



**Families, Community Services and
Indigenous Affairs Legislation
Amendment (Further 2007 Budget
Measures) Act 2007**

No. 183, 2007

**An Act to amend the law in relation to social
security, veterans' affairs and family assistance,
and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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**An Act to amend the law in relation to social
security, veterans' affairs and family assistance,
and for related purposes**

[Assented to 28 September 2007]

The Parliament of Australia enacts:

*Families, Community Services and Indigenous Affairs Legislation Amendment (Further 2007
Budget Measures) Act 2007 No. 183, 2007 1*

1 Short title

This Act may be cited as the *Families, Community Services and Indigenous Affairs Legislation Amendment (Further 2007 Budget Measures) Act 2007*.

2 Commencement

This Act commences on 1 January 2008.

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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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

Income Tax Assessment Act 1997

1 Section 11-15 (table item headed “social security or like payments”)

After:

Commonwealth education or training payment..... Subdivision 52-F

insert:

DFISA bonus and DFISA bonus bereavement payment 52-65

2 Section 11-15 (table item headed “social security or like payments”)

Omit:

pension bonus 52-10 and 52-65

substitute:

pension bonus and pension bonus bereavement payment... 52-10 and 52-65

3 Paragraph 52-10(1)(a)

After “bonus”, insert “and pension bonus bereavement payment”.

4 Subsection 52-10(1A)

After “bonus”, insert “and pension bonus bereavement payment”.

5 Paragraph 52-65(1)(a)

Omit “or DFISA bonus”, substitute “, pension bonus bereavement payment, DFISA bonus or DFISA bonus bereavement payment”.

6 Subsection 52-65(1A)

Repeal the subsection, substitute:

(1A) The following payments under the *Veterans’ Entitlements Act 1986* are exempt from income tax:

- (a) pension bonus and pension bonus bereavement payment under Part IIIAB;
- (b) DFISA bonus and DFISA bonus bereavement payment under Part VIIAB.

Social Security Act 1991

7 Subsection 11(3C)

After “pension bonus”, insert “or pension bonus bereavement payment”.

8 Subsection 23(1)

Insert:

PBBP employment income (short for pension bonus bereavement payment employment income) has the meaning given by section 93WC.

9 Subsection 23(1) (definition of *pension bonus*)

Repeal the definition, substitute:

pension bonus means pension bonus under Part 2.2A (and does not include a pension bonus bereavement payment under Division 12 of that Part).

10 Subsection 23(1)

Insert:

pension bonus bereavement payment means a pension bonus bereavement payment under Division 12 of Part 2.2A.

11 Subsection 92Q(1)

Omit “by written notice published in the *Gazette*”, substitute “by legislative instrument”.

12 Subsection 92Q(1)

Omit “The period must not begin before the publication of the notice.”

13 After subsection 92Q(1)

Insert:

(1A) Despite subsection 12(2) of the *Legislative Instruments Act 2003*, a period ascertained in accordance with a declaration made under subsection (1) may begin before the date on which the declaration is registered under that Act.

14 Subsection 92Q(3)

Repeal the subsection.

15 Paragraphs 93H(a) and (b)

Omit “date of grant of”, substitute “start day for”.

16 Paragraph 93J(3)(a)

Omit “date of grant of”, substitute “start day for”.

17 Paragraph 93J(3)(a)

Omit “that date”, substitute “that day”.

18 Paragraph 93J(3)(b)

Omit “date of grant of”, substitute “start day for”.

19 Paragraph 93J(3)(b)

Omit “that date”, substitute “that day”.

20 Paragraph 93J(4)(a)

Omit “date of grant of”, substitute “start day for”.

21 Paragraph 93J(4)(a)

Omit “that date”, substitute “that day”.

22 Paragraph 93J(4)(b)

Omit “date of grant of”, substitute “start day for”.

23 Paragraph 93J(4)(b)

Omit “that date”, substitute “that day”.

24 At the end of Division 6 of Part 2.2A

Add:

93K Top up of pension bonus for increased rate of age pension

- (1) The Secretary may determine (a *top up determination*) that a person’s pension bonus is to be increased if:
 - (a) the Secretary makes a determination (a *rate determination*) increasing the person’s rate of age pension; and

- (b) the rate determination takes effect on a day that is not more than 13 weeks after the start day for the person's pension bonus; and
- (c) the rate determination is made because of a reduction since the start day in either or both of the following:
 - (i) the value of the person's assets;
 - (ii) the person's ordinary income.

Note: Any reduction in the value of a person's assets or the person's income will be determined by applying the assets test and the ordinary income test in Pension Rate Calculator A in Part 2.3.

- (2) The person's pension bonus is increased by the difference between:
 - (a) the person's amount of pension bonus on the start day; and
 - (b) the amount that would have been the person's amount of pension bonus on the start day if the person's rate of age pension on that day had been the highest rate at which age pension was payable to the person during the 13 weeks after the start day.
- (3) A top up determination takes effect on the day on which the determination is made or on any earlier or later day specified in the determination.
- (4) A top up determination is not a legislative instrument.

