

2004-2005

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**EMPLOYMENT AND WORKPLACE RELATIONS LEGISLATION
AMENDMENT (WELFARE TO WORK AND OTHER MEASURES) BILL
2005**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Employment and Workplace Relations
the Honourable Kevin Andrews MP)

**EMPLOYMENT AND WORKPLACE RELATIONS LEGISLATION
AMENDMENT (WELFARE TO WORK AND OTHER MEASURES) BILL
2005**

OUTLINE

This Bill implements the Government's Welfare to Work reforms which are aimed at comprehensively rebalancing Australia's welfare system to make it more sustainable and to encourage increased workforce participation for those with the capacity to work. The Bill includes a range of measures aimed at assisting and encouraging participation in the workforce, improving returns from work for people receiving allowances, a new compliance framework, and RapidConnect, which would require job seekers to register with the Job Network prior to making a claim for newstart allowance or youth allowance. The reforms recognise the importance of paid employment, whether full time or part time to each individual's well being.

The Government's objectives are to:

- increase work force participation by those receiving working age income support; and
- reduce the adverse consequences of passive welfare dependence.

Three new work first principles are to underpin the working age support system, namely that:

- the best form of family income is from paid employment;
- a working age income support recipient should have an obligation to participate in the workforce to the extent of their capacity to work, with this being determined having regard to whether the people have:
 - a disability that constrains their capability to work; and/or
 - caring responsibilities (eg parents of young children or those caring for a frail adult or disabled child) that constrain their availability to work; and
- the design and delivery of services for working age people on income support with capacity to work, should focus on assisting them into jobs (a work first approach).

FINANCIAL IMPACT STATEMENT

Total Expenses and Capital

	2005-06	2006-07	2007-08	2008-09	Total
	\$m	\$m	\$m	\$m	\$m
DEST	-1.3	82.9	92.3	96.3	270.2
DEWR	190.4	681.4	883.8	775.1	2,530.7
FaCS	0.2	-9.5	-13.6	-15.0	-37.8
DHS	16.0	132.1	135.7	127.8	411.6
	205.3	886.9	1,098.2	984.3	3,174.7

The figures in the table above show the impact on the fiscal balance for each of the agencies. The figures include net administered and departmental costs associated with the measures in this Bill and the related investment in employment and other services. The costs associated with the child care measures announced in the 2005-06 Budget and the recently announced expanded eligibility for carer payment have been excluded.

**EMPLOYMENT AND WORKPLACE RELATIONS LEGISLATION
AMENDMENT (WELFARE TO WORK AND OTHER MEASURES) BILL
2005**

Clause 1 sets out how the Act is to be cited, that is, the *Employment And Workplace Relations Legislation Amendment (Welfare to Work and Other Measures) Act 2005*

Clause 2 provides a table that sets out the commencement dates of the various sections in and schedules to the Act.

Clause 3 provides that each Act that is specified in a Schedule is amended or repealed as set out in that Schedule.

For ease of description, this explanatory memorandum uses the following abbreviations:

“Social Security Act” means the *Social Security Act 1991*; and

“Administration Act” means the *Social Security (Administration) Act 1999*.

SCHEDULE 1 – DEFINITIONS AND OTHER INTERPRETATIVE PROVISIONS

SUMMARY

Part 1 – Amendments commencing on 1 July 2006

From 1 July 2006, new definitions will be inserted in the Social Security Act. These definitions are ‘principal carer’, ‘partial capacity to work’, registered and active foster carer, home educator and distance educator.

Part 2 – Amendments commencing on 20 September 2006

From 20 September 2006, changes to the definitions of ‘seasonal work’ and ‘income maintenance period’ will come into operation.

Part 3 – Miscellaneous

After the commencement of the *Workplace Relations Amendment (Work Choices) Act 2005*, a new definition of Australian Fair Pay and Conditions Standard will be inserted into the Social Security Act.

BACKGROUND

Amendments commencing on 1 July 2006

The objective of the measures in this Bill is to increase workforce participation and reduce the number of working age Australians on welfare, including parents and people with disabilities. The Government considers that the best form of family income comes from a job rather than welfare. This Bill makes amendments to parenting payment and disability support pension to ensure that people are able to participate in the workforce as far as they are capable.

However, the Government recognises that people who have an obligation to work, but are not working, should receive similar levels of support as those who do not necessarily have participation requirements. Amendments made to the Social Security Act by this Bill provide certain benefits and concessions to particular groups of parents and people with disabilities who are receiving newstart allowance and youth allowance. These are similar to benefits and concessions that are provided to disability support pension and parenting payment recipients.

Whilst newstart allowance and youth allowance recipients are generally subject to a full-time work obligation, this Bill also provides that for identified groups of parents and people with disabilities who are receiving newstart allowance or youth allowance, reduced participation requirements will apply. To identify people within these groups two new terms will be included in the Social Security Act. These are ‘principal carer’ and ‘partial capacity to work’.

The ‘principal carer’ definition also addresses an unintended consequence of the *Family Law Reform (Consequential Amendments) Act 1995* that resulted in step-parents no longer qualifying for Benefit (PP) Partnered.

The new definitions of ‘registered and active’ ‘home educator’ and ‘distance educator’ will be relevant in the context of exemption from activity tests and participation requirements.

Any single parent, receiving newstart allowance or youth allowance and who has an exemption in one of these three groups will receive a higher rate of allowance (which will be always equivalent to pension PP (single) rate). This higher rate recognises that these parents are choosing to perform valuable roles over and above those involved in parenting and caring, and for which there can be additional associated costs. These new rates are inserted by Schedule 17 (youth allowance) and Schedule 19 (newstart allowance) of this Bill.

Amendments commencing on 20 September 2006

Seasonal work preclusion period

The seasonal work preclusion period applies if a person, or the person’s partner, has higher than average earnings (measured with reference to Average Weekly Ordinary Time Earnings - AWOTE) from seasonal work undertaken in the six months before claiming newstart allowance, mature age allowance, benefit PP (partnered), partner allowance, widow allowance or youth allowance. From 20 September 2006 the seasonal work preclusion period will be:

- extended to any person who claims carer payment, disability support pension, sickness allowance, pension PP (single) and austudy payment; and
- altered to include the earnings of highly paid contract and intermittent workers.

A person claiming disability support pension who is permanently blind continues to be excluded from the seasonal work preclusion period.

The seasonal work preclusion period ensures that people with higher than average earnings from seasonal work support themselves for a period after ceasing a work spell. Applying the seasonal work preclusion period to highly paid contract and intermittent workers will provide for their consistent treatment with highly paid seasonal workers. Many contract and intermittent workers have similar work patterns to seasonal workers in that they know when their work will end. The amendments in this Schedule provide that contract and intermittent work will be treated the same as seasonal work where the employment is for a set period or particular project, leave entitlements are not accruing and the employment is for less than a year. The intention of the amendments is to target high-income workers who are not subject to an income maintenance period.

The extension of the seasonal work preclusion period to carer payment, disability support pension, sickness allowance, pension PP (single) and austudy payment and covering the earnings of highly paid contract and intermittent workers will enhance consistency in the eligibility conditions for these payments, and ensure that income support is targeted towards those most in need.

Income maintenance period

From 20 September 2006:

- the calculation of the income maintenance period for a person will be altered to include redundancy payments received on the termination of employment; and
- a person who claims or receives the disability support pension under section 94 will have an income maintenance period applied. Permanently blind persons in receipt of disability support pension are not subject to the ordinary income test and so will be excluded from the application of the income maintenance period.

Under the income maintenance period, where a person receives a leave payment, the amount of the leave payment is apportioned over the period that the payment represents and maintained as ordinary income for that period. The inclusion of redundancy payments in the income maintenance period will enhance consistency in the eligibility conditions for most income support payments, to ensure that income support is targeted towards those most in need. Currently, an income maintenance period applies to leave payments only. The inclusion of redundancy payments in the calculation of the income maintenance period recognises that the primary purpose of a redundancy payment is to support peoples' incomes for a period after loss of employment.

Income maintenance provisions are already applied to most income support payments for working age people. The introduction of the income maintenance period for disability support pension purposes will enhance consistency in the eligibility conditions for income support for working age people.

Under the income maintenance period, where a person claiming or receiving disability support pension receives a leave payment or a redundancy payment, the amount of that payment will be apportioned over the period that the payment represents and maintained as ordinary income for that period.

Part 3 – Miscellaneous

With the commencement of the *Workplace Relations Amendment (Work Choices) Act 2005*, a new definition of Australian Fair Pay and Conditions Standard will be inserted into the Social Security Act.

EXPLANATION OF CHANGES

AMENDMENT OF THE SOCIAL SECURITY ACT 1991

Part 1 – Amendments commencing on 1 July 2006

Presently, qualification for parenting payment, amongst other things, requires a person to have a PP child. Current sections 500D to 500H of the Social Security Act provide for, and apply to, the concept of the PP child. Subsection 5(1) of the Social Security Act contains definitions, about family relationships and children, that are used in the social security law. **Item 1** of this Bill provides a cross-reference at subsection 5(1) to the new definition of ‘principal carer’. **Item 2** inserts a new note at current subsection 5(2) signposting the new subsections 5(15) to 5(24). **Item 3** inserts new subsections 5(15) to (24) setting out the relevant provisions of ‘principal carer’.

The definition of ‘principal carer’, in effect, replicates sections 500D to 500H of the Social Security Act. These sections will be repealed by this Bill and qualification for parenting payment will be amended so that, amongst other things (including having a child less than 8 years old if not a member of a couple, and a child less than 6 years old if a member of a couple), to qualify for parenting payment a person will need to be a ‘principal carer’ as defined in section 5. The new subsections 5(15) to 5(24) apply in the same way as sections 500D - 500H operated in respect of parenting payment, but with a broader application.

Subsection 5(15)

New subsection 5(15) requires that for a person to be a ‘principal carer’, the person must have a dependent child under the age of 16. Dependent child is presently defined at subsection 5(2).

When a step-parent will be taken to be legally responsible for a child

Subsection 5(16)

As provided at new subsection 5(15) for a person to be a ‘principal carer’ the person must have a dependent child. The dependent child definition at subsection 5(2) requires that to have a dependent child a person must care for the child and have legal responsibility for the child, or when no other adult cares and has legal responsibility for the child, the person must care wholly or substantially for the child. Generally, this means that although a step-parent has the care of a child, the child can only be a dependent child if another adult is not legally responsible for the day-to-day care of the child. This precludes a step-parent who cares for a child, but is partnered with a person who has the legal responsibility for the child, from having a dependent child and being a ‘principal carer’.

New subsection 5(16) specifically addresses this issue and, for the purposes of the ‘principal carer’ definition, allows for a person who is a step-parent of a child to be

taken to be legally responsible for the day-to-day care, welfare and development of child if:

- the person is living with the child and a parent of the child; and
- the person and the parent of the child are members of the same couple.

It will be necessary that for a step-parent to be ‘principal carer’ that, apart from the other relevant subsections contained in this definition the other elements of having a dependent child are still met. However, where a step-parent is a ‘principal carer’ the intended effect is that, for the purposes of the Social Security law and where being a ‘principal carer’ is relevant - for example, qualification for parenting payment - then the child will be taken to be a dependent child of the person.

However, subsection 5(16) does not affect the determination of whether another person is taken to be legally responsible for the child.

When a child leaves the ‘principal carer’ for up to 8 weeks and returns Subsection 5(17)

Subsection 5(17) applies in the same way that section 500D(2) applied to PP child. That is, it provides that a child may still be regarded as being in the care of a person despite an absence of up to 8 weeks if:

- prior to the start of the period of absence, the child was in the person’s care; and
- at the end of the period, it is intended that the child will return to the person’s care.

The effect of this amendment is to provide a minimum period during which a temporarily absent child can be regarded as still in a person’s care. However, as provided by new subsection 5(17) it is not intended that the provision would preclude a finding that a child is still to be regarded as in a person’s care outside of this period under the operation of the ‘dependent child’ definition. Whether such a finding is available would depend on the circumstances of the particular case.

Only one person can be a ‘principal carer’ of the child Subsections 5(18) to 5(20)

Subsections 5(18) to 5(20) reflect the rule and are intended to operate in the same way as the current section 500E. However, the rule is not restricted to claims for, or recipients of, parenting payment.

New subsection 5(18) provides that only one person at a time can be a ‘principal carer’ of a particular child.

New subsection 5(19) deals with the situation where two or more adults may be the ‘principal carer’ of the same child. If the Secretary is satisfied that more than one person would be the ‘principal carer’ of a child, then a written determination must be made by the Secretary specifying one of the adults as the ‘principal carer’ of the child.

New subsection 5(20) provides that the determination referred to in new subsection 5(19) may be made even if all the adults (being those that would be the ‘principal carers’ of the same child) have not made a claim for a social security payment that is based on, or would be affected by, the adult being the ‘principal carer’.

New subsection 5(19) may apply when, for example, two or more people lodge a claim for a social security payment (whether or not it is for the same social security payment) and each person maintains they are the ‘principal carer’ in respect of the same child at the same time. However, new subsection 5(20) enables the Secretary to make a determination that a person is a ‘principal carer’ whether or not the person claims a social security payment that is based on being the ‘principal carer’ of the child (for example parenting payment) or would be affected by the person being the ‘principal carer’ of the child (for example newstart allowance).

Absences of a child from Australia Subsections 5(21) to 5(24)

Subsections 5(21) to (24), in effect replicate the rules presently contained at sections 500F to sections 500H of the Social Security Act.

New subsection 5(21) deals with the circumstances when a dependent child of a ‘principal carer’ leaves Australia. New subsection 5(21) provides that, if a dependent child leaves Australia temporarily and continues to be absent from Australia for more than 13 weeks, a person cannot be the ‘principal carer’ at any time after the 13 weeks while the child remains absent from Australia.

New subsection 5(22) specifies three factors that need to be taken into account when determining whether an absence is temporary: the purpose of the absence; the intended duration of the absence; and the frequency of such absences. If it is determined that the absence is not temporary a person cannot be the ‘principal carer’ of the child.

However, a person can remain a ‘principal carer’ outside the 13 weeks of a temporary absence by the child, if:

- the child remains in the company of a person to whom Division 2 of Part 4.2 applies; and
- the person would otherwise be the ‘principal carer’ of the child; and
- the person’s portability period for a social security payment has not ended.

Division 2 of Part 4.2 applies to a person who is a social security payment recipient or has his or her claim granted during an absence from Australia, during a period which

the person is continuously absent from Australia, and his or her payment type is listed in column 2 of section 1217. Column 2 refers to various social security payments including parenting payment, newstart allowance and youth allowance.

The portability period is an amount of time during which a person is entitled to continue to receive payment when the person is not physically in Australia. However, specific conditions must be met for some payments and portability of some payments may only be allowed for certain types of absences. These are set out in column 4 of section 1217. The maximum portability period for payments is set out in column 5 of section 1217. However, a person's portability period is subject to continuing qualification for the payment and nothing in the portability rules confers a right on a recipient to continue to be paid if the recipient is not qualified for the payment.

New subsection 5(23) provides that, if a child is born outside Australia and continues to be absent from Australia for more than 13 weeks immediately following the child's birth, a person cannot be the 'principal carer' of the child at any time after the 13 weeks while the child remains outside Australia. As provided in subsection (23) the exception to this is if:

- the child remains in the company of a person to whom Division 2 of Part 4.2 applies; and
- the person would otherwise be the 'principal carer' of the child; and
- the person's portability period for a social security payment has not ended.

New subsection (24) further provides that, if a person is not the 'principal carer' of a child because of:

- the child has been absent from Australia for more than 13 weeks (subsections (21) and (23) refer); or
- because of the previous application of this subsection

and the child comes to Australia and subsequently leaves Australia within 13 weeks of arriving in Australia, the person cannot be the 'principal carer' of the child for the whole period of the subsequent overseas absence.

The effect of this provision is that a person who:

- is no longer a 'principal carer' because of the child's 13 week absence from Australia; and
- then the child comes to Australia and leaves again within 13 weeks

the person will not be a 'principal carer' for any period of subsequent overseas absence unless the child comes to Australia and stays in Australia for a continuous period of at least 13 weeks.

Item 4

This Item inserts definitions for the terms ‘registered and active foster carer’, ‘home educator’ and ‘distance educator’. These terms are relevant in the context of exemptions from participation requirements.

Section 5B provides that a person is a ‘registered and active foster carer’ if the person satisfies all the requirements under State or Territory law in order to be a foster carer and is actively involved in providing foster care in that State or Territory. Subsection 5B(2) provides for the Secretary to make guidelines in relation to what is meant by being ‘actively involved’, for the purposes of the social security law in providing foster care.

Section 5C provides that a person is a ‘home educator’ of a child if, among other things, the Secretary is satisfied that the child is receiving education at home that would otherwise be wholly or substantially provided by attending school. The person must also satisfy all the requirements under relevant State or Territory laws that are necessary in order to be permitted in that State or Territory to provide home education. According to paragraph 5C(c) the person must also be suitably involved in providing and supervising that education.

Section 5D provides that a person is a ‘distance educator’ of a child if, among other things, the Secretary is satisfied that the child is enrolled to receive, and is undertaking, education through a distance education curriculum. According to paragraph 5D(c) the person must also be suitably involved in assisting and supervising the child in relation to that curriculum.

These exemptions recognise that some parents are involved in significant ongoing tasks over and above the normal tasks associated with parenting and other caring responsibilities.

Subsection 7(7) of the Social Security Act deals with the question of when is a person exempt from certain residence requirements. **Item 5** amends subsection 7(7) to include a reference to new paragraph 593(1D)(b)(ii) as that latter provision includes a consideration of whether a person is exempt from the relevant residence requirements.

Partial Capacity to Work

Item 6 of this Bill inserts a new section 16B providing when a person will have a ‘partial capacity to work’. This definition will be used to determine when newstart allowance and youth allowance recipients and/or claimants who have a physical, intellectual or psychiatric impairment and an assessed work capacity of less than 30 hours per week will have reduced participation requirements and access to certain concession and allowances.

While the ‘partial capacity to work’ definition, in some respects, includes similar concepts as contained in section 94 of the Social Security Act which sets out qualification for the disability support pension, it does not directly replicate section 94. In particular, a person who has a ‘partial capacity to work’ will not have to meet the 20 point impairment as is required under the qualification for disability support pension.

New subsection 16B(1) provides that a person will have a ‘partial capacity to work’ if the person has a physical, intellectual or psychiatric impairment. The Secretary will need to be satisfied that:

- because of the impairment the person is unable within 2 years to work ‘30 hours of work per week’, independently of a program of support; and
- no training activity is likely, because of the impairment, to increase the person’s capacity so that the person could undertake 30 hours of work per week within the next 2 years.

New subsection 16B(5) specifically defines ‘30 hours of work per week’ to mean work that is for at least 30 hours per week at award wages or above and that exists in Australia, even if not within the person’s locally accessible labour market.

Subsection 16B(2) requires that the work needs to be done ‘independently of a program of support’. This has the same meaning as is provided for in new subsection 94(4).

The types of activities that are a ‘training activity’ specifically include programs that are designed for people with disabilities. For the purposes of the definition of ‘partial capacity to work’ the activities are the same as those that are provided in the amended subsection 94(5). That is, training activities means one or more of the following: education; pre-vocational training; vocational training; vocational rehabilitation; and work-related training (including on-the-job training).

Item 7 inserts an amendment before paragraph (a) of the definition of ‘approved program of work supplement’ at subsection 23(1). This reflects the extension of the approved program of work supplement to disability support pension recipients who are participant in an approved program of work.

Item 9 repeals the definition of ‘CSP’ as that program has been replaced by PSP.

Item 10 inserts a cross-reference into subsection 23(1) to the new term ‘distance educator’ contained at new section 5D.

Item 11 inserts a cross-reference into subsection 23(1) to the new term ‘home educator’ contained at new section 5C.

Item 12 inserts a cross-reference into subsection 23(1) to the term ‘newstart participation failure’ which is relevant in the context of the new compliance framework. **Items 8, 14, 20** and **23** respectively insert similar cross-references for austudy payment, parenting payment, special benefit and youth allowance.

Item 13 inserts a new definition of ‘Parenting Payment Activity Agreement’ which is relevant in the context of the new participation requirements that will apply to certain parenting payment recipients.

Item 15 inserts a cross-reference to the new definition of ‘partial capacity to work’ inserted by Item 6.

Item 16 inserts a cross-reference into subsection 23(1) to the term ‘participation failure instalment period’ which is relevant in the context of the new compliance framework.

Item 17 inserts a cross-reference into subsection 23(1) to the term ‘registered and active foster carer’ contained at new section 5B.

Other Technical Amendments

Item 18 inserts the definition of the term ‘reserves’ into subsection 23(1). The definition was previously situated in Part 2.12 but, as its application was relevant for Parts other than Part 2.12, it is more appropriately positioned in subsection 23(1).

Item 19 expands the definition of social security entitlement to include parenting payment, not just pension PP (single).

Item 21 sets out what is meant by ‘subject to participation requirements’. This is relevant for the purposes of parenting payment and the requirement that certain parenting payment recipients - as contained at paragraph 500(1)(c) and 500F(1)(f) and (2)(f) - meet participation requirements under section 500A.

Item 22 inserts a definition of ‘transitional DSP applicant’ that identifies disability support pension recipients who claimed for a disability support pension on or after 11 May 2005 but before 1 July 2006 and who have been given a notice under subsection 63(2) or 64(2) of the Administration Act for the purpose of reviewing their capacity.

Items 24, 25 and 26 amend section 28 which is concerned with the concept of ‘an approved program of work for income support payment’. These changes are relevant to the Welfare to Work measure dealing with increasing the participation requirements of some very long term unemployed job seekers. The broad effect is that, where subsection 28(4) applies to a person, the person can be required to undertake an approved program of work for income support payment for up to 50 hours per fortnight.

Item 26 inserts a new subsection (4) which applies to a person if the person is under 60 years of age and the Secretary determines that the section applies to the person. In making this determination the Secretary will consider, but is not restricted to, the questions of whether the job seeker:

- has completed 2 rounds of Job Network Intensive Support customised assistance;
- is on the full rate of Newstart Allowance or Youth Allowance (and is not a full-time student or new apprentice);
- does not have a reduced work capacity;
- has not fully complied with their agreed participation requirements.

The new subsection (5) allows the Secretary to determine, by legislative instrument, matters that the Secretary is to take into account (or not take into account) in making determinations under paragraph (4)(b). Subsection (6) makes it clear that a determination made under subsection (5) in relation to matters that the Secretary is to take into account does not operate to limit the matters that the Secretary may take into account when making a determination under paragraph (4)(b).

Part 2 – Amendments commencing on 20 September 2006

Schedule 1, Part 2 alters the seasonal work definitions.

Item 27 extends the definition of seasonal work in subsection 16A(1) (after paragraph (a) of the definition of ‘seasonal work’) to work that is intermittent, for a specified period or to completion of a particular project or specified task, where leave entitlements were not accruing and the employment was for less than 12 months. **Item 28**, through the insertion of subsection 16A(1A) after subsection 16A(1), excludes from the definition of seasonal work, people who had been receiving income support continuously for more than 12 months before they commenced the seasonal work.

The extension of the seasonal work preclusion period to parenting payment claimants who are single, disability support pension, sickness allowance, carer payment and austudy payment is provided in **Items 29, 30, 31, 32, 33** and **34**, by inserting the payment type that was not previously included in the relevant paragraph or subsection that will be amended by this Schedule. Item 29 extends the application of the seasonal work preclusion period to these payments in paragraph 16A(3)(b). A similar amendment is made by Item 30 in paragraph 16A(4)(b). Item 31 inserts ‘disability support pension, carer payment’ after ‘special benefit’ in subsection 19C(2). Item 33 makes a similar insertion in subsection 19C(3). Item 32 inserts ‘pension’, after ‘payment, benefit’ in subsection 19C(2). Item 34 makes a similar insertion in subsection 19C(3). The amendments made by Items 31, 32, 33 and 34 are to ensure that the provisions relating to severe financial hardship also apply to these payment types.

The severe financial hardship provisions exempt a person from the application of a seasonal work preclusion period. In order to determine whether a person is in severe financial hardship, the maximum payment rate of the person’s income support payment is compared to the value of the person’s liquid assets. **Item 35** inserts the following references to the Pension Rate Calculators for determining the maximum payment rates for recipients of the disability support pension and carer payment:

- in Module A of Pension Rate Calculator A at subparagraph 19C(8)(aa)(i) as it relates to a person receiving disability support pension who is not permanently blind and over 21 years;
- in Module A of Pension Rate Calculator D at subparagraph 19C(8)(aa)(ii) as it relates to a person receiving disability support pension who is not permanently blind and under 21 years; and

- in Module A of Pension Rate Calculator A at subparagraph 19C(8)(ab) as it relates to a person receiving carer payment.

Item 36 inserts an amendment in subsection 23(1) to the definition of ‘income maintenance period’ which has the effect of expanding its application to persons who are claiming the disability support pension under section 94, and for whom Pension rate Calculator A or Pension Rate Calculator D applies.

Part 3 - Miscellaneous

Item 37 inserts a new definition of Australian Fair Pay and Conditions Standard. It has the same meaning as in the *Workplace Relations Amendment (Work Choices) Act 2005*. This definition will immediately commence after the commencement of Schedule 1 of the *Workplace Relations Amendment (Work Choices) Act 2005*.

SCHEDULE 2 – DISABILITY SUPPORT PENSION

SUMMARY

Part 1 - Participation

From 1 July 2006, Part 2.3 of the Social Security Act will be amended so that a person will qualify for a disability support pension if, amongst other things, the person is assessed as not capable of working 15 hours or more a week at award wages within 2 years. If a person is capable of working 15 or more hours a week at award wages within 2 years, but to do the work the person will require ongoing or regular support, then the person will also qualify for a disability support pension.

The current test for disability support pension assesses a person's capacity to work for 30 or more hours a week at award wages within 2 years, taking account of the types of activities that may assist a person to increase his or her work capacity. Currently only mainstream training is considered. However, programs that are designed to take account of a person's disability can significantly improve a person's capacity to work. Recognising this, the Bill broadens the types of activities that Centrelink will take into account in determining a person's capacity. These activities specifically include programs and activities designed for people with physical, intellectual or psychiatric impairments.

The new disability support pension qualification criteria will not consider a person's local labour market conditions in determining a person's capacity to work, regardless of a person's age. This will ensure consistency in the assessment of work capacity for all people of working age.

People who were receiving disability support pension on 10 May 2005 will not be affected by the changes to disability support pension qualification. People who qualify for disability support pension between 11 May 2005 (the day after the 2005-06 night) and 30 June 2006 will be assessed under the new measures at their first review after 1 July 2006.

A new section 94A is inserted at Part 2.3 of the Social Security Act that provides another means to qualify for a disability support pension. This new section will apply to a person with an impairment who is assessed as being able to work 15 or more hours per week, within 2 years, but at the time of the assessment has a work capacity of less than 15 hours. Following the assessment, if the person continues to receive a social security entitlement or benefit and undertakes such assistance as required by Centrelink, or that Centrelink otherwise considers suitable, then after 2 years, if the person's capacity has not reached 15 hours per week the person will qualify for disability support pension. Certain age and residency requirements will also need to be met. A person can remain qualified while the person has a capacity of less than 15 hours per week (subject to other eligibility requirements), until the person's work capacity is again reviewed or considered. At this time, in order to remain qualified for disability support pension the person will need to meet the current 'continuing inability to work' qualification taking into account assistance that could increase the person's capacity in the following 2 years.

People claiming disability support pension, on or after 20 September 2006, except those who are permanently blind, will be subject to a seasonal work preclusion period.

The approved program of work supplement, the ‘Work for the Dole’ supplement, will also, from 1 July 2006, be extended to disability support pension recipients who wish to participate in an approved program of work.

Part 2 – Seasonal work preclusion period

The seasonal work preclusion period applies if a person, or the person’s partner, has higher than average earnings (measured with reference to Average Weekly Ordinary Time Earnings - AWOTE) from seasonal work undertaken in the six months before claiming newstart allowance, mature age allowance, benefit PP (partnered), partner allowance, widow allowance or youth allowance. From 20 September 2006, the seasonal work preclusion period will be extended to any person who claims disability support pension (also applying the amendments made to the definition of seasonal work to include the earnings of highly paid contract and intermittent workers). A person claiming disability support pension who is permanently blind continues to be excluded from the seasonal work preclusion period.

Part 3 – Approved program of work supplement

The approved program of work supplement, informally known as the ‘Work for the Dole’ supplement, will be extended to disability support pension recipients who wish to participate in an approved program of work.

BACKGROUND

Participation

Over 700,000 people are in receipt of a disability support pension. This is approximately 6.7 per cent of the Australian workforce.

The current test for disability support pension effectively encourages many people with disabilities who can do some work to withdraw from the labour market. The changes to the work hours threshold are consistent with recommendations of the Final Report of the *Reference Group on Welfare Reform*, ‘Participation for a more Equitable Society’ (the McClure Report). The McClure Report recommended the Government review the work capacity criterion for disability support pension to ensure that it is consistent with contemporary patterns of labour market participation.

The Government believes long-term dependence on the disability support pension is not the best option for people who have the ability to work reasonable hours, on a sustained basis, in the open labour market for award wages. The changes to income support arrangements and the increased funding for employment services are designed to encourage and assist people with disabilities to test their capacity to work.

In many cases people with disabilities, who have skills to offer but cannot work full-time, could do part-time jobs, in many cases receiving a part-rate of income support.

The measures in this Bill will help people claiming disability support pension, and people already receiving disability support pension to become more independent and active in the community. More people with disabilities will be able to share in the rewards and benefits of work—increased income, improved standards of living, better links to the community and enhanced self esteem and wellbeing.

Increasing the participation of people in the paid labour market will also reduce the adverse economic impact that Australia faces with its ageing workforce and declining growth in the number of labour force participants over the next 15 years.

Seasonal work preclusion period

The seasonal work preclusion period ensures that people with higher than average earnings (measured with reference to AWOTE) from seasonal work, support themselves for a period after ceasing a work spell.

The extension of the seasonal work preclusion period to disability support pension and covering the earnings of highly paid contract and intermittent workers will enhance consistency in the eligibility conditions for these payments, and ensure that income support is targeted towards those most in need. The seasonal work preclusion period continues not to be applied to a person who is permanently blind and claiming disability support pension.

Approved program of work supplement

This measure will encourage the voluntary participation of income support recipients in Work for the Dole. Currently, disability support pension recipients are not eligible for the Work for the Dole supplement. This is an anomaly that will be rectified by this measure so that there is parity of treatment for disability support pension recipients if they volunteer to participate in Work for the Dole.

Part 2.3 of the Social Security Act will be amended so disability support recipients who volunteer for Work for the Dole can receive an approved program of work supplement of \$20.80 per fortnight. The supplement of \$20.80 per fortnight is received by all other Work for the Dole participants.

EXPLANATION OF CHANGES

AMENDMENT OF THE SOCIAL SECURITY ACT 1991

Part 1 - Participation

Item 1 inserts new paragraph 94(1)(f) that applies so that if people qualify for disability support pension under new section 94A, they will not also have to meet the qualification under section 94. However, as provided for in new section 94A (see Item 10) once a person is qualified under section 94A the person is only able to

qualify under section 94A until such time the person has his or her capacity reviewed or considered.

Qualification requirements at section 94

The qualification for disability support pension requires, amongst other things, that a person has a continuing inability to work because of an impairment. **Item 2** repeals subsection 94(2) and substitutes a new subsection 94(2) for the purposes of determining when a person has a ‘continuing inability to work’. In effect, two main amendments are made to the current subsection 94(2).

The first amendment to subsection 94(2) provides that when considering a person’s ability to do work in the next 2 years, the work must be capable of being done ‘independently of a program of support.’ This is provided for by new paragraph 94(2)(a).

The requirement that work at award wages be done ‘independently of a program of support’ means that, if a person can do work of at least 15 hours per week at award wages or above (see also Item 5 below) within the next 2 years (taking into account activities that the person could undertake to assist him or her), but the person can only do the work if provided with certain types of ongoing or regular support, then the person will have a ‘continuing inability to work’. If the person meets all other qualification requirements the person will therefore qualify for a disability support pension.

This ensures that people who are working at full award wages in the open labour market who require significant support in the workplace on an ongoing basis to maintain that employment, such as an attendant carer to assist with toileting and eating in the workplace, will continue to qualify for the disability support pension. Item 5 substitutes a new subsection 94(4) providing when a person is treated as being able to do work ‘independently of a program of support’ and what types of support are considered to be a ‘program of support’.

The second main amendment to current subsection 94(2) is at paragraph 94(2)(b). In considering whether a person has a ‘continuing inability to work’ the Secretary must also apply paragraph 94(2)(b) and consider types of activities that could assist the person prepare and train for work in the next 2 years. Paragraph 94(2)(b) contains two subparagraphs and both of these are amended. In effect, the amendment made to both subparagraph 94(2)(b)(i) and 94(2)(b)(ii) is that the reference to education or vocational training or on–the-job training is removed and replaced by a reference to a ‘training activity’. Item 8 of this Bill inserts a definition of training activity that includes education or vocational training or on–the-job training. The insertion made by Item 8 (see Item 8 discussed below) broadens the types of activities to also include pre-vocational training, vocational rehabilitation and work-related training and specifically includes activities designed for people with disabilities. The consequence of the insertion of ‘training activity’ in subparagraphs 94(2)(b)(i) and 94(2)(b)(ii) is that in determining what a person’s work capacity will be in the next 2 years, a

broader range of activities that could assist the person to build his or her capacity can be considered.

Item 3 substitutes ‘educational or vocational training or on–the-job training’ in paragraph 94(3)(a) with ‘a training activity’. This is consistent with the amendments at subparagraph 94(2)(b)(i) and 94(2)(b)(ii) that insert a reference to ‘a training activity’. The effect of this is that paragraph 94(3)(a) provides that in deciding whether a person has a ‘continuing inability to work’, the Secretary is not to have regard to the actual availability to the person of a ‘training activity’ that would assist in skilling the person to work.

Item 4 amends paragraph 94(3)(b) by removing the reference to subsection 94(4) reflecting the repeal of the existing subsection 94(4).

Item 5 repeals existing subsection 94(4). The effect of this is that from 1 July 2006 when determining if a person has a ‘continuing inability to work’ the actual availability of work in the person’s locally accessible labour market will not be considered, irrespective of a person’s age.

Independently of a program of support

Item 5 substitutes a new subsection 94(4) that sets out when a person will be treated as doing work ‘independently of a program of support’. This is relevant for determining if a person has a ‘continuing inability to work’ under new subsection 94(2) of the Social Security Act.

There are three circumstances when a person will be treated as doing work independently of a program of support. These are if the Secretary is satisfied that to do the work the person is:

- unlikely to need a program of support to do the work;
- likely to need a program of support but only occasionally; or
- likely to need a program of support but the provision of the program of support is not ongoing.

For the purposes of the reference to ‘program of support’, new subparagraph 94(4)(a)(ii) provides that the program of support must be a program that is funded (wholly or partly) by the Commonwealth; or a type that the Secretary considers is similar to such a program. Subparagraph 94(4)(a)(ii) specifically contemplates the types of support that have been formally acknowledged and recognised by the Department as being programs that assist people in preparing for, obtaining or doing work. Such programs may or may not have been specifically designed for people with disabilities. These programs include the Disability Open Employment Service and Post Placement Support from a Job Network Service.

Matt has reduced exercise tolerance following heart bypass surgery. He lodges a claim for a disability support pension. Matt is not permanently blind so his qualification is determined under section 94 of the Social Security Act. Matt attends a Comprehensive Work Capacity Assessment to have his qualification for disability support pension assessed and is found to be currently able to do light work, such as

clerical work, for 15 or more hours per week at award wages. The assessor determines that Matt is unlikely to need a program of support to do the clerical work and is referred to Job Network. Matt will not qualify for a disability support pension.

Miriam has depression. She lodges a claim for a disability support pension. Miriam attends a Comprehensive Work Capacity Assessment and is assessed as currently being able to work less than 15 hours per week at award wages. However, with the provision of a vocational rehabilitation program, that includes vocational counselling, vocational training and a work placement, the assessor determines that, within 2 years, Miriam would be able to work 15 or more hours a week without ongoing support. As Miriam will be able to work independently of a program of support she will not qualify for a disability support pension.

Brendan has an acquired brain injury. He lodges a claim for disability support pension and attends a Comprehensive Work Capacity Assessment to determine his work capacity and qualification for disability support pension. At the assessment, Brendan is assessed as currently being able to work less than 15 hours per week at award wages, but with the provision of a Disability Open Employment Service to help him prepare for and find employment and provide him with support to maintain that employment, within 2 years he will be able to work more than 15 hours per week at award wages and will no longer need that support. Even though Brendan will be exited from Disability Open Employment Service following his 2 year program, Brendan's employment consultant will claim an intermittent support fee as he thinks Brendan may require one off assistance (e.g. 2-3 hours to develop new job skills) at some time over the next 12 months. As Brendan will only need occasional support, he will not qualify for disability support pension.

Sue has a mild intellectual disability. At her Comprehensive Work Capacity Assessment, it is determined that Sue is currently able to work less than 15 hours per week at award wages. With the provision of a Disability Open Employment Service to help her prepare for and find employment, and to provide her with support to maintain that employment, Sue could work 15 or more hours per week at award wages within 2 years. However, in order to work 15 hours or more per week at award wages, Sue will require regular support by her Disability Open Employment Service provider in the workplace. This will include support through changes in the workplace, and for more than 2 years, support to reinforce previous tasks learned and to learn new tasks. As Sue requires ongoing support, she cannot do the work independently of a program of support and will qualify for a disability support pension.

Broadening the types of activities that can be considered to determine a person's work capacity

Item 6 repeals the definitions of 'educational or vocational training' and **Item 7** repeals the definition of 'on-the-job training'. The consequence of this is that 'educational or vocational training' and 'on-the-job training' will no longer be defined as not including programs designed specifically for people with physical, intellectual or psychiatric impairments.

Consistent with the repeal of the definitions in Items 6 and 7, **Item 8** inserts a definition of ‘training activity’ to include activities that are designed specifically for people with physical, intellectual or psychiatric impairments. These activities are considered in determining a person’s work capacity in the next 2 years. This recognises that the work capacity of people with disabilities can markedly improve when people access services that are appropriately tailored to their needs.

The activities contained in the new subsection 94(5) include those activities that were previously contained in subparagraph 94(2)(b)(i) and 94(2)(b)(ii). These are education (that includes educational training) that is contained in new paragraph 94(5)(a) and vocational training included in new paragraph 94(5)(c).

Paragraph 94(5)(b) inserts a new activity of ‘pre-vocational training’. Some of the activities that may be considered ‘pre-vocational training’ include training that will prepare a person for work such as job search skills programs, basic computer training and presentation and communication skill courses.

Paragraph 94(5)(d) inserts a new activity of vocational rehabilitation. Vocational rehabilitation enables a person with a physical, intellectual or psychiatric impairment get and keep suitable work. Such rehabilitation includes counselling, physical conditioning programs to restore a person’s physical capacity and return to work programs designed specifically for people with disabilities.

Paragraph 94(5)(e) provides for a new training activity of work-related training. Work-related training includes on-the-job training. The inclusion of on-the-job training was previously included in subparagraph 94(2)(b)(i) and 94(2)(b)(ii).

However, paragraph 94(5)(e) also contemplates training that may not be on-the-job such as short courses tailored to a particular industry or occupation, either within or outside of an work environment. Such work training could include book keeping, storeman/fork lift driver and service station console operator.

Definition of ‘work’

Item 9 changes the definition of work at subsection 94(5) of the Social Security Act. Item 9 omits the reference to 30 at paragraph 94(5)(a) and substitutes 15. The change to the definition of work at subsection 94(5) means that for a person to have a ‘continuing inability to work’ under subsection 94(2), the ‘continuing inability to work’ must be for at least 15 hours per week, at award wages or above.

New section 94A

The current qualification provision at section 94 requires, amongst other things, that a person has a ‘continuing inability to work’. In determining if a person has a ‘continuing inability to work’, a person’s capacity to do 15 hours or more work at award wages (this Bill makes an amendment from 30 hours to 15 hours) within the next 2 years is assessed, taking into account a range of assistance that could increase the person’s work capacity. **Item 10** inserts a new section 94A. New section 94A applies to a person who has undertaken a work capacity assessment and the Secretary

is satisfied that at the time of assessment, because of a physical, intellectual or psychiatric impairment, the person is unable to work at least 15 hours per week at award wages or above. This is referred to as the person having a ‘current inability to work’. New subsection 94A(4) provides that in determining whether a person has a ‘current inability to work’, the assessment will not take into account the availability of work in the person’s locally accessible labour market. However, the work will need to be capable of being done ‘independently of a program of support’. ‘Independently of a program of support’ defined at new subsection 94A(3) has the same meaning as in new subsection 94(2).

A person will qualify for a disability support pension if the person, at least 2 years following the assessment at which he or she had a current inability to work at least 15 hours per week, has his or her capacity reviewed and still has a current inability to work at least 15 hours per week. A person will remain qualified (subject to other qualification requirements) while the person’s current capacity is less than 15 hours per week, until such time the person’s capacity is reviewed. At this point, in order to remain qualified for disability support pension a person will need to qualify under section 94. This will ensure that, at review, people who have qualified for disability support pension because of their current inability to work are treated in the same manner as all other disability support pension recipients who qualify against the ‘continuing inability to work’ criteria in section 94.

The insertion of new section 94A does not mean that, in light of the second assessment, the person was qualified for a disability support pension under section 94 at the first assessment, or that at the second assessment the person is qualified for a disability support pension under section 94. This new section recognises that, despite the provision of assistance to a person, at times a person’s capacity to perform work may not increase to the level that was initially anticipated. This may be because a person’s impairment has deteriorated, or a person’s recovery from an injury has taken longer than anticipated, or a person’s residual level of impairment is greater than would have normally been expected. New section 94A recognises that for people who have made every effort to try to increase their work capacity but have been unable to, the appropriate payment is the disability support pension. However, new section 94A does not prevent people from qualifying for the disability support pension if, during the 2 year period (or at any other time), they are qualified under section 94.

In order to qualify under new section 94A a person will need to satisfy the following qualification criteria:

- the person immediately before qualifying under section 94A will need to be receiving a social security benefit or entitlement (other than disability support pension) (paragraph 94A(1)(c) refer);
- the person must have been receiving a social security benefit or entitlement continuously between the two assessments (paragraph 94A(1)(h) refer);
- during the period between the assessments, if the person has been required to undertake training activities as part of an agreement with the Secretary then the

person has undertaken that activity and also complied with the agreement(subparagraph 94A(1)(i)(i) refer);

- if the person has not been required by the Secretary to undertake an activity, (this will usually be because the person’s payment type does not require the person to enter into an activity agreement), then the person has undertaken a training activities that are suitable for the person (subparagraph 94A(1)(i)(ii) refer);
- the person’s impairment will need to be 20 points or more under the Impairment table (paragraph 94A(1)(d) refer);
- the person has turned 16 (paragraph 94A(1)(k) refer); and
- the person meets the following residency requirements (subsection 94A(5) refer):
 - the person was an Australian resident when the person first had a ‘current inability to work’ because of an impairment (paragraph 94A(5)(a) refer); or
 - has 10 years qualifying Australian residence or has a qualifying residency exemption for a disability support pension (paragraph 94A(5)(b) refer); or
 - if the person was born outside Australia and when the person first had a current inability to work was not an Australian resident but was a dependent child of an Australian resident and the person becomes an Australian resident while a dependent child of an Australian resident (paragraph 94A(5)(c) and 94A(1)(b) refer).

The residency requirements are intended to apply in the same way as the residency requirements in section 94 apply to qualification under that section. That is, it will be when the actual impairment referred to in paragraph 94A(1)(b) first prevented the person from doing any work.

Social security entitlement and social security benefit are defined in section 23 of the Social Security Act and include a broad range of payment types. In determining if a person has been receiving a social security entitlement or social security benefit section 38B of the Social Security Act applies so that in certain circumstances a person is treated as having received an income support payment in respect of a continuous period even though the person did not actually receive such a payment during a part or parts of the period.

New subsection 94A(6) inserts a similar provision as currently contained at subsection 94(6) that sets out circumstances when a person will not qualify for disability support pension under new section 94A. New subsection 94A(7) operates with the effect that after the person qualifies under section 94A, at the next review of a person’s work capacity, the person cannot continue to qualify under section 94A. The consequence of this is that in order for a person to retain his or her disability support pension, the person will need to meet the ‘continuing inability to work’ criteria under section 94. If a person does not qualify under section 94, because within

2 years the person is assessed as being able to work independently of a program of support 15 or more hours per week at award wages, then the person will be able to claim and receive (if eligible) another income support payment, such as newstart allowance. However, the reference in new paragraph 94A(1)(ii) means that a person who previously qualified under section 94A will be able to again qualify under section 94A at another time (including following 2 years on from the review referred to in subsection 94(7)) if all the criteria in section 94A are again met.

