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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**ASSISTANCE FOR CARERS LEGISLATION AMENDMENT
BILL 1999**

EXPLANATORY MEMORANDUM

**(Circulated by authority of the Minister for Family and Community Services,
Senator the Hon Jocelyn Newman)**

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ASSISTANCE FOR CARERS LEGISLATION AMENDMENT BILL 1999

OUTLINE AND FINANCIAL IMPACT STATEMENT

This Bill gives effect to a number of measures aimed at improving assistance to carers, including the measures announced in the Government's 1998-99 Budget and its April 1998 'Staying at Home' package and a measure announced in the 1997-98 Budget.

The legislation involved is the *Social Security Act 1991*, the *Child Care Payments Act 1997*, the *Childcare Rebate Act 1993*, the *Health Insurance Act 1973*, the *Income Tax Assessment Act 1936*, the *Income Tax Assessment Act 1997*, the *National Health Act 1953*, the *Safety, Rehabilitation and Compensation Act 1988*, the *Seafarers Rehabilitation and Compensation Act 1992* and the *Veterans' Entitlements Act 1986*.

Schedule 1—Carer payment

Schedule 1, Part 1 amends the *Social Security Act 1991* to:

- introduce a new method of assessing an adult's disability—the Adult Disability Assessment Tool;
- extend qualification for carer payment to carers of disabled adults who have children under 16, where the carer provides care for both the adult and the child, and the child is either disabled or is under the age of 6;
- allow a person to qualify for carer payment for 63 days in a calendar year whilst the person being cared for is in hospital and the carer participates in the hospital care;
- extend qualification for carer payment bereavement payments on the death of a partner who was receiving a social security benefit; and
- apply the full carer payment qualification requirements in cases where the care receivers are 2 or more disabled children.

Schedule 1, Parts 2 to 4 include amendments to the *Income Tax Assessment Act 1997*. **Part 4** makes amendments that are consequential on the introduction of the measures specified above. **Part 3** makes amendments that are consequential on the introduction, from 1 July 1998, of a new category of care receivers, 2 or more disabled children. **Part 2** makes technical amendments correcting a drafting error relating to carer payment.

Date of Effect: **Schedule 1, Parts 1 and 4** commence immediately after the commencement of Schedule 1 to the *Payment Processing Legislation Amendment (Social Security and Veterans' Entitlements) Act 1998* (which commences on 1 July 1999).

Schedule 1, Part 2 is taken to have commenced immediately after Schedule 1 to the *Tax Law Improvement Act 1997* (which commenced on 1 July 1997).

Schedule 1, Part 3 is taken to have commenced on 1 July 1998.

Financial Impact: (net outlays)	1999-00	\$0.077m
	2000-01	\$0.076m
	2001-02	\$0.075m

The costs of the introduction into carer payment of the Adult Disability Assessment Tool and the measure allowing a person to qualify for carer payment whilst the person being cared for is in hospital are included in the financial impact figures for carer allowance (**Schedule 2**).

Schedule 2—Carer allowance

Schedule 2, Part 1 introduces, from 1 July 1999, a new social security payment, carer allowance, that replaces child disability allowance (currently in the family and community services portfolio) payable to carers of children with disabilities and domiciliary nursing care benefit (currently in the health and aged care portfolio) payable to carers of adults who would be eligible for entry to a nursing home.

Carer allowance represents a simpler and more consistent system of income supplement for carers of people with disabilities of all ages. Assessment of entitlement for carer allowance will utilise two new tools: the Child Disability Assessment Tool for the assessment of the child's disability, and the Adult Disability Assessment Tool for the assessment of the adult's disability.

Schedule 2, Parts 2 to 5 make consequential amendments to the *Social Security Act 1991*, the *National Health Act 1953*, the *Income Tax Assessment Act 1936*, the *Income Tax Assessment Act 1937*, the *Child Care Payments Act 1997*, the *Childcare Rebate Act 1993*, the *Health Insurance Act 1973*, the *Safety, Rehabilitation and Compensation Act 1988*, the *Seafarers Rehabilitation and Compensation Act 1992* and the *Veterans' Entitlements Act 1986*.

Date of effect: **Schedule 2** (other than **items 1 and 3**) commences immediately after the commencement of Schedule 1 to the *Payment Processing Legislation Amendment (Social Security and Veterans' Entitlements) Act 1998* (which commences on 1 July 1999).

Items 1 and 3 of Schedule 2 commence immediately after the commencement of **Part 1 of Schedule 1**.

Financial impact: (net outlays)	1998-99	\$ 6.195m
	1999-00	\$25.332m
	2000-01	\$33.246m
	2001-02	\$33.496m

These figures include the costs of the introduction into carer payment of the Adult Disability Assessment Tool and the measure allowing a person to qualify for carer payment whilst the person being cared for is in hospital (**Schedule 1**).

Schedule 3—Transitional provisions relating to carer payment and carer allowance

Schedule 3 provides for transitional arrangements relating to the carer payment and carer allowance measures introduced by **Schedules 1 and 2**. This Schedule amends the *Social Security Act 1991* and the *National Health Act 1953*.

Date of effect: **Schedule 3, item 1** commences on Royal Assent.

Schedule 3, items 2 to 4 commence immediately after the commencement of Schedule 1 to the *Payment Processing Legislation Amendment (Social Security and Veterans' Entitlements) Act 1998* (which commences on 1 July 1999).

Financial impact: Included in the financial impact figures for the substantive amendments made in **Schedules 1 and 2**.

PRELIMINARY

Clause 1 of the Assistance for Carers Legislation Amendment Bill 1999 sets out how the amending Act will be cited.

Clause 2 specifies when the various items and Schedules of the Act are to commence.

Clause 3 provides that each Act that is specified in a Schedule to the Assistance for Carers Legislation Amendment Bill 1999 is amended in accordance with the applicable items in those Schedules.

Schedule 1—Carer payment

1. Summary of proposed changes

This Schedule is divided into four parts. These are as follows:

Part 1 amends the *Social Security Act 1991* (the Social Security Act) to introduce a new method of assessing an adult's disability—the Adult Disability Assessment Tool. It also extends qualification for carer payment to carers of disabled adults who have children under 16, where the carer provides care for both the adult and the child and the child is disabled or is aged under 6. Amendments are also made to allow a person to qualify for carer payment for a period of up to 63 days in a calendar year whilst any person being cared for is in hospital, and the carer participates in the hospital care. The amendments also extend qualification for carer payment bereavement payments on the death of a partner who was receiving a social security benefit, and apply the full carer payment qualification requirements in cases where the care receivers are 2 or more disabled children.

Parts 2 to 4 include amendments to the *Income Tax Assessment Act 1997* (the 1997 Income Tax Assessment Act). **Part 4** makes amendments that are consequential on the introduction of the measures specified above. **Part 3** makes amendments that are consequential on the introduction, from 1 July 1998, of a new category of care receivers, 2 or more disabled children. **Part 2** makes technical amendments correcting a drafting error relating to carer payment.

Each of these parts is dealt with separately below.

Part 1—Amendments of Social Security Act

2. Background

Part 1 of Schedule 1 amends Part 2.5 (carer payment) of the Social Security Act in the following respects.

A new test of an adult's disability, to be known as the Adult Disability Assessment Tool (ADAT), is introduced. The current disability requirement included in the definition of 'severely handicapped person' in the Social Security Act is considered to be unsatisfactory as it is too subjective. This test will provide a fairer and more objective method of assessing disability. The ADAT will apply to the current category of severely handicapped persons (adults whose disability qualifies their carers for carer payment), who will now be described for the purposes of the legislation as 'higher ADAT score adults', the term 'severely handicapped person' will no longer be used.

Qualification for carer payment is extended to carers of disabled adults who have children.

Currently a person cannot qualify for carer payment where they are caring for an adult who has a disability but that disability does not satisfy the definition of 'severely handicapped person' in section 18A of the Social Security Act. In some cases, such an adult may have a child, and the adult's carer will also care for the child, because the adult's disability means that the adult cannot care for the child himself or herself. In these cases, the carer may be providing long-term care for the adult and child, and may be unable to participate in the workforce. This Schedule therefore extends qualification for carer payment to persons who are caring for an adult with a disability and that adult's child aged under 16. The adult's disability will be measured under the ADAT, but, to qualify their carers for carer payment, adults in this category will be required to reach a lower ADAT score than disabled adults who do not care for a child; these adults will be described as 'lower ADAT score adults'. Where the child who is being cared for is aged 6 or over, qualification will only arise if the child has a disability and carer allowance is payable for the child, but this requirement does not apply to a child aged under 6.

In recognition of the continuing caring responsibilities of carers during hospital treatment of care receivers, amendments are made to allow carers to claim carer payment while a care receiver is in hospital, and to continue to receive the payment, for 63 days in a calendar year. Currently carers in this situation cannot claim carer payment. If a person had already qualified for carer payment and the care receiver was then hospitalised, the carer could only continue to qualify for carer payment by using the 63-day cessation of care provision under current subsection 198(2) of the Social Security Act, which allows a carer to qualify for carer payment during a period of temporary cessation of care. The amendments made by this Schedule will apply where the hospitalised person is expected to return home after treatment, or where he or she has a terminal illness. The 63 days' entitlement will be available in addition to days of respite care under the new section 198AC (new section 198AC is the equivalent of current subsection 198(2)).

Qualification for carer payment bereavement payments on the death of a partner is extended to include the death of a partner who was in receipt of a social security benefit and who was a long-term social security recipient. A carer payment recipient may currently qualify for bereavement payments on the death of his or her partner only if the partner, immediately before the death, had been receiving a social security pension, a service pension, or income support supplement. This is inconsistent with the treatment of recipients of other social security payments, whose entitlement to bereavement payments extends to cases where the deceased partner was in receipt of a social security benefit and was a long-term social security recipient. The carer payment bereavement provisions are therefore being amended so that there is parity with other social security recipients.

The carer payment qualification conditions are amended to provide that the general conditions which apply to a care receiver who is a profoundly disabled child are also applied to 2 or more disabled children. Currently the Social Security Act provides that carer payment is payable to a person who is caring for a severely handicapped person, a profoundly disabled child, or 2 or more disabled children who jointly require a level of care that is equivalent to that required by a profoundly disabled child. The provision for 2 or more disabled children was inserted into the Act at a late stage during the passage of the legislation which introduced carer payment entitlement in respect of a profoundly disabled child. An unintended consequence of this late amendment was that the common conditions of entitlement were not applied to this category of care receiver. As a result, certain conditions (for example the income and assets test, Australian residence, and the requirement to be aged less than 16) apply to the profoundly disabled child, but do not apply to 2 or more children. This Schedule amends the Social Security Act to apply those conditions to 2 or more children, so that there will be consistent treatment for all care receivers who are children.

3. Explanation of the changes

Items 1 to 4 amend the index of definitions in section 3 of the Social Security Act, and repeal the definitions of ‘care’, ‘care receiver’, ‘guardian’, ‘profoundly disabled child’ and ‘severely handicapped person’ in sections 18A and 23, to provide for the relocation of the carer payment definitions to new section 197 in Part 2.5 of the Act.

Item 5 inserts new section 38C into the Social Security Act. This section provides for the new method of assessing an adult’s disability, called the Adult Disability Assessment Tool. Section 38C provides that the Secretary may, by disallowable instrument, devise a test for assessing the disability, emotional state, behaviour and special care needs of a person aged 16 or more, and provide a method for rating the person by giving him or her a score, based on a scale, which indicates the different levels of physical, intellectual or psychiatric disability of a person.

Item 6 inserts new section 197 into the Social Security Act; this section provides definitions for the purposes of Part 2.5 of the Act (carer payment). The definitions relocated from section 18A are unchanged, with the exception of the definition of ‘guardian’, which is amended to include guardians of disabled children in addition to profoundly disabled children. The definition of ‘care receiver’ is amended to cross-refer to the amended subsection 198(2), which lists all the categories of person in respect of whom a carer may qualify for carer payment. The definition of ‘severely handicapped person’ is repealed. New definitions are also added. ‘Adult Disability Assessment Tool’ is defined by cross-referring to the new section 38C, introducing the Tool (inserted by **item 5**). ‘Disabled adult’ is defined as a person aged 16 or more who has a physical, intellectual or psychiatric disability, and is likely to suffer from that disability permanently or for an extended period. ‘Higher ADAT score adult’ is defined as a disabled adult who is a care receiver under paragraph 198(2)(a). This category of care receiver effectively replaces the ‘severely handicapped person’ category; the principal change is the method of assessing disability. Additionally the person is required to be aged 16 or more; previously this condition was not explicitly required for a severely handicapped person who was in receipt of a social security payment, but in practice all care receivers in this category would have been aged 16 or more. (Care receivers aged less than 16 may qualify their carers for carer payment as a profoundly disabled child.) ‘Lower ADAT score adult’ is defined as a disabled adult who is a care receiver under paragraph 198(2)(d) (section 198 is amended by **item 7**).

Item 7 repeals and replaces section 198 of the Social Security Act, which sets out the qualification conditions for carer payment. The section is restructured in order to apply the common qualification provisions to 2 or more disabled children and to introduce qualification in respect of the lower ADAT score adult and child; also qualification in respect of a ‘severely handicapped person’ is replaced by a ‘higher ADAT score adult’. The current sections are also restructured to clarify their meaning.

The qualification conditions for carer payment are:

- the carer must personally provide constant care for a care receiver (subsection 198(2) refers);
- the care receiver(s) may be:
 - a disabled adult who has been given a score of at least 25 under the ADAT (this score applies where one carer is caring for the disabled adult); or
 - a disabled adult who has been given a score of at least 80 under the ADAT (this score applies where more than one person is caring for the disabled adult, and reflects the current operation of carer payment, where two people may qualify for carer payment for caring for a severely handicapped person, provided that the level of disability is sufficiently severe to justify the provision of constant care by more than one person) (paragraph 198(2)(a) refers);(the two categories of care receiver set out above are both ‘higher ADAT score adults’); or
- a profoundly disabled child aged under 16 (paragraph 198(2)(b) refers); or

- 2 or more disabled children aged under 16 (paragraph 198(2)(c) refers); or
- an adult and a dependent child of that adult, where the adult has been given a score of at least 20 under the ADAT, (a ‘lower ADAT score adult’) and the child is under 16, and if the child aged 6 or more, carer allowance is payable for him or her (paragraph 198(2)(d) refers);
- the care must be provided in a private residence that is the home of the care receiver(s) (subsection 198(3) refers);
- the carer must be in Australia, unless carer payment may be granted under certain international social security agreements (subsection 198(4) refers);
- the care receivers must (subsections 198(5) to (7) refer):
 - if the care receiver(s) are a profoundly disabled child or 2 or more disabled children, require constant care; (this requirement previously also applied to severely handicapped persons, but it no longer applies to adult care receivers);
 - be Australian residents (this requirement clarifies the current provision which technically applies only to certain care receivers; it does not explicitly apply to severely handicapped adults who are receiving a social security pension or benefit, service pension or income support supplement, or who would be receiving such a pension or benefit if he or she had been an Australian resident for a long enough period; however in practice this group of care receivers would be subject to the Australian residence requirement in order to qualify for the payments mentioned). There is an exception where carer payment may be granted under an international social security agreement;
 - pass an income test, and pass an assets test or be exempted from the assets test under the special rules in section 198N; however the income and assets tests do not apply to a higher ADAT score adult who is receiving a social security pension or benefit, service pension or income support supplement, or who would be receiving such a pension or benefit if he or she had been an Australian resident for a long enough period;
- where the care receivers are 2 or more disabled children, the Secretary must be of the opinion that the level of care required by those children jointly is at least equivalent to the level of care required by a profoundly disabled child (subsection 198(8) refers);
- where the care receivers are a lower ADAT score adult and a child, the carer is considered to be caring for the child if he or she supervises the adult’s care of the child (subsection 198(9) refers).

After section 198, **item 7** also inserts new sections 198AA, 198AB and 198AC into the Social Security Act.

Section 198AA gives effect to the Budget 1998-99 measure that recognises the caring responsibilities of carers during the hospital treatment of care receivers. Carers who participate in the care of a child or adult with disabilities while the child or adult is in hospital undergoing treatment (or is terminally ill) will be able to claim carer payment and receive it for up to 63 days in a calendar year. The 63-day qualification period when the person cared for is in hospital and the carer participates in the care in the hospital is additional to the 63-day cessation of care period (respite period) currently available under subsection 198(2) (the equivalent provision will now be section 198AC). Section 198AA provides that:

- where a person (the carer) is participating in the care of a person who is in hospital; and
- it is reasonable to assume that if the person was not in hospital, the carer would qualify for carer payment in respect of that hospitalised person; and
- the hospitalised person is terminally ill or it is reasonable to expect that the person will reside in his or her private home after leaving hospital,

the carer may qualify for carer payment for up to 63 days in a calendar year.

The following examples illustrate the situations in which a carer may qualify for carer payment under the new section 198AA (note that all events in the examples are taken to have occurred in the same calendar year).

Examples

Carer caring for a profoundly disabled child—claim lodged during period of hospitalisation

The mother of a newly born disabled child with a profound disability claims carer payment. The child will require constant care for the rest of his life and cannot be released from hospital until the mother is able to understand and cope with the child's care regime. The mother attends the hospital most days to participate in, and receive training in, the child's care. It is expected that this process will take up to 50 days. Carer payment will be granted provided all other qualification requirements in section 198 (for example the requirement for the care receiver to be an Australian resident or to pass an income and assets test), are satisfied.