93L Top up of pension bonus in specified circumstances

- (1) The Secretary may determine (a *top up determination*) that a person's pension bonus is to be increased if:
 - (a) the Secretary makes a determination (a *rate determination*) increasing the person's rate of age pension; and
 - (b) the rate of age pension is increased in circumstances specified in an instrument made under subsection (6).
- (2) The person's pension bonus is increased by the amount specified by the Secretary in the top up determination.
- (3) The Secretary must not specify an increase that would be greater than the difference between:
 - (a) the person's amount of pension bonus on the start day for the bonus; and

- (b) the amount that would have been the person's amount of pension bonus on the start day if the person's rate of age pension on that day had been the rate specified in the rate determination.
- (4) A top up determination takes effect on the day on which the determination is made or on any earlier or later day specified in the determination.
- (5) A top up determination is not a legislative instrument.
- (6) The Secretary may, by legislative instrument, specify circumstances (other than circumstances specified in subsection 93K(1)) for the purposes of paragraph (1)(b).

25 Application of sections 93K and 93L of the *Social Security Act 1991*

Sections 93K and 93L of the *Social Security Act 1991*, as inserted by this Schedule, apply in relation to a pension bonus the start day for which is on or after 1 January 2008.

26 At the end of Part 2.2A

Add:

Division 12—Pension bonus bereavement payment

93WA Qualification for pension bonus bereavement payment

A person is qualified for a pension bonus bereavement payment if:

- (a) the person stopped being a member of a couple because the person's partner died; and
- (b) immediately before the partner died, the partner was a registered member of the pension bonus scheme; and
- (c) the partner had not made a claim for age pension or pension bonus before the partner died.

93WB Amount of pension bonus bereavement payment

- (1) The amount of a person's pension bonus bereavement payment is worked out:

- (a) by working out the amount of pension bonus that would have been payable to the legal personal representative of the partner had the partner made claims for age pension and pension bonus just before the partner died (see subsections 59(3) and (4) of the Administration Act); and
 - (b) by disregarding, in working out the amount referred to in paragraph (a):
 - (i) any PBBP employment income of the person (see section 93WC); and
 - (ii) any income of a kind specified in an instrument made under subsection (2).
- (2) The Secretary may, by legislative instrument, specify kinds of income for the purposes of subparagraph (1)(b)(ii).

93WC Definition of *PBBP employment income*

- (1) ***PBBP employment income***, of a person:
- (a) means ordinary income that is, or is taken to be, earned, derived or received by the person or the person's partner from gainful work; and
 - (b) includes (without limitation) any of the following that is, or is taken to be, earned, derived or received by the person or the person's partner:
 - (i) salary, wages, commissions and employment-related fringe benefits;
 - (ii) leave payments;
 - (iii) payments to the person or the person's partner by a former employer of the person or partner in relation to the termination of the person's or partner's employment.
- (2) For the purposes of subparagraph (1)(b)(ii), a ***leave payment***:
- (a) includes a payment in respect of sick leave, personal leave, carer's leave, annual leave, maternity leave, long service leave or special leave; and
 - (b) may be made as a lump sum payment, a series of regular payments or otherwise; and
 - (c) is taken to be made to a person if it is made to another person:
 - (i) at the direction of the person or of a court; or

- (ii) on behalf of the person; or
- (iii) for the benefit of the person; or
- (iv) if the person waives or assigns his or her right to the payment.

27 Application of Division 12 of Part 2.2A of the *Social Security Act 1991*

Division 12 of Part 2.2A of the *Social Security Act 1991*, as inserted by this Schedule, applies in relation to a person whose partner dies on or after 1 January 2008.

28 Subsection 1224AA(1)

Omit “(1)”.

29 Paragraph 1224AA(1)(a)

Repeal the paragraph, substitute:

- (a) an amount of a social security payment or an amount of fares allowance is paid by cheque; and

Social Security (Administration) Act 1999

30 Subsection 17(1)

Omit “either”.

31 At the end of subsection 17(1)

Add:

- ; or (c) the subject of a determination under subsection (5).

32 At the end of section 17

Add:

(5) If:

- (a) a person who is a registered member of the pension bonus scheme lodges a claim for age pension; and
- (b) a claim for pension bonus for the person is lodged after the claim for age pension; and
- (c) the Secretary is satisfied that, having regard to guidelines (if any) made under subsection (6), special circumstances apply in relation to the lodgment of the claim for pension bonus;

the Secretary may determine that the claim for the pension bonus is taken to have been made at the time the person claimed age pension.

- (6) The Secretary may, by legislative instrument, make guidelines for the purposes of subsection (5).

33 Application of amendments of section 17 of the *Social Security (Administration) Act 1999*

The amendments of section 17 of the *Social Security (Administration) Act 1999* made by this Schedule apply in relation to a claim for pension bonus lodged on or after 1 January 2008.

34 Section 21

Before “A claim”, insert “(1)”.

35 At the end of section 21

Add:

- (2) However, the Secretary may in special circumstances allow a person a longer period to make a claim than the period fixed by this Subdivision. If the Secretary does so, the lodgment period for the person’s claim is the period allowed by the Secretary.
- (3) Subsection (2) does not apply in relation to a claim for which the lodgment period is fixed by subsection 23(1).

