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HOUSE OF REPRESENTATIVES

**SOCIAL SECURITY AND FAMILY ASSISTANCE
LEGISLATION AMENDMENT
(MISCELLANEOUS MEASURES) BILL 2006**

EXPLANATORY MEMORANDUM

**(Circulated by the authority of the
Minister for Families, Community Services and Indigenous Affairs,
the Hon Mal Brough MP)**

**SOCIAL SECURITY AND FAMILY ASSISTANCE
LEGISLATION AMENDMENT
(MISCELLANEOUS MEASURES) BILL 2006**

OUTLINE

This bill makes a number of minor amendments to improve the effectiveness of social security, family assistance and related legislation. The amendments remove anomalies, clarify the legislation in line with established policy and make technical corrections and refinements.

For example, the measures make sure that:

- child care benefit for registered care is limited to the fee paid;
- child care benefit is precluded for care provided as part of a compulsory education programme;
- the concept of a temporarily separated couple (who attract a higher rate of some supplementary payments such as rent assistance and remote area allowance) can include a temporarily separated *de facto* couple;
- the correct range of Commonwealth payments are taken into account as income for the low-income health care card;
- the meaning of homelessness for special benefit is aligned with the meaning of homelessness that applies more broadly, such as for youth allowance;
- certain redundant housing Acts are repealed; and
- necessary technical corrections are made, including many that are consequential on the commencement of the *Legislative Instruments Act 2003*.

There is no significant new policy introduced by this bill.

The majority of the measures commence on Royal Assent. Some amendments, however, have different commencement dates for technical reasons.

Financial impact statement

The measures in this bill have no or negligible financial impact.

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NOTES ON CLAUSES

Clause 1 sets out how the Act is to be cited, that is, the *Social Security and Family Assistance Legislation Amendment (Miscellaneous Measures) Act 2006*.

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Clause 3 provides that each Act that is specified in a Schedule is amended or repealed as set out in that Schedule.

This Explanatory Memorandum uses the following abbreviations:

- ‘Family Assistance Act’ means the *A New Tax System (Family Assistance) Act 1999*;
- ‘Family Assistance Administration Act’ means the *A New Tax System (Family Assistance) (Administration) Act 1999*;
- ‘Social Security Act’ means the *Social Security Act 1991*;
- ‘Social Security Administration Act’ means the *Social Security (Administration) Act 1999*;
- ‘Veterans’ Entitlements Act’ means the *Veterans’ Entitlements Act 1986*;
- ‘CCB’ means child care benefit; and
- ‘Legislative Instruments Act’ means the *Legislative Instruments Act 2003*.

Schedule 1 – Amendment of the A New Tax System (Family Assistance) Act 1999

Summary

This Schedule provides for minor amendments to the Family Assistance Act, relating to CCB. These amendments commence on the day of Royal Assent.

Background and explanation of the changes

Provide the power for the Minister to determine a class of individuals who are taken to have recognised training commitments or study commitments

The amount of CCB for care provided to an individual's child by an approved child care service depends, among other things, on the weekly limit of hours of care in respect of which the individual is eligible for CCB. An individual who 'satisfies the work/training/study test' may be eligible for CCB for up to 50 hours of care in a week (subsection 54(2) refers).

Section 14 provides that an individual satisfies the work/training/study test if the individual has either 'recognised work or work related commitments', 'recognised training commitments' or 'recognised study commitments'.

Subsection 15(1) specifies circumstances in which an individual has recognised work or work related commitments (for example, is in paid work). Section 16 specifies circumstances in which an individual has recognised training commitments (is undertaking a training course for the purpose of improving his or her work skills and/or employment prospects) and section 17 specifies circumstances in which an individual has recognised study commitments (for example, is undertaking a course of education for the purpose of improving his or her work skills and/or employment prospects).

Subsection 15(2) provides the Minister with a discretionary power to determine, by a legislative instrument, that individuals included in a specified class are individuals who are taken to have recognised work or work related commitments (for example, individuals on annual leave from paid work fall into this category).

There are no equivalent ministerial determination-making powers relating to recognised training commitments and recognised study commitments. The lack of such powers makes the administration of the work/training/study test, as it relates to training and study commitments, unduly restrictive.

Items 1 and 2 amend sections 16 and 17, respectively, to remedy this impediment. **Item 1** inserts new subsection 16(3), which provides the Minister with the discretion to determine that individuals in a specified class are taken to have recognised training commitments. **Item 2** inserts new subsection 17(3), which provides the Minister with the discretion to determine that individuals in a specified class are taken to have recognised study commitments. An example of the application of the new power would be deeming short training/study breaks to be a recognised training or study commitment for the purposes of the work/training/study test, with the effect that the limit of 50 hours in a week will apply to the individual.

A determination under new subsection 16(3) or 17(3) is a legislative instrument.

Clarify that CCB for care provided by an approved child care service is not available in respect of care provided as part of compulsory education programme

CCB is available for care provided to a child either by an approved child care service (claimed either as ongoing fee reductions or as a lump sum for a past period) or by a registered carer (claimed as a lump sum for a past period).

In the case of care provided by a registered carer, paragraph 45(1)(h) explicitly states that an individual is eligible for CCB if the care is not provided as part of the compulsory education programme in the State or Territory where the care is provided. In the situation where a teacher is also approved as a registered carer, the lines between the care provided to a child by that person in his or her capacity as a registered carer and the care provided to the child by the same person in his or her capacity as a teacher, may become blurred. Paragraph 45(1)(h) ensures that CCB for registered care cannot be successfully claimed in respect of the hours spent at school by school children in the care of their teachers.

While the policy underlying the eligibility for CCB for care provided by an approved child care service has been the same, the relevant CCB eligibility provisions (sections 43 and 44) do not contain any specific exclusion of care provided as part of the compulsory education programme. Such an exclusion was not thought to be necessary, because, generally, a school and an approved child care service are separate entities, so care provided to a child in the school context by the school can usually be distinguished from care provided by an approved child care service in the service's environment. In this situation, it is reasonably clear that care provided in the school as part of the education programme is not child care provided by an approved child care service. However, with the provision of outside school hours care by some schools becoming more widespread, it has become necessary to clarify the eligibility provisions relevant to CCB for care provided by an approved child care service to ensure that the care provided as part of the compulsory education programme does not give rise to eligibility for CCB.

Items 3 and 4 amend, respectively, subsection 43(1), dealing with eligibility for CCB by fee reduction for care provided by an approved child care service, and subsection 44(1), dealing with eligibility for CCB for a past period for care provided by an approved child care service. **Item 3** inserts new paragraph 43(1)(b) and **item 4** inserts new paragraph 44(1)(b). Both new paragraphs mirror existing paragraph 45(1)(h) that excludes eligibility for CCB for care provided by a registered carer if the care is provided as part of a compulsory education programme. The amendments ensure that eligibility for CCB by fee reduction or for a past period does not arise if care provided by an approved child care service is provided as part of the compulsory education programme in the State or Territory.

Provide for Secretary, rather than Minister, to make a determination that an approved child care service is a sole provider

Under section 57 of the Family Assistance Act, the Minister has a discretionary power to determine that an approved child care service is the sole provider in an area of the kind of care the service provides, if the Minister is satisfied that the service would be likely to close if the determination were not made. While such a determination is in force, a limit of 50 hours of care in a week applies to eligibility for CCB for care provided by the service (instead of the lower limit of hours that applies for care provided by a service that is not a sole provider).