Andrew has a back injury. He lodges a claim for disability support pension and attends a Comprehensive Work Capacity Assessment to determine his work capacity and qualification for disability support pension. At the assessment Andrew is assessed as being currently able to work for less than 15 hours per week at award wages, but with the provision of a vocational rehabilitation program, the vocational rehabilitation program includes a pain management program, a fitness program and a vocational assessment that he could work for more than 15 hours per week but less than 30 hours per week at awards wages within the next 2 years. Andrew is referred to a vocational rehabilitation provider who provides the services recommended by the work capacity assessor. Andrew is granted newstart allowance and is required to participate in a vocational rehabilitation program to meet his participation requirements. 2 years later, after having completed the program, Andrew has his work capacity reassessed via another Comprehensive Work Capacity Assessment. The pain management program resulted in only marginal improvement, as did the fitness program. Andrew had attempted to return to work twice since finishing the program, but both attempts had lasted only 1 month due to pain. At this second assessment Andrew is assessed as currently being able to work for less than 15 hours per week at award wages. As Andrew has a current inability to work, has been participating in and has been undertaking a training activity during that time, has been continuously on newstart allowance between his two assessments and he meets all of the other criteria for the disability support pension, he is granted a disability support pension. Two years after Andrew qualifies for disability support pension, as part of his regular review Andrew attends a Comprehensive Work Capacity Assessment. A decision is made about Andrew's capacity to work, that within two years he could work for more than 15 hours per week. Andrew will not qualify for disability support pension.

Item 11 makes a technical amendment at paragraph 729(2A)(a) to reflect the insertion of the new qualification for disability support pension under section 94A.

Item 12 makes a technical amendment at paragraph 1061ZD(2)(b) to reflect the introduction by Item 9 of the 15 hour a week work capacity threshold.

Application and transitional provisions

Item 13 provides the application and transitional provisions in respect of the amendments made under Part 1 of Schedule 2 of this Bill. Subitem (1) provides that the amendments in Part 1 will apply to claims and payments in respect of such claims that are made on or after 1 July 2006.

Subitem (2) provides that subject to subitem (3) the amendments made under this Part of the Bill do not apply to a claim made before 1 July 2006. This provides a protected

status for disability support pension recipients who had claimed prior to 1 July 2006. It means that, subject to subitem (3), while a person remains on the disability support pension on a claim made before 1 July 2006 then the changes made to the disability support pension in Items 1 to 12 of Schedule 2 ('new qualification rules') will not apply to the person. The person's qualification will continue to be determined by the rules as they were prior to 1 July 2006 ('old qualification rules').

This is subject to subitem (3), which applies to a person who made a claim for a disability support pension before 1 July 2006 but on or after 11 May 2005 (the day after the 2005-06 Budget). Paragraph (a) of subitem (3) provides that the amendments made under Part 1 of Schedule 2 of this Bill will apply to a person if the person is given a notice under subsection 63(2) or 64(2) of the Administration Act and as provided at paragraph (b) of subitem (3), the notice requires the person to undertake a specified activity for the purposes of reviewing the person's capacity to perform work. The amendments made under Part 1 of Schedule 2 of this Bill will apply from the date of the notice.

The effect of this is that a person who properly made a claim for disability support pension prior to 1 July 2006 but on or after 11 May 2005 will remain under the 'old qualification rules' until the person is given a notice to undertake an activity (such as Comprehensive Work Capacity Assessment) in order to review the person's capacity to work. The 'new qualification rules' apply from the date of the notice.

Liz lodges a claim for disability support pension on 25 May 2005. Centrelink refers Liz for a Work Capacity Assessment to help determine her eligibility for disability support pension. The 'old qualification rules' still apply at this time and Liz is assessed as having a work capacity of less than 30 hours per week at award wages and is granted a disability support pension. In July 2007, Liz is sent a notice requiring her to attend a Comprehensive Work Capacity Assessment as part of her regular disability support pension review. Liz attends the Comprehensive Work Capacity Assessment and she is assessed against the new eligibility criteria that came into effect from 1 July 2006 (including the 15 hour capacity threshold). Liz is assessed as, within 2 years, being able to work independently of a program of support more than 15 hours but less than 30 hours per week at award wages. Liz will no longer be qualified for disability support pension. However, Liz meets the eligibility criteria for newstart allowance and is granted this payment. Liz will meet the definition of having a 'partial capacity to work'. On newstart allowance Liz will have a requirement to seek work, but will retain access to the pensioner concession card and pharmaceutical allowance that she received when she was on disability support pension, and will be referred to an employment service to assist her to build her capacity and help her prepare and look for work.

Part 2- Seasonal worker preclusion period

Item 14 inserts a new seasonal workers preclusion period section at the end of Subdivision B of Division 1 of Part 2.3 of Chapter 2 that is modelled on section 500Z as amended by Item 12 of Part 3 of Schedule 4. Section 104 applies if a person has lodged a claim for and qualifies under section 94 for disability support pension and at any time during the 6 months immediately before the day on which the person lodged

the claim, the person or the person's partner has been engaged in seasonal work. This new section is applicable to a person who applies for disability support pension and who is not permanently blind.

Under subsection 104(2) disability support pension will not be payable if the person is subject to a seasonal work preclusion period (as worked out under subsection 16A(1) of the Social Security Act) or a part of that period as determined by the Secretary.

Under subsection 104(3), if the Secretary is satisfied that the person is in severe financial hardship because the person has incurred unavoidable or reasonable expenditure (whether in relation to disability support pension claim or any other claim under the Act), the Secretary may determine that the person is not subject to the whole, or any part, of the preclusion period. In this context, 'severe financial hardship' has the meaning as set out in subsection 19C(2) of the Social Security Act where the person is not a member of a couple and subsection 19C(3) where the person is a member of a couple. 'Unavoidable or reasonable expenditure' is set out in subsection 19C(4).

Item 15 provides that the amendments made by this Part apply in relation to claims for disability support pension made on or after 20 September 2006.

Part 3 - Approved program of work supplement

Item 16 inserts new sections 118, 119 and 120. New section 118 provides for the payment of an approved program of work supplement to a person who is receiving disability support pension and who is participating in an approved program of work for income support payment. The amount of the supplement is \$20.80 per fortnight for each fortnight during which the person participates in the program.

However, new section 119 ensures that an approved program of work supplement cannot be paid to a person in respect of a particular fortnight if a pensioner education supplement under Part 2.24A of the Social Security Act or under ABSTUDY is payable to the person for one or more days in that fortnight.

Disability support pension recipients who volunteer to participate in an approved program of work will sign an agreement that includes an outline of their obligations and responsibilities. However, new section 120 applies so a person is not taken, merely by participating in an approved program of work for income support payment, in accordance with an agreement to participate in such a program, to be:

- an employee within the meaning of section 9 of the *Occupational Health and Safety (Commonwealth Employees) Act 1991*; or
- an employee within the meaning of section 5 of the *Safety, Rehabilitation and Compensation Act 1988*; or
- an employee for the purposes of the *Superannuation Guarantee (Administration) Act 1992*; or
- an employee for the purposes of the *Workplace Relations Act 1996*.

Item 17 makes a consequential amendment at subparagraph 1223(7)(b)(iv) of the Social Security Act. Subsection 1223(7) sets out when an add-on amount is a debt owed to the Commonwealth. Presently, the provision covers the situation where recipients of youth allowance, newstart allowance or parenting payment have their rate increased by an approved program of work supplement when the rate should not have been increased. Where this happens, the amount of an approved program of work supplement is a debt owed to the Commonwealth. Amendments are made to subsection 1223(7) so that it also applies to a person who is receiving disability support pension and the person's pension rate is increased by an approved program of work supplement and the rate should not have been so increased. The consequence of this is that the amount that the rate was increased by would be a debt owed to the Commonwealth.

SCHEDULE 3 – CARER PAYMENT

SUMMARY

The seasonal work preclusion period applies if a person, or the person's partner, has higher than average earnings (measured with reference to Average Weekly Ordinary Time Earnings - AWOTE) from seasonal work undertaken in the six months before claiming newstart allowance, mature age allowance, benefit PP (partnered), partner allowance, widow allowance and youth allowance. From 20 September 2006 the seasonal work preclusion period will be extended to any person who claims carer payment.

BACKGROUND

The seasonal work preclusion period ensures that people with higher than average earnings (measured with reference to Average Weekly Ordinary Time Earnings) from seasonal work, support themselves for a period after ceasing a work spell.

The extension of the seasonal work preclusion period to carer payment and covering the earnings of highly paid contract and intermittent workers will enhance consistency in the eligibility conditions for payments, and ensure that income support is targeted towards those most in need.

EXPLANATION OF CHANGES

AMENDMENT OF THE SOCIAL SECURITY ACT 1991

This Schedule extends the application of the seasonal work preclusion period to persons claiming carer payment.

Item 1 inserts a new seasonal workers preclusion period section at the end of Subdivision B of Division 1 of Part 2.5 of Chapter 2 that is modelled on section 500Z as amended by Item 12 of part 3 of Schedule 4. The new section 203 applies if a person has lodged a claim for carer payment and at any time during the 6 months immediately before the day on which the person lodged the claim, the person or the person's partner has been engaged in seasonal work.

Under subsection 203(2) carer payment will not be payable if the person is subject to a seasonal work preclusion period (as worked out under section 16A of the Social Security Act) or a part of that period as determined by the Secretary.

Under subsection 203(3), if the Secretary is satisfied that the person is in severe financial hardship because the person has incurred unavoidable or reasonable expenditure (whether in relation to a claim for carer payment or any other claim under the Act), the Secretary may determine that the person is not subject to the whole, or any part, of the preclusion period. In this context, 'severe financial hardship' has the

meaning as set out in subsection 19C(2) of the Social Security Act where the person is not a member of a couple and subsection 19C(3) where the person is a member of a couple. ‘Unavoidable or reasonable expenditure’ is set out in subsection 19C(4).

Item 2 applies the amendments made by this Part to claims for carer payment made on or after 20 September 2006.

SCHEDULE 4 – PARENTING PAYMENT

SUMMARY

Part 1 – Participation

From 1 July 2006, the qualification criteria for parenting payment under Part 2.10 of the Social Security Act will be amended. In particular, the sections that applied to PP child will be moved to the definitions section of the Social Security Act. After 1 July 2006, these sections will apply more broadly than only to parenting payment, and so the definitions section is a more appropriate location for these to be contained.

The definition of PP child will be amended so single people claiming parenting payment on or after 1 July 2006, if eligible, will receive parenting payment while their youngest child is less than 8 years old. However, these people will have participation requirements when their youngest child turns 6. People who are partnered will be eligible to receive parenting payment while their youngest child is less than 6 years old.

People who, on 30 June 2006:

- are receiving parenting payment; or
- are not necessarily receiving parenting payment (for example, because they are serving a waiting period in respect of payment) but have a claim that has been granted; or
- are not necessarily receiving parenting payment, but have a claim that has been granted and on 30 June 2006 it was suspended and not subsequently cancelled with a date of effect before 1 July 2006 (for example because of a result of changes in a person's circumstances or pending investigation by Centrelink into their eligibility for payment); or
- have a determination made after 1 July 2006 granting their claim but the start day in respect of the claim for parenting payment is prior to 1 July 2006 (and there has not been another determination cancelling the claim); or
- have other circumstances that apply to them as determined by the Secretary in a legislative instrument;

will be able to remain on parenting payment under the current entitlement that is, until their youngest child turns 16. However, to access and retain this 'transitional status' a person will need to have been covered by transitional arrangements that are contained at a new subdivision AA. The transitional arrangements set out certain requirements that a person must meet to continue to have the 'transitional status'.

In order to retain the transitional status, a person must not change his or her relationship status, nor have had their payment cancelled. A person will lose their transitional status if for more than 12 continuous weeks they are not covered by the transitional arrangements.

To be covered by the transitional arrangements people will also need to continue to meet the other qualification criteria for parenting payment. Additionally, whilst remaining on parenting payment under the transitional arrangements, parenting payment recipients will have participation requirements. These will commence from the later of 1 July 2007 or when a person's youngest child, that qualifies the person for parenting payment, turns 7 years of age.

Participation requirements are aligned with the activity requirements of 'principal carers' receiving newstart allowance.

Part 2 – Compliance

Similar compliance provisions that apply to 'principal carers' on newstart allowance will also apply to people receiving parenting payment, who have participation requirements.

Part 3 – Seasonal work preclusion period

From 20 September 2006, seasonal work preclusion period provisions will be extended and will apply to all parenting payment claimants.

BACKGROUND

There are around 610,000 people currently receiving parenting payment and the number of people on parenting payment now exceeds those on unemployment benefits. Furthermore, more than 80 per cent of lone parents receive income support and although many work part time, on average they remain on income support for an estimated 12 years or more of their working age life.

In August 2000, the Final Report of the Reference Group on Welfare Reform, 'Participation Support for a More Equitable Society' ('the McClure Report') was released. The McClure Report found participation in paid employment is a major source of self-esteem. Without it, people can fail to develop, or become disengaged from, employment, family and community networks. This can lead to physical and psychological ill health and reduced life opportunities for parents and their children.

The McClure Report recommended, amongst other things, that *initial* steps be taken to require parents of high school aged children (thirteen and over) to enter into a Participation Plan, including job readiness and needs assessment, part-time job search, part-time employment or part-time preparation for paid employment. The McClure Report also recommended that parents with primary school aged children (six to thirteen years of age) be required to attend an annual compulsory interview to

discuss their current and future capacity for increasing participation. These measures were introduced in the *Family and Community Services Legislation Amendment (Australians Working Together and other 2001 Budget Measures) Act 2003*.

The measures in this Bill build on those introduced by *Australians Working Together*, and aim to ensure that parents, who have the capacity to look for work and undertake it when their children are of school age, do so. The broad objective of these changes is that people should look for, and undertake, paid work in line with their work capacity. The changes made by this Bill are modest by international standards with sole parents on benefits in Austria, Germany, France, Italy, Norway and Switzerland required to look for work when their youngest child turns three.

The Government is committed to encouraging all people of working age, including parents, to participate in the paid labour market, and developing an overarching mutual obligation framework for the participation support system.

This Schedule gives effect to the Government's objectives of increasing work force participation for parents and reducing welfare dependency.

EXPLANATION OF CHANGES

SOCIAL SECURITY ACT 1991

Part 1 – Participation

To qualify for parenting payment, amongst other things, a person must have at least one PP child. Presently, sections 500D to 500H of the Social Security Act set out the relevant provisions that provide for, and apply when a person has a PP child. In particular, subsection 500D(1) determines when a person will have a PP child. This is, if a person has a dependent child who has not turned 16.

Item 1 makes a technical amendment at paragraph 500(1)(a) reflecting the repeal of sections 500D to 500H and the insertions of new sections 500D to 500F.

Item 2 repeals the paragraph 500(1)(c), which requires a person to satisfy the requirement to enter into a participation agreement. This is substituted by a new paragraph 500(1)(c) that sets out to qualify for parenting payment, a person (who is not a member of a couple), and whose PP child (or children) has turned 6, must meet participation requirements that apply to the person.

This only applies to people who are not a member of a couple, because unless a person is covered by the new 'transitional arrangements' under new subdivision AA, only people who are single are able to qualify for parenting payment when their child is over 6 years of age. Participation requirements do not apply to any parenting payment recipient if the child that qualifies him or her for parenting payment has not turned 6.

People who are part of the transitional group (single and partnered) also have participation requirements. The requirement that ‘transitional status’ people meet participation requirements is set out in new subdivision AA (see Item 6)

Item 3 repeals subsection 500(4).

Participation requirements

For a person to be covered by the transitional arrangements, the rules contained at new paragraph 500F(1)(f) and (2)(f) require that a person must meet any participation requirements that apply to a person under section 500A. Other parenting payment recipients – who will only be those who are not a member of a couple – must meet participation requirements when their PP child turns 6. **Item 4** inserts new section 500A that sets out the participation requirements.

New subsection 500A provides that a person must:

- enter into an activity agreement when the person is required to by the Secretary under section 501 (paragraph 500A(1)(a) refer);
- while an agreement is in force comply with its terms (paragraph 500A(1)(b) refer);
- be prepared to enter into another agreement, if required by the Secretary under section 501 (paragraph 500A(1)(c) refer);
- comply with any requirements that the Secretary notifies to the person under subsection 502(1) (paragraph 500A(1)(d) refer).

New Division 3A provides for exemptions from the participation requirements.

Item 5 repeals section 500D to 500H. These sections, in effect, are being moved to the family and relationship definitions at section 5 of the Social Security Act. However, the new sections that will be contained at section 5 do not refer to PP child but use the term ‘principal carer’. This is because the definition of ‘principal carer’ will not only be relevant in determining when a person has a PP child for qualification of parenting payment, but will also be relevant for other payments. The definition of ‘principal carer’ is inserted by Item 3 of Schedule 1 of this Bill.

Qualification for parenting payment will still require that a person has a PP child. Item 5 of this Schedule inserts a new section 500D that contains three new subsections 500D(1), (2) and (3) for determining when a person will have a PP child.

New subsection 500D(1) provides that a child will be the PP child of a person if the child of the person has not turned 6 and the person is the ‘principal carer’ of the child and the person is a member of a couple.

The consequence of this is that people who are a member of a couple claiming for parenting payment on or after 1 July 2006 (subject to backdating rules) will be qualified for parenting payment if they have a dependent child who is less than 6

years old. This is an amendment from the present parenting payment qualification which provides that for a person to have a PP child the child must not have turned 16.

New subsection 500D(2) sets out when people who are not members of a couple will have a PP child. This is when a person is the principal carer of a child and the child has not turned 8. The consequence of this is that, people claiming parenting payment on or after 1 July 2006 (subject to backdating rules) and who are not a member of a couple will be qualified for parenting payment if they have a dependent child who is less than 8 years old. This is an amendment from the present parenting payment qualification which provides that for a person to have a PP child the child must not have turned 16.

Section 4 of the Social Security Act sets out the relevant provisions to determine when a person is a member of a couple.

New subsection 500D(3), in effect, sets out an exception to subsections 500D(1) and (2) by providing that a person will have a PP child while ever the person has a child who has not turned 16, and the person is covered by the transitional arrangements in relation to the child. However, as set out in new paragraph 500D(3)(e) this is subject to there not having been any continuous period of more than 12 weeks since 1 July 2006 during which the person has not been covered by the transitional arrangements in relation to the child which qualified the person for parenting payment, or any other child. The intention of new subsection 500D(3) is that it provides a ‘transitional status’ for certain parenting payment recipients enabling them to qualify for parenting payment until their youngest child turns 16.

Prospective determinations for some recipients

Item 5 also inserts new section 500E, which is concerned with prospective determinations of qualification for parenting payment. While some parenting payment recipients may be required to lodge fortnightly forms in order to establish entitlement to payment, this provision (where applicable) allows the Secretary to decide that a person can be required to lodge on a less regular basis. In order to do so, the Secretary must be satisfied that the person will meet certain requirements during the period (e.g. be qualified and payable and comply with the Act). Subsection 500E(2) requires the Minister to determine, by legislative instrument, guidelines for making decisions under new paragraph 500E (1)(b).

Parenting payment transitional arrangements

Item 6 inserts a new Subdivision AA setting out the transitional arrangements for the purposes of when a person will have a PP child under subsection 500D(3).

When a person is covered by the parenting payment transitional arrangements – Section 500F

In order to be covered by the transitional arrangements, that is to have and retain the ‘transitional status’, a person will need to meet a number of criteria. New subsection 500F(1) applies when a person immediately before 1 July 2006 was not a member of

a couple. New subsection 500F(2) applies to a person who, immediately before 1 July 2006, was a member of a couple.

In order to be covered by the transitional arrangements parenting payment recipients must not have changed their relationship status. That is, if a person was single immediately prior to 1 July 2006 a person will only be covered if he or she remains single after 1 July 2006. If a person was a member of a couple immediately before 1 July 2006 he or she will only be covered by the transitional arrangements while remaining as a member of a couple.

Whilst parenting payment is in effect only one type of payment, within the payment are two different calculators that are used to work out a person's parenting payment amount depending on whether a person is a member of a couple or is not a member of a couple. However, as some people who are covered by the transitional arrangement may not have actually been receiving payment on 30 June 2006, it is necessary to determine what Rate Calculator would apply if they were receiving payment. This would have been determined by whether or not a person is a member of a couple. Section 4 of the Social Security Act sets out the relevant provisions to determine when a person is a member of a couple.

For a person to be covered by the transitional arrangements in relation to a child (or any other child) new subsections 500F(1) and (2) provide that, immediately before 1 July 2006:

- a determination under section 37 of the Administration Act must be 'in force' granting a person parenting payment (subparagraph 500F(1)(b)(i) and (2)(b)(i) refer)
 - This includes a person who is receiving parenting payment and a person who may not actually be receiving payment. A person may not be receiving parenting payment if for example the person has been granted his or her claim under section 37 of the Administration Act, but because the person is subject to a seasonal work preclusion period, payment has not commenced. The reference to 'in force' means that under section 123 of the Administration Act the determination granting the claim has a continuing effect (for example, that it has not been cancelled under section 80 of the Administration Act); or
- a determination was 'in force' suspending the person's parenting payment (subparagraph 500F(1)(b)(ii) and (2)(b)(ii))
 - A person's payment may have been suspended, for example, as a result of a change in the person's circumstances or pending investigation by Centrelink into his or her eligibility for payment. When a person's parenting payment is suspended a determination granting a person's payment will not necessarily have a 'continuing effect' as provided by section 123 of the Administration Act. However, subparagraph

500F(1)(b)(ii) and (2)(b)(ii) operates so that if, on 30 June 2006, the person's payment is suspended (not cancelled) the person will still have the opportunity to have the benefit of the transitional status provided by subsection 500D(3).

However, the transitional arrangements are also subject to new subsection 500F(3). This subsection applies so that if a person has his or her parenting payment cancelled, and the date of effect of the cancellation is prior to 1 July 2006, the person will not be covered by subparagraph 500F(1)(b)(i) or (ii) or subparagraph 500F(2)(b)(i) or (ii), and the person will be taken to have never been covered by the transitional arrangements.

When determinations are taken to be in force

New subsections 500G is also relevant as this expands the scope of subparagraphs 500F(1)(b)(i) and (2)(b)(i) and when a determination will be 'in force', with the effect that the transitional arrangements may apply more broadly to a person than as discussed above.

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

Despite immediately prior to 1 July 2006 a determination not being 'in force', new subsections 500G(1) and (2) enable the Secretary to specify by legislative instrument that, because of certain circumstances a determination will be taken to have been force. This will mean that if the particular circumstance contained in the legislative instrument applies to the person, the person will meet the requirement set out in subparagraph 500F(1)(b)(i) or (2)(b)(i) and still have the opportunity to access the 'transitional status'.

Repealed subsection 500(4)

If the only reason a determination was not 'in force' is because of the operation of current section 500(4) new subsection 500G(3) allows for someone to meet the requirement in new subparagraph 500F(1)(b)(i) or 500F(2)(b)(i). Current section 500(4) applies to people who had their payment suspended or cancelled because they did not comply with the requirement to enter into a participation agreement. If the person within 13 weeks of the suspension or cancellation complied with the requirement, the section allowed for a person to return to payment as if it had never ceased. This section is being repealed by Item 3 of this Schedule with the effect that a person who has not entered into an agreement will be returned to payment.

However, the person will not be returned to payment prior to 1 July 2006. If a person has had his or her parenting payment cancelled the person will not be able to meet the requirement of a determination being 'in force' immediately before 1 July 2006. However, new subsection 500G(3) makes an exception to this. For people who have not entered into a participation agreement prior to 1 July 2006 and have had their payment cancelled and the 13 weeks has not yet passed, a determination will be taken

to be ‘in force’ immediately prior to 1 July 2006. This means a person will meet the requirement of subparagraph 500F(1)(b)(i) or subparagraph 500F(2)(b)(i) and have access to the ‘transitional status’. A person who has had his or her payment suspended will meet the rule relating to the transitional arrangements under subparagraph 500F(1)(b)(ii) or subparagraph 500F(2)(b)(ii).

Backdated start days

New subsection 500G(4) applies so that a determination will be taken to be ‘in force’ prior to 1 July 2006, even though the determination granting a person’s claim was made after 1 July 2006. In order for this to apply, a person must have a ‘start day’ for his or her payment prior to 1 July 2006. The rules about determining a person’s start day are set out in Schedule 2 of the Administration Act.

For example, if a woman gives birth to a child on 27 June 2006 and on 10 July 2006 the woman makes a claim for parenting payment, if the woman was qualified for parenting payment on 27 June 2006, then clause 10 Schedule 2 of the Administration Act operates with the effect that the woman’s start day will be 27 June 2006. This will mean that the woman will have a claim ‘in force’ as required by subparagraph 500F(1)(b)(i) or 500F(2)(b)(i).

However, as provided by new subsection 500G(4)(c) a subsequent determination must not have been made cancelling the person’s parenting payment claim with the cancellation date prior to 1 July 2006.

A person is covered until his or her youngest child turns 16 (subject to other qualification), irrespective of when the child becomes the PP child of the person.

The reference in paragraph 500F(1)(b) and (2)(b) to ‘that child (or any other child)’ means the child that qualified the person for parenting payment immediately prior to 1 July 2006, does not have to be the same child that is referred to in subsection 500D(3). This means that, if, for example, in 2008 a person’s PP child that he or she had immediately prior to 1 July 2006 turns 16, but at that time the person is the ‘principal carer’ of another dependent child (whether or not this was the situation at 30 June 2006) then the person can still be covered by the transitional arrangements and continue on parenting payment (subject to the other qualification rules and section 500A) until the second child turns 16.

Other criteria that need to be met to be covered by the transitional arrangements

A person will not only have to meet the requirements that have been discussed above. At any point in time for the transitional arrangements to apply a person will have to meet other general requirements. These are contained at new paragraphs 500F(1)(d), (e) and (f) (person is not a member of a couple) and 500F(1)(d), (e) and (f) (person is a member of a couple).

The effect of these paragraphs is that, for a person to remain on parenting payment the person must:

- meet all the other qualification requirements of parenting payment (paragraphs 500F(1)(d) and (e) and 500F(2)(d) and (e) refer); and
- meet the participation requirements that are set out in section 500A (paragraph 500F(1)(f) and (2)(f) refer).

New subsection 500F(4) makes it clear that people who are covered by the transitional arrangements will commence their participation requirements from the later of 1 July 2007 or when their youngest PP child turns 7.

The effect of cancellation

New section 500H operates so that reference to a person qualifying under paragraphs 500F(1)(d) and (e) or 500F(2)(d) and (e) does not include a person who may be qualified but has had his or her payment cancelled, and there is no subsequent determination in force. As provided under new section 500H(4) a reference to a determination being in force is taken from the person's start date in relation to that parenting payment.

New subsections 500H(2) and (3) also allows the Secretary by legislative instrument to determine circumstances when a person's parenting payment that has been cancelled will be taken not to be cancelled.

Graham is single and has two children, aged 10 and 14, who qualify him for parenting payment. He has been receiving parenting payment continuously since January 2004 with his payment calculated according to the pension PP (single) Rate Calculator. On 12 October 2006, Graham partners with Gail and he advises Centrelink that he is a member of a couple. Graham is no longer covered by the transitional arrangements and as he does not have a child under the age of 6 he cannot qualify for parenting payment (as a member of a couple). However, if eligible, Graham will be able to claim and receive another income support payment such as newstart allowance. After 12 weeks, Graham and Gail are still together. This means that Graham ceases to be able to return to parenting payment under the 'transitional arrangements'. This is because for a continuous period of more than 12 weeks Graham has not been covered by the parenting payment transitional arrangements.

Nilda has a youngest child aged 3. On 28 June 2006 she lodges a claim for parenting payment. On 12 July 2006, Centrelink grants her claim and determines that, as she was qualified for parenting payment when she lodged the claim, her start day is 28 June 2006. On 30 June 2006, Nilda is not a member of a couple. On 4 September 2006, Nilda decides to partner with Robert and she advises Centrelink of this on the same day. Robert is employed and receives additional income from investments. His income from both sources does not provide enough income to preclude Nilda from

being eligible for parenting payment. However, Nilda is now a member of a couple and she is not covered by the transitional arrangements, but still qualifies for parenting payment as she has a youngest child under 6. As a member of a couple her parenting payment is calculated according to the benefit PP (partnered) Rate Calculator. On 9 October 2006, Robert's investment income increases and this results in Nilda's parenting payment no longer being payable. Centrelink cancels Nilda's parenting payment with a date of effect of cancellation of 9 October 2006. On 14 November 2006, Nilda leaves Robert. This is 10 weeks since Nilda partnered with Robert. Nilda is again not a member of a couple but as she has had her parenting payment cancelled and no other determination is in force, Nilda is still not covered by the transitional arrangements. Nilda advises Centrelink and lodges a claim for parenting payment on 20 November 2006. Centrelink grants Nilda's claim on 2 December 2006, but Nilda's start day for parenting payment is 20 November 2006. This is 11 weeks since Nilda was initially not covered by the transitional arrangements. Nilda retains her 'transitional status'.

Kerrie is married to Sam and they have a daughter who is 5. Since July 2003, Kerrie has been receiving parenting payment. As Kerrie is a member of a couple, her payment has been calculated using the benefit PP (partnered) Rate Calculator. Kerrie and Sam are living in rented accommodation. On 10 October 2006, Kerrie leaves Sam and advises Centrelink that she is no longer a member of a couple. Kerrie still lives in rented accommodation. As Kerrie qualifies for parenting payment (because her daughter is under 8) from that date her payment is calculated using the pension PP(single) rate calculator. However, she is not covered by the transitional arrangements. On 7 November, Kerrie inherits a 4 bedroom house in Sydney. Kerrie advises Centrelink about the inheritance, that she is not living in the house and that the value of the house means that her assets are above the assets limit. Centrelink cancels Kerrie's parenting payment claim with a date of effect of cancellation of 7 November 2006. Kerrie has not been a member of a couple for 4 weeks when her claim is cancelled. On 14 November 2006, Kerrie and Sam reconcile and become a couple. This means that Kerrie was not a member of a couple for 5 weeks. In January 2007, Kerrie and Sam move into the house she has inherited and is granted a claim for parenting payment with her start day being 5 January 2007. This is a period of over 8 weeks since her parenting payment was cancelled in November, but more than 12 weeks since she has been covered by the transitional arrangements. As Kerrie is a member of a couple she will only qualify for parenting payment while she has a youngest child who is less than 6 years old.

Item 7 repeals Division 2 of Part 2.10 of Chapter 2 that currently sets out provisions relating to parenting payment participation agreements. This will be substituted by a new Division 2 that contains relevant provisions for Parenting Payment Activity Agreements and Division 3 that sets out additional participation requirements. Whilst to some extent these are similar to the current parenting payment participation agreement provisions, they have been amended to more appropriately align with participation provisions in newstart allowance.

New section 501 sets out that the Secretary can require a person who is subject to participation requirements to enter into a Parenting Payment Activity Agreement. Participation requirements apply to people when their youngest PP child turns 6 or for people who are covered by the transitional arrangements (see Item 6), from the later of 1 July 2007 or when their youngest PP child turns 7. A Parenting Payment Activity Agreement is a written agreement in a form that has been approved by the Secretary. The Secretary can also require a person who has an existing agreement to enter into another agreement. However, these subsections do not apply when a person is covered by a participation exemption. Participation exemptions are contained at new Division 3A.

If a person is required to enter into an agreement the Secretary will give notice to the person of the requirement and also of the places and times at which the agreement is to be negotiated.

Parenting Payment Activity Agreement - terms

New section 501A sets out the terms of a Parenting Payment Activity Agreement. New subsection 501A(1) provides that an agreement shall require the person to undertake one or more activities that the Secretary regards as suitable.

However, as provided by new subsection 501A(2) if an agreement requires the person to be engaged for at least 30 hours per fortnight in paid work that the Secretary regards as suitable, then the agreement must not require the person to undertake any other activity. A person would however need to also comply with this requirement, that is the person would need to actually undertake the work. The effect of this is that a person who works for 30 hours per fortnight in paid work that the Secretary considers suitable will not be required to do any other activity to meet his or her participation requirements.

New subsections 501A(3) and (4) allow the Secretary, by legislative instrument, to specify kinds of activities that cannot be contained in an agreement. The intention of this is to make the agreement provisions flexible. However, a legislative mechanism is needed to ensure that, over time, job seekers are not permitted or compelled to undertake activities that may not be consistent with the Government's policy intention. New subsection 501A(5) requires that the terms of an agreement are to be approved by the Secretary.

New subsection 501A(6) provides that the Secretary must have regard to a person's capacity to comply with an agreement. The matters that the Secretary is to take into account are listed in new subsection 501A(7) and reflect those that are taken into account in respect of activity agreement under other income support payments. New subsection 501A(8) sets out when a person's agreement may be varied, suspended or cancelled.

New subsection 501A(9) sets out that recipients of parenting payment who are party to an agreement must notify the Secretary if there are any circumstances affecting or preventing their ability to comply with the agreement.

New section 501B and section 501C are modelled on new section 607 provisions that are being inserted Schedule 7 of this Bill. While new section 501B will apply to all parenting payment recipients, new section 501C contemplates that some parenting payment recipients may have a ‘partial capacity to work’ because of a physical, intellectual or psychiatric impairment. The Note signposts the relevant definition of ‘partial capacity to work’ contained at new subsection 16B. New section 501B recognises that what may be suitable work or the appropriate number of hours will be particularly relevant given that a person has a ‘partial capacity to work’ because of a disability.

New section 501D sets out the provisions for Parenting Payment Activity Agreements in respect of the requirement to participate in an approved program of work. This new section reflects the new section 607B contained at Part 2.12 of the Social Security Act that applies to newstart allowance recipients (as it has been amended by Schedule 7 of this Bill).

New subsection 501D(4) is the same as current section 501B(8) and sets out when a person will not be taken to be an employee merely by participating in an approved program of work.

New section 501E sets out that during any period a person is covered by a participation exemption under new section 502C (Domestic violence etc) or 502D (People with disabled children and other circumstances) a Parenting Payment Activity Agreement is suspended.

Additional participation requirements

New subsection 500A(1) requires a person who is covered by the transitional arrangements to comply with any requirements that the Secretary notifies him or her of under subsection 502(1). Under subsection 502(1) the Secretary may require a person to undertake paid work unless it is unsuitable. However, this is subject to both new sections 502A and 502B. Additionally, if a person is covered by a participation exemption new subsection 502(1) will not apply.

However, in any other case, the Secretary may notify and require a person to undertake such work. Subsection 502(2) sets out that this also includes if such work is a number of hours different to the amount a person is required to seek under an agreement. For example, under the new arrangements, a person’s activity agreement might require the person to be seeking part time work of at least 15 hours per week. This would not in any way prevent the Secretary from requiring the person to undertake particular paid work of e.g. 25 hours provided the work was not unsuitable for the person (subsection 502(4) deals with matters relevant to ‘unsuitable work’). The intention of the changes is that people should seek and undertake suitable work that is in line with their work capacity. However, parenting payment recipients will not be required to look for work or accept work where the hours of work would involve more than 25 hours per week.

New subsection 502(3) provides that a person who does not comply with a requirement under new subsection 502(1) can still be taken not to meet his or her

participation requirements, even if the person still complies with a requirement under an activity agreement.

New subsection 502(4) sets out when paid work would be unsuitable for the purposes of subsection 502(1). New subsection 502(4) reflects the provision contained at subsection 601(2A) (as amended by Schedule 7 of this Bill) that sets what is unsuitable work in the context of newstart allowance activity tests. New subsections 502(5) and (6) apply to new subsection 502(4) in the same way as new subsections 601(2AAA) and (2AAB) inserted by Schedule 7 of the Bill apply to section 601(2A).

The broad effect of new subsection 502(5) is that work will be unsuitable for a person if, in the Secretary's opinion, the person is the 'principal carer' of one or more children and there is no appropriate child care or supervision available for the times when the person would be undertaking the work. New subsection 502(6) makes it clear that the reference in paragraph 4(c) to 'the times when the person would be required to undertake the work' includes reasonable travel time between the person's home and the place of work (and vice versa).

A person has access to appropriate care and supervision if the requirements specified in any of paragraphs 501(5)(a) to (c) are met. Paragraph (a) deals with situations where the child could be provided with care by an approved child care service and the Secretary considers that that care would be appropriate. Under paragraph (b), the care needs to be care that the principal carer considers suitable and could be provided to the child. Under paragraph (c), a person will have access to appropriate care and supervision if the child could be attending school and, in the Secretary's opinion, that would be appropriate.

For the purposes of paragraph (a), an approved child care service has the same meaning as in the Family Assistance Administration Act. An approved child care service includes the following kinds of child care services under the Family Assistance Administration Act: a centre-based long day care scheme, a family day care service, an occasional care service, an outside school hours care service, in home care (see explanation), or vacation care service.

The Secretary will bear in mind the cost of child care and accessibility of the child care when making a determination as to the appropriateness of the child care.

New subsection 502(7), (8) and (9) insert for the purposes of parenting payment participation requirements a similar provision as contained at subsections 601(2AA) to (2D) applying in the context of newstart allowance.

New section 502A sets out an exemption from the operation of subsection 502(1). This exemption applies when a person is 55 years or older and is engaged in certain voluntary or paid work. However, subsection 502A(2) operates with the effect that if the Secretary, having considered opportunities or possible opportunities for employment that become available to the person, can determine the exemption provided by section 502A will not apply. Subsection 502A(3) sets out what is meant by approved voluntary unpaid work and an approved organisation.

New section 502B provides that if a person is engaged in suitable paid work then the Secretary cannot notify the person under subsection 502(1). This means that if a parenting payment recipient is undertaking paid work that the Secretary considers suitable and it is for at least 30 hours per fortnight, then the person cannot be required to undertake other paid work.

Participation exemptions

New Division 3A sets out the participation exemptions in respect of participation requirements for parenting payment.

New section 502C sets out when a person will be exempt from participation requirements because of domestic violence or special family circumstances. Under section 502D a person has a participation exemption if the Secretary is satisfied that:

- the person is the principal carer of one or more children who has a physical, intellectual or psychiatric disability or illness and whose care needs are such that the person could not be expected to satisfy participation requirements for the period;
- the person is a principal carer and the person is a ‘registered and active’ foster carer - if the Secretary is satisfied this is the case the Secretary must make a determination exempting the person;
- the person is a home educator (or distance educator) of a child in relation to whom the person is also the principal carer - if the Secretary is satisfied this is the case the Secretary must make a determination exempting the person;
- the person is included in a class of persons specified in legislative instruments made under subsection (5) and the person’s circumstances are such that the person would be unable to actively participate in the labour market (eg by undertaking job search or suitable paid work).

Classes of persons who might be specified in relevant legislative instruments include principal carers with large families.

New section 502E provides a participation exemption during a period a person is attending a training camp as a reservist member of the Australian Defence Force.

New section 502F and 502G provide participation exemptions in special circumstances and for pre-natal and post natal relief. These provisions are similar to those contained at sections 603A and 603AAA applying to newstart allowance.

New section 502H to 502K set out an exemption because of temporary incapacity and provisions relating to time limits on such an exemption and when an exemption period will end. These are intended to apply similarly as the temporary incapacity exemptions contained at 603C to 603F that apply to newstart allowance.

Part 2 - Compliance

The broad effect of **Item 8** is to allow the Secretary to either cancel or suspend a person's payment if the person fails to comply with a requirement under section 67, 68 or 192 of the Administration Act.

Item 9 basically provides for the same compliance arrangements as are introduced for newstart allowance by Part 3 of Schedule 7.

There are however distinctions between the two sets of arrangements. The main difference relates to what matters constitute a parenting payment participation failure. Unlike newstart allowance, a participation failure for parenting payment (see 500ZA) does not include:

- failure to satisfy the activity test;
- employer contact certificates; and
- job seeker diary.

The fact that the latter two matters are not included as participation failures for Parenting Payment has the consequential effect that other aspects of the new compliance framework that were relevant for newstart allowance are not relevant for parenting payment (compare for example subsection 626(3) for newstart allowance purposes with 500ZB(3) for Parenting Payment purposes).

Item 11 repeals subdivision B of Division that set out rate reductions relating to participation agreement breaches.

Item 10 and **12** clarify that, consistent with the repeal of the participation agreement provisions any, participation agreement breach non-payment period or breach rate reduction periods that may apply to a person will cease on 1 July 2006.

Part 3 – Seasonal work preclusion period

Item 13 omits the reference to a person who is a member of a couple at subsection 500Z(1) with the effect that the seasonal work preclusion period provisions will apply to all parenting payment claimants. **Item 14** applies this amendment from 20 September 2006.

SCHEDULE 5 – YOUTH ALLOWANCE

SUMMARY

Part 1 – RapidConnect

These measures implement new RapidConnect that will, amongst other things, require some persons seeking newstart allowance and youth allowance (not a new apprentice or undertaking full-time study) to register and attend an interview with a Job Network member before their income support payments can commence. More generally, a person can be required to attend an interview at a specified time and place. The allowance will not be payable until the person attends the interview.

Part 2 – Participation

From 1 July 2006, there will be a number of amendments to the Social Security Act that will improve the participation of working age income support recipients. The broad objective of these changes is that working age income support recipients (who are not full time students or new apprentices) should seek and undertake work that is in line with their work capacity. The changes are targeted at people with a disability with the capacity to work 15 or more hours a week in the open labour market, parents with school age children, mature age job seekers, and very long term unemployed job seekers.

Very long term job seekers with a full-time job search requirement and a pattern of work avoidance may be required to undertake an approved program of work for income support payment for up to 50 hours per fortnight (full-time Work for the Dole).

Under current arrangements job seekers are required to take ‘reasonable steps’ to comply with their activity requirements. It is the Government’s intention that from 1 July 2006 job seekers will be required to fully meet their activity requirements, unless they are unreasonable or they have a valid excuse for not meeting them.

Job search requirements will be extended to new groups of youth allowance recipients (other than students and new apprentices) from 1 July 2006.

Job seekers with a partial capacity to work will generally be required to look for and undertake paid work of 15 or more hours a week. They will be taken to satisfy the activity test if they are undertaking suitable paid work of at least 15 hours a week. However, while a person may be required to seek 15 or more hours a week to satisfy the activity test, they may be required to accept an offer of paid work of more than 15 hours per week, provided that it is not unsuitable for that person, to satisfy the activity test. For principal carer parents, access to appropriate child care and reasonable travel time will be taken into account in determining whether particular work is unsuitable.

Principal carer parents will not be required to satisfy the activity test in special circumstances, which may include: cases of domestic violence; children with a physical, intellectual or psychiatric disability or illness; foster caring, recognised home schooling and large families.

People with a temporary incapacity for work, but who have the capacity to undertake a suitable activity, will no longer be exempted from the activity test, and will be required to enter into an activity agreement to undertake a suitable activity.

Part 3 – Compliance

Under this measure, the current breaching regime, under which people can incur lasting financial penalties regardless of subsequent efforts to meet their requirements, is abolished and a new compliance framework is established. A person who persists in their non-compliance, despite being warned, will lose payment until they do comply. As a deterrent to repeated participation failures or more serious failures, an eight week non-payment period will apply. This Bill also introduces a more equitable means of deterring income support recipients from knowingly failing to declare or under-declaring their earnings, in the form of a recovery fee set at 10 per cent of the debt incurred.

BACKGROUND

RapidConnect

To improve the integrity of the income support system, the Government has decided to implement a new RapidConnect model, a work first initiative.

The usual situation is where a newly applying activity tested job seeker claiming newstart allowance or youth allowance (not a new apprentice or undertaking full-time study) will be required to attend an interview with a Job Network member before their income support payments can commence. Job seekers will be referred to an interview with the Job Network within 2 working days of first contact. Centrelink will retain its role as the gateway into employment services.

RapidConnect will reduce delays in job seekers' access to services to connect them with jobs by bringing forward the job seeker's connection with Job Network. Currently job seekers connect after 3 – 4 weeks. Faster access to Job Network will maximise their chance of finding work quickly, reducing or removing the need for income support.

Genuine job seekers who comply will not be disadvantaged by RapidConnect. Non-complying job seekers will have their income support deferred until they attend the Job Network. The usual situation would involve job seekers who attend their Job Network interview within the first 14 days will be back paid to day 1, this includes allowing non-attendance for valid reasons (for example a couple of casual days work or illness). Job seekers that attend after day 14 will have their income support paid

from the date of attendance, for example from day 17 onwards, subject to a discretion that may still allow back payment after day 14.

The usual situation would involve RapidConnect not applying to where it is not appropriate for a person's needs, such as the needs of a person in a remote area.

Participation

These are 2005-06 Budget measures, and will commence on 1 July 2006.

The aim of the measures is to increase workforce participation and reduce welfare dependency. They reflect the key principles that the best form of income comes from a job, not welfare, and that people should be encouraged and supported to work to the level of their capacity.

The new changes will improve the workforce participation of parents, people with a disability, mature age people and very long term unemployed people while maintaining a sustainable and adequate safety net for people who are in genuine need, including people with disabilities who are unable to work. The focus will shift to the capacity people have to work not the number of hours they can't work.

The changes will address the demographic challenges facing the Australian economy from the ageing of the population by increasing the participation of working age people in the Australian labour force. The new measures will allow more people to reduce their welfare dependency and benefit from the social and economic advantages of working.

Compliance

For a detailed discussion of the background of the new compliance regime, see the discussion at Part 3 of Schedule 7 of this Bill which relates to newstart allowance.

