

Social Services and Other Legislation Amendment (Pension Loans Scheme Enhancements) Act 2022

No. 28, 2022

An Act to amend the law relating to social security and veterans’ entitlements, and for related purposes

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Social Services and Other Legislation Amendment (Pension Loans Scheme Enhancements) Act 2022

No. 28, 2022

An Act to amend the law relating to social security and veterans’ entitlements, and for related purposes

[*Assented to 1 April 2022*]

The Parliament of Australia enacts:

1 Short title

 This Act is the *Social Services and Other Legislation Amendment (Pension Loans Scheme Enhancements) Act 2022*.

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 |
| Provisions | Commencement | Date/Details |
| 1. The whole of this Act | 1 July 2022. | 1 July 2022 |

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

 (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

 Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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

Part 1—No negative equity guarantee

Social Security Act 1991

1 Subsection 1133AA(1) (definition of *real assets*)

Omit “, but does not include any real property specified under paragraph 1136(1A)(a)”, substitute “that is specified under paragraph 1136(1A)(a)”.

2 Paragraph 1133(3)(c)

After “against”, insert “specified”.

3 Paragraph 1133(3)(d)

Omit “that real”, substitute “the specified real”.

4 Paragraph 1136(1A)(a)

Repeal the paragraph, substitute:

 (a) specify any real property that is to be included in working out the value of real assets for the purposes of sections 1133 and 1135A, or that is to be subject to a charge under section 1138; and

5 Paragraph 1136(3)(b)

Omit “Secretary; and”, substitute “Secretary.”.

6 Paragraph 1136(3)(c)

Repeal the paragraph.

7 Paragraph 1137(3)(b)

Repeal the paragraph, substitute:

 (b) be in a form approved by the Secretary.

8 After section 1144

Insert:

1144AA No negative equity guarantee

When adjusted value of assets is exceeded

 (1) If:

 (a) a person owes a debt to the Commonwealth under section 1135; and

 (b) neither subparagraph 1133(1)(d)(ii) nor subparagraph 1133(2)(d)(ii) applied to the person when the person made the request to participate in the pension loans scheme; and

 (c) either of the following events occur:

 (i) a person seeks to repay the debt;

 (ii) the Commonwealth seeks to recover the debt; and

 (d) at the time the event occurs, the amount of the debt exceeds the adjusted value of the person’s real assets; and

 (e) subsection (3) of this section does not apply;

then:

 (f) the Commonwealth is not entitled to recover an amount (the ***excess amount***) that exceeds the adjusted value of the person’s real assets; and

 (g) the debt to the Commonwealth, and the charge securing the debt, is discharged to the extent of the excess amount by force of this paragraph.

Note: For the meaning of ***real assets***, see subsection 1133AA(1).

When adjusted value of charge is exceeded

 (2) If:

 (a) a person owes a debt to the Commonwealth under section 1135; and

 (b) subparagraph 1133(1)(d)(ii) or (2)(d)(ii) applied to the person when the person made the request to participate in the pension loans scheme; and

 (c) either of the following events occur:

 (i) a person seeks to repay the debt;

 (ii) the Commonwealth seeks to recover the debt; and

 (d) at the time the event occurs, the amount of the debt exceeds the adjusted value of the real property specified for the purposes of paragraph 1133(3)(c); and

 (e) subsection (3) of this section does not apply;

then:

 (f) the Commonwealth is not entitled to recover an amount (the ***excess amount***) that exceeds the adjusted value of the specified real property; and

 (g) the debt to the Commonwealth, and the charge securing the debt, is discharged to the extent of the excess amount by force of this paragraph.

Excess amount may be recovered and debt is not discharged in certain circumstances

 (3) This subsection applies if the Secretary is satisfied that:

 (a) a charge or encumbrance over the person’s real assets or the specified real property is created or increased by, or with the express consent of, the person after the person begins to participate in the pension loans scheme which affects, or will affect, the ability of the Commonwealth to recover the debt owed under section 1135; or

 (b) the person engaged in fraud, or made a misrepresentation, in relation to the person’s participation in the pension loans scheme, including in relation to the person’s real assets or the specified real property.