Carer caring for a disabled adult—claim lodged during period of hospitalisation

The partner of a person diagnosed with terminal cancer lodges a carer payment claim shortly after the person is hospitalised. It is not expected that the person will live more than 3 months and it is unlikely that the person will return home. The person's partner attends the hospital on a daily basis to be with the person. Carer payment will be granted provided all other qualification requirements are satisfied.

Carer caring for a disabled adult and a child—one party in hospital at time of claim lodgement

A woman has a car accident and will be hospitalised for 30 days until her condition is stabilised and she can be released into her partner's care. The woman now has a permanent condition as a result of injuries sustained in the accident and her ADAT score qualifies her for carer payment under paragraph 198(2)(d). The woman also has a 10-year old carer allowance child for whom she was providing primary care until the time of her accident. Since the accident her partner has taken extended leave from work to care for the child. Her partner also attends to her needs in hospital and participates in her rehabilitation program. On her release her partner will be providing constant care for her and their child at home. Carer payment will be granted provided all other qualification requirements are satisfied.

Sections 198AB and 198AC provide for the continuation of qualification for carer payment in certain circumstances, that is, during absences from Australia, and during temporary periods of cessation of care or where the carer undertakes training etc.

Under section 198AB, a person who travels with, and provides constant care for, a care receiver while overseas may be absent from Australia for up to three months in a calendar year without losing qualification for carer payment, provided that the other qualification conditions are satisfied, except for the requirement to provide care in 'a private residence that is the home of the care receivers'.

Under subsection 198AC(1), a person may cease caring for the care receiver for up to 63 days in a calendar year without ceasing to qualify for carer payment (a person is not required to be in Australia during the cessation of care period). Subsection 198AC(2) provides that a person who was qualified for carer payment under section 198AA because the person being cared for was or is in hospital, and who would cease to be qualified for carer payment under section 198AA if the carer exhausted the 63-day qualification limit under section 198AA or ceased to provide care to the hospitalised person, may still qualify for carer payment under this provision, subject to the other qualification requirements in section 198 being met (for example the qualifying level of disability or the requirement for the care receiver to be an Australian resident), for up to 63 days in a calendar year. The combined period of qualification for carer payment under subsections 198AC(1) and (2) is limited to 63 days in a calendar year. The Secretary has a discretion to extend the 63-day period in special circumstances. The following examples illustrate the application of subsections 198AC(1) and (2) (note that all the events in the examples are taken to have occurred in the same calendar year).

Examples

Two carers caring for a disabled adult—temporary cessation of care

Two people care for their adult son with a severe disability following a car accident that has left him semi-comatose and a quadriplegic. The son has a qualifying two carers score on the ADAT as required by paragraph 198(2)(a)(ii), and both his parents receive carer payment. Each parent is entitled to a 63-day respite period under subsections 198AC(1) or (2), and 63 days' hospitalisation under section 198AA. When the son is admitted to a local respite care facility for two weeks, each parent's cessation of care limit under subsection 198AC(3) is reduced by 14 days as they have both ceased temporarily to provide constant care to their son. Later in the year, the son's father temporarily ceases care for 4 days but his mother continues to provide constant care during this period. 4 days is deducted from the father's cessation of care limit, leaving him with 45 days still available for that calendar year. The mother's cessation of care limit is unaffected.

Carer caring for a profoundly disabled child—continuation of carer payment when hospitalisation provision (section 198AA) ceases to apply

The child in the first example above relating to section 198AA (carer caring for a profoundly disabled child—claim lodged during period of hospitalisation) suffers a setback and his release from hospital is delayed for a further 20 days (the child spends a total of 70 days in hospital). Section 198AA allows the mother to qualify for carer payment for only 63 days of the child's hospitalisation in a calendar year, but subsection 198AC(2) allows the mother to qualify further, for up to 63 days in a calendar year, following the loss of qualification under section 198AA. In this example the mother qualifies for carer payment for 63 hospitalisation days (under section 198AA), and then for 7 days under subsection 198AC(2). This leaves the mother 56 respite days remaining for that calendar year, during which she may continue to qualify for carer payment.

Carer caring for a disabled adult—continuation of carer payment when hospitalisation provision (section 198AA) ceases to apply

A stroke victim is receiving rehabilitation while in hospital and his daughter lodges a claim for carer payment. All other requirements are satisfied and carer payment is granted because the daughter is participating in her father's rehabilitation regime and she will be caring for her father after his release from hospital (section 198AA applies). After 60 days the father is released from hospital and his daughter commences providing constant care to him at home. The father suffers a second mild stroke and is hospitalised but he is expected to return home after 45 days of treatment and further rehabilitation. Although the daughter has only 3 days of qualification left under the section 198AA hospitalisation provision, she has not used any respite days in that calendar year. Therefore, for the first 3 days of the second hospitalisation period she will qualify for carer payment under the hospitalisation provisions in section 198AA, and for the subsequent 42 days she will qualify under the cessation of care provision in subsection 198AC(2). The daughter will then have 21 respite days under section 198AC available to her for that calendar year during which she may continue to qualify for carer payment.

Carer caring for a disabled adult and a child—continuation of carer payment when hospitalisation provision (section 198AA) ceases to apply

The woman in the third example above relating to section 198AA (carer caring for a disabled adult and a child—one party in hospital at time of claim lodgement) is released from hospital after 30 days. Her partner still has 33 days of qualification under the hospitalisation section (section 198AA) available to him in the calendar year. Later on the child is unexpectedly hospitalised for 40 days. The woman's partner continues to provide care to her while also visiting the child in hospital and assisting in his care. As the carer only has 33 days qualification during hospitalisation left, for the other 7 days the carer would be able to use the cessation of care provision in subsection 198AC(2) to continue to qualify for carer payment for the last week of the child's hospitalisation. The partner will still have 56 respite days available to him in that calendar year.

Under subsection 198AC(4) a person who ceases providing constant care for a care receiver in order to undertake training, education, unpaid voluntary work or paid employment, for up to 20 hours per week, does not cease to qualify for carer payment. Under subsection 198AC(5), the qualification for carer payment during training, education, unpaid voluntary work or paid employment, applies also to a person who qualified for carer payment while participating in the care receiver's treatment in hospital.

Item 8 repeals and replaces section 198A of the Social Security Act (care receiver income test). Subsection 198A(1) provides that the care receiver passes the income test if his or her taxable income or, where there is more than one care receiver, the total of all their incomes, for the relevant tax year is not more than the income ceiling (currently \$66,403). Subsection (2) provides that care receivers do not pass the income test if any person whose income is taken into account in applying section 198B does not have an assessed taxable income or an accepted estimated taxable income for the appropriate tax year.

Item 9 amends subsection 198B(1) to insert a cross-reference to the new subsection 198B(1BA).

Item 10 repeals and replaces subsections 198B(1A) and (1B). Subsection 198B(1A) contains changes consequential on the change of terminology from 'severely handicapped person' to 'higher ADAT score adult'. Subsection 198B(1B) provides that where the care receiver is a child who lives with a parent, the income of that parent and, if applicable, the parent's partner and any other children of the parent or partner, is included in the income of the child for the purposes of the care receiver income test. For the situation where the care receivers are 2 or more children, provision is made to ensure that a person's income cannot be counted more than once. A new subsection 198B(1BA) is added: this subsection provides that where the care receiver is a lower ADAT score adult, the adult's income includes (where applicable) the income of his or her partner, and any children of the adult or partner (other than the care receiver who is the dependent child of the adult, whose resources are assessed separately).

Item 11 repeals and replaces subsection 198C(2). Subsection 198C(2) provides that the Secretary may agree to a request to change the appropriate tax year. The request may be made by the carer, the care receiver if aged 16 or over, or the parent of a care receiver who is aged under 16.

Items 12 and 13 amend subsection 198C(3), which provides for the changed tax year to apply in the next calendar year in certain circumstances. The subsection is amended to include the case where there is more than one care receiver.

Items 14 to 18 amend subsections 198C(4) and (5), which provide that in certain circumstances the appropriate tax year will change if a notifiable event occurs. The subsections are amended to include the situation where there is more than one care receiver.

Item 19 makes an amendment to subsection 198D(1) consequential on the change of terminology from ‘severely handicapped person’ to ‘higher ADAT score adult’.

Item 20 makes a technical correction to paragraph 198D(1)(c) to change a reference from ‘FP’ to ‘FA’, in consequence of the change of name of family payment to family allowance in April 1998.

Item 21 makes a technical change to subsection 198D(1A) to amend the assets limit for a profoundly disabled child to read \$410,000, in line with the figure for a higher ADAT score adult. The subsection previously contained an incorrect figure of \$406,000.

Item 22 repeals the note to subsection 198D(1A) referring to a carer payment definition in section 18A; as the carer payment definitions are now provided in section 197, these notes are no longer necessary. Similar notes are also repealed by **items 62, 63, 71, 77, 84 and 86**.

Item 23 makes a technical correction to subsection 198D(1B) to clarify that the profoundly disabled child’s assets do *not* include the assets of the other members of his or her family for the purposes of subsection 198D(1A) (which provides for aggregating the resources of all family members). The purpose of the amendment is to ensure that assets are not counted twice.

Item 24 inserts new subsections 198D(1C), (1D) and (1E) into the Social Security Act to provide for the assets test to be applicable to 2 or more disabled children and to the lower ADAT score adult and child. The 2 or more children pass the test if the total assets of all the disabled children and, if any child lives with a parent, the parent, the parent’s partner, and any other family allowance children of the parent or partner, are less than the assets limit (currently \$410,000). The assets of the same person cannot be taken into account more than once. For the purposes of the following provisions of the Social Security Act (disposal of assets etc), the child’s assets are deemed to include the assets of the other members of the family. The lower ADAT score adult and child pass the assets test if the total assets of the adult and child and, where applicable, the adult’s partner and other family allowance children of the adult or partner, do not exceed the assets limit of \$410,000.

Item 25 repeals subsections 198D(2) to (4). These provisions provided for the Secretary to make a determination increasing the assets limit in subsection 198D(1); this is no longer necessary as the assets limit is increased by the automatic indexation provisions in section 1190 of the Social Security Act.

Item 26 makes a technical amendment to section 198E to include a cross reference to new subsections 198(1C) and (1E).

Items 27 to 30 amend subsection 198F(1A) (disposal of profoundly disabled child's assets) to provide for references to 2 or more disabled children and a dependent child of a lower ADAT score adult.

Item 31 makes an amendment to paragraph 198H(1)(a) consequential on the change of terminology from 'severely handicapped person' to 'higher ADAT score adult'.

Items 32 to 35 amend section 198HA (disposal of assets in pre-pension years—profoundly disabled child) to include 2 or more disabled children. Where a person has disposed of assets of a profoundly disabled child or a disabled child (including assets of other members of the family that are taken to be the child's assets under subsection 198D(1D)) in a pre-pension year of the carer, the amount of the disposition of assets, or if there has been more than one disposition, the total of all dispositions, (less \$10,000), is included in the assets of the child for 5 years from the date when the disposition occurred. The heading of the section is also amended, and a new subsection (3) inserts a definition of 'pre-pension year', which is the period of 12 months before the carer became entitled to carer payment, or any preceding period of 12 months.

Item 36 inserts new section 198HB (disposal of assets in pre-pension years—lower ADAT score adult and dependent child). This section provides that where a person has disposed of assets of a lower ADAT score adult, a dependent child, the adult's partner, or other family allowance children of the adult or partner in a 'pre-pension year' of the carer, the amount of the disposition of assets, or if there has been more than one disposition, the total of all dispositions, (less \$10,000), is included in the assets of the adult for 5 years from the date when the disposition occurred. If the adult ceases to be a member of a couple, because of the death of the partner or for another reason, the disposition of the partner's assets and any family allowance children of that partner is not taken into account, and if a child dies, the disposition of that child's assets is not taken into account. A 'pre-pension year' is defined as the period of 12 months before the carer became entitled to carer payment, or any preceding period of 12 months.

Item 37 makes an amendment to paragraph 198J(1)(a) consequential on the change of terminology from 'severely handicapped person' to 'higher ADAT score adult'.

Items 38 to 41 amend section 198JA (disposal of assets—profoundly disabled child) to include 2 or more disabled children. This section makes similar provisions for disposal of assets during a 'pension year' of the carer as for pre-pension years (for this provision, see **items 32 to 35**). A new subsection (3) inserts a definition of 'pension year', which is the 12 months starting on the day when carer payment first became payable to the carer, or any preceding or following 12 month period.

Item 42 inserts new section 198JB (disposal of assets—lower ADAT score adult and dependent child). This makes similar provisions for disposal of assets during a 'pension year' of the carer as for pre-pension years (for this provision, see **item 36**). 'Pension year' is defined as the 12 months starting on the day when carer payment first became payable to the carer, or any preceding or following 12 month period.

Items 43 and 44 make amendments to subsection 198K(1) and 198L(1) consequential on the change of terminology from 'severely handicapped person' to 'higher ADAT score adult'.

Item 45 amends section 198M (certain dispositions to be disregarded) to include the situation where there is more than one care receiver.

Items 46 to 49 amend section 198MA (certain dispositions of an asset of a profoundly disabled child to be disregarded) to include 2 or more disabled children and a dependent child of a lower ADAT score adult. An asset that has been disposed of is not to be included in the assets of a child if the disposition occurred:

- more than 5 years before the carer became qualified for carer payment for caring for that person; or
- less than 5 years before the carer became qualified for carer payment, but before the time when the disposer could, in the Secretary's opinion, reasonably have expected that the carer would become qualified for carer payment.

Item 50 amends subsection 198N(1) (exemption from care receiver assets test) to insert correct cross-references to the amended section 198.

Items 51 to 53 make amendments to subsection 198N(1) consequential on the change of terminology from 'severely handicapped person' to 'higher ADAT score adult'.

Item 54 makes a technical amendment to subsection 198N(1) to correct cross-references to other subsections.

Item 55 repeals and replaces subsections 198N(1A) to (4). Section 198N provides for care receivers to be exempted from the assets test in certain circumstances. The section is amended in order to apply to 2 or more disabled children and to the lower ADAT score adult and child.

Subsection 198N(1A) provides that the section applies to a profoundly disabled child or 2 or more children where:

- a person would be disqualified from carer payment because the care receiver or care receivers do not pass the assets test; and
- the parent or carer of any of the children lodges, on an approved form, a request that the carer should not be disqualified from carer payment; and
- the request includes a written estimate of the child's or children's taxable income(s) under subsection 198B(3); and
- the Secretary accepts the estimate under subsection 198B(4).

A new subsection 198N(1B) is inserted to provide that the section applies to a lower ADAT score adult and child where:

- a person would be disqualified from carer payment because the care receivers do not pass the assets test; and

- the lower ADAT score adult lodges, on an approved form, a request that the carer should not be disqualified from carer payment; and
- the request includes a written estimate of the adult's and child's taxable incomes under subsection 198B(3); and
- the Secretary accepts the estimate under subsection 198B(4).

Subsections 198N(2) to (4) provide that the Secretary may decide that the care receiver does not have to pass the assets test if:

- the total value of the assets of all the care receivers exceeds the assets limit but is less than \$608,500; and
- the value of the liquid assets of all the care receivers is less than the liquid assets limit; and
- the amount of the accepted estimated taxable income(s) of the care receiver(s) is less than the special income test threshold amount calculated under subsection (6);

or

- the total value of the assets of all the care receivers exceeds the assets limit but is less than \$608,500; and
- the value of the liquid assets of all the care receivers is greater than the liquid assets limit; or
- the amount of the accepted estimated taxable income(s) of the care receiver(s) is above the special income test threshold amount calculated under subsection (6);

or

- the total value of the assets of all the care receivers is more than \$608,500; and
- the value of the liquid assets of all the care receivers is less than the liquid assets limit; and
- the amount of the accepted estimated taxable income(s) of the care receiver(s) is less than the special income test threshold amount calculated under subsection (6).

Item 56 makes an amendment to paragraph 198N(5)(a) consequential on the change of terminology from 'severely handicapped person' to 'higher ADAT score adult'.

Item 57 makes a technical correction to subparagraph 198N(5)(a)(iii) to change a reference from 'FP' to 'FA', in consequence of the change of name of family payment to family allowance in April 1998.

Items 58 and 59 amend subsection 198N(5) to provide that—

- the value of the liquid assets of a care receiver who is a profoundly disabled child or a disabled child is the sum of the liquid assets of the child, plus, if the child lives with a parent, the liquid assets of that parent and, if applicable, the parent's partner and any other family allowance children; the assets of a person cannot be counted more than once;
- the value of the liquid assets of the lower ADAT score adult is the sum of the liquid assets of the adult plus, where applicable, the adult's partner and any family allowance children of the adult or partner (other than the care receiver child, whose assets are assessed separately);
- the liquid assets limit is \$10,000 where any of the care receivers is a member of a couple, and \$6,000 in other cases; and
- the taxable income of the care receiver is the taxable income as calculated under section 198B.

An amended note at the end of subsection 198N(5) advises the reader that the certain assets are taken to be the assets of the child under subsections 198D(1A) and (1C).

Item 60 makes an amendment to subsection 198N(6) consequential on the change of terminology from 'severely handicapped person' to 'higher ADAT score adult'.