The Minister also has the capacity under paragraph 57B(c) to specify rules relating to making sole provider determinations, and has done so (the current rules are specified in the *Child Care Benefit (Hours of Eligibility Rules) Determination 2000*).

Paragraph 57C(c) requires that the Minister's determination of a sole provider under section 57 be made in accordance with the rules made for that purpose by the Minister under section 57B.

The current arrangement, under which the power to make sole provider determinations for individual services rests with the Minister, is administratively inefficient. It is also inconsistent with the role the Secretary has under the Family Assistance Act in administering other provisions relevant to the determinations of the weekly limit of care for the purposes of CCB eligibility.

Item 5 substitutes the reference to 'Minister' in subsection 57(1) with a reference to 'Secretary'. As a result of this amendment, the Secretary will be able to make sole provider determinations under this section, instead of the Minister.

Items 6 to 8 make consequential amendments to subsections 57(3) and (4), paragraph 57B(c), and paragraph 57C(c). Those items substitute the references to ‘Minister’ in those provisions with references to ‘Secretary’.

The amendments made by **items 5 to 8** do not affect the Minister’s power under section 57B to specify rules for the purposes of making sole provider determinations under section 57.

Item 9 contains saving provisions.

Subitem 9(1) is relevant to sole provider determinations made by the Minister under section 57 before the commencement of the amendments made by **items 5 to 8**. This subitem provides that these determinations continue in force after the commencement of the amendments as if the determinations were made by the Secretary.

Subitem 9 (2) is relevant to the rules relating to the making of determinations under section 57 made by the Minister under paragraph 57B(c) before the commencement of the amendments made by **items 5 to 8**. This subitem provides that the rules made by the Minister for the purposes of the determination of a sole provider by the Minister continue to apply, after the commencement of the amendments, to the Secretary’s determinations of a sole provider in the same way as they applied to the Minister’s determinations.

Subitem 9(3) clarifies that the saving arrangements in **item 9** do not prevent the variation or revocation of the determinations covered by the saving arrangements (that is, determinations of a sole provider under section 57 or of rules under paragraph 57B(c) that were made by the Minister before commencement of the amendments made by **items 5, 6 and 7**). After the commencement of these amendments, these determinations may be varied or revoked by the Secretary.

Limiting child care benefit for care provided by a registered carer to the fee amount paid

Sections 71 and 72 limit the total amount of CCB and fee reductions, respectively, for care provided by an approved child care service in a week. If an individual claimed CCB for a past period, a CCB amount for care provided in a week cannot exceed the amount the service charged the individual for that care. If an individual claimed CCB by fee reduction, a CCB and fee reduction amount for care provided in a week cannot exceed the amount the service would have charged the individual for that care if he or she were not eligible or conditionally eligible for CCB. In other words, an amount of CCB for a week, for care provided by an approved child care service in the week, is limited to the full fee amount chargeable for that care (for the purposes of eligibility for CCB for care provided by an approved child care service, it is irrelevant whether the fees were paid or not – paragraphs 43(1)(c) and 44(1)(c) refer).

There is no equivalent limitation in relation to a CCB amount for care provided in a week by a registered carer that would establish a relationship between the CCB amount and the fee amount paid for the care (it is a condition of eligibility for CCB for care provided by a registered carer that the fees are paid – paragraphs 45(1)(d) refers). For registered care, the only limitation on the total amount of CCB for the week is provided via limiting the total number of CCB attracting hours of care to 50, as specified in the formula in section 84. Therefore, a CCB amount for this type of care may, potentially, exceed the amount paid for the care.

Item 12 repeals the existing section 84, dealing with the weekly limit on CCB for care provided by a registered carer, and substitutes a new section 84. The amended section 84 provides that the total amount of CCB for care provided by a registered carer in a week is the amount calculated in accordance with the current formula that includes the limit of 50 hours of care in a week or the amount paid for the care, whichever is the lesser amount. The amendment ensures that CCB for this type of care does not exceed the amount paid for the care.

Schedule 2 – Amendment of the A New Tax System (Family Assistance) (Administration) Act 1999

Summary

This Schedule provides for minor technical amendments to the Family Assistance Administration Act. These amendments commence on the day of Royal Assent.

Background and explanation of the changes

Amendment to paragraph 66(2)(a) to correct cross-references

Inalienability of specified family assistance payments (including CCB) is currently provided by subsection 66(1). Subsection 66(2) specifies the manner in which such payments are made.

Paragraph 66(2)(a) contains references to payment decisions made under subsections 56(2) and 56A(2). However, subsections 56(2) and 56A(2) were repealed by the *Family and Community Services Legislation Amendment (Budget Initiatives and Other Measures) Act 2002*, Schedule 2, items 8 and 10 respectively. The corresponding current provisions are subsections 56(3) and 56A(3).

Item 1 substitutes the correct references in paragraph 66(2)(a).

Amendment to subsection 109G(2) to insert a missing word

Item 2 makes a technical amendment to insert a missing word 'and' at the end of paragraph 109G(2)(e) of the Family Assistance Administration Act. This will ensure the sequence of paragraphs in the subsection reads correctly.

Schedule 3 – Amendment of the Social Security Act 1991

Summary

This Schedule provides for the bill's minor policy and technical measures insofar as they require amendment to the Social Security Act. Most of these measures are addressed fully by this Schedule and are discussed in detail below. However, some of the measures have related amendments in Schedule 4, which amends the Social Security Administration Act, as indicated below. Unless otherwise indicated, all amendments commence on Royal Assent.

Background and explanation of the changes

Definition of 'temporarily separated couple' – remove legally married criterion

A temporarily separated couple consists of two members of a couple who are living separately and apart on a temporary basis, but not because of illness or respite care (in those circumstances, other definitions and arrangements apply).

Temporarily separated couples attract a higher rate of certain supplementary social security and family assistance payments (such as rent assistance and remote area allowance) to recognise the cost of maintaining separate households. As it stands, the definition applies only to temporarily separated *legally married* couples, not to *de facto* couples. This is out of step with related policy and the definition is being amended so it applies to all couples usually recognised for social security and family assistance purposes.

Item 1 provides for this measure by repealing existing paragraph 4(9A)(b) of the Social Security Act, which currently contains the requirement that temporarily separated couples be legally married.

Correct various cross-references

The definition of 'ordinary income' in subsection 8(1) of the Social Security Act has a note signposting section 1171 as the provision giving effect to the reduction of ordinary income for periodic compensation payments. However, the provision giving this effect is now section 1176. Point 1064-A2 of the same Act refers to point 1064-F2, which was repealed some time ago. The heading to section 1066 includes sole parent pension among the payments for which it addresses the question of rate. However, sole parent pension was repealed some years ago.

Items 2 and 40 (including the note following **item 40**) correct all of these technical deficiencies.

Repeal redundant housing legislation

There are seven Acts relating to housing that are no longer operational and are being repealed by Schedule 7 to this bill. One of these is the *Homeless Persons Assistance Act 1974* (the HPA Act). The HPA Act is currently referred to in paragraph 8(8)(d) of the Social Security Act, where specified assistance given to a person under the HPA Act is excluded from the person's income for social security purposes.

