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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**SOCIAL SECURITY AND OTHER LEGISLATION AMENDMENT
(WELFARE PAYMENT REFORM) BILL 2007**

EXPLANATORY MEMORANDUM

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

SOCIAL SECURITY AND OTHER LEGISLATION AMENDMENT (WELFARE PAYMENT REFORM) BILL 2007

OUTLINE

The bill will amend Commonwealth welfare legislation to provide new national welfare measures to help address child neglect and encourage school attendance.

Income management regime

The bill establishes a national income management regime that applies to a person in receipt of welfare payments, whose child is at risk of neglect, is not enrolled at school, or fails to attend school adequately. The part of the affected person's payment that is subject to income management will, generally, be used to pay the priority needs of that person, their partner and their children. The bill also establishes an income management regime that applies in respect of people on certain welfare payments in the Northern Territory, as part of the Commonwealth's Northern Territory national emergency response, and in Cape York. There will be no overall reduction in payments as a result of these measures

Baby bonus

Baby bonus will be paid in 13 fortnightly instalments to claimants who are subject to the income management regime.

Northern Territory CDEP transitional payment

Beginning in September 2007, the Community Development Employment Projects (CDEP) program in the Northern Territory will progressively be replaced with other employment services. CDEP participants, on a community by community basis, will move into real jobs, training or to more appropriate income support including Work for the Dole. These legislative amendments are broadly designed to assist CDEP participants who move onto income support by establishing a Northern Territory CDEP transition payment. The payment will make up the difference between average earnings from CDEP scheme payments and income support payments at 23 July 2007 (being the date of announcement of the CDEP changes by the Minister for Families, Community Services and Indigenous Affairs, and the Minister for Employment and Workplace Relations) and the payments made under income support arrangements after the changes to CDEP.

Financial impact statement

Total resourcing for the measures in the bill for 2007-08 is \$71.6 m.

SOCIAL SECURITY AND OTHER LEGISLATION AMENDMENT (WELFARE PAYMENT REFORM) BILL 2007

NOTES ON CLAUSES

Clause 1 sets out how the Act is to be cited, that is, the *Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007*.

Clause 2 provides that the Act commences on the day after it receives the Royal Assent.

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:

- ‘Social Security Act’ means the *Social Security Act 1991*;
- ‘Social Security Administration Act’ means the *Social Security (Administration) Act 1999*;
- ‘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*; and
- ‘Veterans’ Entitlements Act’ means the *Veterans’ Entitlements Act 1986*.

Clause 4 ensures that new Part 3B of the Social Security Administration Act, and all actions and omissions in anyway related to it or the income management regime, are deemed to be special measures and are also excluded from the operation of Part II of the *Racial Discrimination Act 1975* in relation to the people specified in **paragraphs 4(1)(c), (d) and (e)**.

Clause 4 provides that, where new Part 3B of the Social Security Administration Act applies in respect of a person on the basis of section 123UF (Queensland Commission) or applies, or potentially applies, in respect of a person on the basis of:

- new section 123UD or 123UE (school enrolment and attendance), but only where the person is in the Northern Territory; or
- new section 123UB (relevant Northern Territory Area);

then any acts or omissions done under, or for the purposes of, the operation of Part 3B, or the income management regime, in respect of that person is deemed to be a special measure for the purposes of the *Racial Discrimination Act 1975* and is also excluded from the operation of Part II of that Act. Part II of the *Racial Discrimination Act 1975* includes sub-sections 9(1) and (1A) and section 10. **Subclause 4(3)** overlaps with **subclause 4(2)**.

Subclauses 4(4) and 4(5) provide that any provisions of any laws made, or acts or omissions done, by Queensland in establishing or operating the Queensland Commission or any act of omission of the Queensland Commission in giving a notice or a direction under the Social Security Administration Act, relating to Part 3B, is deemed to be a special measure for the purposes of the *Racial Discrimination Act 1975* and also excluded from the operation of Part II of the *Racial Discrimination Act 1975*. **Subclause 4(5)** overlaps with **subclause 4(4)**.

Clauses 4 and 5 of the bill relate to the Northern Territory national emergency response and the Queensland Commission welfare reforms announced by the government. The provisions of the bill that relate to the Northern Territory national emergency response and the Queensland Commission recognise the importance of Australia's obligations under international law:

- The Convention on the Rights of the Child requires Australia to protect children from abuse and exploitation and ensure their survival and development and that they benefit from social security. The International Convention for the Elimination of All Forms of Racial Discrimination requires Australia to ensure that people of all races are protected from discrimination and equally enjoy their human rights and fundamental freedoms.
- Preventing discrimination and ensuring equal treatment does not mean treating all people the same. Different treatment based on reasonable and objective criteria and directed towards achieving a purpose legitimate under international human rights law is not race discrimination. In fact, the right not to be discriminated against is violated when governments, without objective and reasonable justification, fail to treat differently people whose situations are significantly different.

The impact of sexual abuse on Indigenous children, families and communities is a most serious issue requiring decisive and prompt action. The Northern Territory national emergency response will protect children and implement Australia's obligations under human rights treaties. In doing so, it will take important steps to advance the human rights of the Indigenous peoples in communities suffering the crisis of community dysfunction.

In the case of Indigenous people in the Northern Territory, there are significant social and economic barriers to the enjoyment of their rights to health, development, education, property, social security and culture.

The provisions of this bill that relate to the Northern Territory national emergency response and the Queensland Commission reforms are the basis of action to improve the ability of Indigenous peoples to enjoy these rights and freedoms. This cannot be achieved without implementing measures that do not apply in other parts of Australia. The bill will provide the foundation for rebuilding social and economic structures and give meaningful content to Indigenous rights and freedoms. In a crisis such as in the Northern Territory, the Northern Territory measures in the bill are necessary to ensure that there is real improvement before it is too late for many of the children.

Clause 5 provides that, where a person is subject to, or potentially subject to, the income management regime under Part 3B of the Social Security Administration Act on the basis of section 123UD or 123UE, but only where the person is in the Northern Territory (school enrolment and attendance), section 123UB (relevant Northern Territory Area) or section 123UF (Queensland Commission), then the provisions of Part 3B, or any acts or omissions done under Part 3B, or for the purposes of the income management regime, will apply to the exclusion of, or have effect despite, any discrimination laws of Queensland or the Northern Territory, unless provided otherwise by the Minister in a legislative instrument.

In response to the national emergency in the Northern Territory, the government decided to amend the procedures and guidelines relating to Work for the Dole, with the objective of cleaning up those communities in the Northern Territory subject to the Northern Territory national emergency response.

Work for the Dole is an 'approved program of work for income support' for the purposes of the social security law.

The procedures and guidelines enable providers of Australian Government employment services (PAGES) to place job seekers in the affected communities in Work for the Dole activities promptly and until they no longer receive income support payments, they are no longer eligible to be referred to Work for the Dole, or they are referred to another activity by PAGES that will lead them to gaining employment.

The purpose of **clauses 6 and 7** is to ensure that actions taken by PAGES and others in pursuance of these Work for the Dole measures are not rendered unlawful by the *Racial Discrimination Act 1975* or Northern Territory anti-discrimination legislation. Implementation of these guidelines is also a special measure for the purposes of the *Racial Discrimination Act 1975*.

Actions taken to implement the Work for the Dole measures commenced on 9 July 2007. As the measures are only intended to operate for the duration of the Northern Territory national emergency response, these provisions will cease to operate five years after the commencement of section 1 of what will become the *Northern Territory National Emergency Response Act 2007*.

Schedule 1 – Income management regime

Summary

This schedule establishes a national income management regime that applies to a person in receipt of welfare payments, whose child is at risk of neglect, is not enrolled at school, or fails to attend school adequately. The part of the affected person's payment that is subject to income management will, generally, be used to pay the priority needs of that person, their partner and their children. The schedule also establishes an income management regime that applies in respect of people on certain welfare payments in the Northern Territory, as part of the Commonwealth's Northern Territory National Emergency Response, and in Cape York. There will be no overall reduction in payments as a result of these measures

Background

Children at risk of neglect

This measure is designed to target children at risk of neglect and ensure that, where parents are not meeting these responsibilities to their children, action can be taken to ensure that welfare payments are directed to their intended purpose so children receive shelter, food and clothing. Although child protection is a responsibility of the States and Territories, these amendments will provide a Commonwealth mechanism to help ensure that parents provide appropriate care for their children, and that the welfare income of these parents is managed so the needs of the children are met.

National child school enrolment and attendance

This proposal requires parents on income support to ensure their children are enrolled at, and regularly attend, school. The measure provides for income management arrangements to apply for parents who fail to ensure the enrolment, or sufficient school attendance, of their children. These changes are designed to complement State responsibilities.

In couples where both parents receive income support, it is intended that both parents' income support and family payments would be subject to income management if this requirement is not met. In couples where one parent receives income support, the total family payments of the couple could also potentially become subject to income management, regardless of which parent actually receives the payment.

In more complex family circumstances where care for a child may be shared between natural parents, step-parents and/or other carers (such as grandparents), it is intended that all adults who have a recognised level of responsibility for the care of the child are held to this in relation to getting the child to school. Measures introduced as part of the child support reforms provide existing benchmarks for what could constitute a level of responsibility which merits recognition by means of a higher rate of income support payment to people in certain circumstances. Adults with at least 14 per cent care of a child may be subject to income management. However, Centrelink is given some discretion to exclude parents on a case by case basis from income management where the parent has lower levels of shared care of a child (for example, in the bandwidth of 14 to 34 per cent care) especially where a parent has care of a child primarily on the weekends.

Northern Territory

On 21 June 2007, the Australian Government announced a number of measures in response to the national emergency confronting the welfare of Aboriginal children in the Northern Territory.

This measure has two primary aims:

- a) to stem the flow of cash that is expended on substance abuse and gambling; and
- b) to ensure funds that are provided for the welfare of children are actually expended in this way.

Cape York

This measure establishes the Cape York Welfare Reform trials. The trials will initially run in four communities: Hope Vale, Coen, Aurukun and Mossman Gorge. These trials aim to rebuild social norms in these communities by linking the receipt of welfare payments to fulfilment of socially responsible behaviours. These behaviours focus in particular on the wellbeing and education of children and seek to respond to concerns about truancy and child neglect.

The legislation envisages a statutory body, created under Queensland State legislation, which the Minister can authorise to make decisions affecting the payment of welfare entitlements to residents in the trial communities. The Commission will be responsible, on a case by case basis, for deciding whether a person has breached their obligations and then whether their welfare payments should be subject to income management. The Commission will also decide the proportion of the person's welfare payments which will be subject to income management and the purposes for which that income will be directed. This income could be directed towards meeting priority needs or savings or to another responsible adult.