Items 61 to 63 amend subsection 198N(6) (the formula for calculating the special income test threshold amount) to include the cases where the care receivers are 2 or more disabled children or a lower ADAT score adult and child; the effect of the amendment is to increase the threshold for each child included in the assessment of assets. **Item 63** repeals a note at the end of the subsection which is no longer required: for an explanation of this, see **item 22**.

Item 64 repeals subsection 198N(7), which provided for the Secretary to make a determination increasing the assets limits in subsections 198N(2) to (4), this is no longer necessary as the assets limits are increased by the automatic indexation provisions in section 1190 of the Social Security Act.

Items 65 to 78 amend section 198P (date of effect of favourable decision under section 198N). **Item 65** amends subsection (1) to insert the correct cross-reference to the amended section 198. **Items 66 and 68 to 78** make technical amendments to ensure that the section applies to care receivers who are 2 or more disabled children or a lower ADAT score adult and child. The amendments provide that in the case of 2 or more children, notice of the decision may be given to the carer, or to the parent of any of the children, and in the case of the lower ADAT score adult and child, notice of the decision may be given to the carer or to the adult. **Item 67** makes an amendment consequential on the change of terminology from 'severely handicapped person' to 'higher ADAT score adult'. **Items 71 and 77** repeal notes that are no longer required: for an explanation of this, see **item 22**.

Item 79 repeals and replaces section 198Q (date of effect of adverse decision under section 198N). The amended section contains updated cross-references to the amended section 198, and includes provision for more than one care receiver.

Item 80 repeals and replaces subsection 222(1A) (Secretary may require notice of the happening of an event or a change in circumstances). The subsection is amended to include the situation where there is more than one care receiver. The amended subsection provides that where a person is receiving carer payment for caring for a person who is subject to the income and assets tests, the Secretary may give a notice to a care receiver who is aged 16 or more, or the parent of any care receiver aged under 16, requiring that person to inform the Department if a specified changes of circumstances occurs or is likely to occur.

Items 81 and 82 amend section 225AA (effect on carer payment when person being cared for is admitted to an institution). The section is amended to include the situation where there is more than one care receiver. The section provides that where a person ceases to be qualified for carer payment because the care receiver, or any of the care receivers, is admitted permanently to an institution, carer payment continues to be payable for 14 weeks after the carer ceases to be qualified.

Items 83 and 85 amend sections 226 and 227 (automatic termination) to update cross-references to the amended subsection 222(1A).

Items 84 and 86 repeal notes in sections 226 and 227 (automatic termination) which are no longer required: for an explanation of this, see **item 22**.

Item 87 amends section 234 (date of effect of adverse determination). Subsections 234(8) to (11) are repealed and replaced. The effect of the amendments is to provide for the section to apply in cases where the care receivers are 2 or more disabled children, or a lower ADAT score adult and a child. Consequential amendments are also made due to the change of terminology from ‘severely handicapped person’ to ‘higher ADAT score adult’. Subsection 234(8) provides for backdating determinations where an assessment of a care receiver’s income is amended by the Commissioner of Taxation, a tribunal or a court. Subsection 234(9) provides for backdating determinations where taxable income has been estimated and is subsequently assessed by the Commissioner of Taxation. Subsection 234(10) provides for the cancellation or suspension of carer payment where the income of the higher ADAT score adult exceeds the income ceiling. The decision takes effect on the date that the carer or care receiver informed the Department that the income exceeded the ceiling (or if the Department was not so informed, the decision takes effect on the date that the income exceeded the ceiling). Subsection 234(11) makes similar provision where the care receiver is a profoundly disabled child; in this case, the information must be provided by the carer or the child’s parent. Subsection 234(12) makes similar provision where the care receivers are 2 or more disabled children, and subsection 234(13) similarly provides for the situation where the care receivers are the lower ADAT score adult and child. In the latter case, the information must be provided by the carer, the adult, or a parent of the child. Subsection 234(14) provides that in other cases, the adverse determination takes effect either on the day on which it is made, or on a later day specified in the determination.

Item 88 amends section 235 (bereavement payments). Subsection 235(1) is repealed and replaced and a new subsection 235(1A) is inserted. The amended section 235 includes provision for bereavement payments where there is more than one care receiver. Subsections 235(1) and (1A) provide that on the death of any care receiver who is not the carer's partner, if the carer would cease to be qualified for carer payment because of the death, qualification continues for the bereavement period (14 weeks after the death). Subsection 235(1) applies when, on the death of the care receiver, the carer qualified for carer payment under section 198 (ie was providing constant care or had temporarily ceased care). Subsection 235(1A) applies when, on the death of a care receiver, the carer qualified for carer payment under section 198AA (ie was participating in care in hospital) or subsection 198AC(2) (had ceased the provision of care in hospital).

Items 89 to 91 amend section 236A (bereavement payment lump sum). Subsection 236A(1) is repealed and replaced; the new version includes provision for bereavement lump sums where there is more than one care receiver. Subsection 236A(1) provides that a bereavement lump sum may be payable on the death of a care receiver who is not the carer's partner, if the person qualifies for carer payment on the basis of subsection 235(1) or (1A) and certain conditions are satisfied. New subsection (1A) provides that if two or more care receivers die simultaneously, only one lump sum payment is payable. Stylistic amendments are made to subsections 236A(3) and (4).

Items 92 and 105 insert new sections 236B and 243 into the Social Security Act. These sections prevent more than one bereavement payment being made if the care receivers are a lower ADAT score adult and a child, and both care receivers die at the same time. The provisions apply where the lower ADAT score adult is the carer's partner. The combined effect of the sections is that if the carer would be entitled to bereavement payments in respect of both the child (under section 235) and the adult (under Subdivision B, which provides for bereavement payments on the death of the partner), the carer will be entitled to only one set of payments. The payments will be made under either section 235 or Subdivision B; the sum payable will be whichever is the greater amount in the particular case.

Items 93 to 104 amend sections 237 to 239 and 241 (Subdivision B—bereavement payments on the death of the carer's partner). Currently a carer payment recipient may qualify for carer payment on the death of his or her partner only if the partner, immediately before the death, had been receiving a social security pension, a service pension, or income support supplement. **Items 94 and 97** amend section 237 to extend entitlement to bereavement payments to cases where the deceased was a 'long-term social security recipient'. This is defined as a person who is receiving a social security benefit, and had, throughout the previous 12 months, or for at least 46 weeks of the previous 52, been receiving a social security pension or benefit, a youth training allowance, a service pension or income support supplement, or any combination of those payments. **Item 96** inserts a new subsection 237(1A) which provides that, in the case of a lower ADAT score adult and child, if bereavement payments are being paid to the carer because of the death of the child, the carer does not qualify for a further set of bereavement payments if the lower ADAT score adult is the carer's partner and the partner dies within the bereavement period. **Item 98** amends subsection 238(1) to provide that during the bereavement rate continuation period, there is payable to the carer payment recipient an amount equivalent to the amount of pension or benefit that would have been payable to the partner if the partner had not died. **Items 93, 95 and 99 to 104** make minor consequential changes to the heading of Subdivision B and to sections 237, 239 and 241, and correct an incorrect cross-reference in section 241.

Items 106 to 115 make consequential amendments to sections 1118, 1118A, 1118B, 1150 to 1154 and 1190 of the Social Security Act to update cross-references to include the new carer payment provisions.

Items 116 to 121 amend section 1223 dealing with debts. Paragraph 1223(1B)(b) provides that carer payment overpayments are not debts due to the Commonwealth where the overpayment arose because the care receiver's income had been underestimated or reassessed, or because of the failure of the care receiver to inform the Department of a notifiable event. Paragraph 1223(1C) provides that despite subsection (1B), the overpayment is a debt if it was reasonable for the carer to know about those matters. Subsections 1223(1B) and (1C) are amended to provide for the subsections to apply in cases where the care receiver is a child, and where there is more than one care receiver.

4. Commencement

Part 1 of Schedule 1 will commence immediately after the commencement of Schedule 1 to the *Payment Processing Legislation Amendment (Social Security and Veterans' Entitlements) Act 1998* (which commences on 1 July 1999).

Part 2—Technical amendments of the income tax law commencing on 1 July 1997

2. Background

This Part makes minor technical amendments to a number of provisions in the *Income Tax Assessment Act 1936* (the 1936 Income Tax Assessment Act) and the 1997 Income Tax Assessment Act.

3. Explanation of the changes

Item 122 rectifies a technical error in section 52-10 of the 1997 Income Tax Assessment Act (section 52-10 was introduced by the *Tax Law Improvement Act 1997* with effect from 1 July 1997). Section 52-10 lists all the payments under the Social Security Act that are wholly or partly exempt from income tax and deals with 4 different cases. Case 4 in this section describes the tax treatment of the lump sum payments paid because of death of a carer payment recipient's partner. Table items 4.1 to 4.4 in section 52-10, dealing with carer payment, incorrectly include in Case 4 references to section 236A which provides for lump sum payments paid because of the death of the person being cared for who was not the carer's partner. **Item 122** amends Table items 4.1 to 4.4 in section 52-10 to remove the reference to section 236A from Case 4 and to insert that reference in Case 3 dealing with payments received because of the death of a person (other than the carer payment recipient's partner).

A number of provisions in the 1936 Income Tax Assessment Act and the 1997 Income Tax Assessment Act contain references to 'carer pension'. These references are incorrect as the name of that pension was changed, from 1 July 1997, to 'carer payment' (as a result of amendments made by Schedule 2 of the *Social Security Legislation Amendment (Budget and Other Measures) Act 1996*). **Items 123 to 127** make the necessary corrections. **Items 123 to 125** amend section 52-15, subsection 52-25(1) and section 52-40 of the Income Tax Assessment Act to replace the references to carer pension with references to carer payment and **items 126 and 127** make similar amendments to paragraph 202EA(5)(d) and subparagraph 202EB(5)(a)(iv) of the 1936 Income Tax Assessment Act.

Item 128 is an application provision that provides that the amendments made by this Part apply to assessments for the 1997-98 income year and later years.

4. Commencement

The changes made by **Part 2 of Schedule 1** are taken to have commenced immediately after Schedule 1 to the *Tax Law Improvement Act 1997* (which commenced on 1 July 1997).

Part 3—Amendments of the income tax law relating to carer payment for disabled children

2. Background

Until 1 July 1998, carer payment could only be paid to a carer of a ‘severely handicapped person’. The 1997 Income Tax Assessment Act makes specific reference to this category of care receivers.

From 1 July 1998, two new categories of carer payment recipients were introduced: a carer for a profoundly disabled child and a carer for 2 or more disabled children. Due to an oversight, the necessary consequential amendments to the taxation legislation for the purposes of the new categories of recipients were not made. As the relevant 1997 Income Tax Assessment Act provisions exempting carer payment amounts from income tax specifically refer to ‘severely handicapped person’, those provision do not apply to carer payment amounts when the person cared for is a disabled child. As a result, in certain situations, carer payment amounts paid in respect of disabled children are taxable while carer payment amounts paid in respect of a disabled adult are exempt). Amendments made by **Part 3 of Schedule 1** rectify the situation by amending the relevant provisions, with effect from 1 July 1998, to ensure that the taxation treatment that applies to carer payment paid in respect of the ‘severely handicapped person’ is extended to carer payment paid for the new categories of care receivers.

3. Explanation of the changes

Item 129 amends Table items 4.2 to 4.4 in section 52-10 of the 1997 Income Tax Assessment Act. The amendment to item 4.2 is of a stylistic nature. Item 4.3 currently provides for the taxation treatment of carer payment that is paid when both the carer payment recipient and the severely handicapped person are under pension age. As a result of the inclusion in item 4.3 of the references to the two new categories of care receivers, the taxation treatment specified in item 4.3 will apply to carer payment paid for the profoundly disabled child and for 2 or more disabled children. Item 4.4 currently provides for the taxation treatment of carer payment that is paid when the recipient of carer payment is under pension age and the severely handicapped person has died. As a result of the inclusion in item 4.4 of the references to the two new categories of care receivers, the taxation treatment specified in this item will be extended to carer payment paid for the profoundly disabled child or for 2 or more disabled children.

Items 130, 131 and 132 amend section 52-35 that exempt from tax lump sum payments made because of the death of the person cared for. To extend the operation of this provision to the two new categories of care receivers, those items insert references to ‘profoundly disabled child’ and ‘disabled child’ or ‘2 or more disabled children’ (as appropriate) alongside the existing references to ‘severely handicapped person’.

Item 133 is an application provision providing that the amendments made by this Part apply to assessments for the 1998-99 income year.

4. Commencement

The changes made by **Part 3 of Schedule 1** are taken to have commenced on 1 July 1998.

Part 4—Amendments of the income tax law relating to carer payment for disabled adult and dependent child

2. Background

From 1 July 1999 another category of carer payment recipients is introduced: a carer who cares for an adult with a disability who has a child (amendments introducing this category of carer payment recipients are made by **Part 1 of Schedule 1**). **Part 4 of Schedule 1** makes amendments to the 1997 Income Tax Assessment Act to ensure that the taxation treatment of carer payment paid to the new category of recipients is aligned with the taxation treatment of carer payment paid to other categories of carer payment recipients.

3. Explanation of the changes

Item 134 amends Table items 4.2 to 4.4 in section 52-10 of the 1997 Income Tax Assessment Act providing for the taxation treatment of carer payment amounts. The specific references in those items to the existing categories of care receivers, that is, ‘severely handicapped person’, ‘profoundly disabled child’ and ‘2 or more disabled children’ are amended to refer to ‘care receiver’ or ‘care receivers’ (as the case may be). These amendments ensure that the taxation treatment of carer payment of the new category of carer payment recipients who care for a disabled adult with a child is the same as the taxation treatment of carer payment paid to other carer payment recipients.

Items 135 and 136 make similar amendments to subsections 52-35(1) and 52-35(3), respectively, that exempt from tax lump sum payments made because of the death of the person cared for. The amendments extend the operation of this provision to the new category of carer payment recipients.

Item 137 is an application provision providing that the amendments made by this Part apply to assessments for the 1999-2000 income year and later years.

4. Commencement

The changes made by **Part 4 of Schedule 1** commence immediately after the commencement of Schedule 1 to the *Payment Processing Legislation Amendment (Social Security and Veterans’ Entitlements) Act 1998* (which commences on 1 July 1999).

Schedule 2—Carer allowance

1. Summary of proposed changes

This Schedule provides for the introduction of carer allowance and the repeal of child disability allowance and domiciliary nursing care benefit. It also makes consequential amendments to the *Social Security Act 1991* (the Social Security Act) and to other Acts.

This Schedule deals with the above matters in five parts, as follows:

Part 1 amends the Social Security Act to include carer allowance;

Part 2 makes amendments to the Social Security Act consequential on the repeal of child disability allowance and domiciliary nursing care benefit and the introduction of carer allowance;

Part 3 repeals domiciliary nursing care benefit provisions and makes other consequential amendments to the *National Health Act 1953* (the National Health Act);

Part 4 makes consequential amendments to the *Income Tax Assessment Act 1936* (the 1936 Income Tax Assessment Act) and the *Income Tax Assessment Act 1997* (the 1997 Income Tax Assessment Act); and

Part 5 makes consequential amendments to the *Child Care Payments Act 1997* (the Child Care Payments Act), the *Childcare Rebate Act 1993* (the Childcare Rebate Act), the *Health Insurance Act 1973* (the Health Insurance Act), the *Safety, Rehabilitation and Compensation Act 1988* (the Safety, rehabilitation and Compensation Act), the *Seafarers Rehabilitation and Compensation Act 1992* (the Seafarers Rehabilitation and Compensation Act) and the *Veterans' Entitlement Act 1986* (the Veterans' Entitlements Act).

The amendments made by each Part are explained separately below.

Part 1—Amendment of Social Security Act 1991 to include new carer allowance Part

2. Background

Part 1 introduces, from 1 July 1999, a new social security payment, carer allowance, that replaces child disability allowance (currently in the family and community services portfolio) payable to carers of children with disabilities, and domiciliary nursing care benefit (currently in the health and aged care portfolio) payable to carers of adults who would be eligible for entry to a nursing home.

Carer allowance will represent a simpler and more consistent system of income supplements for carers of people of all ages with disabilities.

Assessment of entitlement for carer allowance will utilise two new tools. The Child Disability Assessment Tool, introduced from 1 July 1998 under the child disability allowance regime as a means of assessment of the disability of children, will continue to be used from 1 July 1999 for the carer allowance purposes as a disability assessment tool in respect of children. The new Adult Disability Assessment Tool will be used, from 1 July 1999, for carer allowance as a means of assessment of the disability of adults. The same Tool will be used from 1 July 1999 in respect of carer payment for assessment of the disability of adults. The Adult Disability Assessment Tool will provide a more objective assessment of a person's disability. It is also less restrictive than the current domiciliary nursing care benefit eligibility test, particularly for people with intellectual, psychiatric and neurological disabilities.

Carer allowance aligns a number of requirements that currently vary between the existing payments including shared care arrangements and Australian residency requirements for carers and care receivers. It provides uniform administrative arrangements in respect of claim lodgement (including the availability of claim lodgement by telephone, facsimile machine or computer), the determination of claims, payment of the allowance and the review process.

Carer allowance provides for a 26 week period of payment during an overseas absence regardless of whether the care receiver is a child or an adult (currently, domiciliary nursing care benefit is not paid during overseas absences and child disability allowance is paid for up to 3 years).