 (4) The Secretary may, by legislative instrument, make guidelines to be complied with in making a decision for the purposes of subsection (3).

Meaning of adjusted value

 (5) The ***adjusted value***:

 (a) for real assets—means the amount worked out by:

 (i) working out the market value of the assets in accordance with an instrument made under subsection (6); and

 (ii) adjusting that value in accordance with the instrument; and

 (b) for real property—means the amount worked out by:

 (i) working out the market value of the property in accordance with an instrument made under subsection (6); and

 (ii) adjusting that value in accordance with the instrument.

 (6) The Secretary must, by legislative instrument, determine:

 (a) one or more methods for working out the market value of real assets for the purposes of subparagraph (5)(a)(i); and

 (b) adjustments to be made to the market value of real assets for the purposes of subparagraph (5)(a)(ii); and

 (c) one or more methods for working out the market value of real property for the purposes of subparagraph (5)(b)(i); and

 (d) adjustments to be made to the market value of real property for the purposes of subparagraph (5)(b)(ii).

 (7) Without limiting subsection (6), the determination may:

 (a) specify that adjustments are to be made in relation to specified kinds of charges or encumbrances over real assets or real property; and

 (b) determine different methods to be used and adjustments to be made in different circumstances.

Veterans’ Entitlements Act 1986

9 Subsection 52ZAAA(1) (definition of *real assets*)

Omit “, but does not include any real property specified under paragraph 52ZD(1A)(a)”, substitute “that is specified under paragraph 52ZD(1A)(a)”.

10 Paragraph 52ZA(3)(c)

After “against”, insert “specified”.

11 Paragraph 52ZA(3)(d)

Omit “that real”, insert “the specified real”.

12 Paragraph 52ZD(1A)(a)

Repeal the paragraph, substitute:

 (a) specify any real property that is to be included in working out the value of real assets for the purposes of sections 52ZA and 52ZCA, or that is to be subject to a charge under section 52ZF; and

13 At the end of Subdivision E of Division 11 of Part IIIB

Add:

52ZMAA No negative equity guarantee

When adjusted value of assets is exceeded

 (1) If:

 (a) a person owes a debt to the Commonwealth under section 52ZC; and

 (b) neither subparagraph 52ZA(1)(e)(ii) nor subparagraph 52ZA(2)(e)(ii) applied to the person when the person made the request to participate in the pension loans scheme; and

 (c) either of the following events occur:

 (i) a person seeks to repay the debt;

 (ii) the Commonwealth seeks to recover the debt; and

 (d) at the time the event occurs, the amount of the debt exceeds the adjusted value of the person’s real assets; and

 (e) subsection (3) of this section does not apply;

then:

 (f) the Commonwealth is not entitled to recover an amount (the ***excess amount***) that exceeds the adjusted value of the person’s real assets; and

 (g) the debt to the Commonwealth, and the charge securing the debt, is discharged to the extent of the excess amount by force of this paragraph.

Note: For the meaning of ***real assets***, see subsection 52ZAAA(1).

When adjusted value of charge is exceeded

 (2) If:

 (a) a person owes a debt to the Commonwealth under section 52ZC; and

 (b) subparagraph 52ZA(1)(e)(ii) or (2)(e)(ii) applied to the person when the person made the request to participate in the pension loans scheme; and

 (c) either of the following events occur:

 (i) a person seeks to repay the debt;

 (ii) the Commonwealth seeks to recover the debt; and

 (d) at the time the event occurs, the amount of the debt exceeds the adjusted value of the real property specified for the purposes of paragraph 52ZA(3)(c); and

 (e) subsection (3) of this section does not apply;

then:

 (f) the Commonwealth is not entitled to recover an amount (the ***excess amount***) that exceeds the adjusted value of the specified real property; and

 (g) the debt to the Commonwealth, and the charge securing the debt, is discharged to the extent of the excess amount by force of this paragraph.