Explanation of the changes

Inalienability

Section 66 of the Family Assistance Administration Act provides that family assistance payments are inalienable, subject to specified exceptions (such as section 84, which is about deductions from a person's family tax benefit to repay a debt of the person). **Item 1** inserts a new exception at the end of subsection 66(2), which ensures that the inalienability principle is subject to the new income management regime in Part 3B of the Social Security Administration Act.

Social security payments are inalienable under section 60 of the Social Security Administration Act, while section 1061EK of the Social Security Act provides for the inalienability of advance payments.

These provisions are amended by **items 4 and 3** respectively to ensure that the inalienability principle is subject to the new income management regime in Part 3B of the Social Security Administration Act.

Section 125 of the Veterans' Entitlements Act provides that a pension, allowance or other pecuniary benefit under that Act is inalienable. **Item 22** inserts an exception into this provision to take account of the new income management regime provided for in Part 3B of the Social Security Administration Act.

Nominee provisions

Section 219TE of the Family Assistance Administration Act enables the Secretary to cancel the appointment of a nominee in prescribed circumstances. **Item 2** inserts a new subsection 219TE(1A) that requires the appointment of a payment nominee to be cancelled by the Secretary if the nominee becomes subject to the income management regime under new section 123UC (child protection).

Section 123E of the Social Security Administration Act is the equivalent social security provision relating to the revocation of nominee arrangements. **Item 16** makes the same amendment to this provision.

Notification obligations

Sections 67 and 68 of the Social Security Administration Act enable the Secretary to require claimants and recipients of social security payments to inform the Department of specified events or changes in circumstances and/or to give the Department a statement about a matter that might affect payment.

Items 5 to 10 amend these provisions to ensure that the Secretary can require a person to notify of an event or change in circumstances, or give a statement to the Department about a matter, that might affect the operation, or prospective operation, of the new income management regime in Part 3B of the Social Security Administration Act in relation to the person.

Item 11 inserts new section 70A into the Social Security Administration Act, which allows the Secretary to give a person subject to, or likely to become subject to, the income management regime a notice requiring him or her to notify of a change, or potential change, of circumstances or to give a statement about a matter that could impact on the way that Part 3B has effect in relation to the person.

Item 12 inserts new paragraphs 72(3)(e) and (f) into the Social Security Administration Act, which provide that, if a person has been given a notice to inform the Department of a change of circumstances, in accordance with new section 70A, then, if a change of circumstances does occur, the person must notify the Department of the change within 14 days. Additionally, if the Secretary has given a person a notice requiring them to give a statement in relation to a matter that may affect the operation of Part 3B in respect of the person, the person must provide that statement within 14 days.

Items 13, 14 and 15 make minor consequential changes to sections 72 and 74 of the Social Security Administration Act to take account of the new section 70A.

Item 16 is described above.

Part 3B – Income management regime

Division 1 - Introduction

Item 17 inserts new 'Part 3B – Income management regime' into the Social Security Administration Act. An outline of new Part 3B is provided in new section 123TA.

The objects of Part 3B are set out in new section 123TB. The objects are to promote socially responsible behaviour, particularly in relation to the care and education of children, and to set aside some or all of a recipient's welfare payments and ensure they are directed to the priority needs of the recipient, their partner, their children and any other dependants. The concept of ***priority needs*** is defined in new section 123TH.

New section 123TC sets out the definitions for terms and concepts used in Part 3B.

A person who is subject to the income management regime will have a notional income management account within the **Special Account** (defined to mean the Income Management Special Account established by new section 123VA). An **income management account** is defined as a notional account kept in accordance with new section 123WA. By definition, an **account statement** will set out the amounts credited and debited from a person's income management account in a particular period and the balance of the account at the end of that period. Accounts statements are provided for in new sections 123WG, 123WH and 123WI. Under new section 123WI, if an income management account is kept in the name of a person, the Secretary is required to give the person a written account statement for the income management account at least once each quarter. **Quarter** is defined as a period of three months beginning on 1 January, 1 April, 1 July or 1 October.

The terms **acquire, goods, service** and **supply** have the same meaning as in the *Trade Practices Act 1974*.

An **alcoholic beverage** means a beverage that contains more than 0.1% by volume of alcohol. An alcoholic beverage is listed as one of the excluded goods that are not priority needs (new section 123TI refers). A **non-alcoholic beverage**, which can be a priority need, is defined to mean a beverage other than an alcoholic beverage.

There are a number of situations in which a person can be subject to the income management regime (relevant Northern Territory area) under new section 123UB.

A person is subject to the income management regime under new subsection 123UB(1) if, among other things, the person or the person's partner is an eligible recipient of a category A welfare payment. A **category A welfare payment** is defined as a social security benefit or a social security pension (each of which is defined in subsection 23(1) of the Social Security Act) or ABSTUDY living allowance.

The concept of **eligible recipient** is defined in new section 123TK by reference to the earliest day for which the payment can be made (the start day for social security payments and provisional commencement day for veterans' payments) to the date of cancellation of the payment.

If a person is subject to the income management regime under new subsection 123UB(1), then:

- 50 per cent of the net amount of those payments listed in the definition of **category B welfare payment** that are payable to the person are subject to income management; and
- 100 per cent of the net amount of those payments listed in the definition of **category C welfare payment** that are payable to the person are subject to income management.

The situation is similar for a person who is subject to the income management regime under new subsection 123UB(3) because the person has a payment nominee who is subject to the income management regime under new subsection 123UB(1) or (2).

One of the payments covered under category C welfare payment is arrears of family tax benefit by instalment. To clarify, this description would include top-up payments of family tax benefit owed to a person as a result of the reconciliation process which occurs at the end of the relevant income year and any arrears of instalments owed to a person due to a successful review or a change in the person's circumstances.

The term **net amount** is defined to mean so much of an instalment or payment that remains after specified deductions are made or set offs occur. An example is where deductions are made from a person's fortnightly instalments to repay a debt owed by the person (section 1231 of the Social Security Act and section 84 of the Family Assistance Administration Act refers). These deductions would continue in the case of a debtor who is subject to the income management regime and would not be taken into account in working out the amount of the welfare payment that is subject to income management.

A person is subject to the income management regime under new subsection 123UB(2) if, among other things, neither the person, nor the person's partner, is an eligible recipient of a category A welfare payment but the person or the person's partner is an eligible recipient of a category D welfare payment and the person or the person's partner is entitled to be paid family tax benefit. A **category D welfare payment** is defined as a service pension, income support supplement or Defence Force Income Support Allowance (as defined in subsection 23(1) of the Social Security Act).

If a person is subject to the income management regime under new subsection 123UB(2), then:

- 50 per cent of the net amount of those payments listed in the definition of **category F welfare payment** that are payable to the person are subject to income management; and
- 100 per cent of the net amount of those payments listed in the definition of **category G welfare payment** that are payable to the person are subject to income management.

New section 123UC sets out the conditions in which a person is subject to the income management regime (child protection). New sections 123UD and 123UE outline the conditions that trigger income management in situations involving school enrolment and school attendance. One of the relevant conditions in each of these provisions is that the person or the person's partner is an eligible recipient of a category H welfare payment. A **category H welfare payment** is defined as a social security benefit, a social security pension, ABSTUDY living allowance, a service pension, income support supplement or Defence Force Income Support Allowance.

If a person is subject to income management under any of these provisions, then the deductible portion of the net amount of the payments listed in the definition of **category I welfare payment** that are payable to the person are subject to income management. The deductible portion in this context is 100 per cent or a lower percentage specified by the Minister (see, for example, new section 123XI).

The situation is similar for a person who is subject to the income management regime under new subsection 123UD(4) or 123UE(4) because the person has a payment nominee who is subject to the income management regime under new subsection 123UD(1) or 123UE(1) respectively.

Together with a notice from the Queensland Commission, there are certain welfare payment types the receipt of which will subject a person to the income management regime (Queensland Commission) under new section 123UF.

A person is subject to the income management regime under new subsection 123UF(1) if, among other things, the person or the person's partner, is an eligible recipient of a category P welfare payment. A **category P welfare payment** is defined as a social security benefit or a social security pension (other than age pension and carer payment) or ABSTUDY living allowance.

If a person is subject to the income management regime under new subsection 123UF(1), then the deductible portion of the net amount of the payments listed in the definition of **category Q welfare payment** that are payable to the person are subject to income management. The deductible portion in this context is the percentage determined by the Secretary (see, for example, new section 123XM) on direction from the Queensland Commission (see section 123ZK).

The situation is similar for a person who is subject to the income management regime under new subsection 123UF(3) because the person has a payment nominee who is subject to the income management regime under new subsection 123UF(1) or (2).

A person is subject to the income management regime under new subsection 123UF(2) if, among other things, neither the person nor the person's partner is an eligible recipient of a category P welfare payment but the person or the person's partner is an eligible recipient of a category R welfare payment. A **category R welfare payment** is defined as an age pension, carer payment, a service pension, income support supplement or Defence Force Income Support Allowance.

If a person is subject to the income management regime under new subsection 123UF(2), then the deductible portion of the net amount of the payments listed in the definition of **category S welfare payment** that are payable to the person are subject to income management. The deductible portion in this context is the percentage determined by the Secretary (see, for example, new section 123XO) on direction from the Queensland Commission (see section 123ZK).

Centrelink means the Commonwealth Services Delivery Agency.

The term **child** is defined as a dependent child, FTB child or regular care child (a concept that exists on and after 1 July 2008) of the person. An example of where this definition is relevant is in the context of debiting a person's income management account to meet the priority needs of, among others, the person's children. The definition does not apply to the definition of **child protection officer**, Division 2, new subsection 123ZE(2) or new section 123ZEB.

A **child protection officer** is defined to mean an officer or employee of a State or Territory with responsibility relating to the care, protection or welfare of children. The definition is relevant for the provisions relating to income management in the child protection context. For example, one of the requirements under new section 123UC is for a child protection officer of a State or Territory to have given the Secretary written notice requiring that a particular person be subject to income management.

A **declared child protection State or Territory** is defined by reference to new section 123TF, which enables the Minister, by legislative instrument, to determine that a specified State or Territory is a declared child protection State or Territory. That a State or Territory is a declared child protection State or Territory is a condition of income management under section 123UC.

The terms **declared primary school area** and **declared secondary school area** are defined by reference to new section 123TG. Under this provision, the Minister may determine in writing that a specified State, Territory or area meets the definition. The terms are used in new section 123UD and 123UE.

The terms **family law order**, **parenting plan** and **registered parenting plan** are defined. These terms are relevant for the purposes of the definition of **eligible care child** in new section 123UH which, in turn, is relevant for the income management provisions relating to school enrolment and school attendance (see, for example, subsection 123UE(1)).

The related concepts of **declared relevant Northern Territory area** and **relevant Northern Territory area** are defined. A person is subject to the income management regime (relevant Northern Territory area) if, among other things, the person was physically present overnight in a relevant Northern Territory area at any time during a prescribed period and, at the test time, the relevant Northern Territory area is a declared relevant Northern Territory area.