Item 3 repeals paragraph 8(8)(d) as a consequence of the repeal of the HPA Act.

Reinstate definition of 'periodic amount' (inadvertently repealed)

Subsection 8(11) of the Social Security Act defines the concept of an 'exempt lump sum' for the purposes of the income test. In part, this draws its meaning from the concept of a 'periodic amount', stated to be defined in subsection 10(1A). However, that subsection was repealed, along with the rest of section 10, by the *Family and Community Services Legislation Amendment Act 2003*, because the maintenance income definitions contained in it are now present in the family assistance law and were no longer required for the social security law. Nevertheless, subsection 8(11) still requires the periodic amount concept that is no longer there.

Accordingly, **items 4 and 5** reinstate the necessary definition, but this time alongside subsection 8(11) itself, as a new subsection 8(11A).

Financial hardship farmer – repeal redundant provisions and references

Definitions relating to a 'financial hardship farmer' appeared in the social security law until their repeal in 2000, although they had been redundant since 1993, when new arrangements for farm household support were introduced. However, the 2000 repeal failed to repeal or amend provisions (other than the definitions themselves) that were relevant to the definitions, and that are now redundant.

Items 6, 8, 9, 10, 27 and 63 to 71 now make these technical corrections. Similarly, **items 11 and 12** of Schedule 4 make the relevant corrections in the Social Security Administration Act.

All of these amendments commence on Royal Assent except for the repeal of subsection 593(2) of the Social Security Act made by **item 27**. That item commences on 1 July 2006, immediately after an amendment made to the same section by the *Employment and Workplace Relations Legislation Amendment (Welfare to Work and Other Measures) Act 2005* (although it will commence on Royal Assent to this bill if this occurs later than 1 July 2006). The reason for this commencement arrangement is to make it clear that the intended result is that subsection 593(2), which is redundant, be repealed, not amended as the above Act provided.

Remote area allowance – include Lord Howe Island

Lord Howe Island is included in Special Tax Zone A and should also be included within the social security definition of 'remote area' so that residents can attract remote area allowance as part of their social security payments.

Item 7 now makes this inclusion clear by amending the definition in subsection 14(1) of the Social Security Act.

Item 80 makes an associated technical amendment to remove reference to remote area allowance from section 1216. That section says that certain add-on amounts including remote area allowance are not to be paid to a person overseas beyond a person's portability period (usually 13 weeks) or 26 weeks (if the portability period is unlimited). However, this provision is redundant in relation to remote area allowance because subsection 14(2) already limits payment of remote area allowance to a person outside the remote area to eight weeks, and overseas is necessarily outside the remote area.

Definition of 'in gaol' and psychiatric confinement – clarify established policy

Section 1158 of the Social Security Act provides that certain social security payments are not payable to a person while the person is 'in gaol' or undergoing psychiatric confinement because the person has been charged with an offence. 'In gaol' is defined in subsection 23(5). A person is in gaol if the person is imprisoned in connection with the person's conviction for an offence, or being lawfully detained in a place other than a prison in connection with such a conviction, or undergoing a period of custody pending trial or sentencing for an offence.

Uncertainty has been cast over the application of these provisions where a person is transferred during his or her sentence from a gaol to a psychiatric hospital. The Federal Court decision in *Blunn v Bulseley* (1994) 53 FCR 572 applied a narrow test of what was meant by 'in connection with' an offence, requiring a connection between the mental state of the person and the crime for which they are imprisoned.

The later Federal Court decision in *Garden v Secretary, Department of Family and Community Services* [2001] FCA 827 laid down a wider test, requiring a connection between the person's detention and their conviction for an offence. In essence, *Garden* suggested that it should not matter whether a person is detained in a prison, psychiatric hospital or some other place as long as he or she is still serving the sentence arising from the conviction.

Although the test from *Garden* is in line with the established policy in this area, there remains a risk that a court or tribunal could validly apply the *Bulsey* decision in some cases. Accordingly, this Schedule includes amendments to ensure a social security payment covered by section 1158 is not payable to a person while the person is being lawfully detained (whether in a gaol, psychiatric hospital or other place) during a sentence arising from the person's conviction of an offence. If the person were to be released before the expiry of the sentence, the payment preclusion would end. Similarly, if the person were still in a psychiatric hospital when the sentence expired, he or she would cease to be regarded as being lawfully detained and the payment preclusion would end.

Item 11 addresses this measure with a substituted subsection 23(5) of the Social Security Act, containing the definition of 'in gaol'. New paragraph 23(5)(b) is a reiteration of existing paragraph 23(5)(c). New paragraph 23(5)(a) takes the place of existing paragraphs 23(5)(a) and (b) and is modified to achieve the effect sought. In particular, whether a person is 'in gaol' under new paragraph (a) is temporally based, that is, based on the duration of the person's sentence, regardless of the place of detention.

However, the new paragraph also makes clear that it does not apply while the person is on release on parole or licence. This is to overcome any implication from section 19AZC of the *Crimes Act 1914* (which treats a person released on parole or licence as still being under sentence) that a person should be taken to be again 'in gaol' if the person is released on parole or licence and then detained again during the term of the original sentence but not in connection with that sentence, for example, for investigation of a new offence. Should a person in such a situation fall within the definition of 'in gaol' in relation to a new offence, that would be a separate matter.

Nor is it intended that a person released on a good behaviour bond under paragraph 20(1)(a) of the *Crimes Act 1914* be regarded, for this purpose, as being 'under sentence', despite subsection 23WA(8) of that Act, which deals with the matter of sentence only in relation to certain unrelated definitions.

Repeal notes referring to repealed provisions

The *Social Security (Administration and International Agreements) (Consequential Amendments) Act 1999* repealed many provisions in the Social Security Act that had been relocated into the Social Security Administration Act. However, some notes to provisions in the Social Security Act that referred to provisions relocated in this way were not amended or repealed as they should have been.

Items 12 and 21 to 24 now repeal those incorrect notes.

Bereavement payment – complete references to long-term social security recipient

Certain sections of the Social Security Act provide for a person's qualification for bereavement payment if he or she is receiving a particular payment and one of three criteria is met in relation to his or her deceased partner. One of these criteria is that the partner was a 'long-term social security recipient', which means a person receiving a social security benefit and with a specified history of payment receipt in the previous 12 months. The following section in each case sets out the amount of bereavement payment, but there is no stipulation as to which amount applies if the partner was a long-term social security recipient.

Therefore, amendments are made to make it clear the person attracts an amount of bereavement payment on a similar basis to a person whose partner was receiving a social security pension. That is, the person will be paid the amount of social security benefit that would have been payable to his or her 'long-term social security recipient' partner if the partner had not died.

Items 13, 19 and 30 make these amendments to, respectively, sections 83 (age pension), 146G (disability support pension) and 823 (special needs age, disability support or wife pension). Minor amendments to the headings of the relevant sections are also made.