36 Application of amendments of section 21 of the *Social Security (Administration) Act 1999*

The amendments of section 21 of the *Social Security (Administration) Act 1999* made by this Schedule apply in relation to a claim for pension bonus lodged on or after 1 January 2008.

37 After Subdivision E of Division 1 of Part 3

Insert:

Subdivision EA—Time limits for claims for pension bonus bereavement payment

26A General rule

A person's claim for pension bonus bereavement payment must be made within the period of 26 weeks beginning on the day of death of the partner in respect of whom the person is qualified for pension bonus bereavement payment.

26B Extension

The Secretary may in special circumstances allow a person a longer period to make a claim than the period under section 26A. If the Secretary does so, the person's claim must be made before the end of the period allowed by the Secretary.

38 Subsection 47(1) (after paragraph (i) of the definition of lump sum benefit)

Insert:

- (ia) pension bonus bereavement payment; or

39 Paragraph 58(1)(a)

After "pension bonus", insert "or pension bonus bereavement payment".

Note: The heading to section 58 is altered by inserting "**and pension bonus bereavement payment**" after "**pension bonus**".

40 Subsection 59(1)

After "bonus", insert "or a pension bonus bereavement payment".

Note: The heading to section 59 is altered by inserting "**or pension bonus bereavement payment**" after "**bonus**".

41 After subsection 59(1)

Insert:

(1A) If:

- (a) a person claims a pension bonus; and
- (b) the person dies; and
- (c) at the time of the person's death, the person had received the bonus; and

(d) after the person's death, the Secretary determines that the person's bonus is to be increased under section 93K or 93L; the increase is payable to the legal personal representative of the person.

42 Paragraph 59(2)(a)

After "bonus", insert "or a pension bonus bereavement payment".

43 Paragraph 59(2)(c)

After "bonus", insert "or payment".

44 Subsection 59(2)

Omit "the bonus is payable", substitute "the bonus or payment is payable".

45 Paragraph 59(3)(a)

After "bonus", insert "or a pension bonus bereavement payment".

46 Paragraph 59(3)(e)

After "bonus", insert "or payment".

47 After subsection 59(4)

Insert:

(4A) If a pension bonus is payable to the legal personal representative of a person under subsection (2) or (3), any increase in that bonus determined by the Secretary under section 93K or 93L is also payable to that legal personal representative.

48 Subsection 59(5)

After "pension bonus", insert "or pension bonus bereavement payment".

49 At the end of subsection 59(5)

Add "or payment".

50 Subsection 149(2)

After "pension bonus", insert "or pension bonus bereavement payment".

51 Subsection 149(3)

After “entitled to a pension bonus”, insert “or pension bonus bereavement payment”.

52 Paragraphs 149(3)(a) and (b)

After “the pension bonus”, insert “or pension bonus bereavement payment”.

Veterans’ Entitlements Act 1986

53 Subsection 5L(3C)

After “pension bonus”, insert “, pension bonus bereavement payment, DFISA bonus or DFISA bonus bereavement payment”.

54 Subsection 5Q(1) (definition of *DFISA bonus*)

Repeal the definition, substitute:

DFISA bonus means DFISA bonus under Part VIIAB (and does not include DFISA bonus bereavement payment under Subdivision C of Division 3 of that Part).

55 Subsection 5Q(1)

Insert:

DFISA bonus bereavement payment means a DFISA bonus bereavement payment under Subdivision C of Division 3 of Part VIIAB.

56 Subsection 5Q(1) (definition of *pension bonus*)

Repeal the definition, substitute:

pension bonus means pension bonus under Part IIIAB (and does not include pension bonus bereavement payment under Division 11A of that Part).

57 Subsection 5Q(1)

Insert:

pension bonus bereavement payment means a pension bonus bereavement payment under Division 11A of Part IIIAB.

58 Section 45TA

Insert:

PPBP employment income (short for pension bonus bereavement payment employment income) has the meaning given by section 45UUC.

59 Subparagraphs 45TC(1)(f)(ii), (2)(f)(ii) and (3)(f)(ii)

Omit “bonus under Part 2.2A of”, substitute “pension bonus within the meaning of”.

60 Subsection 45TO(1)

Omit “by written notice published in the Gazette”, substitute “by legislative instrument”.

61 Subsection 45TO(1)

Omit “The period must not begin before the publication of the notice.”

62 After subsection 45TO(1)

Insert:

(1A) Despite subsection 12(2) of the *Legislative Instruments Act 2003*, a period ascertained in accordance with a declaration made under subsection (1) may begin before the date on which the declaration is registered under that Act.

63 Subsection 45TO(3)

Repeal the subsection.

64 At the end of Division 6 of Part IIIAB

Add:

45UIB Top up of pension bonus for increased rate of designated pension

- (1) The Commission may determine (a ***top up determination***) that a person’s pension bonus is to be increased if:
- (a) the Commission makes a determination (a ***rate determination***) increasing the rate of the person’s designated pension; and

-
- (b) the rate determination takes effect on a day that is not more than 13 weeks after the date (the *effective date*) on which the determination granting the pension bonus takes effect; and
 - (c) the rate determination is made because of a reduction since the effective date in either or both of the following:
 - (i) the value of the person's assets;
 - (ii) the person's ordinary income.