Circumstances in which excess amount may be recovered and debt is not discharged

 (3) This subsection applies if the Commission is satisfied that:

 (a) a charge or encumbrance over the person’s real assets or the specified real property is created or increased by, or with the express consent of, the person after the person begins to participate in the pension loans scheme which affects, or will affect, the ability of the Commonwealth to recover the debt owed under section 52ZC; or

 (b) the person engaged in fraud, or made a misrepresentation, in relation to the person’s participation in the pension loans scheme, including in relation to the person’s real assets or the specified real property.

 (4) The Commission may, by legislative instrument, make guidelines to be complied with in making a decision for the purposes of subsection (3).

Meaning of adjusted value

 (5) The ***adjusted value***:

 (a) for real assets—means the amount worked out by:

 (i) working out the market value of the assets in accordance with an instrument made under subsection (6); and

 (ii) adjusting that value in accordance with the instrument; and

 (b) for real property—means the amount worked out by:

 (i) working out the market value of the property in accordance with an instrument made under subsection (6); and

 (ii) adjusting that value in accordance with the instrument.

 (6) The Commission must, by legislative instrument, determine:

 (a) one or more methods for working out the market value of real assets for the purposes of subparagraph (5)(a)(i); and

 (b) adjustments to be made to the market value of real assets for the purposes of subparagraph (5)(a)(ii); and

 (c) one or more methods for working out the market value of real property for the purposes of subparagraph (5)(b)(i); and

 (d) adjustments to be made to the market value of real property for the purposes of subparagraph (5)(b)(ii).

 (7) Without limiting subsection (6), the determination may:

 (a) specify that adjustments are to be made in relation to specified kinds of charges or encumbrances over real assets or real property; and

 (b) determine different methods to be used and adjustments to be made in different circumstances.

14 Application of amendments

(1) The amendments made by items 1 to 7 and 9 to 12 of this Part apply in relation to requests to participate in the pension loans scheme made after the commencement of this item.

(2) The amendments made by items 8 and 13 of this Part apply in relation to debts owed to the Commonwealth after the commencement of this item, regardless of whether the debt was incurred before or after that commencement.

Part 2—Pension loans scheme advance payments

Social Security Act 1991

15 Subsection 8(1) (note to the definition of *home equity conversion agreement*)

Omit “Note”, substitute “Note 1”.

16 Subsection 8(1) (at the end of the definition of *home equity conversion agreement*)

Add:

Note 2: A pension loans scheme advance payment (within the meaning of Division 4 of Part 3.12) is an example of a payment under a home equity conversion agreement.

17 Paragraph 23(11)(b)

Repeal the paragraph.

18 Subsection 1133AA(1)

Insert:

***pension loans scheme advance payment***: see section 1134A.

***pension loans scheme advance payment period***, for a person, means the period of 26 fortnights starting on the day in relation to which the person’s pension loans scheme advance payment was worked out under subsection 1134A(2).

19 Subsection 1134(1)

Repeal the subsection, substitute:

 (1) This section applies if:

 (a) a person is qualified to participate in the pension loans scheme; and

 (b) the person makes a request to participate under section 1136; and

 (c) the Secretary is satisfied that the amount of any debt that becomes payable by the person to the Commonwealth under this Division is readily recoverable.

 (1A) The rate of the pension payable to the person by operation of the scheme is to be:

 (a) if the pension will not be received in relation to a pension loans scheme advance payment period for the person:

 (i) 1.5 multiplied by the maximum payment rate; or

 (ii) a lower rate nominated by the person; or

 (b) if the pension will be received in relation to a pension loans scheme advance period for the person:

 (i) the greater of the maximum payment rate and 1.5 multiplied by the maximum payment rate less any amounts of pension loans scheme advance payment received by the person in relation to the period; or

 (ii) a lower rate nominated by the person.

Note: For the meaning of ***maximum payment rate***, see subsection 1133AA(1).

20 After section 1134

Insert:

1134A Pension loans scheme advance payment

 (1) This section applies if a pension is payable to a person at a rate worked out under this Division.

