert:

- (ba) the person is the principal carer for one or more children, and does not have access to appropriate care and supervision for

the children at the times when the person would be required to undertake the work; or

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

27 Paragraph 601(2A)(d)

Repeal the paragraph.

28 Paragraphs 601(2A)(e) and (f)

Repeal the paragraphs, substitute:

- (e) the work would be covered by the Australian Fair Pay and Conditions Standard, but the terms and conditions for the work would be less generous than the minimum terms and conditions for the work under the Australian Fair Pay and Conditions Standard; or
- (f) the work would not be covered by the Australian Fair Pay and Conditions Standard, but, if it were so covered, the terms and conditions for the work would be less generous than the minimum terms and conditions for the work under the Australian Fair Pay and Conditions Standard; or

29 After subsection 601(2A)

Insert:

- (2AAA) A person has, for the purposes of paragraph (2A)(ba), access to appropriate care and supervision for a child at a particular time if, at that time:
 - (a) the child could be provided with care by an approved child care service (within the meaning of the Family Assistance Administration Act), and provision of that care would, in the Secretary's opinion, be appropriate in the circumstances; or
 - (b) the child could be provided with other care that the person considers to be suitable; or
 - (c) the child could be attending school, and attendance at that school would, in the Secretary's opinion, be appropriate in the circumstances.
 - (2AAB) For the purposes of paragraph (2A)(ba), a time when the person would be required to undertake the work includes reasonable amounts of time that would be needed for the person to travel from the person's home to the place of work and from the place of work to the person's home.
-

30 Paragraph 601(2AA)(c)

Omit “or over the age of 50”.

30A After subsection 601(2AB)

Insert:

(2AC) The Secretary must, by legislative instrument, determine matters that the Secretary must take into account in deciding whether, for the purposes of paragraph (2A)(j), particular paid work is unsuitable for a person.

(2AD) To avoid doubt, a determination under subsection (2AC) does not limit the matters that the Secretary may take into account in deciding whether, for the purposes of paragraph (2A)(j), particular paid work is unsuitable for a person.

31 Subsections 601(2B) and (2C)

Repeal the subsections.

32 Subsections 601(2E), (2F) and (3)

Repeal the subsections.

33 Subsection 601(4)

Omit “is taking reasonable steps to comply with”, substitute “is complying with”.

34 Subsection 601(4) (note)

Repeal the note.

35 Subsection 601(5)

Omit “take reasonable steps to”.

36 Subsection 601(5) (note 1)

Repeal the note, substitute:

Note 1: For situations in which a person is not required to satisfy the activity test see section 603 (persons attending training camps or in remote areas).

37 Subsection 601(6)

Repeal the subsection.

38 Subsection 601(6A)

Omit “CSP”, substitute “PSP”.

39 Subsection 601(7)

Repeal the subsection.

40 Sections 601A and 602

Repeal the sections.

41 After section 602A

Insert:

602B Relief from activity test—domestic violence etc.

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

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

- (2A) The Secretary must, by legislative instrument, specify matters that the Secretary must take into account in deciding whether there are special circumstances relating to a person’s family that make it appropriate to make a determination under this section.

- (2B) To avoid doubt, an instrument made under subsection (2A) does not limit the matters that the Secretary may take into account in making a determination under subsection (2).
- (3) The period that the Secretary determines under this section must be the lesser of:
 - (a) the period that the Secretary considers to be appropriate; or
 - (b) 16 weeks.
- (4) Any such period may be followed by one or more other periods (not exceeding 16 weeks) determined under this section in relation to the person.
- (5) The period that the Secretary determines under this section must, despite subsection (3), be 16 weeks if the determination:
 - (a) is made on grounds referred to in paragraph (2)(a) (or on grounds that include those grounds); and
 - (b) is the first determination made on those grounds (or on grounds that include those grounds) in connection with the particular cessation referred to in subparagraph (2)(a)(ii).
- (6) The Secretary may revoke a determination under this section in relation to a person if the Secretary is satisfied that the grounds on which the determination was made no longer exist.
- (7) Subsection (6) does not affect any operation that subsection 33(3) of the *Acts Interpretation Act 1901* has in relation to a determination under this section.

602C Relief from activity test—people with disabled children and other circumstances

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

- (b) whose care needs are such that the person should, for the period specified in the determination, not be required to satisfy the activity test.

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

- (3) The Secretary must make a determination under this section in relation to the person if the Secretary is satisfied that the person is the principal carer of one or more children, and that:
 - (a) the person is a registered and active foster carer; or
 - (b) the person is a home educator of that child, or one or more of those children; or
 - (c) the person is a distance educator of that child, or one or more of those children.

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

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

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

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

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

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

- (4) The Secretary may make a determination under this section in relation to the person if the Secretary is satisfied that:
 - (a) the person is a person included in a class of persons specified under subsection (5); and
 - (b) the person's circumstances are such that the person should not be required to satisfy the activity test for the period.
- (5) The Secretary may, by legislative instrument, specify classes of persons in respect of whom determinations under this section may be made.
- (6) The period that the Secretary determines under this section must be the lesser of:
 - (a) the period that the Secretary considers to be appropriate; or
 - (b) 12 months.

- (7) Any such period may be followed by one or more other periods (not exceeding 12 months) determined under this section in relation to the person.
- (8) The Secretary may revoke a determination under this section in relation to a person if the Secretary is satisfied that the grounds on which the determination was made no longer exist.
- (9) Subsection (8) does not affect any operation that subsection 33(3) of the *Acts Interpretation Act 1901* has in relation to a determination under this section.

42 Subsection 603(1A)

Repeal the subsection.

43 Continued application of subsection 603(1A)

Despite the repeal of subsection 603(1A) of the *Social Security Act 1991* by this Act, that subsection:

- (a) continues to apply after the commencement of this item to a person to whom it applied immediately before that commencement; and
- (b) ceases to apply:
 - (i) if the person has been required to enter into a Newstart Activity Agreement but has failed, or is taken to have failed, to enter that agreement—when the person so failed or is taken to have so failed; or
 - (ii) in any other case—when the person has entered into such an agreement.

44 Paragraph 603(2)(a)

Repeal the paragraph, substitute:

- (a) it would be reasonable to assume that, at the end of a period, a person is present in an area where:
 - (i) there is no locally accessible labour market; and
 - (ii) there is no locally accessible vocational training course or labour market program; and
- (aa) it would be reasonable to assume that, throughout the period, the person is unemployed and is capable of undertaking, and is willing to undertake, paid work that, in the Secretary's opinion, is suitable for the person to undertake; and

45 Subsection 603(2)

Omit “subsection 601(2)”, substitute “subsection 601(1A)”.

46 At the end of section 603

Add:

(3) If:

- (a) a person is treated as being unemployed because of subsection 595(1); and
- (b) the Secretary is satisfied that it is appropriate for this subsection to apply;

the person is taken to satisfy the activity test during the period starting when the person made a claim, or is to be taken to have made a claim, for newstart allowance and ending:

- (c) if the person has been required to enter into a Newstart Activity Agreement but has failed to enter that agreement—when the person so failed; or
- (d) in any other case—when the person has entered into such an agreement.

(4) Subsection (3) does not apply if, at the time of becoming a person who is treated as being unemployed because of subsection 595(1), the person had already been required to enter into a Newstart Activity Agreement.

47 Subsection 603AA(1)

Omit “50 years”, substitute “55 years”.

Note: The heading to section 603AA is altered by omitting “engaged in voluntary work” and substituting “55 and over who are engaged in work”.

48 Paragraph 603AA(1)(a)

Omit “full-time”.

49 Paragraph 603AA(1)(a)

Omit “32 hours”, substitute “30 hours”.

50 Paragraph 603AA(1)(b)

Omit “40 hours”, substitute “30 hours”.

51 At the end of subsection 603AA(1)

Add:

; or (c) is engaged for at least 30 hours in the period in paid work that the Secretary regards as suitable.

52 Subsection 603AA(2)

Repeal the subsection.

53 Subsection 603AA(3)

Omit “Neither subsections (1) nor (2)”, substitute “This section does not”.

54 Subsection 603AA(3)

Omit “the subsection”, substitute “this section”.

55 Subsection 603AA(4)

Omit “subsections (1) and (2)”, substitute “this section”.

56 After section 603AA

Insert:

603AB Relief from activity test—certain principal carers and people with partial capacity to work

A person who:

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

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

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

Note 2: For *partial capacity to work* see section 16B.

57 After section 603C

Insert:

603D Time limit for exemption—Secretary satisfied person can undertake activity

- (1) A person ceases to be exempt, under this Subdivision, from the activity test if the Secretary is satisfied that, although the person meets the requirements of section 603C, the person should undertake one or more activities that the Secretary regards as suitable for the person.
- (2) The cessation occurs:
 - (a) if the person has failed to comply with a requirement to enter into a Newstart Activity Agreement—when the person so failed; or
 - (b) in any other case—when the person has entered into such an agreement.
- (3) This section does not prevent a person ceasing to be exempt under section 603F.

58 At the end of section 603F

Add:

- (7) This section does not prevent a person ceasing to be exempt under section 603D.

Note: The heading to section 603F is altered by omitting “**from requirement to satisfy activity test**” and substituting “**—end of person’s maximum exemption period**”.

59 Section 604

Repeal the section.

60 Subsection 605(2A)

Repeal the subsection, substitute:

- (2A) If, under Subdivision BA, a person is not required to satisfy the activity test, subsections (1) and (2) apply to the person only if subsection 603D(1) applies to the person.

61 After subsection 605(2B)

Insert:

- (2C) Subsections (1) and (2) do not apply to a person at a time during which, under section 602B or 602C, the person is not required to satisfy the activity test.

62 At the end of section 605

Add:

- (4) A Newstart Activity Agreement is a written agreement in a form approved by the Secretary. The agreement is between the person and the Secretary.
- (5) For the purposes of this Part, if:
- (a) a person starts to receive newstart allowance on a particular day; and
 - (b) immediately before that day, the person was a party to a Parenting Payment Activity Agreement; and
 - (c) the period covered by the agreement ends after that day;
- the agreement has effect on and after that day as if it were a Newstart Activity Agreement.
- (6) For the purposes of this Part, if:
- (a) a person starts to receive newstart allowance on a particular day; and
 - (b) immediately before that day, the person was a party to a Youth Allowance Activity Agreement; and
 - (c) the period covered by the agreement ends after that day;
- the agreement has effect on and after that day as if it were a Newstart Activity Agreement.
- (7) For the purposes of this Part, if:
- (a) a person starts to receive newstart allowance on a particular day; and
 - (b) immediately before that day the person was a party to a Special Benefit Activity Agreement; and
 - (c) the period covered by the agreement ends after that day;
- the agreement has effect on and after that day as if it were a Newstart Activity Agreement.

63 Subsections 606(1) to (1AC)

Repeal the subsections, substitute:

- (1) Subject to sections 607 to 607B, a Newstart Activity Agreement with a person is to require the person to undertake one or more activities that the Secretary regards as suitable for the person.
- (1A) However, an agreement must not contain a requirement of a kind that the Secretary determines under subsection (1B).
- (1B) The Secretary must determine, by legislative instrument, the kinds of requirements that agreements must not contain.
- (1C) To avoid doubt, a determination under subsection (1B) does not limit the Secretary's discretion to exclude other kinds of requirements from a particular agreement under subsection (1).

64 Application of subsection 606(1A)

Subsection 606(1A) of the *Social Security Act 1991* as amended by this Act does not apply to any Newstart Activity Agreement entered into before the commencement of this item.

65 Paragraph 606(4)(a)

Repeal the paragraph, substitute:

- (a) the person's education, experience, skills and age; and
- (aa) the impact of any disability, illness, mental condition or physical condition of the person on the person's ability to work, to look for work or to participate in training activities; and

66 Paragraph 606(4)(e)

Omit “, by reference to what constitutes unreasonably difficult commuting for the purposes of paragraph 601(2A)(g)”.

67 Subsections 606(5A) to (5C)

Repeal the subsections.

68 Sections 607 to 607B

Repeal the sections, substitute:

607 Newstart Activity Agreements—principal carers

- (1) A Newstart Activity Agreement that:

- (a) is between the Secretary and a person who is the principal carer of at least one child; and
- (b) requires the person to undertake, as an activity, looking for part-time paid work that the Secretary regards as suitable; must require the person to undertake looking for such part-time paid work of at least the appropriate number of hours per week.

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

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

607A Newstart Activity Agreements—people with partial capacity to work

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

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

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

607B Newstart Activity Agreements—requirement to participate in an approved program of work

- (1) A Newstart Activity Agreement between the Secretary and a person must not require the person to participate in an approved program of work for income support payment if:
 - (a) because of the application of Module G of Payment Rate Calculator B in section 1068, the person is receiving a newstart allowance at a rate that has been reduced; or

- (b) in the Secretary's opinion:
 - (i) it has been established that there is medical evidence that the person has an illness, disability or injury that would be aggravated by the conditions in which the work would be performed; or
 - (ii) performing the work in the conditions in which the work would be performed would constitute a risk to health or safety or would contravene a law of the Commonwealth, a State or a Territory relating to occupational health and safety; or
 - (c) the person is at least 50 years of age and is not a person to whom subsection 28(4) applies.
- (2) The Secretary may, by notice given to a person whom a Newstart Activity Agreement requires to participate in an approved program of work for income support payment, revoke the requirement to participate in the program if the Secretary:
- (a) is satisfied that, because of the application of Module G of Payment Rate Calculator B in section 1068, the person is receiving a newstart allowance at a rate that has been reduced; or
 - (b) forms the opinion that:
 - (i) it has been established that there is medical evidence that the person has an illness, disability or injury that would be aggravated by the conditions in which the work would be performed; or
 - (ii) performing the work in the conditions in which the work would be performed would constitute a risk to health or safety or would contravene a law of the Commonwealth, a State or a Territory relating to occupational health and safety; or
 - (c) is satisfied that the person is at least 50 years of age and is not a person to whom subsection 28(4) applies.
- (3) Upon the Secretary so notifying the person, the requirement is taken to have been revoked with effect from the day specified in the notice.

607C Newstart Activity Agreements—suspension of agreements in cases of domestic violence etc.

A Newstart Activity Agreement between the Secretary and a person is taken to be suspended during any period during which the person is not required to satisfy the activity test because of section 602B or 602C.

69 Paragraph 613(2)(a)

Repeal the paragraph.

70 Subsection 613(2) (notes)

Repeal the notes, substitute:

Note 1: For Newstart Activity Agreement see sections 605 and 606.

Note 2: The operation of this section is modified for participants in the case management system by section 45 of the *Employment Services Act 1994*.

71 Paragraph 620(2)(b)

Omit “the CSP or”.

72 Section 631C

Omit “with a requirement of the Secretary under section 601 or”.

Part 3—Compliance

Social Security Act 1991

73 Subdivision F of Division 1 of Part 2.12 of Chapter 2

Repeal the Subdivision, substitute:

Subdivision F—Situations where allowance not payable because of newstart participation failure

624 Newstart participation failures

- (1) A person commits a *newstart participation failure* if the person:
 - (a) fails to comply with a requirement:
 - (i) that was notified to the person under subsection 63(2) or 64(2) of the Administration Act; and
 - (ii) that was reasonable; and
 - (iii) the notification of which included a statement to the effect that a failure to comply with the requirement could constitute a newstart participation failure; or
 - (b) fails to satisfy the activity test; or
 - (c) fails to comply with a requirement to enter into a Newstart Activity Agreement; or
 - (d) fails to comply with a term of a Newstart Activity Agreement between the Secretary and the person; or
 - (e) fails to attend a job interview; or
 - (f) fails:
 - (i) to commence, complete or participate in an approved program of work for income support payment that the person is required to undertake; or
 - (ii) to comply with the conditions of such a program; or
 - (g) fails to continue his or her involvement in a labour market program because he or she:
 - (i) voluntarily ceases to take part in the program; or
 - (ii) is dismissed from the program for misconduct; or
 - (h) is issued with a notice under subsection 625(1) and fails to comply with it within the period specified in the notice; or

- (i) fails to comply with subsection 625(2); or
 - (j) fails to comply with a requirement included in a Newstart Activity Agreement between the Secretary and the person to:
 - (i) undertake a certain number of job searches per fortnight; and
 - (ii) keep a record of the person's job searches in a document referred to in the agreement as a job seeker diary; and
 - (iii) return the job seeker diary to the Department at the end of the period specified in the agreement; or
 - (k) fails to comply with a requirement to undertake another activity referred to in paragraph 626(1)(b).
- (2) Despite subsection (1), a failure of a kind referred to in that subsection is not a newstart participation failure if the person satisfies the Secretary that the person had a reasonable excuse for the failure.
- (2A) The Secretary must, by legislative instrument, determine matters that the Secretary must take into account in deciding whether, for the purposes of subsection (2), a person had a reasonable excuse for committing a newstart participation failure.
- (2B) To avoid doubt, a determination under subsection (2A) does not limit the matters that the Secretary may take into account in deciding whether, for the purposes of subsection (2), a person had a reasonable excuse for committing the newstart participation failure referred to in subsection (1).
- (3) Despite subsection (1), if a failure of a kind referred to in that subsection occurs in an instalment period of the person in which the person has already committed a newstart participation failure, the failure is not a newstart participation failure if:
- (a) the instalment period is the person's first instalment period for newstart allowance; or
 - (b) the instalment period is not the person's first instalment period for newstart allowance, and:
 - (i) the person did not commit a newstart participation failure in the immediately preceding instalment period of the person; or
 - (ii) in respect of each newstart participation failure that the person committed in the immediately preceding instalment period of the person, the person acted in

accordance with a requirement of the Secretary notified in respect of that failure.

- (4) Despite subsection (1), a failure of a kind referred to in that subsection is not a newstart participation failure if it results in newstart allowance not being payable to the person under section 615.
- (5) Paragraph (1)(f) does not apply to a failure if:
 - (a) the person is under 60; and
 - (b) a determination under paragraph 28(4)(b) is in force in relation to the person.
- (6) Paragraph (1)(j) does not limit the scope of paragraph (1)(d).

625 Requiring a person to apply for job vacancies

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

626 Allowance not payable because of newstart participation failure

- (1) A newstart allowance is not payable to a person, for the period starting in accordance with section 627 and ending in accordance with section 628, if:
 - (a) the person commits a newstart participation failure; and
 - (b) the Secretary requires the person:

- (i) to comply with the requirement, or undertake the activity, to which the newstart participation failure relates; or
- (ii) to comply with a particular requirement, or undertake a particular activity, in place of the requirement or activity to which the failure relates;
during the participation failure instalment period for the failure, or at a particular time during that period; and
- (c) the person fails to comply with the requirement.

However, paragraphs (b) and (c) do not apply in relation to a newstart participation failure of a kind referred to in paragraph 624(1)(h), (i) or (j).