Note: Any reduction in the value of a person's assets or the person's income will be determined by applying the assets test and the ordinary/adjusted income test in the Rate Calculator in Schedule 6.

- (2) The person's pension bonus is increased by the difference between:
 - (a) the person's amount of pension bonus on the effective date; and
 - (b) the amount that would have been the person's amount of pension bonus on the effective date if the rate of the person's designated pension on that date had been the highest rate at which the designated pension was payable to the person during the 13 weeks after the effective date.
- (3) A top up determination takes effect on the day on which the determination is made or on any earlier or later day specified in the determination.
- (4) A top up determination is not a legislative instrument.

45UIC Top up of pension bonus in specified circumstances

- (1) The Commission may determine (a *top up determination*) that a person's pension bonus is to be increased if:
 - (a) the Commission makes a determination (a *rate determination*) increasing the rate of the person's designated pension; and
 - (b) the rate of the designated pension is increased in circumstances specified in an instrument made under subsection (6).
- (2) The person's pension bonus is increased by the amount specified by the Commission in the top up determination.
- (3) The Commission must not specify an increase that would be greater than the difference between:

- (a) the person's amount of pension bonus on the day on which the determination granting the bonus takes effect; and
 - (b) the amount that would have been the person's amount of pension bonus on that day if the rate of the person's designated pension on that day had been the rate specified in the rate determination.
- (4) A top up determination takes effect on the day on which the determination is made or on any earlier or later day specified in the determination.
- (5) A top up determination is not a legislative instrument.
- (6) The Commission may, by legislative instrument, specify circumstances (other than circumstances specified in subsection 45UIB(1)) for the purposes of paragraph (1)(b).

65 Application of sections 45UIB and 45UIC of the *Veterans' Entitlements Act 1986*

Sections 45UIB and 45UIC of the *Veterans' Entitlements Act 1986*, as inserted by this Schedule, apply in relation to a pension bonus granted on or after 1 January 2008.

66 Paragraph 45UK(1)(c)

Omit "either", substitute "one of the following".

67 Subparagraph 45UK(1)(c)(i)

Omit "pension; or", substitute "pension;".

68 Subparagraph 45UK(1)(c)(ii)

Omit "(3); and", substitute "(3);".

69 At the end of paragraph 45UK(1)(c)

Add:

- (iii) the subject of a determination under subsection (5); and

70 At the end of section 45UK

Add:

- (5) If:

- (a) a person who is a registered member of the pension bonus scheme lodges a claim for a designated pension; and
- (b) a claim for pension bonus for the person is lodged after the claim for the designated pension; and
- (c) the Commission is satisfied that, having regard to guidelines (if any) made under subsection (6), special circumstances apply in relation to the lodgment of the claim for pension bonus;

the Commission may determine that this Part (other than this section) has effect as if the claim for the pension bonus had been made at the time the person claimed the designated pension.

- (6) The Commission may, by legislative instrument, make guidelines for the purposes of subsection (5).

71 Application of amendments of section 45UK of the *Veterans' Entitlements Act 1986*

The amendments of section 45UK of the *Veterans' Entitlements Act 1986* made by this Schedule apply in relation to a claim for pension bonus lodged on or after 1 January 2008.

72 After subsection 45UL(1)

Insert:

- (1A) However, the Commission may in special circumstances allow a person a longer period to make a claim than the period determined under this section. If the Commission does so, the ***lodgment period*** for the person's claim is the period allowed by the Commission.
- (1AB) Subsection (1A) does not apply in relation to a claim for which the lodgment period is determined under subsection (3).

73 Application of amendment of section 45UL of the *Veterans' Entitlements Act 1986*

The amendment of section 45UL of the *Veterans' Entitlements Act 1986* made by this Schedule applies in relation to a claim for pension bonus lodged on or after 1 January 2008.

74 At the end of subsection 45UR(1)

Add:

Note: A person's surviving partner may be qualified for a pension bonus bereavement payment under Division 11A of this Part.

75 After subsection 45UR(1)

Insert:

Later top up of pension bonus received before death

(1A) If:

- (a) a person claims a pension bonus; and
- (b) the person dies; and
- (c) at the time of the person's death, the person had received the bonus; and
- (d) after the person's death, the Commission determines that the person's bonus is to be increased under section 45UIB or 45UIC;

the increase is payable to the legal personal representative of the person.

76 After subsection 45UR(4)

Insert:

Top up of pension bonus also payable

- (4A) If a pension bonus is payable to the legal personal representative of a person under subsection (2) or (3), any increase in that bonus determined by the Commission under section 45UIB or 45UIC is also payable to that legal personal representative.

77 After Division 11 of Part IIIAB

Insert:

Division 11A—Pension bonus bereavement payment

45UUA Qualification for pension bonus bereavement payment

A person is qualified for a pension bonus bereavement payment if:

- (a) the person stopped being a member of a couple because the person's partner died; and
- (b) immediately before the partner died, the partner was a registered member of the pension bonus scheme; and

-
- (c) the partner had not made a claim for a designated pension or pension bonus before the partner died.