Carer allowance preserves the existing child disability allowance and domiciliary nursing care benefit cessation of care provisions that allow carers to continue to qualify for those payments during temporary cessation of care for up to 63 days in a calendar year. In recognition of the continuing caring responsibilities of carers during hospital treatment of care receivers, carers who participate in the care of a child or adult with disabilities while the adult or child is in hospital will be able to claim carer allowance and continue to receive it for up to 63 days in a calendar year (this is not available under any of the current payments). From 1 July 1999, the additional 63 day period of payment while a person being cared for is in hospital will also apply to carer payment (**Schedule 1** makes amendments to carer payment to the same effect).

The new payment preserves the backdating arrangements currently available for children with disabilities (payability of child disability allowance may be backdated for up to 12 months before the claim lodgement day). It also provides a new backdating arrangement for adults with disabilities by allowing the payability of carer allowance to be backdated for up to 6 months before the claim lodgement day if the disability from which the adult is suffering was due to an acute onset (eg was caused by a stroke or a motor vehicle accident).

Carer allowance rate is maintained at the level of the child disability allowance and domiciliary nursing care benefit rates (the rates of both payments have been aligned from 1 July 1998; currently at \$75.60 per fortnight).

Qualification for carer allowance is not income or asset tested.

3. Explanation of the changes

Items 1 to 4 make changes to section 3 (index). **Item 1** amends the ‘care receiver’ entry to add a reference to the definition of ‘care receiver’ in new carer allowance section 952. **Item 2** amends the ‘Child Disability Assessment Tool’ entry to reflect the fact that this definition has been relocated from subsection 23(1) to section 952. **Item 3** adds a new entry ‘disabled adult’ that cross-refers to section 952 and **item 4** adds a new entry ‘disabled child’ that cross-refers to section 952.

Items 5 and 6 move the provision establishing the ‘Child Disability Assessment Tool’ from subsection 23(1) containing terms that are used throughout the Social Security Act to new section 38D located next to the provision establishing the ‘Adult Disability Assessment Tool’ in section 38C.

Item 7 repeals Part 2.19 of the Social Security Act in which child disability allowance was located and substitutes a new Part 2.19 dealing with carer allowance.

NEW PART 2.19—CARER ALLOWANCE

New Division 1—Interpretation

Section 952 defines terms used for the purposes of Part 2.19 (Carer allowance). ‘Adult Disability Assessment Tool’ has the meaning as given in subsection 38C(3), ‘care receiver’ has the meaning as given by subsections 953(1) and (2) and 954(1) and ‘Child Disability Assessment Tool’ has the meaning as given in subsection 38D(4). ‘Disabled adult’ is defined as a person aged 16 or more who has a physical, intellectual or psychiatric disability and is likely to suffer from that disability permanently or for an extended period. ‘Disabled child’ is defined as a person aged under 16 who has a physical, intellectual or psychiatric disability and is likely to suffer from that disability permanently or for an extended period.

New Division 2—Qualification and payability of carer allowance

New Subdivision A—Qualification

New section 953—Qualification for carer allowance—caring for either one or 2 disabled children

Section 953 sets out the basic qualification criteria for carer allowance, which will determine a person's entitlement to carer allowance if the person provides care and attention to a disabled child or 2 disabled children. These criteria reflect the child disability allowance criteria.

Subsection 953(1) sets out qualification requirements when a person provides care for a disabled child, and subsection 953(2) deals with qualification requirements when care is provided in respect of 2 disabled children.

Under subsection 953(1), a person qualifies for carer allowance for a disabled child if the person is an Australian resident and in Australia and provides care and attention on a daily basis to a dependent child under the age of 16 who is an Australian resident and who is suffering from a disability that is declared under the Child Disability Assessment Tool to be a recognised disability, or who has been assessed and rated under the Child Disability Assessment Tool and given a positive score of not less than 1.

The definition of 'dependent child' in section 5 applies for the purposes of this subsection, except for subsection 5(3) which does not apply (the child's income will not affect the child's status as a dependent child).

The qualifying care and attention has to be provided by the person, or the person's partner, or by the person together with another person, in a private home that is the residence of the person and the disabled child.

Under subsection 953(2), a person qualifies for carer allowance for 2 disabled children if the person is an Australian resident and in Australia and provides care and attention on a daily basis to two dependent children under the age of 16 who are Australian residents, who have been assessed and rated under the Child Disability Assessment Tool and whose individual score is less than 1 but whose aggregate score is 1 or more.

The definition of 'dependent child' in section 5 applies for the purposes of this subsection, except for subsection 5(3) which does not apply (each child's income will not affect the child's status as a dependent child).

The qualifying care and attention has to be provided by the person, or the person's partner, or by the person together with another person, in a private home that is the residence of the person and the disabled children.

Notes 1 to 4 direct the reader to the definition of 'Australian resident' in section 7 and to other provisions that may be relevant for the purposes of the determination of a person's entitlement to carer allowance, eg during the child's hospitalisation, overseas absence or temporary cessation of care.

Note 5 refers to sections 964 and 965 for the effect of 2 people being qualified for carer allowance. While the care provided by a person's partner or shared with the person's partner will qualify both the person and the person's partner for carer allowance, new section 965 provides that only one member of the couple will receive carer allowance. When the care is provided jointly by a person and another person who is not the person's partner, each of the carers will qualify for carer allowance but will receive only a share of one carer allowance (new section 964 refers).

New section 954—Qualification for carer allowance—caring for a disabled adult

Section 954 sets out qualification requirements relevant when a person provides care and attention to a disabled adult.

Under subsection 954(1), a person qualifies for carer allowance for a disabled adult if the person is an Australian resident and in Australia and provides care and attention on a daily basis to a disabled adult (aged 16 or more) who is a family member of the person (or is a person approved by the Secretary, in writing, for the purposes of this requirement), who is an Australian resident and who has been assessed and rated under the Adult Disability Assessment Tool and given a score of not less than 30.

The qualifying care and attention has to be provided by the person, or the person together with another person, in a private home that is the residence of the person and the disabled adult.

Notes 1 to 5 at the end of this subsection are identical to the notes at the end of subsections 953(1) and 953(2).

When care is provided by a person and the person's partner, both the person and the person's partner may qualify for carer allowance; however, under new section 965 only one member of the couple will receive carer allowance. When the care is provided by a person and another person who is not the person's partner, each of the carers may qualify for carer allowance but will receive only a share of one carer allowance (new section 964 refers).

Subsection 954(1) extends the application of the child disability allowance Australian residency requirement to carer allowance payable in respect of disabled adults.

Subsections 954(2) and 954(3) preserve the current domiciliary nursing care benefit qualification restrictions. Subsection 954(2) provides that if a person qualifies for carer allowance for a disabled adult, the disabled adult cannot qualify for carer allowance for another disabled adult. Subsection 954(3) provides that one person may qualify for carer allowance for a maximum of two disabled adults.

New section 955—Qualification for carer allowance—hospitalisation

Section 955 gives effect to the Budget 1998-99 measure that recognises the continuing caring responsibilities of carers during the hospital treatment of care receivers. Carers who participate in the care of a child or adult with disabilities while the child or adult is in hospital undergoing treatment (or is terminally ill) will be able to claim carer allowance while a care receiver is in hospital and continue to receive it for up to 63 days in a calendar year. The 63 day qualification period when the person cared for is in hospital and the carer participates in the care in the hospital is additional to the 63-day cessation of care period (respite period) currently available under the child disability allowance and domiciliary nursing care benefit regimes. Currently, carers who participate in the care of the person cared for in hospital cannot validly claim child disability allowance or domiciliary nursing care benefit when the person cared for is hospitalised. They could only continue to qualify for child disability allowance or domiciliary nursing care benefit during the hospitalisation period if the carers qualified for the payment before the admission of the child or the adult to hospital. Under current provisions, the carers would have to use the 63-day respite limit to continue to qualify during the hospitalisation period.

Sections 953 and 954 set out the qualification requirements that have to be met to qualify for carer allowance for a child (children) or adult with disabilities respectively. One of these requirements is the provision of ‘care and attention on a daily basis’ ‘in a private home that is the residence of the person and the care receiver’ (paragraphs 953(1)(d), 953(2)(d) and 954(1)(d) refer). The qualifying care could be provided by the person, the person’s partner or the person jointly with another person (whether the person’s partner or not). (To qualify for carer allowance all other qualification requirements of section 953 or 954 also have to be met).

If a child (children) or an adult is in a hospital and the carer participates in the care in hospital, and the carer is the person who would otherwise qualify a claimant for carer allowance, then, due to the operation of section 955, the claimant qualifies for carer allowance, subject to the other qualification requirements of sections 953 or 954 being met. Note that a claimant may qualify for carer allowance for a child if another person eg the claimant’s partner provides care in hospital.

If a carer normally cares for ‘2 disabled children’ whose combined disability would qualify the carer, or another person eg the carer’s partner, for carer allowance, and one of the children is hospitalised while another child remains at home, section 955 applies for the purposes of the determination of the claimant’s qualification for carer allowance.

Section 955 applies only when a hospitalised person is in hospital because the person is terminally ill or because the person is undergoing treatment and, at the time of admission to a hospital, it was reasonable to expect that the person will return home (that is, will be cared for in the private home that is the home of the person and the carer allowance claimant).

The following examples illustrate the situations in which section 955 may apply (note that all events in the examples are taken to have occurred in the same calendar year).

Examples

Carer caring for a profoundly disabled child—claim lodged during period of hospitalisation

The mother of a newly born child with disabilities claims carer allowance. The child will require care and attention on a daily basis for an extended period and cannot be released from hospital until the mother is able to understand and cope with the child's care regime. The mother attends the hospital most days to participate in, and receive training in, the child's care. It is expected that this process will take up to 50 days. The mother will qualify for carer allowance under section 955, provided all other qualification requirements of section 953 (child's dependency, Australian residency requirements, the qualifying level of disability) are satisfied.

Carer caring for a disabled adult—claim lodged during period of hospitalisation

The partner of a person diagnosed with terminal cancer lodges a carer allowance claim shortly after the person is hospitalised. It is not expected that the person will live more than 3 months and it is unlikely that the person will return home. The person's partner attends the hospital on a daily basis to be with the person. The partner will be granted carer allowance under section 955, and after the first 63 days of hospitalisation will continue to receive carer allowance under subsection 957(2), provided all other qualification requirements of section 954 are satisfied.

Two adults in care—two carer allowances payable

A woman cares for elderly mother and her disabled adult child and qualifies for carer allowance in respect of each. The 63-day hospitalisation entitlement under section 955 applies separately in respect of each of the care receivers. Her mother is hospitalised after a fall at home and undergoes a rehabilitation program for two weeks. The woman continues to care for her child during this period. The two weeks that her mother spends in hospital reduces the woman's 63-day hospitalisation entitlement in respect of her mother, leaving her 49 days of that entitlement. The 63-day entitlement in respect of her adult child is unaffected by her mother's hospitalisation.

New section 956—Effect of certain absences from Australia on carer allowance

Currently, if a carer travels overseas with the care recipient and the care is provided to the care recipient during the overseas absence, child disability allowance is payable for a period not exceeding 3 years. Domiciliary nursing care benefit is not payable overseas.

Under new sections 953 and 954, a person qualifies for carer allowance if the person is in Australia and the qualifying care is provided by the person, the person's partner or jointly by the person and another person in a private home that is the residence of the person and the care receiver or care receivers.

Subsection 956(1) allows for the continuation of the person's qualification for carer allowance during the person's or a care receiver's absence from Australia not exceeding 26 weeks despite the person not being in Australia or the care not being provided in a private home that is the residence of the person and the care receiver. Subsection 956(1) applies only if throughout the period of absence the person would continue to meet other carer allowance qualification requirements (eg in the case of a disabled child, the care that qualified the person for carer allowance continues to be provided by the person, if the person is overseas with the care receiver, or by the person's partner in Australia if the person is overseas without the care receiver, or by the person's partner overseas if the partner is overseas with the care receiver, or, if the person ordinarily shares the care with another person, if both the person and another person provide the care overseas).

If the overseas absence of the person or care receiver is longer than 26 weeks and the care receiver, or the care receiver and the person, (as the case may be) return to Australia and leave again within 26 weeks from the date of return, subsection 956(2) prevents the person from being qualified for carer allowance for that subsequent period of absence.

New section 957—Effect of cessation of care etc. on carer allowance

Section 957 deals with the cessation of care situations.

Continuation of allowance when temporary cessation of care

Subsection 957(1) deals with the situation when a person qualifies for carer allowance because care and attention is provided on a daily basis and that care temporarily ceases to be provided. Subsection 957(1) together with subsection 957(3) operates to the effect that the person continues to be qualified for carer allowance during the cessation of care period, or periods, totalling 63 days in a calendar year.

Subsection 957(1) applies regardless of whether the person is in Australia or not during the period of cessation of care. This subsection and subsection 956(1) dealing with overseas absences are intended to be mutually exclusive. That is, under subsection 956(1), a person may continue to qualify for carer allowance for up to 26 weeks while providing care to care receivers overseas and then may cease the provision of care and continue to qualify for carer allowance under subsection 957(1) (up to the 63 day limit in a calendar year) while remaining overseas.

Continuation of allowance after hospitalisation when section 955 ceases to apply

Subsection 957(2) deals with the situation when section 955 under which a person qualifies for carer allowance because the person participates in the care of the child or adult in hospital, ceases to apply to the person (eg because the period of the care receiver's hospitalisation exceeded 63 days or because the person ceased to participate in the care in hospital). Subsection 957(2) is provided so that, in that situation, the person continues to be qualified for carer allowance despite the fact that the child or adult does not receive care and attention on a daily basis and that the person may not be in Australia as required by sections 953 and 954. However, for subsection 957(2) to apply, other carer allowance qualification requirements in sections 953 or 954 will have to be met (eg the child would have to continue to have the qualifying disability or to be a dependent child of the person).

Under subsection 957(3), the total period of the cessation of care in respect of which the person can qualify for carer allowance, whether under subsection 957(1) or subsection 957(2), or both, is 63 days in any calendar year. The Secretary has discretion to extend the 63 day period in special circumstances.

The following examples illustrate the application of subsection 957(2).

Examples

Carer caring for a profoundly disabled child

The child referred to in the first example relating to section 955 (carer caring for a profoundly disabled child—claim lodged during period of hospitalisation) suffers a setback and his release from hospital is delayed for a further 20 days (the child spends a total of 70 days in hospital). Section 955 allows the mother to qualify for carer allowance for only 63 days of the child's hospitalisation in a calendar year, but subsection 957(2) allows the mother to qualify further, for up to 63 days in a calendar year, following the loss of qualification under section 955. In this example, the mother qualifies for carer allowance for 63 hospitalisation days (under section 955), and then for 7 days under subsection 957(2). This leaves the mother 56 respite days remaining for that calendar year, during which she may continue to qualify for carer allowance.

Carer caring for a disabled adult

A stroke victim is receiving rehabilitation while in hospital and his daughter lodges a claim for carer allowance. All other requirements are satisfied and carer allowance is granted because the daughter is participating in her father's rehabilitation regime and she will be caring for her father after his release from hospital (section 955 applies). After 60 days the father is released from hospital and his daughter commences to provide constant care to him at home. The father suffers a second mild stroke and is hospitalised but he is expected to return home after 45 days of treatment and further rehabilitation. Although the daughter has only 3 days of qualification left under the section 955 hospitalisation provision, she has not used any respite days in that calendar year. Therefore, for the first 3 days of the second hospitalisation period she will qualify for carer allowance under the hospitalisation provisions in section 955, and for the subsequent 42 days she will qualify under the cessation of care provision in subsection 957(2). The daughter will then have 21 respite days available to her for that calendar year during which she may continue to qualify for carer allowance.

Cessation of care in order to undertake training etc.

Subsection 957(4) is based on the child disability allowance arrangement under which a person qualifies for the payment during periods of cessation of care during which the child (or children) are receiving education, training or treatment (other than treatment in hospital).

Subsection 957(4) extends the same treatment to a person who qualifies for carer allowance for a child (or children) who is receiving education, training etc away from home.

This provision only applies to a person after the person has exhausted the 63 day cessation of care limit.

A note at the end of subsection 957(4) informs the reader that a person whose qualification for carer allowance continues on the basis of this subsection will receive a reduced rate of carer allowance as specified in subsection 974(3).

New Subdivision B—Payability

New Subdivision B—Payability

New section 958—Carer allowance not payable in some circumstances

New subsection 958(1) outlines those situations in which carer allowance is not payable to a person even though the person qualifies for the allowance. These are the situations where:

- the allowance has not yet commenced to be payable (see new sections 959 and 975); or
- another person is receiving carer allowance for the care receiver/s (see new section 964);
or
- the person's partner is receiving carer allowance for the care receiver/s (see new section 965); or

- the person has not nominated an account into which carer allowance is to be paid (see new section 978).

New subsection 958(2) provides that carer allowance is not payable to a person where the person's rate of payment is nil.

New section 959—Carer allowance generally not payable before claim

Under this provision, carer allowance is not payable before the person's provisional commencement day as provided for in new section 959. This new provision is subject to the backdating provisions in new sections 961 and 962.

New section 960—Provisional commencement day

New section 960 sets a person's provisional commencement day as the day on which the person claims carer allowance.