 (2) The person is qualified for an advance payment (a ***pension loans scheme advance payment***) of the pension if:

 (a) the person makes a request for the advance payment under section 1137AA; and

 (b) the person has not received more than one pension loans scheme advance payment in relation to a pension loans scheme advance payment period commencing during the previous 26 fortnights.

 (3) The amount of the pension loans scheme advance payment is whichever is the least of the following amounts:

 (a) if the person has not received another pension loans scheme advance payment in relation to a pension loans scheme advance payment period that commenced during the previous 26 fortnights—0.5 multiplied by the maximum payment rate payable to the person on the day in relation to which the person’s rate of pension worked out under this Division is to be paid as the pension loans scheme advance payment;

 (b) if the person has received another pension loans scheme advance payment (the ***previous amount***) in relation to a pension loans scheme advance payment period that commenced during the previous 26 fortnights—0.5 multiplied by the maximum payment rate payable to the person on the day in relation to which the person’s rate of pension worked out under this Division is to be paid as the pension loans scheme advance payment, less the previous amount;

 (c) the maximum loan available to the person under the pension loans scheme, less the amount of the debt owed by the person under section 1135;

 (d) the amount requested by the person.

 (4) A pension loans scheme advance payment is to be paid as soon as practicable after the request under section 1137AA is made.

 (5) This section applies despite section 1061A.

Note: Section 1061A sets out other circumstances in which a person is qualified for an advance payment of a social security entitlement.

21 Subsection 1135(3) (method statement, after step 1)

Insert:

Step 1A. Add to the primary loan amount the amount of any pension loans scheme advance payments received by the person: the result is the ***advance payment adjusted amount***.

22 Subsection 1135(3) (method statement, step 2)

Omit “primary loan amount”, substitute “advance payment adjusted amount”.

23 Paragraphs 1136(1A)(c) and 1137(1)(b)

Omit “subparagraph 1134(1)(e)(ii)”, substitute “subparagraph 1134(1A)(a)(ii) or (b)(ii)”.

24 After section 1137

Insert:

1137AA Need for a request for a pension loans scheme advance payment

 (1) A person who wants to receive a pension loans scheme advance payment must make a request for the payment in accordance with this section.

 (2) A request under subsection (1) must specify the amount of pension loans scheme advance payment requested.

Note: There are limits to the amount that can be paid: see subsection 1134A(2).

 (3) The request must be signed:

 (a) if the person is not a member of a couple—by the person; or

 (b) if the person is a member of a couple—by both members of the couple.

 (4) The request must be:

 (a) in writing; and

 (b) in a form approved by the Secretary.

Social Security (Administration) Act 1999

25 Subsection 47(1) (paragraph (a) of the definition of *lump sum benefit*)

Omit “or Part 2.22”, substitute “, Part 2.22 or section 1134A”.

Veterans’ Entitlements Act 1986

26 Subsection 5H(1) (note to the definition of *home equity conversion agreement*)

Omit “Note”, substitute “Note 1”.

27 Subsection 5H(1) (at the end of the definition of *home equity conversion agreement*, after the note)

Add:

Note 2: A pension loans scheme advance payment (within the meaning of Subdivision E of Division 11 of Part IIIB) is an example of a payment under a home equity conversion agreement.

28 After paragraph 5H(8)(aa)

Insert:

 (ab) a pension loans scheme advance payment (within the meaning of section 52ZBA);

29 Subsection 52ZAAA(1)

Insert:

***pension loans scheme advance payment***: see section 52ZBA.

***pension loans scheme advance payment period***, for a person, means the period of 26 fortnights starting on the day in relation to which the person’s pension loans scheme advance payment was worked out under subsection 52ZBA(2).

30 Paragraph 52ZAAA(3)(b)

Repeal the paragraph.

31 Subsection 52ZB(1)

Repeal the subsection, substitute:

 (1) This section applies if:

 (a) a person is eligible to participate in the pension loans scheme; and

 (b) the person makes a request to participate under section 52ZD; and

 (c) the Commission is satisfied that the amount of any debt that becomes payable by the person to the Commonwealth under this Subdivision is readily recoverable.