45UUB Amount of pension bonus bereavement payment

- (1) The amount of a person's pension bonus bereavement payment is worked out:
- (a) by working out the amount of pension bonus that would have been payable to the legal personal representative of the partner had the partner made claims for a designated pension and pension bonus just before the partner died (see subsections 45UR(3) and (4)); and
 - (b) by disregarding, in working out the amount referred to in paragraph (a):
 - (i) any PBBP employment income of the person (see section 45UUC); and
 - (ii) any income of a kind specified in an instrument made under subsection (2).
- (2) The Commission may, by legislative instrument, specify kinds of income for the purposes of subparagraph (1)(b)(ii).

45UUC Definition of *PBBP employment income*

- (1) ***PBBP employment income***, of a person:
- (a) means ordinary income that is, or is taken to be, earned, derived or received by the person or the person's partner from gainful work; and
 - (b) includes (without limitation) any of the following that is, or is taken to be, earned, derived or received by the person or the person's partner:
 - (i) salary, wages, commissions and employment-related fringe benefits;
 - (ii) leave payments;
 - (iii) payments to the person or the person's partner by a former employer of the person or person's partner in relation to the termination of the person's or partner's employment.
- (2) For the purposes of subparagraph (1)(b)(ii), a ***leave payment***:

- (a) includes a payment in respect of sick leave, personal leave, carer's leave, annual leave, maternity leave, long service leave or special leave; and
- (b) may be made as a lump sum payment, a series of regular payments or otherwise; and
- (c) is taken to be made to a person if it is made to another person:
 - (i) at the direction of the person or of a court; or
 - (ii) on behalf of the person; or
 - (iii) for the benefit of the person; or
 - (iv) if the person waives or assigns his or her right to the payment.

45UUD Need for a claim for pension bonus bereavement payment

A person who wants to be granted a pension bonus bereavement payment must make a proper claim for the payment.

45UUE Proper claim

- (1) To be a proper claim, a claim for pension bonus bereavement payment must be:
 - (a) in writing; and
 - (b) in accordance with a form approved by the Commission; and
 - (c) lodged at an office of the Department in Australia in accordance with section 5T within the applicable lodgment period (see section 45UUF).
- (2) A claim for pension bonus bereavement payment lodged in accordance with section 5T is taken to have been made on a day determined under that section.

45UUF Lodgment period for claim

- (1) The *lodgment period* for a person's claim for pension bonus bereavement payment is the period of 26 weeks beginning on the day of death of the partner in respect of whom the person is qualified for pension bonus bereavement payment.
- (2) However, the Commissioner may in special circumstances allow a person a longer period to make a claim than the period under

subsection (1). If the Commissioner does so, the *lodgment period* for the person's claim is the period allowed by the Commissioner.

45UUG Withdrawal of claim

- (1) A claimant for a pension bonus bereavement payment may withdraw a claim that has not been determined.
- (2) A claim that is withdrawn is taken not to have been made.
- (3) A withdrawal may be made orally or by document lodged at an office of the Department in Australia in accordance with section 5T.
- (4) A withdrawal made by lodging a document in accordance with section 5T is taken to have been made on a day determined in accordance with that section.

45UUH Secretary to investigate claim and submit it to Commission

- (1) If a person makes a proper claim for a pension bonus bereavement payment, the Secretary must cause an investigation to be made into the matters to which the claim relates.
- (2) When the investigation is completed, the Secretary must cause the claim to be submitted to the Commission for consideration and determination.
- (3) When the claim is submitted to the Commission, it must be accompanied by:
 - (a) any evidence supplied by the claimant in support of the claim; and
 - (b) any documents or other evidence obtained by the Department in the course of the investigation that are relevant to the claim; and
 - (c) any other documents or other evidence under the control of the Department that are relevant to the claim.

45UUI Commission to determine claim

The Commission must, in accordance with this Act, determine a claim for pension bonus bereavement payment.

45UUJ Grant of claim

The Commission must determine that a claim for pension bonus bereavement payment is to be granted if the Commission is satisfied that the person is qualified for the payment.

45UUK Payment of pension bonus bereavement payment

If a claim for pension bonus bereavement payment is granted, the payment is payable to the person concerned on:

- (a) the first pension payday after the grant; or
- (b) if the Commission considers that it is not practicable to pay the payment on that payday—the next practicable day.

45UUL Payment of pension bonus bereavement payment after death

- (1) This section sets out the only circumstances in which pension bonus bereavement payment will be payable after the death of the person concerned.
- (2) If:
 - (a) a person claims a pension bonus bereavement payment; and
 - (b) the person dies; and
 - (c) at the time of the person's death, the claim had been granted, but the person had not received the payment;the payment is payable to the legal personal representative of the person.
- (3) If:
 - (a) a person claims a pension bonus bereavement payment; and
 - (b) the person dies; and
 - (c) at the time of the person's death, the claim had not been determined;then:
 - (d) the Commission must determine the claim after the person's death as if the person had not died; and
 - (e) if the claim is granted—the payment is payable to the legal personal representative of the person.