Correct anomalies in pension bonus scheme provisions

The pension bonus scheme is addressed by a range of provisions in the Social Security Act. An anomaly has become apparent in relation to people whose marital status changes during the bonus accrual period. This situation is governed by a formula, but one of the provisions potentially causes a bonus amount to be incorrectly based on an amount that exceeds the maximum annual pension rate.

Furthermore, the provisions that provide a formula to work out the notional pension rate for a person who is not permanently blind are incorrect and produce a result that departs from the original policy intention.

There are also some technical errors in the provisions.

Item 14 addresses one of the technical errors, amending subparagraph 92C(a)(ii) of the Social Security Act to correct the signpost to the definition of 'scheduled international social security agreement', which is now located in the *Social Security (International Agreements) Act 1999*.

Item 15 repeals and substitutes paragraph 93H(a) to make two more technical corrections to terminology.

Items 16 and 17 repeal and substitute paragraphs 93J(3)(a) and (4)(a) respectively. This is to correct the provisions containing the formula relating to the notional pension rate for a person who is not permanently blind (as described above), thus aligning the provisions with the original policy intention. The new paragraphs make it clear that the notional pension rate is reached by applying the adjusted percentage to the person's pension supplement as well as to the person's maximum basic rate. That is, the formula is to have regard to the adjusted percentage of the sum of those two components, rather than (as currently provided) to the whole pension supplement and the adjusted percentage of the maximum basic rate only.

Item 18 replaces the definition of 'maximum basic rate' in subsection 93J(5), as it applies for the definition of 'adjusted percentage' in the same subsection. This is to correct the anomaly described above that could cause an inappropriate inflation of a bonus amount. In the new version of the definition, the maximum basic rate is the sum of two specified social security rate components for the person – the person's maximum basic rate (Step 1 of the method statement in point 1064-A1) and the pension supplement (Step 1A of that method statement).

These amendments in combination will produce the correct outcome under these pension bonus scheme provisions.

Reinstate inappropriately repealed automatic termination provision – carer payment

The Social Security Administration Act aimed to relocate into a separate Act, without policy change, those provisions from the Social Security Act that dealt with machinery, or administrative, matters. Before that change, old subsection 222(1A) provided for the Secretary to give a notice to a care receiver, requiring that person to give certain types of information relevant to the payment of carer payment to the person providing care to the care receiver. Old section 227 provided for the automatic termination of the carer payment if the care receiver did not give the information as required.

New section 70 of the Social Security Administration Act provided an equivalent rule to old subsection 222(1A). However, an equivalent of old section 227 was not reproduced in the Social Security Administration Act. Therefore, there is no longer the required consequence for failure to comply with the notice. This measure reinstates the automatic termination provision in the same terms as previously provided (see **item 8** of Schedule 4).

Items 20 and 81 of this Schedule make technical amendments to subparagraph 198C(6)(b)(i) and subsection 1223(1B) of the Social Security Act to reflect the relocation of old subsection 222(1A). Similarly, **items 6 and 7** of Schedule 4 make further technical amendments.

Legislative Instrument technical amendments

Schedule 8 to this bill contains numerous technical amendments flowing from the commencement of the Legislative Instruments Act. The amendments are mainly to reflect the new concepts introduced by the Legislative Instruments Act. As a consequence of some of those amendments, some technical amendments (to remove superfluous subsection numbers or references to repealed provisions) need to be made. **Items 25, 26, 76 and 77** make such amendments.

Education entry payment for carer payment recipients – correct cross-reference

Section 665ZFC of the Social Security Act relates to claims for the education entry payment (EdEP) for carer payment recipients. It incorrectly refers to another section under which the EdEP qualification arises. **Item 28** now changes that reference to the correct qualification section, so that section 665ZFC operates properly.

Align special benefit definition of 'homeless' with youth allowance 'unreasonable to live at home' definition

Special benefit is not generally payable to full-time students, nor to people in respect of whom specified educational payments are payable. For these exclusions to apply, the person must be either 18 or more, or less than 16 and not an 'SPB homeless person'. Therefore, students (or similar) under 16 may still attract special benefit if they are homeless.

The meaning of homeless in this sense is covered by paragraph 739(c) of the Social Security Act, and essentially addresses a situation in which either the young person is not permitted to live at home or it is not reasonable to expect them to live at home for reasons of domestic violence, incestuous harassment or other exceptional circumstances. In addition, the young person must be unpartnered, not have a dependent child and not be receiving continuous income support or payments from their family.

This definition of homeless differs from the related definition that applies for the larger customer groups of youth allowance and young disability support pension recipients. In both of those cases, the more detailed 'unreasonable to live at home' definition from subsection 1067A(9) applies. This addresses a situation in which the young person cannot live at home because of extreme family breakdown or similar, or because it would be unreasonable to expect them to live at home because of a serious risk of violence, sexual abuse or similar, or because the parents lack stable accommodation. In addition, the young person must not be receiving continuous income support or payments from their family.

In the interests of efficiency and equity, the homeless test for special benefit is being aligned with that for the larger customer groups. However, the existing requirement to be unpartnered and not have a dependent child will continue.

Item 29 achieves this result by substituting a new paragraph 739(c) in place of current paragraphs 739(c), (d) and (e). The new paragraph will effectively introduce the homeless test from subsection 1067A(9) for this element of special benefit.

Repeal redundant provisions

Paragraphs 1037(b) (mobility allowance) and 1061ZK(7)(b) (health care card) of the Social Security Act relate to people who purchased a motor vehicle with a sales tax exemption under certain provisions in the *Sales Tax (Exemptions and Classifications) Act 1935* or the *Sales Tax (Exemptions and Classifications) Act 1992*. However, sales tax (including on motor vehicles) was repealed by the *A New Tax System (End of Sales Tax) Act 1999* and replaced with the goods and services tax (GST) from 1 July 2000.

No equivalent arrangement was set up at that time to prevent mobility allowance from being paid to people who purchase a motor vehicle free of GST. However, the old provisions, which are now redundant, were never repealed. **Items 31, 32 and 39** now achieve this.

Correct references to an ‘application’ for a special employment advance to references to a ‘claim’

Part 2.22A of the Social Security Act provides for a social security payment known as a special employment advance. Section 1061EM deals with qualification for the advance by reference to the day on which a person’s ‘application’ for it is made. However, the established concept in the social security law is for social security payments to be ‘claimed’, not applied for (see, for example, section 29 of the Social Security Administration Act). Accordingly, **items 33 and 34** make this minor correction to the relevant terminology.

Clarify crisis payment qualification

Section 1061JG of the Social Security Act provides for a person to be qualified for a crisis payment in certain circumstances if he or she is released from gaol, or from psychiatric confinement being undergone because the person had been charged with committing an offence. ‘Psychiatric confinement’ is defined in subsections 23(8) and (9). It includes confinement in a psychiatric section of a hospital, or any other place where people with psychiatric disabilities tend to be confined. However, if the person is undertaking a course of rehabilitation during the confinement, it is *not* taken to be psychiatric confinement.

As with the 'in gaol' and psychiatric confinement measure mentioned above in the discussion about **item 11**, issues have arisen where a person is transferred from gaol to psychiatric confinement. Such a transfer does not generally constitute a 'release from gaol' and so, correctly, a crisis payment has not usually been payable. This outcome will be clearer through the amendment made by **item 11**. However, it is not currently clear that a subsequent release from the psychiatric confinement will trigger a crisis payment under the current provisions, as intended.