EXPLANATION OF CHANGES

AMENDMENT OF THE SOCIAL SECURITY ACT 1991

Part 1 - RapidConnect

Item 1 repeals the existing subsection 544A(1) and inserts a new subsection. Under the new subsection 544A(1) a person can be required to enter into a Youth Allowance Activity Agreement if the Department is contacted in relation to a claim for youth allowance. The application of subsection 544A(1) is no longer restricted to there having to be a person receiving, or having made a claim for, youth allowance.

This measure will assist with the implementation of RapidConnect by enabling the activity agreement to be entered into at the time of the initial interview with the Job Network member, even if a claim has not yet been made.

Item 2 adds a new section 547AA (Youth allowance not payable if a person fails to attend interview etc. in certain circumstances). This new section provides the means by which the RapidConnect measure can be applied. It provides that a person having contacted the Department in relation to youth allowance, and regardless of whether it is before or after making a claim, can be required to attend a certain place at a certain time and until the person does that, youth allowance will not be payable.

Under the new subsection 547AA, youth allowance is not payable if:

- the Department is contacted in relation to a claim for a youth allowance (not a new apprentice or undertaking full-time study). This can occur before or after a claim is made;
- the Department then, as a result of that contact, requires the person to attend an interview at a specified time and place or enter into a Youth Allowance Activity Agreement or both; and
- the person then fails to comply with any of these requirements.

New subsection 547AA(2) provides flexibility in that the Secretary may decide, subject to guidelines in subsection 547AA(3), that new section 547AA is not to apply. Flexibility is needed to allow the section not to be applied in a variety of circumstances where RapidConnect may not be appropriate. The most likely scenarios would include job seekers whose requirements for employment are most appropriately addressed in the first instance by other Government initiatives including the Jobs Pathway Programme, Languages, Literacy and Numeracy Programme, Career Planning Programme, Job Placement Employment and Training (JPET), disability support pension and Disability Open Employment Services.

Under subsection 547AA(3), the Secretary may make guidelines to be complied with in deciding whether section 547AA applies to a person. Any guidelines that are made will be a legislative instrument.

New subsection 547AA(4) details how section 547AA will cease to apply. It ceases when the person complies with any requirements. Importantly, paragraph 547AA(4)(b) enables the Secretary to determine it was an earlier time than the requirements were actually complied with. This allows backdating by effectively allowing the start date for payment to be backdated.

Marie phones Centrelink on 1 August 2008 inquiring about youth allowance. She is identified as suitable for RapidConnect. An appointment is made for Marie to attend an interview with a Job Network Member on 6 August 2008. Payment of youth allowance is now not payable until Marie attends the interview on 6 August 2008. Marie attends Centrelink on 5 August 2008 to complete her claim form for youth allowance. However, she fails to turn up for her interview on 6 August 2008 without any reasonable excuse but, nevertheless, attends the interview re-scheduled for 10 August 2008. A Centrelink officer, as delegate of the Secretary determines that Marie complied with her requirements on 1 August 2008 and this is taken to be her start date.

Under subsection 547AA(5), the Secretary may make guidelines to be complied with in deciding under paragraph 547AA(4)(b) at what earlier time a person will be regarded as having complied with their requirements and thus allowing back dating of the start date. Any guidelines, if made under subsection 547AA(5), will be a legislative instrument.

The usual situation would involve a person making initial contact with Centrelink and then subsequently attending the Job Network Member interview on another date. In the usual situation provided the person lodges a claim within 14 days of initial contact with Centrelink this person will be paid back to the day of initial contact. A person who attends after day 14 will have their income support paid from the date of attendance, though subject to discretion that allows back payment before the interview attendance (but after the claim lodgement date). Flexibility is needed for a variety of situations where, nevertheless, back payment is to be allowed.

New subsection 547AA(6) makes it clear that notwithstanding section 547AA the normal operation of current section 13 (Deemed claim—person contacting Department about a claim for a social security payment) of the Administration Act will apply. It generally provides that if a person makes initial contact with Centrelink, provided the person lodges their claim within 14 days from that initial contact that person will be taken to have made their claim on that day of initial contact. Otherwise, generally, it is the day the claim is lodged.

Daniel contacts Centrelink by telephone on 1 February 2006. He is identified as suitable for RapidConnect. An appointment is made for Daniel to attend an interview with a Job Network Member on 7 February 2006. Payment of youth allowance is now not payable until Daniel attends the interview on 7 February 2006. Daniel does not attend the interview. He finally lodges a claim with Centrelink on 17 February 2006, that is, more than 14 days after initial his contact. Daniel finally attends his Job Network Member interview on 20 February 2006. A Centrelink officer, as delegate of the Secretary is to determine whether any backdating will be allowed. Whilst further investigation of Daniel's reasons for not attending the first Job Network Member interview on 7 February 2006 is being undertaken, whatever is decided in terms of backdating it will not override the operation of section 13 (unless a provision within section 13 means the normal rule does not apply). Therefore the earliest date Daniel can be back dated to the date he lodged his claim, that is, 17 February 2006. In any event the delegate of the Secretary may decide to not back date at all. Then, in accordance with paragraph 547AA(a), the operation of section 547AA will have occurred on 20 February 2006, the date Daniel complied with his requirements.

Part 2 - Participation

New section 540AB is inserted by **Item 3**. Under the new arrangements, there will be situations where the work capacity of a claimant for youth allowance will need to be assessed in order to determine what would be appropriate activities for inclusion in an

activity agreement. Accordingly, where, among other things, the person satisfies the Secretary that:

- the person has a permanent medical condition that would prevent the person from undertaking full-time work; and
- it would be unreasonable to expect the person to satisfy the activity test until the person's work capacity has been assessed

the person will be qualified for youth allowance for a period. The duration of the period is established by subsections (2) and (3).

Where the person is already receiving youth allowance at the time when the Secretary becomes aware of the medical condition, the period will start from the time that the Secretary became aware of the condition. In other cases, the period will start from the time that the person claimed, or is taken to have claimed, youth allowance. These outcomes are achieved by subsection (2).

Under subsection (3), the period will end when the person, having been required by the Secretary to enter into an activity agreement, either enters an agreement or fails to enter an agreement.

However, it is recognised that some people may already be working to capacity or undertaking other appropriate activities, with the effect that they might not be correctly described as 'unemployed' (paragraph 540AB(1)(a) refers). Accordingly, new subsection (4) creates a power for the Secretary to treat a person as unemployed in the circumstances specified. The combined effect of new subsections (5) and (6) is that the Secretary may determine, by legislative instrument, kinds of activities that are not activities to which subsection (4) will apply.

One of the amendments made by **Items 4, 5, 10, 11, 20 to 22, 26 to 28** is consequential on other amendments (e.g. the repeal of subsection 541(2)). Amendments are also made to omit references to the concept of 'reasonable steps'. The concept of "reasonable steps" is subjective and as such causes difficulty and inconsistency in the administration of the relevant provisions. It is the Government's intention that a job seeker should meet each and every requirement included in their activity agreement, unless those requirements are unreasonable or they have a reasonable excuse for not meeting them. It is not consistent with this intention that a person should be able to partially comply with their requirements.

Item 6 omits a redundant reference to CSP and substitutes a reference to PSP.

Item 7 inserts new subsection 541(1B). The effect of that provision is that a person who is a principal carer or who has a partial capacity to work will be taken to satisfy the activity test if the person is undertaking suitable paid work of at least 30 hours per fortnight.

Subsections 541(2) and (2A) are repealed by **Item 8**.

Existing subsection (2) provides for certain matters which the Secretary can require a person to do and if the person complies with the requirement, the person is taken to have satisfied the activity test. For example, the Secretary may require a person to participate in an approved program of work for income support payment or to undertake a course of vocational training. In practice, the current approach adopted for the purpose of participation by job seekers is to include relevant activities in an activity agreement. Accordingly, as subsection (2) is redundant (other than in respect of the subject matter of paragraph (2)(a)), it is repealed.

Existing paragraph (2)(a) is broadly concerned with the Secretary's power to require a person to undertake particular paid work. Unlike the other activities referred to in subsection (2), the requirement to undertake paid work might be notified to the person in the manner contemplated by subsection (2) rather than as a term in an activity agreement. Accordingly, new subsection 541(2) retains the Secretary's power to require a person to undertake particular paid work. Where the person complies with that requirement, the person will satisfy the activity test.

New subsection (2A) makes it clear that the work that the Secretary might require a person to undertake under subsection (2) could involve different hours to the work referred to in the person's activity agreement. For example, under the new arrangements, a person's activity agreement might require the person to be seeking part time work of at least 15 hours per week. This would not in any way prevent the Secretary from requiring the person to undertake particular paid work of (eg) 25 hours provided the work was not unsuitable for the person (section 541D deals with matters relevant to 'unsuitable work'). The intention of the changes is that people should seek and undertake suitable work that is in line with their work capacity. However, principal carers will not be required to look for work or accept work where the hours of work would involve more than 25 hours per week.

The essential effect of new subsection (2B) is that, if a person fails to comply with a requirement under subsection (2), the person cannot be taken to satisfy the activity test in spite of any compliance with subsections (1), or (1A) or with any other provision of the social security law that provides for a person to satisfy the activity test.

The broad effect of **Item 9** is to provide for the ongoing operation of any notification that the Secretary might have undertaken under subsection (2) prior to the commencement of this Item where that notification related to a requirement under paragraph 541(2)(a).

Item 12 repeals section 541C. That provision is concerned with the Secretary's power to require a person to apply for a particular number of advertised job vacancies. As a result of the approach adopted for the purposes of implementing the Welfare to Work measure dealing with an improved compliance framework, these provisions are to be repositioned.

The amendments made by **Items 13** to **16** are relevant to the question of what constitutes ‘unsuitable work’.

The broad effect of new paragraph 541D(1)(ba) is that work will be unsuitable for a person if, in the Secretary’s opinion, the person is the ‘principal carer’ of one or more children and there is no appropriate child care or supervision available for the times when the person would be undertaking the work. New subsection 541D(1AB) set out at Item 16 makes it clear that the reference in paragraph (ba) to ‘the times when the person would be required to undertake the work’ includes reasonable travel time between the person’s home and the place of work (and vice versa).

A person has access to appropriate care and supervision if the requirements specified in any of paragraphs (1AA)(a) to (c) as set out at Item 16 are met. Paragraph (a) deals with situations where the child could be provided with care by an approved child care service and the Secretary considers that that care would be appropriate. Under paragraph (b), the care needs to be care that the principal carer considers suitable and could be provided to the child. Under paragraph (c), a person will have access to appropriate care and supervision if the child could be attending school and, in the Secretary’s opinion, that would be appropriate.

For the purposes of paragraph (a), an approved child care service has the same meaning as in the Family Assistance Administration Act. An approved child care service includes the following kinds of child care services under the Family Assistance Administration Act: a centre-based long day care scheme, a family day care service, an occasional care service, an outside school hours care service, in home care (see explanation), or vacation care service.

The Secretary will bear in mind the cost of child care and accessibility of the child care when making a determination as to the appropriateness of the child care.

Paragraph 541D(1)(d) basically provides that work that would involve a person in being self employed is unsuitable work. Under the changes effected by the Welfare to Work measures, it is recognised that more flexibility will be required in order to appropriately deal with the various scenarios that might arise. As paragraph (d) might operate to restrict desirable flexibility, it is repealed by **Item 14**. This change does not mean that youth allowance will be available as a supplement to people who are engaged in self employment for limited remuneration and guidelines will be developed to ensure that a job seeker undertaking self-employment can only be taken to meet their requirements if it provides an appropriate level of remuneration.

Item 15 replaces current paragraphs 541D(1)(e) and (f) with two new paragraphs. The current paragraphs refer to work covered by an industrial award. The new paragraphs refer to the Australian Fair Pay and Conditions Standard that is defined and set out in the *Workplace Relations Amendment (Work Choices) Act 2005*. (See the definition of the Australian Fair Pay and Conditions Standard in Schedule 1, Part 3.) These new paragraphs (e) and (f) are to immediately commence after the

commencement of Schedule 1 of the *Workplace Relations Amendment (Work Choices) Act 2005*.

Current Paragraph 541D(1)(e) provides that work was unsuitable if, in the opinion of the Secretary, the work was covered by an industrial award but the employer would only employ the person if the person agreed to become a party to an agreement reducing or abolishing rights that the award conferred on employees. This is substituted by new paragraph 541D(1)(e) which provides that work is unsuitable if, in the opinion of the Secretary, the work would be covered by the Australian Fair Pay and Conditions Standard, but the terms and conditions for the work would be below the minimum terms and conditions for the work under the Australian Fair Pay and Conditions Standard.

Current paragraph 541D(1)(f) provides that work was unsuitable if, in the opinion of the Secretary, the work although not covered by an industrial award, the remuneration for the work would have been lower than the minimum applicable rate of remuneration for comparable work that was covered by an industrial award. The new paragraph 541D(1)(f) provides that work is unsuitable if, in the opinion of the Secretary, the work, although not covered by the Australian Fair Pay and Conditions Standard, if the work was covered then terms and conditions for the work would be below the minimum terms and conditions for the work under the Australian Fair Pay and Conditions Standard.

Item 17 repeals subsections 541D(2) and (3).

Under paragraph 541D(1)(g), work is unsuitable for a person if commuting between the person's home and the place of work would be unreasonably difficult. Subsections (2) and (3) provide further meaning to the concept of unreasonably difficult commuting. However, the outcomes for which those 2 provisions provide will not always be appropriate in the context of the changes effected by the Welfare to Work measures. For example, paragraph (2)(a) broadly provides that commuting will not be unreasonably difficult if the journey (either to work or home from work) would not exceed 90 minutes. While 90 minutes will remain the maximum period that will be considered to be suitable, retaining this strict requirement in the legislation would prevent the Secretary from determining that a journey of a lesser duration might still constitute unreasonably difficult commuting in a particular case. Accordingly, subsections (2) and (3) (which is cross referenced to (2)) are repealed to allow flexibility in dealing with the concept of unreasonably difficult commuting.

Section 541E is concerned with the circumstances where a person cannot be required under subsection 541(2) to participate in an approved program of work for income support payment. As subsection 541(2) is being repealed, section 541E is repealed by **Item 18**. This Item also repeals section 541F which is concerned with reasonable steps. The repeal of this provision is consistent with the approach taken in other amendments.

Section 542 specifies certain situations in which a person is not required to satisfy the activity test. The changes made by **Item 19** add to that list (see new sections 542F, 542FA and 542FB which provide exemptions from the activity test in the specified circumstances).

Broadly, existing sections 542A to 542C are concerned with exemptions from the activity test for people who are temporarily incapacitated for work.

The broad effect of the changes made by **Items 23, 24 and 32** is that, if the Secretary is satisfied that a person to whom 542A applies could undertake a suitable activity, the person will cease to have an exemption from the activity test. Instead the person will be required to enter an activity agreement and undertake a suitable activity. New subsection 544A(2A) is inserted which allows the Secretary to require a person to enter into an activity agreement if subsection 542BA(1) applies to the person.

Section 542C is concerned with the maximum exemption period in situations involving temporary incapacity for work. Where a person has an exemption from the activity test under 542A, new subsection 542C(8) makes it clear that the person can cease to be exempt from the activity test as a result of section 542BA even if the person's maximum exemption period has not ended. Similarly, subsection 542BA(3) makes it clear that section 542BA does not prevent a person ceasing to be exempt from the activity test if the person's maximum exemption period ends.

The amendments made by **Item 25** provide for the repeal of existing section 542F (which is concerned with exemptions from the activity test due to undertaking unpaid voluntary work) and the insertion of various 'exemptions' from the activity test in the specified circumstances.

The combined effect of subsection 542F(1) and paragraph 542F(2)(a) is that the Secretary may determine that a person has a domestic violence exemption in respect of a period if the Secretary is satisfied about the following matters:

- (a) the person is the 'principal carer' of at least one child; and
- (b) in the period of 26 weeks prior to the determination, the person has ceased to be a member of a couple; and
- (c) in that same period, the person was subjected to domestic violence; and
- (d) the person has not again become a member of a couple.

It is important to note that there does not need to be any causal link between the separation and the domestic violence. In fact, the domestic violence may have occurred after the separation.

Paragraph (2)(b) (in combination with subsection (1)) provides for an exemption where the Secretary is satisfied that, in relation to the family of a 'principal carer', there are special circumstances that make it appropriate for the person to be not required to satisfy the activity test.

The effect of subsection (5) is that where paragraph (2)(a) applies, the preliminary determination in relation to those circumstances must provide for a 16 week exemption from the activity test. Subsequent determinations of up to 16 weeks can also be made depending on the circumstances of the particular case.

Where paragraph (2)(b) applies, the Secretary may determine a period of up to 16 weeks. Subsequent determinations can also be made (subsection (4) refers).

The effect of subsections (6) and (7) is that, where the Secretary has determined a period of exemption under section 542F, the determination may be revoked if the Secretary is satisfied that the circumstances that gave rise to the exemption are no longer present (or the pre-conditions necessary for the original exercise of the power no longer exist).

Under section 542FA the Secretary may determine that a person has an exemption from the activity test for a period if:

- the person is the principal carer of one or more children who has a physical, intellectual or psychiatric disability or illness and whose care needs are such that the person could not be expected to meet the activity test for the period;
- the person is a principal carer and the person is a ‘registered and active’ foster carer - if the Secretary is satisfied this is the case the Secretary must make a determination exempting the person;
- the person is a home educator (or distance educator) of a child in relation to whom the person is also the principal carer - if the Secretary is satisfied this is the case the Secretary must make a determination exempting the person;
- the person is included in a class of persons specified in legislative instruments made under subsection (5) and the person’s circumstances are such that the person would be unable to actively participate in the labour market (eg by undertaking job search or suitable paid work).

Classes of persons who might be specified in relevant legislative instruments include principal carers with large families.

Where subsections (2) or (3) apply, the Secretary may determine a period of exemption of up to 12 months (subsection (6) refers). Subsequent determinations can also be made (subsection (7) refers).

The effect of subsections (8) and (9) is that, where the Secretary has determined a period of exemption under section 542FA, the Secretary can revoke that determination if the Secretary is satisfied that the circumstances that gave rise to the exemption are no longer present (or the pre-conditions necessary for the original exercise of the power no longer exist).

As a result of the Welfare to Work measures, some people who might previously have sought to claim either parenting payment or disability support pension will now need to establish entitlement to other payments such as youth allowance. One qualification

criterion for youth allowance is that the person must satisfy the activity test (ie be actively seeking and willing to undertake paid work). New section 542FB recognises that, under the new arrangements, a person might be, at the time of claiming youth allowance, already undertaking work or an appropriate activity which would prevent the person from actively seeking work. Provided the Secretary is of the opinion that, because of the work or the activity, it would be unreasonable to expect the person to satisfy activity test, the person will have an exemption from the activity test until such time as an agreement can be negotiated (subsection (4) refers).

The combined effect of new subsections (2) and (3) is that the Secretary may determine, by legislative instrument, kinds of activities that are not activities to which subsection (1) will apply.

Section 544 is concerned with Youth Allowance Activity Agreements. The effect of **Item 29** is that, where a person was in an agreement under section 500A immediately prior to starting to receive youth allowance, the agreement continues in effect as if it were a Youth Allowance Activity Agreement.

Item 30 repeals paragraph 544A(2)(a) as a consequence of other amendments made in this Schedule. That provision previously provided that a person who had a temporary incapacity exemption could not be required to enter an activity agreement. The insertion of new subsection 544A(2A) makes that provision inappropriate.

Item 31 inserts new paragraphs (ba) and (bb) into subsection 544A(2). The effect of this is that a person who has

- a domestic violence exemption;
- a special family circumstances exemption;
- a disabled children exemption; or
- other family circumstances exemption

cannot be required to enter into a Youth Allowance Activity Agreement.

Subsection 544A(4) is concerned with notification of the requirement to enter an activity agreement. Currently, notification must be in writing. Given the various means of communication that are available, this requirement is unnecessarily restrictive. Accordingly, the requirement for the notice to be in writing is omitted and the Secretary will be able to decide what is an appropriate method of communication (**Items 33** and **34**).

Items 35 to **39** amend section 544B which is concerned with the terms of Youth Allowance Activity Agreements. A new subsection (1) is substituted. The existing provision contains a list of activities that the Secretary may require a person to undertake. For example, it specifies such activities as job search, paid work experience and participation in the PSP. While those activities will still be suitable activities in appropriate cases, the new provision is expressed in broad flexible terms, simply referring to activities that the Secretary regards as suitable for the person.

New subsections (1A) and (1B) allow the Secretary, by legislative instrument, to specify kinds of activities that cannot be contained in an agreement. Although the intention here is to make the agreement provisions less restrictive and more flexible, a legislative mechanism is needed to ensure that, over time, job seekers are not permitted or compelled to undertake activities that may not be consistent with the Government's policy intention. The effect of Item 36 is to provide that new subsection (1A) does not apply to Youth Allowance Activity Agreements entered into before the commencement of this Schedule.

Before approving an agreement with a person, subsection 544B(3) provides that the Secretary must have regard to the person's capacity to comply. Subsection (4) then sets out matters that the Secretary is to take into account when considering the person's capacity to comply. Paragraph (a) currently provides that the Secretary is to take into account 'the person's education, experience, skills, age, disability, illness, mental and physical condition'. Item 37 repeals paragraph (a) and substitutes 2 new paragraphs that separately deal with the subject matter in existing paragraph (a).

Paragraph 544B(4)(e) is amended to reflect changes that were made to the provisions dealing with the concept of 'unreasonably difficult commuting'.

Subsections (5A) to (5C) are repealed as they are redundant. Subsection (5) already allows for the review and variation of agreements at any time.

The broad effect of new subsection (7A) is to allow the Secretary, in the specified circumstances, to revoke a requirement for a person to participate in an approved program of work (**Item 40**).

Item 41 repeals sections 544C to 544E.

In part, section 544C requires the Secretary to consider whether a person who has been required to enter into an activity agreement is unreasonably delaying entering into the agreement. If the Secretary does reach that conclusion, the Secretary may give the person a notice that the person is taken to have failed to enter the agreement and, if the notice is given, the person is taken to have so failed. Under subsection (2) the notice must be in writing, set out the reasons for the decision and include a statement about the person's review rights.

This provision is administratively cumbersome and does not add anything to the operation of the compliance regime. There is a separate and clearer provision which deals with a person's failure, without reasonable excuse, to enter an agreement when required to do so. This provision is sufficient to deal with such situations.

Sections 544D and 544E are respectively concerned with the circumstances in which a Youth Allowance Activity Agreement can require a person to undertake development of self-employment or development of a group enterprise or co-operative enterprise. These provisions are now redundant as the programs to which they relate are no longer operative. Accordingly, the provisions are repealed.

This Item also provides for new provisions, sections 544C to 544E.

New sections 544C and 544B are respectively concerned with Youth Allowance Activity Agreements for principal carers and for people with a partial capacity to work. In both cases, where the agreement relates to job search for part-time work, it must specify that the part time work is for at least 15 hours or such other number as the Secretary determines is appropriate having regard to the person's circumstances. New subsection 541(2A) makes it clear that the work that the Secretary might require a person to undertake under subsection 541(2) may involve a number of hours per week that differs from the number of hours per week that the person is required to seek to comply with the activity test. This allows an individual's assessed work capacity to be reflected in their activity requirements. For example, under the new arrangements, a person's activity agreement might require the person to be seeking part time work of at least 15 hours per week. This would not in any way prevent the Secretary from requiring the person to undertake particular paid work of (eg) 25 hours provided the work was not unsuitable for the person. The intention of the changes is that people should seek and undertake suitable work that is in line with their work capacity. However, principal carers will not be required to look for work or accept work where the hours of work would involve more than 25 hours per week.

Section 544E is concerned with the effect of sections 542F and 542FA during any period when those provisions apply to a person who is already a party to an activity agreement. Section 544E states that, in those circumstances, any agreement is taken to be suspended for the period.

Section 546 is concerned with prospective determinations of qualification for youth allowance. **Items 42 to 44** amend that provision in a manner consistent with the amendments that were made to section 600 which is relevant for Newstart Allowance purposes.

Part 3 - Compliance

Item 45

The broad effect of this amendment is to allow the Secretary to either cancel or suspend a person's payment if the person fails to comply with a requirement under section 67, 68 or 192 of the Administration Act.

Item 46

This Item repeals and substitutes Subdivision D of Division 2 of Part 2.11, which relates to youth allowance.

New section 550 is concerned with the concept of a 'youth allowance participation failure'. Examples include a failure to satisfy the activity test, a failure to comply with the terms of a Youth Allowance Activity Agreement and a failure relating to a

job seeker diary. Under paragraph (1)(a), a person will also commit a youth allowance participation failure if the person fails to comply with a reasonable requirement under subsection 63(2) or 64(2) of the Administration Act. Notification of the relevant requirement would need to include information about the fact that a failure to comply with the requirement could constitute a youth allowance participation failure.

The significance of youth allowance participation failures is that they can result in loss of payment including, where a person commits 3 in a 12 month period, an 8 week non-payment period.

The effect of subsections (2) and (3) is that a failure of a kind specified in subsection (1) would not be treated as a youth allowance participation failure in the specified circumstances.

Under subsection (2), a failure will not be a youth allowance participation failure if the person had a reasonable excuse for the failure.

Subsection (3) is concerned with three situations in which the failure occurs in an instalment period in which the person has already committed a youth allowance participation failure. The intention is that, in these situations only, a further act of non-compliance in the same instalment period should not be treated as a further failure for the purposes of determining whether or not an 8 week non-payment period should apply.

The first situation is where the instalment period is the person's first instalment period for youth allowance (paragraph (3)(a) refers).

The second scenario is where the person had not committed a youth allowance participation failure in the instalment period immediately preceding the instalment period in which the failure has occurred.

The third situation is where, although the person had committed a youth allowance participation failure in the immediately preceding instalment period, the person has subsequently complied with a requirement that was notified by the Secretary.

Subsection (4) deals with the interaction of the new compliance framework with the provisions providing for the RapidConnect measure. In effect, where the RapidConnect provisions would apply to a person, the provisions providing for the new compliance framework would not be applicable.

Subsection (5) provides that paragraphs (1)(c) to (j) do not apply to a failure if the person is undertaking full-time study. Subsection (6) provides that subsection (1) does not apply if the person is a new apprentice.

Subsection (7) is concerned with the operation of paragraph (1)(f). That latter provision provides for a youth allowance participation failure if a person fails to

undertake Work for the Dole when required to do so. The effect of subsection (7) is that paragraph (1)(f) does not apply to the person if the person is under 60 and a determination under paragraph 28(4)(b) is in force in respect of the person. That latter provision is relevant in the context of very long term unemployed job seekers who have a pattern of job avoidance. Where a person in relation to whom a 28(4)(b) determination is in place has been required to take part in Work for the Dole and fails to comply, section 551 will apply to the failure (with the effect that an 8 week non-payment period will apply).

Subsection (8) makes it clear that paragraph (1)(j) does not limit the scope of paragraph (1)(d).

Section 550A relates to the power of the Secretary to require a person to apply for a particular number of job vacancies in a period. This allows the Secretary to request verification that a job seeker has applied for advertised or actual job vacancies.

Where a person has committed a youth allowance participation failure, subsection 550B(1) provides that youth allowance is not payable if the Secretary requires the person to undertake an activity (whether the same as the original activity that the person has failed to undertake or some other requirement) and the person fails to do so. The requirement of the Secretary must be a requirement that is to be undertaken during the ‘participation failure instalment period’ (which is defined in subsection (3) and is discussed below).

The effect of the words following paragraph (1)(c) is that where the failure relates to ‘employer contact certificates’ or the ‘job seeker diary’, the requirements of paragraphs (1)(b) and (c) do not need to be satisfied in order for Youth Allowance to be not payable.

Subsection (2) provides for certain situations where section 550B does not apply to a failure. Under paragraph (2)(a), section 550B does not apply if the Secretary is satisfied that the person had a reasonable excuse for not complying with the requirement notified under subsection (1). Paragraph (2)(b) creates a discretion for the Secretary to decide that subsection (1) does not apply to a failure if the Secretary is satisfied that it should not apply.

Subsection (3) defines the concept of the participation failure instalment period. Paragraphs (3)(a) and (b) are respectively concerned with failures relating to employer contact certificates (see paragraphs 550(1)(h) and (i) and section 550A) and the job seeker diary paragraph (paragraph 550(1)(j) refers). In failures of that nature, the participation failure instalment period is the next instalment period to start after the period covered by the certificates or the diary.

Paragraph (3)(c) provides that, in all other cases, the participation failure instalment period is the next instalment period to start after the day on which the Secretary first becomes aware that the person has committed the failure.

Subsection (4) states that section 550B does not apply to a youth allowance participation failure to which section 551 applies. That provision provides for 8 week non-payment periods to apply in the specified circumstances.

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

Section 550D provides for the end of the period of non-payment. In simple terms, the period will end as soon as the person complies with their participation requirements. For a more detailed discussion of the operation of these provisions, see Part 3 of Schedule 7 which relates to newstart allowance.

Subdivision E, which contains sections 551 and 551A, is concerned with repeated or more serious failures (which result in an 8 week non-payment period).

Subsection 551(1) specifies a list of matters that can give rise to an 8 week non-payment period. Paragraphs (1)(b) to (d) are respectively concerned with situations where the person:

- is unemployed due, either directly or indirectly, to a voluntary act of the person;
- is unemployed due to the person's misconduct as a worker;
- has refused or failed, without reasonable excuse, to accept a suitable offer of employment.

Paragraph (1)(e) is concerned with situations where a person fails to undertake Work for the Dole when required to do so. Subsection (6) provides that paragraph (1)(e) only applies if the person is under 60 and a determination under paragraph 28(4)(b) is in force in respect of the person. That latter provision is relevant in the context of very long term unemployed job seekers who have a pattern of job avoidance.

Paragraph (1)(a) is concerned with repeated youth allowance participation failures. Basically it provides for an 8 week non-payment period to apply to a person where the person commits 3 or more youth allowance participation failures in a 12 month period.

Subsection (2) ensures that, where a person had a reasonable excuse for failing to comply with a requirement under subsection (1), that failure does not count for the purposes of this provision. Subsection (3) creates a discretion for the Secretary to decide that subsection (1) does not apply to a failure if the Secretary is satisfied that it should not apply.

Subsection (4) provides that paragraphs (1)(b) to (e) do not apply to a failure if the person is undertaking full-time study or is a new apprentice.

The effect of subsection (5) is that a person who is unemployed due to a voluntary act will not incur an 8 week non-payment period if the Secretary is satisfied that the act was reasonable.

Section 551A provides for the start of the 8 week non-payment period.

Subsection (1) is concerned with situations where the 8 week non-payment period is the result of repeated Youth Allowance participation failures. Paragraph (1)(a) provides for situations involving employer contact certificates and job seeker diaries. In those circumstances, the 8 week non-payment period starts at the start of the participation failure instalment period.

Paragraph (1)(b) provides that, if paragraph (a) does not apply and the failure occurs during the participation failure instalment period for an earlier failure, the non-payment period starts at the start of that participation failure instalment period. A broad example would be where the person has committed a 2nd failure in a 12 month period in the instalment period ending 5 October, the participation failure instalment period for which is the instalment period ending 19 October. If the person commits a 3rd failure during the instalment period ending 19 October, the 8 week non-payment period starts at the beginning of that instalment period.

In all other cases, paragraph (1)(c) provides for the 8 week non-payment period to commence at the start of the next instalment period to start after the day on which the Secretary first became aware that the person committed the failure.

Subsections (2) and (3) are concerned with situations other than those involving repeated failures. Under subsection (3), if paragraphs (1)(b) or (c) (or both) apply and at the time of the voluntary act or misconduct the person was not receiving youth allowance, the 8 week non-payment period starts when the person became unemployed as a result of the voluntary act or misconduct.

In other situations, the 8 week non-payment period starts on the day on which the Secretary determines that section 551 applies to the person.

Item 47

This Item is concerned with situations where, prior to the commencement of the Item, an activity test non-payment period applied to the person and, at the commencement of this Item, the penalty period had not ended. The effect of this transitional provision is that the penalty period continues to apply to the person as if the changes had not been made. That is, the person is required to serve the penalty period. This includes situations where, although a penalty period applied to a person, the penalty period may not have commenced.

Item 48

Stated broadly, this provision is concerned with the ‘breaches’ that occurred prior to the commencement of this Item. The broad effect is that where a person commits a youth allowance participation failure after the commencement of the Item, any ‘breaches’ that occurred in the 12 months prior to that failure would be counted for the purposes of paragraph 551(1)(a), regardless of the fact that the ‘breach’ occurred prior to the commencement of the Item.

However, breaches arising under paragraphs 550(c) to (g) prior to the commencement of this Item will not be counted for the purposes of paragraph 551(1)(a). This is consistent with the treatment of those matters under the Welfare to Work changes. The subject matter contemplated in paragraphs 550(c), (f) and (g) will now result in an 8 week non-payment period while the subject matter covered by paragraphs (d) and (e) will no longer be treated as a participation related matter. In those circumstances, it is considered appropriate for breaches arising under those provisions prior to the commencement of this Item to be disregarded for the purposes of paragraph 551(1)(a).

Items 49 and 50

These amendments repeal the heading to Subdivision A of Division 5. They also repeal Subdivision B of Division 5.

Item 51

Clause (1) of this Item is concerned with situations where, prior to the commencement of the Item, an activity test rate reduction period applied to the person and, at the commencement of this Item, the period had not ended. The effect of this transitional provision is that the penalty period continues to apply to the person as if the changes had not been made. That is, the person is required to serve the penalty period. This includes situations where, although a penalty period applies to a person, the penalty period may not have commenced.

Clause (2) deals with what is intended to happen where an activity test breach rate reduction period is applying to a person under clause (1) and a non-payment period applies to the person under the new compliance framework. Stated broadly, the periods are served concurrently. The person would receive no payment during the period where the new compliance framework would be applicable in relation to the failure that occurred after the commencement of this Item. If payment again became payable, any residual amount of the activity test breach rate reduction period would still need to be served.

Items 52 and 53

These amendments repeal the heading to Subdivision C of Division 5. They also repeal sections 558 to 558G which are concerned with the redundant concept of administrative breaches.

Item 54

This Item is concerned with situations where, prior to the commencement of the Item, an administrative breach rate reduction period applied to the person and, at the commencement of this Item, the penalty period had not ended. The effect of this transitional provision is that the penalty period continues to apply to the person as if the changes had not been made. That is, the person is required to serve the penalty period. This includes situations where, although a penalty period applied to a person, the penalty period may not have commenced.

Item 55

The broad effect of clause (1) is to continue the effect of repealed sections 558A to 558G in the specified circumstances.

Clause (2) deals with what is intended to happen where an administrative breach rate reduction period is applying to a person under clause (1) and a non-payment period applies to the person under the new compliance framework. Stated broadly, the periods are served concurrently. The person would receive no payment during the period where the new compliance framework would be applicable in relation to the failure that occurred after the commencement of this Item. If payment again became payable, any residual amount of the activity test breach rate reduction period would still need to be served.

SCHEDULE 6 – AUSTUDY PAYMENT

SUMMARY

Part 1 - Compliance

Consistent with the approach adopted for other payment types which currently have a breaching regime, the existing regime is abolished and a new compliance framework is established.

Part 2 - Seasonal work preclusion period

The seasonal work preclusion period applies if a person, or the person's partner, has higher than average earnings (measured with reference to Average Weekly Ordinary Time Earnings - AWOTE) from seasonal work undertaken in the 6 months before claiming newstart allowance, mature age allowance, benefit PP (partnered), partner allowance, widow allowance or youth allowance. From 20 September 2006 the seasonal work preclusion period will be extended to any person who claims austudy.

BACKGROUND

Compliance

For a detailed discussion of the background of the new compliance regime, see the discussion at Part 3 of Schedule 7 of this Bill which relates to newstart allowance.

Seasonal work preclusion period

The seasonal work preclusion period ensures that people with higher than average earnings (measured with reference to AWOTE) from seasonal work, support themselves for a period after ceasing a work spell.

The extension of the seasonal work preclusion period to austudy payment and covering the earnings of highly paid contract and intermittent workers will enhance consistency in the eligibility conditions for payments, and ensure that income support is targeted towards those most in need.

EXPLANATION OF CHANGES

AMENDMENT OF THE SOCIAL SECURITY ACT 1991

Part 1 - Compliance

The broad effect of the amendment at **Item 1** is to allow the Secretary to either cancel or suspend a person's payment if the person fails to comply with a requirement under section 67, 68 or 192 of the Administration Act.

Item 2 repeals Subdivision E of Division 2 of Part 2.11A (which relates to activity test non-payment periods for newstart allowance) and substitutes new Subdivision E.

New section 576 is concerned with the concept of an ‘austudy participation failure’. A person commits an austudy participation failure if the person fails to satisfy the activity test. Under paragraph (1)(a) a person will also commit an austudy participation failure if the person fails to comply with a reasonable requirement under subsection 63(2) or 64(2) of the Admin Act. Notification of the relevant requirement would need to include information about the fact that a failure to comply with the requirement could constitute an austudy participation failure.

The significance of austudy participation failures is that they can result in loss of payment or, if a person commits 3 in a 12 month period, an 8 week non-payment period.

The effect of subsections (2) and (3) is that a failure of a kind specified in subsection (1) would not be treated as an austudy participation failure in the specified circumstances.

Under subsection (2) a failure will not be an austudy participation failure if the person had a reasonable excuse for the failure.

Subsection (3) is concerned with three situations in which the failure occurs in an instalment period in which the person has already committed an austudy participation failure. The intention is that, in these situations only, a further act of non-compliance in the same instalment period should not be treated as a further failure for the purposes of determining whether or not an 8 week non-payment period should apply.

The first situation is where the instalment period is the person’s first instalment period for austudy payment (paragraph (3)(a) refers).

The second scenario is where the person had not committed an austudy participation failure in the instalment period immediately preceding the instalment period in which the failure has occurred.

The third situation is where, although the person had committed an austudy participation failure in the immediately preceding instalment period, the person has subsequently complied with a requirement that was notified by the Secretary.

Where a person has committed an austudy participation failure, subsection 576A(1) provides that austudy payment is not payable if the Secretary requires the person to undertake an activity (whether the same as the original activity that the person has failed to undertake or some other requirement) and the person fails to do so. The requirement of the Secretary must be a requirement that is to be undertaken during the ‘participation failure instalment period’.

Subsection (2) provides for certain situations where section 576A does not apply to a failure. Under paragraph (2)(a), section 576A does not apply if the Secretary is satisfied that the person had a reasonable excuse for not complying with the requirement notified under subsection (1). Paragraph (2)(b) creates a discretion for the Secretary to decide that subsection (1) does not apply to a failure if the Secretary is satisfied that it should not apply.

Subsection (3) provides that the participation failure instalment period for an austudy participation failure is the next instalment period to start after the day on which the Secretary first becomes aware that the person has committed the failure.

Subsection (4) states that section 576A does not apply to an austudy participation failure to which section 577 applies. That latter provision provides for 8 week non-payment periods to apply in the specified circumstances.

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

Section 576C provides for the end of the period of non-payment. In simple terms, the period will end as soon as the person complies with their requirements.

Subdivision F, which contains sections 577 and 577A, is concerned with repeated or more serious breaches (which result in an 8 week non-payment period).

Subsection 577(1) provides that an 8 week non-payment period applies to a person if the person commits an austudy participation failure, having committed austudy participation failures on 2 or more occasions during the 12 months preceding that failure.

Subsection (2) ensures that, where a person had a reasonable excuse for failing to comply with a requirement under 576A(1), that failure does not count for the purposes of this provision. Subsection (3) creates a discretion for the Secretary to decide that subsection 577(1) does not apply to a failure if the Secretary is satisfied that it should not apply.

Section 577A provides for the start of the 8 week non-payment period.

Paragraph (a) provides that, if the failure occurs during the participation failure instalment period for an earlier failure, the non-payment period starts at the start of that participation failure instalment period.

In all other cases, paragraph (b) provides for the 8 week non-payment period to commence at the start of the next instalment period to start after the day on which the Secretary first became aware that the person committed the failure.

Item 3 is concerned with situations where, prior to the commencement of the Item, an activity test non-payment period applied to the person and, at the commencement of this Item, the penalty period had not ended. The effect of this transitional provision is that the penalty period continues to apply to the person as if the changes had not been made. That is, the person is required to serve the penalty period. This includes situations where, although a penalty period applied to a person, the penalty period may not have commenced.

Stated broadly, **Item 4** is concerned with the ‘breaches’ that occurred prior to the commencement of this Item. The broad effect is that where a person commits a austudy participation failure after the commencement of the Item, any ‘breaches’ that occurred in the 12 months prior to that failure would be counted for the purposes of subsection 577(1), regardless of the fact that the ‘breach’ occurred prior to the commencement of the Item.

However, breaches arising under paragraphs 576A(1)(b) and (c) prior to the commencement of this Item will not be counted for the purposes of subsection 577(1). This is consistent with the fact that the subject matter of those provisions will no longer be treated as a participation related matter under the Welfare to Work changes. In those circumstances, it is considered appropriate for breaches arising under those provisions prior to the commencement of this Item to be disregarded for the purposes of paragraph 577(1).

Items 5 and 6 repeal a heading and two Subdivisions that are redundant as a result of the changes.

Clause (1) of **Item 7** is concerned with situations where, prior to the commencement of the Item, an activity test rate reduction period applied to the person and, at the commencement of this Item, the period had not ended. The effect of this transitional provision is that the penalty period continues to apply to the person as if the changes had not been made. That is, the person is required to serve the penalty period. This includes situations where, although a penalty period applies to a person, the penalty period may not have commenced.

Clause (2) deals with what is intended to happen where an activity test breach rate reduction period is applying to a person under clause (1) and a non-payment period applies to the person under the new compliance framework. Stated broadly, the periods are served concurrently. The person would receive no payment during the period where the new compliance framework would be applicable in relation to the failure that occurred after the commencement of this Item. If payment again became payable, any residual amount of the activity test breach rate reduction period would still need to be served.

Item 8 is concerned with situations where, prior to the commencement of the Item, an administrative breach rate reduction period applied to the person and, at the commencement of this Item, the penalty period had not ended. The effect of this transitional provision is that the penalty period continues to apply to the person as if

the changes had not been made. That is, the person is required to serve the penalty period. This includes situations where, although a penalty period applied to a person, the penalty period may not have commenced.

The effect of **Item 9** is broadly the same as Item 7 except that the subject matter of this Item is the interaction of administrative breach rate reduction periods and the new compliance framework.

Part 2 – Seasonal work preclusion period

Part 2 of Schedule 6 extends the application of the seasonal work preclusion period to persons claiming austudy payment.

Item 10 inserts a new seasonal workers preclusion period section after section 575E that is modelled on section 500Z as amended by Item 13 of Part 3 of Schedule 4. The new section 575EA applies if a person has lodged a claim for austudy payment and at any time during the 6 months immediately before the day on which the person lodged the claim, the person or the person’s partner has been engaged in seasonal work.

Under subsection 575EA(2) austudy payment will not be payable if the person is subject to a seasonal work preclusion period (as worked out under section 16A(1) of the Social Security Act) or a part of that period as determined by the Secretary.

Under subsection 575EA(3), if the Secretary is satisfied that the person is in severe financial hardship because the person has incurred unavoidable or reasonable expenditure (whether in relation to a claim for austudy payment or any other claim under the Act), the Secretary may determine that the person is not subject to the whole, or any part, of the preclusion period. In this context, ‘severe financial hardship’ has the meaning as set out in subsection 19C(2) of the Act where the person is not a member of a couple and subsection 19C(3) where the person is a member of a couple. ‘Unavoidable or reasonable expenditure’ is set out in subsection 19C(4).

Item 11 amends point 1067L-D22 in the Austudy Payment Rate Calculator to ensure that if a person is subject to a seasonal work preclusion period, if the person receives a lump sum amount for remunerative work after a claim for austudy payment is granted, the person is taken to receive 1/52 of that lump sum amount as ordinary income during each week in the 12 months commencing on the day the person is entitled to receive the lump sum amount.

Item 12 applies the amendments made by this Part to claims for austudy payment made on or after 20 September 2006.

SCHEDULE 7 – NEWSTART ALLOWANCE

SUMMARY

Part 1 - RapidConnect

These measures implement new RapidConnect that will, amongst other things, require some persons seeking newstart allowance and youth allowance (not a new apprentice or undertaking full-time study) to register and attend an interview with a Job Network member before their income support payments can commence. More generally, a person can be required to attend an interview at a specified time and place. The allowance will not be payable until the person attends the interview.

Part 2 - Participation

From 1 July 2006 there will be a number of amendments to the Social Security Act that will improve the participation of working age income support recipients. The broad objective of these changes is that working age income support recipients should seek and undertake work that is in line with their work capacity. The changes are targeted at people with a disability with the capacity to work 15 or more hours a week in the open labour market, parents with school age children, mature age job seekers, and very long term unemployed job seekers.

Very long term job seekers with a full-time job search requirement and a pattern of work avoidance may be required to undertake an approved program of work for income support payment for up to 50 hours per fortnight (full-time Work for the Dole).