- (2) This section does not apply in relation to the failure if:
 - (a) the Secretary is satisfied that the person had a reasonable excuse for the failure referred to paragraph (1)(c); or
 - (b) the Secretary is for any other reason satisfied that subsection (1) should not apply to the failure.
- (2A) The Secretary must, by legislative instrument, determine matters that the Secretary must take into account in deciding whether, for the purposes of paragraph (2)(a), a person had a reasonable excuse for a failure of a kind referred to in paragraph (1)(c).
- (2B) To avoid doubt, a determination under subsection (2A) does not limit the matters that the Secretary may take into account in deciding whether, for the purposes of paragraph (2)(a), a person had a reasonable excuse for the failure referred to in paragraph (1)(c).
- (3) The *participation failure instalment period* for the newstart participation failure is:
 - (a) if the failure is a failure of a kind referred to in paragraph 624(1)(h) or (i)—the next instalment period of the person to start after the end of the period specified in the notice under subsection 625(1) to which the failure relates; or
 - (b) if the failure is a failure of a kind referred to in paragraph 624(1)(j)—the next instalment period of the person to start after the end of the period referred to in subparagraph 624(1)(j)(iii); or

- (c) otherwise—the next instalment period of the person to start after the day on which the Secretary first became aware that the person committed the failure.
- (4) This section does not apply to a newstart participation failure if section 629 applies to the failure.

627 When the period of non-payment starts

The period for which newstart allowance is not payable to the person because of section 626 is taken to have started at the start of the participation failure instalment period for the newstart participation failure.

628 When the period of non-payment ends

The period for which newstart allowance is not payable to the person because of section 626 ends when:

- (a) in accordance with a requirement of the Secretary that the person comply with the requirement, or undertake the activity, to which the newstart participation failure related, the person has complied with the requirement or undertaken the activity; or
- (b) in accordance with a requirement of the Secretary that the person undertake another activity in place of the requirement or activity to which the newstart participation failure related, the person has undertaken the other activity; or
- (c) in accordance with a requirement of the Secretary that the person comply with another requirement in place of the requirement or activity to which the newstart participation failure related, the person has complied with the other requirement.

Subdivision FA—Situations where allowance not payable because of repeated or more serious failure

629 Allowance not payable because of repeated or more serious failure

- (1) A newstart allowance is not payable to a person, for the period of 8 weeks starting in accordance with section 630, if the person:

- (a) commits a newstart participation failure (the *repeated failure*), having committed newstart participation failures (the *earlier failures*) on 2 or more other occasions during the period of 12 months preceding that failure; or
 - (b) is unemployed due, either directly or indirectly, to a voluntary act of the person; or
 - (c) is unemployed due to the person's misconduct as a worker; or
 - (d) has refused or failed, without reasonable excuse, to accept a suitable offer of employment; or
 - (e) fails:
 - (i) to commence, complete or participate in an approved program of work for income support payment that the person is required to undertake; or
 - (ii) to comply with the conditions of such a program.
- (1A) The Secretary must, by legislative instrument, determine matters that the Secretary must take into account in deciding whether, for the purposes of paragraph (1)(d), a person had a reasonable excuse for refusing or failing to accept a suitable offer of employment.
- (1B) To avoid doubt, a determination under subsection (1A) does not limit the matters that the Secretary may take into account in deciding whether, for the purposes of paragraph (1)(d), a person had a reasonable excuse for refusing or failing to accept a suitable offer of employment referred to in that paragraph.
- (2) For the purposes of paragraph (1)(a), disregard any earlier failure that is a failure to which subsection 626(1) does not apply because of subsection 626(2).
- (3) Subsection (1) does not apply in relation to the repeated failure if the Secretary is for any other reason satisfied that subsection (1) should not apply to the failure.
- (4) Paragraph (1)(b) does not apply if the Secretary is satisfied that the person's voluntary act was reasonable.
- (5) Paragraph (1)(e) applies only if:
 - (a) the person is under 60; and
 - (b) a determination under paragraph 28(4)(b) is in force in relation to the person.

630 When the period of non-payment starts

- (1) The period for which newstart allowance is not payable to the person because of paragraph 629(1)(a) is taken to start, or to have started:
 - (a) if the repeated failure is a failure of a kind referred to in paragraph 624(1)(h), (i) or (j)—at the start of the participation failure instalment period for the repeated failure; or
 - (b) if paragraph (a) of this subsection does not apply and the repeated failure occurs during a participation failure instalment period for an earlier failure—at the start of the participation failure instalment period for the earlier failure; or
 - (c) otherwise—at the start of the next instalment period of the person to start after the day on which the Secretary first became aware that the person committed the failure.

Note: For *participation failure instalment period* see subsection 626(3).

- (2) The period for which newstart allowance is not payable to the person because of section 629 (other than because of paragraph 629(1)(a)) starts on the day the Secretary determines that section 629 applies to the person.
- (3) However, if:
 - (a) section 629 would not apply to the person but for the application of paragraph 629(1)(b) or (c), or both; and
 - (b) at the time of the voluntary act or misconduct in question, the person was not receiving newstart allowance;the period for which newstart allowance is not payable to the person starts at the time the person became unemployed as a result of the voluntary act or misconduct.

74 Saving provision relating to activity test breaches

- (1) If:
 - (a) as a result of an activity test breach committed by the person before the commencement of this item, an activity test penalty period applied to the person under Subdivision F of Division 1 of Part 2.12 of the *Social Security Act 1991*; and

- (b) on that commencement, the activity test penalty period had not ended;

the activity test penalty period continues to apply to the person after that commencement as if that Subdivision had not been repealed by this Act.

- (2) In this item:

activity test breach means any failure, voluntary act or misconduct committed by the person as a result of which an activity test penalty period applied to the person, before the commencement of this item, under Subdivision F of Division 1 of Part 2.12 of the *Social Security Act 1991*.

75 Transitional provision relating to repeated breaches

- (1) The reference in paragraph 629(1)(a) of the *Social Security Act 1991*, as amended by this Act, to newstart participation failures committed by a person during the period of 12 months preceding a newstart participation failure includes a reference to any activity test failures committed by the person:

- (a) during that period of 12 months; and
(b) before the commencement of this item.

- (2) In this item:

activity test failure means any failure committed by the person as a result of which an activity test penalty period applied to the person, before the commencement of this item, under section 624, 625 or 626 of the *Social Security Act 1991*.

76 Section 631

Repeal the section, substitute:

631 Situations where allowance not payable for failure to comply with certain requirements

A newstart allowance is not payable to a person if the person refuses or fails, without reasonable excuse, to comply with a requirement made of the person under section 67, 68 or 192 of the Administration Act.

77 Saving provision relating to administrative breaches

- (1) If:
-

- (a) as a result of an administrative breach committed by the person before the commencement of this item, an administrative breach rate reduction period applied to the person under section 631 of the *Social Security Act 1991*; and
- (b) on that commencement, the administrative breach rate reduction period had not ended;

the administrative breach rate reduction period continues to apply to the person after that commencement as if that section had not been repealed by this Act.

- (2) In this item:

administrative breach means any refusal or failure by the person as a result of which an administrative breach rate reduction period applied to the person, before the commencement of this item, under section 631 of the *Social Security Act 1991*.

78 Sections 631A and 631B

Repeal the sections.

79 Subdivision GB of Division 1 of Part 2.12 of Chapter 2

Repeal the Subdivision.

80 Subdivision A of Division 4 of Part 2.12 of Chapter 2 (heading)

Repeal the heading.

81 Subdivision AA of Division 4 of Part 2.12 of Chapter 2

Repeal the Subdivision.

82 Saving provision relating to activity test breach rate reductions

- (1) If:

- (a) as a result of an activity test breach committed by the person before the commencement of this item, an activity test breach rate reduction period applied to the person under Subdivision F of Division 1 of Part 2.12 of the *Social Security Act 1991*; and
- (b) on that commencement, the activity test breach rate reduction period had not ended;

Subdivision AA of Division 4 of Part 2.12 of the *Social Security Act 1991* continues to apply to the activity test breach rate reduction period after that commencement as if it had not been repealed by this Act.

- (2) The fact that an activity test breach rate reduction period is applying to the person because of this item does not prevent the application to the person, at the same time, of a period during which newstart allowance is not payable because of Subdivision F or FA of Division 1 of Part 2.12 of the *Social Security Act 1991* as amended by this Act.
- (3) In this item:
activity test breach means any failure, voluntary act or misconduct committed by the person as a result of which an activity test penalty period applied to the person, before the commencement of this item, under Subdivision F of Division 1 of Part 2.12 of the *Social Security Act 1991*.

83 Subdivision B of Division 4 of Part 2.12 of Chapter 2 (heading)

Repeal the heading.

84 Sections 644B to 644H

Repeal the sections.

85 Saving provision relating to administrative breaches

- (1) If:
- (a) as a result of an administrative breach committed by the person before the commencement of this item, an administrative breach rate reduction period applied to the person under:
 - (i) section 631 of the *Social Security Act 1991*; or
 - (ii) subsection 63(5) or 64(4) of the *Social Security (Administration) Act 1999*; and
 - (b) on that commencement, the administrative breach rate reduction period had not ended;
- sections 644B to 644H of the *Social Security Act 1991* continue to apply to the administrative breach rate reduction period after that commencement as if they had not been repealed by this Act.

- (2) The fact that an administrative breach rate reduction period is applying to the person because of this item does not prevent the application to the person, at the same time, of a period during which newstart allowance is not payable because of Subdivision F or FA of Division 1 of Part 2.12 of the *Social Security Act 1991* as amended by this Act.
- (3) In this item:
administrative breach means any refusal, failure or non-compliance by the person as a result of which an administrative breach rate reduction period applied to the person, before the commencement of this item, under:
- (a) section 631 of the *Social Security Act 1991*; or
 - (b) subsection 63(5) or 64(4) of the *Social Security (Administration) Act 1999*.

Part 4—Consequential amendment

Social Security Act 1991

86 Subsection 1217(4) (table item 15A)

Repeal the item.

Schedule 8—Employment entry payment

Social Security Act 1991

1 At the end of subsection 661(1)

Add:

- ; and (g) the person is not qualified under section 663 or 663D in relation to the employment.

Note: The heading to section 661 is replaced by the heading “**Former newstart allowees (standard employment entry payment)**”.

2 After section 662

Insert:

663 Former newstart or youth allowees (increased employment entry payment)

- (1) A person is qualified for an employment entry payment under this section if:
 - (a) the person is in paid employment (other than sheltered employment); and
 - (b) the person’s income from the employment exceeds the threshold amount; and
 - (c) immediately before the person commenced the employment, the person:
 - (i) had a partial capacity to work; and
 - (ii) was receiving newstart allowance or youth allowance; and
 - (iii) if the person was receiving youth allowance—was not undertaking full-time study and was not a new apprentice; and

Note 1: For *partial capacity to work* see section 16B.

Note 2: For *undertaking full-time study* see section 541B.

Note 3: For *new apprentice* see subsection 23(1).

- (d) in the Secretary’s opinion the person’s employment is likely to continue for more than 4 weeks; and

- (e) the person has not received a payment under this Part within the last 12 months.
- (2) If the Secretary is satisfied that:
 - (a) a person has entered an agreement under which the person is to be employed; and
 - (b) on the commencement of that employment, the person would (but for receiving a payment under this subsection) be qualified for a payment under subsection (1);then:
 - (c) subject to paragraph (d), the person is qualified for an employment entry payment which is payable to the person at such time as the Secretary determines; and
 - (d) the person is not qualified for the employment entry payment unless the Secretary is still satisfied as mentioned in paragraphs (a) and (b) at the time at which the payment is payable to the person.
- (3) The time determined under paragraph (2)(c) is not to be more than 28 days before the person is to commence the employment.
- (4) In this section:

threshold amount means the maximum amount per fortnight that a person receiving newstart allowance can earn, derive or receive without the allowance ceasing to be payable, if the person:

- (a) is not a member of a couple; and
- (b) is not receiving rent assistance; and
- (c) is not receiving remote area allowance; and
- (d) has turned 21 but has not turned 60; and
- (e) has no dependent children.

663A Amount of section 663 payment

The amount of an employment entry payment under section 663 is \$312.

663B Newstart or youth allowees

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

- (a) the person is receiving newstart or youth allowance; and
- (b) if the person is receiving youth allowance—the person is not undertaking full-time study and is not a new apprentice; and

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

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

- (c) the person has been receiving income support payments in respect of a continuous period of at least 12 months (whether or not the kind of payment received has changed over the period and whether the period or any part of it occurred before or after the commencement of this paragraph); and

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

Note 2: For the determination of whether a person received income support payments in respect of a continuous period of at least 12 months, see section 38B.

- (d) the person has a partial capacity to work; and

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

- (e) either:

- (i) the person commences employment for at least 15 hours per week on wages that are at or above the relevant minimum wage; or
- (ii) the person's hours of employment, on wages that are at or above the relevant minimum wage, increase to at least 15 hours per week; and

- (f) the employment, or the increase in hours worked, has continued for at least 4 consecutive weeks; and
- (g) the person has not previously received a payment under this section in respect of that employment; and
- (h) the person has not received a payment under another section of this Part within the last 12 months.

663C Amount of section 663B payment

The amount of an employment entry payment under section 663B is \$312.

663D Former newstart or youth allowees (principal carer of a child)

- (1) A person is qualified for an employment entry payment under this section if:
 - (a) the person is the principal carer of a child; and
-

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

(b) the person is not a member of a couple; and

Note: For *member of a couple* see subsections 4(2) to (6A).

(c) at a particular time, the person starts to earn income from employment or the person's income from employment increases; and

(d) immediately before that time:

(i) the person was receiving newstart allowance or youth allowance; and

(ii) if the person was receiving youth allowance—the person was not undertaking full-time study and was not a new apprentice; and

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

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

(e) because of the income, or the increase in income, the person's income from employment exceeds the threshold amount; and

(f) the person's income from employment is, in the Secretary's opinion, likely to exceed the threshold amount for more than 4 weeks; and

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

(2) If the Secretary is satisfied that:

(a) a person has entered an agreement under which the person is to be employed or the person's income is to be increased; and

(b) on the commencement of that employment or increase in income, the person would (but for receiving a payment under this subsection) be qualified for a payment under subsection (1);

then:

(c) subject to paragraph (d), the person is qualified for an employment entry payment, which is payable to the person at such time as the Secretary determines; and

(d) the person is not qualified for the employment entry payment unless the Secretary is still satisfied as mentioned in paragraphs (a) and (b) at the time at which the payment is payable to the person.

(3) The time determined under paragraph (2)(c) must not be more than 14 days before the person is to commence the employment or the person's income from employment is to increase.

(4) In this section:

threshold amount means the maximum amount per fortnight that a person receiving newstart allowance can earn, derive or receive without the allowance ceasing to be payable, if the person:

- (a) is not a member of a couple; and
- (b) is not receiving rent assistance; and
- (c) is not receiving remote area allowance; and
- (d) has turned 21 but has not turned 60; and
- (e) has no dependent children.

663E Amount of section 663D payment

The amount of an employment entry payment under section 663D is \$104.

663F Newstart or youth allowees (principal carer of a child)

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

- (a) the person is the principal carer of a child; and
- (b) the person is receiving newstart or youth allowance; and
- (c) if the person is receiving youth allowance—the person is not undertaking full-time study and is not a new apprentice; and

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

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

- (d) the person has been receiving income support payments in respect of a continuous period of at least 12 months (whether or not the kind of payment received has changed over the period and whether the period or any part of it occurred before or after the commencement of this paragraph); and

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

Note 2: For the determination of whether a person received income support payments in respect of a continuous period of at least 12 months see section 38B.

- (e) either:
 - (i) the person commences employment for at least 15 hours per week on wages that are at or above the relevant minimum wage; or
 - (ii) the person's hours of employment, on wages that are at or above the relevant minimum wage increase to at least 15 hours per week; and
- (f) the employment, or the increase in hours worked, has continued for at least 4 consecutive weeks; and
- (g) the person has not previously received a payment under this section in respect of that employment; and
- (h) the person has not received a payment under another section of this Part within the last 12 months.

663G Amount of section 663F payment

The amount of an employment entry payment under section 663F is \$104.

3 After section 664B

Insert:

664BA Parenting payment recipients

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

- (a) the person is the principal carer of a child; and
- (b) the person is receiving a pension PP (single) or a benefit PP (partnered); and
- (c) the person has been receiving income support payments in respect of a continuous period of at least 12 months (whether or not the kind of payment received has changed over the period and whether the period or any part of it occurred before or after the commencement of this paragraph); and

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

Note 2: For the determination of whether a person received income support payments in respect of a continuous period of at least 12 months see section 38B.

- (d) either:

- (i) the person commences employment for at least 15 hours per week on wages that are at or above the relevant minimum wage; or
- (ii) the person's hours of employment on wages that are at or above the relevant minimum wage increase to at least 15 hours per week; and
- (e) the employment, or the increase in hours worked, has continued for at least 4 consecutive weeks; and
- (f) the person has not previously received a payment under this section in respect of that employment; and
- (g) the person has not received a payment under another section of this Part within the last 12 months.

664BB Amount of section 664BA payment

The amount of an employment entry payment under section 664BA is \$104.

Note: The heading to section 664A is replaced by the heading "**Pension PP (single recipients)**".

4 Subsection 665(1)

Omit "661, 664A,", substitute "661, 663, 663B, 663D, 663F, 664A, 664BA,".

5 Subsection 665(2)

After "661", insert ", 663".

6 Subsection 665(3)

After "section", insert "663D,".

7 After subsection 665(3)

Insert:

- (3A) A person is not qualified for an employment entry payment under section 663B, 663F or 664BA if the claim for payment is made more than 56 days after:
 - (a) the commencement of the employment; or
 - (b) the increase in hours worked;in respect of which the claim is made.

Schedule 9—Sickness allowance

Social Security Act 1991

1 At the end of Subdivision C of Division 1 of Part 2.14 of Chapter 2

Add:

697 Seasonal workers—preclusion period

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

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

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

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

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

Schedule 9 Sickness allowance

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

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

2 Application provision

The amendment made by this Schedule applies in relation to claims for sickness allowance made on or after 20 September 2006.

Schedule 10—Special benefit

Part 1—Participation

Social Security Act 1991

1 Paragraph 729(2B)(e)

Omit “is taking reasonable steps to comply with”, substitute “is complying with”.

2 Subsections 729(2C) and (2CA)

Repeal the subsections.

3 Subsections 731A(2) to (6)

Repeal the subsections.

4 Subsections 731A(7) to (10)

Repeal the subsections, substitute:

- (7) A person to whom this Subdivision applies also satisfies the activity test in respect of a period if:
 - (a) the Secretary is of the opinion that, throughout the period, the person should undertake particular paid work, other than unsuitable paid work within the meaning of section 731B; and
 - (b) the Secretary notifies the person that the person is required to act in accordance with the opinion; and
 - (c) the person complies, throughout the period, with the Secretary’s requirement.
- (8) To avoid doubt, the work that the person is required to undertake under subsection (7) may involve a number of hours per week that differs from the number of hours of work per week that the person is required to seek to comply with a Special Benefit Activity Agreement between the Secretary and the person.
- (9) A person cannot be taken to satisfy the activity test throughout a period if the person fails to comply with a requirement under subsection (7):

- (a) whether or not the person complies with subsection (1) or (11); and
- (b) whether or not another provision of this Act under which the activity test is satisfied, or taken to be satisfied, applies (or would apart from this section apply) to the person.