New section 961—Backdating—claim for one or 2 disabled children

New subsection 961(1) allows payment of carer allowance in respect of a disabled child to be backdated for up to 12 months in certain circumstances. This can happen where a person is qualified for carer allowance for a care receiver who is a disabled child or for care receivers who are 2 disabled children and where the person's provisional commencement day is within 12 months after the day on which the person qualified for the allowance. In this situation, arrears of carer allowance can be paid back to the day on which the person first qualified for carer allowance.

Note 1 at the end of new subsection 961(1) directs the reader to new section 960 for the provisional commencement day. Note 2 informs the reader that although a person's claim can be backdated to the day the person first qualified, there may be other factors relating to payability that prevent carer allowance from being paid from that day.

New subsection 961(2) deals with the situation where a person is qualified for carer allowance for a care receiver who is a disabled child or for care receivers who are 2 disabled children but the person's provisional commencement day is more than 12 months after the day on which the person qualified for the allowance. In this situation, arrears of carer allowance can only be backdated 12 months.

Note 1 at the end of new subsection 961(2) directs the reader to new section 960 for the provisional commencement day. Note 2 informs the reader that although a person's claim can be backdated 12 months, there may be other factors relating to payability that prevent carer allowance from being paid from that day.

New section 962—Backdating—claim for disabled adult

New subsection 962(1) allows payment of carer allowance in respect of a disabled adult to be backdated for up to 6 months in certain circumstances. This can happen where a person is qualified for carer allowance for a care receiver who is a disabled adult whose qualifying disability was due to an acute onset (for example was caused by a stroke or a car accident) and where the person's provisional commencement day is within 6 months after the day on which the person became qualified for the allowance as a result of the disability that had an acute onset. In this situation, arrears of carer allowance can be paid back to the day on which the person first qualified for carer allowance on the grounds of the disability that was due to an acute onset.

Note 1 at the end of new subsection 962(1) directs the reader to new section 960 for the provisional commencement day. Note 2 informs the reader that although a person's claim can be backdated to the day the person first qualified, there may be other factors relating to payability that prevent carer allowance from being paid from that day.

New subsection 962(2) deals with the situation where a person is qualified for carer allowance for a care receiver who is a disabled adult whose qualifying disability was due to an acute onset but the person's provisional commencement day is more than 6 months after the day on which the person qualified for the allowance as a result of the disability that had an acute onset. In this situation, arrears of carer allowance can only be backdated 6 months.

Note 1 at the end of new subsection 962(2) directs the reader to new section 25 for the provisional commencement day. Note 2 informs the reader that although a person's claim can be backdated 12 months, there may be other factors relating to payability that prevent carer allowance from being paid from that day.

New section 963—Claims by telephone, facsimile or computer

New section 963 deems, on certain conditions, the date on which a person contacted the Department by telephone, facsimile or computer inquiring about carer allowance (initial contact) to be the date the person lodged a claim for carer allowance.

New section 963 applies to a person if:

- the person or someone on behalf of the person contacts the Department in relation to the person claiming carer allowance (new paragraph 963(1)(a) refers); and
- on the day of the initial contact, the person was qualified for carer allowance (new paragraph 963(1)(b) refers); and
- the Secretary gives the person a written notice acknowledging the initial contact (new paragraph 963(1)(c) refers); and
- the person lodges a claim for carer allowance within 21 days from the date of the initial contact or within the period of extension given to the person by the Secretary (new paragraph 963(1)(d), and subsections 963(2) and (3) refer); and

- at the time of lodgement of the claim for carer allowance, either the person gives the Secretary the notice received from the Secretary acknowledging the initial contact or the Department has a record of that notice being sent to the person (new paragraph 963(1)(e) refers).

Where new section 963 applies to a person, the person is taken to have lodged a proper claim on the day on which the person contacted the Department (new subsection 963(4) refers).

New subsection 963(5) ensures that if a person is contacting the Department by facsimile or computer equipment, then the contact is taken to have occurred when the message is received by the Department.

New section 964—Carer allowance not payable to 2 people for the same care receiver or care receivers unless declaration made

New section 964 deals with the situation where two people who are not members of a couple qualify for carer allowance for the same care receiver/s and one of the people is receiving carer allowance for the care receiver/s. Where this situation arises and the Secretary has not made a declaration under new subsection 981(1), carer allowance is not payable to the other person.

New section 965—Carer allowance not payable to more than one member of a couple

New subsection 965(1) provides the basic rule that only one member of a couple can receive carer allowance for a care receiver/s. Carer allowance is not payable to the other member of the couple.

New subsection 965(2) deals with the situation where both members of a couple qualify for carer allowance for the same care receiver/s and each has made a claim for the allowance. Where this happens, the Secretary must make a declaration that each member of the couple qualifies for carer allowance and name one of them as the person to whom allowance is payable. Carer allowance is then not payable to the other member of the couple under new subsection 965(3). In making the declaration, the Secretary is to have regard to which member of the couple is the primary carer (see new subsection 965(5)).

Under new subsection 965(4), the Secretary must give notice of the declaration to each member of the couple involved.

New Division 3—Claim for carer allowance

New section 966—Need for a claim

New subsection 966(1) provides that a person who wants to be granted carer allowance must make a proper claim for the payment.

A note to this provision signposts new sections 967, 968 and 969, which outline the requirements of a proper claim. These provisions relate to the form of the claim, where the claim needs to be lodged and requirements relating to residency.

New subsection 966(2) provides that if, at the time a person (or someone on behalf of the person) makes a claim for carer allowance, the person is not qualified for that payment, the claim will be taken not to have been made.

New section 967—Form of claim

New section 967 provides that a claim for carer allowance must be in writing and in accordance with a form approved by the Secretary.

New section 968—Lodgement of claim

New section 968 provides that a claim for carer allowance must be lodged at an office of the Department of Family and Community Services or at a place, or with a person, approved by the Secretary. A place, or a person, for lodgement of claims must be in Australia.

New section 969—Residency

New section 969 provides that a person claiming carer allowance must be an Australian resident and in Australia on the day on which the claim is lodged.

Note 1 directs the reader to the definition of ‘Australian resident’ in section 7 of the Social Security Act.

New section 970—Claim may be withdrawn

New section 970 provides that a claim for carer allowance can be withdrawn at any time before the claim is determined. The withdrawal can be made orally or in writing. A claim that is withdrawn is taken not to have been made.

New Division 4—Determination of claim

New section 971—Secretary to determine claim

New section 971 provides that the Secretary must determine, in accordance with the Social Security Act, a claim for carer allowance.

New section 972—Grant of claim

New section 972 provides that the Secretary must determine that a claim for carer allowance is to be granted if the Secretary is satisfied that the person is qualified for the allowance and the allowance is payable.

New section 973—Date of effect of determination

New subsection 973(1) specifies the date of effect of a determination under new section 972. The determination takes effect on the day on which the determination is made or on such later or earlier day as is specified in the determination.

New subsection 973(1) is subject to new subsections 973(2), (3) and (4). These provisions specify the date of effect of a determination granting a claim that results from a person asking for a review of an original decision rejecting the claim.

Notified decision—review sought within 13 weeks

New subsection 973(2) deals with the situation where an applicant for carer allowance:

- is notified in writing of a decision to reject the person's claim; and
- applies to the Secretary under section 1240, within 13 weeks after written notification of the decision is given, for a review of that decision; and
- is granted carer allowance as a result of the review.

The determination to grant the claim takes effect on the day on which the original decision to reject it took effect. This enables arrears to be paid back to that date.

Notified decision—review sought after 13 weeks

New subsection 973(3) deals with the situation where an applicant for carer allowance:

- is notified in writing of a decision to reject the person's claim; and
- applies to the Secretary under section 1240, more than 13 weeks after the written notification of the decision is given, for a review of the decision; and
- is granted carer allowance as a result of the review.

In this case, the determination to grant the claim takes effect on the day on which the person sought the review.

Decision not notified

New subsection 973(4) deals with the situation where an applicant for carer allowance:

- is not notified in writing of a decision to reject the person's claim; and
- applies to the Secretary under section 1240 at any time for a review of the decision; and
- is granted carer allowance as a result of the review.

In this case, the determination to grant the claim takes effect on the day on which the original decision rejecting the claim took effect. As is the case with new subsection 973(2), this enables arrears to be paid back to the date of the original decision.

New Division 5—Rate of carer allowance

New section 974—Rate of carer allowance

New subsection 974(1) provides that a person's carer allowance is a daily rate that is worked out by dividing the person's fortnightly rate by 14.

Under new subsection 974(2), a person's fortnightly rate is expressed to be \$75.60. A note at the end of this provision informs the reader that this rate is indexed annually.

New subsection 974(3) deals with the situation where, on one or more days in an instalment period during which a person qualified for carer allowance, the care receiver undertakes education, training or treatment (other than in a hospital) and, during that period, the person qualifies for carer allowance under subsection 957(4). In this situation, the person's fortnightly rate of carer allowance is reduced in proportion to the number of days in the period that the person cared for undertakes education, training or treatment.

New subsection 974(4) deals with the situation where 2 people who are not members of the same couple care for the same care receiver/s. Where both people qualify for carer allowance and the Secretary makes a declaration under new subsection 981(1) in respect of carer allowance for the care receiver/s, then the person's rate of carer allowance is the share specified in that declaration. Section 981 allows the Secretary to declare that 2 people are qualified for carer allowance in respect of a care receiver/s and to specify the share of carer allowance each person is to receive.

New Division 6—Payment of carer allowance

New section 975—Commencement of carer allowance

New section 975 provides that carer allowance becomes payable to a person on the first day on which the person qualifies for the allowance and no provision in the Social Security Act makes the allowance not payable to the person.

Note 1 at the end of this provision directs the reader to the relevant qualification provisions. Note 2 directs the reader to the payability rules applicable to carer allowance.

New section 976—Payment by instalments

Under new subsection 976(1), carer allowance is to be paid in arrears, by instalments relating to such periods as the Secretary determines. The period determined by the Secretary cannot be greater than 14 days. Each period determined by the Secretary is an instalment period in relation to carer allowance (new subsection 976(5) refers).

New subsection 976(2) provides that instalments of carer allowance are to be paid at such times as the Secretary determines.

The amount of carer allowance that comprises an instalment is, under new subsection 976(3), the sum of the amounts payable for the days in the period on which carer allowance was payable to the person. This provision acknowledges that carer allowance is calculated on a daily rate.

New subsection 976(4) provides that where a person is outside Australia, instalments can be paid to the person at such times as the Secretary determines. In this situation, the instalments can relate to a period greater than 14 days.

New section 977—Instalments to be paid to person or nominee

New section 977 provides that instalments of a person's carer allowance are to be paid to that person unless the Secretary directs that the whole or part of the instalment is to be paid to someone else on behalf of the person.

New section 978—Payment into bank account etc.

New subsections 978(1), (2) and (3) provide that payments of a person's carer allowance are to be made by direct deposit to an account with a bank, credit union or building society nominated and maintained by the person. The account can be maintained by the person either alone or jointly or in common with another person.

The Secretary may decide in the circumstances of a particular case that some other manner of payment is appropriate and that payment of some or all of the carer allowance should be paid in some other way. This would normally be done in the case of persons with no reasonable access to banking or like facilities (see new subsections 978(4) and (5)).

Where a person has not nominated an account within 28 days of carer allowance becoming payable to the person then, unless new subsections 978(4) and (5) apply, carer allowance ceases to be payable to the person (see new subsection 978(6)).

New subsection 978(7) provides that, subject to other payability provisions, if a payment ceases to be payable under new subsection 978(6), arrears may be payable if the person nominates an account within 3 months from the date that carer allowance ceased to be payable. (This rule assumes that carer allowance continues to be payable to the person under the relevant provisions in Part 2.19 of the Social Security Act.) If the person nominates an account after 3 months, then carer allowance is only payable from the date the person nominated the account.

New section 979—Where carer allowance payday would fall on public holiday etc.

New section 979 gives the Secretary a discretion to direct the earlier payment of an instalment of carer allowance if it cannot be paid on the normal day, for example, because of a public or bank holiday.

New section 980—Payment of allowance after death

New subsection 980(1) provides that where a person to whom carer allowance is payable dies and an amount of payment is outstanding at the date of death, the Secretary may pay the outstanding amount to another person who, in the Secretary's opinion, is best entitled to it. That person must apply to receive the amount within 6 months of the death or within a further period allowed by the Secretary in special circumstances.

New subsection 980(2) makes it clear that once a payment has been made under new subsection 980(1), the Commonwealth has no liability to another person in respect of that amount.

New section 981—Secretary may make declaration where 2 people are qualified for carer allowance for the same care receiver or care receivers

Under new subsection 981(1), if the Secretary is satisfied that 2 people who are not members of the same couple qualify for carer allowance for the same care receiver/s, then the Secretary can make a declaration stating that and specifying the share of carer allowance each person is to receive. The people involved must be given notice of the Secretary's declaration under new subsection 981(2).

Note 1 at the end of new section 981 provides that only one person can receive carer allowance until the Secretary makes a declaration under new section 981.

Note 2 refers the reader to subsection 974(4) for the effect of a declaration under this section on the calculation of carer allowance rate.

New Division 7—Protection of carer allowance

New section 982—Carer allowance to be absolutely inalienable

New section 982 provides that carer allowance is to be absolutely inalienable, except in the circumstances specified in new subsections 982(2) and (3) and section 1359 of the Social Security Act.

Payments to Commissioner of Taxation at person's request

New subsection 982(2) provides that, at the request of the person, the Secretary may make deductions from the person's instalments of carer allowance and direct those deductions to the Commissioner of Taxation.

A note to the subsection alerts the reader to the fact that section 1359 provides that the Secretary must make deductions from a person's social security payment if requested to do so by the Commissioner of Taxation.

Deductions from instalments with recipient's consent

New subsection 982(3) provides that, with the consent of the person, the Secretary may make deductions from instalments of the person's carer allowance to recover a debt incurred by another person. Consent to such deductions is given by the person under section 1234A of the Social Security Act.

A note to the subsection indicates that section 1234A enables the Secretary to recover a debt from a person other than the debtor if the person is receiving a social security payment and consents to deductions being made.

New section 983—Effect of garnishee or attachment order

New section 983 protects a 'saved amount' of carer allowance in a recipient's bank account from being garnished by third party creditors. The 'saved amount' is calculated by working out the amount of the instalments of carer allowance credited to the person's account in the 4 week period immediately before the court order came into force and deducting from that amount the total amount withdrawn from the account during the same period. The bank account may be maintained by the person alone or jointly or in common with another person.

New Division 8—Recipient obligations

New section 984—Secretary may require notice of the happening of an event or a change in circumstances

New subsections 984(1) and (2) enable the Secretary to give a person receiving carer allowance a notice requiring the person to notify the Department if a specified event or change in circumstances that might affect payment occurs or is likely to occur. An event or change of circumstances cannot be specified in such a notice unless the occurrence of that event or change of circumstances might affect payment of carer allowance.

New subsection 984(3) requires the notice to:

- be in writing; and
- be given personally or by post; and
- specify how the information is to be given to the Department; and
- specify the period in which the information must be given; and
- specify that the notice is a recipient notification notice given under the Social Security Act.

New subsection 984(4) provides that a recipient notification notice is not invalid merely because it fails to comply with those paragraphs of new subsection 984(3) requiring a notice to specify how information is given to the Department and requiring the notice to be described as a 'recipient notification notice'.

New subsection 984(5) sets out the general rule that the period specified in the notice must be a period of 14 days after the day on which the event or change in circumstances occurs or after the day on which the person becomes aware that the event or change in circumstances is likely to occur.

New subsections 984(6), (7) and (8) are exceptions to this general rule.

Under new subsection 984(6), the Secretary can extend the period specified in the notice to not less than 15 and not more than 28 days after the day on which the event or change in circumstances occurs or after the day on which the person becomes aware that the event or change in circumstances is likely to occur, provided the Secretary is satisfied that special circumstances exist.

Under new subsection 984(7), a person has a period of 28 days in which to notify the Department of the death of a person.

Under new subsection 984(8), if a notice requires a person to inform the Department of his or her proposal to leave Australia, then the 14 day notification rule in new subsection 984(5) does not apply. Under this provision, a person could be required to inform the Department of a proposal to leave Australia immediately.

New subsection 984(9) sets out the compliance conditions for notices under new subsection 984(1) and the penalties for contravening the provision. If a person receiving carer allowance is capable of complying with a notice but refuses or fails to do so and does not have a reasonable excuse for the failure or refusal, then the person may be imprisoned for 6 months.

A note refers the reader to the subsections of the *Crimes Act 1914* that allow a court to impose an appropriate fine instead of, or in addition to, the specified term of imprisonment.

New subsection 984(10) allows new section 984 to operate outside Australia. It extends to acts, omissions, matters and things outside Australia, whether or not in a foreign country. It also extends to all persons to whom it normally applies, regardless of their nationality or citizenship.

New section 985—Secretary may require recipient to give particular information relevant to payment of carer allowance

New subsection 985(1) allows the Secretary to give a person to whom carer allowance is being paid a notice requiring the person to give the Department a statement about a matter that might affect the payment of the person's carer allowance.

New subsection 985(2) requires the notice to:

- be in writing; and
- be given personally or by post; and
- specify how the statement is to be given to the Department; and

- specify the period within which the statement must be given to the Department; and
- specify that the notice is a recipient statement notice given under the Social Security Act.