A **relevant Northern Territory area** is each prescribed area within the meaning of what will become the *Northern Territory National Emergency Response Act 2007*, and the place known as Finke or Aputula as well as the place known as Kalkarindji or Wave Hill. The definition is in new section 123TD.

Under new section 123TE, the Minister may, by writing, determine that a specified relevant Northern Territory area is a **declared relevant Northern Territory area**. The declaration lasts for a period specified by the Minister, up to 12 months. However, new subsections 123TE (7) and (10) enable the Minister to extend a declaration by up to 12 months or revoke an existing declaration respectively.

In deciding whether to determine a specific relevant Northern Territory area as a declared relevant Northern Territory area, the Minister must have regard to the matters set out in new subsection 123TE(5). For example, the Minister must have regard to the opportunities that have been made available to people in the area to discuss with employees or officers of the Commonwealth the proposal to make the area a declared relevant Northern Territory area and the consequences of making the determination. However, a contravention of subsection 123TE(5) does not invalidate the declaration of the area. New subsection 123TE(12) provides that a court must not make an interlocutory order which suspends the operation of a decision made under this section unless there are exceptional circumstances.

Subsections 123TE(13) and (14) exempt instruments made under subsections 123TE(1), (7) and (10) from the disallowance provisions of the *Legislative Instruments Act 2003*. The roll-out of the income management regime and the continued capacity to target communities for whom income management should apply is a matter of significant government policy as it is designed to restore order and social norms. It is important that there is certainty in relation to the making of these welfare payments, to enable the Minister to take action urgently. Disallowance would create uncertainty in the administration of the income management regime so that it would be unclear which Northern Territory areas are being targeted and whose welfare payments are being affected.

Also related is the definition of **exempt Northern Territory person**. This term is defined in new section 123UG and explained further in the context in which it appears (Division 2).

A **designated nominee** is defined as a payment nominee or a person to whom instalments of youth allowance are paid on behalf of the young person (generally, their parent). This concept is relevant for the purposes of Division 6, which deals with debits from a person's income management account.

An **excluded payment nominee** is defined as the Public Trustee of a State or Territory or a payment nominee who is not subject to the income management regime.

The related term **payment nominee** is defined as a person who, by virtue of an appointment in force under section 123B of the Social Security Administration Act or under section 219TB of the Family Assistance Administration Act, is a payment nominee. A payment nominee is also a person to whom payment of another person's service pension is made by virtue of an approval under section 58D of the Veterans' Entitlements Act or an appointment under section 202 of the Veterans' Entitlements Act.

The terms **applicable school period**, **eligible care period**, **eligible care child** and **unsatisfactory school attendance situation** are relevant to the income management regime relating to school enrolment and school attendance and have their substantive definitions in Division 2 (in new sections 123UH to 123UK). These terms are explained further in the context in which they appear.

The terms **excluded goods** and **excluded service** are defined as having the meaning in new section 123TI.

Excluded goods are:

- **alcoholic beverages** (defined as beverages containing more than 0.1% by volume of ethyl alcohol);
- **tobacco products** (defined as having the same meaning as in the *Tobacco Advertising Prohibition Act 1992*);
- **pornographic material** (defined in new section 123TJ by reference to classification as used in the *Classification (Publications, Films and Computer Games) Act 1995*); and
- goods specified in a legislative instrument made by the Minister.

Excluded services are **gambling** (defined as a service provided to a person in the capacity of a customer of a gambling service within the meaning of the *Interactive Gambling Act 2001*) and a service specified in a legislative instrument made by the Minister.

The term **priority needs** is defined by reference to new section 123TH. This provision contains a list of items that are considered to be a person's priority needs. Amounts are debited from a person's income management account to meet priority needs.

Priority needs include food, beverages, clothing, basic household items, housing, household utilities, health, child care and development, education and training, and other specified items. The Minister may specify other things as priority needs in a legislative instrument.

Excluded goods and excluded services are not priority needs.

Finance Minister has the same meaning as in the *Financial Management and Accountability Act 1997*.

The term **income tax law** has the same meaning as in the *Income Tax Assessment Act 1997*.

Queensland Commission is defined as a body or agency established by a law of Queensland that is specified in a legislative instrument made by the Minister for the purposes of the definition. The definition is relevant for the purposes of the income management regime relating to the Queensland Commission. Under new section 123UF, a person is subject to the income management regime (Queensland Commission) if, among other things, the Queensland Commission has given the Secretary a notice requiring the person to be subject to the income management regime.

A bereavement payment under the Social Security Act may be available where a recipient of a social security payment dies or where a child or partner of a recipient dies. There are rules relating to bereavement payments at the end of each of the relevant payment Parts in Chapter 2 of the Social Security Act. In many cases, qualification for the primary payment continues for a bereavement period, in which case payments received during the bereavement period continue to be the primary payment. An example of this type of provision is section 235 of the Social Security Act (carer payment). In other cases, a person can qualify for a payment under the relevant subdivision to cover the bereavement period. The definition of **social security bereavement payment** lists the provisions that come within the latter category.

The definition of **veterans' entitlements bereavement payment** covers a similar category of bereavement payments under the Veterans' Entitlements Act, related to service pension and income support supplement.

A social security bereavement payment and a veterans' entitlements bereavement payment can be subject to income management in certain circumstances (for example, as a category I welfare payment).

A person who is subject to the income management regime can be given a stored value card that enables the person to acquire goods or services. A **stored value card** is defined to include a portable device that is capable of storing monetary value in a form other than cash, and of a kind specified in a legislative instrument made by the Minister.

The concept of being **subject to the income management regime** has the meaning given by new section 123UB, 123UC, 123UD, 123UE or 123UF. The situations in which a person is subject to the income management regime are set out in Subdivision A of Division 2.

Division 2 – Persons subject to the income management regime

New **section 123UA** provides that new Subdivision A of Division 2 of Part 3B sets out the various situations in which a person is subject to the income management regime. There are five general situations in which this can occur. These situations are set out in new sections 123UB, 123UC, 123UD, 123UE and 123UF.

New **section 123UB** deals with the situation where a person is subject to the income management regime because they are in a relevant Northern Territory area (see section 123TD). This provision enables the income management regime to apply to certain persons in any area declared by the Minister to be a declared relevant Northern Territory area (see section 123TE). Many of the people affected by this measure will be Indigenous people. New section 123UB will enable the income management regime to apply without delay in Indigenous communities where child abuse and neglect is occurring and where parents are not ensuring that welfare payments are providing appropriately for the care of their children. This provision will apply as a short-term measure to enable these issues to be addressed as soon as possible in the Northern Territory, because of the particular problems experienced in Northern Territory Indigenous communities. It is intended that other elements of the income management scheme will, as soon as they become operational, operate alongside of, and gradually replace, the Northern Territory scheme under section 123UB. This provision is subject to the five year limitation period which applies to other parts of the Northern Territory emergency response legislation.

New subsection 123UB(1) deals with the situation where receipt of a category A welfare payment leads to a person being subject to the income management regime. It provides that a person is subject to the income management regime at the test time if:

- (a) the person or their partner is an eligible recipient (see section 123TK) of a category A welfare payment (see section 123TC);
- (b) the person was physically present in a relevant Northern Territory area at any time from 21 June 2007 to the end of the most recent instalment period relating to that payment or payments;

- (c) at the test time, the area is a declared relevant Northern Territory area (see section 123TE);
- (d) at the test time, the person is not an exempt Northern Territory person (see section 123UG);
- (e) if, at the test time, the person had a payment nominee – the payment nominee is not an excluded payment nominee (see section 123TC);
- (f) at the test time, the person is not subject to the income regime under section 123UC, 123UD, 123UE or 123UF; and
- (g) the test time occurs within five years of the commencement of this section.

New subsection 123UB(2) deals with the situation where entitlement to family tax benefit (FTB) in combination with receipt of a category D welfare payment leads to a person being subject to the income management regime. It provides that a person is subject to the income management regime at the test time if:

- (a) neither the person nor their partner is an eligible recipient (see section 123TK) of a category A payment (see section 123TC);
- (b) the person or their partner is an eligible recipient of a category D welfare payment;
- (c) the person or their partner is entitled to be paid FTB;
- (d) the person was physically present in a relevant Northern Territory area at any time from 21 June 2007 to the end of the most recent instalment period relating to the category D welfare payment or payments;
- (e) at the test time, the area is a declared relevant Northern Territory area (see section 123TE);
- (f) at the test time, the person is not an exempt Northern Territory person (see section 123UG);
- (g) if, at the test time, the person had a payment nominee – the payment nominee is not an excluded payment nominee (see section 123TC);
- (h) at the test time, the person is not subject to the income regime under section 123UC, 123UD, 123UE or 123UF; and
- (i) the test time occurs within 5 years of the commencement of this section.

New subsection 123UB(3) provides that, for the purposes of Part 3B, a person is subject to the income management regime at the test time if, at that time:

- (a) the person is not subject to the income management regime under any other provision;
- (b) the person had a payment nominee; and
- (c) the payment nominee is subject to the income management regime under subsection 123UB(1) or (2).

New **section 123UC** deals with the situation where a person is subject to the income management regime because a child protection officer of a State or Territory has given a notice to the Secretary requiring that a person be subject to the income management regime.

Section 123UC provides that a person is subject to the income management regime at the test time if:

- (a) the person or their partner is an eligible recipient of a category H welfare payment;
- (b) before the test time, a child protection officer (see section 123TC) of a State or Territory gave the Secretary a written notice requiring that the person be subject to the income management regime;
- (c) the notice was given under either a law of, or the executive power of, the State or Territory;
- (d) at the test time, the notice had not been withdrawn or revoked;
- (e) at the test time, the State or Territory is a declared child protection State or Territory (see section 123TF);
- (f) if, at the test time, the person had a payment nominee – the payment nominee is not an excluded payment nominee; and
- (g) at the test time, the person is not subject to the income management regime under section 123UF.

New **section 123UD** sets out the mechanism when a person may be subject to income management as a result of failing to ensure that his or her child is enrolled at school.

Income management will act as a tool to help ensure parents and carers receiving income support meet a key parental responsibility by enrolling their compulsory school aged children in school.

A person may be subject to income management when the person (or person's partner) is an eligible recipient of a Category H welfare payment.

A Category H welfare payment is a social security benefit or pension, a service pension, an income support supplement or a Defence Force Income Support Allowance. These are the 'trigger' payments for the school enrolment measure. If a person is subject to income management a broader range of the person's payments will be subject to income management.

An eligible recipient is a person who has been granted a claim and who has commenced payment and the claim for the payment has not been cancelled (see section 123TK).