5 Subsection 731A(11)

Omit “is taking reasonable steps to comply with”, substitute “is complying with”.

6 Subsection 731A(12)

Omit “take reasonable steps to”.

7 Subsection 731A(13)

Repeal the subsection.

8 Subsection 731B(1)

Omit “subparagraph 731A(7)(a)(i)”, substitute “paragraph 731A(7)(a)”.

9 After paragraph 731B(1)(b)

Insert:

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

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

10 Paragraph 731B(1)(d)

Repeal the paragraph.

11 Paragraphs 731B(1)(e) and (f)

Repeal the paragraphs, substitute:

- (e) the work would be covered by the Australian Fair Pay and Conditions Standard, but the terms and conditions for the work would be less generous than the minimum terms and conditions for the work under the Australian Fair Pay and Conditions Standard; or
- (f) the work would not be covered by the Australian Fair Pay and Conditions Standard, but, if it were so covered, the terms

and conditions for the work would be less generous than the minimum terms and conditions for the work under the Australian Fair Pay and Conditions Standard; or

12 After subsection 731B(1)

Insert:

- (1A) A person has, for the purposes of paragraph (1)(ba), access to appropriate care and supervision for a child at a particular time if, at that time:
- (a) the child could be provided with care by an approved child care service (within the meaning of the Family Assistance Administration Act), and provision of that care would, in the Secretary's opinion, be appropriate in the circumstances; or
 - (b) the child could be provided with other care that the person considers to be suitable; or
 - (c) the child could be attending school, and attendance at that school would, in the Secretary's opinion, be appropriate in the circumstances.
- (1B) For the purposes of paragraph (1)(ba), a time when the person would be required to undertake the work includes reasonable amounts of time that would be needed for the person to travel from the person's home to the place of work and from the place of work to the person's home.
- (1C) The Secretary must, by legislative instrument, determine matters that the Secretary must take into account in deciding whether, for the purposes of paragraph (1)(i), particular paid work is unsuitable for a person.
- (1D) To avoid doubt, a determination under subsection (1C) does not limit the matters that the Secretary may take into account in deciding whether, for the purposes of paragraph (1)(i), particular paid work is unsuitable for a person.

13 Paragraph 731B(2)(c)

Omit "or over the age of 50".

14 Subsections 731B(5) and (6)

Repeal the subsections.

15 Section 731C

Repeal the section.

16 Paragraph 731D(a)

Repeal the paragraph, substitute:

- (a) it would be reasonable to assume that, at the end of a period, a person is present in an area where:
 - (i) there is no locally accessible labour market; and
 - (ii) there is no locally accessible vocational training course; and
- (aa) it would be reasonable to assume that, throughout the period, the person is capable of undertaking, and willing to undertake, paid work that in the Secretary's opinion is suitable to be undertaken by the person; and

17 After section 731D

Insert:

731DA Relief from activity test—domestic violence etc.

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

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

- (2A) The Secretary must, by legislative instrument, specify matters that the Secretary must take into account in deciding whether there are special circumstances relating to a person's family that make it appropriate to make a determination under this section.
- (2B) To avoid doubt, a determination under subsection (2A) does not limit the matters that the Secretary may take into account in making a determination under subsection (2).
- (3) The period that the Secretary determines under this section must be the lesser of:
 - (a) the period that the Secretary considers to be appropriate; or
 - (b) 16 weeks.
- (4) Any such period may be followed by one or more other periods (not exceeding 16 weeks) determined under this section in relation to the person.
- (5) The period that the Secretary determines under this section must, despite subsection (3), be 16 weeks if the determination:
 - (a) is made on grounds referred to in paragraph (2)(a) (or on grounds that include those grounds); and
 - (b) is the first determination made on those grounds (or on grounds that include those grounds) in connection with the particular cessation referred to in subparagraph (2)(a)(ii).
- (6) The Secretary may revoke a determination under this section in relation to a person if the Secretary is satisfied that the grounds on which the determination was made no longer exist.
- (7) Subsection (6) does not affect any operation that subsection 33(3) of the *Acts Interpretation Act 1901* has in relation to a determination under this section.

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

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

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

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

- (3) The Secretary must make a determination under this section in relation to the person if the Secretary is satisfied that the person is the principal carer of one or more children, and that:
- (a) the person is a registered and active foster carer; or
 - (b) the person is a home educator of that child, or one or more of those children; or
 - (c) the person is a distance educator of that child, or one or more of those children.

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

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

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

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

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

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

- (4) The Secretary may make a determination under this section in relation to the person if the Secretary is satisfied that:
- (a) the person is a person included in a class of persons specified under subsection (5); and
 - (b) the person's circumstances are such that the person should not be required to satisfy the activity test for the period.
- (5) The Secretary may, by legislative instrument, specify classes of persons in respect of whom determinations under this section may be made.
- (6) The period that the Secretary determines under this section must be the lesser of:

- (a) the period that the Secretary considers to be appropriate; or
 - (b) 12 months.
- (7) Any such period may be followed by one or more other periods (not exceeding 12 months) determined under this section in relation to the person.
- (8) The Secretary may revoke a determination under this section in relation to a person if the Secretary is satisfied that the grounds on which the determination was made no longer exist.
- (9) Subsection (8) does not affect any operation that subsection 33(3) of the *Acts Interpretation Act 1901* has in relation to a determination under this section.

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

- (1) A person is not required to satisfy the activity test in respect of the period to which subsection (4) applies if:
- (a) during the period, the person undertakes:
 - (i) paid work that, in the Secretary's opinion, is suitable for the person to undertake; or
 - (ii) any other activity; and
 - (b) the Secretary is of the opinion that, taking into account:
 - (i) the nature of the work or other activity; and
 - (ii) the duration of the work or other activity; and
 - (iii) any remuneration received for the work or other activity; and
 - (iv) any other matters relating to the work or other activity, or to the person's circumstances, that the Secretary considers relevant;it would be unreasonable to expect the person to satisfy the activity test for the period.
- (2) However, the work or other activity must not be or include any work or other activity of a kind that the Secretary determines under subsection (3).
- (3) The Secretary may determine, by legislative instrument, kinds of work or other activity that are not to be taken into account for the purposes of subsection (1).

- (4) This subsection applies to the period:
- (a) starting:
 - (i) when the person made a claim, or is taken to have made a claim, for special benefit; or
 - (ii) when the person started to undertake the work or other activity;whichever happens later; and
 - (b) ending:
 - (i) if the person has been required to enter into a Special Benefit Activity Agreement but has failed to enter that agreement—when the person so failed; or
 - (ii) in any other case—when the person has entered into such an agreement.

18 Subsection 731G(1)

Omit “50 years”, substitute “55 years”.

Note: The heading to section 731G is altered by omitting “**engaged in voluntary work**” and substituting “**55 and over who are engaged in work**”.

19 Paragraph 731G(1)(a)

Omit “full-time”.

20 Paragraph 731G(1)(a)

Omit “32 hours”, substitute “30 hours”.

21 Paragraph 731G(1)(b)

Omit “40 hours”, substitute “30 hours”.

22 Subparagraph 731G(1)(b)(ii)

Omit “for another person”.

23 At the end of subsection 731G(1)

Add:

; or (c) is engaged for at least 30 hours in the period in paid work that the Secretary regards as suitable.

24 Subsection 731G(2)

Repeal the subsection.

25 Subsection 731G(3)

Omit “Neither subsection (1) nor (2) applies”, substitute “This section does not apply”.

26 Subsection 731G(3)

Omit “the subsection”, substitute “this section”.

27 After section 731G

Insert:

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

A person who:

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

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

28 Paragraph 731H(1)(b)

Omit “16”, substitute “6”.

29 After section 731K

Insert:

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

- (1) A person ceases to be exempt, under this Subdivision, from the activity test if the Secretary is satisfied that, although the person meets the requirements of section 731K, the person should undertake one or more activities that the Secretary regards as suitable for the person.
- (2) The cessation occurs:
 - (a) if the person has been required to enter into a Special Benefit Activity Agreement but has failed to enter that agreement—when the person so failed; or

(b) in any other case—when the person has entered into such an agreement.

30 Subsection 731L(3)

Omit “731E, 731F, 731JA or 731K”, substitute “731DA, 731DB, 731E, 731F or 731JA”.

31 After subsection 731L(3)

Insert:

(3A) If, under section 731K, a person is not required to satisfy the activity test, subsections (1) and (2) apply to the person only if subsection 731KA(1) applies to the person.

32 Subsections 731M(1) to (1B)

Repeal the subsections, substitute:

- (1) Subject to subsection (2) and to sections 731N to 731Q, a Special Benefit Activity Agreement with a person is to require the person to undertake one or more activities that the Secretary regards as suitable for the person.
- (1A) However, an agreement must not require the person to undertake an activity of a kind that the Secretary determines under subsection (1B).
- (1B) The Secretary must determine, by legislative instrument, kinds of activities that agreements must not require persons to undertake.
- (1C) To avoid doubt, a determination under subsection (1B) does not limit the Secretary’s discretion to exclude other kinds of requirements from a particular agreement under subsection (1).

33 Application of subsection 731M(1A)

Subsection 731M(1A) of the *Social Security Act 1991* as amended by this Act does not apply to any Special Benefit Activity Agreement entered into before the commencement of this item.

34 At the end of subsection 731M(2)

Add:

; or (d) the person is at least 50 years of age and is not a person to whom subsection 28(4) applies.

35 At the end of subsection 731M(2)

Add:

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

36 Paragraph 731M(5)(a)

Repeal the paragraph, substitute:

- (a) the person's education, experience, skills and age;
- (aa) the impact of any disability, illness, mental condition or physical condition of the person on the person's ability to work, to look for work or to participate in training activities;

37 Paragraph 731M(5)(e)

Omit “, by reference to what constitutes unreasonably difficult commuting for the purposes of paragraph 731B(1)(g)”.

38 Subsections 731M(6A) to (6C)

Repeal the subsections.

39 Section 731N

Repeal the section, substitute:

731N Special Benefit Activity Agreements—principal carers

- (1) A Special Benefit Activity Agreement that:
 - (a) is between the Secretary and a person who is the principal carer of at least one child; and
 - (b) requires the person to undertake, as an activity, looking for part-time work that the Secretary regards as suitable; must require the person to undertake looking for such part-time work of at least the appropriate number of hours per week.
- Note: For *principal carer* see subsections 5(15) to (24).
- (2) The appropriate number of hours per week is:
 - (a) 15; or
 - (b) such other number as the Secretary determines to be appropriate having regard to the person's circumstances.

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

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

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

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

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

- (1) The Secretary may, by notice given to a person whom a Special Benefit Activity Agreement requires to participate in an approved program of work for income support payment, revoke the requirement to participate in the program if the Secretary:
- (a) is satisfied that the person or the person's partner has income; or
 - (b) forms the opinion that:
 - (i) it has been established that there is medical evidence that the person has an illness, disability or injury that would be aggravated by the conditions in which the work would be performed; or
 - (ii) performing the work in the conditions in which the work would be performed would constitute a risk to health or safety or would contravene a law of the Commonwealth, a State or a Territory relating to occupational health and safety; or
 - (c) is satisfied that the person is at least 50 years of age and is not a person to whom subsection 28(4) applies.

- (2) Upon the Secretary so notifying the person, the requirement is taken to have been revoked with effect from the day specified in the notice.

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

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

40 Paragraph 736(1)(d)

Omit “take reasonable steps to”.

41 Subsection 736(2)

Omit “takes reasonable steps to comply with”, substitute “complies with”.

42 Paragraph 737(3)(a)

Omit “731A or”.

Part 2—Compliance

Social Security Act 1991

43 Subdivision C of Division 1 of Part 2.15 of Chapter 2

Repeal the Subdivision, substitute:

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

740 Special benefit participation failures

- (1) A person who is a nominated visa holder commits a *special benefit participation failure* if the person:
 - (a) fails to comply with a requirement:
 - (i) that was notified to the person under subsection 63(2) or 64(2) of the Administration Act; and
 - (ii) that was reasonable; and
 - (iii) the notification of which included a statement to the effect that a failure to comply with the requirement could constitute a special benefit participation failure; or
 - (b) fails to satisfy the activity test; or
 - (c) fails to comply with a requirement to enter into a Special Benefit Activity Agreement; or
 - (d) fails to comply with a term of a Special Benefit Activity Agreement between the Secretary and the person; or
 - (e) fails to attend a job interview; or
 - (f) fails:
 - (i) to commence, complete or participate in an approved program of work for income support payment that the person is required to undertake; or
 - (ii) to comply with the conditions of such a program; or
 - (g) fails to continue his or her involvement in a labour market program because he or she:
 - (i) voluntarily ceases to take part in the program; or
 - (ii) is dismissed from the program for misconduct; or

- (h) is issued with a notice under subsection 741(1) and fails to comply with it within the period specified in the notice; or
 - (i) fails to comply with subsection 741(2); or
 - (j) fails to comply with a requirement included in a Special Benefit Activity Agreement between the Secretary and the person to:
 - (i) undertake a certain number of job searches per fortnight; and
 - (ii) keep a record of the person's job searches in a document referred to in the agreement as a job seeker diary; and
 - (iii) return the job seeker diary to the Department at the end of the period specified in the agreement; or
 - (k) fails to comply with a requirement to undertake another activity referred to in paragraph 742(1)(b).
- (2) Despite subsection (1), a failure of a kind referred to in that subsection is not a special benefit participation failure if the person satisfies the Secretary that the person had a reasonable excuse for the failure.
- (2A) The Secretary must, by legislative instrument, determine matters that the Secretary must take into account in deciding whether, for the purposes of subsection (2), a person had a reasonable excuse for committing a special benefit participation failure.
- (2B) To avoid doubt, a determination under subsection (2A) does not limit the matters that the Secretary may take into account in deciding whether, for the purposes of subsection (2), a person had a reasonable excuse for committing the special benefit participation failure referred to in subsection (1).
- (3) Despite subsection (1), if a failure of a kind referred to in that subsection occurs in an instalment period of the person in which the person has already committed a special benefit participation failure, the failure is not a special benefit participation failure if:
- (a) the instalment period is the person's first instalment period for special benefit; or
 - (b) the instalment period is not the person's first instalment period for special benefit, and:
 - (i) the person did not commit a special benefit participation failure in the immediately preceding instalment period of the person; or

- (ii) in respect of each special benefit participation failure that the person committed in the immediately preceding instalment period of the person, the person acted in accordance with a requirement of the Secretary notified in respect of that failure.
- (4) Paragraph (1)(f) does not apply to a failure if:
 - (a) the person is under 60; and
 - (b) a determination under paragraph 28(4)(b) is in force in relation to the person.
- (5) Paragraph (1)(j) does not limit the scope of paragraph (1)(d).

741 Requiring a person to apply for job vacancies

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

742 Allowance not payable because of special benefit participation failure

- (1) A special benefit is not payable to a person, for the period starting in accordance with section 743 and ending in accordance with section 744, if:
 - (a) the person commits a special benefit participation failure; and
 - (b) the Secretary requires the person:

- (i) to comply with the requirement, or undertake the activity, to which the special benefit participation failure relates; or
- (ii) to comply with a particular requirement, or undertake a particular activity, in place of the requirement or activity to which the failure relates;
during the participation failure instalment period for the failure, or at a particular time during that period; and
- (c) the person fails to comply with the requirement.

However, paragraphs (b) and (c) do not apply in relation to a special benefit participation failure of a kind referred to in paragraph 740(1)(h), (i) or (j).

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

- (c) otherwise—the next instalment period of the person to start after the day on which the Secretary first became aware that the person committed the failure.
- (4) This section does not apply to a special benefit participation failure if section 745 applies to the failure.

743 When the period of non-payment starts

The period for which special benefit is not payable to the person because of section 742 is taken to have started at the start of the participation failure instalment period for the special benefit participation failure.

744 When the period of non-payment ends

The period for which special benefit is not payable to the person because of section 742 ends when:

- (a) in accordance with a requirement of the Secretary that the person comply with the requirement, or undertake the activity, to which the special benefit participation failure related, the person has complied with the requirement or undertaken the activity; or
- (b) in accordance with a requirement of the Secretary that the person undertake another activity in place of the requirement or activity to which the special benefit participation failure related, the person has undertaken the other activity; or
- (c) in accordance with a requirement of the Secretary that the person comply with another requirement in place of the requirement or activity to which the special benefit participation failure related, the person has complied with the other requirement.

Subdivision CA—Situations where allowance not payable because of repeated or more serious failure

745 Allowance not payable because of repeated or more serious failure

- (1) A special benefit is not payable to a person, for the period of 8 weeks starting in accordance with section 745A, if the person:

- (a) commits a special benefit participation failure (the *repeated failure*), having committed special benefit participation failures (the *earlier failures*) on 2 or more other occasions during the period of 12 months preceding that failure; or
 - (b) is unemployed due, either directly or indirectly, to a voluntary act of the person; or
 - (c) is unemployed due to the person's misconduct as a worker; or
 - (d) has refused or failed, without reasonable excuse, to accept a suitable offer of employment; or
 - (e) fails:
 - (i) to commence, complete or participate in an approved program of work for income support payment that the person is required to undertake; or
 - (ii) to comply with the conditions of such a program.
- (1A) The Secretary must, by legislative instrument, determine matters that the Secretary must take into account in deciding whether, for the purposes of paragraph (1)(d), a person had a reasonable excuse for refusing or failing to accept a suitable offer of employment.
- (1B) To avoid doubt, a determination under subsection (1A) does not limit the matters that the Secretary may take into account in deciding whether, for the purposes of paragraph (1)(d), a person had a reasonable excuse for refusing or failing to accept a suitable offer of employment referred to in that paragraph.
- (2) For the purposes of paragraph (1)(a), disregard any earlier failure that is a failure to which subsection 742(1) does not apply because of subsection 742(2).
- (3) Subsection (1) does not apply in relation to the repeated failure if the Secretary is for any other reason satisfied that subsection (1) should not apply to the failure.
- (4) Paragraph (1)(b) does not apply if the Secretary is satisfied that the person's voluntary act was reasonable.
- (5) Paragraph (1)(e) applies only if:
 - (a) the person is under 60; and
 - (b) a determination under paragraph 28(4)(b) is in force in relation to the person.

745A When the period of non-payment starts

- (1) The period for which special benefit is not payable to the person because of paragraph 745(1)(a) is taken to start, or to have started:
 - (a) if the repeated failure is a failure of a kind referred to in paragraph 740(1)(h), (i) or (j)—at the start of the participation failure instalment period for the repeated failure; or
 - (b) if paragraph (a) of this subsection does not apply and the repeated failure occurs during a participation failure instalment period for an earlier failure—at the start of the participation failure instalment period for the earlier failure; or
 - (c) otherwise—at the start of the next instalment period of the person to start after the day on which the Secretary first became aware that the person committed the failure.

Note: For *participation failure instalment period* see subsection 742(3).

- (2) The period for which special benefit is not payable to the person because of section 745 (other than because of paragraph 745(1)(a)) starts on the day the Secretary determines that section 745 applies to the person.
- (3) However, if:
 - (a) section 745 would not apply to the person but for the application of paragraph 745(1)(b) or (c), or both; and
 - (b) at the time of the voluntary act or misconduct in question, the person was not receiving special benefit;the period for which special benefit is not payable to the person starts at the time the person became unemployed as a result of the voluntary act or misconduct.