New subsection 985(3) provides that a recipient statement notice is not invalid merely because it fails to comply with paragraph 2(c) or (e) of new subsection 985(2) that requires a notice to specify how the statement is to be given to the Department and that requires the notice to be described as a ‘recipient statement notice’.

New subsection 985(4) provides that the period specified in the notice must end at least 14 days after the day on which the notice is given to the person.

New subsection 985(5) provides that the recipient statement notice must be in writing and in accordance with a form approved by the Secretary.

New subsection 985(6) sets out the compliance conditions for notices under new subsection 985(1) and the penalties for contravening the provision. If a person receiving carer allowance is capable of complying with a notice under new subsection 985(1) but refuses or fails to do so and has no reasonable excuse for the refusal or failure, then he or she may be imprisoned for 6 months.

A note refers the reader to the subsections of the *Crimes Act 1914* that allow a court to impose an appropriate fine instead of, or in addition to, a term of imprisonment.

New subsection 985(7) allows new section 985 to operate outside Australia. It extends to acts, omissions, matters and things outside Australia, whether or not in a foreign country. It also extends to all persons to whom it would normally apply if they resided in Australia, regardless of their nationality or citizenship.

New Division 9—Continuation, variation and termination

New Subdivision A—General

New section 986—Continuing effect of determination

Entitlement determination

New subsection 986(1) provides that a decision that carer allowance is granted or is payable continues until:

- carer allowance stops being payable automatically under new section 987 or 988; or
- a decision to cancel or suspend under new section 992C or 992D has taken effect.

Note 1 at the end of this provision indicates that the grant of a claim for carer allowance is regulated by new section 972.

In relation to the payability requirement, note 2 directs the reader to new section 992F which deals with the situation where an earlier determination to cancel or suspend has been reversed.

Note 3 refers the reader to new section 992E which provides that changes to payments by computer are taken to have been made by determination of the Secretary.

Rate determination

New subsection 986(2) provides that a decision regarding the rate of payment of carer allowance continues in effect until:

- carer allowance becomes payable at a lower rate under new section 990 or 991; or
- a decision to vary the rate under new section 992A or 992B has taken effect.

A note at the end of this provision refers the reader to new section 992E which provides that changes to payments by computer are taken to have been made by determination of the Secretary.

New subdivision B—Automatic termination

New section 987—Automatic termination—recipient complying with section 984 notification obligations

New section 987 deals with the situation where a recipient of carer allowance complies with a new section 984 notice by informing the Department of the occurrence of a specified event or a change in circumstances and, because of the occurrence of the event or change in circumstances, the person loses qualification or payability. One of two things can happen in this situation. If carer allowance is cancelled during the instalment period following the instalment period in which the event or change in circumstances occurred (the first period), then carer allowance continues to be payable until the end of the instalment period in which the event or change in circumstances occurred. Alternatively, if carer allowance is not cancelled during the first period, then carer allowance continues to be payable until the end of the notification period.

New section 988—Automatic termination—person not complying with section 984 notification obligations

New section 988 applies where a recipient of carer allowance fails to comply with a new section 984 notice by failing to inform the Department of the occurrence of an event or change in circumstances within the notification period and, as a result of the event or change:

- the person stops being qualified for the payment; or
- payment stops being payable to the person.

In that situation, carer allowance stops being payable on the day on which the event or change in circumstances occurs.

New section 989—Changes to payments by computer following automatic termination

This new section applies where carer allowance is being paid to a person based upon information held in a computer and the allowance is automatically terminated under the Social Security Act through the operation of a computer program approved by the Secretary. In such a case, the Secretary is taken to have decided that the automatic termination applies to the person's payment.

A note at the end of this provision indicates to the reader that the decision that is taken to have been made is a decision of an officer for the purposes of review by the Secretary and the Social Security Appeals Tribunal (sections 1239, 1240 and 1247 of the Social Security Act refer).

New Subdivision C—Automatic rate reduction

New section 990—Automatic rate reduction—recipient complying with section 984 notification obligations

New section 990 deals with the situation where a recipient of carer allowance complies with a new section 984 notice by informing the Department of the occurrence of a specified event or a change in circumstances and, because of the occurrence of the event or change in circumstances, the person's rate of payment should be reduced. One of two things can happen in this situation. If the person's rate of carer allowance is reduced during the instalment period following the instalment period in which the event or change in circumstances occurred (the first period), then carer allowance becomes payable at the reduced rate at the end of the instalment period in which the event or change in circumstances occurred. Alternatively, if the rate of carer allowance is not reduced during the first period, then carer allowance becomes payable to the person at the reduced rate at the end of the notification period.

New section 991—Automatic rate reduction—recipient not complying with section 984 notification obligations

This new section applies where a recipient of carer allowance fails to comply with a new section 984 notice by failing to inform the Department of the occurrence of a specified event or a change in circumstances within the notification period and, as a result of the event or change, the person's payment rate is to be reduced. In such a case, the reduced rate becomes payable on the day on which the event or change in circumstances occurs.

New section 992—Changes to payments by computer following automatic reduction

This new section applies where carer allowance is being paid to a person based upon information held in a computer and the rate of allowance is automatically reduced under the Social Security Act through the operation of a computer program approved by the Secretary. In such a case, the Secretary is taken to have decided that the automatic rate reduction applies to the person's payment.

A note at the end of this provision indicates to the reader that the decision that is taken to have been made is a decision of an officer for the purposes of review by the Secretary and the Social Security Appeals Tribunal (sections 1239, 1240 and 1247 of the Social Security Act refer).

New Subdivision D—Determinations

New section 992A—Rate increase determination

This new section gives the Secretary the power to increase the rate of carer allowance paid to a person if the Secretary is satisfied that the rate being paid to the person is less than the rate the person should be paid under the Social Security Act.

A note signposts the provision that sets out the date of effect of a decision under this new section, that is, new section 992G.

New section 992B—Rate reduction determination

This new section gives the Secretary the power to reduce the rate of a carer allowance paid to a person if the Secretary is satisfied that the rate being paid to the person is more than the rate the person should be paid under the Social Security Act.

Note 1 points out that this provision does not apply if automatic rate reduction provisions in new sections 990 or 991 apply.

Note 2 signposts the provision that sets out the date of effect of a decision under this new section, that is, new section 992H.

New section 992C—Cancellation or suspension determination

This new section gives the Secretary the power to cancel or suspend payment of carer allowance to a person if the Secretary is satisfied that the payment is not, or was not, payable to the person.

Note 1 points out that this provision does not apply if the automatic termination provisions in new section 987 or 988 apply.

Note 2 signposts the provision that sets out the date of effect of a decision under this new section, that is, new section 992H.

New section 992D—Cancellation or suspension for failure to comply with section 985, 1304 or 1305 notice

This new section provides the Secretary a specific cancellation or suspension power if a person who is receiving carer allowance fails to comply with a notice given to him or her under section 985, 1304 or 1305.

Note 1 points out that this provision does not apply where new section 992C applies.

Note 2 signposts the provision that sets out the date of effect of a decision under this new section, that is, new section 992H.

New section 992E—Changes to payments by computer

This new section applies where carer allowance is being paid to a person based upon information held in a computer and that payment is increased, decreased, cancelled or suspended through the operation of a computer program approved by the Secretary and the program causes the change for a reason for which the Secretary could determine the change. In such a case, the increase, decrease, cancellation or suspension is taken to have been made through a decision of the Secretary for that reason.

A note points out that a determination to change a payment under the new section is reviewable by the Secretary and by the Social Security Appeals Tribunal (sections 1239, 1240 and 1247 of the Social Security Act refer).

New section 992F—Resumption of payment after cancellation or suspension

New subsection 992F(1) allows the Secretary to make a decision to resume payment of carer allowance if a decision to cancel or suspend is made under new section 992C or 992D and then reconsidered by the Secretary and the Secretary is satisfied that the person did not receive, and is not receiving, carer allowance that is payable to the person.

New subsection 992F(2) provides that the reconsideration referred to in new subsection 992F(1) can be either reconsideration following an application for review under section 1240 of the Social Security Act or at the Secretary's instigation.

A note signposts new section 992G that specifies the date of effect of a determination to resume payment of carer allowance.

New Subdivision E—Date of effect of determinations

New section 992G—Date of effect of favourable determination

New subsection 992G(1) provides for the date of effect of a favourable determination (ie, a determination made under new section 992A or 992F).

Notified decision—review sought within 3 months

New subsection 992G(2) deals with the situation where a decision is made about carer allowance, the person is notified of the decision and applies to have it reviewed under section 1240 of the Social Security Act within 3 months of being notified and a favourable decision is made as a result of the review. In this situation, the favourable determination takes effect on the date on which the previous decision took effect.

Notified decision—review sought after 3 months

New subsection 992G(3) deals with the situation where a decision is made about carer allowance, the person is notified of the decision and applies to have it reviewed under section 1240 of the Social Security Act more than 3 months after being notified and a favourable decision is made as a result of the review. In this situation, the favourable determination takes effect on the day that the person sought the review.

Decision not notified

New subsection 992G(4) provides that if a person seeks a review of a carer allowance decision about which he or she was not notified in writing and a favourable decision results, then the decision takes effect on the date on which the previous decision took effect. This enables arrears to be paid to the date of original decision.

Notified change of circumstances

Under new subsection 992G(5), if a favourable decision results from a person informing the Department of an event or a change in circumstances, then the favourable decision takes effect on the date on which the advice was received or on the day on which the change has occurred, whichever is the later.

Other determinations

New subsection 992G(6) provides that, in any other case, a favourable determination takes effect on the determination date or on such later or earlier date as is specified in the determination (not being more than 3 months before the determination date).

New section 992H—Date of effect of adverse determination

New subsection 992H(1) provides for the date of effect of an adverse determination (ie, a determination under new section 992B, 992C or 992D).

Notified change of circumstances

New subsection 992H(2) applies where an adverse determination is made after a person notifies the Department of the occurrence of an event or change in circumstances specified in a section 984 notice, the notification is within the notification period and the person is not paid an instalment of carer allowance after the making of the notification and before the determination is made. In this situation, the adverse determination takes effect on the day on which the event or change in circumstances occurred.

Contravention of Act

New subsection 992H(3) applies where a person has contravened a provision of the Act (except section 985, 1304, 1305, 1306 or 1307) and the contravention causes a delay in making the adverse determination. Where this happens, the adverse determination takes effect on a day specified in the determination. This day can be earlier than the day on which the determination is made.

False statement or misrepresentation—cancellation or suspension

New subsection 992H(4) applies where a person makes a false statement or misrepresentation which causes carer allowance to be paid to the person when it should have been cancelled or suspended. In this situation, the adverse determination takes effect on a day specified in the determination. This day can be earlier than the day on which the determination is made.

False statement or misrepresentation—rate reduction

New subsection 992H(5) applies where a person makes a false statement or misrepresentation which causes carer allowance to be paid to the person at a higher rate than it should have been. In this situation also, the adverse determination takes effect on a day specified in the determination, which can be earlier than the day on which the determination is made.

Other determinations

New subsection 992H(6) provides that in any other case, an adverse determination takes effect on the day on which it is made or, if the determination specifies a later day, on that day.

New Division 10—Bereavement payments (death of disabled child)

New Subdivision A—Death of disabled child

New section 992J—Continued carer allowance during bereavement continuation period where disabled child dies

In order to qualify for carer allowance for a child, a person must, among other things, care for a care receiver who is a disabled child or for care receivers who are 2 disabled children. If a disabled child or one of the disabled children die, the person would, without specific provisions, lose qualification for carer allowance. This situation is addressed in new section 992J which ensures a person's continuing qualification for carer allowance where a person is receiving carer allowance for a care receiver who is a disabled child or for care receivers who are 2 disabled children, the disabled child or one of the disabled children dies and, immediately before the death, the person was receiving family allowance in respect of the child.

Qualification would continue for the 'bereavement rate continuation period', as defined in subsection 21(2) of the Social Security Act (note 1 at the end of new subsection 992J(1) refers).

Note 2 directs the reader's attention to new section 992L which enables carer allowance to be paid for 4 weeks after the death of the child. New section 992L may be relevant to a person who was not receiving family allowance immediately before the death of the child and so will not qualify for carer allowance under section 992J.

New subsection 992J(2) provides that the rate of carer allowance to be paid to the person during the bereavement rate continuation period is the same as the rate at which the allowance was payable to the person immediately before the day on which the child died.

New section 992K—Lump sum payable in some circumstances

This new provision allows the person to receive a lump sum where the person continues to qualify for carer allowance after the death of a disabled child (under new section 992J), the first available bereavement adjustment payday occurs before the end of the bereavement period and the person was receiving family allowance for the disabled child immediately before the child's death.

The lump sum is worked out using the lump sum calculator at the end of new subsection 992K(1) as follows. First, the rate of carer allowance that was payable to the person immediately before the child's death is worked out. This amount is multiplied by the number of paydays of the person in the bereavement lump sum period. The result is the amount of lump sum payable to the person.

Note 1 at the end of new subsection 992K(1) refers the reader to subsection 21(2) of the Social Security Act for the definitions of 'first available bereavement adjustment payday', 'bereavement period' and 'bereavement lump sum period'.

Note 2 informs the reader that if a person cannot receive a lump sum because the person was not receiving family allowance for a disabled child immediately before the child's death but someone else was receiving family allowance for the child, then a lump sum payment may be available to the other person under section 892 of the Social Security Act.

New subsection 992K(2) ensures that only one lump sum payment can be made to a person who is qualified for carer allowance for 2 disabled children where both of the children die at the same time.

New Subdivision B—Death of disabled child (special short-term assistance)

New section 992L—Continuation of qualification for carer allowance for 4 weeks in some cases where recipient's disabled child dies

New subsection 992L(1) covers the situation where a person is receiving carer allowance for a care receiver who is a disabled child or for care receivers who are two disabled children and the disabled child or one of the disabled children dies but the person's qualification for carer allowance cannot be extended under new section 992J. In this situation, new subsection 992L(1) allows qualification to continue in respect of the deceased child for a period of 4 weeks starting on the day on which the child dies.

New subsection 992L(2) provides that the rate of carer allowance to be paid to the person during the 4 week period is the same as the rate at which the allowance was payable to the person immediately before the day on which the child died.

New Subdivision C—Death of recipient

New section 992M—Death of recipient

New subsection 992M(1) deals with the death of a partnered person receiving carer allowance for a care receiver who is a disabled child or for care receivers who are two disabled children. In this situation, the person's partner is entitled to the amount of carer allowance that would have been payable to the person under new subsection 992J(2) had the person not died plus any lump sum that would have been payable to the person under new section 992K if the person had not died.

New subsection 992M(2) deals with a similar situation except that the deceased carer allowance recipient is not a member of a couple. In this situation, a person who is judged by the Secretary the most appropriate person is entitled to the amount of carer allowance that would have been payable to the person had the person not died plus any lump sum that would have been payable to the person if the person had not died.

4. Commencement

Amendments made by **Part 1 of Schedule 2** (other than **items 1 and 3**) commence immediately after the commencement of Schedule 1 to the *Payment Processing Legislation Amendment (Social Security and Veterans' Entitlements) Act 1998* (which commences on 1 July 1999).

Amendments made by **items 1 and 3** of **Schedule 2** commence immediately after the commencement of **Part 1 of Schedule 1**.

Part 2—Consequential amendments of the Social Security Act

2. Background

This Part makes consequential amendments of the Social Security Act flowing from the introduction of carer allowance.

3. Explanation of the changes

Item 8 omits the ‘CDA child’ entry in section 3 (index) as that term will cease to exist.

Item 9 amends paragraph (g) of subsection 8(8), which currently excludes domiciliary nursing care benefit from income. The amendment makes sure that that exclusion applies only to payments of domiciliary nursing care benefit as in force immediately before 1 July 1999. After that date, equivalent payments (of carer allowance) will be excluded from income under paragraph 8(8)(a).

Item 10 inserts a new definition of ‘child disability allowance’ (ie, that allowance as in force under the Social Security Act before 1 July 1999) into subsection 23(1) for the purposes of the provisions in the Social Security Act in which references to that term are to be retained for transitional purposes.

Items 11 and 12 amend the definitions of ‘recipient notification notice’ and ‘recipient statement notice’ in subsection 23(1) to substitute the current references to the child disability allowance notice provisions with the new references to the relevant carer allowance notice provisions.

Item 13 amends section 500D relating to ‘PP child’ status for parenting payment. The purpose of this amendment is to eliminate subparagraph 500D(2)(b)(ii), which currently allows a dependent child for whom the adult is qualified for child disability allowance, and who has turned 16 but not 21, to be a PP child and therefore to qualify the adult for parenting payment. Since all carer allowance children will be under 16 (and therefore will fall within subparagraph 500D(2)(b)(i)), subparagraph (ii) is no longer relevant. Accordingly, paragraph (b) is being reinserted to incorporate only the subparagraph (i) rule.

Item 14 amends family allowance subsection 843(2). Under this provision, a person’s or organisation’s provisional commencement day may be the day on which the person or organisation lodged a claim for child disability allowance. To preserve the operation of this provision for children in respect of whom family allowance may be claimed after 1 July 1999, this amendment adds reference to carer allowance in the provision, but retains the reference to child disability allowance for transitional purposes. **Item 16** makes an identical amendment to the equivalent family tax payment provision in subparagraph 900 AI(2)(a)(i), **item 18** for maternity allowance in subparagraph 900P(a)(i) and **item 19** for double orphan pension in subparagraph 1002(2)(a)(i).