If a person or the person's partner has an eligible care child and the child should be enrolled at a school that is in an area that the Minister has declared to be a declared primary or secondary school area and the child is not enrolled, then the person will be subject to income management. This recognises that under State and Territory laws, some children may not be required to be enrolled at a school. For example if the child is not of compulsory school age or the child is being home schooled according to relevant State or Territory law.

An eligible care child is a dependent child or a child for which the person cares under a family law order, a registered parenting plan or parenting plan for at least 14 per cent of a particular period described as an eligible care period (see sections 123UH and 123UJ). The eligible care period, being the period to which the 14 per cent minimum care relates will be set out in a legislative instrument.

The declaration of the school is relevant as the implementation of this new income management framework will require close consultation with the States and Territories regarding enrolment and school attendance (see section 123TG regarding declarations). It is intended that the framework will be implemented on a State or Territory by State or Territory basis or in some instances on a community by community or school by school basis.

A person will not be subject to income management under section 123UD if the person has a payment nominee and that nominee is an excluded nominee or if the person is subject to income management under section 123UC (child protection) or section 123UF (Queensland Commission).

Paragraph 123UD(1)(h) has the effect that income management will not apply if a person has been exempted under subsection 123UD(2). Any exemption made will need to be made in accordance with any principles made by the Minister by legislative instrument (see subsection 123UD(3)).

Paragraph 123UD(1)(i) allows for the Minister by legislative instrument to set other conditions that also need to be met before a person is subject to income management under section 123UD.

New subsection 123UD(4) provides that if a person's payment nominee is subject to the income management regime under section 123UD, then the person will also be subject to the income management regime under section 123UD.

Subsections 123UD(5) to (9) are relevant for determining if a child is enrolled in school. Under subsection (5) the Secretary may give to a person who has an eligible care child a written notice requiring that within a specified time documentary evidence of the child's enrolment at a school during a specified applicable school period is to be provided to the Secretary. A person will be given at least 7 days to provide evidence of a child's enrolment at school (subsection 123UD(7)). The period that is specified can be extended (see subsection 123UD(8)). The intention is for this extension power to be used particularly in circumstances where the reason for why the parent or carer could not provide proof of enrolment within the initial specified period is outside of their control.

The notice must set out that if a person does not comply, the Secretary may determine that the person's eligible care child is not enrolled at any time during the applicable school period specified in the notice. This in effect, means that the Secretary may determine that a person (or the person's partner) is subject to income management for all or part of the period for which the person has been requested to evidence his or her child's enrolment. Documentary evidence of school enrolment is evidence of enrolment not evidence of non-enrolment.

New subsection 123UD(10) makes it clear that nothing in the new Part stops a notice being a notice under subsection (5) or another provision of the law of the Commonwealth. For example, a notice under subsection (5), if the relevant conditions are met could still be a notice under section 68 of the Social Security Administration Act.

The broad effect of section 123UD is that if a child is enrolled at school then the person will not be subject to income management. If a child should be enrolled and a person has been requested to provide evidence of his or her child's enrolment and fails to do so, then the child will be deemed not to be enrolled for a particular period as set out in the notice provided to the person. Any person who provides the required documentary evidence of enrolment (assuming the child is enrolled) will of course not be subject to income management.

A person can also be subject to income management if the person fails to ensure that their child attends school. Income management will also be a tool to help in improving parental behaviour which adversely affects the adequate school attendance of compulsory school aged children. Helping to ensure children reach their full potential at school will also help to reduce the risk of the potential for these children to become long term unemployed and welfare dependent.

New **section 123UE** sets out when a person will be subject to income management. As with school enrolment, a person may be subject to income management when the person (or person's partner) is an eligible recipient of a Category H welfare payment.

An unsatisfactory school attendance situation needs to exist in relation to the eligible care child at the test time (paragraph 123UE(1)(b)). When an unsatisfactory school attendance situation will exist will be set out in a legislative instrument made by the Minister (see section 123UK). Such an instrument may for example provide that unsatisfactory school attendance exists in relation to the child, when the child was absent from school on a particular number of days (or more occasions) without an acceptable reason (as determined by school officials in accordance with the relevant State or Territory guidelines) in the previous applicable school period. Under section 123UI, an applicable school period will also be defined in a legislative instrument and for example may be defined to be a school term or semester.

However, as the duration of State and Territory school terms may differ, different unsatisfactory school attendance situations may exist in respect of different States and Territories. It is necessary that the income management regime is practical and workable taking into account the varying education system structures.

For income management to apply a child needs to be enrolled at a school (paragraph 123UE(1)(d)) which is a school in a declared primary or secondary school area (paragraph 123UE(1)(e) and (f)). The declaration of the school area is relevant, as the implementation of this new income management framework will require close consultation with the States and Territories regarding enrolment and school attendance (see section 123TG regarding declarations). It is intended that the framework will be implemented on a State or Territory by State or Territory basis or in some instances on a community by community or school by school basis. If a child is not enrolled and the child should be enrolled, then a person may be subject to income management under section 123UD.

Throughout a period that ended before the unsatisfactory school attendance situation was in existence the person or the person's partner needs to have an eligible care child. This does not mean that a person who has an eligible care child after this time can't be subject to income management. In this regard, the unsatisfactory school attendance situation is the point in time when a person is subject to income management. This paragraph makes it clear that the relevant link to the care and responsibility for the eligible care child relates to a period when the failure to attend school could be occurring. Eligible care child is a dependent child or a child for which the person cares under a family law order, registered parenting plan or parenting plan for at least 14 per cent of a particular period described as an eligible care period (see sections 123UH and 123UJ). The eligible care period will be set out in a legislative instrument.

Paragraph 123UE(1)(g) requires that before a person is subject to the income management regime that the person or the person's partner be given a formal warning under section 123UL. This warning under section 123UL may be given if a person is not subject to income management under section 123UE and the person has an eligible care child and an unsatisfactory school attendance situation exists or such a situation previously existed in relation to the child. The warning is to set out that a person or the person's partner could immediately become income managed if an unsatisfactory school attendance situation subsequently exists in relation to the child.

The unsatisfactory school attendance situation will be set out in a legislative instrument and as set out above this could be, for example, when the eligible care child was absent from school on a particular number of days or more occasions without an acceptable reason (as determined by the school in accordance with the relevant State or Territory guidelines) in the previous applicable school period.

However, a person only needs to receive one warning before the person can be subject to income management. These are not separate warnings for each of a person's eligible care children. Therefore, if a person is warned and becomes subject to income management but then is not subject to income management a person does not need to be given another warning before they can again be subject to income management.

However, before a person can be subject to income management the whole or part of an applicable school period needs to have occurred after the formal warning was given and before the test time (paragraph 123UE(1)(h)).

A person will not be subject to income management under section 123UE if the person has a payment nominee and that nominee is an excluded nominee or if the person is subject to income management under section 123UC (child protection) or section 123UF(Queensland Commission).

Paragraph 123UE(1)(k) has the effect that a person will not be subject to the income management regime if the Secretary has made a written determination exempting the person. Such an exemption must be made in accordance with principles (if any) contained in a legislative instrument made by the Minister.

The Minister may also under paragraph 123UE(1)(l) make other conditions that must be met before a person will be subject to income management under the school attendance framework in section 123UE.

New subsection 123UE(4) provides that if a person's payment nominee is subject to the income management regime under section 123UE, then the person will be also be subject to the income management regime under section 123UE.

New **section 123UF** deals with the situation where a person is subject to the income management regime because the Queensland Commission has given a notice to the Secretary requiring that a person be subject to the income management regime.

New subsection 123UF(1) deals with the situation where receipt of a category P welfare payment leads to a person being subject to the income management regime. It provides that a person is subject to the income management regime at the test time if:

- (a) the person or their partner is an eligible recipient of a category P welfare payment;
- (b) before the test time, the Queensland Commission gave the Secretary a written notice requiring that the person be subject to the income management regime;
- (c) the notice was given under a law of Queensland;
- (d) the notice was not given in circumstances specified in a legislative instrument made by the Minister;
- (e) at the test time, the notice had not been withdrawn or revoked;
- (f) if, at the test time, the person had a payment nominee – the payment nominee is not an excluded payment nominee; and
- (g) the test time occurs before 1 January 2012.

New subsection 123UF(2) deals with the situation where receipt of a category R welfare payment leads to a person being subject to the income management regime. It provides that a person is subject to the income management regime at the test time if:

- (a) neither the person nor their partner is an eligible recipient of a category P welfare payment;
- (b) the person or their partner is an eligible recipient of a category R welfare payment
- (c) before the test time, the Queensland Commission gave the Secretary a written notice requiring that the person be subject to the income management regime;
- (d) the notice was given under a law of Queensland;
- (e) the notice was not given in circumstances specified in a legislative instrument made by the Minister;
- (f) at the test time, the notice had not been withdrawn or revoked;

- (g) if, at the test time, the person had a payment nominee – the payment nominee is not an excluded payment nominee; and
- (h) the test time occurs before 1 January 2012.

New subsection 123UF(3) provides that, for the purposes of Part 3B, a person is subject to the income management regime at the test time if, at that time:

- (a) the person is not subject to the income management regime under any other provision;
- (b) the person had a payment nominee; and
- (c) the payment nominee is subject to the income management regime under subsection 123UF(1) or (2).

New **section 123UG** provides for the circumstances in which a person is exempt from the income management regime that would otherwise apply to a person because of section 123UB (relevant Northern Territory area).

Subsections 123UG(1) to (4) deal with exempting a person from each relevant Northern Territory area (that is, so that they cannot be subject to the income management regime because of section 123UB).

New subsection 123UG(1) provides that the Secretary may, by written notice given to a person, determine that the person is an exempt Northern Territory person in relation to each relevant Northern Territory area.

New subsection 123UG(2) provides that, in deciding whether to make a determination under subsection (1), the Secretary must have regard to the matters specified in that provision.

New subsection 123UG(3) provides that a determination under subsection (1) is not a legislative instrument. This provision is included to assist readers, as the instrument is not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*.

New subsection 123UG(4) provides that the Minister may, by legislative instrument, determine that a specified person is an exempt Northern Territory person in relation to each relevant Northern Territory area. This enables the Minister to make a legislative instrument which specifies that a person or a class, or classes, of persons, such that a member of any of those classes is an exempt Northern Territory person for the purposes of Part 3B. A note under the provision directs readers to subsection 13(3) of the *Legislative Instruments Act 2003*, which deals with specification by class.

New subsection 123UG(5) provides that subsection (1) and (4) do not limit each other.

New subsection 123UG(6) provides that the Secretary may, by written notice given to a person, determine that the person is an exempt Northern Territory person in relation to a specified relevant Northern Territory area. This means that a person could still be subject to the income management regime under section 123UB if they were in a declared relevant Northern Territory area to which the exemption under subsection 123UG(6) did not relate.

New subsection 123UG(7) provides that, in deciding whether to make a determination under subsection (6), the Secretary must have regard to the matters specified in that provision.