44 Saving provision relating to activity test breaches

- (1) If:
 - (a) as a result of an activity test breach committed by the person before the commencement of this item, an activity test penalty period applied to the person under Subdivision C of Division 1 of Part 2.15 of the *Social Security Act 1991*; and
 - (b) on that commencement, the activity test penalty period had not ended;

the activity test penalty period continues to apply to the person after that commencement as if that Subdivision had not been repealed by this Act.

(2) In this item:

activity test breach means any failure, voluntary act or misconduct committed by the person as a result of which an activity test penalty period applied to the person, before the commencement of this item, under Subdivision C of Division 1 of Part 2.15 of the *Social Security Act 1991*.

45 Transitional provision relating to repeated breaches

(1) The reference in paragraph 745(1)(a) of the *Social Security Act 1991*, as amended by this Act, to special benefit participation failures committed by a person during the period of 12 months preceding a special benefit participation failure includes a reference to any activity test failures committed by the person:

- (a) during that period of 12 months; and
- (b) before the commencement of this item.

(2) In this item:

activity test failure means any failure committed by the person as a result of which an activity test penalty period applied to the person, before the commencement of this item, under section 740, 741 or 742 of the *Social Security Act 1991*.

46 Section 745H

Repeal the section, substitute:

745H Situations where special benefit not payable for failure to comply with certain requirements

Special benefit is not payable to a person who is a nominated visa holder if the person refuses or fails, without reasonable excuse, to comply with a requirement made of the person under section 67, 68 or 192 of the Administration Act.

47 Saving provision relating to administrative breaches

(1) If:

- (a) as a result of an administrative breach committed by the person before the commencement of this item, an

administrative breach rate reduction period applied to the person under section 745H of the *Social Security Act 1991*; and

- (b) on that commencement, the administrative breach rate reduction period had not ended;

the administrative breach rate reduction period continues to apply to the person after that commencement as if that section had not been repealed by this Act.

- (2) In this item:

administrative breach means any refusal or failure by the person as a result of which an administrative breach rate reduction period applied to the person, before the commencement of this item, under section 745H of the *Social Security Act 1991*.

48 Subdivision A of Division 4 of Part 2.15 of Chapter 2 (heading)

Repeal the heading.

49 Subdivision B of Division 4 of Part 2.15 of Chapter 2 (heading)

Repeal the heading.

50 Subdivisions C and D of Division 4 of Part 2.15 of Chapter 2

Repeal the Subdivisions.

51 Saving provision relating to activity test breach rate reductions

- (1) If:

- (a) as a result of an activity test breach committed by the person before the commencement of this item, an activity test breach rate reduction period applied to the person under Subdivision C of Division 1 of Part 2.15 of the *Social Security Act 1991*; and
- (b) on that commencement, the activity test breach rate reduction period had not ended;

Subdivision C of Division 4 of Part 2.15 of the *Social Security Act 1991* continues to apply to the activity test breach rate reduction period after that commencement as if it had not been repealed by this Act.

- (2) The fact that an activity test breach rate reduction period is applying to the person because of this item does not prevent the application to the person, at the same time, of a period during which special benefit is not payable because of Subdivision C or CA of Division 1 of Part 2.15 of the *Social Security Act 1991* as amended by this Act.
- (3) In this item:
activity test breach means any failure, voluntary act or misconduct committed by the person as a result of which an activity test penalty period applied to the person, before the commencement of this item, under Subdivision C of Division 4 of Part 2.15 of the *Social Security Act 1991*.

52 Saving provision relating to administrative breaches

- (1) If:
- (a) as a result of an administrative breach committed by the person before the commencement of this item, an administrative breach rate reduction period applied to the person under:
 - (i) section 745H of the *Social Security Act 1991*; or
 - (ii) subsection 63(5) or 64(4) of the *Social Security (Administration) Act 1999*; and
 - (b) on that commencement, the administrative breach rate reduction period had not ended;

Subdivision D of Division 4 of Part 2.15 of the *Social Security Act 1991* continues to apply to the administrative breach rate reduction period after that commencement as if it had not been repealed by this Act.

- (2) The fact that an administrative breach rate reduction period is applying to the person because of this item does not prevent the application to the person, at the same time, of a period during which special benefit is not payable because of Subdivision C or CA of Division 1 of Part 2.15 of the *Social Security Act 1991* as amended by this Act.
- (3) In this item:

administrative breach means any refusal, failure or non-compliance by the person as a result of which an administrative breach rate reduction period applied to the person, before the commencement of this item, under:

- (a) section 745H of the *Social Security Act 1991*; or
- (b) subsection 63(5) or 64(4) of the *Social Security (Administration) Act 1999*.

**53 Subdivision E of Division 4 of Part 2.15 of Chapter 2
(heading)**

Repeal the heading.

Part 3—Rate of special benefit

Social Security Act 1991

54 At the end of section 746

Add:

- (3) In working out, for the purposes of subsection (2), the rate at which youth allowance would be payable to a person, disregard any amount by which the rate would be increased because of point 1067G-B3A of the Youth Allowance Rate Calculator.
- (4) In working out, for the purposes of subsection (2), the rate at which newstart allowance would be payable to a person, disregard any amount by which the rate would be increased because of point 1068-B5 of Benefit Rate Calculator B.

Schedule 11—Mobility allowance

Social Security Act 1991

1 Subsection 1035(1)

After “mobility allowance”, insert “at the rate specified in subsection 1044(1)”.

Note: The heading to section 1035 is replaced by the heading “**Qualification for mobility allowance (rate specified in subsection 1044(1))**”.

2 After section 1035

Insert:

1035A Qualification for mobility allowance (rate specified in subsection 1044(1A))

General principle

- (1) A person is qualified for a mobility allowance at the rate specified in subsection 1044(1A) if:
 - (a) the person is a handicapped person; and
 - (b) the Secretary is of the opinion that the person is unable to use public transport without substantial assistance (either permanently or for an extended period) due to the person’s physical or mental disability; and
 - (c) the person is an Australian resident; and
 - (d) the person satisfies one or more of subsections (2) to (7).

Disability support pension

- (2) A person satisfies this subsection if:
 - (a) at a particular time, the person’s hours of work per week, on wages that are at or above the relevant minimum wage increase to at least 30 hours per week; and
 - (b) immediately before that time, the person was receiving disability support pension as a result of a claim made before 1 July 2006; and

- (c) the person ceased to be qualified for disability support pension because of the increase in the number of hours worked; and
- (d) since the time mentioned in paragraph (a), the person:
 - (i) has been working at least 30 hours per week on wages that are at or above the relevant minimum wage; and
 - (ii) has not received another income support payment; and
- (e) the person is required to travel to and from the person's home for the purpose of performing that work.

However, this subsection ceases to apply to a transitional DSP applicant from the date of effect of the first decision about the person's capacity to perform work made on or after 1 July 2006 following a review of the person's capacity to perform work.

- (3) A person satisfies this subsection if:
 - (a) the person is receiving disability support pension; and
 - (b) one or both of the following applies to the person:
 - (i) the person is working for at least 15 hours per week on wages that are at or above the relevant minimum wage;
 - (ii) the person is undertaking job search activities under an agreement between the Secretary and a service provider nominated by the Secretary of the Employment Department for work of at least 15 hours per week on wages that are at or above the relevant minimum wage; and
 - (c) if the person is working as mentioned in subparagraph (b)(i)—the person is required to travel to and from the person's home for the purpose of performing the work; and
 - (d) if the person is undertaking job search activities as mentioned in subparagraph (b)(ii)—the person is required to travel to and from the person's home for the purpose of undertaking those activities.
- (4) A person satisfies this subsection if:
 - (a) subsection (2) does not apply (or has ceased to apply) to the person; and
 - (b) the person is working for at least 15 hours per week on wages that are at or above the relevant minimum wage; and

- (c) immediately before the person started that work, the person was receiving disability support pension; and
 - (d) the person ceased to be qualified for disability support pension because of the number of hours worked; and
 - (e) since starting that work, the person:
 - (i) has been working at least 15 hours per week on wages that are at or above the relevant minimum wage; and
 - (ii) has not received another income support payment; and
 - (f) the person is required to travel to and from the person's home for the purpose of performing that work.
- (5) A person satisfies this subsection if:
- (a) subsection (2) does not apply (or has ceased to apply) to the person; and
 - (b) at a particular time, the person starts to earn income from work or the person's income from work increases; and
 - (c) immediately before that time, the person was receiving disability support pension; and
 - (d) the disability support pension ceased to be payable to the person because the rate of the pension is nil due to the income, or increased income, the person earned from the work; and
 - (e) since the time mentioned in paragraph (b), the person has been working at least 15 hours per week on wages that are at or above the relevant minimum wage; and
 - (f) the person is required to travel to and from the person's home for the purpose of performing that work; and
 - (g) since the time mentioned in paragraph (b), no income support payment has been payable to the person because the rate of the payment is nil due to the income, or increased income, the person has been earning from the work.

Newstart allowance or youth allowance recipients

- (6) A person satisfies this subsection if:
- (a) the person:
 - (i) is receiving newstart allowance; or
 - (ii) is receiving youth allowance, but is not undertaking full-time study and is not a new apprentice; and
 - (b) one or both of the following applies to the person:

- (i) the person is working for at least 15 hours per week on wages that are at or above the relevant minimum wage;
- (ii) the person is undertaking job search activities under an agreement between the Secretary and a service provider nominated by the Secretary of the Employment Department for work of at least 15 hours per week on wages that are at or above the relevant minimum wage; and
- (c) if the person is working as mentioned in subparagraph (b)(i)—the person is required to travel to and from the person’s home for the purpose of performing the work; and
- (d) if the person is undertaking job search activities as mentioned in subparagraph (b)(ii)—the person is required to travel to and from the person’s home for the purpose of undertaking those activities.

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

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

- (7) A person satisfies this subsection if:
- (a) at a particular time, the person starts to earn income from work or the person’s income from work increases; and
 - (b) immediately before that time, the person:
 - (i) was receiving newstart allowance; or
 - (ii) was receiving youth allowance, but was not undertaking full-time study and was not a new apprentice; and
 - (c) the newstart allowance or youth allowance ceased to be payable to the person because the rate of the allowance was nil due to the income, or increased income, the person earned from his or her work; and
 - (d) since the time mentioned in paragraph (a), the person has been working at least 15 hours per week on wages that are at or above the relevant minimum wage; and
 - (e) the person is required to travel to and from the person’s home for the purpose of performing that work; and
 - (f) since the time mentioned in paragraph (a), no income support payment has been payable to the person because the rate of the payment is nil due to the income, or increased income, the person has been earning from the work.

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

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

3 Before section 1037

Insert:

1036 Mobility allowance not payable at 2 rates

Mobility allowance at the rate specified in subsection 1044(1) is not payable to a person while mobility allowance at the rate specified in subsection 1044(1A) is payable to the person.

4 Subsection 1044(1)

After “mobility allowance”, insert “for a person who qualifies for the allowance under section 1035”.

5 After subsection 1044(1)

Insert:

(1A) The fortnightly rate of mobility allowance for a person who qualifies for the allowance under section 1035A is \$100.

6 Paragraph 1046(1)(a)

After “mobility allowance”, insert “at the rate specified in subsection 1044(1)”.

7 Paragraph 1046(2)(a)

After “mobility allowance”, insert “at the rate specified in subsection 1044(1)”.

8 After subsection 1046(2)

Insert:

(2A) This section applies to a person if:

- (a) a mobility allowance is payable to a person at the rate specified in subsection 1044(1A); and
- (b) the person would, apart from this section, cease to be qualified for the mobility allowance because he or she ceases, in the Secretary’s opinion, to satisfy one or more of subsections 1035A(2), (3), (4), (5), (6) and (7).

(2B) This section applies to a person if:

- (a) a mobility allowance is payable to a person at the rate specified in subsection 1044(1A) because the person satisfies one or both of subsections 1035A(6) and (7); and
- (b) the person would, apart from this section, cease to be qualified for the mobility allowance because he or she ceases, in the Secretary’s opinion:
 - (i) to receive newstart allowance for a reason other than the application of section 601 or 605 of this Act or section 81 of the Administration Act; or
 - (ii) to receive youth allowance for a reason other than the application of section 541A, 544A, 550B, 551 or 553B of this Act or section 81 of the Administration Act; or
 - (iii) to undertake job search activities, under an agreement between the Secretary and a service provider nominated by the Secretary of the Employment Department, for work of at least 15 hours per week on wages that are at or above the relevant minimum wage.

9 Paragraph 1046(4)(b)

Omit “and (2)”, substitute “, (2), (2A) and (2B)”.

10 Section 1190 (table item 57)

Repeal the item, substitute:

Mobility allowance			
57.	mobility allowance for a person qualified under section 1035	MA rate (standard)	[subsection 1044(1)]
58.	mobility allowance for a person qualified under section 1035A	MA rate (increased)	[subsection 1044(1A)]

11 Subsection 1191(1) (table item 34)

Omit “MA rate”, substitute “MA rate (standard)”.

12 Subsection 1191(1) (after table item 34)

Insert:

Schedule 11 Mobility allowance

34A.	MA rate (increased)	1 January	June	highest June quarter before the reference quarter (but not earlier than June 2006 quarter)	\$0.10
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13 Subsection 1192(3)

After “MA rate”, insert “(standard)”.

14 After subsection 1192(3)

Insert:

(3A) The first indexation of the MA rate (increased) under subsection (1) is to take place on 1 January 2007.

Schedule 12—Advance payments of benefit PP (partnered)

Social Security Act 1991

1 Subsection 1061EE(1)

After “widow allowance,” insert “benefit PP (partnered),”.

Note: The heading to section 1061EE is replaced by the heading “**Amount of advance payment—certain other social security payments**”.

2 Subsection 1061EE(4)

After “advance payment of”, insert “benefit PP (partnered),”.

Note: The heading to subsection 1061EE(4) is replaced by the heading “*Formula for maximum amount of advance: benefit PP (partnered), youth allowance, austudy payment or newstart allowance*”.

3 Subsection 1061EE(6) (definition of fortnightly payment rate)

Repeal the definition (not including the example), substitute:

fortnightly payment rate means:

- (a) in relation to benefit PP (partnered)—the fortnightly rate of that benefit payable under the Benefit PP (Partnered) Rate Calculator to the person on the last payday before the application for the advance payment was made, excluding any amount payable by way of remote area allowance; or
- (b) in relation to widow allowance, youth allowance, austudy payment, mature age allowance under Part 2.12B or newstart allowance—the fortnightly rate of that benefit payable under Benefit Rate Calculator B to the person on the last payday before the application for the advance payment was made, excluding any amount payable by way of remote area allowance.

4 Subsection 1206H(3)

Repeal the subsection.

5 Subsection 1206Q(3)

Repeal the subsection.

6 Paragraph 1224E(1)(d)

Omit “or benefit PP (partnered)”.

7 Application of items 1, 2 and 3

The amendments made by items 1, 2 and 3 of this Schedule apply to applications for advance payment of benefit PP (partnered) made on or after 20 September 2006.

Schedule 13—Pensioner education supplement

Social Security Act 1991

1 Subparagraph 1061PE(4)(d)(i)

Omit “or a pension PP (single)”, substitute “, a pension PP (single), a youth allowance or a newstart allowance”.

2 After paragraph 1061PJ(2)(d)

Insert:

- (da) subject to subsection (2A), a youth allowance;
- (db) subject to subsection (2B), a newstart allowance;

3 After subsection 1061PJ(2)

Insert:

(2A) Paragraph (2)(da) only applies if:

- (a) the person receiving the payment:
 - (i) has a partial capacity to work; and
 - (ii) on the day (being a day occurring on or after 1 July 2006) immediately before the person last qualified for a youth allowance, was a transitional DSP applicant and was receiving a disability support pension; and
 - (iii) on that day ceased to be qualified for that disability support pension because he or she no longer had a continuing inability to work within the meaning of section 94; and
 - (iv) on that day was qualified for a pensioner education supplement in relation to a particular course of education or study; or
- (b) the person receiving the payment:
 - (i) is the principal carer of at least one child and is not a member of a couple; and
 - (ii) on the day (being a day occurring on or after 1 July 2006) immediately before the person last qualified for a

youth allowance, was receiving a pension (PP) single;
and

- (iii) on that day ceased to be qualified for a parenting payment because he or she no longer had a PP child for the reason that his or her youngest dependent child had turned 8; and
- (iv) on that day was qualified for a pensioner education supplement in relation to a particular course of education or study;

and the person has:

- (c) at all times since that day, been qualified both for:
 - (i) a youth allowance; and
 - (ii) a pensioner education supplement in relation to that particular course of education or study; and
- (d) at no time since that day, either undertaken full-time study or been a new apprentice.

Note 1: For *partial capacity to work* see section 16B.

Note 2: For *transitional DSP applicant* see subsection 23(1).

Note 3: For *principal carer* see subsections 5(15) to (24).

Note 4: For *undertaking full-time study* see section 541B.

Note 5: For *new apprentice* see subsection 23(1).

(2B) Paragraph (2)(db) only applies if:

- (a) the person receiving the payment:
 - (i) has a partial capacity to work; and
 - (ii) on the day (being a day occurring on or after 1 July 2006) immediately before the person last qualified for a newstart allowance, was a transitional DSP applicant and was receiving a disability support pension, or was receiving a youth allowance in respect of which subsection (2A) applied; and
 - (iii) if he or she was receiving a disability support pension—on that day ceased to be qualified for it because he or she no longer had a continuing inability to work within the meaning of section 94; and
 - (iv) on that day was qualified for a pensioner education supplement in relation to a particular course of education or study; or
 - (b) the person receiving the payment:
-

- (i) is the principal carer of at least one child and is not a member of a couple; and
- (ii) on the day (being a day occurring on or after 1 July 2006) immediately before the person last qualified for a newstart allowance, was receiving a pension (PP) single, or was receiving a youth allowance in respect of which subsection (2A) applied; and
- (iii) if he or she was receiving a pension (PP) single—on that day ceased to be qualified for a parenting payment because he or she no longer had a PP child for the reason that his or her youngest dependent child had turned 8; and
- (iv) on that day was qualified for a pensioner education supplement in relation to a particular course of education or study;

and the person has, at all times since that day, been qualified both for:

- (c) a newstart allowance; and
- (d) a pensioner education supplement in relation to that particular course of education or study.

Note 1: For *partial capacity to work* see section 16B.

Note 2: For *transitional DSP applicant* see subsection 23(1).

Note 3: For *principal carer* see subsections 5(15) to (24).

4 After subparagraph 1061PZG(1)(b)(i)

Insert:

- (ia) a youth allowance or newstart allowance under this Act, in a case where the person has a partial capacity to work;

5 At the end of subsection 1061PZG(1)

Add:

Note 1: Recipients of youth allowance or newstart allowance only qualify for pensioner education supplement in the limited circumstances set out in subsection 1061PJ(2A) or (2B).

Note 2: For *partial capacity to work* see section 16B.