Furthermore, it is not clear that the current provisions fully support the policy intention to pay a crisis payment on a person's release from any psychiatric confinement undergone in connection with the person's being charged with or convicted of an offence, whether or not a course of rehabilitation was being undertaken, and whether or not the person was transferred from a gaol to the psychiatric confinement.

These amendments to support the current policy are subject to the usual crisis payment qualification rules, including the minimum confinement period.

Items 35 to 37 address this measure. In particular, a new paragraph 1061JG(1)(a) (provided by **item 36**) achieves the effect described above, in conjunction with a new subsection and two new notes (provided by **item 37**) that signpost the improved version of the 'in gaol' definition in subsection 23(5) (see **item 11**) and confirm that, in this context, the fact that a person may be undergoing rehabilitation while in the psychiatric confinement is not a disqualifying factor.

Health care cards for youth allowance recipients – clarify entitlement to automatic issue card for jobseekers

Long-standing policy has been to give youth allowance jobseekers, like other allowance recipients, a health care card automatically with their payment, whereas youth allowance students (including new apprentices) have been required to claim a low-income health care card so that their greater income-earning capacity can be assessed individually (students having a higher income free area and access to the student income bank).

However, the current social security legislation produces a different result in relation to youth allowance recipients who swap between the student and jobseeker streams. Essentially, the legislation providing for the automatic issue health care card has regard to the person's status as a non-student only at the point of grant of youth allowance. Therefore, a person who is a student at the point of grant will continue *not* to be qualified for an automatic issue health care card even if he or she later becomes a jobseeker. Conversely, a person who is a jobseeker at grant will *continue* to be qualified even if he or she later becomes a student. Neither of these results is consistent with the established policy.

Item 38 addresses this by substituting a new paragraph 1061ZK(5)(a) of the Social Security Act. This makes it clear that an automatic issue card is available to a youth allowance recipient on a day only if the recipient is not undertaking full-time study on that day (and is not a new apprentice, as currently provided). This removes the point of grant criterion.

Repeal redundant provision, removing residence requirement for special benefit pharmaceutical allowance

All social security payments, other than special benefit, have Australian residence qualification requirements. Pharmaceutical allowance is a component of a person's rate of social security payment. In only one of the several rate calculators providing for pharmaceutical allowance is there a requirement for the person to be an Australian resident before the component may be added to the person's maximum basic rate. This residence stipulation (in paragraph 1068-D1(a) of the Social Security Act) is redundant because it is already covered in the person's primary qualification requirements.

However, the residence stipulation in that paragraph, rather than being merely redundant, may operate to deny pharmaceutical allowance to a special beneficiary. This is because, although the rate of special benefit is discretionary, it is pegged to the maximum applicable rate of newstart or youth allowance or austudy payment. Therefore, whereas youth allowance and austudy payment do not have an Australian residence requirement for pharmaceutical allowance, newstart allowance does (under paragraph 1068-D1(a)). There is a risk this could result in the rate of special benefit that may be determined for a person for whom the newstart rate criteria are applicable not including a component equivalent to pharmaceutical allowance, whereas such a limitation does not apply where youth allowance or austudy payment rate criteria are applicable.

Item 41 repeals the redundant paragraph 1068-D1(a), ensuring that the correct rate applies for all special beneficiaries.

Rate of rent assistance – correct rounding in indexation provisions

Long-standing policy has been that couples should receive the same total maximum amount of rent assistance, regardless of whether it is shared or paid to only one member of the couple. However, with the way the rounding provisions operate when the prescribed amounts of rent assistance are indexed, there can be a slight divergence in rates. In particular, the total amount shared between two members of a couple can potentially be around 20c per fortnight more or less than the equivalent total amount paid to one member of a couple.

This Schedule addresses this by aligning the maximum rate of rent assistance paid to each of two members of a couple with exactly half of the maximum rate (as indexed from time to time) that is paid to one member of a couple for both of them.

To achieve this, **items 42 to 46** replace the relevant dollar amounts in the rent assistance rate tables with a reference to half the combined couple rate specified in the relevant table item. **Item 75** then amends the indexation provision so that there will be no indexation of the substituted rent assistance table entries (which are no longer dollar amounts), leaving only the combined couple rate to be indexed as at present. This indexation will flow through to the half-rate of rent assistance paid separately to each member of a couple.

Low-income health care card – correct definition of ‘income’

The *Social Security Legislation Amendment (Concession Cards) Act 2001* sought to consolidate all provisions relating to concession cards administered by the then Family and Community Services portfolio into the social security law. Some of these provisions had previously appeared in health legislation, including the *Health Insurance Act 1973* (Health Insurance Act). While no policy change was intended by this consolidation, a portion of the definition of ‘income’ for the purposes of the health care card income test, contained in paragraph 5B(12)(a) of the Health Insurance Act, was incorrectly omitted when that definition was relocated into new point 1071A-4 of the Social Security Act. That paragraph, importantly, had provided that a social security pension or benefit was included in income, as were comparable Commonwealth and other payments of an income support nature. Accordingly, **item 47** reinstates this portion of the definition of income for the purpose of the health care card income test.

Furthermore, **item 48** includes in the definition of income for the purpose of the health care card income test the new Defence Force Income Support Allowance (DFISA), introduced into Part VIIAB of the Veterans’ Entitlements Act in response to the Clarke Review. DFISA is paid to customers or their partners who receive a veterans’ affairs adjusted disability pension and who have a social security pension or social security benefit that is reduced (including to nil) by the inclusion of the adjusted disability pension in the income test assessment. Therefore, the new allowance is of the same income support nature as the primary social security pension or benefit and should be treated similarly under the health care card income test.

Similarly, the same item includes the veterans’ affairs income support supplement (ISS) in the definition of income under the health care card income test. ISS is an income and asset-tested addition to a veterans’ affairs war widow’s or widower’s pension and is generally treated in the same way under the social security law as a service pension, which already comes within that definition of income.

Correct cross-references to certain taxation and income reduction provisions

Sections 1072 and 1075 of the Social Security Act provide some general rules about the income test. This measure corrects some internal references in those sections.

Section 1072 states that a person's 'ordinary income' means the gross ordinary income without any reduction other than under Division 2 or 3 of Part 3.10. This reference to Division 2 or 3 results from an incorrect amendment made by the *Family and Community Services Legislation (Simplification and Other Measures) Act 2001*. The previous reference was to Division 1A (dealing with the treatment of ordinary income from a business) and **item 49** restores this reference to ensure the correct effect for section 1072. Divisions 2 and 3 have no bearing at all on income reduction.

Section 1075 permits certain amounts related to a business carried on by a person to reduce the person's ordinary income from the business. In particular, depreciation that is an allowable deduction for the purposes of Division 42 of the *Income Tax Assessment Act 1997* (ITAA 1997) may cause such a reduction (paragraph 1075(1)(b)). However, as part of changes made by the Simplified Tax System, Division 42 was repealed and subsumed within a new Division 40, and paragraph 1075(1)(ba) inserted to pick up the new reference. New Division 40 is broader than old Division 42, so there has been a risk that amounts may be excluded from income that were never intended to be.