New subsection 123UG(8) provides that a determination under subsection (6) is not a legislative instrument. This provision is included to assist readers, as the instrument is not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*.

Subdivision C – Additional provisions relating to school enrolment and attendance

New **section 123UH** sets out when a child is an **eligible care child**. The concept of an eligible care child is relevant for both the school enrolment and school attendance trigger. Broadly, a person will have an eligible care child when the person has a dependent child (as defined in section 5 of the Social Security Act) or during a particular period under a family law order, registered parenting plan or parenting plan that is in force during that period and the person is caring for the child for at least 14 per cent of the period. The 'period' in this context is essentially the period during which the level of care will be assessed. This is referred to as the eligible care period.

New **section 123UI** provides for the Minister to make a legislative instrument setting out what is meant by an **applicable school period**. An applicable school period is relevant to the school enrolment trigger. A person may be given a notice requiring him or her to provide evidence of his or her child's enrolment at school during a specified applicable school period. Subsection (2) makes it clear that such a period can be a recurring period and does not require the instrument to define a singular period of time.

Subsection (3) also indicates that an applicable school period may be defined by reference to a term of a school attended by a child. Subsection (4) provides that even if an applicable school period begins before the commencement of the provision it can still form part of an applicable school period. For example a legislative instrument may define an applicable school period to be a school term plus any adjoining holidays. Following the commencement of the provisions, a person is requested to provide evidence of his or her child's enrolment in that school term (even though that particular school term commenced before the new provision started). If a person failed to do so, then the person could be subject to income management during the remainder of that term plus the school holidays.

New **section 123UJ** provides for a legislative instrument to be made by the Minister setting out the eligible care period. This is the period over which the level of care of a child (under a family law order, registered parenting plan or parenting plan that is in force during that period) is assessed. Subsection (2) makes it clear that such a period can be a recurring period and does not require the instrument to define a singular period of time. Subsection (3) provides that such a period can commence before the commencement of the section.

New **section 123UK** provides that the question of whether an ***unsatisfactory school attendance situation*** exists or has existed in relation to a child is to be ascertained in accordance with a legislative instrument made by the Minister.

An unsatisfactory school attendance situation is relevant for the school attendance trigger. Before a person can be subject to the income management regime under section 123UE, a person needs to be provided a formal warning under section 123UL. Before a formal warning is given an unsatisfactory school attendance situation must exist or must previously have existed. Additionally, a person can be subject to the income management framework only when an unsatisfactory school attendance situation exists. Furthermore, throughout a period which ends when the unsatisfactory school attendance situation came into existence the child must be an eligible care child of the person or the person's partner.

New subsection 123UK(2) provides that an unsatisfactory school attendance situation cannot exist if under a State or Territory law the child is not required to attend school. Subsection (3) makes it clear that once an instrument is made setting out when an unsatisfactory school attendance situation exists, such a situation can exist before the commencement of the provision. For example, if the legislative instrument set out that an unsatisfactory school attendance situation exists if an eligible care child has been absent on more than five days during a school term without an unacceptable reason then those absences can have taken place prior to the commencement of these provisions. The broad effect of this is that a warning under section 123UL could then be given to a person.

New section 123UL provides the mechanism through which a formal warning can be given to a person in respect of an unsatisfactory school attendance situation. A warning can be given to a person or the person's partner that they may become subject to the income management regime if:

- a person is not subject to income management under the school attendance trigger (section 123UE),
- the person or the person's partner has an eligible care child (section 123UH); and
- an unsatisfactory school attendance situation exists (section 123UK) or has previously existed in relation to the eligible care child.

Division 3 – Establishment of the Income Management Special Account

New **subsection 123VA(1)** provides that the Income Management Special Account is established by this section. New subsection 123VA(2) provides that the Account is a Special Account for the purposes of the *Financial Management and Accountability Act 1997* (FMAA).

New **section 123VB** provides that an amount standing to the credit of the Special Account is not held on trust and is special public money for the purposes of section 16 of the FMAA.

New **section 123VC** provides that amounts standing to the credit of the Special Account may be kept in a single bank account. This provision is intended to negate any inference that amounts credited to notional accounts (see Division 4) should be kept in separate bank accounts.

Division 4 – Income management accounts

Subdivision A – Income management accounts

New **subsection 123WA(1)** provides that separate notional accounts are to be kept in the Special Account in the names of particular persons.

New subsection 123WA(2) provides that an account in the name of a person is to be known as the person's income management account.

New **section 123WB** deals with the opening of income management accounts.

New subsection 123WB(1) provides that the Secretary may open an income management account in the name of a particular person. New subsection 123WB(2) provides that the Secretary can do so even if the person is not subject to the income management regime. This enables the Secretary to make preparations for an account to be opened prior to a person becoming subject to the income management regime.

New subsection 123WB(3) imposes a duty on the Secretary to open an account in the name of a particular person if the person does not already have an account and they are subject to the income management regime.

New **section 123WC** provides that the Secretary may close an account if the balance of the account is nil and:

- (a) the person is not subject to the income management regime; or
- (b) the person has died.

There is no obligation to close an account merely because a person is no longer subject to the income management regime.

New **subsection 123WD(1)** provides that a person's account may have a nil balance. Subsection 123WD(2) provides examples of cases where this might occur.

New **subsection 123WE(1)** provides that only one account may be kept for a particular person. New subsection 123WE(2) provides that a contravention of subsection (1) does not affect the validity of an account. New subsection 123WE(3) requires the Secretary to amalgamate accounts into a single account if the Secretary becomes aware that two or more accounts are being kept for the same person.

New **section 123WF** provides that an amount must not be credited to or debited from an account except as provided for by new Part 3B.

Subdivision B – Account statements

New **section 123WG** provides that the Secretary may issue a means of identification (such as a personal identification number) to a person who has an account that enables them to do either or both of the following:

- (a) to access their account statements on the Internet;
- (b) to be told the balance of their account using an automated telephone answering system.

New **subsection 123WH(1)** provides that the section applies if a person has an account in their name. New subsection 123WH(2) provides that a person who has an account may request the Secretary to give them a written account statement. New subsection 123WH(3) provides that the Secretary must comply with such a request. New subsection 123WH(4) provides that the Secretary may refuse to comply with a request if the person has made a request within the past 30 days.

New **subsection 123WI(1)** provides that the section applies if a person has an account in their name. New subsection 123WI(2) provides that at least once a quarter, the Secretary must give the person a written account statement. New subsection 123WI(3) provides that the Secretary is not required to give a written account statement for a particular period unless the account has been debited or credited during that period, or unless the account has a credit balance at the end of the period.

Subdivision C – Miscellaneous

New **section 123WJ** deals with the payment of credit balances in an income management account where a person ceases to be subject to the income management regime.

New subsection 123WJ provides that the section applies if a person ceases to be subject to the income management regime, their account has a credit balance and the Secretary is satisfied that they are not likely to become subject to the income management regime within the next 60 days. New subsections 123WJ(2) and (3) provide that the residual amount is the credit balance when the person ceases to be subject to the income management regime and that this amount is payable in accordance with the section.

Subsections 123WJ(4), (7), (9), (11) and (14) provide that the Secretary may enable payment of the residual amount by instalments, or by way of a lump sum in specified circumstances, make a payment to discharge an obligation in specified circumstances or make a set-off against an amount owed to the Commonwealth in specified circumstances. Subsections 123WJ(5), (8), (12) and (15) provide that each of these things must occur within 12 months from the person ceasing to be subject to the income management regime. Subsections 123WJ(6), (10), (13) and (16) provide for the debiting of the Special Account and of the person's income management account and for the payment of the residual amount (in the case of expense payments and set-offs). Subsection 123WJ(17) and (18) provide that any actions under this provision do not have consequences under the income tax law for the person no longer subject to the income management regime.

New **section 123WK** provides for the payment of instalments and lump sums under new section 123WJ (person ceasing to be subject to the income management regime). New subsections 123WK(2) and (3) provide that, generally, such amounts are to be paid to the credit of a bank account kept by the person alone or jointly. However, subsection 123WK(4) provides that the Secretary may direct that it be paid in a different way: if such a direction is made, the amount is to be paid in accordance with such a direction (subsection 123WK(5)).

New **section 123WL** deals with the payment of credit balances of a person's income management account if the person dies. New subsection 123WL(2), (3) and (4) provide that the residual amount (the credit balance of the account on the person's death) is to be paid to the person's legal personal representative as a single lump sum within 12 months of the person's death. If this occurs, the Special Account and the person's income management account is debited by the amount of the lump sum (subsection 123WL(5)). Subsection 123WL(6) provides that making such a payment does not have consequences under the income tax law for the person's estate.

New **section 123WM** applies the same rules for the payment of amounts under 123WL to a person's legal personal representative (where the person dies) as for the person ceasing to be subject to the income management regime (see new section 123WK).

New **section 123WN** provides that the Minister administering new Part 3B and the Finance Minister (defined in section 123TC to have the same meaning as in the Financial Management and Accountability Act 1997) may, by legislative instrument, make rules providing that an amount is to be credited to the Special Account and a person's income management account in specified circumstances.

Division 5 – Deductions from welfare payments

Subdivision A – Relevant Northern Territory area

New **section 123XA** provides that, if a person is subject to the income management regime under subsection 123UB(1) or (3) (relevant Northern Territory area) and an instalment of a Category B welfare payment is payable to the person, the Secretary must deduct 50 per cent of the net amount of that payment and credit the person's income management account and the Special Account accordingly.

New **section 123XB** provides that, if a person is subject to the income management regime under subsection 123UB(1) or (3) (relevant Northern Territory area) and payment of a Category B welfare payment is payable to the person other than by instalments (that is, by lump sum), the Secretary must deduct 50 per cent of the net amount of that payment and credit the person's income management account and the Special Account accordingly.

New **section 123XC** provides that, if a person is subject to the income management regime under subsection 123UB(1) or (3) (relevant Northern Territory area) and an instalment of a Category C welfare payment is payable to the person, the Secretary must deduct 100 per cent of the net amount of that payment and credit the person's income management account and the Special Account accordingly.

New **section 123XD** provides that, if a person is subject to the income management regime under subsection 123UB(1) or (3) (relevant Northern Territory area) and payment of a Category C welfare payment is payable to the person other than by instalments (that is, by lump sum), the Secretary must deduct 100 per cent of the net amount of that payment and credit the person's income management account and the Special Account accordingly.

New **section 123XE** provides that, if a person is subject to the income management regime under subsection 123UB(2) (relevant Northern Territory area) and an instalment of a Category F welfare payment is payable to the person, the Secretary must deduct 50 per cent of the net amount of that payment and credit the person's income management account and the Special Account accordingly.

New **section 123XF** provides that, if a person is subject to the income management regime under subsection 123UB(2) (relevant Northern Territory area) and payment of a Category F welfare payment is payable to the person other than by instalments (that is, by lump sum), the Secretary must deduct 50 per cent of the net amount of that payment and credit the person's income management account and the Special Account accordingly.