Under current arrangements job seekers are required to take 'reasonable steps' to comply with their activity requirements. It is the Government's intention that from 1 July 2006 job seekers will be required to fully meet their activity requirements, unless they are unreasonable or they have a valid excuse for not meeting them.

Job search requirements will be extended to new groups of newstart allowance recipients from 1 July 2006.

Job seekers with a partial capacity to work will generally be required to look for and undertake paid work of 15 or more hours a week. They will be taken to satisfy the activity test if they are undertaking suitable paid work of at least 15 hours a week. However, while a person may be required to seek 15 or more hours a week to satisfy the activity test, they may be required to accept an offer of paid work of more than 15 hours per week, provided that it is not unsuitable for that person, to satisfy the activity test. For principal carer parents, access to appropriate child care and reasonable travel time will be taken into account in determining whether particular work is unsuitable.

Principal carer parents will not be required to satisfy the activity test in special circumstances, which may include: cases of domestic violence; children with a

physical, intellectual or psychiatric disability or illness; foster caring, recognised home schooling and large families.

A current requirement for newstart eligibility is that a person be unemployed. Newstart eligibility requirements will be amended so that people who work part-time and would be entitled to a part rate of payment under the newstart income test, are eligible for payment.

The changes recognise that people aged 50 years or over have the same capacity for work as younger job seekers. From 1 July 2006 newstart recipients aged 50 years or over will have the same job search requirements as younger job seekers. Those aged 55 or over will be able to meet these requirements by undertaking a minimum of 15 hours a week of voluntary and/or paid work.

People with a temporary incapacity for work, but who have the capacity to undertake a suitable activity, will no longer be exempted from the activity test, and will be required to enter into an activity agreement to undertake a suitable activity.

Part 3 - Compliance

Under this measure, the current breaching regime, under which job seekers can incur lasting financial penalties regardless of subsequent efforts to meet their requirements, is abolished and a new compliance framework is established. A job seeker without a record of repeated non-compliance who commits a participation failure, such as missing an interview with an employment service provider, will be given the opportunity to avoid any financial penalty by quickly re-engaging with that provider. A job seeker who persists in their non-compliance, despite being warned, will lose payment until they do comply. As a deterrent to repeated participation failures or more serious failures, such as refusing a job offer, an 8 week non-payment period will apply. This Bill also introduces a more equitable means of deterring income support recipients from knowingly failing to declare or under-declaring their earnings, in the form of a recovery fee set at 10 per cent of the debt incurred.

Part 4 – Consequential amendment

Amendment is made to the portability rules to reflect the changes being made as part of the measure providing for increased participation of the mature aged.

BACKGROUND

RapidConnect

To improve the integrity of the income support system, the Government has decided to implement a new RapidConnect model, a work first initiative.

The usual situation is where a newly applying activity tested job seeker claiming newstart allowance and youth allowance (not a new apprentice or undertaking full-time study) will be required to attend an interview with a Job Network member before

their income support payments can commence. Job seekers will be referred to an interview with the Job Network within 2 working days of first contact. Centrelink will retain its role as the gateway into employment services.

RapidConnect will reduce delays in job seekers access to services to connect them with jobs by bringing forward the job seeker's connection with Job Network. Currently job seekers connect after 3-4 weeks. Faster access to Job Network will maximise their chance of finding work quickly, reducing or removing the need for income support.

Genuine job seekers who comply will not be disadvantaged by RapidConnect. Non-complying job seekers will have their income support deferred until they attend the Job Network. The usual situation would involve job seekers who attend their Job Network interview within the first 14 days will be back paid to day 1, this includes allowing non-attendance for valid reasons (for example a couple of casual days work or illness). Job seekers that attend after day 14 will have their income support paid from the date of attendance, for example from day 17 onwards, subject to a discretion that may still allow back payment after day 14.

The usual situation would involve RapidConnect not applying to where it is not appropriate for a person's needs, such as the needs of a person in a remote area.

Participation

These are 2005-06 Budget measures, and will commence on 1 July 2006.

The aim of the measures is to increase workforce participation and reduce welfare dependency. They reflect the key principles that the best form of income comes from a job, not welfare, and that people should be encouraged and supported to work to the level of their capacity.

The new changes will improve the workforce participation of parents, people with a disability, mature age people and very long term unemployed people while maintaining a sustainable and adequate safety net for people who are in genuine need, including people with disabilities who are unable to work. The focus will shift to the capacity people have to work not the number of hours they cannot work.

The changes will address the demographic challenges facing the Australian economy from the ageing of the population by increasing the participation of working age people in the Australian labour force. The new measures will also allow more people to reduce their welfare dependency and benefit from the social and economic advantages of working.

Compliance

The Australian Government's employment and participation policies are framed in the context of the responsibilities of the respective parties. Government is responsible for providing income support for those who require it and provide employment and

related services to help people into work. In return, job seekers on these income support payments are required under social security law to meet the activity test in order to keep receiving their payment. The activity test requires people to actively seek work and do everything that they can to become ready for work.

The new compliance framework to be introduced on 1 July 2006 focuses on re-engagement as its key principle. It replaces the current breaching regime while building on the success of current suspension arrangements and the Rapid Reconnection process as the most effective means of securing re-engagement with services designed to help job seekers get a job.

Under the new framework, if a job seeker fails to meet a participation requirement, they will generally be able to avoid any financial penalty by quickly re-engaging with their provider or programme. A job seeker who persists in their non-compliance will have their payment withdrawn until they do comply. This will clearly link the receipt of welfare payments to active participation and compliance with their activity agreement, including participation in employment services. An 8 week non-payment period will be retained as a deterrent to more serious failures. These are: repeated participation failures (3 or more in a 12 month period), refusal of a suitable job offer, voluntary unemployment or failure to participate in full-time Work for the Dole (for long term unemployed people who have displayed a pattern of job avoidance).

The new compliance framework replaces the breaching regime that provided little incentive to comply once a penalty had been applied. The new framework is consistent with the recommendations of the Breaching Review Taskforce, which included representatives from the employment services industry and the welfare sector, as well as Government departments.

Consequential amendments

Table Item 15A is repealed as part of the measure dealing with increasing participation of the mature aged.

EXPLANATION OF CHANGES

AMENDMENT OF THE SOCIAL SECURITY ACT 1991

Part 1 - RapidConnect

Item 1 repeals the existing subsection 605(1) and inserts a new subsection. Under the new subsection 605(1) a person can be required to enter into a Newstart Activity Agreement if the Department is contacted in relation to a claim for newstart allowance. It is no longer restricted to there having to be a person receiving, or having made a claim for, newstart allowance.

This measure will assist with the implementation of RapidConnect by enabling the activity agreement to be entered into at the time of the initial interview with the Job Network member, even if a claim has not yet been made.

Item 2 adds a new section 615 (Newstart allowance not payable if person fails to attend interview etc. in certain circumstances). This new section provides the means by which the RapidConnect measure can be applied. It provides that a person having contacted the Department in relation to newstart allowance, and regardless of whether it is before or after making a claim, can be required to attend a certain place at a certain time and until the person does that, newstart allowance will not be payable.

Under the new subsection 615(1), newstart allowance is not payable if:

- there is contact in relation to a claim for a newstart allowance. This can occur before or after a claim is made;
- the Department then, as a result of that contact, requires the person to attend an interview at a specified time and place or enter into a Newstart Allowance Activity Agreement or both; and
- the person then fails to comply with any of these requirements.

New subsection 615(2) provides flexibility in that the Secretary may decide, subject to guidelines in subsection 615(3), that new section 615 is not to apply. Flexibility is needed to allow the section not to be applied in a variety of circumstances where RapidConnect may not be appropriate. The most likely scenarios would include job seekers whose requirements for employment are most appropriately addressed in the first instance by other Government initiatives including the Jobs Pathway Programme, Languages, Literacy and Numeracy Programme, Career Planning Programme, Job Placement Employment and Training (JPET), disability support pension and Disability Open Employment Services.

Under subsection 615(3), the Secretary may make guidelines to be complied with in deciding whether section 615 applies to a person. Any guidelines that are made will be a legislative instrument.

New subsection 615(4) details how section 615 will cease to apply. It ceases when the person complies with any requirements. Importantly, paragraph 615(4)(b) enables the Secretary to determine it was an earlier time than the requirements were actually complied with. This allows backdating by effectively allowing the start date for payment to be backdated.

Marie phones Centrelink on 1 August 2008 inquiring about newstart allowance. She is identified as suitable for RapidConnect. An appointment is made for Marie to attend an interview with a Job Network Member on 6 August 2008. Payment of newstart allowance is now not payable until Marie attends the interview on 6 August 2008. Marie attends Centrelink on 5 August 2008 to complete her claim form for newstart allowance. However, she fails to turn up for her interview on 6 August 2008 without any reasonable excuse but, nevertheless, attends the interview re-scheduled for 10 August 2008. A Centrelink officer, as delegate of the Secretary determines that Marie complied with her requirements on 1 August 2008 and this is taken to be her start date.

Under subsection 615(5), the Secretary may make guidelines to be complied with in deciding under paragraph 615(4)(b) at what earlier time a person will be regarded as having complied with their requirements and thus allowing back dating of the start date. Any Guidelines, if made under subsection 615(5), will be a legislative instrument.

The usual situation would involve a person making initial contact with Centrelink and then subsequently attending the Job Network Member interview on another date. Provided the person lodges a claim within 14 days of initial contact with Centrelink this person will be paid back to the day of initial contact. A person who attends after day 14 will have their income support paid from the date of attendance, though subject to discretion that may still allow back payment before the date of attendance (but after the claim date). Flexibility is needed for a variety of situations where, nevertheless, back payment is to be allowed.

New subsection 615(6) makes it clear that notwithstanding section 615 the normal operation of current section 13 (Deemed claim—person contacting Department about a claim for a social security payment) of the Administration Act will apply. It generally provides that if a person makes initial contact with Centrelink, provided the person lodges their claim within 14 days from that initial contact that person will be taken to have made their claim on that day of initial contact. Otherwise, generally, it is the day the claim is lodged.

Daniel contacts Centrelink by telephone on 1 February 2006. He is identified as suitable for RapidConnect. An appointment is made for Daniel to attend an interview with a Job Network Member on 7 February 2006. Payment of newstart allowance is now not payable until Daniel attends the interview on 7 February 2006. Daniel does not attend the interview. He finally lodges a claim with Centrelink on 17 February 2006, that is, more than 14 days after his initial contact. Daniel finally attends his Job Network Member interview on 20 February 2006. A Centrelink officer, as delegate of the Secretary is to determine whether any backdating will be allowed. Whilst further investigation of Daniel's reasons for not attending the first Job Network Member interview on 7 February 2006 is being undertaken, whatever is decided in terms of backdating it will not over ride the operation of section 13 (unless a provision within section 13 means the normal rule does not apply). Therefore the earliest date Daniel can be back dated, is to the date he lodged his claim, that is, 17 February 2006. In any event the delegate of the Secretary may decide to not back date at all. Then, in accordance with paragraph 615(4)(a), the operation of section 615 will have occurred on 20 February 2006, the date Daniel complied with his requirements.

Part 2 - Participation

Items 3, 4, 7, 9, 10 and 13 make amendments to section 593 that are necessary as a consequence of other changes made in this Bill. For example, existing paragraph 593(1)(c) contains a reference to subsection 604(1). As section 604 is to be repealed, paragraph (1)(c) is amended to omit that reference.

Items 5, 6, 11, 12, 14, 33 to 35 either amend or repeal various provisions and Notes that deal with the concept of ‘reasonable steps’. The concept of ‘reasonable steps’ is subjective and as such causes difficulty and inconsistency in the administration of this provision. It is the Government’s intention that a job seeker should meet each and every requirement included in their activity agreement, unless those requirements are unreasonable or they have a reasonable excuse for not meeting them. It is not consistent with this intention that a person should be able to partially comply with their requirements, which is what this provision allows for.

Subsection 593(2B) is repealed as a consequence of the repeal of subsection 593(2A). It is also inappropriate for some scenarios that might arise under the new arrangements. For example, in order to determine that a person has failed to take reasonable steps to comply with an activity agreement, paragraph 593(2B)(a) requires the Secretary to be satisfied that the terms of the agreement were intended to assist the person in gaining employment or undertaking study or training. Under the flexible arrangements being introduced, the terms of a particular agreement might not immediately reflect those objectives. In those circumstances, paragraph 593(2B)(a) would prevent the Secretary from determining that the person had failed to comply with the agreement even where it was clear that the person had failed to comply. Paragraphs 593(2B)(b) and (c) are not necessary as they describe administrative steps that are implicit in the requirement for the Secretary to determine whether or not a job seeker had a reasonable excuse for failing to meet their requirements.

New subsections 593(1D) to (1F) are inserted by this **Item 8**. Under the new arrangements, there will be situations where the work capacity of a claimant for newstart allowance will need to be assessed in order to determine what would be appropriate activities for inclusion in an activity agreement. Accordingly, where, among other things, the person satisfies the Secretary that:

- the person has a permanent medical condition that would prevent the person from undertaking full-time work; and
- it would be unreasonable to expect the person to satisfy the activity test until the person’s work capacity has been assessed.

the person will be qualified for newstart allowance for a period. The duration of the period is established by subsections (1E) and (F).

Where the person is already receiving newstart allowance at the time when the Secretary becomes aware of the medical condition, the period will start from the time that the Secretary became aware of the condition. In other cases, the period will start from the time that the person claimed, or is taken to have claimed, newstart allowance. These outcomes are achieved by subsection (1E).

Under subsection (1F), the period will end when the person, having been required by the Secretary to enter into an activity agreement, either enters an agreement or fails to enter an agreement.

Item 15 repeals subsections 595(1), (1A), (1B) and (2). Subsections (1A) and (1B) were concerned with certain matters relevant to people who are at least 50. As part of the ‘increasing participation of the mature aged’ initiative, it is intended that job seekers have similar requirements under the legislation. Accordingly those provisions are to be repealed.

While existing subsections 595(1) and (2) are repealed, the substance of those provisions is retained in the new draft provisions. As discussed below, subsection (1) is expanded to include activities other than paid work. Existing paragraph 595(2)(a) contains a reference to subsection 601(2). As that provision is to be repealed new subsection (2) omits that reference (while retaining the subject matter covered in existing paragraph 595(2)(b)).

Section 595 is concerned with the Secretary’s power to treat people as unemployed in certain circumstances. As a result of the Welfare to Work measures, some people who might previously have sought to claim either Parenting Payment or Disability Support Pension will now need to establish entitlement to other payments such as newstart allowance. One qualification criterion for newstart allowance is that the person must be unemployed. However, it is recognised that some people in the affected group will already be working to capacity or undertaking other appropriate activities, with the effect that they might not be correctly described as ‘unemployed’. Accordingly, new subsection 595(1) creates a power for the Secretary to treat a person as unemployed in the circumstances specified in proposed new subsection 595(1).

The combined effect of new subsections 595(1A) and (1B) is that the Secretary may determine, by legislative instrument, kinds of activities that are not activities to which subsection 595(1) will apply.

Subsection 595(2) reflects part of existing subsection (2) by providing that a person who is complying with a Newstart Activity Agreement may also be treated as unemployed.

Item 16 amends paragraph 595(3)(a) by replacing a reference to subsection 601(2) (which is repealed) with a reference to new subsection 601(1A).

Item 17 omits the reference to CSP in paragraph 598(8)(b) as that reference is redundant.

Items 18 to 20 amends section 600, which is concerned with prospective determinations of qualification for newstart allowance. While many job seekers are required to lodge fortnightly forms in order to establish entitlement to payment, this provision (where applicable) allows the Secretary to decide that a person can lodge on a less regular basis. In order to do so, the Secretary must be satisfied that the person will meet certain requirements during the period (eg be qualified and payable and comply with the Act). Subsection 600(2) allows the Minister to determine, by legislative instrument, guidelines for making decisions under paragraph (b).

The person must also meet the requirements specified in at least one of the subsections, 600(3) to (7). Examples of the subject matter covered by those latter provisions include where the person is exempt from the activity test due to a temporary incapacity and where the person is at least 50 and is satisfying the activity test by undertaking unpaid voluntary work. Significantly, subsection (7) is satisfied if the Secretary considers that the person is qualified for Newstart Allowance for any reason that the Secretary considers relevant. The broad effect of Item 19 is to retain the flexibility that that broad discretion provides while Item 20 repeals the specific requirements previously required under subsections (3) to (7). Item 18 amends subsection (1) to allow the Secretary to determine the period that would be applicable in an individual case under section 600.

Subsection 601(1) is amended by **Item 21** by omitting a reference to subsection (3) and substituting a reference to subsection (5). This reflects changes made to section 601 by other Items contained in this Schedule.

Item 22 amends Note 1 to subsection 601(1) to reflect changes made by other amendments in this Schedule.

Item 23 repeals subsections 601(1A) to (2). Existing subsections (1A) to (1F) are concerned with the Secretary's power to require a person to apply for a particular number of advertised job vacancies. As a result of the approach adopted for the purposes of implementing the Welfare to Work measure dealing with an improved compliance framework, these provisions are to be repositioned.

Existing subsection 601(2) provides for certain matters which the Secretary can require a person to do and if the person complies with the requirement, the person is taken to have satisfied the activity test. For example, the Secretary may require a person to participate in an approved program of work for income support payment or to undertake a course of vocational training. In practice, the current approach adopted for the purpose of participation by job seekers is to include relevant activities in an activity agreement. Accordingly, as subsection 601(2) is redundant (other than in respect of the subject matter of subparagraph 601(2)(a)(i)), it is repealed.

Existing subparagraph 601(2)(a)(i) is broadly concerned with the Secretary's power to require a person to undertake particular paid work. Unlike the other activities referred to in subsection 601(2), the requirement to undertake paid work might be notified to the person in the manner contemplated by subsection 601(2) rather than as a term in an activity agreement. Accordingly, new subsection 601(1A) retains the Secretary's power to require a person to undertake particular paid work. Where the person complies with that requirement, the person will satisfy the activity test.

New subsection 601(1B) makes it clear that the work that the Secretary might require a person to undertake under subsection 601(1A) could involve different hours to the work referred to in the person's activity agreement. For example, under the new arrangements, a person's activity agreement might require the person to be seeking part time work of at least 15 hours per week. This would not in any way prevent the Secretary from requiring the person to undertake particular paid work of (eg) 25 hours

provided the work was not unsuitable for the person (subsection 601(2A) deals with matters relevant to ‘unsuitable work’). The intention of the changes is that people should seek and undertake suitable work that is in line with their work capacity. However, principal carers will not be required to look for work or accept work where the hours of work would involve more than 25 hours per week.

The essential effect of new subsection 601(2) is that, if a person fails to comply with a requirement under subsection (1A), the person cannot be taken to satisfy the activity test in spite of any compliance with subsections (1), (4) or (6A) or with any other provision of the social security law that provides for a person to satisfy the activity test.

The broad effect of **Item 24** is to provide for the ongoing operation of any notification that the Secretary might have undertaken under paragraph 601(2)(b) prior to the commencement of this Item where that notification related to a requirement under old subparagraph 601(2)(a)(i).

Item 25 substitutes a reference to subparagraph 601(2)(a)(i), which is repealed, with a reference to new paragraph (1A)(a).

The amendments in **Items 26** to **29** are relevant to the question of what constitutes ‘unsuitable work’.

The broad effect of new paragraph 601(2A)(ba) is that work will be unsuitable for a person if, in the Secretary’s opinion, the person is the ‘principal carer’ of one or more children and there is no appropriate child care or supervision available for the times when the person would be undertaking the work. New subsection 601(2AAB) makes it clear that the reference in paragraph (ba) to ‘the times when the person would be required to undertake the work’ includes reasonable travel time between the person’s home and the place of work (and vice versa).

A person has access to appropriate care and supervision if the requirements specified in any of paragraphs 601(2AAA)(a) to (c) are met. Paragraph (a) deals with situations where the child could be provided with care by an approved child care service and the Secretary considers that that care would be appropriate. Under paragraph (b), the care needs to be care that the principal carer considers suitable that could be provided to the child. Under paragraph (c), a person will have access to appropriate care and supervision if the child could be attending school and, in the Secretary’s opinion, that would be appropriate.

For the purposes of paragraph (a), an approved child care service has the same meaning as in the Family Assistance Administration Act. An approved child care service includes the following kinds of child care services under the Family Assistance Administration Act: a centre-based long day care scheme, a family day care service, an occasional care service, an outside school hours care service, in home care (see explanation), or vacation care service.

The Secretary will bear in mind the cost of child care and accessibility of the child care when making a determination as to the appropriateness of the child care.

Existing paragraph 601(2A)(d) basically provides that work that would involve a person being self employed is unsuitable work. Under the changes effected by the Welfare to Work measures, it is recognised that more flexibility will be required in order to appropriately deal with the various scenarios that might arise. As paragraph (2A)(d) might operate to restrict desired flexibility, it is repealed by **Item 27**. This change does not mean that newstart allowance will be available as a supplement to people who are engaged in self employment for limited remuneration and guidelines will be developed to ensure that a job seeker undertaking self-employment can only be taken to meet their requirements if it provides an appropriate level of remuneration. The usual qualification test requiring a person to be unemployed will remain.

Item 28 replaces current paragraphs 601(2A)(e) and (f) with two new paragraphs. The current paragraphs refer to work covered by an industrial award. The new paragraphs refer to the Australian Fair Pay and Conditions Standard that is defined and set out in the *Workplace Relations Amendment (Work Choices) Act 2005*. (See the definition of the Australian Fair Pay and Conditions Standard in Schedule 1, Part 3.) These new paragraphs (e) and (f) are to immediately commence after the commencement of Schedule 1 of the *Workplace Relations Amendment (Work Choices) Act 2005*.

Current paragraph 601(2A)(e) provides that work was unsuitable if, in the opinion of the Secretary, the work was covered by an industrial award but the employer would only employ the person if the person agreed to become a party to an agreement reducing or abolishing rights that the award conferred on employees. The new paragraph 601(2A)(e) provides that work is unsuitable if, in the opinion of the Secretary, the work would be covered by the Australian Fair Pay and Conditions Standard, but the terms and conditions for the work would be below the minimum terms and conditions for the work under the Australian Fair Pay and Conditions Standard.

Current Paragraph 601(2A)(f) provides that work was unsuitable if, in the opinion of the Secretary, the work although not covered by an industrial award, the remuneration for the work would have been lower than the minimum applicable rate of remuneration for comparable work that was covered by an industrial award. The new paragraph 601(2A)(f) provides that work is unsuitable if, in the opinion of the Secretary, the work, although not covered by the Australian Fair Pay and Conditions Standard, if the work was covered then terms and conditions for the work would be below the minimum terms and conditions for the work under the Australian Fair Pay and Conditions Standard.

As part of the Welfare to Work measure dealing with increasing participation of the mature aged, job seekers of all ages are broadly intended to have similar requirements. Accordingly, **Item 30** amends paragraph 601(2AA)(c) (which is

concerned with what constitutes unsuitable work) by omitting a reference to people over the age of 50.

Under paragraph 601(2A)(g), work is unsuitable for a person if commuting between the person's home and the place of work would be unreasonably difficult. Subsections (2B) and (2C) provide further meaning to the concept of unreasonably difficult commuting. However, the outcomes for which those 2 provisions provide will not always be appropriate in the context of the changes effected by the Welfare to Work measures. For example, paragraph 601(2B)(a) broadly provides that commuting will not be unreasonably difficult if the journey (either to work or home from work) would not exceed 90 minutes. While 90 minutes will remain the maximum period that will be considered to be suitable, retaining this strict requirement in the legislation would prevent the Secretary from determining that a journey of a lesser duration might still constitute unreasonably difficult commuting in a particular case. Accordingly, subsections 601(2B) and (2C) (which is cross referenced to (2B)) are repealed to allow flexibility in dealing with the concept of unreasonably difficult commuting (**Item 31**).

Subsections 601(2E) to (3) either contain references to subsection 601(2) or are cross referenced to each other. As subsection 601(2) is itself repealed, subsections (2E) to (3) would no longer operate as they are currently worded. Accordingly they are repealed by **Item 32** (although the effect of subsections (2E) and (2F) is retained by other amendments in this Schedule – see section 607B).

Item 36 amends Note 1 to subsection 601(5) to remove a reference to section 602 which is repealed.

Item 37 repeals subsection subsection 601(6).

Item 38 substitutes a reference in subsection 601(6A) to CSP with a reference to PSP.

Item 39 repeals subsection 601(7) which contains a definition of the term 'reserves'. That term is inserted into subsection 23(1) (which deals with general definitions) by Part 1 of Schedule 1.

Sections 601A and 602 are repealed by **Item 40**. The matters addressed by section 601A relate to actions that are deemed to be failures of the activity test. While those actions remain relevant for social security law purposes, the approach adopted for the new compliance framework means that section 601A is not required in its current form.

Section 602 is broadly concerned with relief from the activity test for people aged at least 50. As it is broadly intended that job seekers have similar requirements under the legislation, section 602 is repealed as part of the measure providing for increasing participation of the mature aged.

The amendments made by **Item 41** provide for 'exemptions' from the activity test in the specified circumstances.

The combined effect of subsection 602B(1) and paragraph 602B(2)(a) is that the Secretary may determine that a person is not required to satisfy the activity test in respect of a period if the Secretary is satisfied about the following matters:

- (a) the person is the principal carer of at least one child; and
- (b) in the period of 26 weeks prior to the determination, the person has ceased to be a member of a couple; and
- (c) in that same period, the person was subjected to domestic violence in a period of 26 weeks before the determination; and
- (d) the person has not again become a member of a couple.

It is important to note that there does not need to be any causal link between the separation and the domestic violence. In fact, the domestic violence may have occurred after the separation.

Paragraph 602B(2)(b) (in combination with subsection (1)) provides for an exemption where the Secretary is satisfied that, in relation to the family of a principal carer, there are special circumstances that make it appropriate for the person to be not required to satisfy the activity test.

The effect of subsection 602B(5) is that where paragraph 602B(2)(a) applies, the preliminary determination in relation to those circumstances must provide for a 16 week exemption from the activity test. Subsequent determinations of up to 16 weeks can also be made depending on the circumstances of the particular case.

Where paragraph 602B(2)(b) applies, the Secretary may determine a period of up to 16 weeks. Subsequent determinations can also be made (subsection 602B(4) refers).

The effect of subsections 602B(6) and 602B(7) is that, where the Secretary has determined a period of exemption under section 602B, the determination may be revoked if the Secretary is satisfied that the circumstances that gave rise to the exemption are no longer present (or the pre-conditions necessary for the original exercise of the power no longer exist).

Under section 602C the Secretary may make a determination that a person should not be required to satisfy the activity test for a period if:

- the person is the principal carer of one or more children who has a physical, intellectual or psychiatric disability or illness and whose care needs are such that the person could not be expected to meet the activity test for the period;
- the person is a principal carer and the person is a ‘registered and active’ foster carer;
- the person is a home educator (or distance educator) of a child in relation to whom the person is also the principal carer;
- the person is included in a class of persons specified in legislative instruments made under subsection (5) and the person’s circumstances are such that the person would be unable to actively participate in the labour market (eg by undertaking job search or suitable paid work).

Classes of persons who might be specified in relevant legislative instruments include principal carers with large families.

Where subsections (2) or (3) apply, the Secretary may determine a period of exemption of up to 12 months (subsection 602C(6) refers). Subsequent determinations can also be made (subsection 602C(7) refers).

The effect of subsections 602C(7) and (8) is that, where the Secretary has determined a period of exemption under section 602C, he can revoke that determination if the Secretary is satisfied that the circumstances that gave rise to the exemption are no longer present (or the pre-conditions necessary for the original exercise of the power no longer exist).

Subsection 603(1A) is repealed by **Item 42**. That provision provides relief from the activity test in certain circumstances for people aged at least 50 years old. Under the Welfare to Work measure dealing with increasing participation of the mature aged, it is intended that job seekers have similar requirements under the legislation. Accordingly, subsection 603(1A) is repealed.

Item 43

The broad effect of section 603(1A) is to provide relief from the activity test for a period to people who are aged at least 50 years old and who have not been required to satisfy the activity test. The period covered by the exemption is from the date of claim until the person, having been required to enter an activity agreement, has either entered such an agreement or has failed to enter the agreement. The effect of Item 42 is that, where subsection 603(1A) applied to a person immediately before the commencement of this Item, it continues to apply to the person until the person has either entered an agreement or has failed to enter an agreement after being required to enter one.

The wording of existing subparagraph 603(2)(a)(i) includes a reference to the ‘area described in subparagraph 601(2)(a)(iii)’. As that latter provision is being repealed, **Item 44** omits that reference from subparagraph 603(2)(a)(i) and instead inserts an actual description of the relevant area.

Item 45 omits a reference in subsection 603(2)(b) to subsection 601(2) as that latter provision is repealed. A reference to new subsection 601(1A) is inserted.

Item 46 adds new subsections 603(3) and (4). The basic effect of subsection 603(3) is that a person will be taken to satisfy the activity test for a period if the person has been treated as unemployed under new subsection 595(1) and the Secretary considers it appropriate to treat the person as satisfying the activity test. The period will commence from when the person made (or is taken to have made) a claim for newstart allowance and will end when the person has entered into an activity agreement (or when the person fails to enter such an agreement after being required to enter one).

This provision recognises that, under the new arrangements, a person might at the time of claiming newstart allowance be already undertaking an appropriate activity which would prevent the person from actively seeking work. While the person would be qualified for payment if the activity was included in an activity agreement, until such time as an agreement can be negotiated the person effectively has no way of satisfying the activity test and thereby qualifying for payment. The effect of this provision is to treat the person as satisfying the activity test until such time as an activity agreement can be negotiated with the person.

Subsection 603(4) makes it clear that if a person has already been required to enter a Newstart Activity Agreement at the time that subsection 595(1) would first apply to the person, subsection 595(3) does not apply.

Items 47 to 55 make changes to existing section 603AA that is broadly concerned with relief from the activity test for people engaged in voluntary work.

Currently, subsection 603AA(1) provides that a person who is at least 50 years old is taken to satisfy the activity test if the person is engaged in approved full time unpaid voluntary work of at least 32 hours or is engaged, for at least 40 hours, in a combination of full time unpaid voluntary work and suitable paid work for another person.

As part of the measure dealing with increasing participation of the mature aged, the age requirement for subsection 603AA(1) is amended to 55 years old. The requirements in relation to hours of engagement are both changed to 30 hours to reflect the participation requirements that will be relevant for certain people affected by particular Welfare to Work changes. The requirement in paragraph 603AA(1)(a) for the voluntary work to be ‘full time’ is also omitted (refer to Item 46).

New paragraph 603AA(1)(c) is also inserted. The effect of that paragraph is that a person who is at least 55 years old will satisfy the activity test if the person is engaged in suitable paid work of at least 30 hours in the period.

Subparagraph 603AA(1)(b)(ii) currently requires that the paid work be ‘for another person’. This requirement is omitted as it is recognised that, under the new arrangements, there may be some situations where it would be appropriate to allow a person to be engaged in a level of self employment, if that self-employment provides an appropriate level of remuneration.

Subsection 603AA(2) is currently concerned with exemptions from the activity test for people aged under 50 years in certain circumstances. It is inconsistent with the aims of Welfare to Work that a job seeker should be able to choose to satisfy the activity test solely through voluntary work unless it would increase their immediate employment prospects, which is what this provision allows. Accordingly, the provision is repealed by Item 52. Voluntary work can still be included in an activity agreement if the Secretary believes that it is appropriate for the job seeker.

Broadly, existing Subdivision BA of Division 1 of Part 2.12 is concerned with exemptions from the activity test for people who are temporarily incapacitated for work (see in particular section 603C).

Items 53 to 55 make consequential amendments to subsections 603AA(3) and (4) arising from the changes discussed above.

Item 56 inserts new section 603AB. The effect of that provision is that a person who is a principal carer or who has a partial capacity to work will be taken to satisfy the activity test if the person is undertaking suitable paid work of at least 30 hours per fortnight.

The broad effect of the changes made by **Items 57, 58 and 60** is that, if the Secretary is satisfied that a person to whom 603C applies could undertake a suitable activity, the person will cease to have an exemption from the activity test. Instead the person will be required to enter an activity agreement and undertake a suitable activity. Item 60 inserts new subsection 605(2A) which allows the Secretary to require a person to enter into an activity agreement if subsection 603D(1) applies to the person.

Section 603F is concerned with the maximum exemption period in situations involving temporary incapacity for work. Where a person has an exemption from the activity test under 603C, new subsection 603F(7) makes it clear that the person can cease to be exempt from the activity test as a result of section 603D even if the person's maximum exemption period has not ended. Similarly, subsection 603D(3) makes it clear that section 603D does not prevent a person ceasing to be exempt from the activity test if the person's maximum exemption period ends.

Existing sections 604 and 605 contain a high level of duplication. Both are concerned with the Secretary's power to require a person to enter an activity agreement. While section 605 also extends to people who have claimed newstart allowance, both sections provide for the situation where the person is receiving newstart allowance. Both require notice of the requirement to be sent to the person. Both provide that a person cannot be required to enter an activity agreement if the person qualifies for newstart allowance due to the operation of subsection 593(1B).

In order to address the confusion created by that duplication, **Item 59** repeals section 604 while **Items 61 and 62** amend section 605 to include relevant matters from section 604 and also to include additional relevant matters.

Item 61 inserts new subsection 605(2C), the effect of which is that a person cannot be required to enter an activity agreement at any time during which, under section 602B or 602C, the person is not required to satisfy the activity test. Those latter provisions are concerned with people who have exemptions from the activity test (see Item 41).

Item 62 inserts subsections 605(4) to (7). Subsections (4), (6) and (7) reflect provisions currently appearing in section 604 which is to be repealed. Subsection 605(5) deals with the situation of a person who is a party to a Parenting Payment participation agreement immediately prior to the time the person starts to

receive newstart allowance. In those circumstances, the participation agreement has effect as if it is a Newstart Activity Agreement.

Items 63 to 67 amend section 606, which is concerned with the terms of Newstart Activity Agreements. Item 63 substitutes a new subsection 606(1). The existing provision contains a list of activities that the Secretary may require a person to undertake. For example, it specifies such activities as job search, paid work experience and participation in the PSP. While those activities will still be suitable activities in appropriate cases, the new provision is expressed in broad flexible terms, simply referring to activities that the Secretary regards as suitable for the person.

New subsections 606(1A) and 606(1B) allow the Secretary, by legislative instrument, to specify kinds of activities that cannot be contained in an agreement. Although the intention of Item 63 is to make the agreement provisions less restrictive and more flexible, a legislative mechanism is needed to ensure that, over time, job seekers are not permitted or compelled to undertake activities that may not be consistent with the Government's policy intention. The effect of **Item 64** is to provide that new subsection (1A) does not apply to Newstart Activity Agreements entered into before the commencement of this Schedule.

Item 63 also repeals subsections 606(1A) to (1AC) as part of the measure dealing with increasing participation of the mature aged.

Before approving an agreement with a person, the current subsection 606(3) provides that the Secretary must have regard to the person's capacity to comply. The current subsection 606(4) then sets out matters that the Secretary is to take into account when considering the person's capacity to comply. Paragraph 606(4)(a) currently provides that the Secretary is to take into account the person's education, experience, skills, age, disability, illness, mental and physical condition. **Item 65** repeals paragraph 606(4)(a) and substitutes 2 new paragraphs that separately deal with the subject matter in existing paragraph 606(4)(a).

Item 66 amends paragraph 606(4)(e) to reflect changes that were made to the provisions dealing with the concept of 'unreasonably difficult commuting' (see Item 35 above).

Item 67 repeals subsections 606(5A) to (5C). These provisions are redundant as 606(5) allows for the review and variation of agreements at any time.

Item 68 repeals sections 607 to 607B.

In part, the current section 607 requires the Secretary to consider whether a person who has been required to enter into an activity agreement is unreasonably delaying entering into the agreement. If the Secretary does reach that conclusion, the Secretary may give the person a notice that the person is taken to have failed to enter the agreement and, if the notice is given, the person is taken to have so failed. Under the current subsection 607(2) the notice must be in writing, set out the reasons for the decision and include a statement about the person's review rights.

This current provision is administratively cumbersome and does not add anything to the operation of the compliance regime. There is a separate and clearer provision which deals with a person's failure, without reasonable excuse, to enter an agreement when required to do so (section 625 refers). This provision is sufficient to deal with such situations.

Present sections 607A and 607B are respectively concerned with the circumstances in which a Newstart Activity Agreement can require a person to undertake development of self-employment or development of a group enterprise or co-operative enterprise. These provisions are now redundant as the programs to which they relate are no longer operative. Accordingly, the provisions are repealed.

Item 68 also provides for new provisions, sections 607 to 607C.

New sections 607 and 607A are respectively concerned with Newstart Activity Agreements for principal carers and for people with a partial capacity to work. In both cases, where the agreement relates to job search for part time work, it must specify that the part time work is for at least 15 hours or such other number as the Secretary determines is appropriate having regard to the person's circumstances. New subsection 601(1B) makes it clear that the work that the Secretary might require a person to undertake under subsection 601(1A) may involve a number of hours per week that differs from the number of hours per week that the person is required to seek to comply with the activity test. This allows an individual's assessed work capacity to be reflected in their activity requirements. For example, under the new arrangements, a person's activity agreement might require the person to be seeking part time work of at least 15 hours per week. This would not in any way prevent the Secretary from requiring the person to undertake particular paid work of (e.g.) 25 hours provided the work was not unsuitable for the person (subsection 601(2A) deals with matters relevant to 'unsuitable work'). The intention of the changes is that people should seek and undertake suitable work that is in line with their work capacity. However, principal carers will not be required to look for work or accept work where the hours of work would involve more than 25 hours per week.

New subsection 607B(1) is concerned with situations in which the Secretary cannot require a person to participate in an approved program of work for income support payment. These provisions are essentially identical to those contained in repealed subsection 601(2E). The only distinction appears in paragraph (c). That provision previously provided that a person who was at least 50 years of age could not be required to participate in an approved program of work. That restriction is qualified in new section 607B. The restriction does not apply if the person is a person to whom subsection 28(4) applies (which is relevant in the context of the measure dealing with the very long term unemployed).

New subsections 607B(2) and (3) provide for similar outcomes as were provided by subsection 601(2F) (which is repealed). The broad effect of those provisions is to allow the Secretary to revoke a requirement for a person to participate in an approved

program of work if the matters relevant to subsection 607B(1) are present. The requirement is revoked from the date specified in the notice.

Section 607C is concerned with the effect of sections 602B and 602C during any period when those provisions apply to a person who is already a party to an activity agreement. Section 607C states that, in those circumstances, a Newstart Activity Agreement is taken to be suspended for the period.

Items 69 and 70 make amendments to subsection 613(2) that are consequential on other amendments in this Schedule.

Item 71 omits a reference to the CSP in paragraph 620(2)(b).

Part 3 - Compliance

Item 73 repeals and substitutes Subdivision F of Division 1 of Part 2.12, which relates to newstart allowance.

New section 624 is concerned with the concept of a ‘newstart participation failure’. Examples include a failure to satisfy the activity test, a failure to comply with the terms of a Newstart Activity Agreement and a failure relating to a job seeker diary. Under paragraph 624(1)(a), a person will also commit a newstart participation failure if the person fails to comply with a reasonable requirement under subsection 63(2) or 64(2) of the Administration Act. Notification of the relevant requirement would need to include information about the fact that a failure to comply with the requirement could constitute a newstart participation failure.

The significance of newstart participation failures is that they can result in loss of payment (see section 626) or, if a person commits 3 in a 12 month period, an 8 week non-payment period (see section 629).

The effect of subsections 624(2) and (3) is that a failure of a kind specified in subsection 624(1) would not be treated as a newstart participation failure in the specified circumstances.

Under subsection 624(2), a failure will not be a newstart participation failure if the person had a reasonable excuse for the failure.

Subsection 624(3) is concerned with 3 situations in which the failure occurs in an instalment period in which the person has already committed a newstart participation failure. The intention is that, in these situations only, a further act of non-compliance in the same instalment period should not be treated as a further failure for the purposes of determining whether or not an 8 week non-payment period should apply.

The first situation is where the instalment period is the person’s first instalment period for newstart allowance (paragraph 624(3)(a) refers).

The second scenario is where the person had not committed a newstart participation failure in the instalment period immediately preceding the instalment period in which the failure has occurred.

The third situation is where, although the person had committed a newstart participation failure in the immediately preceding instalment period, the person has subsequently complied with a requirement that was notified by the Secretary. For example, in a particular instalment period, a person may have been required to attend an interview with the Job Network and has failed to attend that interview. A new interview is arranged for the person and the person attends that interview. In the next instalment period, a first failure would be treated as a newstart participation failure. However, any other failures in that instalment period would not be treated as newstart participation failure.

Subsection 624(4) deals with the interaction of the new compliance framework with the provisions providing for the RapidConnect measure. In effect, where the RapidConnect provisions would apply to a person, the provisions providing for the new compliance framework would not be applicable.

Subsection 624(5) is concerned with the operation of paragraph 624(1)(f). That latter provision provides for a newstart participation failure if a person fails to undertake Work for the Dole when required to do so. The effect of subsection 624(5) is that paragraph 624(1)(f) does not apply to the person if the person is under 60 years of age and a determination under paragraph 28(4)(b) is in force in respect of the person. That latter provision is relevant in the context of very long term unemployed job seekers who have a pattern of job avoidance. Where a person in relation to whom a paragraph 28(4)(b) determination is in place has been required to take part in Work for the Dole and fails to comply, section 629 will apply to the failure (with the effect that an 8 week non-payment period will apply).

Subsection 624(6) makes it clear that paragraph 624(1)(j) does not limit the scope of paragraph 624(1)(d).

Section 625 relates to the power of the Secretary to require a person to apply for a particular number of job vacancies in a period. This allows the Secretary to request verification that a job seeker has applied for advertised or actual job vacancies. This provision simply repositions existing subsections 601(1A) to (1E).

Where a person has committed a newstart participation failure, subsection 626(1) provides that newstart allowance is not payable if the Secretary requires the person to undertake an activity (whether the same as the original activity that the person has failed to undertake or some other requirement) and the person fails to do so. The requirement of the Secretary must be a requirement that is to be undertaken during the ‘participation failure instalment period’ (which is defined in subsection 626(3) and is discussed below).

The effect of the words following paragraph 626(1)(c) is that where the failure relates to ‘employer contact certificates’ or the ‘job seeker diary’, the requirements of

paragraphs 626(1)(b) and (c) do not need to be satisfied in order for newstart allowance to be not payable.

Subsection 626(2) provides for certain situations where section 626 does not apply to a failure. Under paragraph 626(2)(a), section 626 does not apply if the Secretary is satisfied that the person had a reasonable excuse for not complying with the requirement notified under subsection (1). Paragraph (2)(b) creates a discretion for the Secretary to decide that subsection 626(1) does not apply to a failure if the Secretary is satisfied that it should not apply.

Subsection 626(3) defines the concept of the participation failure instalment period. Paragraphs (3)(a) and (b) are respectively concerned with failures relating to employer contact certificates (see paragraphs 624(1)(h) and (i) and section 625) and the job seeker diary (paragraph 624(1)(j) refers). In failures of that nature, the participation failure instalment period is the next instalment period to start after the period covered by the certificates or the diary.

Paragraph 626(3)(c) provides that, in all other cases, the participation failure instalment period is the next instalment period to start after the day on which the Secretary first becomes aware that the person has committed the failure.

Subsection 626(4) states that section 626 does not apply to a newstart participation failure to which section 629 applies. Section 629 provides for 8 week non-payment periods to apply in the specified circumstances.

Section 627 provides that the period for which newstart allowance is not payable because of section 626 is taken to have commenced at the start of the participation failure instalment period for the newstart participation failure.

Section 628 provides for the end of the period of non-payment. In simple terms, the period will end as soon as the person complies with their participation requirements (e.g. re-engages with the Job Network). Paragraph 628(a) provides for the non-payment period to end once the Secretary is satisfied that the person has complied with the original requirement (or has undertaken the original activity) to which the newstart participation failure relates. Paragraphs 628(b) and (c) are respectively concerned with the situations where the Secretary requires the person to undertake another activity or another requirement in place of the original activity or requirement. Again, once the Secretary is satisfied that the person has undertaken the activity or requirement, the non-payment period ends.

Subdivision FA of Part 3, Schedule 7 which contains sections 629 and 630, is concerned with repeated or more serious breaches (which result in an 8 week non-payment period).

Subsection 629(1) specifies a list of matters that can give rise to an 8 week non-payment period. Paragraphs 629(1)(b) to (d) are respectively concerned with situations where the person:

- is unemployed due, either directly or indirectly, to a voluntary act of the person;
- is unemployed due to the person's misconduct as a worker; or
- has refused or failed, without reasonable excuse, to accept a suitable offer of employment.

Paragraph 629(1)(e) is concerned with situations where a person fails to undertake Work for the Dole when required to do so. Subsection 629(5) provides that paragraph (1)(e) only applies if the person is under 60 years of age and a determination under paragraph 28(4)(b) is in force in respect of the person. That latter provision is relevant in the context of very long term unemployed job seekers who have a pattern of job avoidance.