Schedule 14—Telephone allowance

Part 1—Amendments commencing on Royal Assent

Social Security Act 1991

1 Paragraphs 1061Q(3)(b) and (3A)(e)

Omit “(whether or not the kind of payment received has changed over the period and whether the period or any part of it occurred before or after the commencement of this paragraph)”.

2 Subsection 1061Q(4)

Repeal the subsection, substitute:

(3C) If:

- (a) a person has been receiving one of the following:
 - (i) a social security pension;
 - (ii) a mature age allowance under Part 2.12B; and
- (b) the person ceases to receive the pension or allowance because the person or the person’s partner earns, derives or receives, or is taken to earn, derive or receive, employment income; and
- (c) the person is a telephone subscriber;
the person is qualified for a telephone allowance:
- (d) if the person has been receiving a disability support pension—for a period of 12 months from the date on which the person ceases to receive the pension; or
- (e) in any other situation mentioned in paragraph (a)—for a period of 6 months from the date on which the person ceases to receive the pension or allowance.

Note 1: For *telephone subscriber* see subsection (5).

Note 2: Subsection 23(4A) can affect when a person is taken to be receiving the pension or allowance.

(3F) If:

- (a) a person has been receiving one of the following social security benefits:
 - (i) newstart allowance;

- (ii) widow allowance;
 - (iii) partner allowance;
 - (iv) sickness allowance;
 - (v) special benefit;
 - (vi) benefit PP (partnered); and
- (b) the person ceases to receive the benefit because the person or the person's partner earns, derives or receives, or is taken to earn, derive or receive, employment income; and
- (c) the person has turned 60; and
- (d) immediately before the person ceases to receive the benefit, the person had been receiving income support payments in respect of a continuous period of at least 9 months; and
- (e) the person is a telephone subscriber;
- the person is qualified for a telephone allowance for a period of 6 months from the date on which the person ceases to receive the benefit.

Note 1: For *telephone subscriber* see subsection (5).

Note 2: Subsection 23(4A) can affect when a person is taken to be receiving the benefit.

(3G) If:

- (a) a person has been receiving partner allowance or benefit PP (partnered); and
- (b) the person ceases to receive the benefit because the person or the person's partner earns, derives or receives, or is taken to earn, derive or receive, employment income; and
- (c) the person's partner has turned 60; and
- (d) the person's partner:
 - (i) is receiving newstart allowance or sickness allowance;
or
 - (ii) was receiving newstart allowance or sickness allowance immediately before the person ceased to receive partner allowance or benefit PP (partnered); and
- (e) immediately before the person ceases to receive the benefit, the person's partner had been receiving income support payments in respect of a continuous period of at least 9 months; and
- (f) the person is a telephone subscriber;

the person is qualified for a telephone allowance for a period of 6 months from the date on which the person ceases to receive the benefit.

Note 1: For *telephone subscriber* see subsection (5).

Note 2: Subsection 23(4A) can affect when a person is taken to be receiving the benefit.

- (3J) A reference in paragraph (3C)(b), (3F)(b) or (3G)(b) to the employment income of a person is a reference to that person's employment income either alone or in combination with any other ordinary income earned, derived or received, or taken to have been earned, derived or received, by the person or the person's partner.
- (4) For the purposes of paragraph (3)(b), (3A)(e), (3F)(d) or (3G)(e), it does not matter:
- (a) whether the kind of payment received has changed over the period in question; or
 - (b) whether the period or any part of it occurred before or after the commencement of that paragraph.

Part 2—Amendments commencing on 1 July 2006

Social Security Act 1991

3 After subsection 1061Q(1)

Insert:

- (2) A person is qualified for a telephone allowance if:
- (a) the person is receiving a youth allowance; and
 - (b) the person is not undertaking full-time study; and
 - (c) the person is not a new apprentice; and
 - (d) the person:
 - (i) has a partial capacity to work; or
 - (ii) is the principal carer of at least one child and is not a member of a couple; and
 - (e) the person is a telephone subscriber.

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

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

Note 3: For *partial capacity to work* see section 16B.

Note 4: For *principal carer* see subsections 5(15) to (24).

Note 5: For *telephone subscriber* see subsection (5).

- (2A) A person is qualified for a telephone allowance if:
- (a) the person is receiving a newstart allowance; and
 - (b) the person:
 - (i) has a partial capacity to work; or
 - (ii) is the principal carer of at least one child and is not a member of a couple; and
 - (c) the person is a telephone subscriber.

Note 1: For *partial capacity to work* see section 16B.

Note 2: For *principal carer* see subsections 5(15) to (24).

Note 3: For *telephone subscriber* see subsection (5).

- (2B) A person is qualified for a telephone allowance if:
- (a) the person is:

- (i) receiving a youth allowance while the person is not undertaking full-time study and is not a new apprentice; or
- (ii) receiving a newstart allowance; and
- (b) the person is the principal carer of at least one child and is a member of a couple; and
- (c) the person is a telephone subscriber; and
- (d) the person's partner has turned 60; and
- (e) the person's partner is receiving newstart allowance or sickness allowance; and
- (f) the person's partner has been receiving income support payments in respect of a continuous period of at least 9 months.

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

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

Note 3: For *principal carer* see subsections 5(15) to (24).

Note 4: For *telephone subscriber* see subsection (5).

Note 5: For *income support payment* see subsection 23(1).

Note 6: Subsection 23(4A) can affect when a person is taken to be receiving the pension or allowance.

4 After subsection 1061Q(3C)

Insert:

- (3D) Subsection (3C) applies to a person who:
- (a) has been receiving a youth allowance while the person:
 - (i) has had a partial capacity to work; and
 - (ii) has not been undertaking full-time study; and
 - (iii) has not been a new apprentice; or
 - (b) has been receiving a newstart allowance while the person has had a partial capacity to work;
- as if the person had been receiving a disability support pension.

Note 1: For *partial capacity to work* see section 16B.

Note 2: For *undertaking full-time study* see section 541B.

Note 3: For *new apprentice* see subsection 23(1).

- (3E) Subsection (3C) applies to a person who:
- (a) has been receiving a youth allowance while the person:

- (i) has been the principal carer of at least one child; and
 - (ii) has not been a member of a couple; and
 - (iii) has not had a partial capacity to work; and
 - (iv) has not been undertaking full-time study; and
 - (v) has not been a new apprentice; or
- (b) has been receiving a newstart allowance while the person:
- (i) has been the principal carer of at least one child; and
 - (ii) has not been a member of a couple; and
 - (iii) has not had a partial capacity to work;
- as if the person had been receiving pension PP (single).

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

Note 2: For *partial capacity to work* see section 16B.

Note 3: For *undertaking full-time study* see section 541B.

Note 4: For *new apprentice* see subsection 23(1).

5 After subsection 1061Q(3G)

Insert:

- (3H) Subsection (3G) applies to a person who:
- (a) has been receiving youth allowance while the person:
 - (i) has been the principal carer of at least one child; and
 - (ii) has been a member of a couple; and
 - (iii) has not been undertaking full-time study; and
 - (iv) has not been a new apprentice; or
 - (b) has been receiving newstart allowance while the person:
 - (i) has been the principal carer of at least one child; and
 - (ii) has been a member of a couple;
- as if the person had been receiving partner allowance or benefit PP (partnered).

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

Note 2: For *undertaking full-time study* see section 541B.

Note 3: For *new apprentice* see subsection 23(1).

6 Subsection 1061Q(4)

After “paragraph”, insert “(2B)(f),”.

Schedule 15—Concession cards

Social Security Act 1991

1 After subsection 1061ZA(2)

Insert:

- (2A) Subject to subsection (3), a person is qualified for a pensioner concession card on a day if, on that day:
- (a) the person is receiving a youth allowance; and
 - (b) the person is not undertaking full-time study and is not a new apprentice; and
 - (c) the person:
 - (i) has a partial capacity to work; or
 - (ii) is the principal carer of at least one child and is not a member of a couple.

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

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

Note 3: For *partial capacity to work* see section 16B.

Note 4: For *principal carer* see subsections 5(15) to (24).

- (2B) Subject to subsection (3), a person is qualified for a pensioner concession card on a day if, on that day:
- (a) the person is receiving a newstart allowance; and
 - (b) the person:
 - (i) has a partial capacity to work; or
 - (ii) is the principal carer of at least one child and is not a member of a couple; and
 - (c) the person is not qualified for a pensioner concession card under subsection (2).

Note 1: For *partial capacity to work* see section 16B.

Note 2: For *principal carer* see subsections 5(15) to (24).

2 Subsection 1061ZA(3)

Omit “subsections (1) and (2)”, substitute “subsections (1), (2), (2A) and (2B)”.

3 Subsection 1061ZA(4)

Omit “subsections (1) and (2)”, substitute “subsections (1), (2), (2A) and (2B)”.

4 After paragraph 1061ZC(1)(c)

Insert:

and (ca) the person did not become qualified under section 1061ZEB for a pensioner concession card because of that employment or increase in ordinary income;

5 Subsection 1061ZD(1)

Omit “subsection (5)”, substitute “subsections (5), (5A) and (7)”.

6 After subsection 1061ZD(5)

Insert:

(5A) If, during the period of 52 weeks referred to in subsection (1), a person receives an instalment of:

- (a) a youth allowance while subsection 1061ZA(2A) applies to the person; or
- (b) a newstart allowance while subsection 1061ZA(2B) applies to the person;

that relates to one or more days within that period, the person is not qualified under this section for a pensioner concession card on the day or days in relation to which the person receives the instalment.

7 At the end of section 1061ZD

Add:

(7) This section does not apply in any case where a person is qualified for a pensioner concession card under section 1061ZEB.

8 Subsection 1061ZEA(1)

Omit “or 1061ZE”, substitute “, 1061ZE or 1061ZEB”.

9 Paragraph 1061ZEA(2)(f)

Omit “1061ZA(2)”, substitute “1061ZA(2), (2A) or (2B)”.

10 Subparagraph 1061ZEA(2)(g)(ii)

Omit “1061ZA(2)”, substitute “1061ZA(2), (2A) or (2B)”.

11 After section 1061ZEA

Insert:

1061ZEB Extended qualification rule: persons with a partial capacity to work

- (1) A person is qualified for a pensioner concession card for the period of 52 weeks starting on the day on which this section begins to apply to the person.
 - (2) Subject to subsection (3), this section applies to a person if:
 - (a) either:
 - (i) the person has been receiving a youth allowance while the person was not undertaking full-time study and was not a new apprentice; or
 - (ii) the person has been receiving a newstart allowance; and
 - (b) because there is an increase in the person’s ordinary income from employment (and after any working credit balance of the person is reduced to nil), the youth allowance or newstart allowance ceases to be payable to the person; and
 - (c) at the time of the cessation the person:
 - (i) was qualified for a pensioner concession card because of subsection 1061ZA(2A) or (2B); and
 - (ii) had a partial capacity to work.
- Note 1: For *undertaking full-time study* see section 541B.
- Note 2: For *new apprentice* see subsection 23(1).
- Note 3: For *partial capacity to work* see section 16B.
- (3) This section only applies to a person while the person is in Australia and is an Australian resident.
 - (4) If, during the period of 52 weeks referred to in subsection (1), a person receives an instalment of:
 - (a) a youth allowance while subsection 1061ZA(2A) applies to the person; or
 - (b) a newstart allowance while subsection 1061ZA(2B) applies to the person; or
 - (c) a social security pension;

that relates to one or more days within that period, the person is not qualified under this section for a pensioner concession card on the day or days in relation to which the person receives the instalment.

12 Subsection 1061ZK(5)

After “to a person”, insert “(other than a person who is qualified for a pensioner concession card because of subsection 1061ZA(2A))”.

13 After subsection 1061ZM(1B)

Insert:

(1BA) If the person:

- (a) was an employment-affected person because of receiving youth allowance or newstart allowance; and
- (b) was, on the day on which the person ceased to be an employment-affected person, the principal carer of at least one child; and
- (c) is qualified for a pensioner concession card under section 1061ZEA until a day (the *particular day*);

subsection (1) has effect as if the reference to the period of 26 weeks starting on the day on which the person ceases to be an employment-affected person were a reference to the period starting on the particular day and ending 26 weeks after the person ceases to be an employment-affected person.

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

Schedule 16—Pension Rate Calculators

Part 1—Amendment of Pension Rate Calculator A

Social Security Act 1991

1 Point 1064-A1 (method statement, after step 5)

Insert:

Note:	Module F contains provisions that may apply to working out the ordinary income of a person, and the ordinary income of a partner of the person, for the purposes of disability support pension.
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2 Point 1064-E1 (method statement, step 1, note)

Repeat the note, substitute:

Note 1:	For the treatment of the ordinary income of members of a couple see point 1064-E2.
Note 2:	Module F contains provisions that may apply to working out the ordinary income of a person, and the ordinary income of a partner of the person, for the purposes of disability support pension.

3 At the end of point 1064-E2

Add:

Note: For the purposes of working out a person's disability support pension rate under this Rate Calculator, Module F applies to working out the ordinary incomes of both members of the couple.

4 Section 1064 (after Module E)

Insert:

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

Application of this Module

1064-F1 This Module applies only for the purposes of working out the rate of disability support pension payable to a person. It so applies to

that person and, if the person is a member of a couple, to the person's partner.

Lump sum payments arising from termination of employment

- 1064-F2 Subject to points 1064-F3 to 1064-F14 (inclusive), if:
- (a) a person's employment has been terminated; and
 - (b) as a result the person is entitled to a lump sum payment from the person's former employer;
- the person is taken to have received the lump sum payment on the day on which the person's employment was terminated.

Rolling over lump sum payments

- 1064-F3 If:
- (a) a person's employment has been terminated; and
 - (b) as a result the person is entitled to a lump sum termination payment from the person's former employer; and
 - (c) the person rolls over the lump sum termination payment into an approved deposit fund, a superannuation fund or a deferred annuity;
- the lump sum termination payment is to be disregarded in working out the ordinary income of the person for the purposes of Module E.

Certain leave payments taken to be ordinary income—employment continuing

- 1064-F4 If:
- (a) a person is employed; and
 - (b) the person is on leave for a period; and
 - (c) the person is or was entitled to receive a leave payment (whether as a lump sum payment, as a payment that is one of a series of regular payments or otherwise) in respect of a part or all of a leave period;
- the person is taken to have received ordinary income for a period (the *income maintenance period*) equal to the leave period to which the leave payment entitlement relates.

Certain payments taken to be ordinary income—employment terminated

1064-F5 If:

- (a) a person's employment has been terminated; and
- (b) the person receives a termination payment (whether as a lump sum payment, as a payment that is one of a series of regular payments or otherwise);

the person is taken to have received ordinary income for a period (the **income maintenance period**) equal to the period to which the payment relates.

More than one termination payment on a day

1064-F6 If:

- (a) a person is covered by point 1064-F5; and
- (b) the person receives more than one termination payment on a day;

the income maintenance period is worked out by adding the periods to which the payments relate.

Start of income maintenance period—employment continuing

1064-F7 If a person is covered by point 1064-F4, the income maintenance period starts on the first day of the leave period to which the leave payment entitlement relates.

Start of income maintenance period—employment terminated

1064-F8 If a person is covered by point 1064-F5, the income maintenance period starts, subject to point 1064-F9, on the day on which the person is paid the termination payment.

Commencement of income maintenance period where there is a second termination payment

1064-F9 If:

- (a) a person who is covered by point 1064-F5 is subject to an income maintenance period (the **first period**); and
- (b) the person is paid another termination payment during that period (the **second termination payment**);

the income maintenance period for the second termination payment starts on the day after the end of the first period.

Leave payments or termination payments in respect of periods longer than a fortnight

1064-F10 If:

- (a) a person receives a leave payment or termination payment; and
- (b) the payment is in respect of a period longer than a fortnight; the person is taken to receive in a payment fortnight or part of a payment fortnight an amount calculated by:
 - (c) dividing the amount received by the number of days in the period to which the payment relates (the **daily rate**); and
 - (d) multiplying the daily rate by the number of days in the payment fortnight that are also in the period.

1064-F11 If the Secretary is satisfied that a person is in severe financial hardship because the person has incurred unavoidable or reasonable expenditure while an income maintenance period applies to the person, the Secretary may determine that the whole, or any part, of the period does not apply to the person.

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

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

Note 3: If an income maintenance period applies to a person, then, during that period:

- (a) the pension claimed may not be payable to the person; or
- (b) the amount of the pension payable to the person may be reduced.

When a person receives a leave payment or a termination payment

1064-F12 For the purposes of points 1064-F3 to 1064-F11 (inclusive), a person (the **first person**) is taken to receive a leave payment or termination payment if:

- (a) the payment is made to another person:
 - (i) at the direction of the first person or a court; or
 - (ii) on behalf of the first person; or
 - (iii) for the benefit of the first person; or

- (b) the first person waives or assigns his or her right to receive the payment.

Single payment in respect of different kinds of termination payments

- 1064-F13 If a person who is covered by point 1064-F5 receives a single payment in respect of different kinds of termination payments, then, for the purposes of the application of points 1064-F3 to 1064-F12 (inclusive):
- (a) each part of the payment that is in respect of a different kind of termination payment is taken to be a separate payment; and
 - (b) the income maintenance period in respect of the single payment is worked out by adding the periods to which the separate payments relate.

Definitions

- 1064-F14 In this Module:

leave payment includes a payment in respect of sick leave, annual leave, maternity leave and long service leave.

payment fortnight means a fortnight in respect of which a disability support pension is paid, or would be paid apart from the application of an income maintenance period, to a person.

period to which the payment relates means:

- (a) if the payment is a leave payment—the leave period to which the payment relates; or
- (b) if the payment is a redundancy payment and is calculated as an amount equivalent to an amount of ordinary income that the person would (but for the redundancy) have received from the employment that was terminated—the period for which the person would have received that amount of ordinary income; or
- (c) if the payment is a redundancy payment and paragraph (b) does not apply—the period of weeks (rounded down to the nearest whole number) in respect of which the person would have received ordinary income, from the employment that was terminated, of an amount equal to the amount of the redundancy payment if:

- (i) the person's employment had continued; and
- (ii) the person received ordinary income from the employment at the rate per week at which the person usually received ordinary income from the employment prior to the termination.

redundancy payment does not include a qualifying eligible termination payment within the meaning of Subdivision AA of Division 2 of Part III of the *Income Tax Assessment Act 1936*.

roll-over, in relation to a lump sum leave payment or a lump sum redundancy payment, has the meaning that **roll-over** has in section 27D of the *Income Tax Assessment Act 1936* in relation to an eligible termination payment.

termination payment means:

- (a) a leave payment relating to a person's employment that has been terminated; or
- (b) a redundancy payment.

Part 2—Amendment of Pension Rate Calculator D

Social Security Act 1991

5 Point 1066A-A1 (method statement, after step 5)

Insert:

Note:	Module G contains provisions that may apply to working out, under this Rate Calculator, the ordinary income of a person, and the ordinary income of a partner of the person.
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6 Point 1066A-F1 (method statement, step 1, note)

Repeal the note, substitute:

Note 1:	For the treatment of the ordinary income of members of a couple see point 1066A-F2.
Note 2:	Module G contains provisions that may apply to working out, under this Rate Calculator, the ordinary income of a person, and the ordinary income of a partner of the person.