New **section 123XG** provides that, if a person is subject to the income management regime under subsection 123UB(2) (relevant Northern Territory area) and an instalment of a Category G welfare payment is payable to the person, the Secretary must deduct 100 per cent of the net amount of that payment and credit the person's income management account and the Special Account accordingly.

New **section 123XH** provides that, if a person is subject to the income management regime under subsection 123UB(2) (relevant Northern Territory area) and payment of a Category G welfare payment is payable to the person other than by instalment (that is, by lump sum), the Secretary must deduct 100 per cent of the net amount of that payment and credit the person's income management account and the Special Account accordingly.

Subdivision B – Child protection

New **section 123XI** provides that, if a person is subject to the income management regime under section 123UC (child protection) and an instalment of a Category I welfare payment is payable to the person, the Secretary must deduct 100 per cent of the net amount of that payment (unless the Minister has, by legislative instrument, specified a lower percentage) and credit the person's income management account and the Special Account accordingly.

New **section 123XJ** provides that, if a person is subject to the income management regime under section 123UC (child protection) and payment of a Category I welfare payment is payable to the person other than by instalments (that is, by lump sum) the Secretary must deduct 100 per cent of the net amount of that payment (unless the Minister has, by legislative instrument, specified a lower percentage) and credit the person's income management account and the Special Account accordingly.

Subsections 123XI(4) and 123XJ(4) provide that an instrument may specify different percentages in relation to different category I welfare payments.

Subdivision C – School enrolment and attendance

New **section 123XK** provides that, if a person is subject to the income management regime under section 123UD or 123UE (school enrolment and attendance) and an instalment of a Category I welfare payment is payable to the person, the Secretary must deduct 100 per cent of the net amount of that payment (unless the Minister has, by legislative instrument, specified a lower percentage) and credit the person's income management account and the Special Account accordingly.

New **section 123XL** provides that, if a person is subject to the income management regime under section 123UD or 123UE (school enrolment and attendance) and payment of a Category I welfare payment is payable to the person other than by instalments (that is, by lump sum), the Secretary must deduct 100 per cent of the net amount of that payment (unless the Minister has, by legislative instrument, specified a lower percentage) and credit the person's income management account and the Special Account accordingly.

Subsections 123XK(4) and 123XL(4) provide that an instrument may specify different percentages in relation to different category I welfare payments.

Subdivision D – Queensland Commission

New **section 123XM** provides that, if a person is subject to the income management regime under subsection 123UF(1) or (3) (Queensland Commission) and an instalment of a Category Q welfare payment is payable to the person the Secretary must deduct a percentage, that he determines, of the net amount of that payment and credit the person's income management account and the Special Account accordingly. In determining the percentage of a person's payment to be deducted, the Secretary must comply with a direction of the Queensland Commission (see section 123ZK).

New **section 123XN** provides that, if a person is subject to the income management regime under subsection 123UF(1) or (3) (Queensland Commission) and payment of a Category Q welfare payment is payable to the person other than by instalment (that is, by lump sum), the Secretary must deduct a percentage, that he determines, of the net amount of that payment and credit the person's income management account and the Special Account accordingly. In determining the percentage of a person's payment to be deducted, the Secretary must comply with a direction of the Queensland Commission (see section 123ZK).

New **section 123XO** provides that, if a person is subject to the income management regime under subsection 123UF(2) (Queensland Commission) and an instalment of a Category S welfare payment is payable to the person, the Secretary must deduct a percentage, that he determines, of the net amount of that payment and credit the person's income management account and the Special Account accordingly. In determining the percentage of a person's payment to be deducted, the Secretary must comply with a direction of the Queensland Commission (see section 123ZK).

New **section 123XP** provides that, if a person is subject to the income management regime under subsection 123UF(2) (Queensland Commission) and payment of a Category S welfare payment is payable to the person other than by instalments (that is, by lump sum), the Secretary must deduct a percentage, that he determines, of the net amount of that payment and credit the person's income management account and the Special Account accordingly. In determining the percentage of a person's payment to be deducted, the Secretary must comply with a direction of the Queensland Commission (see section 123ZK).

New **section 123XQ** provides that, where an amount is deducted from a person's payment under Division 5 (that is, so that deducted amount is to be subject to the income management regime), then, for the purposes of the income tax, social security and family assistance laws as well as the *Student Assistance Act 1973*, the *Veterans' Entitlements Act* and the *Child Support (Assessment) Act 1989*, the person is taken to have been paid the amount of the deduction at the time it would have been paid apart from the operation of this Part. This means, in effect, that, for the purposes of those Commonwealth laws listed above that rely upon the assessment of an amount of income paid to a person, this Part will not change how much income was paid, and when that income was paid, to a person subject to the income management regime. Consequently, in relation to the income tax laws, if the deducted amount taken to have been paid to the person is assessable income under the income tax law, it is assessable in the year in which the amount would have been paid if the deduction had not been made.

Division 6 – Debits from income management accounts

Subdivision A – General

New **section 123YA** provides that, where a person is subject to the income management regime and has a credit balance in their income management account, then the Secretary must take appropriate action under Subdivision B to meet any unmet priority needs of the person, their partner, their children or other dependants, within a reasonable period after becoming aware of those needs. If the Secretary is satisfied that the balance of the person's income management account is greater than what is reasonably required to meet the priority needs of the person, their partner, their children and dependants and any reasonably foreseeable priority needs of those same people then the Secretary must not unreasonably refuse a request by the person for the payment of funds, for other than priority needs, under Division 6, as long as making such a payment will not result in the balance of the person's income management account falling below a level necessary to pay the current, and reasonably foreseeable, priority needs of the person, their partner, their children and dependants.

New **section 123YB** provides that, where a person is subject to the income management regime and has a credit balance in their income management account and that person also has one or more children then, in deciding whether to take an action under this Division, the Secretary must have regard to the best interests of the person's children and any other matters that the Secretary considers relevant. This provision recognises that a person has an obligation not only to care for themselves, but also to care for any children they may have.

Subdivision B – Restricted debits

New **section 123YC** provides that, where a person who is subject to the income management regime has a credit balance in their income management account, then the Secretary may issue a voucher to that person or, with the person's consent, to a third party that enables the person, or third party, to acquire goods or services, of a value up to the face value of the voucher, unless the Secretary is satisfied that the relevant goods or services are excluded goods or services. The voucher cannot be for a greater value than the amount standing to the credit of the person in their income management account and may be issued to acquire only limited goods or services, as determined by the Secretary in each case.

Where a voucher is issued by the Secretary, the person's income management account and the Special Account are to be debited by an amount equal to the face value of the voucher. There are no taxation consequences related to the issue of a voucher under this provision. This section is to be used to meet the priority needs of the person, their partner, their children or any other dependants. This section does not apply to a person who has a payment nominee nor to a youth allowance recipient under 18 years of age where the person is not independent and their parent receives the payment of youth allowance on their behalf (see new section 123YD, which deals with these situations).

New **section 123YD** applies to a person who has a payment nominee. Alternatively, it applies to a youth allowance recipient under 18 years of age, where section 123YC does not apply to that person (that is, the person is not independent and their parent receives the payment of youth allowance on their behalf). Where a person to whom this section applies, has a credit balance in their income management account then the Secretary may issue a voucher to that person's parent or nominee or, with the parent or nominee's consent, to a third party that enables the parent or nominee, or third party, to acquire goods or services, of a value up to the face value of the voucher, unless the Secretary is satisfied that the relevant goods or services are excluded goods or services. The voucher cannot be for a greater value than the amount standing to the credit of the person in their income management account and may be issued to acquire only limited goods or services, as determined by the Secretary in each case.

Where a voucher is issued by the Secretary, the person's income management account and the Special Account are to be debited by an amount equal to the face value of the voucher. There are no taxation consequences related to the issue of a voucher under this provision. This section is to be used to meet the priority needs of the person, their partner, their children or any other dependants.

New **section 123YE** provides that, where a person, who is subject to the income management regime, has a credit balance in their income management account then the Secretary may issue a stored value card (or top-up the value of an existing stored value card) to that person or, with the person's consent, to a third party that enables the person, or third party, to acquire goods or services, unless the Secretary is satisfied that the relevant goods or services are excluded goods or services, and so long as the card cannot be used to obtain cash. The amount of the card (or top-up) issued cannot be greater than the amount standing to the credit of the person in their income management account and may be issued to acquire only limited goods or services, as determined by the Secretary in each case.

Where a card is issued by the Secretary (or topped-up), the person's income management account and the Special Account are to be debited by an amount equal to the value of the card, or top-up. There are no taxation consequences related to the issue, or top-up, of a card under this provision. This section is to be used to meet the priority needs of the person, their partner, their children or any other dependants. This section does not apply to a person who has a payment nominee nor to a youth allowance recipient under 18 years of age where the person is not independent and their parent receives the payment of youth allowance on their behalf (see section 123YF, which deals with these situations).

New **section 123YF** applies to a person who has a payment nominee. Alternatively, it applies to a youth allowance recipient under 18 years of age, where section 123YE does not apply to that person, that is, the person is not independent and their parent receives the payment of youth allowance on their behalf. Where a person to whom this section applies, has a credit balance in their income management account then the Secretary may issue a stored value card (or top-up an existing stored value card) to that person's parent or, with the parent's consent, to a third party that enables the parent, or third party, to acquire goods or services, unless the Secretary is satisfied that the relevant goods or services are excluded goods or services, and so long as the card cannot be used to obtain cash. The amount of the card (or top-up) issued cannot be greater than the amount standing to the credit of the person in their income management account and may be issued to acquire only limited goods or services, as determined by the Secretary in each case.

Where a card is issued by the Secretary (or topped-up), the person's income management account and the Special Account are to be debited by an amount equal to the value of the card, or top-up. There are no taxation consequences related to the issue, or top-up, of a card under this provision. This section is to be used to meet the priority needs of the person, their partner, their children or any other dependants.

New **section 123YG** provides that, where a person, who is subject to the income management regime, has a credit balance in their income management account then the Secretary may pay an amount to partially or wholly discharge a debt incurred by the person for goods, services, rates or land tax or, with the person's consent, by a third party (e.g. a spouse), unless the Secretary is satisfied that the relevant goods or services are excluded goods or services. The amount paid cannot be greater than the amount standing to the credit of the person in their income management account.

Where an amount is paid by the Secretary under this provision, the person's income management account and the Special Account are to be debited by an amount equal to the amount paid. There are no taxation consequences related to a payment made under this provision. This section is to be used to meet the priority needs of the person, their partner, their children or any other dependants. This section does not apply to a person who has a payment nominee nor to a youth allowance recipient under 18 years of age where the person is not independent and their parent receives the payment of youth allowance on their behalf.