Paragraph 629(1)(a) is concerned with repeated newstart participation failures. Basically it provides for an 8 week non-payment period to apply to a person where the person commits 3 or more newstart participation failures in a 12 month period. Subsection 629(2) ensures that, where a person had a reasonable excuse for failing to comply with a requirement under 626(1), that failure does not count for the purposes of this provision. Subsection 629(3) creates a discretion for the Secretary to decide that subsection 629(1) does not apply to a failure if the Secretary is satisfied that it should not apply.

The effect of subsection 629(4) is that a person who is unemployed due to a voluntary act will not incur an 8 week non-payment period if the Secretary is satisfied that the act was reasonable.

Section 630 provides for the start of the 8 week non-payment period.

Subsection 630(1) is concerned with situations where the 8 week non-payment period is the result of repeated newstart participation failures. Paragraph 630(1)(a) provides for situations involving employer contact certificates and job seeker diaries. In those circumstances, the 8 week non-payment period starts at the start of the participation failure instalment period.

Paragraph 630(1)(b) provides that, if paragraph 630(1)(a) does not apply and the failure occurs during the participation failure instalment period for an earlier failure, the non-payment period starts at the start of that participation failure instalment period. A broad example would be where the person has committed their second failure in a 12 month period in the instalment period ending 5 October 2006, the participation failure instalment period for which is the instalment period ending 19 October 2006. If the person commits their third failure during the instalment period ending 19 October 2006, the 8 week non-payment period starts at the beginning of that instalment period.

In all other cases, paragraph 630(1)(c) provides for the 8 week non-payment period to commence at the start of the next instalment period to start after the day on which the Secretary first became aware that the person committed the failure.

Subsections 630(2) and (3) are concerned with situations other than those involving repeated failures. Under subsection (3), if paragraphs (1)(b) or (c) (or both) apply and at the time of the voluntary act or misconduct the person was not receiving newstart allowance, the 8 week non-payment period starts when the person became unemployed as a result of the voluntary act or misconduct.

In other situations, the 8 week non-payment period starts on the day on which the Secretary determines that section 629 applies to the person (subsection 630(2) refers).

Item 74 is concerned with situations where, prior to the commencement of the Item, an activity test penalty period (eg a rate reduction or a non-payment period) applied to the person and, at the commencement of this Item, the penalty period had not ended. The effect of this transitional provision is that the penalty period continues to apply to the person as if the changes had not been made. That is, the person is required to serve the penalty period. This includes situations where, although a penalty period applied to a person, the penalty period may not have commenced due to the operation of an existing provision like subsection 644AB(2) or 630B(2).

Item 75

Stated broadly, this provision is concerned with the ‘breaches’ that occurred prior to the commencement of this Item. The broad effect is that where a person commits a newstart participation failure after the commencement of the Item, any ‘breaches’ that occurred in the 12 months prior to that failure would be counted for the purposes of paragraph 629(1)(a), regardless of the fact that the ‘breach’ occurred prior to the commencement of the Item.

However, breaches arising under sections 628, 629, 630 and 630AA prior to the commencement of this Item will not be counted for the purposes of paragraph 629(1)(a). This is consistent with the treatment of those matters under the Welfare to Work changes. The subject matter contemplated in sections 628 to 630 will now result in an 8 week non-payment period while the subject matter covered by section 630AA will no longer be treated as a participation related matter. In those circumstances, it is considered appropriate for breaches arising under those provisions prior to the commencement of this Item to be disregarded for the purposes of paragraph 629(1)(a).

The amendments made by **Item 76** are consequential on other changes being made as part of the Welfare to Work arrangements. For example, as there will no longer be any administrative breach rate reduction periods, this Item amends section 631 of the Social Security Act to remove a reference to that concept.

Item 77 is concerned with situations where, prior to the commencement of the Item, an administrative breach rate reduction period applied to the person and, at the commencement of this Item, the penalty period had not ended. The effect of this transitional provision is that the penalty period continues to apply to the person as if the changes had not been made. That is, the person is required to serve the penalty period. This includes situations where, although a penalty period applied to a person,

the penalty period may not have commenced due to the operation of an existing provision like subsection 644C(2).

Items 78 and 79 repeal provisions that were concerned with concepts that have been made redundant by the new compliance framework (eg activity test penalty periods).

Item 80 makes a minor technical amendment by repealing the heading to Subdivision A of Division 4 of part 2.12, which simply replicated the heading of Division 4 itself.

Item 81 repeals Subdivision AA of Division 4. That subdivision is concerned with the now redundant concept of activity test breach rate reductions.

Division 4 of Part 2.12 is headed ‘Rate of Newstart Allowance’. Subdivision AA of Division 4 deals with various matters relevant to activity test breach rate reductions. That Subdivision is repealed as part of the measure providing for the new compliance framework (see previous Item 81). **Item 82** is concerned with situations where, prior to the commencement of the Item, an activity test breach rate reduction period applied to the person and, at the commencement of this Item, the penalty period had not ended. In those circumstances, subitem 82(1) provides that Subdivision AA of division 4 continues to apply after the commencement of the Item as if it had not been repealed.

Subitem 82(2) deals with what is intended to happen where an activity test breach rate reduction period is applying to a person under clause (1) and a non-payment period applies to the person under the new compliance framework. Stated broadly, the periods are served concurrently. The person would receive no payment during the period where the new compliance framework would be applicable in relation to the failure that occurred after the commencement of this Item. If payment again became payable, any residual amount of the activity test breach rate reduction period would still need to be served.

Items 83 and 84 repeal headings and sections that related to the redundant concept of administrative breach rate reductions.

The effect of this **Item 85** is broadly the same as Item 82 except that the subject matter of this Item is the interaction of administrative breach rate reduction periods and the new compliance framework.

Part 4 – Consequential amendment

Item 86 Table Item 15A in subsection 1217(4) is concerned with the portability of Newstart Allowance in certain cases involving persons aged at least 50 years of age. In effect, it provides that, in circumstances where the person is a party to an activity agreement (other than one requiring the person to undertake job search), Newstart Allowance will remain payable to the person during any temporary absence overseas for up to 13 weeks. Table Item 15A is repealed as part of the measure dealing with increasing participation of the mature aged.

SCHEDULE 8 – EMPLOYMENT ENTRY PAYMENT

SUMMARY

From 1 July 2006, Part 2.13 of the Social Security Act will be amended by inserting various sections to provide an employment entry payment to certain newstart allowance, youth allowance and parenting payment recipients. This Bill inserts new definitions providing for when a person will have a ‘partial capacity to work’ or will be a ‘principal carer’.

Under the current provisions, newstart allowance and parenting payment single recipients (i.e. pension PP (single)) already can be eligible for an employment entry payment. The new employment entry payment sections will extend to other income support recipients and provide different qualification rules for eligibility to an employment entry payment.

The new sections provide newstart allowance and youth allowance (not a new apprentice or undertaking full-time study) recipients access to an employment entry payment if they have a ‘partial capacity to work’ or are single and are identified as a ‘principal carer’. These identified newstart allowees and youth allowees will qualify for an employment entry payment when they will have earned an income from a job that exceeds a threshold amount. Centrelink will also need to be satisfied that the person’s employment is likely to continue for more than four weeks.

Employment entry payment will also be extended under new provisions to newstart allowance and youth allowance (not a new apprentice or undertaking full-time study) recipients who are identified as a ‘principal carer’ or having a ‘partial capacity to work’, and parenting payment single pension (i.e. pension PP (single)) and parenting payment partnered recipients (i.e. benefit PP (partnered)). They will have access to an employment entry payment if they have been on income support for a continuous period of 12 months and commence or increase their hours of work to 15 hours a week. To claim an employment entry payment they will need to have actually worked for at least 15 hours a week for four continuous weeks. Employment entry payment will also be available to parenting payment recipients who do not yet have a work requirement but commence or increase their hours of work to 15 hours a week.

Under these qualification rules the amount of the payment for newstart allowees and youth allowees (not a new apprentice or undertaking full-time study) with a ‘partial capacity to work’ is \$312. The amount of the payment for newstart allowees and youth allowees (not a new apprentice or undertaking full-time study) who are ‘principal carers’ or pension PP (single) or benefit PP (partnered) recipients is \$104. These different rates are contained in the current provisions for employment entry payment. An employment entry payment will only be payable once in every 12 months.

BACKGROUND

The new Welfare to Work measures acknowledge that the best form of income comes from a job, not welfare, and that people should be encouraged and supported to work to the level of their capacity. As a further incentive for participation in the paid labour market, an employment entry payment will be available to single parents, partnered parents and people with a disability on newstart allowance and youth allowance under new eligibility criteria.

Currently, certain social security payment recipients may qualify for an employment entry payment if their income from employment rises above the threshold amount - an amount that generally would cease their qualification to payment. As part of the Welfare to Work measures, people with a partial work capacity and principal carers with a part time work requirement who would have previously received an employment entry payment will retain eligibility to an employment entry payment if their income rises above the threshold amount.

Youth allowance recipients (not undertaking full-time study or who are new apprentices) who have a partial work capacity or who are principal carers with a dependent child will for the first time be eligible for an employment entry payment. For the first time, benefit PP (partnered) recipients will also be eligible for an employment entry payment.

Further, employment entry payment will be available to people with a part time work requirement even if their income from employment does not rise above the threshold amount. Prior to the amendments in this Bill, a person doing part time work would generally not have been eligible for an employment entry payment. From 1 July 2006 employment entry payment will be available to newstart allowance, youth allowance (not undertaking full-time study or who are new apprentices) and parenting payment recipients (both pension PP (single) and benefit PP (partnered)) under the following conditions:

- when a person has started work or increased hours of work to at least 15 hours a week and has sustained the employment for four consecutive weeks; and
- the person has been receiving an income support payment for 12 months or more; and
- the person has not received an employment entry payment in the previous 12 months.

The employment entry payment measures in this Bill are to provide incentives for people to participate in the paid labour market. The amendments made to the employment entry payment will help income support recipients off-set the costs (such as clothes, tools or fares) associated with commencing employment or increasing employment.

EXPLANATION OF CHANGES

AMENDMENT OF THE SOCIAL SECURITY ACT 1991

Item 1 makes a technical amendment at subsection 661(1) by adding in a reference to a person who is not qualified under section 663 or 663D in relation to the employment. Current section 661 already provides an employment entry payment (being for \$104 under current section 662) for newstart allowees. The new sections 663 (Former newstart or youth allowees (increased employment entry payment)—cessation of qualification) and 663D (Former newstart or youth allowees (principal carer of a child)) may have overlapped with section 661. This amendment ensures that it will be either the new section 663 or the new section 663D will prevail rather than section 661.

Item 1 also amends the heading of section 661 replacing it with ‘Former newstart allowees (standard employment entry payment)’. This not only reflects the changes around job search allowees (who were referred to in the current heading of section 661) but also reflect that there will now be an additional type of employment entry payment. Employment entry payments based on the existing provisions refer to “cessation of qualification” (such as new sections 663, 663D and changes to the heading of current section 661). The provisions inserting the new type of employment entry payment are headed ‘no cessation of qualification’ (such as new sections 663B and 663F).

Item 2 inserts a new section 663. It is based on existing employment entry payment rules. This section is based on the current section 664C which currently provides an employment entry payment in certain circumstances to disability support pension recipients. One of the requirements of the new section 663 is that the person must have a ‘partial capacity to work’ as defined in a new definition being added to the Social Security Act in new section 16B. See Schedule 1 for a full explanation of the new definition. This definition will essentially cover people who would have otherwise been eligible for a disability support pension but for the changes to the qualification of the disability support pension. The change at the new subsection 94(5) means that for a person to have a ‘continuing inability to work’ under subsection 94(2), the ‘continuing inability to work’ must be for at least 15 hours per week, at award wages or above instead of 30 hours. The new definition of ‘partial capacity to work’ makes reference, amongst other things, to 30 hours per week, at award wages.

To qualify under the new section 663 the person is required under new subsection 663(1) in addition to having a ‘partial capacity to work’:

- the person must be in paid employment;
- the person’s income from the employment exceeds the ‘threshold amount’;
- immediately before commencing employment the person was receiving newstart allowance or youth allowance (but not undertaking full-time study and was not a new apprentice);
- no other employment entry payment has been paid under part 2.13 of the Social Security Act; and

- the Secretary is of the opinion that the person’s employment is likely to continue for more than 4 weeks.

With this last requirement the Secretary has to be satisfied that the person still has a job (i.e. agreement of employment). Under new subsection 663(3) the Secretary must not decide this more than 28 days before the job commences.

New subsection 663(4) defines the threshold amount. Regardless of whether a person is receiving newstart allowance or youth allowance, rather than make the threshold amount dependent on the allowance actually being received, it was considered in line with current employment entry payment rules and generally easier administratively that the threshold amount be an amount of income just relating to newstart allowance. The threshold amount is the maximum amount per fortnight that a person receiving newstart allowance can earn, derive or receive without it ceasing to be payable, if the person:

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

The new section 663A provides that an employment entry payment under the new section 663 is \$312.

New section 663B (Newstart or youth allowees) is one of the new type of employment entry payments. In comparison to the existing employment entry payments, the main differences are that with the new type of employment entry payment it is not necessary that a person’s income from the employment exceeds the ‘threshold amount’. The current employment entry payment requires that there be an agreement of employment, and the Secretary is of the opinion that the person’s employment is likely to continue for 4 weeks. The new type of employment entry payment, whilst only requiring an increase in employment to at least 15 hours per week, also requires that the person has continued at work for at least 4 consecutive weeks. It is not enough that employment is likely to continue for 4 weeks. That is, the employment must be for at least 4 consecutive weeks that follow one another in uninterrupted succession.

The requirements of section 663B are:

- the person is receiving newstart or youth allowance (not a new apprentice or undertaking full-time study);
- the person has been receiving income support payments in respect of a continuous period of at least 12 months, regardless of whether the payment type changed;
- the person has ‘a partial capacity to work’ as defined (see explanation above in relation to new section 663);
- the person either commenced employment for at least 15 hours per week at award wages or above or increased the hours worked to at least 15 hours per week at award wages or above;

- the employment (or increase in the hours worked) has continued for at least 4 consecutive weeks;
- the person has not previously received a payment under new section 663B in respect of that employment; and
- the person has not received a payment under another section in Part 2.3 in the last 12 months.

The combined effect of the last two bullet points (which refer to the requirements in new paragraphs 663B(g) and (h)) restrict the application of new section 663B, particularly as it relates to the employment requirement. To satisfy the new section 663B the person must have either commenced employment for at least 15 hours per week at award wages or above or increased employment to at least 15 hours per week. The intention of the words ‘to at least 15 hours per week’ in subparagraph 663B(e)(i) is that the hours of employment must have increased from a point that was below 15 hours a week. In addition to only one employment entry payment being able to be paid each year, under new subsection 663B only one employment entry payment is payable in respect of the particular employment.

Robert commences work with his employer on 1 July 2007 in the information technology section. He is working 20 hours a week. He otherwise satisfies the requirements of section 663B and receives an employment entry payment of \$312 on 15 July 2007. On 2 August 2008 his hours are increased to 21 hours and he transfers to the general office of his employer. John would not be eligible for a further employment entry payment under section 663B. Although it is over 12 months ago, John has already received an employment entry payment under section 663B in respect of employment with that particular employer.

New section 663C provides that an employment entry payment under the new section 663B is \$312.

The Bill inserts a new section 663D (Former newstart or youth allowees (principal carer of a child)). Whilst similar to the new section 663, the new section 663D is based on existing employment entry payment rules in current section 664A (sole parent pension recipients – this heading is being changed – see new section 664BB). Currently, section 664A provides an employment entry payment in certain circumstances to pension PP (single) recipients and for this reason the new section 663D does not also extend to partnered principal carers formerly receiving newstart allowance or youth allowance. These recipients are covered by other employment entry payments (see below).

Under new section 663D the person must be a principal carer of the child and not a member of a couple. Both these terms are defined in subsections 5(15) to 5(24) and subsections 4(2) to 4(6A) respectively in the Social Security Act and notes in the new section refer the reader to the relevant definitions. To qualify under section 663D:

- the person must be the principal carer of a child;
- the person is not a member of a couple;
- the person starts to earn income from employment or the person’s income from employment increases;

- the person’s income from the employment exceeds the ‘threshold amount’;
- immediately before commencing employment the person was receiving newstart allowance or youth allowance (but not undertaking full-time study and was not a new apprentice);
- no other employment entry payment has been paid under part 2.13 of the Social Security Act; and
- the Secretary is of the opinion that the person’s employment is likely to continue for more than 4 weeks.

With this last requirement the Secretary has to be satisfied that the person still has a job (i.e. agreement of employment) when deciding to grant the employment entry payment. Under new subsection 663D(3) the Secretary must not decide this more than 14 days before the job commences which is the same time allowed in current subsection 664A(3).

New subsection 663D(4) is identical to new subsection 663(4). The threshold amount is the maximum amount per fortnight that a person receiving newstart allowance without it ceasing to be payable, if the person:

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

New section 663E provides that an employment entry payment under the new section 663D is \$104.

New section 663F (Newstart or youth allowees (principal carer of a child)) is like new section 663B, that is, it is one of the new type of employment entry payments. In comparison to the existing employment entry payments, the main differences are that with the new type of employment entry payment it is not necessary that a person’s income from the employment exceeds the ‘threshold amount’. The new type of employment entry payment, whilst only requiring an increase in employment to at least 15 hours per week, also requires that the person has worked for at least 4 consecutive weeks. It is not enough that employment is likely to continue for 4 weeks. That is, the employment must be for at least 4 consecutive weeks that follow one another in uninterrupted succession.

The requirements of section 663F are:

- the person must be the principal carer of a child;
- the person is receiving newstart or youth allowance (not a new apprentice or undertaking full-time study);
- the person has been receiving income support payments in respect of a continuous period of at least 12 months, regardless of whether the payment type changed;
- the person either commenced employment for at least 15 hours per week at award wages or above or increased the hours worked to at least 15 hours per week;

- the employment (or increase in the hours worked) has continued for at least 4 consecutive weeks;
- the person has not previously received a payment under new section 663F in respect of that employment.
- the person has not received a payment under another section in Part 2.3 in the last 12 months.

As with new 663B, to satisfy the new section 663F the person must have either commenced employment for at least 15 hours per week at award wages or above or increased employment to at least 15 hours per week. The intention of the words ‘to at least 15 hours per week’ in subparagraph 663B(e)(i) is that the hours of employment must have increased from a point that was below 15 hours a week. In addition to only one employment entry payment being able to be paid each year, under new subsection 663F only get employment entry payment is payable in respect of a particular employment. (See also the example given for new section 663B.)

New section 663G provides that an employment entry payment under the new section 663F is \$104.

New section 664BA (Parenting Payment Recipients) is, like new sections 663B and 663F, one of the new type of employment entry payments. In comparison to the existing employment entry payments, the main differences are that with the new type of employment entry payment it is not necessary that the person’s income from the employment exceeds the ‘threshold amount’. The new type of employment entry payment, whilst only requiring an increase in employment to at least 15 hours per week, also requires that the person has continued at work for at least 4 consecutive weeks. It must have already continued for at least 4 consecutive weeks. That is, at least 4 weeks that follow one another in uninterrupted succession.

The new section 664BA provides an employment entry payment to parenting payment recipients, both parenting payment single recipients (pension PP (single)) and parenting payment partnered recipients (i.e. benefit PP (partnered)). This new section is also available to parenting payment recipients who do not have a work requirement.

The requirements of section 664BA are:

- the person must be the principal carer of a child;
- the person is receiving a pension PP (single) or a benefit PP (partnered);
- the person has been receiving income support payments in respect of a continuous period of at least 12 months, regardless of whether the payment type changed;
- the person either commenced employment for at least 15 hours per week at award wages or above or increased the hours worked to at least 15 hours per week;
- the employment (or increase in hours worked) has continued for at least 4 consecutive weeks;
- the person has not previously received a payment under new section 664BA in respect of that employment;

- the person has not received a payment under another section in Part 2.3 in the last 12 months.

As with new 663B and 663F, to satisfy the new section 664AB the person must have either commenced employment for at least 15 hours per week at award wages or above or increased employment to at least 15 hours per week. The intention of the words ‘to at least 15 hours per week’ in subparagraph 664AB(d)(i) is that the hours of employment must have increased from a point that was below 15 hours a week. In addition to only one employment entry payment being able to be paid each year, under new subsection 663F only one employment entry payment is payable in respect of a particular employment. (See also the example given for new section 663B).

New section 664BB provides that an employment entry payment under the new section 664BA is \$104.

New section 664BB in the note also replaces the heading of existing section 664A to ‘pension PP (single) recipients’.

Items 4, 5, and 6 insert necessary consequential amendments for cross referencing of the new sections in current section 665 which sets out the need for a claim.

Item 7 provides that in relation to the new type of employment entry payment in the new sections 663B, 663F or 664BA, the time period to make a claim is 56 days after the commencement of employment or increase in the hours worked. The current employment entry payment sections have a time limit of 28 days. The reason why the new type of employment entry payments have double the time period (56 days) is because a person must have completed employment for at least 4 consecutive weeks whereas the existing employment entry payment only requires that the Secretary be of the opinion that the person’s employment is likely to continue for more than 4 weeks. Under the new employment entry payment a person can only qualify after the 4 consecutive weeks of work are completed. Therefore, a period of up to 8 weeks (i.e. 56 days) has been allowed from when the employment commenced or increased for a person to claim a new type of employment entry payment.

SCHEDULE 9 – SICKNESS ALLOWANCE

SUMMARY

The seasonal work preclusion period applies if a person, or the person's partner, has higher than average earnings (measured with reference to Average Weekly Ordinary Time Earnings - AWOTE) from seasonal work undertaken in the six months before claiming newstart allowance, mature age allowance, benefit PP (partnered), partner allowance, widow allowance or youth allowance. From 20 September 2006 the seasonal work preclusion period will be extended to any person who claims sickness allowance.

BACKGROUND

The seasonal work preclusion period ensures that people with higher than average earnings (measured with reference to Average Weekly Ordinary Time Earnings) from seasonal work support themselves for a period after ceasing a work spell.

The extension of the seasonal work preclusion period to sickness allowance and covering the earnings of highly paid contract and intermittent workers will enhance consistency in the eligibility conditions for payments and ensure that income support is targeted towards those most in need.

EXPLANATION OF CHANGES

AMENDMENT OF THE SOCIAL SECURITY ACT 1991

This Schedule extends the application of the seasonal work preclusion period to persons claiming sickness allowance.

Item 1 inserts a new seasonal workers preclusion period section at the end of Subdivision C of Division 1 of Part 2.14 of Chapter 2 that is modelled on section 500Z as amended by Item 13 of Part 3 of Schedule 4. The new section 697 applies if a person has lodged a claim for sickness allowance and at any time during the 6 months immediately before the day on which the person lodged the claim, the person or the person's partner has been engaged in seasonal work.

Under subsection 697(2) sickness allowance will not be payable if the person is subject to a seasonal work preclusion period (as worked out under section 16A of the Act) or a part of that period as determined by the Secretary.

Under subsection 697(3), if the Secretary is satisfied that the person is in severe financial hardship because the person has incurred unavoidable or reasonable expenditure (whether in relation to a claim for sickness allowance or any other claim under the Act), the Secretary may determine that the person is not subject to the whole, or any part, of the preclusion period. In this context, 'severe financial hardship' has the meaning as set out in subsection 19C(2) of the Act where the person

is not a member of a couple and subsection 19C(3) where the person is a member of a couple. ‘Unavoidable or reasonable expenditure’ is set out in subsection 19C(4).

Item 2 applies the amendments made by this Part to claims for sickness allowance made on or after 20 September 2006.

SCHEDULE 10 – SPECIAL BENEFIT

SUMMARY

Part 1 – Participation

From 1 July 2006 there will be a number of amendments to the Social Security Act that will improve the participation working age income support recipients. The broad objective of these changes is that working age income support recipients should seek and undertake work that is in line with their work capacity. The changes are targeted at people with a disability with the capacity to work 15 or more hours a week in the open labour market, parents with school age children, mature age job seekers, and very long term unemployed job seekers.

For special benefit recipients, these measures involve changes and enhancements to activity testing arrangements (and a new compliance regime) comparable to the new participation arrangements for newstart allowance recipients. These changes will continue the alignment between participation arrangements for special benefit and other working age payments.

Part 2 – Compliance

Under this measure, the current breaching regime (under which people with participation requirements can incur lasting financial penalties regardless of subsequent efforts to meet their requirements) is abolished and a new compliance framework is established. Under the new regime, where there is a participation failure, there will be the opportunity to avoid any financial penalty by quickly re-engaging. An activity tested special benefit recipient who persists in non-compliance, despite being warned, will lose payment until they comply. As a deterrent to repeated participation failures or more serious failures, such as refusing a job offer, an eight week non-payment period will apply. This Bill also introduces a more equitable means of deterring income support recipients from knowingly failing to declare or under-declare their earnings, in the form of a recovery fee set at 10 per cent of the debt incurred.

Part 3 – Rate of special benefit

Part 3 of Schedule 10 inserts new subsections with the effect that special benefit recipients will continue on their same payment rates as are currently provided under the social security law.

BACKGROUND

Participation

As part of the 2000-2001 Budget, the Government announced a range of measures addressing the issue of unauthorised arrivals including the extension of activity testing to holders of visas issued for temporary protection purposes. From 1 January

2003 holders of specified temporary protection visas who are of workforce age are required to search for work, participate in prescribed activities and enter into a Special Benefit Activity Agreement. This participation regime is similar to that which operates in relation to newstart allowance. Other newstart allowance conditions relating to exemptions from the activity test and a compliance regime also apply as part of the participation arrangements for special benefit.

Schedule 10 amends the current activity testing arrangements for special benefit so as to align them with the new participation arrangements for newstart allowance and other working age payments. However, the group of special beneficiaries subject to these requirements will not change.

Compliance

For a detailed discussion of the background to the new compliance regime, see the discussion at Part 3 of Schedule 7 of this Bill which relates to newstart allowance.

EXPLANATION OF CHANGES

AMENDMENT OF THE SOCIAL SECURITY ACT 1991

Part 1 - Participation

Items 1 to 3, 5 to 7, 40 and 41 either amend or repeal various provisions that deal with the concept of ‘reasonable steps’. The concept of ‘reasonable steps’ is subjective and as such causes difficulty and inconsistency in the administration of this provision. It is the Government’s intention that a job seeker should meet each and every requirement included in their activity agreement, unless those requirements are unreasonable or they have a reasonable excuse for not meeting them. It is not consistent with this intention that a person should be able to partially comply with their requirements, which is what this concept allows for.

Item 4 repeals subsections 731A(7) to (10) and substitutes subsections (7) to (9).

In broad terms, existing subsection 731A(7) set out the programs, courses and activities that a person can be required to undertake in order to satisfy the activity test. In practice, the current approach adopted for the purpose of participation by job seekers is to include relevant activities in the person’s activity agreement. Accordingly, as subsection (7) is largely redundant (other than in respect of the subject matter of subparagraph (7)(a)(i)), it is repealed.

Existing subparagraph (7)(a)(i) is broadly concerned with the Secretary’s power to require a person to undertake particular paid work. Unlike the other activities referred to in the existing subsection (7), the requirement to undertake paid work might be notified to the person in the manner contemplated by that subsection rather than as a term in an activity agreement. Accordingly, new subsection (7) retains the Secretary’s power to require a person to undertake particular paid work. Where the person complies with that requirement, the person will satisfy the activity test.

New subsection (8) makes it clear that the work that the Secretary might require a person to undertake under subsection (7) could involve different hours to the work referred to in the person's activity agreement. For example, under the new arrangements, a person's activity agreement might require the person to be seeking part time work of at least 15 hours per week. This would not prevent the Secretary from requiring the person to undertake particular paid work of (e.g.) 20 hours provided the work was not unsuitable for the person (section 731B deals with matters relevant to 'unsuitable work').

The essential effect of new subsection 731A(9) is that, if a person fails to comply with a requirement under subsection (7), the person cannot be taken to satisfy the activity test in spite of any compliance with subsections (1) or (11) or with any other provision of the social security law that provides for a person to satisfy the activity test.

Item 8 amends a reference in subsection 731B(1) as a consequence of a change made by other amendments in this Schedule.

The amendments made by **Items 9** to **12** are relevant to the question of what constitutes 'unsuitable work'.

The broad effect of the new paragraph 731B(1)(ba) is that work will be unsuitable for a person if, in the Secretary's opinion, the person is the 'principal carer' (subsections 5(15) to (24) refer) of one or more children and there is no appropriate child care or supervision available for the times when the person would be undertaking the work. New subsection 731B(1B) makes it clear that the reference in paragraph (1)(ba) to 'the times when the person would be required to undertake the work' includes reasonable travel time between the person's home and the place of work (and vice versa).

A person has access to appropriate care and supervision if the requirements specified in any of paragraphs 731B(1A)(a) to (c) are met. Paragraph (a) deals with situations where the child could be provided with care by an approved child care service and the Secretary considers that care would be appropriate. Under paragraph (b), the care needs to be care that the principal carer considers suitable and could be provided to the child. Under paragraph (c), a person will have access to appropriate care and supervision if the child could be attending school and, in the Secretary's opinion, that would be appropriate.

For the purposes of paragraph (a), an approved child care service has the same meaning as in the Family Assistance Administration Act. An approved child care service includes the following kinds of child care services under the Family Assistance Administration Act: a centre-based long day care scheme, a family day care service, an occasional care service, an outside school hours care service, in home care or vacation care service.

The Secretary will bear in mind the cost of child care and accessibility of the child care when making a determination as to the appropriateness of the child care.

Paragraph 731B(1)(d) basically provides that work that would involve a person in being self employed is unsuitable work. Under the changes effected by the Welfare to Work measures, it is recognised that more flexibility will be required in order to appropriately deal with the various scenarios that might arise. As paragraph (d) might operate to restrict desirable flexibility, it is repealed (**Item 10**).

Item 11 replaces current paragraphs 731B(1)(e) and (f) with two new paragraphs. The current paragraphs refer to work covered by an industrial award. The new paragraphs refer to the Australian Fair Pay and Conditions Standard that is defined and set out in the *Workplace Relations Amendment (Work Choices) Act 2005*. (See the definition of the Australian Fair Pay and Conditions Standard in Schedule 1, Part 3.) These new paragraphs (e) and (f) are to immediately commence after the commencement of Schedule 1 of the *Workplace Relations Amendment (Work Choices) Act 2005*.

Paragraph 731B(1)(e) had previously provided that work was unsuitable if, in the opinion of the Secretary, the work was covered by an industrial award but the employer would only employ the person if the person agreed to become a party to an agreement reducing or abolishing rights that the award conferred on employees. The new paragraph 731B(1)(e) provides that work is unsuitable if, in the opinion of the Secretary, the work would be covered by the Australian Fair Pay and Conditions Standard, but the terms and conditions for the work would be below the minimum terms and conditions for the work under the Australian Fair Pay and Conditions Standard.

Paragraph 731B(1)(f) had previously provided that work was unsuitable if, in the opinion of the Secretary, the work although not covered by an industrial award, the remuneration for the work would have been lower than the minimum applicable rate of remuneration for comparable work that was covered by an industrial award. The new paragraph 731B(1)(f) provides that work is unsuitable if, in the opinion of the Secretary, the work, although not covered by the Australian Fair Pay and Conditions Standard, if the work was covered by the terms and conditions for the work would be below the minimum terms and conditions for the work under the Australian Fair Pay and Conditions Standard.

As part of the Welfare to Work measure dealing with increasing participation of the mature aged, job seekers of all ages are broadly intended to have similar requirements. Accordingly, paragraph 731B(2)(c) (which is concerned with what constitutes unsuitable work) is amended by omitting a reference to people over the age of 50 (**Item 13**).

Under paragraph 731B(1)(g), work is unsuitable for a person if commuting between the person's home and the place of work would be unreasonably difficult. Subsections (5) and (6) provide further meaning to the concept of unreasonably difficult commuting. However, the outcomes for which those 2 provisions provide

will not always be appropriate in the context of the changes effected by the Welfare to Work measures. For example, paragraph (5)(a) broadly provides that commuting will not be unreasonably difficult if the journey (either to work or home from work) would not exceed 90 minutes. While 90 minutes will remain the maximum period that will be considered to be suitable, retaining this strict requirement in the legislation would prevent the Secretary from determining that a journey of a lesser duration might still constitute unreasonably difficult commuting in a particular case. Accordingly, subsections (5) and (6) are repealed to allow flexibility in dealing with the concept of unreasonably difficult commuting (**Item 14**).

Item 15 repeals section 731C. That provision relates to certain actions that are taken to constitute failure of the activity test. The provision is repealed as part of the Welfare to Work measure providing for a new compliance framework.

Item 16 reworks paragraph 731D(a) to take account of the repeal of existing subsection 731A(7) without altering the broad effect of the provision. It is a consequential change.

The amendments made by **Item 17** provide for ‘exemptions’ from the activity test in the specified circumstances.

The combined effect of subsection 731DA(1) and paragraph 731DA(2)(a) is that the Secretary may determine that a person is not required to satisfy the activity test in respect of a period if the Secretary is satisfied about the following matters:

- (a) the person is the principal carer of at least one child; and
- (b) in the period of 26 weeks prior to the determination, the person has ceased to be a member of a couple; and
- (c) in that same period, the person was subjected to domestic violence; and
- (d) the person has not again become a member of a couple.

It is important to note that there does not need to be any causal link between the separation and the domestic violence. In fact, the domestic violence may have occurred after the separation.

The effect of subsection (5) is that where paragraph (2)(a) applies, the preliminary determination in relation to those circumstances must provide for a 16 week exemption from the activity test. Subsequent determinations of up to 16 weeks can also be made depending on the circumstances of the particular case.

Paragraph 731DA(2)(b) (in combination with subsection (1)) provides for an exemption where the Secretary is satisfied that, in relation to the family of a principal carer, there are special circumstances that make it appropriate for the person to be not required to satisfy the activity test.

Where paragraph (2)(b) applies, the Secretary may determine a period of up to 16 weeks. Subsequent determinations can also be made (subsection (4) refers).

The effect of subsections (6) and (7) is that, where the Secretary has determined a period of exemption under section 731DA, he can revoke that determination if the Secretary is satisfied that the circumstances that gave rise to the exemption are no longer present (or the pre-conditions necessary for the original exercise of the power no longer exist).

Classes of persons who might be specified in relevant legislative instruments include principal carers with large families.

Subsection 731DB(2) is concerned with the Secretary's power to make a determination that a person is not required to satisfy the activity test for a period if the person is the principal carer of one or more children who has a physical, intellectual or psychiatric disability or illness and the child's care needs are such that the person could not be expected to meet the activity test for the period determined by the Secretary.

Subsection (3) allows the Secretary to determine a person is not required to satisfy the activity test in respect of a period if the Secretary is satisfied that:

- the person is the principal carer of one or more children who has a physical, intellectual or psychiatric disability or illness and whose care needs are such that the person could not be expected to satisfy participation requirements for the period;
- the person is a principal carer and the person is a 'registered and active' foster carer - if the Secretary is satisfied this is the case the Secretary must make a determination exempting the person;
- the person is a home educator (or distance educator) of a child in relation to whom the person is also the principal carer - if the Secretary is satisfied this is the case the Secretary must make a determination exempting the person;
- the person is included in a class of persons specified in legislative instruments made under subsection (5) and the person's circumstances are such that the person would be unable to actively participate in the labour market (eg by undertaking job search or suitable paid work).

Classes of persons who might be specified in relevant legislative instruments include principal carers with large families.

Where subsections (2) or (3) apply, the Secretary may determine a period of exemption of up to 12 months (subsection (6) refers). Subsequent determinations can also be made (subsection (7) refers).

The effect of subsections (8) and (9) is that, where the Secretary has determined a period of exemption under section 731DB, he can revoke that determination if the Secretary is satisfied that the circumstances that gave rise to the exemption are no longer present (or the pre-conditions necessary for the original exercise of the power no longer exist).

The broad purpose of the new section 731DC is to allow people who are undertaking paid work (or another activity) to satisfy the activity test for a period until an

appropriate activity agreement can be negotiated with the person. It is recognised that, at the time of claiming Special Benefit, some people may be already working to capacity or undertaking other appropriate activities, with the effect that they might not be able to satisfy the activity test (e.g. as they would not be ‘actively seeking’ work). Accordingly, new subsection 731DC(1) creates a power for the Secretary to treat a person who is undertaking paid work or another activity as satisfying the activity test if (having regard to such matters as the nature and duration of the work or activity) the Secretary considers it would be unreasonable to expect the person to comply with the activity test for the period.

The combined effect of new subsections (2) and (3) is that the Secretary may determine, by legislative instrument, kinds of activities that are not activities to which subsection 731DC(1) will apply.

The period for which the person is not required to satisfy the activity test starts at the later of:

- (i) the time of claim (paragraph (4)(a)(i) refers); or
- (ii) when the person started the work or other activity.

The period of exemption ends when, having been required to enter a Special Benefit Activity Agreement, the person has entered the agreement or has failed to do so. This is because the person will be able to satisfy the activity test by complying with the terms of the agreement – which would include the relevant work or activity.

Items 18 to 26 make changes to existing section 731G which is broadly concerned with relief from the activity test for certain people engaged in voluntary work.

Currently, subsection (1) provides that a person who is at least 50 is taken to satisfy the activity test if the person is engaged in approved full time unpaid voluntary work of at least 32 hours or is engaged, for at least 40 hours, in a combination of full time unpaid voluntary work and suitable paid work for another person.

As part of the measure dealing with increasing participation of the mature aged, the age requirement for subsection (1) is amended to 55. The requirements in relation to hours of engagement are both changed to 30 hours to reflect the participation requirements that will be relevant for certain people affected by particular Welfare to Work changes. The requirement in paragraph (1)(a) for the voluntary work to be ‘full time’ is also omitted.

New paragraph 731G(1)(c) is also inserted. The effect of that paragraph is that a person who is at least 55 will satisfy the activity test if the person is engaged in suitable paid work of at least 30 hours.

Subparagraph (1)(b)(ii) currently requires that the paid work be ‘for another person’. This requirement is omitted as it is recognised that, under the new arrangements, there may be some situations where it would be appropriate to allow a person to be engaged in a level of self employment, if that self-employment provides an appropriate level of remuneration.

Subsection 731G(2) is concerned with exemptions from the activity test for people aged under 50 in certain circumstances. It is inconsistent with the aims of Welfare to Work that a job seeker should be able to choose to satisfy the activity test solely through voluntary work unless it would increase their immediate employment prospects, which is what this provision allows. Accordingly, the provision is repealed. Voluntary work can still be included in an activity agreement if the Secretary believes that it is appropriate for the job seeker.

Consequential amendments are made to subsection 731G(3) as a result of the changes discussed above.

The effect of new section 731GA is that a person who is a principal carer or who has a partial capacity to work will be taken to satisfy the activity test if the person is undertaking suitable paid work of at least 30 hours per fortnight (**Item 27**).

Broadly, existing section 731H provides a person with an exemption from the activity test in respect of a period where the person has a dependant child who has not turned 16. To ensure consistency in the treatment of parents who may be subject to the activity test, the reference to a child who has not turned 16 is replaced by a reference to a child who has not turned 6 (**Item 28**).

Section 731K is concerned with exemptions from the activity test for people who are temporarily incapacitated for work. **Item 29** inserts new section 731KA which provides for the cessation of exemptions in the specified circumstances.

The broad effect of the changes is that, if the Secretary is satisfied that a person to whom 731K applies could undertake a suitable activity, the person will cease to have an exemption from the activity test. Instead the person will be required to enter an activity agreement and undertake a suitable activity. Pursuant to subsection (2), the person will cease to be exempt at the time when, having been required to enter into a Special Benefit Activity Agreement, the person has either entered the agreement or failed to enter the agreement.

Subsection 731L(3) operates by specifying various provisions and then providing that people to whom those provisions apply cannot be required to enter into a Special Benefit Activity Agreement. **Item 30** omits the reference to section 731E, 731F, 731JA and 731K and inserts references to new sections 731DA, 731DB and 731DC. Those latter provisions relate to situations where people are not required to satisfy the activity test.

The effect of new subsection 731L(3A) is that, if a person is able to undertake a suitable activity, the person can be required to enter into a Special Benefit Activity Agreement even though the person meets the requirements of 731K. The person would cease to be exempt from the activity test as a result of the operation of new section 731KA (**Item 31**).

Item 32 amends section 731M which is concerned with the terms of Special Benefit Activity Agreements.

Existing subsection 731M(1) contains a list of activities that the Secretary may require a person to undertake. For example, it specifies such activities as job search and paid work experience. While those activities will still be suitable activities in appropriate cases, the new provision is expressed in broad flexible terms, simply referring to activities that the Secretary regards as suitable for the person.

Existing subsections (1A) and (1B) are repealed as a consequence of the changes being made to subsection (1).

New subsections (1A) and (1B) allow the Secretary, by legislative instrument, to specify kinds of activities that cannot be contained in an agreement. Although the intention of the changes is to make the agreement provisions less restrictive and more flexible, a legislative mechanism is needed to ensure that, over time, job seekers are not permitted or compelled to undertake activities that may not be consistent with the Government's policy intention.

This Item also repeals subsections 731M(1AA) to (1AC) as part of the measure dealing with increasing participation of the mature aged.

The effect of **Item 33** is to provide that new subsection (1A) does not apply to Special Benefit Activity Agreements entered into before the commencement of this Item.

Existing subsection 731M(2) specifies certain situations in which an activity agreement must not require a person to participate in an approved program of work for income support payment. **Item 34** adds the scenario of where the person is at least 50 and subsection 28(4) does not apply to the person. That latter provision is inserted into the social security law by this Bill for the purposes of the measure dealing with increasing the participation of the very long term unemployed.

Item 35 inserts a Note at the end of subsection 731M(2) which directs the reader to section 731Q which is concerned with the revocation of a requirement to undertake an approved program of work for income support payment.

Before approving an agreement with a person, subsection 731M(4) provides that the Secretary must have regard to the person's capacity to comply. Subsection (5) then sets out matters that the Secretary is to take into account when considering the person's capacity to comply. Paragraph (a) currently provides that the Secretary is to take into account 'the person's education, experience, skills, age, disability, illness, mental and physical condition'. **Item 36** repeals paragraph (a) and substitutes 2 new paragraphs that separately deal with the subject matter in existing paragraph (a).

Item 37 amends paragraph 731M(5)(e) to reflect changes that were made to the provisions dealing with the concept of 'unreasonably difficult commuting'.

Subsections 731M(6A) to (6C) are repealed by **Item 38**. Those provisions are redundant as 731M(6) allows for the review and variation of agreements at any time.

Item 39 repeals section 731N. In part, that provision requires the Secretary to consider whether a person who has been required to enter into an activity agreement is unreasonably delaying entering into the agreement. If the Secretary does reach that conclusion, the Secretary may give the person a notice that the person is taken to have failed to enter the agreement and, if the notice is given, the person is taken to have so failed. Under subsection (2) the notice must be in writing, set out the reasons for the decision and include a statement about the person's review rights.

This provision is administratively cumbersome and does not add anything to the operation of the compliance regime. There is a separate and clearer provision which deals with a person's failure, without reasonable excuse, to enter an agreement when required to do so. This provision is sufficient to deal with such situations.

New sections 731N and 731P are respectively concerned with Special Benefit Activity Agreements for principal carers and for people with a partial capacity to work. In both cases, where the agreement relates to job search for suitable paid part time work, it must specify that the part time work is for at least 15 hours or such other number as the Secretary determines is appropriate having regard to the person's circumstances. The Secretary could, for example, determine that a principal carer's caring responsibilities and/or other circumstances are such that their capacity to work at a particular time is less than 15 hours per week. This would not in any way prevent the Secretary from requiring the person to undertake particular paid work of (e.g.) 25 hours provided the work was not unsuitable for the person (subsection 601(2A) deals with matters relevant to 'unsuitable work'). The intention of the changes is that people should seek and undertake suitable work that is in line with their work capacity. However, principal carers will not be required to look for work or accept work where undertaking that work would involve more than 25 hours per week.

New subsection 731A(8) makes it clear that the work that the Secretary might require a person to undertake under subsection 731A(7) could involve different hours to the work referred to in the person's activity agreement. For example, under the new arrangements, the activity agreement of a person to whom either section 731N or 731P applies might require the person to be seeking suitable paid part time work of at least 15 hours per week. This would not prevent the Secretary from requiring the person to undertake particular paid work of (e.g.) 20 hours provided the work was not unsuitable for the person.

The broad effect of new section 731Q is to allow the Secretary to revoke a requirement for a person to participate in an approved program of work if the matters specified in subsection (1) are present. The requirement is revoked from the date specified in the notice (subsection (2) refers).

Section 731R is concerned with the effect of sections 731DA and 731DB. Those latter provisions are concerned with various exemptions from the activity test (eg in cases of separation involving domestic violence). Where those provisions apply to a

person who is already a party to an activity agreement, section 731R provides that the agreement is taken to be suspended.

Item 42 omits from paragraph 737(3)(a) a reference to section 731A as a result of changes made to that provision by the above amendments.

Part 2 - Compliance

Items 43 to 53 provide for the same compliance arrangements for activity tested Special Benefit recipients as are introduced for newstart allowance recipients by Part 3 of Schedule 7.