- (4) If a pension bonus bereavement payment is paid under subsection (2) or (3), the Commonwealth has no further liability to any person in respect of that bonus.

78 Application of Division 11A of Part IIIAB of the Veterans' Entitlements Act 1986

Division 11A of the *Veterans' Entitlements Act 1986*, as inserted by this Schedule, applies in relation to a person whose partner dies on or after 1 January 2008.

79 Subsection 57(3)

After "bonus", insert "and pension bonus bereavement payment".

80 Section 58

Repeal the section, substitute:

58 Application of Subdivision

This Subdivision applies to:

- (a) pensions payable under Part III (Service Pensions) or Part IIIA (Income Support Supplement); and
- (b) pension bonus and pension bonus bereavement payment payable under Part IIIAB.

81 Subsection 58J(2)

After "pension bonus", insert "or pension bonus bereavement payment".

82 Paragraph 58J(2)(a)

After "bonus", insert "or payment".

83 Section 118N (after paragraph (b))

Insert:

(ba) DFISA bonus bereavement payment; and

84 Section 118N

After:

Payment of DFISA bonus is also automatic.

Insert:

If DFISA bonus would have been payable to a person who dies before claiming the person's social security pension bonus, a DFISA bonus bereavement payment may be payable to the person's partner (see Subdivision C of Division 3). Payment of DFISA bonus bereavement payment is also automatic.

85 Section 118NA

Insert:

social security pension bonus bereavement payment means pension bonus bereavement payment under Division 12 of Part 2.2A of the Social Security Act.

86 At the end of subsection 118NH(1)

Add:

Note: A person's surviving partner may be qualified for a DFISA bonus bereavement payment under Subdivision C of this Division.

87 After subsection 118NH(1)

Insert:

Later top up of DFISA bonus received before death

(1A) If:

- (a) a person dies; and
- (b) at the time of the person's death, the person had received a DFISA bonus; and
- (c) after the person's death, the person's DFISA bonus is increased under section 118NIA;

the increase is payable to the legal personal representative of the person.

88 After subsection 118NH(2)

Insert:

Top up of DFISA bonus also payable

- (2A) If a DFISA bonus is payable to the legal personal representative of a person under subsection (2), any increase in that bonus under section 118NIA is also payable to that legal personal representative.

89 Subsection 118NI(1)

Omit “(1)”.

90 At the end of Subdivision B of Division 3 of Part VIIAB

Add:

118NIA Top up of DFISA bonus for social security top up

- (1) The amount of a person’s DFISA bonus is to be increased if a determination (a *top up determination*) under section 93K or 93L of the Social Security Act is made in relation to the person’s social security pension bonus.
- (2) The amount of the increase is the excess (if any) of the amount in paragraph (a) over the amount in paragraph (b):
- (a) the person’s amount of DFISA bonus worked out under section 118NI having regard to the top up determination; and
 - (b) the person’s amount of DFISA bonus worked out under section 118NI without regard to the top up determination.

91 At the end of Division 3 of Part VIIAB

Add:

Subdivision C—DFISA bonus bereavement payment

118NIB Qualification for DFISA bonus bereavement payment

- (1) A person is qualified for a DFISA bonus bereavement payment if:
- (a) the person is qualified for social security pension bonus bereavement payment; and
 - (b) in working out what would have been the person’s partner’s amount of pension bonus under Division 6 of Part 2.2A of the Social Security Act for the purposes of paragraph 93WB(a) of that Act, the amount is reduced by adjusted

disability pension that is payable to the person or the person's partner.

- (2) A person is qualified for a DFISA bonus bereavement payment if:
- (a) the person would have been qualified for social security pension bonus bereavement payment except that the amount of pension bonus that would have been payable to the legal personal representative of the person's partner for the purposes of paragraph 93WA(1)(d) of the Social Security Act would be nil; and
 - (b) the amount would be nil because it was reduced by adjusted disability pension that was payable to the person or the person's partner.

118NIC Amount of DFISA bonus bereavement payment

The amount of a person's DFISA bonus bereavement payment is the amount that would have been the person's partner's amount of DFISA bonus under Subdivision B of this Division if the partner had made claims for social security age pension and social security pension bonus just before the partner died.

118NID Payment of DFISA bonus bereavement payment

DFISA bonus bereavement payment that a person is qualified for is payable to the person on:

- (a) if the person received a social security pension bonus bereavement payment:
 - (i) the first pension payday after that payment was granted; or
 - (ii) if the Commission considers that it is not practicable to pay the DFISA bonus bereavement payment on that day—the next practicable day; and
- (b) otherwise—the next practicable day after the person's claim for social security pension bonus bereavement payment is determined.

118NIE Payment of DFISA bonus bereavement payment after death

- (1) This section sets out the only circumstances in which DFISA bonus bereavement payment will be payable after the death of the person concerned.
- (2) If:
 - (a) DFISA bonus bereavement payment is payable to a person; and
 - (b) the person dies; and
 - (c) at the time of the person's death, the person had not received the DFISA bonus bereavement payment;the payment is payable to the legal personal representative of the person.
- (3) If DFISA bonus bereavement payment is paid under subsection (2), the Commonwealth has no further liability to any person in respect of that payment.