New **section 123YH** applies to a person who has a payment nominee. Alternatively, it applies to a youth allowance recipient under 18 years of age, where section 123YG does not apply to that person (that is, the person is not independent and their parent receives the payment of youth allowance on their behalf). Where a person to whom this section applies, has a credit balance in their income management account then the Secretary may pay an amount to partially or wholly discharge a debt incurred by the person or their nominee or parent for goods or services or, with the nominee's or parent's consent, by a third party, unless the Secretary is satisfied that the relevant goods or services are excluded goods or services. The amount paid cannot be greater than the amount standing to the credit of the person in their income management account.

Where an amount is paid by the Secretary under this provision, the person's income management account and the Special Account are to be debited by an amount equal to the amount paid. There are no taxation consequences related to a payment made under this provision. This section is to be used to meet the priority needs of the person, their partner, their children or any other dependants.

New **section 123YI** provides that, where a person who is subject to the income management regime has a credit balance in their income management account then the Secretary may pay an amount to a third person (for example, a merchant) where that money is to be used to credit an account held with the third person for the benefit of the person and the person will only be allowed to use the balance of that account to acquire goods or services. Alternatively, where the person consents, payment can also be made out of the person's income management account in respect of an account held for the benefit of another person (for example, a spouse) for the purposes of that other person acquiring goods or services. Payment to the third person cannot be made where the Secretary is satisfied that the relevant goods or services are excluded goods or services, and is paid on condition that, if required under section 123ZH, the amount will be repaid if not used for the benefit of the person or, where consent was given, by another person. The amount paid cannot be greater than the amount standing to the credit of the person in their income management account and may be restricted to a limited range of goods or services, as determined by the Secretary in each case.

Where an amount is paid by the Secretary under this provision, the person's income management account and the Special Account are to be debited by an amount equal to the amount paid. There are no taxation consequences related to a payment made under this provision. This section is to be used to meet the priority needs of the person, their partner, their children or any other dependants. This section does not apply to a person who has a payment nominee nor to a youth allowance recipient under 18 years of age where the person is not independent and their parent receives the payment of youth allowance on their behalf.

New **section 123YJ** applies to a person who has a payment nominee. Alternatively, it applies to a youth allowance recipient under 18 years of age, where section 123YI does not apply to that person (that is, the person is not independent and their parent receives the payment of youth allowance on their behalf). Where a person to whom this section applies, has a credit balance in their income management account then the Secretary may pay an amount to a third person (for example, a merchant) where that money is to be used to credit an account held with the third person for the benefit of the person or their parent or nominee and the person, parent or nominee will only be allowed to use the balance of that account to acquire goods or services.

Alternatively, where the parent or nominee consents, payment can also be made out of the person's income management account in respect of an account held for the benefit of another person (for example, a spouse) for the purposes of that other person acquiring goods or services. Payment to the third person cannot be made where the Secretary is satisfied that the relevant goods or services are excluded goods or services, and is paid on condition that, if required under section 123ZH, the amount will be repaid if not used for the benefit of the person or their parent or nominee or, where consent was given, by another person. The amount paid cannot be greater than the amount standing to the credit of the person in their income management account and may be restricted to a limited range of goods or services, as determined by the Secretary in each case.

Where an amount is paid by the Secretary under this provision, the person's income management account and the Special Account are to be debited by an amount equal to the amount paid. There are no taxation consequences related to a payment made under this provision. This section is to be used to meet the priority needs of the person, their partner, their children or any other dependants.

New **section 123YK** provides that, where a person who is subject to the income management regime, has a credit balance in their income management account then the Secretary may pay money into an account held by the person, or with the person's consent, by a third person with a bank or, with a particular person, specified in a legislative instrument made by the Secretary. Funds can only be paid into such an account for the purposes of acquiring goods or services or paying account-related fees or charges, but not if the Secretary is satisfied that the relevant goods or services are excluded goods or services. The funds paid by the Secretary under this provision cannot be of a greater amount than the amount standing to the credit of the person in their income management account and may be restricted to a limited range of goods or services, as determined by the Secretary in each case.

Where funds are paid by the Secretary, the person's income management account and the Special Account are to be debited by an amount equal to the value of the funds paid. There are no taxation consequences related to the payment of funds under this provision. This section is to be used to meet the priority needs of the person, their partner, their children or any other dependants. This section does not apply to a person who has a payment nominee nor to a youth allowance recipient under 18 years of age where the person is not independent and their parent receives the payment of youth allowance on their behalf.

New **section 123YL** applies to a person who has a payment nominee. Alternatively, it applies to a youth allowance recipient under 18 years of age, where section 123YK does not apply to that person (that is, the person is not independent and their parent receives the payment of youth allowance on their behalf). Where a person to whom this section applies has a credit balance in their income management account then the Secretary may pay money into an account held by the person's parent or nominee, or with the parent or nominee's consent, by a third person with a bank or, with a particular person, specified in a legislative instrument made by the Secretary. Funds can only be paid into such an account for the purposes of acquiring goods or services or paying account-related fees or charges, but not if the Secretary is satisfied that the relevant goods or services are excluded goods or services. The funds paid by the Secretary under this provision cannot be of a greater amount than the amount standing to the credit of the person in their income management account and may be restricted to a limited range of goods or services, as determined by the Secretary in each case.

Where funds are paid by the Secretary, the person's income management account and the Special Account are to be debited by an amount equal to the value of the funds paid. There are no taxation consequences related to the payment of funds under this provision. This section is to be used to meet the priority needs of the person, their partner, their children or any other dependants.

New **section 123YM** provides that, where a person, who is subject to the income management regime, has a credit balance in their income management account then the Secretary may pay money directly to them or, with the person's consent to a third person, in one of a number of different ways, as long as the Secretary does not have reasonable grounds to believe that any of the funds paid are to be used to acquire excluded goods or services. This provision allows the Secretary to pay out funds to a bank account kept by the person (whether solely or with another party), or by cheque or cash, or by issuing a stored value card that allows the withdrawal of cash. Alternatively, an amount can be paid to an account held by a third person, without the first person's consent, where a person is subject to the income management regime under section 123UF (Queensland Commission) and the Queensland Commission has directed the Secretary to pay the funds to that bank account. Generally, this would be done where that third person has been instructed by the Queensland Commission to apply those funds for the benefit of the person. The funds paid, or put into a stored value card, by the Secretary under this provision cannot be greater than the amount standing to the credit of the person in their income management account.

Where funds are paid, or put into a stored value card, by the Secretary, the person's income management account and the Special Account are to be debited by an amount equal to the value of the funds paid, or put onto the stored value card. There are no taxation consequences related to the paying of funds under this provision, whether directly or by way of a stored value card. This section is to be used to meet the priority needs of the person, their partner, their children or any other dependants. This section does not apply to a person who has a payment nominee nor to a youth allowance recipient under 18 years of age where the person is not independent and their parent receives the payment of youth allowance on their behalf.

New **section 123YN** applies to a person who has a payment nominee. Alternatively, it applies to a youth allowance recipient under 18 years of age, where section 123YM does not apply to that person (that is, the person is not independent and their parent receives the payment of youth allowance on their behalf). Where a person to whom this section applies has a credit balance in their income management account, then the Secretary may pay money directly to their parent or nominee or, with the consent of the parent or nominee to a third person, in one of a number of different ways unless the Secretary has reasonable grounds to believe that any of the funds paid are to be used to acquire excluded goods or services. This provision allows the Secretary to pay out funds to a bank account kept by the person's parent or nominee (whether solely or with another party), or by cheque or cash, or by issuing a stored value card that allows the withdrawal of cash. Alternatively, where a person is subject to the income management regime under section 123UF (Queensland Commission), then the Queensland Commission may direct the Secretary to pay the funds to a bank account held by a third party. Generally, this would be done where that third person has been instructed by the Queensland Commission to apply those funds for the benefit of the person. The funds paid, or put into a stored value card, by the Secretary under this provision cannot be of a greater amount than the amount standing to the credit of the person in their income management account.

Where funds are paid, or put into a stored value card, by the Secretary, the person's income management account and the Special Account are to be debited by an amount equal to the value of the funds paid, or put onto the stored value card. There are no taxation consequences related to the paying of funds under this provision, whether directly or by way of a stored value card. This section is to be used to meet the priority needs of the person, their partner, their children or any other dependants.

Subdivision C – Unrestricted debits

New **section 123YO** provides that, where a person, who is subject to the income management regime, has a credit balance in their income management account then the Secretary may pay money directly to them or, with their consent to a third person, in one of a number of different ways. In deciding whether to apply this provision, the Secretary must have regard to any matters specified in a legislative instrument made by the Minister for this purpose and to any other matters that the Secretary considers relevant. This provision allows the Secretary to pay out funds to a bank account kept by the person (whether solely or with another party), or by cheque or cash, or by issuing a stored value card that allows the withdrawal of cash. The funds paid, or put into a stored value card, by the Secretary under this provision cannot be of a greater amount than the amount standing to the credit of the person in their income management account.

Where funds are paid, or put into a stored value card, by the Secretary, the person's income management account and the Special Account are to be debited by an amount equal to the value of the funds paid, or put onto the stored value card. There are no taxation consequences related to the paying of funds under this provision, whether directly or by way of a stored value card. This section does not apply to a person who has a payment nominee nor to a youth allowance recipient under 18 years of age where the person is not independent and their parent receives the payment of youth allowance on their behalf. This section, unlike section 123YM, does not have specific restrictions for excluded goods or services.

New **section 123YP** applies to a person who has a payment nominee. Alternatively, it applies to a youth allowance recipient under 18 years of age, where section 123YO does not apply to that person (that is, the person is not independent and their parent receives the payment of youth allowance on their behalf). Where a person to whom this section applies has a credit balance in their income management account then the Secretary may pay money directly to their parent or nominee or, with the consent of the parent or nominee to a third person, in one of a number of different ways. In deciding whether to apply this provision, the Secretary must have regard to any matters specified in a legislative instrument made by the Minister for this purpose and to any other matters that the Secretary considers relevant. This provision allows the Secretary to pay out funds to a bank account kept by the person's parent or nominee (whether solely or with another party), or by cheque or cash, or by issuing a stored value card that allows the withdrawal of cash. The funds paid, or put into a stored value card, by the Secretary under this provision cannot be of a greater amount than the amount standing to the credit of the person in their income management account.

Where funds are paid, or put into a stored value card, by the Secretary, the person's income management account and the Special Account are to be debited by an amount equal to the value of the funds paid, or put onto the stored value card. There are no taxation consequences related to the paying of funds under this provision, whether directly or by way of a stored value card. This section, unlike section 123YN, does not have specific restrictions for excluded goods or services.

New **section 123YQ** provides that where a person, who is subject to the income management regime, has a credit balance in their income management account then the Secretary may take any action specified in a legislative instrument made by the Minister for the purposes of this section as long as the payment for that action is not for a greater value than the amount standing to the credit of the person in their income management account.