Item 51 amends the taxation law reference in section 1075 to preserve the same effect as was previously achieved. It does this by repealing existing paragraphs 1075(1)(b) and (ba) and substituting new paragraphs. The operative difference is that income will now, correctly, exclude only amounts that relate to the business in question and that can be deducted under *any provision of new Division 40 that corresponds to a provision of the previous Division 42*. An example of the amounts that will now no longer be (and were never intended to be) excluded from income is the range of intangible assets described in subsection 40-30(2) of the ITAA 1997. However, the new formulation also ensures that any other unintended income exclusions will not flow for social security purposes from new Division 40.

Items 74, 78 and 79 make comparable amendments to similar references to old Division 42 in sections 1185K, 1208B and 1209C.

Minor corrections to working credit legislation

The income test concession known as the working credit was introduced into the social security law by Schedule 6 to the *Family and Community Services Legislation Amendment (Australians Working Together and other 2001 Budget Measures) Act 2003*. Extensive rules were provided to allow customers to accrue income test credits while not working and use them to offset later earnings. Three minor drafting errors have been identified – two superfluous words and a passage of three missing words. Rectifying these technical errors will bring the provisions concerned (Step 3 of the method statement in section 1073F of the Social Security Act and paragraph 99(2)(g) and subparagraph 99(3)(c)(i) of the Social Security Administration Act) fully into line with comparable working credit provisions, notably section 93 of the Social Security Administration Act.

Item 50 of this Schedule and **items 9 and 10** of Schedule 4 make these technical corrections.

Overseas payments – exchange rate lead time and currency exchange

Exchange rate lead time

There is currently provision for Centrelink to convert into Australian currency any income received by customers in foreign currency, at the rate applicable for the month in which the Australian social security payday falls. **Item 52** amends the currency conversion provision of the Social Security Act (section 1100) so that the exchange rate applicable five business days before the calculation day will be used in the conversion, instead of the rate applicable 15 days before that day, as presently provided. This amendment will ensure even more accurate payments and is achievable because of Centrelink system improvements.

Currency exchange

Despite the usual conversion rule described above for amounts received by customers in foreign currency, some countries pay their pensions to customers having already converted the payments into Australian currency. This conversion is done using an exchange rate that is usually very similar to the rate that Centrelink would have used to determine the Australian dollar value of the overseas payment. For equity and efficiency reasons, this measure extends the current conversion provision so that it applies to all payments originally denominated in a foreign currency, whether actually received in foreign or Australian currency. This is achieved through a new section 1100A, inserted by **item 53**.

Consequential amendments for gifting legislation

The social security assets test exempts certain assets (such as a customer's principal residence or an assets test-exempt income stream). However, these assets are treated as deprived assets if they are given away, and their value at the time of the gift continues to be counted for a period.

As part of achieving this, the provision that exempts certain assets from the assets test (section 1118 of the Social Security Act) stipulates that the exemption does not apply for the purposes of the provisions that deal with the deprivation. However, the list of deprivation provisions in section 1118 has become incomplete following broad changes made to the deprivation provisions by the *Social Security and Veterans' Entitlements Legislation Amendment (Disposal of Assets – Integrity of Means Testing) Act 2002*, which omitted to make the necessary consequential amendments to section 1118. The omission threatens the correct application of the deprivation provisions.

Accordingly, **item 54** amends section 1118 so that it stipulates that the assets exemption does not apply in relation to the full range of deprivation provisions now present in the legislation.

Disposal of assets – repeal inappropriate provisions

The Social Security Act contains various provisions relating to the disposal of assets, for the purposes of the assets test.

Before amendments made by the *Family and Community Services Legislation Amendment Act 2000* (the amending Act), subsections 1124A(2), 1125(2), 1125A(2) and 1126(2) applied to disposals of assets before 1 March 1991. As these provisions operate to include deprived assets in a person's assets value only for five years from the date of the disposal, these subsections were entirely redundant. However, rather than repeal the subsections as intended, the amending Act merely omitted the reference in each subsection to the 1991 date.

As a result, the subsections have been inadvertently reactivated for disposals after that 1991 date. As a result, the value of deprived assets should, on a technical reading of the provisions, be reduced by 10% each year, whereas the correct treatment (under neighbouring provisions) is for the undiscounted value to be counted for five years from the disposal.

Accordingly, **items 55 to 62** complete the repeal of the subsections intended in 2000.

Clarify that carer allowance not payable during imprisonment

Section 1158 of the Social Security Act ensures that a social security pension or benefit, parenting payment, mobility allowance or pensioner education supplement is not payable to a person who is in gaol or undergoing psychiatric confinement because he or she has been charged with an offence.

The non-means tested carer allowance does not fall within this range of payments (although, notably, the means-tested carer payment does). Therefore, carer allowance remains payable during imprisonment under section 1158. Furthermore, the cessation of care that would generally result from the carer being imprisoned would not necessarily preclude payment because section 957 allows payment to continue if the cessation is temporary and does not exceed a certain period (generally 63 days) in any calendar year.

There is no policy reason why carer allowance should continue to be payable in this way when most other payments, including the comparable carer payment, are not. Therefore, **item 72** includes carer allowance within the list of payments precluded under section 1158.

Prisoners and concession cards

Long-standing policy has been to prevent prisoners, who remain the responsibility of state/territory prison systems, and people undergoing psychiatric confinement because of having been charged with an offence, from obtaining concession cards for their personal use. This policy is based on the fact that state/territory governments are responsible for meeting all costs associated with the health and other needs of prisoners. However, prisoners who care for a child while in gaol may hold a concession card, applicable to the child alone.

Current legislation already clearly supports this policy in relation to the automatic issue health care card and pensioner concession card. However, the legislation is not so clear for the low-income health care card and the seniors health card, both of which must be claimed.

Item 73 now makes amendments to safeguard the long-standing policy. This is done by inserting a new section 1159A into Part 3.13 of the Social Security Act. The new section overrides the existing section 1061ZG (qualification for a seniors health card) and section 1061ZO (qualification for a claimable, low-income health care card) to say that people in gaol, or undergoing psychiatric confinement because of having been charged with an offence are not qualified for such a card.

The new subsection supplements the existing arrangements in the legislation (based on section 1158 (payment preclusion while in gaol, etc), section 1061ZA (pensioner concession card qualification) and section 1061ZK (automatic issue health care card qualification)) that deny one of those concession cards to recipients of specified social security payments. People who currently qualify for an automatic issue health care card under section 1061ZK other than through receiving a specified social security payment will not have their qualification affected for the card (eg, certain people entitled to family tax benefit Part A).

Prepayments and debts

Section 57 of the Social Security Administration Act provides for an amount that would be paid on a particular day, but cannot reasonably be paid on that day (for example, because of a bank or public holiday), to be paid on an earlier day. A complementary provision (section 1223AA of the Social Security Act) makes this amount a debt so that it may be recovered if need be.

Historically, prepayments applied only to certain social security benefits, so section 1223AA is drafted in a way that raises debts in relation to prepayments only of social security benefits. However, programme changes in recent years have resulted in prepayments being made in relation to some payments that are not social security benefits, notably parenting payment (single) and disability support pension.