92 Paragraph 119(1)(ba)

After "bonus", insert "and pension bonus bereavement payment".

93 Subsection 119(2) (paragraph (e) of the definition of *claim*)

After "bonus", insert "or pension bonus bereavement payment".

94 Subsection 122D(2)

After "DFISA bonus", insert "or DFISA bonus bereavement payment".

Note 1: The heading to section 122D is altered by omitting "and DFISA bonus" and substituting "DFISA bonus and DFISA bonus bereavement payment".

Note 2: The heading to subsection 122D(2) is altered by inserting "or DFISA bonus bereavement payment" after "bonus".

95 Paragraph 122D(2)(a)

After "bonus", insert "or payment".

96 Subsection 122D(4)

After "bonus", insert "or DFISA bonus bereavement payment".

Note: The heading to subsection 122D(4) is altered by inserting "or DFISA bonus bereavement payment" after "bonus".

Schedule 2—Assurances of support

Social Security Act 1991

1 At the end of subsection 729(2)

Add:

- ; and (h) an assurance of support does not apply to the person at any time during the period (see subsection (2C)).

2 After subsection 729(2B)

Insert:

- (2C) For the purposes of paragraph (2)(h), an assurance of support applies to a person at a particular time if:
- (a) an assurance of support is in force in respect of the person (the *assuree*) at that time; and
 - (b) the person who gave the assurance was willing and able to provide an adequate level of support to the assuree; and
 - (c) it was reasonable for the assuree to accept that support.

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

3 Application provision

The amendments of section 729 of the *Social Security Act 1991* made by this Schedule apply in relation to special benefit the start day for which is on or after 1 January 2008.

4 Subsection 1061ZZGE(3)

Repeal the subsection (including the note), substitute:

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

5 Before section 1061ZZGF

Insert:

1061ZZGEA Assurance cannot be withdrawn once visa issued

A person who has given an assurance of support that has been accepted under this Chapter cannot withdraw that assurance once the person in respect of whom the assurance was given becomes the holder under the *Migration Act 1958* of a visa granted in connection with the assurance.

6 Application provision

Section 1061ZZGEA of the *Social Security Act 1991* applies in relation to an assurance of support that is given on or after 1 January 2008.

7 Paragraph 1061ZZGF(1)(b)

Omit “the earlier”, substitute “the earliest”.

8 At the end of paragraph 1061ZZGF(1)(b)

Add:

- ; (iii) if a circumstance specified for the purposes of this subparagraph in a determination under section 1061ZZGH applies in relation to the assurance—the time determined by the Secretary in relation to that circumstance.

9 Subsection 1061ZZGF(4)

Repeal the subsection, substitute:

- (4) Except as provided by paragraph (1)(b), an assurance of support that has come into force in respect of a person remains in force in respect of that person in spite of any change in circumstances whatsoever (including any purported withdrawal, however described, of the assurance).

10 Subsection 1061ZZGH(1) (at the end of the table)

Add:

- | | | |
|---|-------------------------------------|--|
| 6 | Subparagraph
1061ZZGF(1)(b)(iii) | Circumstances in which assurances of support
accepted under this Chapter cease to be in force |
|---|-------------------------------------|--|

Schedule 3—Crisis payments for humanitarian entrants to Australia

Social Security Act 1991

1 Subsection 19D(1)

Omit “and 1061JHA”, substitute “, 1061JHA and 1061JI”.

2 After section 1061JHA

Insert:

1061JI Qualification—humanitarian entrant to Australia

- (1) A person is qualified for a crisis payment if:
 - (a) the person arrives in Australia; and
 - (b) that arrival is the first time the person has arrived in Australia as the holder of a qualifying humanitarian visa (see subsection (2)); and
 - (c) the person makes a claim for a crisis payment within 7 days of that arrival; and
 - (d) on the day on which the claim is made:
 - (i) the person is in severe financial hardship (see section 19D); and
 - (ii) the person has made a claim (whether on the same day or on an earlier day) for a social security pension or benefit and the person is qualified for the pension or benefit.
- (2) The Minister may, by legislative instrument, specify visas that are qualifying humanitarian visas for the purposes of paragraph (1)(b).

3 Application of amendments

The amendments made by this Schedule apply in relation to a person who arrives in Australia as the holder of a qualifying humanitarian visa on or after 1 January 2008.

Schedule 4—Funeral investments

Social Security Act 1991

1 Paragraph 8(8)(ma) (note)

Omit “subsection 23(1)”, substitute “section 19E”.

2 After section 19D

Insert:

19E Exempt funeral investments

- (1) Work out whether a funeral investment that relates to a particular funeral is an ***exempt funeral investment*** by applying these rules:
- (a) the expenses for the funeral must not be prepaid; and
 - (b) in relation to that funeral:
 - (i) only one investment of not more than \$10,000 can be an exempt funeral investment; or
 - (ii) only two investments that combined are not more than \$10,000 can be exempt funeral investments.