Part 3 – Rate of special benefit

Item 54 inserts new subsections 746(3) and (4) that provide when working out the rate for special benefit any amount, by which the rate would be increased because of new point 1067G-B3A of the Youth Allowance Rate Calculator or new point 1068-B5 of Benefit Rate Calculator B or 1068, is to be disregarded.

SCHEDULE 11 – MOBILITY ALLOWANCE

SUMMARY

From 1 July 2006 a new qualification for a higher rate of mobility allowance is inserted at Part 2.21 of the Social Security Act. The increased rate of mobility allowance of \$100.00 per fortnight is available, subject to certain general requirements, to people receiving a disability support pension, newstart allowance or youth allowance (who are not new apprentices or undertaking full-time study) who are aged 16 or over; who cannot use public transport without substantial assistance; and who are undertaking certain activities and are required to travel to and from their home for the purpose of those activities.

Subject to satisfying other criteria, the activities for which the new mobility allowance is payable are:

- looking for work of at least 15 hours per week at award wages or more as required by an agreement the person has entered into with an employment service provider, such as a Job Network member; or
- working at least 15 hours per week at award wages.

In certain circumstances when the person no longer qualifies for the disability support pension the person may continue to retain the higher rate of mobility allowance. Also, in certain circumstances, when the person's newstart allowance or youth allowance is no longer payable because of the person's employment, the person may continue to retain the higher rate of mobility allowance.

The increased rate of \$100.00 will be indexed annually in line with CPI increases with payments made fortnightly.

The current provisions for the existing mobility allowance will remain.

BACKGROUND

The purpose of the mobility allowance is to provide financial assistance for transport costs to people with disabilities in certain circumstances and who are unable to use public transport without substantial assistance. The increased higher rate of mobility allowance forms part of the broader measures in this Bill to assist people with disabilities to participate in the workforce.

EXPLANATION OF CHANGES

AMENDMENT OF THE SOCIAL SECURITY ACT 1991

Section 1035 currently provides the qualification for mobility allowance.

Item 1 makes an amendment at subsection 1035(1) inserting a reference to the current rate of mobility allowance (the 'standard rate') so that this is linked to the current qualification for mobility allowance.

Item 2 inserts a new section 1035A that provides the qualification for the increased rate of mobility allowance.

Subsection 1035A(1) sets out the general principles a person will need to meet to qualify for the higher rate. There are four general principles that must apply for the new mobility allowance to be paid.

Firstly, new paragraph 1035A(1)(a) requires that a person is a handicapped person. Current section 19 of the Social Security Act provides the definition of a ‘handicapped person’ to mean a person who:

- (a) has a physical or mental disability; and
- (b) has turned 16.

Secondly, the Secretary must be of the opinion that the person is unable to use public transport without substantial assistance due to the person’s physical or mental disability.

Thirdly, the person must be an Australian resident.

Fourthly, the person must satisfy one or more of subsections 1035A(2) to (7).

Subsections 1035A(2) to (7)

Disability support pension recipients – subsections (2) to (5)

New subsections 1035A(2) to (5) apply to people who are or were receiving disability support pensions.

From 1 July 2006, this Bill changes the qualification work capacity threshold for the disability support pension from 30 hours per week at award wages (‘old qualification rules’) to 15 hours per week at award wages (‘new qualification rules’). People who claimed before 1 July 2006 will continue to qualify for disability support pension under the ‘old qualification rules’, with disability support pension recipients claiming between 11 May 2005 and 30 June 2006 qualifying under the old qualification rules only until their next work capacity assessment. These persons are referred to as ‘a transitional DSP applicant’.

Disability support pension recipients (‘old qualification rules’) no longer qualifying for disability support pension because of hours worked

New subsection 1035A(2) only applies to people who were receiving disability support pension as a result of a claim made before 1 July 2006. To be eligible for the new mobility allowance under this section a person must no longer qualify for disability support pension because the person is working 30 or more hours per week at award wages. Immediately before that time the person must have been receiving a disability support pension as a result of a claim made before 1 July 2006. The person

must have ceased to be qualified for disability support pension because of the increase in number of hours worked. Furthermore, the person must not have received another income support payment since commencing work of at least 30 hours per week at award wages. Finally, for the purposes of subsection 1035A(2), the person is required to travel to and from the person's home for the purpose of performing the relevant work. For a transitional DSP applicant, that is a person who made a claim for disability support pension on or after 11 May 2005 but on or before 30 June 2006, subsection 1035A(2) will cease to apply to such a person from the date of the decision about that person's capacity to perform work that is made on or after 1 July 2006.

Disability support pension recipients - working or looking for work

New subsection 1035A(3) applies to all disability support pension recipients, irrespective of when the person claimed a disability support pension. In order for a disability support pension recipient to satisfy subsection 1035A(3), paragraph 1035A(3)(b) requires a disability support pension recipient to be:

- working for at least 15 hours per week at award wages (refer to subparagraph 1035A(3)(b)(i)); and/or
- undertaking job search activities under an agreement for a job that is of at least 15 hours per week at award wages or above (refer to subparagraph 1035A(3)(b)(ii)).

However, as new paragraph 1035A(3)(b)(i) applies to a person who is working for at least 15 hours per week at award wages or above, it is not capable of being satisfied by disability support recipients qualified under the 'new qualification rules'. This is because the 'new qualification rules' require a person to be unable to work 15 hours or more per week at award wages. However, new subparagraph 1035A(3)(b)(ii) will be capable of being satisfied by any disability support pension recipient regardless of when the person claimed the pension.

New subparagraph 1035A(3)(b)(ii) refers to undertaking job search activities under an agreement between the Secretary and a service provider nominated by the Secretary of the Employment Department. Similar references are also made in new subparagraph 1035A(6)(b)(ii). Job search activities include vocational training and other requirements undertaken as part of mutual obligation.

The operation of subsections 1035A(3)(c) and (d) is such that whether a person is working for at least 15 hours per week at award wages or undertaking job search activities, that person must be required to travel to and from the person's home for the purpose of undertaking either the work or those job search activities.

Disability support pension recipients ('new qualification rules') - no longer qualifying for disability support pension because of hours worked

Subsection 1035A(4) applies to disability support pension recipients qualified under the 'new qualification rules'. This is because it applies to a person receiving disability support pension and the person no longer qualifies for the disability support pension because the person works 15 hours per week at award wages. This new

subsection will cover the situation where such a person does not go on to newstart allowance or youth allowance (see below for new sections relating to newstart allowance and youth allowance).

To qualify under subsection 1035A(4) a person must also, since starting work, have been working for at least 15 hours per week at award wages or above and have not received another income support payment. The person is also required to travel to and from the person's home for the purpose of performing that work.

Disability support pension recipients – no longer qualified for disability support pension because of employment income

New subsection 1035A(5) applies so that disability support pension recipients will satisfy the subsection if they earn income from work with the consequence that the disability support pension is no longer payable to them. It can apply regardless of when the person claimed the disability support pension. It can apply whether or not the claim was made on or after 1 July 2006. It does not matter whether a person qualified for disability support pension under the 'new qualification rules' or the 'old qualification rules'. However, the subsection does not apply where subsection 1035A(2) is applying.

There are several requirements to satisfy in subsection 1035A(5). These requirements are:

- at a particular time, the person who was on disability support pension starts to earn income from work or the person's income from work increases such that the disability support pension ceased to be payable;
- the pension ceases because the rate of the pension is nil due to the income, or increased income, the person earned from the work;
- since this happened the person has been working at least 15 hours per week at award wages or above;
- no income support payment has been payable to the person because the rate of the payment is nil due to the income, or increased income, the person has been earning from the work; and
- finally, the person must be required to travel to and from the person's home for the purpose of undertaking the work.

Newstart allowance or youth allowance recipients – subsections (6) and (7)

New subsections 1035A(6) and (7) apply to those who are or were newstart allowance or youth allowance recipients (but not youth allowance recipients undertaking full-time study or who are new apprentices).

Under the new subsection 1035A(6), a person will satisfy this subsection if the person:

- is receiving newstart allowance or youth allowance (but not undertaking full-time study and is not a new apprentice);
- works at least 15 hours per week at award wages or above or undertaking job search activities under an agreement for a job that is of at least 15 hours per week at award wages or above; and

- is required to travel to and from the person’s home for the purpose of undertaking either the work or those job search activities.

Under the new subsection 1035A(7), a person will satisfy this subsection if the person:

- was receiving newstart allowance or youth allowance (but not undertaking full-time study and was not a new apprentice);
- at a particular time the person ceases to receive newstart allowance or youth allowance (but not undertaking full-time study and was not a new apprentice) because the person starts to earn income from work or the person’s income from work increases such that allowance ceased to be payable;
- the rate of the allowance is nil due to the income, or increased income, the person has been earning from the work;
- since this happened, the person has been working at least 15 hours per week at award wages or above;
- since this happened, no income support payment has been payable to the person because the rate of the payment is nil due to the income, or increased income, the person has been earning from the work; and
- the person is required to travel to and from the person’s home for the purpose of undertaking either the work or those job search activities.

Other amendments to mobility allowance sections

Item 3 inserts a new section 1036 providing that only one rate of mobility allowance is payable to a person. This is to ensure that a person does not receive both the ‘standard rate’ of mobility allowance and the new increased rate.

Subsection 1044(1) provides for the ‘standard rate’ of mobility allowance and **Item 4** inserts a reference to the current qualification of mobility allowance under section 1035 with the effect that the ‘standard rate’ is expressly connected to the existing qualification.

Item 5 inserts a new subsection 1044(1A) providing for the increased rate of \$100.00 when a person qualifies under new section 1035A.

Section 1046 of the Social Security Act provides for the continuation of mobility allowance when a person otherwise ceases to be qualified. **Item 6** amends paragraph 1046(1)(a) and **Item 7** amends paragraph 1046(2)(a). The consequence of these amendments is that subsection 1046(1) and subsection 1046(2) will only apply to people who are being paid the standard rate of mobility allowance.

Item 8 inserts two new subsections at section 1046. The current section 1046 allows for the continuation of mobility allowance even after a person ceases to be qualified. Currently, under certain circumstances where a person ceases to be qualified (e.g. cease to receive newstart allowance, though subject to certain exceptions), the person can continue to receive mobility allowance for 12 weeks (currently 12 weeks as provided by current subsection 1046(3)). These subsections provide for the continuation of the new and higher rate of mobility allowance when a person

otherwise ceases to be qualified on the same basis as is currently provided in section 1046 for the existing mobility allowance.

Item 9 provides for the necessary consequential amendments resulting from the new subsections in section 1046.

Items 10, 11, 12, 13 and 14 provide for the necessary amendments to current sections 1190 (table item 57), 1191 (table item 34) and 1192 so as to provide for indexation of the new mobility allowance.

SCHEDULE 12 – ADVANCE PAYMENTS FOR BENEFIT PP (PARTNERED)

SUMMARY

This non-budget measure provides recipients of benefit PP (partnered) with access to Advance Payments under Part 2.22 of the Social Security Act. The measure commences on 20 September 2006.

The purpose of advance payments is to assist certain social security recipients to meet their financial commitments, for example, extraordinary living expenses and/or capital expenditures such as emergency replacement of whitegoods or car repairs. The Act also contains mechanisms to allow advance payments to be recovered, including by deduction from social security entitlements under Part 3.16A.

Presently, advance payments are available to recipients of age pension, disability support pension, wife pension, carer payment, pension PP (single), widow B pension, widow allowance, youth allowance, austudy payment, newstart allowance and mature age allowance. This Schedule extends the availability of advance payments to recipients of benefit PP (partnered).

BACKGROUND

This measure was instigated by a report of the Commonwealth Ombudsman to the Prime Minister under section 16 of the *Ombudsman Act 1976*. This measure will address a current policy anomaly identified by the Ombudsman by extending advance payments to recipients of benefit pp (partnered) on the same basis as currently applies to recipients of pension pp (single). The Government now acts upon the Ombudsman's report.

EXPLANATION OF CHANGES

AMENDMENT OF THE SOCIAL SECURITY ACT 1991

Items 1, 2 and 3 amend section 1061EE of the Act, which sets out the method for calculating the amount of advance payment to be made to recipients of widow allowance, youth allowance, austudy payment, mature age allowance under Part 2.12B and newstart allowance. Subsection 1061EE(2) provides the mechanism for calculating the amount of payment that can be paid to a person. Among other provisions, subsection 1061EE(2) draws on the formula in subsection 1061EE(4) (where relevant) and the definition of 'fortnightly payment rate' in subsection 1061EE(6).

Items 1, 2 and 3 extend section 1061EE to also apply in respect of recipients of benefit PP (partnered). Specifically,

- Item 1 amends the heading of section 1061EE to include the term 'benefit PP (partnered)'.

- Item 1 also amends subsection 1061EE(1) – which concerns the application of section 1061EE – by inserting the term ‘benefit PP (partnered)’. This amendment results in section 1061EE applying to recipients of benefit PP (partnered) for the purposes of calculating the amount of advance payment that may be made to them under the Act.
- Item 2 amends subsection 1061EE(4) – which contains a formula for calculating the ‘maximum amount of advance payment’ – to refer to ‘benefit PP (partnered)’. This amendment ensures that the method of calculating the amount of advance payment to be made to recipients of benefit PP (partnered) is the same as that for recipients of youth allowance, austudy payment and newstart allowance. This amendment provides that recipients of benefit PP (partnered) will be treated similarly to recipients of certain other social security entitlements that are calculated on a fortnightly basis rather than to social security entitlements which are calculated on an annual basis (such as pension (PP) single, disability support pension and age pension).
- Item 2 also amends the heading of subsection 1061EE(4) to reflect its extended application.
- Item 3 amends subsection 1061EE(6) to provide a definition of ‘fortnightly payment rate’ in respect of benefit PP (partnered) which refers to an amount payable under the Benefit PP (Partnered) Rate Calculator, excluding amounts of remote area allowance. The definition is necessary to calculate the ‘maximum amount of advance payment’ under subsections 1061EE(3) and (4) which, in turn, are used to determine the amount of advance payments to be made to a person under subsection 1061EE(2).

Item 4 concerns the operation of section 1206H of the Act, which provides that a person's rate of a ‘social security entitlement’ may be reduced by way of ‘advance payment deduction’ in certain circumstances. To facilitate repayment of advance payments, subsection 1206H(3) contains a special definition of ‘social security entitlement’ that includes benefit PP (partnered). The inclusion of this special definition allows the Commonwealth to recover advance payments from benefit PP (partnered) recipients where such persons received an advance payment under another ‘social security entitlement’ (for example, pension PP (single)).

Item 4 repeals subsection 1206H(3) which contains the special definition of ‘social security entitlement’. This subsection will be redundant on the basis that Item 1 will extend the definition of ‘social security entitlement’ in a way that in effect replicates subsection 1206H(3).

Item 5 concerns the operation of section 1206Q of the Act, which provides that a special employment advance deduction is to be made from the rate of a social security entitlement that is payable to a person. To facilitate repayment of special employment advances, subsection 1206Q(3) contains a special definition of ‘social security entitlement’ that includes benefit PP (partnered). The inclusion of this special definition allows the Commonwealth to recover special employment advances from

benefit PP (partnered) recipients where such persons received a special employment advance under another ‘social security entitlement’ (for example, newstart allowance).

Item 5 repeals subsection 1206Q(3) which contains the special definition of ‘social security entitlement’. This subsection will be redundant on the basis that Item 1 will extend the definition of ‘social security entitlement’ in a way that in effect replicates subsection 1206Q(3).

Item 6 concerns subsection 1224E(1), which provides that where a person has received an advance payment of a ‘social security entitlement’ and that entitlement ceases to be payable before the whole amount of the advance payment has been repaid and no other ‘social security entitlement’ becomes immediately payable to the person, the outstanding amount of advance payment is a debt due by the person to the Commonwealth.

Item 6 omits from subsection 1224E(1)(d) the phrase ‘or benefit PP (partnered)’. This is because the phrase becomes redundant as a result of Item 1 which amends the definition of ‘social security entitlement’ to include benefit PP (partnered).

Item 7 provides that the amendments made by Items 2, 3 and 4 of this Schedule apply only to applications for advance payments of benefit PP (partnered) made on or after 20 September 2006. This means that recipients of benefit PP (partnered) will only be able to apply for, and be paid, advance payments from this date.

SCHEDULE 13 – PENSIONER EDUCATION SUPPLEMENT

SUMMARY

From 1 July 2006, Part 2.24A of the Social Security Act will be amended to provide a pensioner education supplement to certain newstart allowance and youth allowance recipients. To qualify for a pensioner education supplement, a person must, immediately prior to qualifying for newstart allowance or youth allowance, have been undertaking a course of education or study for which they were in receipt of a pensioner education supplement whilst receiving a disability support pension or pension PP (single), at a time on or after 1 July 2006. There are also a number of other qualifying conditions that must be met.

In particular, newstart allowance and youth allowance recipients will only continue to qualify for a pensioner education supplement until they complete the particular course of education or study they were studying whilst receiving either their disability support pension or pension PP (single).

Former disability support pension recipients, who are receiving newstart allowance or youth allowance, will need to have a ‘partial capacity to work’ as defined in the Social Security Act. Additionally, people who have a ‘partial capacity to work’ and who immediately before qualifying for newstart allowance were receiving youth allowance, and who immediately prior to receiving youth allowance were receiving a disability support pension, will also qualify for a pension education supplement until they complete the course they were studying while receiving their pension.

However, former disability support pension recipients will only qualify for a pensioner education supplement if they are a ‘transitional DSP applicant’ as defined in the Act. Broadly, this means that they must have claimed for their pension on or after 11 May 2005 but before 1 July 2006. Additionally, they will only be eligible for a pensioner education supplement if the reason they did not qualify for disability support pension was because they no longer met the disability support pension qualification of having a ‘continuing inability to work’.

Former pension PP (single) recipients who move to newstart allowance or youth allowance will need to be single and a ‘principal carer’ of at least one child. ‘Principal carers’ who are single and immediately prior to qualifying for newstart allowance were receiving youth allowance, and who immediately prior to receiving youth allowance were receiving pension PP (single), will also qualify for a pension education supplement. However, a former pension PP (single) recipient will only qualify for a pensioner education supplement if the reason the person was no longer receiving pension PP (single) was because the person’s child that qualified him or her for parenting payment has turned 8.

BACKGROUND

Presently, certain recipients of income support payments, including disability support pension recipients and recipients of pension (PP) single are able to access a pensioner education supplement for approved courses of education or study. Pensioner education supplement is a fortnightly payment that assists people undertaking study with ongoing study costs. The pensioner education supplement is paid at two rates and the amount paid depends on a person's study load and the person's payment type.

Whilst the focus of the measures in this Bill is about participation in paid work, the Government recognises that people who have been undertaking a course of education or study in preparation for work, and have been assisted by receiving the pensioner education supplement should not be disadvantaged either financially, or because they are unable to complete their course of study. This Schedule gives effect to this by providing that people who receive newstart allowance or youth allowance and who have been undertaking a course whilst receiving a disability support pension or pension PP (single) will continue to receive the same study assistance, being the pensioner education supplement, until they complete their course.

EXPLANATION OF CHANGES

AMENDMENT OF THE SOCIAL SECURITY ACT 1991

Item 1 makes a consequential amendment at subparagraph 1061PE(4)(d)(i) reflecting the extension of a pensioner education supplement to certain recipients of newstart allowance and youth allowance. The effect of the amendment is that current subsection 1061PE(2), that sets out when a person is a 25% concessional study-load student and applies to disability support pension recipients and pension PP (single) recipients, will apply to newstart and youth allowance recipients.

Item 2 inserts new paragraphs 1061PJ(2)(da) and (db) that provides newstart allowance and youth allowance recipients with qualification for a pensioner education supplement. However, as provided in paragraph 1061PJ(2)(da), for youth allowance recipients this is subject to new subsection 1061PJ(2A) and for newstart allowance recipients this is subject to new subsection 1061PJ(2B).

Item 3 inserts new subsection 1061PJ(2A) and (2B). New subsection 1061PJ(2A) applies to people receiving youth allowance and new subsection 1061PJ(2B) applies to people receiving newstart allowance.

Youth allowance

Subsection 1061PJ (2A) applies to youth allowance recipients who were formerly either receiving a disability support pension or pension PP (single) and they were receiving their pension and a pensioner education supplement on or after 1 July 2006. Disability support pension recipients also need to be a 'transitional DSP applicant'. Item 22 of Schedule 1 of this Bill inserts a new definition at subsection 23(1) of the Social Security Act of a 'transitional DSP applicant'. Broadly, a transitional DSP

applicant is a disability support pension recipient who claimed his or her pension between 11 May 2005 and 30 June 2006, and has been given a notice in order to review his or her work capacity. When a person is given a notice, his or her qualification for the disability support pension is assessed under the ‘new qualification rules’ for disability support pension as amended by Schedule 2 of this Bill.

New paragraph 1061PJ(2A)(d) specifically excludes youth allowance recipients from qualifying for a pensioner education supplement if they are undertaking full-time time study (as set out in section 541B) or if they are a new apprentice. However, a person can be studying a full-time work load and qualify for a pensioner education supplement, if this was the course the person was undertaking. This is because a youth allowance recipient may, in certain circumstances, be considered a job seeker, satisfying the youth allowance activity test through entering into an activity agreement. As part of an agreement, the youth allowance recipient may be required to undertake a course of study in preparation for seeking and gaining employment.

The reference to ‘undertaking full-time study’ in new subsection 1061PJ(2A) excludes youth allowance recipients who are not considered to be job seekers, because they satisfy the youth allowance activity test by undertaking full-time study as set out in section 541B of the Social Security Act. New apprentices are not required to satisfy the youth allowance activity test but remain qualified for youth allowance by having a current Commonwealth registration number. New apprentices are also excluded from qualifying for a pensioner education supplement.

Disability support pension ? youth allowance (not undertaking full-time study nor a new apprentice)

In order for new subsection 1061PJ (2A) to apply, a former disability support pension recipient needs to:

- be receiving youth allowance (paragraph 1061PJ(2A)(a) refer);
- have a ‘partial capacity to work’, as defined in new section 16B inserted by Schedule 1 of this Bill (subparagraph 1061PJ(2A)(a)(i) refer);
- immediately before qualifying for youth allowance have been receiving a disability support pension and a pensioner education supplement and be a ‘transitional DSP applicant’(subparagraph 1061PJ(2A)(a)(ii) and (iv) refer); and
- not qualify for disability support pension because of no longer meeting the disability support pension qualification to have a ‘continuing inability to work’ as set out in section 94 of the Social Security Act (subparagraph 1061PJ(2A)(a)(iii) refer); and
- since the day no longer qualifying for disability support pension:
 - have been qualified for youth allowance with the effect that if at anytime a person does not qualify for youth allowance then he or she will lose access to the pensioner education supplement (subparagraph 1061PJ(2A)(c)(i) refer); and
 - qualified for pensioner education supplement in relation to the course that the person was studying on the last day they were receiving the disability support pension (subparagraph 1061PJ(2A)(c)(ii) refer). That is, for the

course the person was studying all the other qualification requirements as set out in of the Social Security Act continue to be met.

Pension PP (single) ? youth allowance (not undertaking full-time study nor a new apprentice)

In order to meet the requirements of new subsection 1061PJ (2A) a former pension PP(single) recipient needs to:

- be receiving youth allowance (paragraph 1061PJ(2A)(b) refer);
- be single and be a ‘principal carer’ of at least one child, as defined by new subsection 5(15) to (24) inserted by Schedule 1 of this Bill (subparagraph 1061PJ(2A)(b)(i) refer);
- immediately before qualifying for youth allowance have been receiving a pension PP (single) and was qualified for a pensioner education supplement (subparagraph 1061PJ(2A)(b)(ii) and (iv) refer);
- not qualify for parenting payment because the child that qualified the person for parenting payment has turned 8 (subparagraph 1061PJ(2A)(b)(iii) refer);
- since the day they no longer qualified for parenting payment:
 - have been qualified for youth allowance (paragraph 1061PJ(2A)(c) refer); and
 - qualified for pensioner education supplement in relation to the course that the person was studying on the last day they were receiving pension PP (single) (subparagraph 1061PJ(2A)(c)(ii) refer). That is, for the course the person was studying all the other qualification requirements as set out in of the Social Security Act continue to be met.

Newstart allowance

New subsection 1061PJ (2B) applies to newstart allowance recipients who were formerly either receiving a disability support pension (transitional DSP applicants only) or pension PP (single). It also applies to people qualifying for newstart allowance and immediately before qualifying were receiving youth allowance and new subsection 1061PJ(2A) (as discussed above) applied to them. This ensures that a person who moves from either disability support pension or pension PP (single) to youth allowance and then to newstart allowance, will retain access to a pensioner education supplement whilst completing the course he or she was studying while receiving a pension.

However, new subsection 1061PJ(2B) only applies when a person receives their pension or youth allowance, and a pensioner education supplement in relation to their payment, on or after 1 July 2006.

Disability support pension ? newstart allowance

or

Disability support pension ? youth allowance (subsection 1061PJ(2A) applies) ? newstart allowance

In order for new subsection 1061PJ(2B) to apply, a former disability support pension recipient needs to:

- be receiving newstart allowance (paragraph 1061PJ(2B)(a) refer);
- have a ‘partial capacity to work’, as defined in new section 16B inserted by Schedule 1 of this Bill (subparagraph 1061PJ(2B)(a)(i) refer);
- immediately before qualifying for newstart allowance
 - have been receiving a disability support pension and a pensioner education supplement and been a transitional DSP applicant; or
 - have been receiving youth allowance and new subsection 1061PJ(2A) applies (subparagraph 1061PJ(2B)(a)(ii) and (iv) refer); and
- have been disqualified for disability support pension because of no longer meeting the requirement to have a ‘continuing inability to work’ as set out in disability support pension qualification under section 94 of the Social Security Act (subparagraph 1061PJ(2B)(a)(iii) refer); and
- since the day no longer qualifying for disability support pension or youth allowance:
 - have been qualified for newstart allowance (paragraph 1061PJ(2B)(c) refer); and
 - qualified for pensioner education supplement in relation to the course that the person was studying on the last day they were receiving the disability support pension or youth allowance (paragraph 1061PJ(2A)(d) refer). That is, for the course the person was studying all the other qualification requirements as set out the Social Security Act continue to be met.

Pension PP (single) ? newstart allowance

or

Pension PP (single) ? youth allowance (subsection 1061PJ(2A) applies) ? newstart allowance

In order to meet the requirements of new subsection 1061PJ(2B) a former pension PP(single) recipient needs to:

- be receiving newstart allowance (paragraph 1061PJ(2B)(b) refer);
- be single and be a principal carer of at least one child, as defined by new subsection 5(15) to (24) inserted by Schedule 1 of this Bill (subparagraph 1061PJ(2B)(b)(i) refer);
- immediately before qualifying for newstart allowance, have been receiving a pension PP (single) and a pensioner education supplement, or have been receiving youth allowance with subsection 1061PJ(2A) applying (subparagraph 1061PJ(2B)(b)(ii) and (iv) refer);
- not qualify for parenting payment because the child that qualified the person for parenting payment has turned 8;
 - This means that a person who is eligible for parenting payment until their youngest child turns 16 and who then moves to newstart allowance, will not have access to a pensioner education supplement; and

- since the day no longer qualifying for pension PP (single) or youth allowance
 - have been qualified for newstart allowance (subparagraph (1061PJ(2B)(c)(ii) refer); and
 - qualified for pensioner education supplement in relation to the course that the person was studying on the last day they were receiving pension PP (single) or youth allowance (paragraph 1061PJ(2B)(d) refer. That is, for the course the person was studying all the other qualification requirements as set out in of the Social Security Act continue to be met.

Item 4 inserts a new subparagraph 1061PZG(1)(b)(ia) with the effect that youth allowance and newstart allowance recipients who have a ‘partial capacity to work’ will have access to the same rate of pensioner education supplement as disability support pension recipients.

Item 5 inserts a new Note 1 at subsection 1061PZG(1) setting out that youth allowance and newstart allowance recipients only qualify for a pensioner education supplement in the limited circumstances as provided in new subsections 1061PJ(2A) and (2B).

SCHEDULE 14 – TELEPHONE ALLOWANCE

SUMMARY

Part 1 – Amendments commencing on Royal Assent

Amendments are made at Part 2.25 of the Social Security Act in relation to telephone allowance to clarify the extension of telephone allowance to certain benefit and pension recipients who cease their payment because of employment.

Part 2 – Amendments commencing on 1 July 2006

From 1 July 2006, Part 2.25 will be amended to provide qualification for a telephone allowance to newstart allowance and youth allowance (not undertaking full-time study nor a new apprentice) recipients who have a ‘partial capacity to work’ or are single ‘principal carers’ and are telephone subscribers. An extended qualification of telephone allowance is also provided to these recipients when, because of employment, they cease their allowance. People with a ‘partial capacity to work’ will be able to qualify for an extension of telephone allowance for a period of 12 months and single ‘principal carers’ will qualify for a period of 6 months.

BACKGROUND

Telephone allowance is a non-taxable, quarterly allowance paid to social security pensioners and certain older allowance recipients to assist them maintain a telephone service. Telephone allowance is also paid on an extended basis for 6 or 12 months to recipients of certain payments whose primary telephone allowance-attracting pension or allowance ceases because of their, or their partners’, employment income.

The 6 month telephone allowance extension is intended to apply to all former pensioners and mature age allowance recipients (12 months for former disability support pensioners). The 6 month telephone allowance extension is also intended to apply to former recipients of newstart, widow, partner or sickness allowance or special benefit or parenting payment (partnered), as long as the person is aged 60 or more and has been on income support for at least 9 months continuously. This telephone allowance extension is in addition to the 12 week period of extension put in place as part of the working credit initiative in 2003.

However, the legislation relating to telephone allowance has been undermined at various times in the past by the repeal of the key legislative schemes and provisions referred to in the telephone allowance extension provisions. Amendments made by this Schedule clarify the intended coverage of the telephone allowance extension, as described above.

Additionally, measures in this Bill amend the qualification of parenting payment and disability support pension. Many people who prior to the amendments would have been eligible for parenting payment or disability support pension, will receive

newstart allowance or youth allowance and whilst on these payments have participation requirements. Extending qualification for telephone allowance to certain newstart allowance and youth allowance recipients, who have a ‘partial capacity to work’ or are a ‘principal carer’, gives effect to the Government’s commitment in continuing to provide similar levels of support to these recipients.

EXPLANATION OF CHANGES

AMENDMENT OF THE SOCIAL SECURITY ACT 1991

Part 1 – Amendments commencing on Royal Assent

Presently, qualification for telephone allowance under subsections 1061Q(3) and (3A) require a person, amongst other things, to have been receiving income support payments in respect of a continuous period of at least 9 months (whether or not the kind of payment received has changed over the period or any part of it occurred before or after the commencement of the paragraph). **Item 1** omits the reference to the words contained in brackets contained at these paragraphs. In effect, these will be contained at new subsection 1061Q(4).

Item 2 repeals subsection 1061Q(4) of the Social Security Act and substitutes new subsections 1061Q(3C), (3F), (3G), (3J) and (4). The five new subsections achieve the coverage clarification required, while preserving the main rules for the telephone allowance extension.

New subsection 1061Q(3C) provides that a person who has been receiving a social security pension or a mature age allowance under Part 2.12B of the Social Security Act, who ceases to receive that payment because of the person’s or their partner’s employment income, and who is a telephone subscriber, is qualified for a telephone allowance. The entitlement is for 12 months if the ceased payment was disability support pension, and for 6 months in respect of other ceased payments.

Pursuant to the new subsection 1061(Q)(3C), a person or a person’s partner will be receiving employment income if they, are earning, deriving or receiving, or being taken to earn, derive or receive, employment income. These concepts are the same as those that apply to the receipt of a social security pension or allowance under subsection 23(4A) of the Act.

New subsection 1061Q(3F) provides that a person who has been receiving one of the named social security benefits, who ceases to receive that benefit because of the person’s or their partner’s employment income, who has turned 60, who has been on income support for at least 9 months continuously, and who is a telephone subscriber, is qualified for a telephone allowance for 6 months.

Again, the established concepts of receipt of employment income are used, and the potential application of subsection 23(4A) is signposted.

New subsection 1061Q(3G) provides that a person who has been receiving partner allowance or benefit PP (partnered) qualifies for a telephone allowance for 6 months after the person ceases to receive his or her benefit because of his or her own or partner's employment income. To meet this qualification, the person's partner needs to have turned 60 and must be receiving, or immediately before the person ceased his or her payment had been receiving, newstart allowance or sickness allowance. The person's partner must also have been receiving an income support payment for at least 9 continuous months.

New subsection 1061Q(3J) makes it clear for the main new subsections that the employment income referred to might be employment income alone or in combination with any other ordinary income.

New subsection 1061Q(4) makes it clear that, in working out whether a person has been on income support for at least 9 months, different kinds of income support payment can count towards the nine months, as can any period on income support, even if it occurred before the new provisions commence.

Part 2 – Amendments commencing on 1 July 2006

Item 3 inserts new subsection 1061Q(2), (2A) and (2B) that provide qualification for a telephone allowance to certain youth allowance and newstart allowance recipients who are telephone subscribers.

The new subsection 1061Q(2) extends the qualification of telephone allowance to a person receiving youth allowance who: is not undertaking full-time study nor a new apprentice; and either has a 'partial capacity to work' or is the 'principal carer' of at least one child and is not a member of a couple.

The new Note 1 to clause 1061Q(2) provides a reference to section 541B that sets out when a person will be considered to be undertaking full-time study. As signposted in Note 2 and 3 the definition of 'partial capacity to work' is contained at new section 16B and the definition of 'principal carer' is contained at new subsections 5(15) to (24). These definitions are inserted by Schedule 1 of this Bill. Note 4 and 5 provide a signpost to the definitions of 'new apprentice' and 'telephone subscriber.'

New subsection 1061Q(2A) provides qualification for a telephone allowance to a person receiving newstart allowance and who either has a 'partial capacity to work' or is the 'principal carer' of at least one child and is not a member of a couple. New Notes 1 to 3 again signpost relevant definitions.

New subsection 1061Q(2B) provides qualification for a telephone allowance to telephone subscribers who are receiving newstart allowance or youth allowance (while the person is not undertaking full-time study nor a new apprentice). For a person to qualify under new subsection 1061Q(2B) the person needs to be a 'principal carer' and have a partner, who has turned 60 and is receiving newstart allowance or

sickness allowance, and has been receiving income support payments for at least 9 continuous months. Notes 1 to 5 signpost relevant sections in respect of 1061Q(2B)

Item 4 inserts new subsections 1061Q(3D) and 1061Q(3E). New subsection 1061Q(3D) applies the rule in new subsection 1061Q(3C) to recipients of newstart allowance and youth allowance (who have not been undertaking full-time study nor are a new apprentice) recipients who have had a ‘partial capacity to work’, as if they had been receiving disability support pension. This means that these newstart allowance and youth allowance recipients who meet new paragraphs 1061Q(3C)(b) and (c), by being a telephone subscriber and ceasing their allowance because of employment income, can qualify for a telephone allowance for 12 months from ceasing their allowance. New Notes 1, 2 and 3 signpost relevant definitions.

New subsection 1061Q(3E) applies the rule in new subsection 1061Q(3C) to newstart allowance and youth allowance (not undertaking full-time study nor a new apprentice) recipients who are a single ‘principal carer’, as if they had been receiving pension PP (single). This means that these recipients who are telephone subscribers can qualify for a telephone allowance for 6 months after they cease their allowance because of income from employment. New Notes 1 to 4 signpost relevant definitions.

Item 5 inserts new subsection 1061Q(3H) and applies the rule in new subsection 1061Q(3G) to newstart allowance and youth allowance (not undertaking full-time study nor a new apprentice) recipients who are partnered and a ‘principal carer’, as if they had been receiving partner allowance or benefit PP (partnered). This means that these recipients who are telephone subscribers will qualify for a telephone allowance for a further 6 months if they cease their allowance because of income from employment. However, this qualification also requires that a person has a partner, and

- the person’s partner has turned 60;
- the person’s partner is receiving or immediately before the person ceased his or her payment had been receiving newstart allowance or sickness allowance
- the person’s partner has been receiving an income support payment for at least 9 continuous months.

Item 6 inserts a reference at new subsection 1061Q(4) to new paragraph 1061Q(2B)(f). This makes it clear that for the purposes of subsection 1061Q(2B), in working out whether a person has been on income support for at least 9 continuous months different kinds of income support payment can count towards the 9 months, even if it occurred before the new provisions commence.

SCHEDULE 15 – CONCESSION CARDS

SUMMARY

From 1 July 2006, access to the pensioner concession card will be extended to certain recipients of newstart allowance and youth allowance. Newstart allowance recipients who have a ‘partial capacity to work’, or identified as being a ‘principal carer’ and not a member of a couple, will have access to a pensioner concession card.

Youth allowance recipients, who are not undertaking full-time study nor a new apprentice, will have access to a pensioner concession card if they have, a ‘partial capacity to work’, or are a ‘principal carer’ but not a member of a couple.

Schedule 1 of this Bill inserts new definitions. New section 16B provides when a person will satisfy the definition of ‘partial capacity to work’. New subsections 5(15) to (24) sets out when a person will be a ‘principal carer’.

Newstart allowance and youth allowance (excluding people undertaking full-time study and new apprentices) recipients who have a ‘partial capacity to work’, and lose their allowance because of employment, will be able to keep their pensioner concession card for 12 months. This provision is designed to assist people to make the transition from income support to work and is similar to the current provision that extends qualification of the pensioner concession card to recipients of disability support pension who lose their pension because of employment.

Newstart allowance and youth allowance (excluding people undertaking full-time study and new apprentices) recipients who are a ‘principal carer’ and not a member of a couple, and who lose their allowance because of employment income, will have access to a 12 week extended qualification rule for their pensioner concession card.

An amendment is made to ensure that ‘principal carers’, who keep their pensioner concession card for the 12 weeks after ceasing payment can also access a health care card for the balance of the period of 26 weeks since they ceased their payment.

BACKGROUND

Presently, recipients of parenting payment who have their payment calculated according to the pension PP (single) rate calculator, and recipients of a disability support pension, have access to a pensioner concession card. Former pension recipients also, in certain circumstances, have extended access to their pensioner concession card after they leave their payment.

The main purpose of the pensioner concession card is to assist pensioners and other selected benefit recipients with certain living costs, by allowing access to specific services at a concessional rate.

Consistent with the Government’s objective to reduce welfare dependency and increase workforce participation, this Bill makes amendments to parenting payment

and disability support pension to ensure that people are able to participate in the workforce as far as they are capable. Many people, who, prior to the amendments, would have been eligible for parenting payment or disability support pension, will receive newstart allowance or youth allowance. However, the Government recognises these people, who will have an obligation to work, should receive similar levels of support as those who do not necessarily have participation requirements.

Schedule 15 gives effect to this by providing certain people on newstart allowance and youth allowance who, because of their disability have a ‘partial capacity to work’, or who are not a member of a couple and because of their caring responsibility for a dependent child are identified as a ‘principal carer’.

EXPLANATION OF CHANGES

AMENDMENT OF THE SOCIAL SECURITY ACT 1991

Item 1 of Schedule 15 inserts a new subsection 1061ZA(2A) with the effect that certain youth allowance recipients will have access to a pensioner concession card. These are people who are receiving youth allowance and are not undertaking full-time study nor a new apprentice and who either:

- have a ‘partial capacity to work’; or
- are a ‘principal carer’ of at least one child and not a member of a couple.

New Note 1 provides a signpost to what is meant by ‘undertaking full-time study’. Note 2 provides a signpost to the definition of a ‘new apprentice’ under subsection 23(1).

As set out in new Notes 3 and 4 for a person to have a ‘partial capacity to work’ the person must meet the definition as provided in new section 16B of the Social Security Act. For a person to be a ‘principal carer’ the person must meet the definition set out in new subsections 5(15) to (24) of the Social Security Act.

Item 1 also inserts new subsection 1061ZA(2B) that similarly extends qualification of a pensioner concession card to people who are receiving newstart allowance and who either:

- have a ‘partial capacity to work’; or
- are a principal carer of at least one child and not a member of a couple.

New paragraph 1061ZA(2B)(c) operates with the effect that a person can only access a pensioner concession card if he or she is not also qualified for a pensioner concession card under subsection 1061ZA(2).

New Notes 1 and 2 again signposts the definitions of ‘partial capacity to work’ and ‘principal carer’.

Item 2 and **3** make amendments so that the current pensioner concession card provisions about residency contained at subsection 1061ZA(3) and (4) also apply to

people qualified for a pensioner concession card under new subsection 1061ZA(2A) and (2B).

Extended qualification of pensioner concession card

New section 1061ZEB (see Item 11) extends qualification of a pensioner concession card for a period of 52 weeks to certain former newstart and youth allowance recipients who have a ‘partial capacity to work’ who cease to qualify for their allowance because of employment.

Under current section 1061ZC long term recipients of social security benefits have access to an extended qualification of a pensioner concession card if they have been on income support payments for 39 continuous weeks and they are over 60 (see subsection 1061ZA(2)).

Under section 1061ZEA certain social security pension and benefit recipients, who were qualified for a pensioner concession card but because of employment income cease to have their pension or benefit payable, can qualify for a pensioner concession card for a period of up to 12 weeks after ceasing payment.

Current section 1061ZD provides an extended qualification for a pensioner concession card to former recipients of disability support pension, if they lose qualification to their pension because of the number of hours they work or cease payment because of employment.

Items 4 to 11 make amendments that deal with the interaction between the pensioner concession card qualification and extended qualification provisions to ensure that a person can access only one pensioner concession card at any given time.

Item 4 makes an amendment so a person qualifying for a pensioner concession card under new section 1061ZEB cannot also qualify under current section 1061ZC

Item 5, makes a technical amendment reflecting the changes made by Items 6 and 7.

Item 6 makes an amendment to current section 1061ZD with the effect that when a person is receiving youth allowance or newstart allowance and they qualify for a pensioner concession card under new subsections 1061ZA(2A) or (2B), then on the day or days that person is receiving their allowance they will not qualify for a pensioner concession card under section 1061ZD.

Item 7 inserts new subsection 1061ZD(7) so a person cannot qualify for pensioner concession card under section 1061ZD if the person is qualified under section 1061ZEB.

Item 8 provides that a person cannot qualify for the pensioner concession card under subsection 1061ZEA if they qualify for the extended pensioner concession card under section 1061ZEB.

Items 9 and 10 make amendments to paragraph 1061ZEA(2)(f) and to subparagraph 1061ZEA(2)(g)(ii) so that current section 1061ZEA will apply to other recipients who qualify for a pensioner concession card under new subsections 1061ZA(2A) and (2B). That is, a person who does not qualify under new subsection 1061ZEA (the 52 week extended qualification because of ‘partial capacity to work’), will be able to qualify for a pensioner concession card for up to 12 weeks under section 1061ZEA, if they meet the qualification requirements under this section. Such persons will primarily be newstart allowance and youth allowance recipients who are ‘principal carers’.

Extended qualification rule: persons with a partial capacity to work

Item 11 inserts a new section 1061ZEB. New subsection 1061ZEB(1) extends qualification to a pensioner concession card for people who meet the criteria in new section 1061ZEB for a period of 52 weeks.

New subsection 1061ZEB(2) applies the extended qualification rule to a person who:

- has been receiving a youth allowance (but not if the person was undertaking full-time study or a new apprentice) or newstart allowance (paragraph 1061ZEB(2)(a) refer); and
- the person ceases to be qualified for youth allowance or newstart allowance because there is an increase in the person’s ordinary income from employment (and after any working credit balance of the person is reduced to nil), the person’s allowance ceases to be payable (paragraph 1061ZEB(2)(b) refer); and
- at the time the person ceased to be qualified for his or her allowance the person was qualified for a pensioner concession card under new subsection 1061ZA(2A) and had a ‘partial capacity to work’(paragraph 1061ZEB(2)(c) refer).

New Notes 1, 2 and 3 direct readers to the meaning of ‘undertaking full-time study’ as set out in section 541B, ‘new apprentice’ defined at subsection 23(1), and ‘partial capacity to work’ in new section 16B.

New subsection 1061ZEB (3) operates so that a person can only access the extended qualification rule if the person is an Australian resident. However, as provided by new subsection 1061ZEB(4) a person will not, during the 52 weeks of extended qualification, qualify for a pensioner concession card on the days on which they are receiving newstart allowance or youth allowance or a social security pension.

Health care cards

Section 1061ZK of the Social Security Act provides for the automatic issue of health care cards. **Item 12** makes an amendment to section 1061ZK with the effect that a youth allowance recipient who qualifies for a pensioner concession card under new subsection 1061ZA(2A) will not also be issued a health care card.

Presently, under section 1061ZM, if a person is a recipient of a certain social security pension or benefit and is an employment-affected person, the person can access a health care card, if because of employment income (being the person's own income or his or her partner's income), the person is no longer an employment-affected person. An employment-affected person is a person who has been receiving one of the social security payments listed in subsection 1061ZM(3). This list currently includes pension PP (single), newstart allowance and youth allowance recipients (but who are not undertaking full-time study).