To reflect these developments, while maintaining the intention of the prepayment regime, **item 82** makes amendments to section 1223AA to ensure that any social security payment in respect of which a prepayment is made may trigger the established debt creation provision.

Technical amendment

Item 83 makes a formatting amendment to remove a superfluous 'or' at the end of paragraph 1231(1)(b) of the Social Security Act.

Debt recovery – complete cross-reference

Section 1231 of the Social Security Act provides for certain debts and overpayments to be recovered by deductions from social security payments. Among the amounts recoverable in this way are overpayments arising under an Act or scheme mentioned in subsection 1228(2). The purpose of section 1228 as a whole is to identify debts and overpayments for the purposes of recovery under section 1231. However, two categories of overpayment (student assistance overpayments and certain child support overpayments) are mentioned in subsections 1228(2A) and (2B) respectively rather than in subsection (2). Therefore, the recovery mechanism provided in section 1231 does not apply to these overpayments, as clearly intended by their coverage by section 1228. **Item 84** corrects this by adding reference to subsections 1228(2A) and (2B) in section 1231.

Schedule 4 – Amendment of the Social Security (Administration) Act 1999

Summary

This Schedule provides for the bill's minor policy and technical measures insofar as they require amendment to the Social Security Administration Act. Some of these measures are addressed fully by this Schedule and are discussed in detail below. However, some of the measures have related amendments in Schedule 3, which amends the Social Security Act, as indicated below. Unless otherwise indicated, all amendments commence on Royal Assent.

Background and explanation of the changes

Omit incorrect cross-reference

Section 14 of the Social Security Administration Act provides an early, deemed claim rule for a concession card if a person contacts the Department in relation to a claim for a card. The section is expressed to be subject to section 18. However, that section is completely unrelated to the subject matter of section 14, being concerned with a claim for a special employment advance (that is, a payment and not a concession card).

Therefore, **item 1** repeals subsection 14(5), thus omitting the incorrect reference to section 18.

Crisis payment for special benefit temporary visa holders

A person in severe financial hardship may be qualified for a crisis payment on release from imprisonment or psychiatric confinement of a certain duration, or because he or she cannot return home because of an extreme circumstance such as domestic violence or a natural disaster, if the person is, on the day of claiming crisis payment, qualified for a social security pension or benefit. The requirement to be qualified for a social security pension or benefit usually requires the person to be an Australian resident. However, to be qualified for special benefit, the person may instead be the holder of a visa determined by the Minister for that purpose. Those determined are temporary visas in certain subclasses.

There are also residence requirements attaching to making a claim for a social security payment (including special benefit and crisis payment). The usual requirement, again, is for the person to be an Australian resident, although, for special benefit, the person may instead be the holder of a visa determined for the purpose. Therefore, the *qualification* and *claim* rules for *special benefit* are consistent.

In the case of a *crisis payment claim*, the only exception to the Australian resident requirement is that the person be a special category visa holder. However, such a visa is not one of those determined for special benefit qualification. Therefore, a person who is qualified for special benefit on the basis of holding a visa determined for that purpose, and therefore *qualified for crisis payment*, may not actually *claim crisis payment*.

Items 2 and 5 address this anomaly by inserting into the Social Security Administration Act a new section 30A to make it clear that a person qualified for special benefit through holding a visa determined for special benefit qualification may now claim the crisis payment for which he or she may also be qualified.

Special benefit – repeal redundant subparagraph and simplify visa reference

Section 30 of the Social Security Administration Act provides the residence requirements that must be met for a special benefit claim to be made. To meet the requirements, a person must be in Australia and satisfy one of three subparagraphs. Subparagraph 30(b)(ii) refers to a person having a 'qualifying residence exemption for special benefit'. This term is defined in subsections 7(6) and (6AA) of the Social Security Act for many social security payments and programmes but explicitly not for special benefit. Therefore, there is no concept under the social security law of a qualifying residence exemption for special benefit. Therefore, **item 3** repeals subparagraph 30(b)(ii) to avoid confusion.

Subparagraph 30(b)(iii) refers to a person holding a visa determined by the Minister for the purposes of the subparagraph. This simply replicates the visa determination provided for special benefit qualification in subparagraph 729(2)(f)(v) of the Social Security Act. However, it has never been intended to make a separate determination for the purposes of this claim provision. Accordingly, **item 4** amends subparagraph 30(b)(iii) so that the visas referred to are those determined for the purposes of subparagraph 729(2)(f)(v).

Reinstate inappropriately repealed automatic termination provision – carer payment

The Social Security Administration Act aimed to relocate into a separate Act, without policy change, those provisions from the Social Security Act that dealt with machinery, or administrative, matters. Before that change, old subsection 222(1A) provided for the Secretary to give a notice to a care receiver, requiring that person to give certain types of information relevant to the payment of carer payment to the person providing care to the care receiver. Old section 227 provided for the automatic termination of the carer payment if the care receiver did not give the information as required.

New section 70 of the Social Security Administration Act provided an equivalent rule to old subsection 222(1A). However, an equivalent of old section 227 was not reproduced in the Social Security Administration Act. Therefore, there is no longer the required consequence for failure to comply with the notice. **Item 8** reinstates the automatic termination provision in the same terms as previously provided.

Items 6 and 7 of this Schedule make technical amendments to section 70 of the Social Security Administration Act to reflect the relocation of old subsection 222(1A). Similarly, **items 20 and 81** of Schedule 3 make further technical amendments.

Minor corrections to working credit legislation

The income test concession known as the working credit was introduced into the social security law by Schedule 6 to the *Family and Community Services Legislation Amendment (Australians Working Together and other 2001 Budget Measures) Act 2003*. Extensive rules were provided to allow customers to accrue income test credits while not working and use them to offset later earnings. Three minor drafting errors have been identified – two superfluous words and a passage of three missing words. Rectifying these technical errors will bring the provisions concerned (Step 3 of the method statement in section 1073F of the Social Security Act and paragraph 99(2)(g) and subparagraph 99(3)(c)(i) of the Social Security Administration Act) fully into line with comparable working credit provisions, notably section 93 of the Social Security Act.

Items 9 and 10 of this Schedule and **item 50** of Schedule 3 make these technical corrections.

Financial hardship farmer – repeal redundant provisions and references

Definitions relating to a ‘financial hardship farmer’ appeared in the social security law until their repeal in 2000, although they had been redundant since 1993, when new arrangements for farm household support were introduced. However, the 2000 repeal failed to repeal or amend provisions (other than the definitions themselves) that were relevant to the definitions, and that are now redundant.

Items 11 and 12 now make these technical corrections. Similarly, **items 6, 8, 9, 10, 27 and 63 to 71** of Schedule 3 make the relevant corrections in the Social Security Act.

Schedule 5 – Amendment of the Social Security (International Agreements) Act 1999

Summary

This Schedule provides for the bill's minor policy and technical measures insofar as they require amendment to the *Social Security (International Agreements) Act 1999*. These measures are discussed in detail below. Both amendments commence on Royal Assent.