Item 15 amends section 846, which relates to the backdating of a claim for family allowance. Under section 846, the payment of a person's family allowance may be backdated to the day child disability allowance became payable to the person but not earlier than 52 weeks before the day the person became qualified for family allowance. This provision operates when a person claims family allowance in respect of the same child in respect of whom child disability allowance is payable, or when a person claims family allowance in respect of a number of children and child disability allowance is payable for one of those children.

The operation of this provision has to be preserved for transitional purposes for children for whom family allowance may be claimed after 1 July 1999, for whom carer allowance will be payable and for whom child disability allowance was payable immediately before 1 July 1999. This is to ensure that the backdating of family allowance that occurs after 1 July 1999 takes into account child disability allowance payable before 1 July 1999.

The amendments allow the backdating of family allowance under current rules when carer allowance, backdated under carer allowance backdating rules (for children or adults), is payable for FA children.

Item 17 achieves a similar result for family tax payment (section 900AL), to preserve the operation of the backdating provision in respect of the child stream of carer allowance.

Item 40 inserts a new subclause into Schedule 1A relating to the saving of a shared care declaration. It applies to a person who, immediately before 1 July 1999, is receiving, under subclause 65(2), a particular share of the child disability allowance rate by virtue of a declaration made under subsection 975A(1) of the Social Security Act as in force before the commencement of that clause (in 1993). This person will continue to receive the same share of carer allowance (the child or adult stream, as the case may be) after 1 July 1999. The declaration referred to in clause 65 is therefore continuing in force, through the new subclause inserted by this item, in respect of the share of carer allowance that will be payable to the person on or immediately after 1 July 1999.

Items 41 and 42 relate to the savings provisions for a disabled child flowing from the child disability allowance changes made on 1 July 1998. The disability of young persons (children between the ages of 16 and 21 in full time education) in respect of whom child disability allowance was claimed on or after 1 July 1998 is tested under the Child Disability Assessment Tool (the CDAT). Under clause 108 of Schedule 1A, young persons who, immediately before 1 July 1998, qualified their carers for child disability allowance (as a result of claims made before 1 July 1998) because they met the disability requirement of section 952 (as in force before 1 July 1998) were 'saved' from the application of the CDAT for a limited period up to 30 June 2003. These young persons qualify their carers for child disability allowance on the basis of section 952 as in force before 1 July 1998. On 1 July 1999, young persons covered by clause 108 will be transferred to carer allowance (adult or child stream, as the case may be). They will qualify their carers for carer allowance on the basis of the same general disability requirements as specified in the pre-1 July 1998 section 952, and will not be subject to testing under the CDAT or the Adult Disability Assessment Tool (under which disability of persons 16 year old or older will be tested from 1 July 1999). Qualification for carer allowance will however depend on other carer allowance conditions of payability being met. Clause 108 is therefore being amended, and a new clause 108A inserted, to achieve this.

The remaining amendments made by this Part are strictly to reflect the primary changes made by the carer allowance initiative. These relate to:

- changing existing references to child disability allowance (or its provisions) to carer allowance (or its provisions) to maintain the same treatment under the Social Security Act for carer allowance as was afforded to child disability allowance (**items 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31 and 32**);
- referring to the new carer allowance provisions alongside references to comparable payment provisions to achieve the correct application of the Social Security Act (**items 34, 35, 36, 37 and 38**); and
- removal of the provisions that no longer have any effect (**items 33 and 39**).

4. Commencement

The amendments made by this Part commence immediately after the commencement of Schedule 1 to the *Payment Processing Legislation Amendment (Social Security and Veterans' Entitlements) Act 1998* (which commences on 1 July 1999).

Part 3—Consequential amendments of the National Health Act

2. Background

From 1 July 1999, child disability allowance and domiciliary nursing care benefit will be merged into a single payment type called carer allowance. New carer allowance will be paid under the Social Security Act. Consequential amendments to the National Health Act are required as a result of this measure. (Transitional provisions relating to the transfer of the recipients of domiciliary nursing care benefit to carer allowance are located *in Part 1 of Schedule 3* and transitional provisions relating to the National Health Act are located in *Part 2 of Schedule 3* of this Bill).

3. Explanation of the changes

Currently, domiciliary nursing care benefit is paid under Part VB of the National Health Act (sections 58D to 58J inclusive). With the introduction of new carer allowance, Part VB becomes obsolete and is therefore repealed by **item 45**.

As a result of the repeal of Part VB, a number of minor consequential amendments are required to remove obsolete cross-references as follows:

- **item 43** omits the reference to ‘(within the meaning of Part VB)’ from paragraph 48B(1)(a);
- **item 47** removes the reference to ‘Part VB’ from subsection 58K(1); and
- the reference to ‘VB’ is omitted from the heading to Part VC by **item 46**.

Other provisions in the National Health Act refer to sections in Part VB, ie, paragraphs 139A(1)(fa) and 139B(1)(ea). These paragraphs are omitted by **items 48 and 49**.

Part VB includes, in subsection 58D of the National Health Act, a definition of ‘registered nurse’. As indicated by section 48B of the National Health Act, this definition is also used for the purposes of Part VA. **Item 44** therefore replicates the definition of ‘registered nurse’ in section 48B.

4. Commencement

Amendments made in this Part commence immediately after the commencement of Schedule 1 to the *Payment Processing Legislation Amendment (Social Security and Veterans’ Entitlements) Act 1998* (which commences on 1 July 1999).

Part 4—Consequential amendments of the income tax Acts

2. Background

Part 4 of Schedule 2 makes amendments to the 1997 Income Tax Assessment Act and the 1936 Income Tax Assessment Act that are consequential on the introduction of carer allowance from 1 July 1999 (amendments introducing carer allowance are made in **Part 1 of Schedule 2**) and the repeal of child disability allowance and domiciliary nursing care benefit.

Currently, both child disability allowance (paid for children under the age of 16 or 16 to 21 if they are in full-time education) and domiciliary nursing care benefit (paid for persons aged 16 or more) are fully exempt from income tax (see Table item 5.1 in section 52-10 and Table item 2 in section 53-10 of the 1997 Income Tax Assessment Act). Carer allowance will be paid for children (under the age of 16) and for adults (aged 16 or more). It will be also fully exempt from tax.

3. Explanation of the changes

Items 50 to 55 amend the provisions of the 1997 Income Tax Assessment Act. **Item 50** omits the reference to ‘domiciliary nursing care benefit’ from section 11-15 (Ordinary or statutory income which is exempt only if it is derived by certain entities). **Item 51** inserts in section 52-10, dealing with social security payments that are fully or partly exempt from income tax, new Table item 3A.1 relating to carer allowance. As a result of this amendment, carer allowance (including lump sum payments paid as a result of death of the child cared for) will be fully exempt from income tax. **Item 52** repeals Table item 5.1 in section 52-10 relating to child disability allowance.

Item 53 inserts new Table item 3A relating to carer allowance in section 52-40 which lists the provisions of the Social Security Act under which ordinary payments and bereavement payments are made that are wholly or partly exempt from income tax. **Item 54** omits from this section item 5 relating to child disability allowance.

Item 55 repeals Table item 2 relating to domiciliary nursing care benefit from section 53-10, which deals with the exemption of various types of payments.

Items 56 to 62 amend the 1936 Income Tax Assessment Act.

Under section 102AC (Income of certain children—Persons to whom division applies), a person who is less than 18 years of age is not a prescribed person in relation to a year of income if in respect of the person child disability allowance was payable for a period that included the last day of the year of income (subparagraph 102AC(2)(c)(i) refers), or if the Commissioner has received a certificate issued by a legally qualified medical practitioner that the person is a disabled child within the meaning of Part 2.19 of the Social Security Act (sub-subparagraph 102AC(2)(d)(i)(A) refers).

To preserve the operation of this provision in respect of the persons who are younger than 18 years of age, **item 56** substitutes the child disability allowance reference in subparagraph 102AC(2)(c)(i) with a reference to ‘carer allowance’ and **item 57** adds in sub-subparagraph 102AC(2)(d)(i)(A) a reference to a ‘disabled adult’ alongside the reference to a ‘disabled child’.

Under subsection 159J(6) (Concessional rebates—‘separate net income’ definition), the definition of ‘separate net income’ does not include child disability allowance or domiciliary nursing care benefit amounts (paragraph (a) of the definition). **Items 58 to 60** omit the child disability allowance and domiciliary nursing care benefit references and substitute them with a reference to carer allowance.

Paragraph (b) of the definition of ‘separate net income’ excludes from the definition amounts of child disability allowance payable to dependants in class 3 or 4 of the table in subsection 159J(2), that is, to students under 16 years of age. **Item 61** substitutes the child disability allowance reference with a reference to carer allowance (students under 16 will receive the child stream of carer allowance).

Subsection 159P(1) (Rebate for medical expenses) provides that certain medical expenses are treated as rebatable amounts. Subsection 159P(2) specifies that the domiciliary nursing care benefit amounts are not medical expenses amounts. Such a clarification of the nature of domiciliary nursing care benefit was needed as under the domiciliary nursing care benefit regime the qualification for that payment depends on a person being assessed as needing the level of care required for admission to a nursing home and on the certification that such a level of care is provided. With domiciliary nursing care benefit being absorbed by carer allowance in the family and community services portfolio and afforded the same taxation treatment as other social security payments, subsection 159P(2) will cease to serve any useful purpose. **Item 62** repeals this subsection.

Item 63 is an application provision. It provides that amendments made by this Part apply to assessments for the 1999-2000 income year and later income years.

Item 64 introduces application provisions that provide for the continuation of the references to the old allowance (child disability allowance) and the old benefit (domiciliary nursing care benefit) after 1 July 1999 for the purposes of the 1997 Income Tax Assessment Act and the 1936 Income Tax Assessment Act provisions specified by this item.

4. Commencement

Amendments made by **Part 4 of Schedule 2** commence immediately after the commencement of Schedule 1 to the *Payment Processing Legislation Amendment (Social Security and Veterans’ Entitlements) Act 1998* (which commences on 1 July 1999).

Part 5—Consequential amendments of other Acts

2. Background

This Part makes amendments to Child Care Payments Act, Childcare Rebate Act, Health Insurance Act, Safety, Rehabilitation and Compensation Act, Seafarers Rehabilitation and Compensation Act and Veterans' Entitlements Act that are consequential on the introduction of carer allowance.

3. Explanation of the changes

Child Care Payments Act 1997

Under the Child Care Payments Act, a child care rebate is payable in respect of children who have not turned 16. One of the qualification requirements for the child care rebate is that a person satisfies the work/training/study test. Under paragraph 15(1)(c) of the Child Care Payments Act, a person satisfies the recognised work or work related commitments test if the person receives domiciliary nursing care benefit. Under the current arrangements, receipt of child disability allowance does not satisfy the work/training/study test.

Item 65 preserves this arrangement by substituting the reference to domiciliary nursing care benefit under Part VB of the National Health Act in paragraph 15(1)(c) with a reference to carer allowance for a disabled adult (within the meaning of section 952 of the Social Security Act).

If a person does not satisfy the work/training/study test, the person may only qualify for child care rebate in respect of 20 hours of care in a week. Under Schedule 1, point D2, paragraph (1)(b) of the Child Care Payments Act, the 20 hour limit does not apply if child disability allowance is payable to the person or the person's partner in respect of some or all of the week in respect of a dependent child of the person or the person's partner. To continue that arrangement in respect of children under 16, **item 66** substitutes the reference to child disability allowance with a reference to carer allowance under section 953 of the Social Security Act.

Childcare Rebate Act 1993

Paragraph 29(1)(c) of the Child Care Rebate Act deems the person to have recognised work or work related commitments for Child Care Rebate Act purposes if the person receives domiciliary nursing care benefit under Part VB of the National Health Act. To continue this, **item 67** replaces the existing reference to domiciliary nursing care benefit with a reference to carer allowance for a disabled adult (within the meaning of section 952 of the Social Security Act).

Health Insurance Act 1973

Health Care Card concessions are available to a person who is a ‘disadvantaged person’ under the Health Insurance Act.

- *new carer allowance recipients*

Currently, young persons with a disability (dependent children who have not turned 16 or dependent children who have turned 16 but not 22 and are in full-time education) and who qualify their carers for child disability allowance are entitled to the Health Care Card concessions by virtue of being ‘disadvantaged persons’ under subsection 4CA(2) of the Health Insurance Act.

Adults (persons who have turned 16) who qualify their carers for domiciliary nursing care benefit do not qualify for a Health Care Card.

The amendments made in this Part continue the current arrangements under which the Health Care Card concessions are provided to children but not to adults. Under the new carer allowance regime, it means that care recipients who have not turned 16 and who qualify their carers for carer allowance would receive a Health Care Card while care recipients aged 16 or more who qualify their carers for carer allowance would not be entitled to the Health Care Card concessions. To achieve this, **item 68** repeals subsections 4CA(1) and (2) of the Health Insurance Act and substitutes them with new subsection 4CA(1). New subsection 4CA(1) provides that if a disabled child or 2 disabled children (within the meaning of Part 2.19 of the Social Security Act) qualify a person for carer allowance, the child or each of the children is a ‘disadvantaged person’.

- *child disability allowance recipients*

Immediately before the introduction of carer allowance on 1 July 1999, there will be two groups of disabled persons who are 16 to 21 years old and in full-time education and who will qualify their carers for child disability allowance.

The first group consists of disabled persons for whom child disability allowance was claimed after 1 July 1998 and whose disability was assessed and measured under the Child Disability Assessment Tool (CDAT) introduced from 1 July 1998. On 1 July 1999, these persons will be transferred to the adult stream of carer allowance and will be subject to the testing under the Adult Disability Assessment Tool (ADAT). As a result of the amendment made by **item 68**, persons in this group will cease, from 1 July 1999, to have a ‘disadvantaged person’ status and will therefore lose their entitlement to the Health Care Card concessions.

The second group consists of a group of young persons in respect of whom child disability allowance was payable before 1 July 1998 and who are receiving child disability allowance by virtue of a saving provision in clause 108 of Schedule 1A of the Social Security Act. Under clause 108 of Schedule 1A, young persons who, immediately before 1 July 1998, qualified their carers for child disability allowance (as a result of claims made before 1 July 1998) because they met the disability requirement of section 952 (as in force before 1 July 1998) were ‘saved’ from the application of the CDAT until 30 June 2003. These young persons qualify their carers for child disability allowance on the basis of section 952 as in force before 1 July 1998. On 1 July 1999, young persons covered by clause 108 will be transferred to carer allowance (adult or child stream, as the case may be). They will qualify their carers for carer allowance on the basis of the same general disability requirements as specified in the pre-1 July 1998 section 952, and will not be subject to testing under the CDAT or the ADAT under which the disability of persons 16 years old or older will be tested from 1 July 1999 (new clause 108A inserted by **item 42 of Part 2 of Schedule 2** preserves the application of section 952 as in force before 1 July 1998 to these persons). New subsection 4CA(3) inserted in the Health Insurance Act by **item 68** preserves these persons’ ‘disadvantaged person’ status, and therefore their access to the Health Care Card concession, for as long as carer allowance is payable in respect of those persons under the saving provision in new clause 108A of the Social Security Act, that is, no later than till 30 June 2003.

- *Health Care Card recipients who do not qualify their carers for child disability allowance*

Currently, ‘young persons’ with a disability (dependent children under 16, or 16 to 21 if in full-time education) who do not qualify their carers for child disability allowance but who would meet the qualifying disability and other criteria specified in paragraphs 4CA(3)(a) to (e) of the Health Insurance Act are also entitled to the Health Care Card as ‘disadvantaged persons’.

New subsection 4CA(2) inserted in the National Health Act by **item 68** preserves the ‘disadvantaged person’ status of the person’s in this group if they are dependent children under the age of 16, in line with the arrangements relating to children for whom carer allowance is payable.

Currently, subsection 4CA(3) of the Health Insurance Act replicates most of the child disability allowance qualification requirements except for the requirement that the child obtains a positive score of 1 on the CDAT; instead, subsection 4CA(3) includes its own disability requirement in paragraphs 4CA(3)(b) and (c). To preserve the benefit of subsection 4CA(3) for disabled children under 16 who would have qualified for carer allowance but for their disability score being under the qualifying carer allowance score, new subsection 4CA(2) replicates the carer allowance qualification requirements (except for the requirement that the child obtains a positive score of 1 on the CDAT) and replicates the current subsection 4CA(2) disability requirement.

Under new subsection 4CA(2) a child is a ‘disadvantaged person’ if:

- the child is a ‘dependent’ child (as defined in the Social Security Act but disregarding subsection 5(3)) of a carer and has not turned 16; and

- the child is an Australian resident (within the meaning of the Social Security Act); and
- the child has a physical, intellectual or psychiatric disability and is likely to suffer from the disability permanently or for an extended period (these are requirements of the current paragraph 4CA(3)(b)); and
- because of that disability, the child needs on a daily basis a level of care and attention that is substantially more than needed by a child of the same age who does not have a physical, intellectual or psychiatric disability (this is the current requirement of paragraph 4CA(3)(c)); and
- the child receives care and attention from the carer or the carer's partner or the carer together with another person (who can be the carer's partner) in a private home that is the residence of the child and the carer; and
- the carer is an Australian resident and in Australia.