A person qualifying under section 1061ZM will have access to a health care card for a period of 26 weeks from when they ceased to be an employment-affected person. An exception to this is provided for by subsection 1061ZM(1B) applying to a person who has been receiving pension PP (single) and who, for a period of time since ceasing to be an employment-affected person, has access to a pensioner concession card under section 1061ZEA. Such a person has access to a health care card for a period commencing from the day they no longer qualify for their pensioner concession card to 26 weeks after ceasing to be an employment-affected person. In effect, they qualify for a health care card for the balance of the 26 weeks. **Item 13** inserts a new subsection 1061ZM(1BA) with the similar effect to that of current subsection 1061ZM(1B).

New subsection 1061ZM(1BA) applies to newstart allowance and youth allowance recipients who cease to be an employment-affected person and who were a 'principal carer' (as set out in subsection 5(15) to (24) when they ceased payment and who since ceasing payment, qualified for a pensioner concession card under section 1061ZEA. Such a person will have access to a health care card for a period commencing from the day they no longer qualify for a pensioner concession card for the period of 26 weeks from the day on which the person ceased to be an employment-affected person.

SCHEDULE 16 – PENSION RATE CALCULATORS

SUMMARY

From 20 September 2006, a person who claims or receives the disability support pension under section 94 will have an income maintenance period applied. Permanently blind persons in receipt of disability support pension are not subject to the ordinary income test and so will be excluded from the application of the income maintenance period.

BACKGROUND

Income maintenance provisions are already applied to most income support payments for working age people. The introduction of the income maintenance period for disability support pension purposes will enhance consistency in the eligibility conditions for income support for working age people and will assist in ensuring that income support is targeted towards those most in need.

Under the income maintenance period, where a person receives a leave payment or a redundancy payment, the amount of that payment will be apportioned over the period that the payment represents and maintained as ordinary income for that period.

EXPLANATION OF CHANGES

AMENDMENT OF THE SOCIAL SECURITY ACT 1991

Part 1 – Amendment of Pension Rate Calculator A

The rate of disability support pension for a person who is over 21 and not permanently blind is calculated using Pension Rate Calculator A at section 1064. Schedule 16 extends the income maintenance period to a person who is over 21 and not permanently blind by amending Pension Rate Calculator A.

Item 1 inserts at point 1064-A1 in Module A – Overall rate calculation process – in the method statement after step 5, a note that refers to provisions in a new Module F that may apply to working out the ordinary income of a person, and the ordinary income of a partner of the person, for the purposes of disability support pension. **Item 2** repeals the note in Module E – Ordinary income test - at point 1064-E1 in method statement, step 1 and substitutes 2 notes. This has the effect of directing the reader to the new Module F for provisions that may apply to working out the ordinary income of a person, and the ordinary income of a partner of the person, for the purposes of disability support pension. **Item 3** inserts a note at the end of point 1064-E2, which explains that for the purposes of working out a person's disability support pension rate under this Rate Calculator, Module F applies to working out the ordinary incomes of both members of the couple.

New Module F

Item 4 inserts at section 1064, after Module E, a new Module F – Ordinary income for the purposes of disability support pension. Module F is modelled on the existing provisions relating to an income maintenance period, that applies to beneficiaries of youth allowance, austudy payment, widow allowance, newstart allowance, sickness allowance, partner allowance, mature age allowance and parenting payment. However, additional provisions are required to ensure that other payments calculated under Pension Rate Calculator A that are not subject to the income maintenance period (for example, age pension) are unaffected by the new arrangements for disability support pension.

An income maintenance period will apply to recipients of disability support pension if the person or the person's partner were to receive a leave payment or a redundancy payment on termination of employment, or a lump sum leave payment while continuing in employment.

Point 1064-F1 ensures that Module F only applies for the purposes of working out the rate of disability support pension payable to a person. Module F only applies to that person, and if the person is a member of a couple, to the person's partner.

By way of example, in the case of a couple where one partner receives disability support pension and the other an age pension, Module F will operate as follows:

- When calculating the ordinary income for the purposes of the age pension, Module F does not apply. Consequently, neither partner's ordinary income for age pension purposes can include amounts calculated under the income maintenance period provisions.
- When calculating the ordinary income for the purposes of the disability support pension, Module F does apply. Consequently, either partner's ordinary income for disability support pension purposes could include amounts calculated under the income maintenance period provisions.

In such a case, the amount of income attributed to each partner under existing 1064-E2 will be different depending on whether the payment being calculated is the age pension or the disability support pension.

Point 1064-F2 determines that a person who receives lump sum payments arising from termination of employment is to be taken to have received the lump sum payment on the day on which the person's employment was terminated.

Point 1064-F3 excludes a lump sum termination payment that is rolled over into an approved deposit fund, a superannuation fund or a deferred annuity from the calculation of a person's ordinary income for the purposes of the Module.

Point 1064-F4 defines income maintenance period as it relates to leave payments during a period of continuing employment.

Point 1064-F5 defines income maintenance period as it relates to termination payments on termination of employment.

Point 1064-F6 determines how the income maintenance period is calculated if a person receives more than one termination payment on a day.

Point 1064-F7 determines that, if a person is employed, the income maintenance period starts on the first day of the leave period to which the leave entitlement relates.

Point 1064-F8 determines that, if a person's employment is terminated, the income maintenance period starts on the day on which the person is paid the termination payment.

Point 1064-F9 determines that if a person whose employment has been terminated is subject to an income maintenance period, is paid another termination payment during this period, the income maintenance period for the second termination payment starts on the day after the end of the first period.

Point 1064-F10 determines how to calculate leave payments or termination payments that are in respect of periods longer than a fortnight.

Point 1064-F11 provides for an exemption to the whole or any part of an income maintenance period if the person is in severe financial hardship because the person has incurred unavoidable or reasonable expenditure while an income maintenance period applies to the person.

Point 1064-F12 determines that in certain circumstances a person is taken to have received a leave payment or a termination payment if the payment is made to another person, or the first person waives or assigns his or her right to receive the payment.

Point 1064-F13 provides that if a person's employment is terminated and the person receives a single payment in respect of different kinds of termination payments, then each part of the payment that is in respect of a different kind of termination payment is taken to be a separate payment. The income maintenance period in respect of the single payment is worked out by adding the periods to which the separate payments relate.

Point 1064-F14 provides new definitions for leave payment, payment fortnight, period to which the payment relates, redundancy payment, roll-over and termination payment. The definitions for leave payment, payment fortnight and roll-over are modelled on existing definitions, but the definition of roll-over is altered to include a lump sum redundancy payment.

The new definition for 'period to which the payment relates', provides that:

- the period that a leave payment will be maintained is the leave period to which the payment relates; or

- the period for which a lump sum redundancy payment will be maintained is equivalent to the number of weeks the redundancy pay out is calculated on; or
- if the period for which the redundancy period is not specified, the person is deemed to receive ordinary income, if the employment had continued at the rate per week at which the person usually received ordinary income from the employment prior to the termination.

The new definition for ‘redundancy payment’ excludes a qualifying eligible termination payment within the meaning of Subdivision AA of Division 2 of Part III of the *Income Tax Assessment Act 1936*.

The new definition of roll-over includes a lump sum leave payment or a lump sum redundancy payment, and has the same meaning as in section 27D of the *Income Tax Assessment Act 1936* in relation to an eligible termination payment.

The new definition for ‘termination payment’ includes a leave payment relating to a person’s employment that has been terminated, or a redundancy payment.

Part 2 – Amendment of Pension Rate Calculator D

The rate of disability support pension for a person who is under 21 and not permanently blind is calculated using Pension Rate Calculator D at section 1064. This Schedule 16 extends the income maintenance period to a person who is under 21 and not permanently blind by amending Pension Rate Calculator D.

Item 5 inserts at point 1066A-A1 in Module A – Overall rate calculation process – in the method statement after step 5, a note that refers the reader to provisions in a new Module G that may apply to working out, under this Rate Calculator, the ordinary income of a person. **Item 6** repeals the note in Module F – Ordinary income test - at point 1066A-F1 in method statement, step 1 and substitutes 2 notes. This has the effect of directing the reader to the new Module G for provisions that may apply to working out, under this Rate Calculator, the ordinary income of a person.

New Module G

Item 7 inserts at section 1066A, after Module F, a new Module G – Payments taken to be ordinary income.

Point 1066A-G1 provides that Module G applies to a person and, if the person is a member of a couple, the person’s partner.

Point 1066A-G2 determines that a person who receives lump sum payments arising from termination of employment is to be taken to have received the lump sum payment on the day on which the person’s employment was terminated.

Point 1066A-G3 excludes a lump sum termination payment that is rolled over into an approved deposit fund, a superannuation fund or a deferred annuity from the calculation of a person’s ordinary income for the purposes of the Module.

Point 1066A-G4 defines income maintenance period as it relates to leave payments during a period of continuing employment.

Point 1066A-G5 defines income maintenance period as it relates to termination payments on termination of employment.

Point 1066A-G6 determines how the income maintenance period is calculated if a person receives more than one termination payment on a day.

Point 1066A-G7 determines that, if a person is employed, the income maintenance period starts on the first day of the leave period to which the leave entitlement relates.

Point 1066A-G8 determines that, if a person's employment is terminated, the income maintenance period starts on the day on which the person is paid the termination payment.

Point 1066A-G9 determines that if a person whose employment has been terminated is subject to an income maintenance period, is paid another termination payment during this period, the income maintenance period for the second termination payment starts on the day after the end of the first period.

Point 1066A-G10 determines how to calculate leave payments or termination payments that are in respect of periods longer than a fortnight.

Point 1066A-G11 provides for an exemption to the whole or any part of an income maintenance period if the person is in severe financial hardship because the person has incurred unavoidable or reasonable expenditure while an income maintenance period applies to the person.

Point 1066A-G12 determines that in certain circumstances a person is taken to have received a leave payment or a termination payment if the payment is made to another person, or the first person waives or assigns his or her right to receive the payment.

Point 1066A-G13 provides that if a person's employment is terminated and the person receives a single payment in respect of different kinds of termination payments, then each part of the payment that is in respect of a different kind of termination payment is taken to be a separate payment. The income maintenance period in respect of the single payment is worked out by adding the periods to which the separate payments relate.

Point 1066A-G14 provides new definitions for leave payment, payment fortnight, period to which the payment relates, redundancy payment, roll-over and termination payment. The definitions for leave payment, payment fortnight and roll-over are modelled on existing definitions, but the definition of roll-over is altered to include a lump sum redundancy payment.

The new definition for 'period to which the payment relates', provides that the:

- period that a leave payment will be maintained is the leave period to which the payment relates; or
- period for which a lump sum redundancy payment will be maintained is equivalent to the number of weeks the redundancy pay out is calculated on; or
- if the period for which the redundancy period is not specified, the person is deemed to receive ordinary income, if the employment had continued at the rate per week at which the person usually received ordinary income from the employment prior to the termination.

The new definition for ‘redundancy payment’ excludes a qualifying eligible termination payment within the meaning of Subdivision AA of Division 2 of Part III of the *Income Tax Assessment Act 1936*.

The new definition of roll-over includes a lump sum leave payment or a lump sum redundancy payment, and has the same meaning as in section 27D of the *Income Tax Assessment Act 1936* in relation to an eligible termination payment.

The new definition for ‘termination payment’ includes a leave payment relating to a person’s employment that has been terminated, or a redundancy payment.

Item 8 ensures that the amendments made by this Schedule apply in relation to claims for social security payments made on or after 20 September 2006.

SCHEDULE 17 – YOUTH ALLOWANCE RATE CALCULATOR

SUMMARY

Part 1 - Income test

This measure amends the income test in the Youth Allowance Rate Calculator in Part 3.5 of the Act, which applies to recipients of youth allowance. The purpose of the amendment is to provide stronger incentives for workforce participation to recipients of this benefit and their partners by increasing the financial gain from higher private income.

This measure includes amendments similar to those proposed for other income tests such as those for Benefit Rate Calculator B and the Austudy Payment Rate Calculator.

In respect of the income test for youth allowance generally, part 1 of Schedule 17:

- lowers the rate of ‘partner income reduction’ applied to the ordinary income of the recipient’s partner from 70 cents in the dollar to 60 cents in the dollar;
- revises and updates the example that demonstrates how the ‘partner income reduction’ is calculated; and
- lowers the rate of ‘upper range reduction’ applied to a recipient’s ordinary income from 70 cents in the dollar to 60 cents in the dollar.

The income test arrangements for youth allowance differ depending on whether the recipient is a full-time student or a new apprentice, or not. For the purposes of this memorandum these groups are referred to as youth allowance (full-time student and new apprentices) and youth allowance (other).

Specifically in respect of youth allowance (other), this part:

- extends the ‘lower range reduction’ applied to ordinary income received by youth allowance (other) recipients from a range of \$62 up to and including \$142 per fortnight to a range of \$62 up to and including \$250 per fortnight; and
- applies the ‘upper range reduction’ to the ordinary income of recipients of youth allowance (other) above \$250 per fortnight.

Part 2 – Maximum basic rate

A new maximum basic rate is inserted into youth allowance for people who are not a member of couple, and are exempt from the youth allowance activity test because they are an ‘active and registered foster carer’, ‘home educator’ or ‘distance educator’. This new fortnightly rate will be aligned with the pension (PP) single maximum basic rate and will be indexed in line with the pension (PP) single rate.

Part 3 – Pharmaceutical allowance

Qualification for pharmaceutical allowance will be extended to newstart allowance and youth allowance recipients who either have a ‘partial capacity to work’ or who are a ‘principal carer’ and are not a member of a couple.

Part 4 – Youth disability supplement

If a person under the age of 21 years receives the disability support pension, the person would also receive the youth disability supplement. From 1 July 2006, a person under the age of 21 years with a partial capacity to work will receive the youth allowance, if the person meets the means test and other eligibility criteria. From this date, a person under the age of 21 years with a partial capacity to work who is receiving youth allowance, will receive the youth disability supplement. Schedule 1 inserts a definition of ‘partial capacity to work’ after section 16A.

Part 5 – Exemption from parental means test

Also from 1 July 2006, a person under the age of 21 years with a partial capacity to work will be exempt from the parental means test for youth allowance.

Part 6 – Income maintenance period

From 20 September 2006 the calculation of the income maintenance period for a person who claims or receives youth allowance will be altered to include redundancy payments received on the termination of employment.

BACKGROUND

Income test

This is a 2005-06 Budget measure, which will commence on 1 July 2006.

The Youth Allowance Rate Calculator works similarly to the Benefit Rate Calculator B whose operation is explained at Schedule 19. However, the Youth Allowance Rate Calculator presently differs from Benefit Rate Calculator B in some key respects. Specifically, recipients of youth allowance (full-time student and new apprentice) have a higher ‘income free area’ and different lower and upper range reduction thresholds. For recipients of youth allowance (full-time student and new apprentice), the relevant provisions are, and will continue to be, aligned with the Austudy Payment Rate Calculator.

Maximum basic rate

The new higher rate for youth allowance ‘principal carer’ recipients, who are single and who are a ‘registered and active foster carer’, ‘home educator’ or ‘distance educator’ recognises that parents in these groups are choosing to perform valuable

roles over and above those involved in parenting and caring, and for which there can be additional associated costs.

Pharmaceutical allowance

Pharmaceutical allowance is currently available to certain pension and allowance recipients and assists these people to buy prescription medicines available through the Pharmaceutical Benefits Scheme. Qualification for pharmaceutical allowance will be extended to newstart allowance and youth allowance recipients who either have a ‘partial capacity to work’ or who are a ‘principal carer’ and are not a member of a couple. New section 16B inserted by Schedule 1 of this Bill provides for when a person will have a ‘partial capacity to work’. New subsections 5(15) to (24) provide for when a person will be a ‘principal carer’.

Youth disability supplement

The youth disability supplement is payable to a recipient of the disability support pension who is aged under 21 years. The policy intention is that for a person who, but for the amendments that are in this Bill would have received the disability support pension, that person would continue to receive the youth disability supplement while on youth allowance. Under current provisions, the rate of a person on disability support pension who is less than 21 years cannot exceed the rate of a disability support pension recipient who is over 21 years.

In order to maintain consistency with the disability support pension, the youth disability supplement will be limited to persons with a partial capacity to work who have not turned 21 years. In addition, the overall rate of youth allowance that a person with a partial capacity to work can receive will be limited to the equivalent rate for newstart allowance. That is, the rate for a single person with a partial capacity to work who is on youth allowance is limited to the single, basic rate of newstart allowance. A partnered person will be limited to the equivalent newstart allowance partner rate.

Exemption from parental means test

For persons under 21 years, the disability support pension is not subject to parents’ income and assets. For youth allowance, a parental means test applies to all dependent young people. Schedule 17 ensures that a person who has a partial capacity to work is exempt from the parental means test for youth allowance.

Income maintenance period

Under the income maintenance period, where a person receives a leave payment, the amount of the leave payment is apportioned over the period that the payment represents and maintained as ordinary income for that period. The inclusion of redundancy payments in the income maintenance period will enhance consistency in the eligibility conditions for most income support payments, to ensure that income support is targeted towards those most in need. Currently, an income maintenance

period applies to leave payments only. The inclusion of redundancy payments in the calculation of the income maintenance period recognises that the primary purpose of a redundancy payment is to support peoples' incomes for a period after loss of employment.

EXPLANATION OF CHANGES

AMENDMENT OF THE SOCIAL SECURITY ACT 1991

Part 1 - Income test

Items 1 and 2 amend point 1067G-H28 which determines the amount of the 'partner income reduction' for partnered recipients of youth allowance whose partner has a 'partner income excess' (that is, the partner receives ordinary income above the 'partner income free area').

Item 1 amends point 1067G-H28 to reduce the rate of 'partner income reduction' applied to person's 'partner income excess' from 70% to 60%. This means that a recipient's rate of benefit will be reduced by 60 cents in the dollar (rather than 70 cents in the dollar) for every dollar of ordinary income received by the recipient's partner in excess of the 'partner free income area' per fortnight.

Item 2 amends the example in point 1067G-H28 to include revised amounts of 'ordinary income' and the 'partner income free area'. The item sets out a new 'partner income excess amount' and applies the new rate of partner income reduction (that is, a rate of reduction of 60% rather than 70%).

Item 3 amends points 1067G-H32 and 1067G-H33, which provide the parameters for determining a person's 'lower range reduction' and 'upper range reduction' respectively.

Item 3 amends point 1067G-H32 to extend the 'lower range reduction' that applies to amounts of ordinary income received by youth allowance (other) recipients. Instead of applying to ordinary income over \$62 and up to and including \$142 per fortnight, the revised 'lower range reduction' will apply to ordinary income over \$62 and up to and including \$250 per fortnight. This change is achieved by altering the amount of \$80 (which represents the difference between \$62 and \$142) to substitute \$188 (which represents the difference between \$62 and \$250). The 'lower range reduction' band for recipients of youth allowance (student and new apprentice) remains \$80 notwithstanding the rewriting of this provision. That is, for these people, the lower range reduction applies to ordinary income over \$236 up to and including \$316 per fortnight.

As noted above, Item 3 also amends point 1067G-H33 which provides the parameters for 'upper range reduction'.

Reflecting the change in the 'lower range reduction' for recipients of youth allowance (other), Item 3 also amends the 'upper range reduction' applied to recipients of this

payment type. That is, for youth allowance (other) recipients, the ‘upper range reduction’ now commences in respect of ordinary income received by them in excess of \$250 per fortnight (rather than over \$142 as is currently the case). Again, this change is achieved by altering the amount of \$80 to substitute \$188 (which represents the difference between \$62 and \$250).

The size of the ‘upper range reduction’ band for recipients of youth allowance (student and new apprentice) is unchanged notwithstanding the rewriting of this provision. That is, for these people, the upper range reduction applies to ordinary income received by the person over \$316 per fortnight.

Finally, Item 3 amends the rate of a person’s ‘upper range reduction’ from 70% to 60%. This means that any ordinary income received by the person in the upper range will reduce a person’s rate of benefit by 60 cents in the dollar (rather than 70 cents in the dollar) for every dollar received by the person over the specified amount. For youth allowance (other) recipients, the upper range reduction will apply to ordinary income earned over \$250 per fortnight, while for youth allowance (student and new apprentice) the upper range reduction will continue to apply to ordinary income earned over \$316 per fortnight.

Part 2 – Maximum basic rate

Item 4 inserts an amendment as consequence of the insertion of new point 1067G-B3A.

Item 5 inserts new point 1067G-B3A that provides for a new maximum basic rate for certain recipients of youth allowance. This new rate will apply to youth allowance recipients who are independent and not a long term income support student, and who are not a member of a couple and have an exemption under section 542FA. The exemptions under section 542FA apply to people who are ‘principal carers’ and who are ‘home educators’, ‘distance educators’ or ‘registered and active foster carers’. This new maximum basic rate is aligned with the pension PP (single) rate and indexed at the same rate of pension PP (single).

Part 3 – Pharmaceutical allowance

Presently, point 1067G-C1 operates so that youth allowance recipients who have a temporary incapacity exemption under section 542A of the Social Security Act can access a pharmaceutical allowance.

Item 6 repeals and substitutes point 1067G-C1 of the Youth Allowance Rate Calculator. The effect of this amendment is that qualification for pharmaceutical allowance for youth allowance recipients is broadened. In addition to youth allowance recipients who have a temporary incapacity exemption, the pharmaceutical allowance will be added to a youth allowance recipient’s maximum basic rate if he or she:

- has a partial capacity to work; or

- is not a member of a couple and is the principal carer of at least one child.

However, **Item 7** provides that for a person for whom point 1067G-C1 applies, if the person is undertaking full-time study as defined by section 541B or is a new apprentice as defined by subsection 23(1), pharmaceutical allowance is not to be added to a person's maximum basic rate.

Part 4 – Youth disability supplement

A person who has a partial capacity to work will, if qualified for youth allowance, be provided with the youth disability supplement.

The purpose of this amendment is to maintain consistency with the disability support pension for persons who have a partial capacity to work, who are under 21 years and on youth allowance.

Item 8 inserts after subsection 1067G(2) a provision to limit the rate of a person's youth allowance to no more than the equivalent rate of newstart allowance that is worked out using Benefit Rate Calculator B. **Item 9** amends the Method statement of Module A of the Youth Allowance Rate Calculator (at point 1067G-A1) to provide for how the fortnightly amount of youth disability supplement will be worked out. A new Module D is inserted by **Item 10** at section 1067G (after Module C). Module D provides that a person who meets the following qualifications will be provided with the youth disability supplement. That is, to be qualified for a youth disability supplement, a person must:

- have a partial capacity to work; and
- have not turned 21.

The rate of youth disability supplement is \$92.40. **Item 11** amends table item 4A at section 1190, to ensure that the youth disability supplement is adjusted annually in line with CPI increases.

Section 1198C provides for the adjustment of youth disability supplement on 1 January of each year. **Items 12, 13** and **14** inserts separate provisions at section 1198C and at the end of section 1198C that separately identifies the youth disability supplement that is to be adjusted on each 1 January for recipients of the disability support pension and youth allowance.

Part 5 – Exemption from parental means test

A person who has a partial capacity to work will be exempt from the parental means test for youth allowance.

Part 4 of this Schedule provides an additional definition of 'independent' under youth allowance. Section 1067A determines that in a number of defined circumstances, a person is regarded as independent. If a person is independent, that person is exempt

from the parental means test for youth allowance through the operation of the Youth Allowance Rate Calculator in Part 3.5.

Item 15 inserts at the end of section 1067A a definition of independent that would enable a person with a partial capacity to work to be exempt from the parental means test for youth allowance. Unlike the majority of other independence criteria under 1067A, which recognise a young person as having demonstrated independence from their parents through workforce participation, having a dependent child, being married or personal circumstances which make it unreasonable or dangerous for a person to stay at home, the objective of this new criterion is to allow the application of a means test regime similar to that for disability support pension (ie without reference to parental income or assets).

Under the new definition of independent at subsection 1067(A)(12), a person is independent if the person:

- has turned 16; and
- has a partial capacity to work; and
- is not undertaking full-time study and is not a new apprentice.

The requirement that a person with a partial capacity to work on youth allowance must be at least 16 years old to qualify for the youth disability supplement is to maintain consistency with the disability support pension. A person with a partial capacity to work who is a full time student or who is a new apprentice will not be exempt from the parental means test for youth allowance.

Part 6 – Income maintenance period

Module H – Income test – in the Youth Allowance Rate Calculator sets out how the person’s ordinary income is to be calculated for determining the person’s maximum payment rate. Where appropriate, points 1067G-H2 to 1067G-H24 relate to particular matters that are to be taken into account when calculating the effect of a person’s ordinary income and the ordinary income of a partner of the person, on the person’s maximum payment rate. These particular matters include the impact on a person’s income maintenance period when the person’s employment is terminated. Part 6 of Schedule 17 amends the Youth Allowance Rate Calculator to include redundancy payments in the calculation of the income maintenance period.

Item 16 of the Bill substitutes ‘leave’ wherever occurring in point 1067G-H10 with ‘termination’. Similar amendments are made in paragraph (b) of point 1067G-H12 (**Item 17**), paragraph (b) of point 1067G-H13 (**Item 19**), point 1067G-H14A (**Item 21**), and point 1067G-H14B, wherever occurring (**Item 22**).

Item 18 amends point 1067G-H12 by omitting ‘leave’ (last occurring). Similar amendments are made in point 1067G-H13 (**Item 20**), paragraphs (b), (c) and (d) of point 1067G-H15 (**Item 24**) and point 1067G-H18 (**Item 28**).

Items 23 and 25 inserts ‘or termination payment’ after ‘leave payment’ in paragraph (a) of point 1067G-H15 and in point 1067G-H17.

Item 26 amends point 1067G-H18 by substituting ‘termination payments’ for ‘leave’ (first occurring) and a similar amendment is made in point 1067G-H18 by substituting ‘termination payment’ for ‘leave’ (second occurring) (**Item 27**).

Items 29, 30 and 32 insert new definitions for the ‘period to which the payment relates’, ‘redundancy payment’ and ‘termination payment’, respectively.

The insertion made by Item 29 in point 1067G-H19 provides that the:

- period that a leave payment will be maintained is the leave period to which the payment relates; or
- period for which a lump sum redundancy payment will be maintained is equivalent to the number of weeks the redundancy pay out is calculated on; or
- if the period for which the redundancy period is not specified, the person is deemed to receive ordinary income, if the employment had continued at the rate per week at which the person usually received ordinary income from the employment prior to the termination.

Item 30 inserts a definition for redundancy payment that excludes a qualifying eligible termination payment within the meaning of Subdivision AA of Division 2 of Part III of the *Income Tax Assessment Act 1936*. **Item 32** inserts a definition of termination payment that means a leave payment relating to a person’s employment that has been terminated, or a redundancy payment.

Item 31 extends the definition of roll-over in point 1067G-H19 with the insertion of ‘or lump sum redundancy payment’ after ‘leave payment’.

Item 33 provides that the amendments made by this Part apply in relation to claims for youth allowance made on or after 20 September 2006.

SCHEDULE 18 – AUSTUDY PAYMENT RATE CALCULATOR

SUMMARY

Part 1 - Income test

This measure amends the income test in the Austudy Payment Rate Calculator in Part 3.5A of the Act, which applies to recipients of austudy payment. The purpose of the amendment is to provide stronger incentives for workforce participation to recipients of this benefit and their partners by increasing the financial gain from higher private income.

The amendments to the Austudy Payment Rate Calculator are less extensive than those for other rate calculators. They involve lower rates of ‘upper range reduction’ and ‘partner income reduction’ for recipients of this benefit. Consistent with amendments to other rate calculators, both income reduction rates will fall from 70 cents in the dollar to 60 cents in the dollar.

One effect of this will be that recipients of austudy payment and their partners will be entitled to receive higher amounts of ordinary income before the benefit ceases to be payable. The other effect is that, as recipients or their partner’s receive higher ordinary income over specified thresholds, the amount of austudy payment payable will reduce at a lower rate than is presently the case.

The amendments also alter the example, which sets out how the income test applies, to reflect the lower rates of income reduction.

Part 2 – Income maintenance period

From 20 September 2006 the calculation of the income maintenance period for a person who claims or receives austudy payment will be altered to include redundancy payments received on the termination of employment.

BACKGROUND

Income test

This is a 2005-06 Budget measure, which will commence on 1 July 2006.

An explanation of how the rate calculators in the Act work, and the terms used in applying those calculators is provided at Schedule 19 with regard to Benefit Rate Calculator B. That explanation is not repeated here.

One important difference between the Austudy Payment Rate Calculator and Benefit Rate Calculator B is the more generous ‘income free area’ applied to recipients of austudy payment, which is set at \$236 per fortnight (compared to \$62 for benefits such as newstart allowance and benefit PP (partnered)).

As a result of this higher ‘income free area’ and changes to other rate calculators, the size of the ‘lower range reduction’ band for austudy payment will now be narrower than for certain other benefits. The austudy payment ‘lower range reduction’ applies to any ordinary income received by the person per fortnight over \$236 and up to and including \$316. Any income received by the person within this band will continue to reduce the amount of austudy payment payable to them by 50 cents in the dollar.

Furthermore, as is currently the case, any ordinary income received by the person over \$316 per fortnight will be assessed for the purposes of the ‘upper range reduction’. However, the rate of income reduction applied to ordinary income received by a person over \$316 will be lowered. This means that the person’s rate of austudy payment will be reduced by 60 cents in the dollar for every dollar received over \$316 per fortnight rather than at a rate of 70 cents in the dollar as is presently the case.

Income maintenance period

Under the income maintenance period, where a person receives a leave payment, the amount of the leave payment is apportioned over the period that the payment represents and maintained as ordinary income for that period. The inclusion of redundancy payments in the income maintenance period will enhance consistency in the eligibility conditions for most income support payments, to ensure that income support is targeted towards those most in need. Currently, an income maintenance period applies to leave payments only. The inclusion of redundancy payments in the calculation of the income maintenance period recognises that the primary purpose of a redundancy payment is to support peoples’ incomes for a period after loss of employment.

EXPLANATION OF CHANGES

AMENDMENT OF THE SOCIAL SECURITY ACT 1991

Part 1 - Income test

Items 1 and 2 amends point 1067L-D27, which determines how a ‘person’s partner income reduction’ is calculated and provides an example of the calculation.

Item 1 amends the rate of ‘partner income reduction’ from 70% to 60%. This means that a recipient’s rate of benefit will be reduced by 60 cents in the dollar (rather than 70 cents in the dollar) for every dollar of ordinary income received by the recipient’s partner in excess of the ‘partner free income area’ per fortnight.

Item 2 updates the example to provide revised amounts of ‘ordinary income’ and ‘partner free income area’. It is amended to apply the revised (lower) rate of ‘partner income reduction’ of 60%.

Item 3 amends point 1067L-D32, which sets out the method for calculating a person’s ‘upper range reduction’. The rate of a person’s ‘upper range reduction’ is revised

from 70% to 60%. This means that any ordinary income received by a person over \$316 per fortnight will reduce that person's rate of benefit by 60 cents in the dollar (rather than 70 cents in the dollar) for every dollar of that amount.

Part 2 – Income maintenance period

Module D – Income test – in the Austudy Payment Rate Calculator sets out how the person's ordinary income is to be calculated for determining the person's maximum payment rate. Where appropriate, points 1067L-D2 to 1067G-H23 relate to particular matters that are to be taken into account when calculating the effect of a person's ordinary income and the ordinary income of a partner of the person, on the person's maximum payment rate. These particular matters include the impact on a person's income maintenance period when the person's employment is terminated. Part 2 of Schedule 18 amends the Austudy Payment Rate Calculator to include redundancy payments in the calculation of the income maintenance period.

Item 4 of the Bill substitutes 'leave' wherever occurring in point 1067L-D4 with 'termination'. Similar amendments are made in paragraph (b) of point 1067L-D6 (**Item 5**), paragraph (b) of point 1067L-D7 (**Item 7**), point 1067L-D9 (**Item 9**), and point 1067L-D10, wherever occurring (**Item 10**).

Item 6 amends point 1067L-D6 by omitting 'leave' (last occurring). Similar amendments are made in point 1067L-D7 (**Item 8**), paragraphs (b), (c) and (d) of point 1067L-D11 (**Item 12**) and in paragraph (b) of point 1067L-D14 (**Item 16**).

Items 11 and **13** inserts 'or termination payment' after 'leave payment' in paragraph (a) of point 1067L-D11 and in point 1067L-D13.

Item 14 amends point 1067L-D14 by substituting 'termination payments' for 'leave' and a similar amendment is made in point 1067L-D14 by substituting 'termination payment' for 'leave' (**Item 15**).

Items 17, 18 and **20** insert new definitions for the 'period to which the payment relates', 'redundancy payment' and 'termination payment'.

The insertion made by Item 17 in point 1067L-D15 provides that:

- the period that a leave payment will be maintained is the leave period to which the payment relates; or
- the period for which a lump sum redundancy payment will be maintained is equivalent to the number of weeks the redundancy pay out is calculated on; or
- if the period for which the redundancy period is not specified, the person is deemed to receive ordinary income, if the employment had continued at the rate per week at which the person usually received ordinary income from the employment prior to the termination.

Item 18 inserts a definition for redundancy payment that excludes a qualifying eligible termination payment within the meaning of Subdivision AA of Division 2 of

Part III of the *Income Tax Assessment Act 1936*. **Item 20** inserts a definition of termination payment that means a leave payment relating to a person's employment that has been terminated, or a redundancy payment.

Item 19 extends the definition of roll-over in point 1067L-D15 with the insertion of 'or lump sum redundancy payment' after 'leave payment'.

Item 21 provides that the amendments made by this Part apply in relation to claims for austudy payment made on or after 20 September 2006.

SCHEDULE 19 – BENEFIT RATE CALCULATOR B

SUMMARY

Part 1 – Income test

This measure amends the income test in Benefit Rate Calculator B in Part 3.6 of the Act, which applies to recipients of newstart allowance, sickness allowance, partner allowance, widow allowance and mature age allowance (under Part 2.12B). The purpose of the amendment is to provide stronger incentives for workforce participation to recipients of these benefits and their partners by increasing the financial gain from higher private income.

This part:

- extends the ‘lower range reduction’ applied to ordinary income received by recipients of newstart allowance, sickness allowance, partner allowance, widow allowance and mature age allowance from a range of \$62 up to and including \$142 per fortnight to a range of \$62 and up to and including \$250 per fortnight;
- applies the ‘upper range reduction’ to the ordinary income of recipients of these benefits above \$250 per fortnight;
- lowers the rate of ‘upper range reduction’ applied to a recipient’s ordinary income from 70 cents in the dollar to 60 cents in the dollar;
- lowers the rate of ‘partner income reduction’ applied to the ordinary income of a recipient’s partner from 70 cents in the dollar to 60 cents in the dollar; and
- revises and updates the example that demonstrates how the ‘partner income reduction’ is calculated.

Part 2 - Maximum basic rate for certain newstart allowance recipients

A new maximum basic rate will be inserted in to Benefit Rate Calculator B which will apply to certain recipients of newstart allowance who are single and are exempt from the newstart allowance activity test because they are a ‘registered and active foster carer’, ‘home educator’ or ‘distance educator’.

Part 3 – Pharmaceutical allowance

Qualification for pharmaceutical allowance will be extended to newstart allowance and youth allowance recipients who either have a ‘partial capacity to work’ or who are a ‘principal carer’ and are not a member of a couple.

Part 4 – Income maintenance period

From 20 September 2006 the calculation of the income maintenance period for a person who claims or receives widow allowance, newstart allowance, sickness allowance, partner allowance, mature age allowance will be altered to include redundancy payments received on the termination of employment.

BACKGROUND

Income test

This is a 2005-06 Budget measure, which will commence on 1 July 2006.

Benefit Rate Calculator B, like other rate calculators in the Social Security Act, provides the basis for calculating the amount of income support to be paid to recipients, taking account of their financial and other circumstances.

Income support recipients are generally entitled to receive an amount of ordinary income before the amount of payment is reduced. This amount of income is called the 'ordinary income free area'. For recipients of newstart allowance, sickness allowance, partner allowance, widow allowance and mature age allowance, the 'ordinary income free area' is set at \$62 per fortnight. This amount remains unchanged under the Welfare to Work reforms. Any amounts of ordinary income received by a person in excess of the 'ordinary income free area' is called the person's 'ordinary income excess'. The amount of this excess is used to determine the person's 'ordinary income reduction' that will be applied to reduce his or her rate of social security benefit.

Two bands are applied to determine the amount of the person's 'ordinary income reduction': the 'lower range reduction' and the 'upper range reduction'. Under the amendments, the ranges of these bands are to change, and the rate at which a person's benefit is reduced under the 'upper range reduction' will be lowered.

The 'lower range reduction' is the first band applied to ordinary income received by the person over the 'income free area'. Under the amendments, this band will apply to ordinary income in excess of \$62 and up to and including \$250 per fortnight. The band previously applied to ordinary income in excess of \$62 and up to \$142 per fortnight. Any ordinary income received within this revised band will reduce the recipient's social security benefit by 50 cents in the dollar.

The 'upper range reduction' is the second band applied to ordinary income received by a person over the 'income free area'. Under the amendments, this band will now apply to all ordinary income received by the person over \$250 per fortnight (rather than ordinary income above the current cut-in point of \$142 per fortnight). Any ordinary income received by a recipient in excess of \$250 per fortnight will reduce his or her rate of benefit by 60 cents in the dollar. Presently, the 'upper range reduction' rate is set at a rate of 70 cents in the dollar.

The amounts determined by the calculations applied by the 'lower range reduction' and 'upper range reduction' are added together. The aggregate amount is called the person's 'ordinary income reduction'.

The amendments to the assessment of income within the lower and upper range reduction bands will allow recipients to achieve higher disposable incomes when commencing work, extending hours of work or attaining higher rates of income when

their ordinary fortnightly income is between \$142 and the amount that reduces the benefit payable to zero.

The reduced rates of income reduction applied will also allow recipients to achieve higher levels of income before social security benefits cease to be payable.

Social security recipients are often partnered to persons who receive ordinary income in their own right. In such cases, the ordinary income of the recipient's partner is also assessed under the income tests set out in rate calculators in the Social Security Act.

The rate of social security benefit paid to a person who is a member of a couple can be affected by ordinary income received by his or her partner. The way in which reductions due to partner income are calculated depends on whether the person's partner receives a social security pension, a service pension, income supplement or a rehabilitation allowance.

Where the person's partner is not in receipt of a social security pension, service pension, income support supplement or a rehabilitation allowance, the person's partner is entitled to receive an amount of money before the person's social security benefit is reduced. This amount is called the 'partner income free area'. For recipients of newstart allowance, sickness allowance, partner allowance, widow allowance and mature age allowance, the 'partner income free area' is set by reference to the income at which certain social security benefit amounts are reduced to zero under the income test. The changes to the lower and upper income reduction rate bands and the reduction in the rate at which benefit payments are reduced will result in an increase in the amount of income required to reduce the rate to zero. This will produce commensurate increases in the level of the partner income free area.

Any amount received by the person's partner over the partner income free area is called the person's 'partner income excess'.

Under the amendments, the amount of the person's 'partner income excess' will reduce the person's rate of benefit by 60 cents in the dollar. Presently, this rate of reduction is set at 70 cents in the dollar. The actual amount of the reduction is known as the person's 'partner income reduction'. This lower rate of 'partner income reduction' will improve incentives for a person's partner to engage, or more fully participate in, the labour market or attain higher rates of income.

Where the person's partner is in receipt of a social security pension, a service pension, income support supplement or a rehabilitation allowance, the person is regarded as having an income that is half the couple's combined income. Consequently, increases in the partner's income are reflected in the amount that is regarded as the person's own income. The changes to the calculation of the 'ordinary income reduction' amount described earlier will therefore also result in partner income being treated more generously than at present.

As a result of partner income being included as the person's ordinary income, these cases are regarded as having zero partner income excess. Consequently there is no

separate partner income reduction amount for a person who is partnered with a recipient of a social security pension, service pension, or income support supplement.

The person's 'ordinary income reduction' and the person's 'partner income reduction' (where relevant) are added together. The sum is referred to as 'the person's income reduction'.

Applying Benefit Rate Calculator B as set out in point 1068-A1 of the Social Security Act, the person's income reduction is deducted from his or her 'maximum payment rate' to arrive at a 'provisional fortnightly payment rate'. Further items such as deductions of advance payments may be subtracted from this rate to ascertain the person's 'rate of benefit'. This is the amount of social security benefit that is actually paid to the person on a fortnightly basis. Technically, however, the rate of benefit is a daily rate not a fortnightly rate.

Pharmaceutical allowance

Pharmaceutical allowance is currently available to certain pension and allowance recipients and assists these people to buy prescription medicines available through the Pharmaceutical Benefits Scheme. Qualification for pharmaceutical allowance will be extended to newstart allowance and youth allowance recipients who either have a 'partial capacity to work' or who are a 'principal carer' and are not a member of a couple. New section 16B inserted by Schedule 1 of this Bill provides for when a person will have a 'partial capacity to work'. New subsections 5(15) to (24) provide for when a person will be a 'principal carer'.

Income maintenance period

Under the income maintenance period, where a person receives a leave payment, the amount of the leave payment is apportioned over the period that the payment represents and maintained as ordinary income for that period. The inclusion of redundancy payments in the income maintenance period will enhance consistency in the eligibility conditions for most income support payments, to ensure that income support is targeted towards those most in need. Currently, an income maintenance period applies to leave payments only. The inclusion of redundancy payments in the calculation of the income maintenance period recognises that the primary purpose of a redundancy payment is to support peoples' incomes for a period after loss of employment.

EXPLANATION OF CHANGES

AMENDMENT OF THE SOCIAL SECURITY ACT 1991

Part 1 – Income test

Items 1 and 2 amend point 1068-G11, which sets out the method for calculating a person's 'partner income reduction'. Specifically, Item 1 changes the rate of 'partner income reduction' from 70% to 60%. This means that a recipient's rate of benefit will

be reduced by 60 cents in the dollar (rather than 70 cents in the dollar) for every dollar of ordinary income received by the recipient's partner in excess of the 'partner free income area' per fortnight.

Item 2 amends the example in point 1068-G11, which demonstrates how the person's 'partner income reduction' is to be calculated. The example will be amended to include revised amounts of 'ordinary income' and 'partner income free area'. The item sets out a new 'partner income excess' amount and applies the new rate of 'partner income reduction' (that is, a rate of 60% rather than 70%).

Item 3 amends point 1068-G15, which provides a formula for determining the person's 'lower range reduction'. The amendment extends the range of the 'lower range reduction' that applies to amounts of ordinary income received by the person. Instead of applying to ordinary income over \$62 and up to and including \$142 per fortnight, the revised lower range reduction will apply to ordinary income over \$62 and up to and including \$250 per fortnight. This change is achieved by omitting the amount of \$80 (which represents the difference between \$62 and \$142) and substituting the amount of \$188 (which represents the difference between \$62 and \$250).

Items 4 and 5 amend point 1068-G16, which provides the formula for determining the person's 'upper range reduction'.

Item 4 amends the rate of a person's 'upper range reduction' from 70% to 60%. This means that any ordinary income received by the person in the upper range (that is, amounts over \$250 per fortnight) will reduce a person's rate of benefit by 60 cents in the dollar (rather than 70 cents in the dollar) for every dollar received by the person over \$250 per fortnight.

Item 5 amends the 'upper range reduction' so that the higher rate of ordinary income reduction now commences in respect of amounts in excess of \$250 received in the fortnight (rather than \$142 as is currently the case). As with Item 3, this is achieved by omitting the amount of \$80 (which represents the difference between \$62 and \$142) and substituting the amount of '\$188' (which represents the difference between \$62 and \$250).

Part 2 - Maximum basic rate for certain newstart allowance recipients

Items 6 and 7 provide a new maximum basic rate of newstart allowance which is the same as the pension PP (single) maximum basic rate. This new maximum basic rate is used in working out a person's rate if the person is, a newstart allowance recipient, and the person is a single 'principal carer' who is exempt from the newstart allowance activity test under subsection 602C(3) of the Social Security Act. Subsection 602C(3) sets out that 'principal carers' who are 'active and registered foster carers', 'home educators' and 'distance educators' are exempt from the newstart allowance activity test. New definitions are inserted by Schedule 1 of this Bill that sets out when a person will be a 'registered and active foster carer', 'home educator' or 'distance educator'.

This new maximum basic rate, which is a fortnightly rate, is worked out by dividing the pension PP (single) maximum basic rate (plus the pension PP (single) pension supplement) by 26. The calculation is required because the pension PP (single) rate is an annual rate and the newstart allowance rate is a fortnightly rate. This new maximum basic rate for newstart allowance will be indexed in accordance with the pension PP (single) rate.

Part 3 – Pharmaceutical allowance

Presently, newstart allowance recipients have their payment amount calculated in accordance with Benefit Rate Calculator B contained at Part 3.6 of the Social Security Act. Module D of Benefit Rate Calculator B sets out for certain recipients that an additional amount by way of pharmaceutical allowance is added to people's maximum basic rate if they are an Australian resident and one of subparagraphs 1068D1(c)(i),(ii) or (iii) apply to them. **Item 8** of Part 2 of Schedule 19 repeals and substitutes paragraph (c)(ii) at point 1068-D1. The consequence of this is that paragraph 1068D1(c)(ii) will be broadened to contain a reference to new point 1068-D2B. The effect of this is that people, who are an Australian resident have the new point applied to them, will also be eligible for a pharmaceutical allowance.