7 Section 1066A (after Module F)

Insert:

Module G—Payments taken to be ordinary income

Application of this Module

1066A-G1 This Module applies to a person and, if the person is a member of a couple, the person's partner.

Lump sum payments arising from termination of employment

1066A-G2 Subject to points 1066A-G3 to 1066A-G14 (inclusive), if:

- (a) a person's employment has been terminated; and
- (b) as a result the person is entitled to a lump sum payment from the person's former employer;

the person is taken to have received the lump sum payment on the day on which the person's employment was terminated.

Rolling over lump sum payments

1066A-G3 If:

- (a) a person's employment has been terminated; and
- (b) as a result the person is entitled to a lump sum termination payment from the person's former employer; and
- (c) the person rolls over the lump sum termination payment into an approved deposit fund, a superannuation fund or a deferred annuity;

the lump sum termination payment is to be disregarded in working out the ordinary income of the person for the purposes of Module F.

Certain leave payments taken to be ordinary income—employment continuing

1066A-G4 If:

- (a) a person is employed; and
- (b) the person is on leave for a period; and
- (c) the person is or was entitled to receive a leave payment (whether as a lump sum payment, as a payment that is one of a series of regular payments or otherwise) in respect of a part or all of a leave period;

the person is taken to have received ordinary income for a period (the *income maintenance period*) equal to the leave period to which the leave payment entitlement relates.

Certain payments taken to be ordinary income—employment terminated

1066A-G5 If:

- (a) a person's employment has been terminated; and
- (b) the person receives a termination payment (whether as a lump sum payment, as a payment that is one of a series of regular payments or otherwise);

the person is taken to have received ordinary income for a period (the *income maintenance period*) equal to the period to which the payment relates.

More than one termination payment on a day

1066A-G6 If:

- (a) a person is covered by point 1066A-G5; and
- (b) the person receives more than one termination payment on a day;

the income maintenance period is worked out by adding the periods to which the payments relate.

Start of income maintenance period—employment continuing

1066A-G7 If a person is covered by point 1066A-G4, the income maintenance period starts on the first day of the leave period to which the leave payment entitlement relates.

Start of income maintenance period—employment terminated

1066A-G8 If a person is covered by point 1066A-G5, the income maintenance period starts, subject to point 1066A-G9, on the day on which the person is paid the termination payment.

Commencement of income maintenance period where there is a second termination payment

1066A-G9 If:

- (a) a person who is covered by point 1066A-G5 is subject to an income maintenance period (the **first period**); and
- (b) the person is paid another termination payment during that period (the **second termination payment**);

the income maintenance period for the second termination payment starts on the day after the end of the first period.

Leave payments or termination payments in respect of periods longer than a fortnight

1066A-G10 If:

- (a) a person receives a leave payment or termination payment; and
 - (b) the payment is in respect of a period longer than a fortnight;
- the person is taken to receive in a payment fortnight or part of a payment fortnight an amount calculated by:

- (c) dividing the amount received by the number of days in the period to which the payment relates (the **daily rate**); and
- (d) multiplying the daily rate by the number of days in the payment fortnight that are also in the period.

1066A-G11 If the Secretary is satisfied that a person is in severe financial hardship because the person has incurred unavoidable or reasonable expenditure while an income maintenance period applies to the person, the Secretary may determine that the whole, or any part, of the period does not apply to the person.

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

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

Note 3: If an income maintenance period applies to a person, then, during that period:

- (a) the pension claimed may not be payable to the person; or
- (b) the amount of the pension payable to the person may be reduced.

When a person receives a leave payment or a termination payment

1066A-G12 For the purposes of points 1066A-G3 to 1066A-G11 (inclusive), a person (the **first person**) is taken to receive a leave payment or termination payment if:

- (a) the payment is made to another person:
 - (i) at the direction of the first person or a court; or
 - (ii) on behalf of the first person; or
 - (iii) for the benefit of the first person; or
- (b) the first person waives or assigns his or her right to receive the payment.

Single payment in respect of different kinds of termination payments

1066A-G13 If a person who is covered by point 1066A-G5 receives a single payment in respect of different kinds of termination payments, then, for the purposes of the application of points 1066A-G3 to 1066A-G12 (inclusive):

- (a) each part of the payment that is in respect of a different kind of termination payment is taken to be a separate payment; and

- (b) the income maintenance period in respect of the single payment is worked out by adding the periods to which the separate payments relate.

Definitions

1066A-G14 In this Module:

leave payment includes a payment in respect of sick leave, annual leave, maternity leave and long service leave.

payment fortnight means a fortnight in respect of which a disability support pension is paid, or would be paid apart from the application of an income maintenance period, to a person.

period to which the payment relates means:

- (a) if the payment is a leave payment—the leave period to which the payment relates; or
- (b) if the payment is a redundancy payment and is calculated as an amount equivalent to an amount of ordinary income that the person would (but for the redundancy) have received from the employment that was terminated—the period for which the person would have received that amount of ordinary income; or
- (c) if the payment is a redundancy payment and paragraph (b) does not apply—the period of weeks (rounded down to the nearest whole number) in respect of which the person would have received ordinary income, from the employment that was terminated, of an amount equal to the amount of the redundancy payment if:
- (i) the person's employment had continued; and
 - (ii) the person received ordinary income from the employment at the rate per week at which the person usually received ordinary income from the employment prior to the termination.

redundancy payment does not include a qualifying eligible termination payment within the meaning of Subdivision AA of Division 2 of Part III of the *Income Tax Assessment Act 1936*.

roll-over, in relation to a lump sum leave payment or a lump sum redundancy payment, has the meaning that **roll-over** has in

section 27D of the *Income Tax Assessment Act 1936* in relation to an eligible termination payment.

termination payment means:

- (a) a leave payment relating to a person's employment that has been terminated; or
- (b) a redundancy payment.

8 Application provision

The amendments made by this Schedule apply in relation to claims for social security payments made on or after 20 September 2006.

Schedule 17—Youth Allowance Rate Calculator

Part 1—Income test

Social Security Act 1991

1 Point 1067G-H28

Omit “70%”, substitute “60%”.

2 Point 1067G-H28 (example)

Repeal the example, substitute:

Example:

Facts: Alice’s partner Martin has an ordinary income of \$800. Assume that the partner income free area under point 1067G-H26 is \$640.

Result: Martin’s ordinary income exceeds the partner income free area. Alice therefore has a partner income excess under point 1067G-H27 of:

$$\$800 - \$640 = \$160$$

Alice’s partner income reduction under point 1067G-H28 is therefore:

$$60\% \times \$160 = \$96$$

3 Points 1067G-H32 and 1067G-H33

Repeal the points, substitute:

Lower range reduction

1067G-H32 The person’s lower range reduction is an amount equal to 50% of the part of the person’s ordinary income excess that does not exceed:

- (a) if the person is undertaking full-time study at any time in the fortnight in respect of which a youth allowance may be payable—\$80; or
- (b) if the person is a new apprentice at any time in the fortnight in respect of which a youth allowance may be payable—\$80; or

(c) otherwise—\$188.

Upper range reduction

1067G-H33 The person's upper range reduction is an amount equal to 60% of the part (if any) of the person's ordinary income excess that exceeds:

- (a) if the person is undertaking full-time study at any time in the fortnight in respect of which a youth allowance may be payable—\$80; or
- (b) if the person is a new apprentice at any time in the fortnight in respect of which a youth allowance may be payable—\$80; or
- (c) otherwise—\$188.

Part 2—Maximum basic rate

Social Security Act 1991

4 Paragraph (b) of point 1067G-B1

After “Table BB”, insert “or point 1067G-B3A”.

5 After point 1067G-B3

Insert:

1067G-B3A Despite point 1067G-B3, if a person:

- (a) is independent (see section 1067A) and is not a long term income support student (see section 1067F); and
- (b) is not a member of a couple; and
- (c) has an exemption under section 542FA because of a determination in relation to the person under subsection 542FA(3) or (3A);

the person’s maximum basic rate is the amount worked out as follows:

Pension PP (Single) maximum basic amount

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where:

pension PP (Single) maximum basic amount is the sum of:

- (a) the amount that would have been the person’s maximum basic rate under Module B of the Pension PP (Single) Rate Calculator if the person was receiving parenting payment; and
- (b) the amount that would have been the person’s pension supplement under Module BA of the Pension PP (Single) Rate Calculator if the person was receiving parenting payment.

Note 1: A person’s maximum basic rate under Module B of the Pension PP (Single) Rate Calculator is indexed 6 monthly in line with increases in Male Total Average Weekly Earnings (see section 1195).

Note 2: A person’s pension supplement amount under Module BA of the Pension PP (Single) Rate Calculator is indexed 6 monthly in line with CPI increases (see sections 1191 to 1194).

Part 3—Pharmaceutical allowance

Social Security Act 1991

6 Point 1067G-C1

Repeal the point, substitute:

Qualification for pharmaceutical allowance

1067G-C1 Subject to points 1067G-C2 and 1067G-C2A, an amount by way of pharmaceutical allowance is to be added to a person's maximum basic rate if the person:

- (a) has a partial capacity to work; or
- (b) is the principal carer of at least one child and is not a member of a couple; or
- (c) has a temporary incapacity exemption under section 542A.

Note 1: For *partial capacity to work* see section 16B.

Note 2: For *principal carer* see subsections 5(15) to (24).

7 After point 1067G-C2

Insert:

No pharmaceutical allowance for full-time students and new apprentices without temporary incapacity exemptions

1067G-C2A Pharmaceutical allowance is not to be added to a person's maximum basic rate if the person:

- (a) does not have a temporary incapacity exemption under section 542A; and
- (b) is undertaking full-time study or is a new apprentice.

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

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

Part 4—Youth disability supplement

Social Security Act 1991

8 At the end of section 1067G

Add:

- (3) The rate of a person's youth allowance is not to be more than the rate at which the allowance would be payable to the person if the person's rate were worked out using the Benefit Rate Calculator B at the end of section 1068.

9 Point 1067G-A1 (method statement, after step 2)

Insert:

<p><i>Step 2A.</i> Work out the amount per fortnight (if any) for youth disability supplement using Module D below.</p>

10 Section 1067G (after Module C)

Insert:

Module D—Youth disability supplement

Youth disability supplement

1067G-D1 If a person:

- (a) has a partial capacity to work; and
- (b) has not turned 21;

an amount by way of youth disability supplement is to be added to a person's rate. The rate of youth disability supplement is \$92.40 per fortnight.

Note 1: For *partial capacity to work* see section 16B.

Note 2: The rate of youth disability supplement is adjusted annually in line with CPI increases (see section 1198C).

11 Section 1190 (table item 4A)

Omit the table item, substitute:

**Youth disability
supplement**

- | | | | |
|-----|--|-----------------------------|---|
| 4A. | Youth disability supplement payable to a disability support pensioner, or to a recipient of youth allowance, who is under 21 | youth disability supplement | [Pension Rate Calculator D—point 1066A-C1—the annual rate]
[Pension Rate Calculator E—point 1066B-C1—the annual rate]
[Youth Allowance Rate Calculator—point 1067G-D1—the fortnightly rate] |
|-----|--|-----------------------------|---|

12 Section 1198C

Before “This Act”, insert “(1)”.

13 Section 1198C

After “disability supplement”, insert “under Module C of Pension Rate Calculator D or Module C of Pension Rate Calculator E”.

14 At the end of section 1198C

Add:

- (2) This Act (and any other Act that refers to this Act) has effect as if, on 1 January each year, the current figure, as at that 1 January, was substituted for the amount of the rate of the youth disability supplement under Module D of the Youth Allowance Rate Calculator.

Note: For *current figure* see subsection 20(1).

Part 5—Exemption from parental means test

Social Security Act 1991

15 At the end of section 1067A

Add:

People with a partial capacity to work

- (12) A person is independent if the person:
- (a) has turned 16; and
 - (b) has a partial capacity to work; and
 - (c) is not undertaking full-time study and is not a new apprentice.

Note 1: For *partial capacity to work* see section 16B.

Note 2: For *undertaking full-time study* see section 541B.

Note 3: For *new apprentice* see subsection 23(1).

Part 6—Income maintenance periods

Social Security Act 1991

16 Point 1067G-H10

Omit “leave” (wherever occurring), substitute “termination”.

Note: The heading to point 1067G-H10 is altered by omitting “leave”.

17 Paragraph (b) of point 1067G-H12

Omit “leave”, substitute “termination”.

Note: The heading to point 1067G-H12 is replaced by the heading “*Certain termination payments taken to be ordinary income*”.

18 Point 1067G-H12

Omit “leave” (last occurring).

19 Paragraph (b) of point 1067G-H13

Omit “leave”, substitute “termination”.

Note: The heading to point 1067G-H13 is altered by omitting “leave” and substituting “*termination*”.

20 Point 1067G-H13

Omit “leave” (last occurring).

21 Point 1067G-H14A

Omit “leave”, substitute “termination”.

22 Point 1067G-H14B

Omit “leave” (wherever occurring), substitute “termination”.

Note: The heading to point 1067G-H14B is altered by omitting “*leave payment—employment terminated*” and substituting “*termination payment*”.

23 Paragraph (a) of point 1067G-H15

After “leave payment”, insert “or termination payment”.

Note: The heading to point 1067G-H15 is altered by inserting “*or termination payments*” after “*Leave payments*”.

24 Paragraphs (b), (c) and (d) of point 1067G-H15

Omit “of leave”.

25 Point 1067G-H17

After “leave payment”, insert “or termination payment”.

Note: The heading to point 1067G-H17 is altered by inserting “*or a termination payment*” after “*leave payment*”.

26 Point 1067G-H18

Omit “leave” (first occurring), substitute “termination payments”.

Note: The heading to point 1067G-H18 is altered by omitting “*leave—employment terminated*” and substituting “*termination payments*”.

27 Point 1067G-H18

Omit “leave” (second occurring), substitute “termination payment”.

28 Point 1067G-H18

Omit “leave” (last occurring).

29 Point 1067G-H19

Insert:

period to which the payment relates means:

- (a) if the payment is a leave payment—the leave period to which the payment relates; or
- (b) if the payment is a redundancy payment and is calculated as an amount equivalent to an amount of ordinary income that the person would (but for the redundancy) have received from the employment that was terminated—the period for which the person would have received that amount of ordinary income; or
- (c) if the payment is a redundancy payment and paragraph (b) does not apply—the period of weeks (rounded down to the nearest whole number) in respect of which the person would have received ordinary income, from the employment that was terminated, of an amount equal to the amount of the redundancy payment if:
 - (i) the person’s employment had continued; and

- (ii) the person received ordinary income from the employment at the rate per week at which the person usually received ordinary income from the employment prior to the termination.

30 Point 1067G-H19

Insert:

redundancy payment does not include a qualifying eligible termination payment within the meaning of Subdivision AA of Division 2 of Part III of the *Income Tax Assessment Act 1936*.

31 Point 1067G-H19 (definition of roll-over)

After “leave payment”, insert “or lump sum redundancy payment”.

32 Point 1067G-H19

Insert:

termination payment means:

- (a) a leave payment relating to a person’s employment that has been terminated; or
- (b) a redundancy payment.

Note: The heading to point 1067G-H4 is replaced by the heading “*Lump sum payments arising from termination of employment*”.

33 Application

The amendments made by this Part apply in relation to claims for youth allowance made on or after 20 September 2006.

Schedule 18—Austudy Payment Rate Calculator

Part 1—Income test

Social Security Act 1991

1 Point 1067L-D27

Omit “70%”, substitute “60%”.

2 Point 1067L-D27 (example)

Repeal the example, substitute:

Example:

Facts: Alice’s partner Martin has an ordinary income of \$800. Assume that the partner income free area under point 1067L-D25 is \$640.

Result: Martin’s ordinary income exceeds the partner income free area. Alice therefore has a partner income excess under point 1067L-D26 of:

$$\$800 - \$640 = \$160$$

Alice’s partner income reduction under point 1067L-D27 is therefore:

$$60\% \times \$160 = \$96$$

3 Point 1067L-D32

Omit “70%”, substitute “60%”.

Part 2—Income maintenance periods

Social Security Act 1991

4 Point 1067L-D4

Omit “leave” (wherever occurring), substitute “termination”.

Note: The heading to point 1067L-D4 is altered by omitting “leave”.

5 Paragraph (b) of point 1067L-D6

Omit “leave”, substitute “termination”.

Note: The heading to point 1067L-D6 is replaced by the heading “*Certain termination payments taken to be ordinary income*”.

6 Point 1067L-D6

Omit “leave” (last occurring).

7 Paragraph (b) of point 1067L-D7

Omit “leave”, substitute “termination”.

Note: The heading to point 1067L-D7 is altered by omitting “leave” and substituting “*termination*”.

8 Point 1067L-D7

Omit “leave” (last occurring).

9 Point 1067L-D9

Omit “leave”, substitute “termination”.

10 Point 1067L-D10

Omit “leave” (wherever occurring), substitute “termination”.

Note: The heading to point 1067L-D10 is altered by omitting “*leave payment—employment terminated*” and substituting “*termination payment*”.

11 Paragraph (a) of point 1067L-D11

After “leave payment”, insert “or termination payment”.

Note: The heading to point 1067L-D11 is altered by inserting “*or termination payments*” after “*Leave payments*”.

12 Paragraphs (b), (c) and (d) of point 1067L-D11

Omit “of leave”.

13 Point 1067L-D13

After “leave payment”, insert “or termination payment”.

Note: The heading to point 1067L-D13 is altered by inserting “*or a termination payment*” after “*leave payment*”.

14 Point 1067L-D14

Omit “leave”, substitute “termination payments”.

Note: The heading to point 1067L-D14 is altered by omitting “*leave—employment terminated*” and substituting “*termination payments*”.

15 Paragraph (a) of point 1067L-D14

Omit “leave”, substitute “termination payment”.

16 Paragraph (b) of point 1067L-D14

Omit “leave”.

17 Point 1067L-D15

Insert:

period to which the payment relates means:

- (a) if the payment is a leave payment—the leave period to which the payment relates; or
- (b) if the payment is a redundancy payment and is calculated as an amount equivalent to an amount of ordinary income that the person would (but for the redundancy) have received from the employment that was terminated—the period for which the person would have received that amount of ordinary income; or
- (c) if the payment is a redundancy payment and paragraph (b) does not apply—the period of weeks (rounded down to the nearest whole number) in respect of which the person would have received ordinary income, from the employment that was terminated, of an amount equal to the amount of the redundancy payment if:
 - (i) the person’s employment had continued; and

- (ii) the person received ordinary income from the employment at the rate per week at which the person usually received ordinary income from the employment prior to the termination.

18 Point 1067L-D15

Insert:

redundancy payment does not include a qualifying eligible termination payment within the meaning of Subdivision AA of Division 2 of Part III of the *Income Tax Assessment Act 1936*.

19 Point 1067L-D15 (definition of *roll-over*)

After “leave payment”, insert “or lump sum redundancy payment”.

20 Point 1067L-D15

Insert:

termination payment means:

- (a) a leave payment relating to a person’s employment that has been terminated; or
- (b) a redundancy payment.