Consistent with the proposal that adults who qualify their carers for carer allowance would not have access to a Health Care Card, the adults (16 to 21 year old students) in this category will cease, from 1 July 1999, to have a 'disadvantaged person' status and will therefore lose their entitlement to the Health Care Card concessions.

Safety, Rehabilitation and Compensation Act 1988

Under the Safety, Rehabilitation and Compensation Act, the amount of compensation an employee can obtain depends on whether the employee has or had dependants (such as a prescribed child who is or was wholly or partially 'dependent' on the employee for economic support). Under paragraph 4(7)(c) of the Safety, Rehabilitation and Compensation Act, child disability allowance amounts are not taken into account when determining whether a child is a 'dependent' child.

Item 70 preserves this arrangement by substituting the reference to a child disability allowance amount in paragraph 4(7)(c) with a reference to a carer allowance amount.

Item 71 is an application provision that enables paragraph 4(7)(c) to be read after 1 July 1999 as including a reference to child disability allowance. Under this application provision, child disability allowance will continue not to be included as a person's income after 1 July 1999 for the purposes of determining the amount of compensation a person can receive under the Safety, Rehabilitation and Compensation Act.

Item 69 omits paragraph 4(7)(b) that refers to family allowance supplement, which no longer exists in the Social Security Act. This is a minor technical amendment.

Seafarers Rehabilitation and Compensation Act 1992

Under the Seafarers Rehabilitation and Compensation Act, payments under Part 2.19 of the Social Security Act (ie, child disability allowance) are not taken into account in determining whether a child is or was dependent on an employee. Since carer allowance provisions will be located in the same Part 2.19, the current reference to Part 2.19 in paragraph 15(4)(a) will continue to be appropriate.

However, as a housekeeping measure, **item 72** reworks the paragraphs in subsection 15(4) so that the provision refers specifically to those social security payments that are disregarded for the purposes of the dependency test rather than referring to Parts. The relevant payments are family allowance (Part 2.17), carer allowance (Part 2.19) and double orphan pension (Part 2.20).

Item 73 is an application provision that enables paragraph 15(4)(b) to be read after 1 July 1999 as including a reference to child disability allowance. Under this application provision, child disability allowance will continue not to be included as a person's income after 1 July 1999 for the purposes of the Seafarers Rehabilitation and Compensation Act.

Veterans' Entitlements Act 1986

Item 74 amends paragraph 5H(8)(n) of the Veterans' Entitlements Act which excludes domiciliary nursing care benefit from income. The amendment makes sure that the exclusion applies to payments of domiciliary nursing care benefit as in force before 1 July 1999. After that date, the equivalent payment (carer allowance for disabled adults) will be excluded from income under paragraphs 5H(8)(h) of the Veterans' Entitlements Act.

When calculating a person's ordinary/adjusted income for the purposes of determining the person's service pension/income support supplement rate, point SCH6-E7 of the Veterans' Entitlements Act allows an additional free area in respect of a dependent child who has reached the age of 18 years and is a 'prescribed student child', if the person or the person's partner receives a child disability allowance for that child. **Item 75** preserves this treatment by substituting the reference to child disability allowance in point SCH6-E7 with a reference to carer allowance (a dependent prescribed student child will be able to receive the adult stream of carer allowance).

4. Commencement

Amendments made by this Part commence immediately after the commencement of Schedule 1 to the *Payment Processing Legislation Amendment (Social Security and Veterans' Entitlements) Act 1998* (which commences on 1 July 1999).

Schedule 3—Transitional provisions relating to carer payment and carer allowance

1. Summary of proposed changes

Schedule 3 includes provisions dealing with transitional arrangements relating to the carer payment and carer allowance measures introduced by **Schedules 1 and 2**.

Part 1 of this Schedule amends the *Social Security Act 1991* (the Social Security Act) and **Part 2** amends the *National Health Act 1953* (the National Health Act).

The amendments made by **Part 1** and **Part 2** are explained separately below.

Part 1—Transitional provisions relating to Social Security Act

2. Background

This Part contains a transitional provision relating to the carer payment changes made in **Schedule 1**. It also includes a number of provisions that deal with transitional issues associated with the repeal, from 1 July 1999, of child disability allowance and domiciliary nursing care benefit and the introduction of carer allowance as provided for in **Schedule 2**.

3. Explanation of the changes

Item 1 inserts new clause 122 in Schedule 1A of the Social Security Act that contains saving and transitional provisions.

As a result of the amendments made by **Schedule 2**, persons who immediately before 1 July 1999 were receiving child disability allowance or domiciliary nursing care benefit will be transferred to carer allowance on 1 July 1999. From that day, their entitlement to carer allowance will depend on the continuing compliance with the carer allowance conditions of qualification and payability.

Under carer allowance provisions (new section 984), the Secretary may give a notice to a carer allowance recipient requiring the person to inform the Department if a specified event or change in circumstances that might affect the payment of the allowance occurs or is likely to occur. A person who receives the notice must not refuse or fail to comply with the notice. The notification obligation of child disability allowance recipients transferring to carer allowance on 1 July 1999 will be preserved after 1 July 1999 under new clause 124 inserted in Schedule 1A of the Social Security Act by **item 2**. As a result of this new clause, the child disability allowance notices issued before 1 July 1999 will become valid carer allowance notices.

To ensure that domiciliary nursing care benefit recipients transferring to carer allowance on 1 July 1999 are aware of the necessity to inform the Department, on or after 1 July 1999, if an event or circumstances that may affect the payment of carer allowance occurs or is likely to occur, new clause 122 inserted by **item 1** allows the Secretary to the Department of Family and Community Services to issue a notice of the kind to domiciliary nursing care benefit recipients before the commencement of carer allowance provisions on 1 July 1999 (but after the date on which this Bill receives Royal Assent). If carer allowance becomes payable to a person to whom the notice was given, the notice will have effect as if it was given to the person on 1 July 1999 and as if it was given under section 984 of the Social Security Act. (subclause 122(2) refers).

Item 2 inserts in Schedule 1A of the Social Security Act new clauses 123, 124 and 125.

Clause 123—Carer payment provisions

New clause 123 provides for the continuing effect after 1 July 1999 of determinations, notices, statements and instruments made or given under carer allowance Part 2.5 of the Social Security Act that had effect immediately before 1 July 1999, that is before the changes to this Part made under Schedule 1 of this Bill. As a result of this clause, persons to whom carer payment was payable immediately before 1 July 1999 will continue to have that payment paid after 1 July 1999 despite the changes to carer payment provisions introduced from 1 July 1999. This clause ensures that the changes introduced from 1 July 1999 (eg the application of the Adult Disability Assessment Tool to test an adult's disability) do not automatically, from 1 July 1999, affect the carer payment recipient's qualification. If the changes affect a person's entitlement to carer payment, the decision to vary the payment will take effect in accordance with the provisions regulating the date of effect of favourable or adverse determinations, as the case may be.

Clause 124—carer allowance (changes introduced 1 July 1999)

New clause 124 deals with savings and transitional arrangements for child disability allowance and domiciliary nursing care benefit due to the introduction of carer allowance on 1 July 1999.

Continuing effect of determinations etc. effective before 1 July 1999

After the introduction of carer allowance on 1 July 1999, persons to whom child disability allowance was payable immediately before that date will be transferred to carer allowance.

Subclause 124(1) authorises the above by providing for the continuing effect after 1 July 1999 of child disability allowance determinations, notices, statements or other instruments that were in force, or had effect, immediately before 1 July 1999, as if they had been made or given in relation to carer allowance.

A note at the end of this subclause refers to sections 992C and 992D to point out that a determination that carer allowance is payable ceases to have effect if the Secretary becomes satisfied that the allowance is no longer payable and determines that it is to be cancelled or suspended.

Pending claims for child disability allowance

Subclause 124(2) deals with child disability allowance claims lodged before 1 July 1999 and undetermined on that date. The subclause provides that where such a claim is refused after 1 July 1999 (which will mean that child disability allowance is not payable before 1 July 1999 and therefore subclause 124(1) cannot apply), the claim has effect as if it was a claim for carer allowance made on 1 July 1999. The purpose of this provision is to allow a decision to be made on the claimant's entitlement to carer allowance from 1 July 1999 without requiring the claimant to make a fresh claim for carer allowance.

Claims made on or after 1 July 1999 for child disability allowance

If a person were to claim child disability allowance on or after 1 July 1999, the claim would be invalid because child disability allowance will not exist at the date of claim. It is anticipated that there will be such claims lodged as a result of the child disability allowance claim forms being issued to potential claimants before 1 July 1999. To allow determination of such claims, subclause 124(3) provides that the claim has effect as if it was made immediately before 1 July 1999. If child disability allowance is granted and payable before 1 July 1999, the person will, by virtue of subclause 124(1), automatically receive carer allowance from 1 July 1999; if child disability allowance is refused, the person's claim will be treated, under subclause 124(2), as a claim for carer allowance from 1 July 1999.

Claims made on or after 1 July 1999 in respect of qualification before 1 July 1999—carer allowance

Subclause 124(4) provides that where a claim for carer allowance is made in respect of a child or children under 16 and the person might have qualified for child disability allowance before 1 July 1999, the claim has effect as if it was a claim for child disability allowance made immediately before 1 July 1999. The purpose of this provision is to allow the application of the 12-month backdating provisions, for a period before 1 July 1999, to carer allowance claims lodged in respect of children under 16.

Child disability allowance bereavement payment in respect of death of child

Subclause 124(5) provides that if, immediately before 1 July 1999, a person was qualified for child disability allowance bereavement payments under section 991 or 992AA as in force before 1 July 1999 in respect of the death of a child, and the person's bereavement period had not ended before 1 July 1999, the person will remain qualified for the bereavement payments until the end of that bereavement period as if the relevant child disability allowance bereavement provisions were still in force. This subclause ensures that the entitlement of a carer to child disability allowance bereavement payments made in respect of the death of a young person aged 16 or more that occurred before 1 July 1999 is unaffected by the repeal of child disability allowance (carer allowance provisions do not provide for bereavement payments on the death of a disabled person aged 16 or more; without this subclause, a carer in this situation would lose, on 1 July 1999, his or her entitlement to child disability bereavement payments).

Effect of overseas absence before 1 July 1999

Subclause 124(6) deals with the situation where child disability allowance was payable to a person immediately before 1 July 1999 during the person's or the children's overseas absence. Under the child disability allowance provisions as in force before 1 July 1999, a person could qualify for that allowance during a period of child's absence overseas not exceeding 3 years.

Section 956 inserted by **item 7 of Part 1 of Schedule 2** limits a person's carer allowance qualification during overseas absence to a period not exceeding 26 weeks. Section 956 operates with effect from 1 July 1999.

Subclause 124(6) modifies the operation of section 956 in respect of a person to whom immediately before 1 July 1999 child disability allowance was payable during the person's or the child's overseas absence and the absence continues on and after 1 July 1999. [A person in this situation will be deemed to be qualified for carer allowance on 1 July 1999 by virtue of subclause 124(1)]. It provides for the continuation of payment until the person has been absent for 3 years or until the end of a 26 week period beginning on 1 July 1999, whichever happens first.

Domiciliary nursing care benefit payable to a person immediately before 1 July 1999

After the introduction of carer allowance on 1 July 1999, persons to whom domiciliary nursing care benefit was payable immediately before that date will be transferred to carer allowance and will be deemed to be qualified for carer allowance.

Subclause 124(7) authorises the transfer to carer allowance from domiciliary nursing care benefit. The subclause provides that where domiciliary nursing care benefit was payable, or was taken to be payable (eg as a result of the determination after 1 July 1999 of a claim lodged before 1 July 1999), immediately before 1 July 1999 to a person in relation to a patient, then on and after that day carer allowance is payable, or is taken to be payable, to the person, and Part 2.19 of the Social Security Act (carer allowance) applies to the person as if he/she had made a claim for carer allowance under that Part and the claim had been granted.

Pending claims for domiciliary nursing care benefit—application to Secretary to the Health Department

Subclause 124(8) deals with applications for domiciliary nursing care benefit lodged before 1 July 1999 and undetermined on that date. The subclause provides that where such an application is refused (which will mean that domiciliary nursing care benefit is not payable before 1 July 1999 and therefore subclause 124(7) cannot apply), the claim has effect as if it was a claim for carer allowance made on 1 July 1999. The purpose of this provision is to allow a decision to be made on the claimant's entitlement to carer allowance from 1 July 1999 without requiring the claimant to make a fresh claim for the new allowance.

Pending claims for domiciliary nursing care benefit—review by Health Minister

Subclause 124(9) deals with the applications for review of a decision to refuse domiciliary nursing care benefit, where the review was applied for before 1 July 1999 but was not determined before that date. The subclause provides that where the review confirms the original decision (which will mean that domiciliary nursing care benefit allowance is not payable before 1 July 1999 and therefore subclause 124(7) cannot apply), the claimant's application for approval as an approved person has effect as if it was a claim for carer allowance made on 1 July 1999. The purpose of this provision is to allow a decision to be made on the claimant's entitlement to carer allowance from 1 July 1999 without requiring the claimant to make a fresh claim for the new allowance (although the claimant may be required to provide all additional information that is necessary to determine the claim for carer allowance and that was not included in the original claim).

Decision of Health Minister in relation to domiciliary nursing care benefit

Subclause 124(10) provides that where the review under **item 3 of Schedule 3** of this Bill confirms the original decision (which will mean that domiciliary nursing care benefit allowance is not payable before 1 July 1999 and therefore subclause 124(7) cannot apply), the claimant's application for approval as an approved person has effect as if it was a claim for carer allowance made on 1 July 1999. The purpose of this provision is to allow a decision to be made on the claimant's entitlement to carer allowance from 1 July 1999 without the requiring the claimant to make a fresh claim for the new allowance (although the claimant may be required to provide all additional information that is necessary to determine the claim for carer allowance and that was not included in the original claim).

Preserving the no residency requirement for domiciliary nursing care benefit

Domiciliary nursing care benefit has no Australian residence requirement. Clause 124(11) contains a savings measure which provides that where, immediately before 1 July 1999, domiciliary nursing care benefit was payable to a person in relation to a patient, and either the person or the patient (or both) was not an Australian resident, the person, or the patient (or both)) will be treated for the purposes of carer allowance as if they were an Australian resident.

Definitions

Subclause 124(12) provides definitions for the purposes of clause 124. It defines 'Health Department' as the department administered by the Health Minister, and 'Health Minister' as the Minister administering the National Health Act.

Clause 125—Transitional regulations arising out of carer allowance changes introduced on 1 July 1999

New clause 125 contains a power to make regulations in respect of any transitional or savings matters arising out of the introduction of carer allowance.

4. Commencement

Amendments made by this Part (other than in **item 1**) commence immediately after the commencement of Schedule 1 to the *Payment Processing Legislation Amendment (Social Security and Veterans' Entitlements) Act 1998* (which commences on 1 July 1999).

The amendment made by **item 1** of this Part commences on Royal Assent.

Part 2—Transitional provisions relating to National Health Act

2. Background

This Part contains provisions that deal with transitional issues associated with the repeal, from 1 July 1999, of Part V of the National Health Act containing domiciliary nursing care benefit, as provided for in **Schedule 2**.

3. Explanation of the changes

Transitional—time limits for making a request for a review of an adverse domiciliary nursing care benefit decision before 1 July 1999

Item 3, subitem (1), deals with applications for review of a decision to refuse a person's application for approval as an approved person for the purposes of the domiciliary nursing care benefit (requests under section 58F of Part VB of the National Health Act), where the adverse decision was made before 1 July 1999 but the application for review was not made before that date. This subitem provides a time limit for the lodgement of a request for review under section 58F of the National Health Act and provides that if an application for review is made before 1 October 1999, it will be dealt with under Part VB of the National Health Act as if the repeal of this Part had not occurred.

Transitional—time limits for making a request for a review of an adverse domiciliary nursing care benefit decision on or after 1 July 1999

Item 3, subitem (2) deals with applications for review of a decision to refuse a person's application for approval as an approved person for the purposes of the domiciliary nursing care benefit (requests under section 58F of Part VB of the National Health Act), where the adverse decision was made after 1 July 1999. This subitem provides that if an application for review under section 58F is made within 3 months after the day on which the person was notified of the decision, it will be dealt with under Part VB of the National Health Act as if the repeal of this Part had not occurred.

Definitions

Item 3, subitem (3) provides definitions for the purposes of **item 3**. It defines 'Health Department' as the department administered by the Health Minister, and 'Health Minister' as the Minister administering the National Health Act.

Transitional—Secretary to Health Department to continue to issue certain certificates relating to domiciliary nursing care benefit

Item 4, subitem (1) provides for the continuing operation after 1 July 1999 of paragraph 139A(1)(fa) of the National Health Act enabling the Secretary to the Health Department to give, on or after 1 July 1999, a certification under that paragraph in relation to any period before that day as if the repeal of that paragraph (amendment made in **Schedule 2**) had not occurred.

Subitem 4(2) defines ‘Health Department’ as the department administered by the Minister administering the National Health Act.

4. Commencement

Amendments made by this Part commence immediately after the commencement of Schedule 1 to the *Payment Processing Legislation Amendment (Social Security and Veterans’ Entitlements) Act 1998* (which commences on 1 July 1999).