New point 1068-D2B is inserted by **Item 9**, which applies to a person who is a newstart allowance recipient who has a 'partial capacity to work' or who is a 'principal carer' of at least one child and is not a member of couple.

Part 4 – Income maintenance period

Module G – Income test – in the Benefit Rate Calculator B sets out how the person's ordinary income is to be calculated for determining the person's maximum payment rate. Where appropriate, points 1068-G2 to 1068-G8 relate to particular matters that are to be taken into account when calculating the effect of a person's ordinary income and the ordinary income of a partner of the person, on the person's maximum payment rate. These particular matters include the impact on a person's income maintenance period when the person's employment is terminated. Part 3 of Schedule 19 amends the Benefit Rate Calculator B to include redundancy payments in the calculation of the income maintenance period.

Item 10 of this Part substitutes 'leave' wherever occurring in point 1068-G7AF with 'termination'. Similar amendments are made in paragraph (b) of point 1068-G7AH (**Item 11**), paragraph (b) of point 1068-G7AJ (**Item 13**), point 1068-G7AKA (**Item 13**), and point 1068-G7AKB, wherever occurring (**Item 16**).

Item 12 amends point 1068-G7AH by omitting 'leave' (last occurring). Similar amendments are made in point 1068-G7AJ (**Item 14**), paragraphs (b), (c) and (d) of point 1068-G7AL (**Item 18**) and point 1068-G7AP (**Item 22**), (last occurring).

Items 17 and **19** inserts 'or termination payment' after 'leave payment' in paragraph (a) of point 1068-G7AL and in point 1068-G7AN, respectively.

Item 20 amends point 1068-G7AP by substituting ‘termination payments’ for ‘leave’ (first occurring) and a similar amendment is made in point 1068-G7AP by substituting ‘termination payment’ for ‘leave’ (second occurring) (**Item 21**).

Items 22, 25 and **26** insert new definitions in point 1068-G7AQ for the ‘period to which the payment relates’, ‘redundancy payment’ and ‘termination payment’.

The insertion made by Item 21 in point 1068-G7AQ provides that the:

- period that a leave payment will be maintained is the leave period to which the payment relates; or
- period for which a lump sum redundancy payment will be maintained is equivalent to the number of weeks the redundancy pay out is calculated on; or
- if the period for which the redundancy period is not specified, the person is deemed to receive ordinary income, if the employment had continued at the rate per week at which the person usually received ordinary income from the employment prior to the termination.

Item 24 inserts a definition for redundancy payment in point 1068-G7AQ that excludes a qualifying eligible termination payment within the meaning of Subdivision AA of Division 2 of Part III of the *Income Tax Assessment Act 1936*. **Item 26** inserts a definition of termination payment in point 1068-G7AQ that means a leave payment relating to a person’s employment that has been terminated, or a redundancy payment.

Item 25 extend the definition of roll-over in point 1068-G7AQ with the insertion of ‘or lump sum redundancy payment’ after ‘leave payment’.

Item 27 provides that the amendments made by this Schedule apply in relation to claims for the following types of payments made on or after 20 September 2006:

- newstart allowance;
- sickness allowance;
- partner allowance;
- mature age allowance;
- widow allowance.

SCHEDULE 20 – PARENTING PAYMENT RATE CALCULATOR

SUMMARY

Part 1 – Income test

This measure amends the income test for the Benefit PP (Partnered) Rate Calculator in Part 3.6A of the Act, which applies to recipients of benefit PP (partnered). The purpose of the amendment is to provide stronger incentives for workforce participation to recipients of this benefit and their partners by increasing the financial gain from higher private income.

This measure is similar to amendments to other income tests such as those provided in respect of Benefit Rate Calculator B.

In respect of benefit PP (partnered), Part 1 of Schedule 20:

- extends the ‘lower range reduction’ applied to ordinary income from a range of \$62 up to and including \$245 per fortnight to a range of \$62 up to and including \$250 per fortnight, thereby aligning this aspect of the Calculator with the equivalent part of Benefit Rate Calculator B;
- applies the ‘upper range reduction’ to the ordinary income of benefit PP (partnered) recipients above \$250 per fortnight;
- lowers the rate of ‘upper range reduction’ applied to a recipient’s ordinary income from 70 cents in the dollar to 60 cents in the dollar; and
- lowers the rate of ‘partner income reduction’ applied to the ordinary income of a recipient’s partner from 70 cents in the dollar to 60 cents in the dollar.

Part 2 –Income maintenance period

From 20 September 2006 the calculation of the income maintenance period for a person who claims or receives parenting payment will be altered to include redundancy payments received on the termination of employment.

BACKGROUND

Income test

This is a 2005-06 Budget measure, which will commence on 1 July 2006. An explanation of how the Rate Calculators in the Act broadly work is provided in Schedule 19 with regard to Benefit Rate Calculator B and is not repeated here.

One amendment exclusive to benefit PP (partnered) is that the ‘ordinary income reduction’ applied to such recipients will be aligned with the ‘ordinary income reduction’ applied to persons receiving newstart allowance, sickness allowance, partner allowance, mature age allowance (under Part 2.12B) and some recipients of youth allowance. Specifically, the ‘lower range reduction’, which presently applies to

ordinary income received by a person over \$62 per fortnight and up to and including \$245 per fortnight, will be extended to ordinary income received over \$62 and up to and including \$250 per fortnight.

Income maintenance period

Under the income maintenance period, where a person receives a leave payment, the amount of the leave payment is apportioned over the period that the payment represents and maintained as ordinary income for that period. The inclusion of redundancy payments in the income maintenance period will enhance consistency in the eligibility conditions for most income support payments, to ensure that income support is targeted towards those most in need. Currently, an income maintenance period applies to leave payments only. The inclusion of redundancy payments in the calculation of the income maintenance period recognises that the primary purpose of a redundancy payment is to support peoples' incomes for a period after loss of employment.

EXPLANATION OF CHANGES

AMENDMENT OF THE SOCIAL SECURITY ACT 1991

Part 1 – Income test

Item 1 amends point 1068B-D24, which sets out the method for calculating a person's 'partner income reduction'. Specifically, this item changes the rate of 'partner income reduction' from 70% to 60%. This means that a recipient's rate of benefit will fall by 60 cents in the dollar (rather than 70 cents in the dollar) for every dollar of ordinary income received by the recipient's partner in excess of the 'partner free income area' per fortnight.

1.1

Item 2 amends point 1068B-D30, which provides a formula for determining the 'lower range reduction' for recipients of benefit PP (partnered). This amendment extends the range of the 'lower range reduction' that applies to ordinary income received by benefit PP (partnered). Instead of applying to ordinary income over \$62 and up to and including \$245 per fortnight, the revised lower range reduction will apply to ordinary income over \$62 up to and including \$250 per fortnight. This is achieved by omitting the amount of \$183 (which represents the difference between \$62 and \$245) and substituting the amount of \$188 (which represents the difference between \$62 and \$250).

Items 3 and 4 amend point 1068B-D31, which sets out the 'upper range reduction' for benefit PP (partnered).

Item 3 revises the rate of 'ordinary income reduction' applied to ordinary income received within this band from 70% to 60%. This means that any ordinary income received by the person in the upper range (that is, amounts over \$250 per fortnight)

will reduce a person's rate of benefit by 60 cents in the dollar (rather than 70 cents in the dollar) for every dollar over \$250.

Item 4 amends the 'upper range reduction' so that the higher rate of ordinary income reduction now commences in respect of amounts in excess of \$250 per fortnight (rather than \$245 as is currently the case). As with Item 2, this is achieved by omitting the amount of \$183 (which represents the difference between \$62 and \$245) and substituting the amount of \$188 (which represents the difference between \$62 and \$250).

Part 2 – Income maintenance period

Module E – Income test – in the Parenting Payment Rate Calculator sets out how the person's ordinary income is to be calculated for determining the person's maximum payment rate for pension pp (single). Where appropriate, points 1068A-E2 to 1068A-E12 relate to particular matters that are to be taken into account when calculating the effect of a person's ordinary income and the ordinary income of a partner of the person, on the person's maximum payment rate. These particular matters include the impact on a person's income maintenance period when the person's employment is terminated. Part 2 of Schedule 20 amends the Parenting Payment Rate Calculator to include redundancy payments in the calculation of the income maintenance period for a person who is claiming or receiving pension pp (single).

Item 5 of the Bill substitutes 'leave' wherever occurring in point 1068A-E2 with 'termination'. Similar amendments are made in paragraph (b) of point 1068A-E4 (**Item 6**), paragraph (b) of point 1068A-E5 (**Item 8**), point 1068A-E7 (**Item 10**), and point 1068A-E8, wherever occurring (**Item 11**).

Item 7 amends point 1068A-E4 by omitting 'leave' (last occurring). Similar amendments are made in point 1068A-E5 (**Item 9**) and point 1068A-E11 (last occurring) (**Item 15**).

Items 12 inserts 'or termination payment' after 'leave payment' in point 1068A-E10.

Item 13 amends point 1068A-E11 by substituting 'termination payments' for 'leave' (first occurring) and a similar amendment is made in point 1068A-E11 by substituting 'termination payment' for 'leave' (second occurring) (**Item 14**).

Items 16, 17 and **19** insert new definitions in point 1068A-E12 for the 'period to which the payment relates', 'redundancy payment' and 'termination payment'.

The insertion made by Item 16 in point 1068A-E12 provides that the:

- period that a leave payment will be maintained is the leave period to which the payment relates; or
- period for which a lump sum redundancy payment will be maintained is equivalent to the number of weeks the redundancy pay out is calculated on; or

- if the period for which the redundancy period is not specified, the person is deemed to receive ordinary income, if the employment had continued at the rate per week at which the person usually received ordinary income from the employment prior to the termination.

Item 17 inserts a definition for redundancy payment in point 1068A-E12 that excludes a qualifying eligible termination payment within the meaning of Subdivision AA of Division 2 of Part III of the *Income Tax Assessment Act 1936*. **Item 19** inserts a definition of termination payment in point 1068A-E12 that means a leave payment relating to a person’s employment that has been terminated, or a redundancy payment.

Item 18 extends the definition of roll-over in point 1068A-E12 with the insertion of ‘or lump sum redundancy payment’ after ‘leave payment’.

Module D – Income test – in the Parenting Payment Rate Calculator sets out how the person’s ordinary income is to be calculated for determining the person’s maximum payment rate of benefit pp (partnered). Where appropriate, points 1068B-D2 to 1068B-D20 relate to particular matters that are to be taken into account when calculating the effect of a person’s ordinary income and the ordinary income of a partner of the person, on the person’s maximum payment rate. These particular matters include the impact on a person’s income maintenance period when the person’s employment is terminated. Part 2 of Schedule 20 amends the Parenting Payment Rate Calculator to include redundancy payments in the calculation of the income maintenance period for a person who is claiming or receiving benefit pp (partnered).

Item 20 of the Bill substitutes ‘leave’ wherever occurring in point 1068B-D8 with ‘termination’. Similar amendments are made in paragraph (b) of point 1068B-D10 (**Item 21**), paragraph (b) of point 1068B-D11 (**Item 23**), point 1068B-D13 (**Item 25**), and point 1068B-D14, wherever occurring (**Item 26**).

Item 22 amends point 1068B-D10 by omitting ‘leave’ (last occurring). Similar amendments are made in point 1068B-D11 (**Item 24**) and point 1068B-D17 (**Item 30**).

Item 27 inserts ‘or termination payment’ after ‘leave payment’ in point 1068B-D16.

Item 28 amends point 1068B-D17 by substituting ‘termination payments’ for ‘leave’ (first occurring) and a similar amendment is made in point 1068B-D17 by substituting ‘termination payment’ for ‘leave’ (second occurring) (**Item 29**).

Items 31, 32 and 34 insert new definitions in point 1068B-D18 for the ‘period to which the payment relates’, ‘redundancy payment’ and ‘termination payment’.

The insertion made by Item 31 in point 1068B-D18 provides that the:

- period that a leave payment will be maintained is the leave period to which the payment relates; or

- period for which a lump sum redundancy payment will be maintained is equivalent to the number of weeks the redundancy pay out is calculated on; or
- if the period for which the redundancy period is not specified, the person is deemed to receive ordinary income, if the employment had continued at the rate per week at which the person usually received ordinary income from the employment prior to the termination.

Item 32 inserts a definition in point 1068B-D18 for redundancy payment that excludes a qualifying eligible termination payment within the meaning of Subdivision AA of Division 2 of Part III of the *Income Tax Assessment Act 1936*. **Item 34** inserts a definition of termination payment in point 1068B-D18 that means a leave payment relating to a person’s employment that has been terminated, or a redundancy payment.

Item 33 extend the definition of roll-over in point 1068B-D18 with the insertion of ‘or lump sum redundancy payment’ after ‘leave payment’.

Item 35 provides that the amendments made by this Part apply in relation to claims for parenting payment made on or after 20 September 2006.

SCHEDULE 21 – OVERPAYMENTS AND DEBT RECOVERY

SUMMARY

This measure provides for a one-off 10 % recovery fee to be applied to any earnings related debt incurred by working age payment recipients as a result of knowingly incorrectly declaring, or refusing to declare, their earnings. The penalty will not apply if the person has a reasonable excuse for an incorrect declaration or not making a declaration.

BACKGROUND

Prior to the changes made by these amendments, only newstart allowance, youth allowance and austudy payment recipients incurred an activity test breach penalty for deliberately misdeclaring their earnings. Penalties were fixed amounts regardless of the size of the debt (and were imposed even if the debt is waived).

Recipients of other working age payments who deliberately misdeclared their earnings incurred no penalty and simply repaid the amount they had been overpaid. There was no mechanism in place to deter this practice, other than prosecution, which is used only in serious cases of deliberate fraud.

The intention of this policy is not to extend breaching to other payment recipients but to abolish earnings-related breaches while providing a less harsh alternative to breaching to deter all people from deliberately providing wrong information about their earnings.

EXPLANATION OF CHANGES

AMENDMENT OF THE SOCIAL SECURITY ACT 1991

Section 1222 of the Social Security Act provides information about the general effect of Chapter 5 (which is concerned with overpayments and debt recovery). Subsection 1222 (2) contains a table that lists the methods of recovery available for the various types of debts. **Item 1** inserts a Note at the end of subsection 1222(2) that alerts the reader to the possibility of a 10% penalty being applied.

Item 2 inserts a new section 1228B. New subsection 1228B(1) provides that, in the circumstances specified in paragraphs 1228B(1)(a) to (c), a penalty amount is added to a debt due to the Commonwealth. The first requirement is that, at the time the payment was made, the person was at least of Youth Allowance age and had not reached pension age. The payment also must be one of the payments specified in paragraph (b).

Under paragraph 1228(1)(c), the debt must have arisen (wholly or partly) because the person had:

- (i) refused or failed to provide information in relation to the person's income from personal exertion; or
- (ii) knowingly or recklessly provided false or misleading information in relation to the person's income from personal exertion.

The effect of subsection 1228B(4) is that (i) above does not apply if the Secretary is satisfied that the person had a reasonable excuse for refusing or failing to provide the information.

Subsection 1228B(2) provides for the calculation of the 10% penalty. It states that the amount to be added to the debt is an amount equal to 10% of that portion of the debt that arose due to the matters referred to in (i) and (ii) above.

Subsection 1228B(3) provides for the amount worked out under subsection (2) to be rounded down to the nearest 5 cents.

Under existing section 1229A a person may be liable to pay interest on the outstanding amount of a debt. The interest payable is a debt due to the Commonwealth. Separately, section 1229AB provides for an administrative charge to apply to a debt in the specified circumstances. That charge is a debt due to the Commonwealth. The effect of subsection 1228B(5) is to make it clear that section 1228B does not apply to any debt arising under either section 1229A or 1229AB.

Item 3 deals with the application of section 1228B. Paragraph 1228B(a) provides that section 1228B applies to any debt relating to a social security payment (of a kind mentioned in paragraph 1228(1)(b)) that is made after the commencement of the measure. Paragraph 1228(1)(b) provides that it can also relate to a debt relating to a social security payment (of a kind mentioned in paragraph 1228(1)(b)) made before the commencement of the measure. However, in the latter scenario, notice of the debt under section 1229 must have been given after the commencement of the Schedule.

Section 1230B makes it clear that the debts arising under the listed provisions do so regardless of the fact that the relevant act, omission etc may have occurred outside of Australia. **Item 4** adds section 1228B to the relevant list of provisions.

SCHEDULE 22 – ADMINISTRATION

SUMMARY

Part 1 – RapidConnect

These measures implement new RapidConnect that will, amongst other things, require some persons seeking newstart allowance and youth allowance (not a new apprentice or undertaking full-time study) to register and attend an interview with a Job Network member before their income support payments can commence. More generally, a person can be required to attend an interview at a specified time and place. The allowance will not be payable until the person attends the interview.

Part 2 – Disability support pension

From 1 July 2006, a new section will be inserted into the Administration Act that will allow for suspension instead of cancellation when a person loses eligibility for disability support pension because of an increase in earnings or hours of employment, but the person has not notified Centrelink of his or her employment within the required time period (usually 14 days). This new section will apply to all disability support pension recipients when the date of effect of cancellation of their pension is on or after 1 July 2006.

Part 3 - Participation

These are consequential amendments.

Part 4 - Compliance

These amendments are made to facilitate the new compliance framework (see for example, Part 3 of Schedule 7). Amendments are made to provisions dealing with notification of obligations for job seekers. Amendments are also made to provisions dealing with the suspension of payments and the date of effect of both favourable and adverse determinations.

Part 5 – Information Exchange

Amendments to the social security law are required to facilitate and clarify the scope for the exchange of information between Commonwealth departments and service providers to ensure streamlined servicing to job seekers and the efficient administration of services. The proposed new arrangements incorporate the new Comprehensive Work Capacity Assessments and will facilitate timely and efficient engagement of job seekers and their assessment and referral to appropriate employment or rehabilitation assistance.

Appropriate mechanisms will be included in contractual arrangements to provide adequate safeguards so that only relevant information is exchanged between service

providers. Protected information of a job seeker will only be accessed or disclosed under these changes by those service providers who are dealing with that job seeker. The usual protections under the *Privacy Act 1988* will apply in relation to, for example, storage and security of information.

The amendments also provide legislative certainty that administrative data can be used for research, policy development and statistical purposes.

Part 6 – Seasonal work preclusion period

Consequential amendments are made to give effect to extending the seasonal work preclusion period to any person who claims carer payment, disability support pension, sickness allowance, pension PP (single) and austudy payment.

Schedule 22 provides for a consequential amendment to subsection 37(4) of the Administration Act in relation to a seasonal work preclusion period for various payments.

BACKGROUND

RapidConnect

To improve the integrity of the income support system, the Australian Government has decided to implement a new RapidConnect model, a work first initiative.

The usual situation is where a newly applying activity tested job seeker claiming newstart allowance and youth allowance (not a new apprentice or undertaking full-time study) will be required to attend an interview with a Job Network member before their income support payments can commence. Job seekers will be referred to an interview with the Job Network within 2 working days of first contact. Centrelink will retain its role as the gateway into employment services.

RapidConnect will reduce delays in job seekers access to services to connect them with jobs by bringing forward the job seeker's connection with Job Network. Currently job seekers connect after 3 - 4 weeks. Faster access to Job Network will maximise their chance of finding work quickly, reducing or removing the need for income support.

Genuine job seekers who comply will not be disadvantaged by RapidConnect. Non-complying job seekers will have their income support deferred until they attend the Job Network. The usual situation would involve job seekers who attend their Job Network interview within the first 14 days will be back paid to day 1, this includes allowing non-attendance for valid reasons (for example a couple of casual days work or illness). Job seekers that attend after day 14 will have their income support paid from the date of attendance, for example from day 17 onwards, subject to a discretion that may still allow back payment after day 14.

The usual situation would involve RapidConnect not applying to where it is not appropriate for a person's needs, such as the needs of a person in a remote area.

Participation

Existing provisions dealing with the concept of ‘unreasonably delaying’ entering into an activity agreement are repealed by other amendments in this Bill. These are consequential changes.

Compliance

Under this measure, the current breaching regime, under which job seekers can incur lasting financial penalties regardless of subsequent efforts to meet their requirements, is abolished and a new compliance framework is established. A job seeker without a record of repeated non-compliance who commits a participation failure, such as missing an interview with an employment service provider, will be given the opportunity to avoid any financial penalty by quickly re-engaging with that provider. A job seeker who persists in their non-compliance, despite being warned, will lose payment until they do comply.

The new arrangements require changes to the provisions dealing with notification of obligations for job seekers (sections 63 and 64 of the Administration Act). Amendments are also made to provisions dealing with the suspension of payments (section 80 of the Administration Act) and the date of effect of both favourable and adverse determinations.

Information Exchange

Under the Welfare to Work measures, rapid referral to, and between, appropriate employment services and work capacity assessors is necessary to ensure that efficient and appropriate services to jobseekers are provided. Service providers will require up-to-date information on customers to ensure appropriate referrals and to ensure that the services they are offering are tailored to the circumstances of the customer.

Under social security law, information obtained and recorded in respect of an individual’s entitlements is protected information. Protected information is defined in section 23 of the Social Security Act. Under existing legislative provisions, there may be situations where individual service providers cannot directly refer a job seeker to another service and the information must be provided to Centrelink that then makes the relevant referral. This approach is administratively cumbersome and inefficient in terms of connecting people with appropriate service providers in a timely way. Similarly, the existing restrictions on the sharing of relevant information between service providers mean that job seekers may be required to provide the same information to each service provider they attend.

The existing authorities for disclosure may also create limitations in the context of contractual arrangements between the Commonwealth and service providers. For example, an organisation might be entitled to a payment for a service it has provided but, due to restrictions on the disclosure of information, the Commonwealth might be unable to confirm that entitlement in a timely manner.

Ongoing policy development and program analysis requires access to relevant administrative data. The Bill contains provisions to ensure exchange of information between the departments administering the social security law.

AMENDMENT OF THE ADMINISTRATION ACT

EXPLANATION OF CHANGES

Part 1 – RapidConnect

Items 1 and 2 add subparagraphs to subsection 37(2) and 37(6). The purpose of these amendments is to allow a claim to be granted, even though it remains not payable because of the operation of either new section 547AA (youth allowance) or new section 605 (newstart allowance) of the Social Security Act. Normally, under existing subsection 37(1) of the Administration Act for a claim to be granted there needs to be two things satisfied. First, the claimant must be qualified for the social security payment and secondly, the payment is payable. These amendments will allow the claim to be granted, even though it otherwise remains not payable until the person complies with the requirement such as attending an interview at a specified time and place. Item 1 adds a subparagraph at the end of paragraph 37(2)(b) to enable this to happen in respect of newstart allowance. Item 2 adds a subparagraph at the end of paragraph 37(6)(b) to enable this to happen in respect of youth allowance.

Item 3 changes section 63 of the Administration Act (Requirement to attend Department etc.). Previously for this section to apply a person had to be receiving or had made a claim for a social security payment. The new subsection 63(1) extends the operation of section 63 to where there is just contact with the Department in relation to newstart allowance and youth allowance (not a new apprentice or undertaking full-time study).

Item 4 changes subsection 63(2). Subsection 63(2) currently provides that if a person is required to do something, such as contact the Department, the Secretary may give the person written notice that he or she is required to do so. The new section 63(2) provides that the Secretary may notify the person that he or she is required to do so. The intention is broaden how a person can be notified and remove any possible restriction on a variety of methods of notifying people including contact by telephone or via mobile phone using short message service ('SMS'). This amendment to subsection 63(2) of the Administration Act also brings it in alignment with current subsection 63(3) that refers to 'notify the person'. Similar amendments are made in **Items 5, 6 and 7** with 'gives the person a notice' or 'give a person a notice' replaced with 'notifies the person' or 'notify the person respectively'. A similar, consequential amendment is also made in **Item 8** to subsection 63(11).

Item 9 adds a new subsection 80(4) at the end of current section 80 (Cancellation or Suspension Determination). Currently under section 80 of the Administration Act a payment can only be cancelled or suspended if a social security payment is being, or has been, paid to a person. With the amendments relating to RapidConnect made to section 37 (see above) it may be necessary to suspend or cancel a grant of a claim

even though no payment has yet been made. By providing that where the RapidConnect provisions apply (i.e. either new section 547AA (youth allowance) or new section 605 (newstart allowance)) such a grant of a claim can be cancelled or suspended.

Item 10 amends Schedule 2 of the Administration Act. Schedule 2 provides the Rules for working out the start day. Clause 5 provides the rule for the effect of an exclusion period. The addition of subclause 5(e) provides that the meaning of an exclusion period includes a period during which the payment is not payable because of the operation of either new section 547AA (youth allowance) or new section 605 (newstart allowance). A social security payment is not payable whilst these sections operate and a start date can not commence whilst these sections continue to operate.

Part 2 – Disability support pension

Suspension instead of cancellation of disability support pension

Section 93 of the Administration Act provides for automatic cancellation of a person's disability support pension if the person complies with a notice issued under section 68(2) and informs the Department of a change of his or her circumstances.

Section 96 of the Administration Act, amongst other things, provides the Secretary with the discretion to suspend rather than cancel a person's disability support pension when the person commences work. The suspension can continue for 2 years after which time the person's disability support pension will be cancelled.

Item 9 of Schedule 2 of this Bill amends the definition of 'work' at subsection 94(5) of the Social Security Act to introduce a new work capacity threshold of 15 hours per week at award wages or above. **Item 11** of Schedule 22 reflects this amendment and omits the reference to 30 in paragraph 96(1)(a) of the Administration Act and substitutes 15. The effect of this is that paragraph 96(1)(a) provides that the Secretary may determine that section 93 of the Administration Act does not apply to a person in circumstances where a person ceases to be qualified for disability support pension because the person obtains paid work that is for at least 15 hours per week. This allows people who are subject to the 'new qualification rules' to have the benefit of a section 96 suspension when they work the number of hours that would result in them no longer qualifying for the disability support pension. It allows people to be suspended rather than cancelled including where they are receiving another income support payment, such as newstart allowance.

Item 12 provides a resumption mechanism for people who have their disability support pension suspended under section 96. New paragraph 96(3A) provides that if the Secretary makes a determination suspending a person's disability support pension under section 96 and within 2 years of the decision the Secretary reconsiders the decision because the person ceases work, and is satisfied the person should be returned to the disability support pension, then the person will receive it. The insertion of this new subsection does not mean that a person has previously been unable to resume payment if his or her payment had been suspended under section 96

and the person became properly qualified or payment became payable to them. The effect of new subsection 96(3A) is to provide re-assurance for a person who participates in paid employment, that should the person's hours of work or employment income reduce, the person can be returned to the disability support pension.

New paragraph 96(3B) provides that a reconsideration of the decision to suspend a person's disability support pension can be on application made by the person under section 129 of the Administration Act or on the Secretary's own initiative.

Item 13 amends section 97(1)(a) of the Administration Act by inserting a reference to the new work capacity threshold of 15 hours per week at award wages.

The current section 97 of the Administration Act provides that where a person's disability support pension is cancelled under section 93, in certain circumstances, the Secretary may determine that the person is to be treated as if the disability support pension is suspended under section 96. The application of this section occurs when cancellation has occurred under section 93, but the decision should have been suspension under section 96. Paragraph 97(1)(a) provides that the Secretary may determine that section 93 did not apply to a person in circumstances where disability support pension ceased to be payable to a person under section 93 because the person obtained paid work that is for at least 15 hours per week and, within 2 years of disability support pension ceasing to be payable, the person ceases to do that work.

Item 14 inserts new sections 97A and 97B providing for when a person ceasing to be qualified for disability support pension, because of employment, can be suspended rather than have his or her payment cancelled. Although section 96 provides the Secretary with a discretion to suspend a person's payment, the section 96 discretion can only be exercised when a person has complied with the notification period referred to in section 93. The section 93 notification period is a time period, usually 14 days, which is set out in a notice the person receives under subsection 68(2).

New sections 97A and 97B contemplate that in some cases, whilst not necessarily attempting to avoid his or her obligation to comply with the notification period, a person may not do so. While for all other purposes a person must comply with the notification period, new sections 97A and 97B recognise that people on disability support pension who participate in paid employment may face new challenges and such a person should not necessarily lose the benefit of having his or her payment suspended. New section 97A (suspension instead of cancellation because of number of hours worked) and 97B (suspension instead of cancellation because of increase in income) provide an incentive to people who are willing to test the labour market by providing reassurance that they will be able to return to the disability support pension, within the 2 years, without having to lodge a new claim.

People who obtain employment but do not comply with a subsection 68(2) notice to inform the Department will usually have their payment cancelled by force of section 94. New sections 97A and 97B give the Secretary the discretion to determine that a payment was suspended rather than cancelled, if cancellation has been made under section 94.

New subsections 97A(1) and (2) apply to a person, who has his or her payment cancelled under section 94, because the person:

- obtains paid work for at least 30 hours per week and the person ceases to be qualified for the disability support pension because of that work - this reflects the current work capacity threshold of 30 hours per week under the ‘old qualification rules’ and applies to people who are qualified for disability support pension under the ‘old qualification rules’ (including transitional DSP applicants while they are under the ‘old qualification rules’); or
- obtains paid work for at least 15 hours per week and the person ceases to be qualified for the disability support pension because of that work - this reflects the amendment from 1 July 2006 to the disability support pension qualification to a work capacity threshold of 15 hours per week and applies to people who are qualified for disability support pension under the ‘new qualification rules’ including transitional DSP applicants while they are under the ‘new qualification rules’).

New subsection 97B(1) applies to a person who has his or her payment cancelled under section 94 because the person:

- obtains work and the person’s disability support pension ceases to be payable because of income earned from the employment – this applies to all disability support pension recipients whether under the ‘old’ or ‘new qualification rules’.

In any of these circumstances, the person must have subsequently informed the Secretary that he or she has attained that work. If the person ceases to do the work within 2 years and 14 days of the day the person ceased to be qualified or when the pension was no longer payable, then the Secretary may determine that the payment is suspended rather than cancelled. In effect, what is intended is that a person will be deemed to have had the pension suspended rather than cancelled from the point in time when the cancellation took place. The reference to ‘within 2 years and 14 days’ reflects the maximum amount of time that people can have their payment suspended rather than cancelled under section 96. That is, a person who under section 96 gives notice to the Secretary on the last day of the 14 day period and then is suspended for a further 2 years from this date. This ensures that a person who did not comply with the notification period does not have the benefit of a longer suspension time than a person who did comply with the notification period.

Under section 94 a person’s disability support pension is cancelled on the day on which the event or change of circumstances occurred that resulted in the person ceasing to be qualified or the pension ceasing to be payable to the person. This is the date of the effect of the determination. Therefore, the possible suspension period will start from the day the person was no longer qualified for his or her pension because of the work or the pension was not payable because of the income from the work. The suspension period will not commence from the day the person notified the Department of the person obtaining the employment.

New subsections 97A(3) and 97B(2) provide that a person will not have the benefit of the suspension period if the Secretary notifies the person that he or she is no longer qualified for the disability support pension before the person informs the Secretary that the person has obtained work.

New subsections 97A(4) and 97B(3) provide that the length of suspension is a maximum of 2 years and 14 days from the day the payment ceased to be payable to a person. After this time, any decision to suspend the person's payment (if any) is revoked resulting in the person's payment being cancelled.

New subsections 97A(5) and 97B(4) apply to people who are qualified for wife pension or carer payment because their partner is receiving disability support pension. If the Secretary suspends a person's disability support pension, subsections 97A(5) and 97B(4) provide the Secretary with the ability to determine that the wife pension or carer payment of the person's partner is also suspended rather than cancelled.

New subsections 97A(6) and 97B(5) are similar to the new resumption provision being inserted at section 96 by Item 12 of this Bill. Subsections 97A(6) and 97B(5) provide a mechanism for resumption to payment following a suspension of a person's disability support pension under section 97A or 97B. Subsections 97A(6) and 97B(5) operate when a person's income from the work that invoked the suspension reduces, and because of the income reduction the disability support pension becomes payable. If, within 2 years and 14 days of the date of effect of the determination (being the date the payment was cancelled under section 94), this occurs, then the Secretary is to determine that the disability support pension is to be paid to the person.

New subsection 97A(7) and 97B(6) provides that a reconsideration of a decision to suspend a person's payment may be by application of the person or on the Secretary's own initiative.

Application and transitional arrangements

Item 15 provides the application and transitional provisions in respect of Items 11 and 13 made under this Schedule.

Items 11 and 13 apply to people who claim disability support pension on or after 1 July 2006. Disability support pension recipients who properly claimed prior to 11 May 2005 will not be affected by the amendments. For disability support pension recipients who properly claimed on or after 11 May 2005 but before 1 July 2006, the amendments made by Item 11 and 13 will apply from the time a person receives a notice under subsection 63(2) or 64(2) to undertake an activity for the purpose of reviewing their capacity to perform work.

Item 16 and **17** will apply to all disability support recipients, regardless of when they claimed from 1 July 2006. However, Item 17 applies Item 14 to people who have had their disability support pension cancelled under section 94 with the date of effect on or after 1 July 2006. The date of effect of a cancellation is the date on which the

person no longer qualified for disability support pension because of employment, not the date the person notifies the Department.

Part 3 - Participation

Items 18 to 20 make amendments consequential on the repeal of other provisions undertaken as part of these measures (e.g. section 607 that is relevant for newstart allowance purposes).

Part 4 - Compliance

Items 21 to 24, 26 and 27 make amendments to section 63.

In broad terms, section 63 is a power for the Secretary to be able to require a person to, for example, contact the Department or attend a particular place for a particular purpose. Penalties can apply if the person does not comply with the requirement.

Currently, subsection 63(3) deals with newstart allowance and special benefit while subsection 63(2) is relevant for the purpose of all other payment types. The broad practical effect of the amendments made by Items 21 and 22 is to only have one provision that relates to all payment types rather than separate approaches for different payment types.

The effect of existing subsections 63(4) and 63(5) is that, where a person does not comply with a requirement under section 63, the payment is not payable. Further, for certain payment types such as youth allowance and newstart allowance, an administrative breach rate reduction period applies to the person if the payment again becomes payable. One effect of the changes made by Items 23 and 24 is to omit the concept of an administrative breach rate reduction period. While Item 23 retains the effect that payments are not payable in specified circumstances of non-compliance with notification under section 63, the effect of new subsection 63(5) is that subsection (4) does not apply if the notification under subsection (2) included a statement to the effect that a failure to comply with the requirement could constitute a participation failure. This is relevant in the context of what matters can constitute a participation failure and that could accordingly result in loss of payment under the new compliance framework (see for example new paragraph 624(1)(a)).

Items 26 and 27 make consequential amendments.

Item 25 is concerned with situations where, prior to the commencement of the Item, an administrative breach rate reduction period applied to the person and, at the commencement of this Item, the penalty period had not ended. The effect of this transitional provision is that the penalty period continues to apply to the person as if the changes had not been made. That is, the person is required to serve the penalty period. This includes situations where, although a penalty period applied to a person, the penalty period may not have commenced.

Items 28 and 29

Among other things, existing section 64 allows the Secretary to require a person to whom the section applies to undergo a medical, psychiatric or physiological

examination. Subsection (1) specifies the people that the section applies to. However, the scenarios specified will no longer be sufficient following the changes made under the Welfare to Work arrangements. For example, the Secretary would not be able to require a person who has claimed newstart allowance and who has a permanent impairment to undergo a medical examination with a view to assessing the person's work capacity and tailoring an appropriate activity agreement for the person. Accordingly, Item 28 amends subsection (1) so that it applies broadly to the relevant payment types.

The broad effect of Items **29** to **31** and **35** is to remove the need for notification under section 64 to be in writing. Where appropriate, this would allow the Secretary to use other methods of communication, for example, by phone.

Where a person fails to comply with a section 64 notice, the effect of **Item 32** is that the payment is not payable (although see the effect of Item 34).

Item 33 provides for similar outcomes as are provided for in Item 25.

Item 34 inserts new subsection 64(4A) that is equivalent to new subsection 63(5) – see Item 24.

Item 36 In simple terms, the effect of subsection 80(1) is to allow the Secretary to cancel or suspend a person's payment if the person is not qualified or the payment is not payable. New subsection (4) provides that the Secretary is not to cancel any of the specified payments if:

- (a) the person is qualified for the payment;
- (b) payment is only not payable to the person due to the operation of one of the provisions relevant to the new compliance regime.

In effect, the Secretary would suspend the person's payment.

Items 37 to 39 New section 110A is concerned with the date of effect of a decision to resume a person's payment after the payment has been suspended due to the operation of one of the provisions relevant to the new compliance regime. The date of effect is the day after the end of the period for which the payment was not payable as a result of the operation of the relevant provision.

The effect of Items 37 and 38 is to exclude the operation of sections 109 and 110 (which also relate to the date of effect of favourable determinations) where new subsection 110A applies.

Item 40 makes a consequential amendment to subsection 114(1) as a result of the insertion of section 110A into the social security law.

Item 41 makes a consequential amendment to paragraph 118(11)(a).

Item 42 Section 118 is concerned with the date of effect of adverse determinations, which includes a decision under section 80. New subsection (12C) provides that if an

adverse determination is made to suspend one of the specified payments and the determination was made because of the application of one of the provisions relevant to the new compliance regime, the adverse determination takes effect on the day that the relevant provision provides for the period of non-payment to start.

The effect of new subsection 118(12D) is that subsection (12C) does not apply where another provision of the social security law would provide for the person's payment to be cancelled or suspended at a date earlier than would be the case if subsection (12C) applied.

Part 5 – Information Exchange

Item 43 inserts a new subsection after subsection 202(2). The new subsection 202(2A) provides that a person engaged by a service organisation may obtain information that is protected under the social security law, make a record of protected information or disclose protected information to another person and otherwise use that information if the person believes, on reasonable grounds, that the information is reasonably necessary for one or more of the purposes set out in section 202(2B). A service organisation is defined in section 202(2D) as meaning an agency or authority of the Commonwealth or an organisation that performs services for the Commonwealth. This includes Government departments as well as other agencies such as Centrelink, Job Network providers and CRS Australia. The *Privacy Act 1988* will apply, including the Information Privacy Principles under section 14 of that Act. IPP 11.3 will regulate third party use or disclosure of personal information.

New subsection 202(2B) sets out the purposes for which a person may obtain, record, disclose or use protection information. These include facilitating access by a service recipient to a work-related service, facilitating efficient and effective delivery of a service, facilitating efficient and effective performance of duties or exercise of functions relating to the provision of work-related services and facilitating efficient and effective administration by the Commonwealth of one or more of the matters mentioned in paragraphs (a), (b) or (c). Section 202(2D) defines the meaning of 'service recipient' and 'a work-related service'.

The Bill specifically notes that information can be exchanged to facilitate payments to service organisations and includes a provision for the Secretary to determine other purposes by legislative instrument (see (2E) below). The Attorney-General's Department will be consulted in the usual manner when such instruments are being drafted.

The new subsection 202(2C) provides that the Secretary may authorise the obtaining, recording, disclosing and other use of protected information if it is reasonably necessary for research into matters of relevance to a Department that administers any part of the social security law; statistical analysis of matters of relevance to a department that is administering any part of the social security law; or for policy development.

Subsection 202(2D) contains definitions for the terms ‘service organisation’, ‘service recipient’ and ‘work related service’. The meaning of ‘service organisation’ has been described above.

A ‘service recipient’ is a person who is receiving a social security payment, benefit or allowance; or who has made a claim for a social security payment, benefit or allowance; or who has contacted the Department about the receipt of, or an existing or future claim for, a social security payment, benefit or allowance; or on whose authorisation another person has contacted the department.

A ‘work-related service’ means a service for the assessment of the capacity to work of a service recipient; assistance given to a service recipient in order for that person to seek or undertake work; placement of a service recipient in a position of employment; or any other service determined by the Secretary by legislative instrument (see (2E) below).

Subsection (2E) gives the power for the Secretary to determine by way of legislative instrument additional purposes for which a person may obtain, record, disclose or use protected information and expand the definition of work-related services.

Item 44 repeals the existing subsection 234(7) and substitutes it with a new definition of ‘officer’.

Item 45 is a transitional provision to ensure that any delegation in force under section 234 of the Administration Act immediately before the commencement of item 45 remain valid.

Part 6 – Seasonal work preclusion period

A consequential amendment to subsection 37(4) of the Administration Act is made by **Item 46** that provides for a grant by the Secretary of disability support pension, sickness allowance, carer payment and austudy payment if a person is qualified, or expected to be qualified for the payment, and the payment would be payable if the person were not subject to a seasonal work preclusion period.

Item 47 applies the amendments made by this Part to claims for social security payments made on or after 20 September 2006.

SCHEDULE 23 – OTHER AMENDMENTS

Disability Services Act 1986

Summary

The requirement that for a rehabilitation program to be approved it must result in the person having a substantially increased capacity to obtain or retain paid employment or result in the person having a substantially increased capacity to live independently is to be removed.

Background

1.2 Rehabilitation programs are approved and provided under Part III of the *Disability Services Act 1986*. CRS Australia provides rehabilitation programs.

1.3 The *Disability Services Act 1986* currently requires that for a rehabilitation program to be provided to a person in the target group, it would have to result in the person having a substantially increased capacity to obtain or retain paid employment (whether or not the employment would be unsupported) or a substantially increased capacity to live independently.

1.4 The ‘substantially increased capacity’ requirement is to be removed from the *Disability Services Act 1986*.

1.5 For the purpose of the disability support pension and other payments under the social security law, an assessment is undertaken by assessors in relation to the person’s work capacity from 1 July 2006. This assessment, funded by the Australian Government, is to be known as the Comprehensive Work Capacity Assessment (CWCA).

1.6 The assessment of the capacity to gain from a vocational rehabilitation program is currently done by CRS Australia. From July 2006 the new CWCA will be used to identify which is the right service for jobseekers. This process will take into account whether jobseekers require vocational rehabilitation to achieve their work capacity. If an assessor, applying the CWCA, makes an assessment that a person should be approved for a rehabilitation program, then subject to any guidelines and the *Disability Services Act 1986*, a rehabilitation program is to be approved.

Explanation of changes

Amendment of the *Disability Services Act 1986*

Item 1 replaces subsection 20(1) with a new subsection. The new subsection effectively removes the requirement that for the Secretary to approve a rehabilitation program, the Secretary has to be satisfied that the provision of a rehabilitation program for a person in the target group would have resulted in the person having a substantially increased capacity to either obtain or retain paid employment (whether or not the employment would be unsupported); or live independently.

The new subsection 20(1) requires that if there are any guidelines under section 5 and the Secretary is satisfied that the provision of a rehabilitation program for a person in the target group would comply with the guidelines then the Secretary may, on the Commonwealth's behalf, approve the provision of the rehabilitation program.

Item 2 repeals paragraphs 21A(b) and (c). Section 21A provides for how a rehabilitation program is ended. Reflecting the changes in section 20 as to how a program is approved, paragraphs 21A(b) and (c) are replaced with a new paragraph (b). That is, the fact that a rehabilitation program would not further increase the person's capacity to either obtain or retain paid employment (whether or not the employment would be unsupported) or live independently is no longer a basis for ending a rehabilitation program. The failure to make reasonable progress to substantially increase the person's capacity to either obtain or retain paid employment (whether or not the employment would be unsupported) or live independently is also no longer a basis for ending a rehabilitation program. A rehabilitation program will now end when either the person requests the program to end or after the time determined by the Secretary.

Item 3 inserts the new subsection 21A(1A) which provides that the Secretary may determine that the provision of a rehabilitation program must end after a specified time.

Item 4 inserts a cross reference to the new subsection 21A(1A) into subsection 21A(2). Subsection 21A(2) requires the Secretary to comply with any guidelines formulated under section 5 of the *Disability Services Act 1986*.

Item 5 provides that the amendments made apply to all rehabilitation programs being considered for approval on or after the commencement of Schedule 23.

Family and Community Services Legislation Amendment (Australians Working Together and other 2001 Budget Measures) Act 2003

Summary

The requirement for an evaluation of the measures contained in schedules 1 and 5 of the *Family and Community Services Legislation Amendment (Australians Working Together and other 2001 Budget Measures) Act 2003* is to be removed.

Explanation of changes

Amendment of the Family and Community Services Legislation Amendment (Australians Working Together and other 2001 Budget Measures) Act 2003

Item 6 deletes section 4. Section 4 provided that the Minister must conduct an evaluation of the measures contained in schedule 1 (Parenting Payment Participation Agreements) and in schedule 5 (Flexible participation requirements for mature age newstart allowees).

Social Security Act 1991

Item 7 repeals the redundant subsection 1134(3) of the Act, as a minor technical amendment indirectly associated with the main telephone allowance measure.

One of the repealed provisions mentioned in current subsection 1061Q(4) (section 146T) was repealed along with neighbouring provisions (including section 146R) by Act No. 30 of 2003. Sections 146R and 146T are also mentioned in subsection 1134(3). In fact, all of the provisions mentioned in that subsection have been repealed, rendering that subsection redundant.