Note: The heading to point 1067L-D3 is replaced by the heading “*Lump sum payments arising from termination of employment*”.

21 Application provision

The amendments made by this Part apply in relation to claims for austudy payment made on or after 20 September 2006.

Schedule 19—Benefit Rate Calculator B

Part 1—Income test

Social Security Act 1991

1 Point 1068-G11

Omit “70%”, substitute “60%”.

2 Point 1068-G11 (example)

Repeal the example, substitute:

Example:

Facts: Susan’s partner Colin has an ordinary income of \$800. Assume that the partner income free area under point 1068-G9 is \$640.

Application: Colin’s ordinary income exceeds the partner income free area. He therefore has a partner income excess under point 1068-G10 of:

$$\$800 - \$640 = \$160$$

Susan’s partner income reduction under point 1068-G11 is therefore:

$$60\% \times \$160 = \$96$$

3 Point 1068-G15

Omit “\$80”, substitute “\$188”.

4 Point 1068-G16

Omit “70%”, substitute “60%”.

5 Point 1068-G16

Omit “\$80”, substitute “\$188”.

Part 2—Maximum basic rate for certain newstart allowance recipients

Social Security Act 1991

6 At the end of point 1068-B1

Add:

Note 8: Some recipients of newstart allowance have a maximum basic rate based on the maximum basic rate under the Pension PP (Single) Rate Calculator (see point 1068-B5).

7 After point 1068-B4

Insert in Module C:

Maximum basic rate for certain newstart allowance recipients

1068-B5 Despite point 1068-B1, if a person:

- (a) is not a member of a couple; and
- (b) receives newstart allowance; and
- (c) is not required to satisfy the activity test because of a determination in relation to the person under subsection 602C(3) or (3A);

the person's maximum basic rate is the amount worked out as follows:

Pension PP (Single) maximum basic amount

26

where:

pension PP (Single) maximum basic amount is the sum of:

- (a) the amount that would have been the person's maximum basic rate under Module B of the Pension PP (Single) Rate Calculator if the person was receiving parenting payment; and
- (b) the amount that would have been the person's pension supplement under Module BA of the Pension PP (Single) Rate Calculator if the person was receiving parenting payment.

Schedule 19 Benefit Rate Calculator B

Part 2 Maximum basic rate for certain newstart allowance recipients

Note 1: A person's maximum basic rate under Module B of the Pension PP (Single) Rate Calculator is indexed 6 monthly in line with increases in Male Total Average Weekly Earnings (see section 1195).

Note 2: A person's pension supplement amount under Module BA of the Pension PP (Single) Rate Calculator is indexed 6 monthly in line with CPI increases (see sections 1191 to 1194).

Part 3—Pharmaceutical allowance

Social Security Act 1991

8 Subparagraph (c)(ii) of point 1068-D1

Repeal the subparagraph, substitute:

- (ii) the person is receiving widow allowance, newstart allowance or partner allowance and point 1068-D2, 1068-D2A, 1068-D2B or 1068-D3 applies to the person.

9 After point 1068-D2A

Insert:

Newstart recipients who have a partial capacity to work or are principal carers

1068-D2B This point applies to a person who is receiving newstart allowance if the person:

- (a) has a partial capacity to work; or
- (b) is the principal carer of at least one child and is not a member of a couple.

Note 1: For *partial capacity to work* see section 16B.

Note 2: For *principal carer* see subsections 5(15) to (24).

Part 4—Income maintenance periods

Social Security Act 1991

10 Point 1068-G7AF

Omit “leave” (wherever occurring), substitute “termination”.

Note: The heading to point 1068-G7AF is altered by omitting “leave”.

11 Paragraph (b) of point 1068-G7AH

Omit “leave”, substitute “termination”.

Note: The heading to point 1068-G7AH is replaced by the heading “*Certain termination payments taken to be ordinary income*”.

12 Point 1068-G7AH

Omit “leave” (last occurring).

13 Paragraph (b) of point 1068-G7AJ

Omit “leave”, substitute “termination”.

Note: The heading to point 1068-G7AJ is altered by omitting “leave” and substituting “*termination*”.

14 Point 1068-G7AJ

Omit “leave” (last occurring).

15 Point 1068-G7AKA

Omit “leave”, substitute “termination”.

16 Point 1068-G7AKB

Omit “leave” (wherever occurring), substitute “termination”.

Note: The heading to point 1068-G7AKB is altered by omitting “*leave payment—employment terminated*” and substituting “*termination payment*”.

17 Paragraph (a) of point 1068-G7AL

After “leave payment”, insert “or termination payment”.

Note: The heading to point 1068-G7AL is altered by inserting “*or termination payments*” after “*Leave payments*”.

18 Paragraphs (b), (c) and (d) of point 1068-G7AL

Omit “of leave”.

19 Point 1068-G7AN

After “leave payment”, insert “or termination payment”.

Note: The heading to point 1068-G7AN is altered by inserting “*or a termination payment*” after “*leave payment*”.

20 Point 1068-G7AP

Omit “leave” (first occurring), substitute “termination payments”.

Note: The heading to point 1068-G7AP is altered by omitting “*leave—employment terminated*” and substituting “*termination payments*”.

21 Point 1068-G7AP

Omit “leave” (second occurring), substitute “termination payment”.

22 Point 1068-G7AP

Omit “leave” (last occurring).

23 Point 1068-G7AQ

Insert:

period to which the payment relates means:

- (a) if the payment is a leave payment—the leave period to which the payment relates; or
- (b) if the payment is a redundancy payment and is calculated as an amount equivalent to an amount of ordinary income that the person would (but for the redundancy) have received from the employment that was terminated—the period for which the person would have received that amount of ordinary income; or
- (c) if the payment is a redundancy payment and paragraph (b) does not apply—the period of weeks (rounded down to the nearest whole number) in respect of which the person would have received ordinary income, from the employment that was terminated, of an amount equal to the amount of the redundancy payment if:
 - (i) the person’s employment had continued; and

- (ii) the person received ordinary income from the employment at the rate per week at which the person usually received ordinary income from the employment prior to the termination.

24 Point 1068-G7AQ

Insert:

redundancy payment does not include a qualifying eligible termination payment within the meaning of Subdivision AA of Division 2 of Part III of the *Income Tax Assessment Act 1936*.

25 Point 1068-G7AQ (definition of roll-over)

After “leave payment”, insert “or lump sum redundancy payment”.

26 Point 1068-G7AQ

Insert:

termination payment means:

- (a) a leave payment relating to a person’s employment that has been terminated; or
- (b) a redundancy payment.

Note: The heading to point 1068-G7 is replaced by the heading “*Lump sum payments arising from termination of employment*”.

27 Application

The amendments made by this Part apply in relation to claims for the following types of payments made on or after 20 September 2006:

- (a) newstart allowance;
- (b) sickness allowance;
- (c) partner allowance;
- (d) mature age allowance;
- (e) widow allowance.

Schedule 20—Parenting Payment Rate Calculators

Part 1—Income test

Social Security Act 1991

1 Point 1068B-D24

Omit “70%”, substitute “60%”.

2 Point 1068B-D30

Omit “\$183”, substitute “\$188”.

3 Point 1068B-D31

Omit “70%”, substitute “60%”.

4 Point 1068B-D31

Omit “\$183”, substitute “\$188”.

Part 2—Income maintenance periods

Social Security Act 1991

5 Point 1068A-E2

Omit “leave” (wherever occurring), substitute “termination”.

Note: The heading to point 1068A-E2 is altered by omitting “leave”.

6 Paragraph (b) of point 1068A-E4

Omit “leave”, substitute “termination”.

Note: The heading to point 1068A-E4 is replaced by the heading “*Certain termination payments taken to be ordinary income*”.

7 Point 1068A-E4

Omit “leave” (last occurring).

8 Paragraph (b) of point 1068A-E5

Omit “leave”, substitute “termination”.

Note: The heading to point 1068A-E5 is altered by omitting “leave” and substituting “*termination*”.

9 Point 1068A-E5

Omit “leave” (last occurring).

10 Point 1068A-E7

Omit “leave”, substitute “termination”.

11 Point 1068A-E8

Omit “leave” (wherever occurring), substitute “termination”.

Note: The heading to point 1068A-E8 is altered by omitting “*leave payment—employment terminated*” and substituting “*termination payment*”.

12 Point 1068A-E10

After “leave payment”, insert “or termination payment”.

Note: The heading to point 1068A-E10 is altered by inserting “*or a termination payment*” after “*leave payment*”.

13 Point 1068A-E11

Omit “leave” (first occurring), substitute “termination payments”.

Note: The heading to point 1068A-E11 is altered by omitting “*leave—employment terminated*” and substituting “*termination payments*”.

14 Point 1068A-E11

Omit “leave” (second occurring), substitute “termination payment”.

15 Point 1068A-E11

Omit “leave” (last occurring).

16 Point 1068A-E12

Insert:

period to which the payment relates means:

- (a) if the payment is a leave payment—the leave period to which the payment relates; or
- (b) if the payment is a redundancy payment and is calculated as an amount equivalent to an amount of ordinary income that the person would (but for the redundancy) have received from the employment that was terminated—the period for which the person would have received that amount of ordinary income; or
- (c) if the payment is a redundancy payment and paragraph (b) does not apply—the period of weeks (rounded down to the nearest whole number) in respect of which the person would have received ordinary income, from the employment that was terminated, of an amount equal to the amount of the redundancy payment if:
 - (i) the person’s employment had continued; and
 - (ii) the person received ordinary income from the employment at the rate per week at which the person usually received ordinary income from the employment prior to the termination.

17 Point 1068A-E12

Insert:

redundancy payment does not include a qualifying eligible termination payment within the meaning of Subdivision AA of Division 2 of Part III of the *Income Tax Assessment Act 1936*.

18 Point 1068A-E12 (definition of roll-over)

After “leave payment”, insert “or lump sum redundancy payment”.

19 Point 1068A-E12

Insert:

termination payment means:

- (a) a leave payment relating to a person’s employment that has been terminated; or
- (b) a redundancy payment.

20 Point 1068B-D8

Omit “leave” (wherever occurring), substitute “termination”.

Note: The heading to point 1068B-D8 is altered by omitting “leave”.

21 Paragraph (b) of point 1068B-D10

Omit “leave”, substitute “termination”.

Note: The heading to point 1068B-D10 is replaced by the heading “*Certain termination payments taken to be ordinary income*”.

22 Point 1068B-D10

Omit “leave” (last occurring).

23 Paragraph (b) of point 1068B-D11

Omit “leave”, substitute “termination”.

Note: The heading to point 1068B-D11 is altered by omitting “leave” and substituting “*termination*”.

24 Point 1068B-D11

Omit “leave” (last occurring).

25 Point 1068B-D13

Omit “leave”, substitute “termination”.

26 Point 1068B-D14

Omit “leave” (wherever occurring), substitute “termination”.

Note: The heading to point 1068B-D14 is altered by omitting “*leave payment—employment terminated*” and substituting “*termination payment*”.

27 Point 1068B-D16

After “leave payment”, insert “or termination payment”.

Note: The heading to point 1068B-D16 is altered by inserting “*or a termination payment*” after “*leave payment*”.

28 Point 1068B-D17

Omit “leave” (first occurring), substitute “termination payments”.

Note: The heading to point 1068B-D17 is altered by omitting “*leave—employment terminated*” and substituting “*termination payments*”.

29 Point 1068B-D17

Omit “leave” (second occurring), substitute “termination payment”.

30 Point 1068B-D17

Omit “leave” (last occurring).

31 Point 1068B-D18

Insert:

period to which the payment relates means:

- (a) if the payment is a leave payment—the leave period to which the payment relates; or
- (b) if the payment is a redundancy payment and is calculated as an amount equivalent to an amount of ordinary income that the person would (but for the redundancy) have received from the employment that was terminated—the period for which the person would have received that amount of ordinary income; or
- (c) if the payment is a redundancy payment and paragraph (b) does not apply—the period of weeks (rounded down to the nearest whole number) in respect of which the person would have received ordinary income, from the employment that was terminated, of an amount equal to the amount of the redundancy payment if:
 - (i) the person’s employment had continued; and

- (ii) the person received ordinary income from the employment at the rate per week at which the person usually received ordinary income from the employment prior to the termination.

32 Point 1068B-D18

Insert:

redundancy payment does not include a qualifying eligible termination payment within the meaning of Subdivision AA of Division 2 of Part III of the *Income Tax Assessment Act 1936*.

33 Point 1068B-D18 (definition of roll-over)

After “leave payment”, insert “or lump sum redundancy payment”.

34 Point 1068B-D18

Insert:

termination payment means:

- (a) a leave payment relating to a person’s employment that has been terminated; or
- (b) a redundancy payment.

Note: The heading to point 1068B-D7 is replaced by the heading “*Lump sum payments arising from termination of employment*”.

35 Application provision

The amendments made by this Part apply in relation to claims for parenting payment made on or after 20 September 2006.

Schedule 21—Overpayments and debt recovery

Social Security Act 1991

1 At the end of subsection 1222(2)

Add:

Note: An additional 10% penalty is payable in some cases: see section 1228B.

2 After section 1228A

Insert:

1228B Additional 10% penalty for understatement etc. of income

- (1) An amount by way of penalty is added to a debt due to the Commonwealth under this Chapter by a person in relation to a social security payment if:
- (a) at the time the payment was made, the person:
 - (i) had attained the minimum age for youth allowance as defined by section 543A; and
 - (ii) had not reached pension age; and
- Note: For *pension age* see subsections 23(5A), (5B), (5C) and (5D).
- (b) the payment was:
 - (i) a social security benefit; or
 - (ii) a disability support pension; or
 - (iii) a wife pension; or
 - (iv) a widow B pension; or
 - (v) a pension PP (single); and
 - (c) the debt arose wholly or partly because the person had:
 - (i) refused or failed to provide information in relation to the person's income from personal exertion; or
 - (ii) knowingly or recklessly provided false or misleading information in relation to the person's income from personal exertion;

when required, under a provision of the social security law, to provide information in relation to the person's income from personal exertion.

Note: For *income from personal exertion* see subsection 8(1).

- (2) The amount added by way of penalty is an amount equal to 10% of so much of the debt as arose because the person refused or failed to provide the information or provided the false or misleading information.
- (3) An amount worked out under subsection (2) must be rounded down to the nearest 5 cents.
- (4) This section does not apply if the Secretary is satisfied that the person had a reasonable excuse for refusing or failing to provide the information.
- (5) This section does not apply in relation to a debt due to the Commonwealth under section 1229A or 1229AB.

3 Application of section 1228B

Section 1228B of the *Social Security Act 1991*, as amended by this Act, applies to:

- (a) a debt that relates to a social security payment, of a kind mentioned in paragraph 1228B(1)(b), that is made on or after the commencement of this Schedule; and
- (b) a debt:
 - (i) that relates to a social security payment of that kind that was made before that commencement; and
 - (ii) in relation to which a notice is given under section 1229 after that commencement.

4 Section 1230B

Omit "and 1228", substitute ", 1228 and 1228B".

Schedule 22—Administration

Part 1—RapidConnect

Social Security (Administration) Act 1999

1 At the end of paragraph 37(2)(b)

Add:

; or (vi) the operation of section 615 of the 1991 Act.

2 At the end of paragraph 37(6)(b)

Add:

; or (vi) if the claim is a claim for youth allowance—the operation of section 547AA of the 1991 Act.

3 Subsection 63(1)

Repeal the subsection, substitute:

(1) This section applies to a person if:

- (a) the person is receiving, or has made a claim for, a social security payment; or
- (b) the Department is contacted by or on behalf of the person in relation to a claim for:
 - (i) if the person is not undertaking full-time study and is not a new apprentice—a youth allowance; or
 - (ii) in any case—a newstart allowance; to be paid to the person; or
- (c) the person is the holder of, or has made a claim for, a concession card.

However, this section does not apply to a person to whom section 64 applies.

Note 1: For *undertaking full-time study* see section 541B of the 1991 Act.

Note 2: For *new apprentice* see subsection 23(1) of the 1991 Act.

4 Subsection 63(2)

Omit “give the person written notice”, substitute “notify the person”.

5 Paragraph 63(4)(b)

Omit “gives the person a notice”, substitute “notifies the person”.

6 Paragraph 63(6)(b)

Omit “gives the person a notice”, substitute “notifies the person”.

7 Subsection 63(7)

Omit “give a person a notice”, substitute “notify a person”.

8 Subsection 63(11)

Omit “notice under subsection (2) or a notification under subsection (3)”, substitute “notification under subsection (2) or (3)”.

9 At the end of section 80

Add:

- (4) A reference in this section to a social security payment being, or having been, paid includes a reference to:
 - (a) if the social security payment is a youth allowance—the youth allowance being payable but for the operation of section 547AA; or
 - (b) if the social security payment is a newstart allowance—the newstart allowance being payable but for the operation of section 615.

10 Subclause 5(2) of Schedule 2 (at the end of the definition of *exclusion period*)

Add:

- ; and (e) if the payment is a youth allowance or newstart allowance—a period during which the payment is not payable because of the operation of section 547AA or 615 of the 1991 Act.

Part 2—Disability support pension

Social Security (Administration) Act 1999

11 Paragraph 96(1)(a)

Omit “30”, substitute “15”.

12 After subsection 96(3)

Insert:

(3A) If:

- (a) the Secretary makes a determination under subsection (1) or (3) suspending a person’s disability support pension; and
- (b) within 2 years from the date of effect of the determination, the Secretary reconsiders the decision to suspend; and
- (c) as a result of the reconsideration, the Secretary is satisfied that the person is not receiving disability support pension that is payable to the person;

the Secretary is to determine that the disability support pension is payable to the person.

(3B) The reconsideration referred to in paragraph (3A)(b) may be a reconsideration on an application under section 129 or a reconsideration on the Secretary’s own initiative.

Note: The heading to section 96 is replaced by the heading “**Disability support pension—suspension instead of cancellation under section 93**”.

13 Paragraph 97(1)(a)

Omit “30”, substitute “15”.

14 After section 97

Insert:

97A Disability support pension—suspension instead of cancellation under section 94 (person obtains work)

(1) If:

- (a) a person was receiving disability support pension as a result of a claim made before 1 July 2006; and
- (b) the person ceased to be qualified for disability support pension because he or she obtained paid work that was for at least 30 hours per week; and
- (c) the person subsequently informs the Secretary that he or she has obtained that work; and
- (d) the person's disability support pension was cancelled under section 94 because of that work; and
- (e) within the period of 2 years and 14 days after the person ceased to be qualified for the disability support pension, the person ceases to do work of the kind referred to in paragraph (b);

the Secretary may determine that:

- (f) the person is to be treated as if section 94 had not applied to the person's disability support pension; and
- (g) the person's disability support pension is suspended from the day on which the person ceased to be qualified for the pension.

However, this subsection ceases to apply to a transitional DSP applicant from the date of effect of the first decision about the person's capacity to perform work made on or after 1 July 2006 following a review of the person's capacity to perform work.