 (1A) The rate of the pension payable to the person by operation of the scheme is to be:

 (a) if the pension will not be received in relation to a pension loans scheme advance payment period for the person:

 (i) 1.5 multiplied by the maximum payment rate; or

 (ii) a lower rate nominated by the person; or

 (b) if the pension will be received in relation to a pension loans scheme advance period for the person:

 (i) the greater of the maximum payment rate and 1.5 multiplied by the maximum payment rate less any amounts of pension loans scheme advance payment received by the person in relation to the period; or

 (ii) a lower rate nominated by the person.

Note: For the meaning of ***maximum payment rate***, see subsection 52ZAAA(1).

32 After section 52ZB

Insert:

52ZBA Pension loans scheme advance payment

 (1) This section applies if a pension is payable to a person at a rate worked out under this Subdivision.

 (2) The person is eligible for an advance payment (a ***pension loans scheme advance payment***) of the pension if:

 (a) the person makes a request for the advance payment under section 52ZEAA; and

 (b) the person has not received more than one pension loans scheme advance payment in relation to a pension loans scheme advance payment period commencing during the previous 26 fortnights.

 (3) The amount of the pension loans scheme advance payment is whichever is the least of the following amounts:

 (a) if the person has not received another pension loans scheme advance payment in relation to a pension loans scheme advance payment period that commenced during the previous 26 fortnights—0.5 multiplied by the maximum payment rate payable to the person on the day in relation to which the person’s rate of pension worked out under this Subdivision is to be paid as the pension loans scheme advance payment;

 (b) if the person has received another pension loans scheme advance payment (the ***previous amount***) in relation to a pension loans scheme advance payment period that commenced during the previous 26 fortnights—0.5 multiplied by the maximum payment rate payable to the person on the day in relation to which the person’s rate of pension worked out under this Subdivision is to be paid as the pension loans scheme advance payment, less the previous amount;

 (c) the maximum loan available to the person under the pension loans scheme, less the amount of the debt owed by the person under section 52ZC;

 (d) the amount requested by the person.

 (4) A pension loans scheme advance payment is to be paid as soon as practicable after the request under section 52ZEAA is made.

 (5) This section applies despite section 79B.

Note: Section 79B sets out other circumstances in which a person is eligible for an advance payment of an amount of pension.

33 Subsection 52ZC(3) (method statement, after step 1)

Insert:

Step 1A. Add to the primary loan amount the amount of any pension loans scheme advance payments received by the person: the result is the ***advance payment adjusted amount***.

34 Subsection 52ZC(3) (method statement, step 2)

Omit “primary loan amount”, substitute “advance payment adjusted amount”.

35 Paragraphs 52ZD(1A)(c) and 52ZE(1)(b)

Omit “subparagraph 52ZB(1)(e)(ii)”, substitute “subparagraph 52ZB(1A)(a)(ii) or (b)(ii)”.

36 After section 52ZE

Insert:

52ZEAA Need for a request for a pension loans scheme advance payment

 (1) A person who wants to receive a pension loans scheme advance payment must make a request for the payment in accordance with this section.

 (2) A request under subsection (1) must specify the amount of pension loans scheme advance payment requested.

Note: There are limits to the amount that can be paid: see subsection 52ZBA(2).

 (3) The request must be signed:

 (a) if the person is not a member of a couple—by the person; or

 (b) if the person is a member of a couple—by both members of the couple; and

 (4) The request must be:

 (a) in writing; and

 (b) in a form approved by the Commission; and

 (c) be lodged at an office of the Department in Australia in accordance with section 5T.

37 At the end of section 58

Add:

 (3) For the purposes of this Subdivision (other than section 58A), ***pension*** includes a pension loans scheme advance payment (within the meaning of section 52ZBA).

38 Application of amendments

The amendments made by this Part apply in relation to requests for a pension loans scheme advance payment received after the commencement of this item, regardless of whether the person became qualified to participate in the pension loans scheme before or after that commencement.

[*Minister’s second reading speech made in—*

*House of Representatives on 2 December 2021*

*Senate on 30 March 2022*]

(171/21)