Note: The amounts in paragraph (1)(b) are indexed each year on 1 July (see Division 2 of Part 3.16).

- (2) Disregard any return on an investment in determining the amount of an investment for the purposes of this section.
- (3) For the purposes of subsection (1), a ***funeral investment*** means an investment, being an investment that cannot be realised before maturity and the return on which is not payable before maturity, that:
- (a) matures on the death of whichever member of a couple dies first or dies last and is to be applied on maturity to the expenses of the funeral of that member of the couple; or
 - (b) matures on the death of:
 - (i) the investor; or
 - (ii) if the investor is a member of a couple at the time the investment is made, the investor’s partner at that time; and is to be applied on maturity to the expenses of the funeral of the person on whose death it matures.
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3 Subsection 23(1) (definition of *exempt funeral investment*)

Repeal the definition, substitute:

exempt funeral investment has the meaning given by section 19E.

4 Subsection 23(1) (definition of *type A funeral investment*)

Repeal the definition.

5 Subsection 23(1) (definition of *type B funeral investment*)

Repeal the definition.

6 Subsection 1118(1) (note 4)

Omit “subsection 23(1)”, substitute “section 19E”.

7 Section 1190 (after table item 35)

Insert:

36.	exempt funeral investment threshold	exempt funeral investment threshold	[paragraph 19E(1)(b)]
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8 Subsection 1191(1) (after table item 25)

Insert:

26.	exempt funeral investment threshold	1 July	December	most recent December quarter before reference quarter	\$250.00
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Veterans’ Entitlements Act 1986

9 After paragraph 5H(8)(zj)

Insert:

Note: For *exempt funeral investment* see section 5PC.

10 After section 5PB

Insert:

5PC Exempt funeral investments

- (1) Work out whether a funeral investment that relates to a particular funeral is an *exempt funeral investment* by applying these rules:
- (a) the expenses for the funeral must not be prepaid; and
 - (b) in relation to that funeral:
 - (i) only one investment of not more than \$10,000 can be an exempt funeral investment; or
 - (ii) only two investments that combined are not more than \$10,000 can be exempt funeral investments.

Note: The amounts in paragraph (1)(b) are indexed each year on 1 July (see Division 18 of Part IIIB).

- (2) Disregard any return on an investment in determining the amount of an investment for the purposes of this section.
- (3) For the purposes of subsection (1), a *funeral investment* means an investment, being an investment that cannot be realised before maturity and the return on which is not payable before maturity, that:
- (a) matures on the death of whichever member of a couple dies first or dies last and is to be applied on maturity to the expenses of the funeral of that member of the couple; or
 - (b) matures on the death of:
 - (i) the investor; or
 - (ii) if the investor is a member of a couple at the time the investment is made, the investor's partner at that time; and is to be applied on maturity to the expenses of the funeral of the person on whose death it matures.

11 Subsection 5Q(1) (definition of *exempt funeral investment*)

Repeal the definition, substitute:

exempt funeral investment has the meaning given by section 5PC.

12 Subsection 5Q(1) (definition of *type A funeral investment*)

Repeal the definition.

13 Subsection 5Q(1) (definition of *type B funeral investment*)

Repeal the definition.

14 After paragraph 52(1)(ja)

Insert:

Note: For *exempt funeral investment* see section 5PC.

15 Section 59A (after table item 13A)

Insert:

13B.	Exempt funeral investment threshold	exempt funeral investment threshold	paragraph 5PC(1)(b)
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16 Subsection 59B(1) (after table item 8A)

Insert:

8B.	Exempt funeral investment threshold	1 July	December	most recent December quarter before reference quarter	\$250.00
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17 Application provision

The amendments made by this Schedule apply on and after 1 January 2008 in relation to investments whether made before or after that day.

Schedule 5—Extension of multiple birth allowance

A New Tax System (Family Assistance) Act 1999

1 Clause 36 of Schedule 1

Before “An amount”, insert “(1)”.

2 Paragraph 36(b) of Schedule 1

Repeal the paragraph, substitute:

- (b) at least 3 of those children were born during the same multiple birth and satisfy the requirements of subclause (2).

3 At the end of clause 36 of Schedule 1

Add:

- (2) For the purposes of paragraph (1)(b), the requirements of this subclause are satisfied by a child if:
 - (a) the child is under the age of 16 years; or
 - (b) both:
 - (i) the child has turned 16 and is undertaking full-time study; and
 - (ii) the calendar year has not ended in which the first born of the children in the multiple birth who are undertaking full-time study turns 18.

4 Paragraphs 37(a) and (b) of Schedule 1

After “multiple birth”, insert “who satisfy the requirements of subclause 36(2)”.

5 Application

The amendments made by this Schedule apply to multiple birth allowance included in an individual’s Part A rate, on or after 1 January 2008, for the 2007-2008 income year or a later income year.

*[Minister's second reading speech made in—
House of Representatives on 20 June 2007
Senate on 16 August 2007]*

(124/07)

36 *Families, Community Services and Indigenous Affairs Legislation Amendment (Further
2007 Budget Measures) Act 2007 No. 183, 2007*