(2) If:

- (a) subsection (1) does not apply, or has ceased to apply, to a person; and
- (b) the person ceased to be qualified for disability support pension because he or she obtained paid work that is for at least 15 hours per week; and
- (c) the person subsequently informs the Secretary that he or she has obtained that work; and
- (d) the person's disability support pension was cancelled under section 94 because of that work; and
- (e) within the period of 2 years and 14 days after the person ceased to be qualified for the disability support pension, the person ceases to do work of the kind referred to in paragraph (b);

the Secretary may determine that:

- (f) the person is to be treated as if section 94 had not applied to the person's disability support pension; and
 - (g) the person's disability support pension is suspended from the day on which the person ceased to be qualified for the pension.
- (3) Neither subsection (1) nor (2) applies to a person if:
- (a) the Secretary gives written notice to the person that the person is no longer qualified for disability support pension; and
 - (b) the Secretary's notice is given before the person informs the Secretary that the person has obtained work.
- (4) If:
- (a) the Secretary makes a determination under subsection (1) or (2) suspending a person's disability support pension; and
 - (b) the determination continues in force throughout the period (or the balance of the period) of 2 years and 14 days after its date of effect;
- then, at the end of that period (or the balance of that period), the determination granting the person disability support pension is, by force of this subsection, revoked.
- (5) If:
- (a) the Secretary makes a determination under subsection (1) or (2) suspending a person's disability support pension; and
 - (b) the person's partner had ceased to be qualified for wife pension or carer payment when the person ceased to be qualified for disability support pension for the reason mentioned in paragraph (1)(b) or (2)(b);
- the Secretary may determine that the partner is to be treated as if the partner's wife pension or carer payment, as the case may be, had not been cancelled but had been suspended for the period of the suspension of the person's disability support pension.
- (6) If:
- (a) the Secretary makes a determination under subsection (1) or (2) suspending a person's disability support pension; and
 - (b) within 2 years and 14 days from the date of effect of the determination, the Secretary reconsiders the decision to suspend; and

- (c) as a result of the reconsideration, the Secretary is satisfied that the person is not receiving disability support pension that is payable to the person;
the Secretary is to determine that the disability support pension is payable to the person.
- (7) The reconsideration referred to in paragraph (6)(b) may be a reconsideration on an application under section 129 or a reconsideration on the Secretary's own initiative.

97B Disability support pension—suspension instead of cancellation under section 94 (person's income)

- (1) If:
 - (a) disability support pension ceased to be payable to a person because the rate of the pension was nil as a result of the income, or increased income, earned by the person from his or her employment; and
 - (b) the person subsequently informs the Secretary of that income or increased income; and
 - (c) the person's disability support pension was cancelled under section 94 because the pension ceased to be payable to the person for the reason mentioned in paragraph (a); and
 - (d) within the period of 2 years and 14 days after the pension ceased to be payable, the income the person earned from his or her employment is reduced to a rate that would not preclude the person from receiving disability support pension;the Secretary may determine that:
 - (e) the person is to be treated as if section 94 had not applied to the person's disability support pension; and
 - (f) the person's disability support pension is suspended from the day on which the pension ceased to be payable to the person.
- (2) Subsection (1) does not apply to a person if:
 - (a) the Secretary gives written notice to the person that the person is no longer qualified for disability support pension; and
 - (b) the Secretary's notice is given before the person informs the Secretary of the person's income or increased income.

(3) If:

- (a) the Secretary makes a determination under subsection (1) suspending a person's disability support pension; and
- (b) the determination continues in force throughout the period (or the balance of the period) of 2 years and 14 days after its date of effect;

then, at the end of that period (or the balance of that period), the determination granting the person disability support pension is, by force of this subsection, revoked.

(4) If:

- (a) the Secretary makes a determination under subsection (1) suspending a person's disability support pension; and
- (b) the person's partner had ceased to be qualified for wife pension or carer payment when disability support pension ceased to be payable to the person for the reason mentioned in paragraph (1)(a);

the Secretary may determine that the partner is to be treated as if the partner's wife pension or carer payment, as the case may be, had not been cancelled but had been suspended for the period of the suspension of the person's disability support pension.

(5) If:

- (a) the Secretary makes a determination under subsection (1) suspending a person's disability support pension; and
- (b) within 2 years and 14 days from the date of effect of the determination, the Secretary reconsiders the decision to suspend; and
- (c) as a result of the reconsideration, the Secretary is satisfied that the person is not receiving disability support pension that is payable to the person;

the Secretary is to determine that the disability support pension is payable to the person.

- (6) The reconsideration referred to in paragraph (5)(b) may be a reconsideration on an application under section 129 or a reconsideration on the Secretary's own initiative.

15 Application and transitional provisions—items 11 and 13

- (1) The amendments of the *Social Security (Administration) Act 1999* made by items 11 and 13 of this Schedule apply in relation to any claim, and any payment of pension as a result of such a claim, by a person for a disability support pension made on or after 1 July 2006.
- (2) Subject to subitem (3), the *Social Security (Administration) Act 1999* applies to any claim by a person for a disability support pension made before 1 July 2006, and any payment of pension as a result of such a claim, as if the amendments referred to in subitem (1) had not been made.
- (3) If:
- (a) on or after 1 July 2006, a notice under subsection 63(2) or 64(2) of the *Social Security (Administration) Act 1999* is given to a person who made a claim for a disability support pension on or after 11 May 2005 and before 1 July 2006; and
 - (b) under the notice, the person is required to undertake a specified activity for the purpose of reviewing his or her capacity to perform work;
- then, the amendments of the *Social Security (Administration) Act 1999* referred to in subitem (1) apply to the person from the date of the notice.

16 Application provision—item 12

The amendment of the *Social Security (Administration) Act 1999* made by item 12 of this Schedule apply in relation to determinations under subsection 96(1) or (3) of that Act whose date of effect is on or after 1 July 2006.

17 Application provision—item 14

The amendment of the *Social Security (Administration) Act 1999* made by item 14 of this Schedule applies in relation to persons whose disability support pension is cancelled, with effect on or after 1 July 2006.

Part 3—Participation

Social Security (Administration) Act 1999

18 Subsection 131(2)

Repeal the subsection.

19 Sections 132A to 134A

Repeal the sections.

20 Sections 146A to 148A

Repeal the sections.

Part 4—Compliance

Social Security (Administration) Act 1999

21 Subsection 63(2)

Omit “, other than a person to whom subsection (3) applies,”.

22 Subsections 63(3) and (3A)

Repeal the subsections.

23 Subsection 63(4)

Omit all the words after paragraph (d), substitute:

the payment that the person is receiving or has claimed is not payable.

24 Subsections 63(5) and (5A)

Repeal the subsections, substitute:

(5) Subsection (4) does not apply if:

- (a) the social security payment is a parenting payment and the notification under subsection (2) included a statement to the effect that a failure to comply with the requirement could constitute a parenting payment participation failure; or
- (b) the social security payment is a youth allowance and the notification under subsection (2) included a statement to the effect that a failure to comply with the requirement could constitute a youth allowance participation failure; or
- (c) the social security payment is an austudy payment and the notification under subsection (2) included a statement to the effect that a failure to comply with the requirement could constitute an austudy participation failure; or
- (d) the social security payment is a newstart allowance and the notification under subsection (2) included a statement to the effect that a failure to comply with the requirement could constitute a newstart participation failure; or
- (e) the social security payment is a special benefit and the notification under subsection (2) included a statement to the

effect that a failure to comply with the requirement could constitute a special benefit participation failure.

Note: Failure by a recipient of, or claimant for, one of these payments to comply with a requirement notified under subsection (2) may result in the payment not being payable to the person: see sections 500ZB, 500ZE, 550B, 551, 576A, 577, 626, 629, 742 and 745 of the 1991 Act.

25 Saving provision relating to administrative breaches

(1) If:

- (a) as a result of an administrative breach committed by the person before the commencement of this item, an administrative breach rate reduction period applied to the person under subsection 63(5) of the *Social Security (Administration) Act 1999*; and
- (b) on that commencement, the administrative breach rate reduction period had not ended;

the administrative breach rate reduction period continues to apply to the person after that commencement as if that subsection had not been repealed by this Act.

(2) In this item:

administrative breach means any non-compliance by the person as a result of which an administrative breach rate reduction period applied to the person, before the commencement of this item, under subsection 63(5) of the *Social Security (Administration) Act 1999*.

26 Subsection 63(8)

Repeal the subsection.

27 Subsection 63(9)

Repeal the subsection, substitute:

- (9) The Secretary may determine that a social security payment that was not payable because of subsection (4) is payable to a person if the Secretary is satisfied that the person had a reasonable excuse for not complying with the requirement under subsection (2).

28 Subsection 64(1)

Repeal the subsection, substitute:

- (1) This section applies to a person if:

- (a) the person is receiving, or has claimed, a disability support pension, parenting payment, youth allowance, newstart allowance, sickness allowance, special benefit, or mobility allowance; or
- (b) the Department is contacted by or on behalf of the person in relation to a claim for youth allowance or newstart allowance to be paid to the person.

29 Subsection 64(2)

Omit “give the person written notice”, substitute “notify the person”.

30 Subsection 64(3)

Omit “give a person notice”, substitute “notify a person”.

31 Paragraph 64(4)(a)

Omit “gives a person notice”, substitute “notifies a person”.

32 Subsection 64(4)

Omit all the words after paragraph (c), substitute:
the payment that the person is receiving or has claimed is not payable.

33 Saving provision relating to administrative breaches

(1) If:

- (a) as a result of an administrative breach committed by the person before the commencement of this item, an administrative breach rate reduction period applied to the person under subsection 64(4) of the *Social Security (Administration) Act 1999*; and
- (b) on that commencement, the administrative breach rate reduction period had not ended;

the administrative breach rate reduction period continues to apply to the person after that commencement as if that subsection had not been amended by this Act.

(2) In this item:

administrative breach means any non-compliance by the person as a result of which an administrative breach rate reduction period applied to the person, before the commencement of this item, under subsection 64(4) of the *Social Security (Administration) Act 1999*.

34 After subsection 64(4)

Insert:

(4A) Subsection (4) does not apply if:

- (a) the social security payment is a parenting payment and the notification under subsection (2) included a statement to the effect that a failure to comply with the requirement could constitute a parenting payment participation failure; or
- (b) the social security payment is a youth allowance and the notification under subsection (2) included a statement to the effect that a failure to comply with the requirement could constitute a youth allowance participation failure; or
- (c) the social security payment is an austudy payment and the notification under subsection (2) included a statement to the effect that a failure to comply with the requirement could constitute an austudy participation failure; or
- (d) the social security payment is a newstart allowance and the notification under subsection (2) included a statement to the effect that a failure to comply with the requirement could constitute a newstart participation failure; or
- (e) the social security payment is a special benefit and the notification under subsection (2) included a statement to the effect that a failure to comply with the requirement could constitute a special benefit participation failure.

Note: Failure by a recipient of, or claimant for, one of these payments to comply with a requirement notified under subsection (2) may result in the payment not being payable to the person: see sections 500ZB, 500ZE, 550B, 551, 576A, 577, 626, 629, 742 and 745 of the 1991 Act.

35 Subsection 64(5)

Omit “notice”, substitute “notification”.

36 At the end of section 80

Add:

- (4) Subsection (1) does not authorise the Secretary to make a determination that cancels the payment of a parenting payment, youth allowance, austudy payment, newstart allowance or special benefit to a person if:
- (a) paragraph (1)(a) does not apply to the person; and
 - (b) paragraph (1)(b) would not apply to the person but for the fact that the payment is not, or was not, payable because of:
 - (i) section 500ZB or 500ZE of the 1991 Act (if the payment is a parenting payment); or
 - (ii) section 550B or 551 of that Act (if the payment is a youth allowance); or
 - (iii) section 576A or 577 of that Act (if the payment is an austudy payment); or
 - (iv) section 626 or 629 of that Act (if the payment is a newstart allowance); or
 - (v) section 742 or 745 of that Act (if the payment is a special benefit).

37 At the end of section 109

Add:

- (6) This section does not apply to determinations to which section 110A applies.

38 At the end of section 110

Add:

- (12) This section does not apply to determinations to which section 110A applies.

39 After section 110

Insert:

110A Date of effect of favourable determinations resuming payment after suspensions relating to non-compliance

If:

- (a) a favourable determination is made under section 85 resuming payment of a parenting payment, youth allowance,

- austudy payment, newstart allowance or special benefit the payment of which had been suspended under section 80; and
- (b) the payment had been suspended because it was not payable because of:
- (i) section 500ZB or 500ZE of the 1991 Act (if the payment was a parenting payment); or
 - (ii) section 550B or 551 of that Act (if the payment was a youth allowance); or
 - (iii) section 576A or 577 of that Act (if the payment was an austudy payment); or
 - (iv) section 626 or 629 of that Act (if the payment was a newstart allowance); or
 - (v) section 742 or 745 of that Act (if the payment was a special benefit);

the determination takes effect, or is taken to have taken effect, on the day after the end of the period for which the payment, allowance or benefit is not payable because of that section.

40 Subsection 114(1)

Omit “neither section 109 nor section 110 applies”, substitute “none of sections 109, 110 and 110A apply”.

41 Paragraph 118(11)(a)

After “section”, insert “80,”.

42 After subsection 118(12B)

Insert:

(12C) If:

- (a) an adverse determination is made under section 80 suspending the payment of a parenting payment, youth allowance, austudy payment, newstart allowance or special benefit to a person; and
- (b) the determination was made because of the application of:
 - (i) section 500ZB or 500ZE of the 1991 Act (if the payment is a parenting payment); or
 - (ii) section 550B or 551 of that Act (if the payment is a youth allowance); or

- (iii) section 576A or 577 of that Act (if the payment is an austudy payment); or
- (iv) section 626 or 629 of that Act (if the payment is a newstart allowance); or
- (v) section 742 or 745 of that Act (if the payment is a special benefit);

the determination is taken to have taken effect on the day of the start of the period for which the payment, allowance or benefit is not payable because of that section.

- (12D) However, subsection (12C) does not apply to an adverse determination if the determination would take effect on an earlier day under another provision of this Act.

Part 5—Information exchange

Social Security (Administration) Act 1999

43 After subsection 202(2)

Insert:

(2A) A person engaged (whether as an employee or otherwise) by a service organisation may:

- (a) obtain protected information; or
- (b) make a record of protected information; or
- (c) disclose protected information to another person; or
- (d) otherwise use protected information;

if the person believes, on reasonable grounds, that the obtaining, recording, disclosure or use that is proposed to be made of the information by the person is reasonably necessary for one or more of the purposes specified in subsection (2B).

Note: In addition to the requirements of this section, information disclosed under this section must be dealt with in accordance with section 14 of the *Privacy Act 1988*.

(2B) The purposes for which the person may obtain, record, disclose or use protected information are as follows:

- (a) facilitating access by a service recipient to a work-related service provided by a service organisation;
- (b) facilitating efficient and effective delivery of a work-related service by a service organisation;
- (c) facilitating efficient and effective performance of duties or exercise of functions relating to the provision of work-related services by a service organisation;
- (d) facilitating efficient and effective administration by the Commonwealth of one or more of the matters mentioned in paragraphs (a), (b) or (c) (for example, payments to service organisations by the Commonwealth);
- (e) any other purpose determined by the Secretary under subsection (2E).

(2C) A person may:

- (a) obtain protected information; or

- (b) make a record of protected information; or
- (c) disclose protected information to another person; or
- (d) otherwise use protected information;

if the Secretary believes, on reasonable grounds, that the obtaining, recording, disclosure or use that is proposed to be made of the information by the person is reasonably necessary for one or more of the following purposes:

- (e) research into matters of relevance to a Department that is administering any part of the social security law;
- (f) statistical analysis of matters of relevance to a Department that is administering any part of the social security law;
- (g) policy development.

(2D) In this section:

service organisation means:

- (a) an Agency (within the meaning of the *Public Service Act 1999*); or
- (b) another authority of the Commonwealth; or
- (c) an organisation that performs services for the Commonwealth.

service recipient means a person:

- (a) who is receiving a social security payment, benefit or allowance; or
- (b) who has made a claim for a social security payment, benefit or allowance; or
- (c) who has contacted the Department about the receipt of, or an existing or future claim for, a social security payment, benefit or allowance; or
- (d) on whose behalf another person, with the person's authority, has contacted the Department about any of the matters mentioned in paragraphs (a) to (c) relating to the person.

work-related service means a service of the following kind:

- (a) assessment of the capacity to work of a service recipient;
- (b) assistance given to a service recipient with the purpose of preparing the service recipient to seek or undertake work;
- (c) placement of a service recipient in a position of employment;

- (d) a service of a kind determined by the Secretary under subsection (2E).
- (2E) The Secretary may, by legislative instrument, determine either or both of the following:
 - (a) that a specified purpose that is related to a matter mentioned in paragraphs (2B)(a) to (d) is a purpose for which the person may obtain, record, disclose or use protected information under subsection (2A);
 - (b) services of a specified kind are work-related services for the purposes of this section.

44 Subsection 234(7)

Repeal the subsection, substitute:

- (7) Without limiting the operation of the definition of *officer* in subsection 23(1), in this section *officer* includes a person engaged (whether as an employee or otherwise) by:
 - (a) an Agency (within the meaning of the *Public Service Act 1999*); or
 - (b) another authority of the Commonwealth; or
 - (c) an organisation that performs services for the Commonwealth;but does not include the CEO or an employee of the Agency.

45 Saving provision

A delegation in force under section 234 of the *Social Security (Administration) Act 1999* immediately before the commencement of item 45 continues to have effect after that commencement as if it were a delegation under that section as amended by this Act.

Part 6—Seasonal work preclusion period

Social Security (Administration) Act 1999

46 At the end of subsection 37(4)

Add:

- ; (h) disability support pension;
- (i) sickness allowance;
- (j) carer payment;
- (k) austudy payment.

47 Application provision

The amendment made by this Part applies in relation to claims for social security payments made on or after 20 September 2006.

Schedule 23—Other amendments

Disability Services Act 1986

1 Subsection 20(1)

Repeal the subsection, substitute:

(1) Subject to section 21, if:

(a) there are guidelines formulated under section 5 that relate to this section; and

(b) the Secretary is satisfied that the provision of a rehabilitation program for a person in the target group would comply with the guidelines;

the Secretary may, on the Commonwealth's behalf, approve the provision of the rehabilitation program for the person, together with any follow-up program that the Secretary considers necessary or desirable.

2 Paragraphs 21A(1)(b) and (c)

Repeal the paragraphs, substitute:

(b) after the time determined by the Secretary under subsection (1A).

3 After subsection 21A(1)

Insert:

(1A) The Secretary may determine that provision of a rehabilitation program must end after a specified time.

4 Subsection 21A(2)

After "In making a determination", insert "under subsection (1A)".

5 Application provision

The amendments of the *Disability Services Act 1986* made by this Schedule apply to all rehabilitation programs being considered for approval on or after the commencement of this Schedule.

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

6 Section 4

Repeal the section.

Social Security Act 1991

7 Subsection 1134(3)

Repeal the subsection.

*[Minister's second reading speech made in—
House of Representatives on 9 November 2005
Senate on 1 December 2005]*

(179/05)

254 *Employment and Workplace Relations Legislation
Amendment (Welfare to Work and Other Measures) Act 2005*