Background and explanation of the changes

International agreement portability rate – correct age of dependent child

The *Social Security (International Agreements) Act 1999* provides, in part, for additional child amounts that may be applicable as part of a person's international agreement portability rate. The relevant provision distinguishes between children aged below 13, and those aged 13 or more but below 15, and provides separate amounts. The reference to age 15 is incorrect, as it does not reflect the historical age used to separate groups of children for rate purposes and reflected in other portfolio provisions (such as section 5 and point 1067G-F23 of the Social Security Act). Accordingly, **item 1** replaces the age 15 reference with one to age 16, in line with equivalent references.

Insert signpost to indexation of additional child amounts

Section 14A of the *Social Security (International Agreements) Act 1999* defines the term 'additional child amounts' for the purposes of working out a person's international portability rate. These amounts are indexed in line with CPI movements under the indexation provisions in the Social Security Act. Because the indexation occurs through the operation of a separate Act, **item 2** inserts a note to the substantive definition that signposts the indexation arrangement.

Schedule 6 – Amendment of other Acts

Summary

This Schedule provides for the bill's minor policy and technical measures insofar as they require amendment to two portfolio amending Acts, the *Disability Services Act 1986* and the *Veterans' Entitlements Act*. These measures are discussed in detail below.

Background and explanation of the changes

Make technical amendments to two portfolio amending Acts

Item 1 amends an item of the *A New Tax System (Compensation Measures Legislation Amendment) Act 1999* to correct a misdescription of the provision intended to be amended by that item, so that it operates as intended by Parliament. The item should have been expressed to amend 'method statement 2'.

Item 3 similarly amends an item of the *Family and Community Services and Veterans' Affairs Legislation Amendment (2004 Election Commitments) Act 2004* to ensure that a new provision is inserted into the *Veterans' Entitlements Act* in the correct location. The insertion should have occurred 'before paragraph 5H(8)(h)'.

Both of these technical corrections to the amending Acts commence with retrospective effect (immediately after the commencement of the erroneous items) to ensure the amendments operate as intended. This retrospective effect does not produce any adverse effects for customers.

Technical amendment

Item 2 makes a technical correction to section 9 of the *Disability Services Act 1986*. There is currently a reference in that section to an approval of a class of services for the purposes of *paragraph (d)* of the definition of 'eligible service' in section 7 of that Act. However, the paragraph of that definition that should be referred to in this context is *paragraph (h)*.

This technical correction commences with retrospective effect (immediately after the incorrect version of section 9 commenced). This retrospective effect does not produce any adverse effects for customers.

Repeal redundant housing legislation

There are seven Acts relating to housing that are no longer operational and are being repealed by Schedule 7 to this bill. One of these is the *Homeless Persons Assistance Act 1974* (the HPA Act). The HPA Act is currently referred to in paragraph 5H(8)(k) of the Veterans' Entitlements Act, where specified assistance given to a person under the HPA Act is excluded from the person's income for veterans' entitlements purposes.

Item 3 repeals paragraph 5H(8)(k) as a consequence of the repeal of the HPA Act and commences on Royal Assent.

Schedule 7 – Repeal of redundant housing Acts

Summary

This Schedule provides for one minor policy measure, repealing seven redundant Acts relating to housing. The repeals commence on Royal Assent.

Background and explanation of the changes

Repeal redundant housing legislation

The Families, Community Services and Indigenous Affairs portfolio has the administration of seven Acts relating to housing that are no longer operational and are being repealed:

- *Home Deposit Assistance Act 1982*;
- *Homeless Persons Assistance Act 1974*;
- *Home Savings Grant Act 1964*;
- *Home Savings Grant Act 1976*;
- *States Grants (Housing) Act 1971*;
- *Supported Accommodation Assistance Act 1985*; and
- *Supported Accommodation Assistance Act 1989*.

None of these Acts needs to remain in effect for prospective matters. However, any right, privilege, obligation or liability already acquired, accrued or incurred under any of the Acts will be preserved in the usual way (relying on section 8 of the *Acts Interpretation Act 1901*) so that, for example, any debt owed or claim undetermined will remain recoverable or capable of being determined.

The repeal of the seven Acts is made by **item 1**. Consequential amendments are made by **item 3** of Schedule 3 and **item 3** of Schedule 6 to remove certain references to one of the Acts in current legislation. Remaining references in current legislation to the repealed Acts should remain so the relevant current legislation operates correctly in historical contexts.

Schedule 8 – Technical amendments relating to legislative instruments

Summary

This Schedule provides for numerous technical amendments to social security, family assistance and related legislation, as a consequence of the commencement of the Legislative Instruments Act. The amendments commence on Royal Assent.

Background and explanation of the changes

Make Legislative Instrument technical amendments

The Legislative Instruments Act has come into force, providing new concepts and arrangements for most subordinate legislation, that is, for instruments of a legislative character. Notably, the *Acts Interpretation Act 1901* has been amended to remove the concept of a disallowable instrument, with the replacement concept of a legislative instrument being provided by the Legislative Instruments Act. There are new rules for the commencement of legislative instruments and entry of instruments on the Federal Register of Legislative Instruments instead of being notified by Gazette.

This Schedule now makes the legislative instrument technical amendments that are necessary to reflect the new arrangements for the following Acts:

- Family Assistance Act;
- Family Assistance Administration Act;
- *Child Care Act 1972*;
- *Data-matching Program (Assistance and Tax) Act 1990*;
- *Disability Services Act 1986*;
- *Family Assistance Legislation Amendment (More Help for Families – One-off Payments) Act 2004*;
- *Housing Assistance Act 1966*;
- Social Security Act;
- Social Security Administration Act;
- *Social Security (International Agreements) Act 1999*.

Amendments are included to:

- refer to a legislative instrument-making power being exercised ‘by legislative instrument’ rather than ‘by disallowable instrument’ or ‘in writing’;
- refer to registration on the Federal Register of Legislative Instruments rather than Gazette;
- repeal, rather than amend, legislative instrument-making powers that are now spent (that is, they have no further application); and
- repeal provisions that are redundant now that the Legislative Instruments Act contains all relevant rules on legislative instruments.

Items 1 to 39 amend the Family Assistance Act.

Items 40 to 75 amend the Family Assistance Administration Act.

Items 76 to 81 amend the *Child Care Act 1972*.

Items 82 to 86 amend the *Data-matching Program (Assistance and Tax) Act 1990*.

Items 87 to 93 amend the *Disability Services Act 1986*.

Items 94 and 95 amend the *Family Assistance Legislation Amendment (More Help for Families – One-off Payments) Act 2004*.

Items 96 to 99 amend the *Housing Assistance Act 1966* (Housing Assistance Act). **Item 97** includes a new rule to say explicitly that section 42 of the Legislative Instruments Act (dealing with disallowance of instruments) applies to a legislative instrument provided by section 5 of the Housing Assistance Act. Section 5 relates to the form of an agreement under the Housing Assistance Act and an instrument made under it before the commencement of the Legislative Instruments was a disallowable instrument. Without the specific statement that section 42 applies, there would be a risk that a section 5 instrument would fall within the exemption, provided by paragraph 44(1)(a) of the Legislative Instruments Act, from the usual disallowance requirement. It is intended that a section 5 instrument continue to be disallowable to give effect to Parliament's original intention.

Items 100 to 203 amend the Social Security Act.

Items 204 to 224 amend the Social Security Administration Act.

Items 225 and 226 amend the *Social Security (International Agreements) Act 1999*.