Where the Secretary takes action under this section, the person's income management account and the Special Account are to be debited by an amount equal to the amount paid by the Secretary under this provision. There are no taxation consequences for any party related to the taking of any action under this section. This section is to be used to benefit the person, their partner, their children or any other dependants and is not used if the Secretary is satisfied that the action will result in the acquisition of any excluded goods or services.

Division 7 - Information

New **section 123ZA** enables the Secretary to use his information gathering powers under section 192 or 195 in relation to a relevant Northern Territory area prior to it becoming a declared relevant Northern Territory area. In effect, this means that information can be collected in the Northern Territory, in respect of a person potentially subject to the income management regime, prior to the introduction of the income management regime in a particular area.

New **section 123ZB** enables the Secretary to use his information gathering powers under section 192 or 195 in relation to a declared primary school area, or declared secondary school area prior to that area actually being determined under section 123TG. In effect, this means that information can be collected in regard to school attendance and enrolment, in respect of a person potentially subject to the income management regime, prior to the introduction of the income management regime in a particular area.

New **section 123ZC** provides that, where a person is subject to the income management regime under section 123UC (child protection), but the person leaves the income management regime because the person or their partner has their Category H welfare payment cancelled, the Secretary must give written notice of the cancellation to a child protection officer of the relevant State or Territory as soon as practicable.

New **section 123ZD** provides that, where a person is subject to the income management regime under section 123UF (Queensland Commission), but the person leaves the income management regime, because the person or their partner has their Category P welfare payment cancelled, or the Category R welfare payment of the person or their partner is cancelled, the Secretary must give notice of the cancellation to the Queensland Commission as soon as practicable.

New **sections 123ZE** and **123ZEA** provide that, despite any State or Territory law, a child protection officer or the Queensland Commission can give information about a particular person to the Secretary if the officer, or the Commission, is considering whether to give a notice under paragraph 123UC(b) (child protection) or paragraphs 123UF(1)(b) or (2)(c) (Queensland Commission) or the person in question is already subject to the income management regime under either section 123UC or section 123UF, and the information being disclosed is relevant to Part 3B (that is, the application of the income management regime). Where information has been provided to the Secretary by either a child protection officer or the Queensland Commission then the Secretary will be authorised to release protected information back to a child protection officer or the Queensland Commission for the purposes of the functions or powers of the child protection officer or the Queensland Commission.

New **section 123ZEB** provides that, despite any State or Territory law, a State or Territory, non-government school authority or any other person who is responsible for the operation of a school, can give information to the Secretary about the enrolment or non-enrolment of children at school, or about the attendance or non-attendance of children at school.

Division 8 – Debt Recovery etc

New **section 123ZF** provides that, where a person is subject to the income management regime and an amount is paid out of that person's income management account by cheque, in accordance with section 123YM, 123YN, 123YO or 123YP, and a person other than the payee obtains value for that cheque without the permission of the payee (that is the payee did not endorse the cheque to that other person), then the amount of the cheque is a debt owed by the person who obtained the benefit of the cheque (the second person) to the Commonwealth. Where an amount is recovered under this provision then that amount is to be recredited to the income management account that was originally debited with the value of the cheque and the Special Account is also to be recredited accordingly.

New **section 123ZG** provides that, where a person is subject to the income management regime and an amount is paid out of that person's income management account by way of a voucher under subsection 123YC(2) or 123YD(2) or a stored value card under subsection 123YE(2), 123YF(2), 123YM(2), 123YN(2), 123YO(2) or 123YP(2), and a person other than the intended recipient obtains the benefit of that voucher or stored value card without the consent of the intended recipient then the amount of the voucher or stored value card is a debt owed by the unauthorised recipient to the Commonwealth. Where an amount is recovered under this provision then that amount is to be recredited to the income management account that was originally debited with the value of the voucher or stored value card and the Special Account is also to be recredited accordingly.

New **section 123ZH** provides that, where a person is subject to the income management regime and an amount is paid out of that person's income management account to a third person, in accordance with section 123YI or 123YJ, then the Secretary may give that third person a written notice requiring repayment of any amount not used by the account holder to acquire goods or services. Where any amount is received by the Commonwealth in accordance with the notice then the income management account of the person and the Special Account is to be credited with the recovered amount.

New **section 123ZI** provides that, where a person is subject to the income management regime and an amount is paid out of that person's income management account to a third person, in accordance with section 123YI or 123YJ, and the third person has breached any of the conditions of payment, then any amount that has not been applied by the third person for the acquisition of goods or services is a debt due to the Commonwealth. Where any amount is recovered by the Commonwealth in accordance with this section then the income management account of the person and the Special Account is to be credited with the recovered amount.

New **section 123ZJ** provides that, if a person is subject to the income management regime and the Secretary, due to an error, purports to take action under Division 6 (that is, pay funds out of the person's income management account in one of a variety of ways) that would have resulted in the person's income management account having a negative balance, then such an action (payment) will be valid for the purposes of this part. Where such an error occurs and a customer's income management account has a negative balance then the Special Account will be credited with an amount equal to the amount of the customer's negative balance and the amount of the negative balance is a debt owed by the person to the Commonwealth. Where funds are recovered from the customer, under this provision, the amount of the customer's income management account, and the Special Account, will be credited with the amount recovered and the Special Account will also be debited to repay the amount credited from the Consolidated Revenue Fund.

Division 9 – Miscellaneous

New **section 123ZK** provides that, where a person is subject to the income management regime under section 123UF (Queensland Commission), then where an amount is to be deducted from that person's Category Q or S payment then in deciding the deductible portion in relation to the person's payment the Secretary will be bound by any direction of the Queensland Commission. That is, the Secretary will deduct the portion of the person's Category Q or S payment that he is directed to by the Commission. This deducted portion will then be subject to the income management regime. Additionally, in deciding how to pay out the deducted portion of a person's payment under Division 6, where that person is subject to the income management regime due to section 123UF (Queensland Commission), the Secretary must also comply with any direction of the Queensland Commission.

New **section 123ZL** applies where a person is subject to the income management regime and the Secretary has debited that person's income management account to issue them, or another person, a voucher under subsection 123YC(2) or 123YD(2) or a stored value card under subsection 123YE(2), 123YF(2), 123YM(2), 123YN(2), 123YO(2) or 123YP(2). Where that voucher, or stored value card, is not used then it may be surrendered to the Secretary and the income management account that it was originally debited from, together with the Special Account, will be credited for the amount of the voucher or the amount of credit remaining on the card.

New **section 123ZM**, without limiting the executive power of the Commonwealth, allows the Secretary to purchase and issue vouchers for the purposes of subsections 123YC(2) and 123YD(2) and enter into agreements with suppliers to accept those vouchers in exchange for the provision of goods and services to the holders of those vouchers. To any extent that the issue of a voucher, or entering into such an agreement with a supplier, involves the borrowing of money by the Commonwealth then this section authorises that borrowing. A note under this provision directs readers to section 37 of the *Financial Management and Accountability Act 1997* which provides that an agreement for the borrowing of money by the Commonwealth is of no effect unless the borrowing is authorised by an Act.

New **section 123ZN** appropriates the Consolidated Revenue Fund for the purposes of:

- returning funds to a person where they have ceased to be subject to the income management regime, or to their estate where they have died;
- purchasing vouchers or paying suppliers in accordance with any agreement under which the supplier agrees to accept a voucher; and

- paying any amounts, including the issue (or top-up) of stored value cards, for the purposes of Division 6.

Subsection 123ZN(2) clarifies that subsection 123ZN(1) is the only provision in Part 3B of the Social Security Administration Act that appropriates the Consolidated Revenue Fund.

New **section 123ZO** provides that the provisions of this Part (that is, the income management regime) take precedence over any other part of the social security or family assistance law or any part of the *Student Assistance Act 1973* or the *Veterans' Entitlements Act*.

Item 18 inserts new paragraph 144(ka) into the Social Security Administration Act, which has the effect that the SSAT cannot review a decision made in respect of a person subject to the income management regime under section 123UB (relevant Northern Territory area). This provision has the flow-on effect that such a decision will also not be reviewable by the AAT. Such decisions will still be subject to review by an authorised review officer, the Secretary or the Chief Executive Officer of Centrelink (see section 135 of the Social Security Administration Act). The reason for these review arrangements is the unique circumstances of the emergency response, given that people still have full external merits review in relation to their substantive entitlements and rates.

Section 192 provides a general power for the Secretary to obtain information from a person where the Secretary considers that information is relevant to a range of specified matters related to the administration of social security payments and concession cards. **Item 19** amends section 192 to insert a new matter in relation to which information sought may be relevant, namely, the operation of the income management regime. The effect of this amendment is that where the Secretary considers that information may be relevant to new Part 3B, such as which persons might be subject to the regime or how payments under the regime might be administered, he or she may require information or a document under a person's custody or control to be provided to the Department.

Section 195(1) allows the Secretary to obtain information from a person about a class of persons for a range of detection and verification purposes related to the administration of social security payments. **Item 20** inserts a new purpose in paragraph (ca), namely, to facilitate the administration of the income management regime in new Part 3B. Note that subsections 195(2) to (6), which:

- restrict the nature of the kind of information which may be requested about the class of persons;
- allow a broad scope of such a request if necessary; and
- direct the Secretary to deal with any irrelevant information obtained as part of that request;

apply to requirements to provide information relevant to the administration of the income management scheme.

Item 21 adds new subsections 202(6) and (7) to the Social Security Administration Act. These new provisions allow the Secretary to release protected information to a person who is responsible for the operation of one or more schools in relation to the enrolment, attendance or non-attendance of children at that school or schools.

Item 22 amends section 125 of the Veterans' Entitlements Act to take account of the new Part 3B of the Social Security Administration Act.

Schedule 2 – Baby bonus

Summary

Baby bonus will be paid in 13 fortnightly instalments to claimants who are subject to the income management regime.

Background

Baby bonus is currently paid in 13 fortnightly instalments to claimants who have not turned 18 on the day they claim the baby bonus. Claimants who have turned 18 generally receive their baby bonus as a lump sum payment, although there is discretion to pay these customers their entitlement in 6 fortnightly instalments or in another way. The relevant payment provision is section 47 of the Family Assistance Administration Act.

The amendments made by this schedule ensure that claimants who have turned 18 on the day they claim the baby bonus and who are subject to income management on the day that their claim for baby bonus is determined, are paid their baby bonus in 13 fortnightly instalments.

Also included is a power for the Minister to specify, in a legislative instrument, a class of individuals who are to be paid their baby bonus entitlement in 13 instalments.

Explanation of the changes

A New Tax System (Family Assistance) Act 1999

Item 1 makes a consequential amendment to subparagraph 38(c)(ii) of the Family Assistance Act so that any unpaid baby bonus under the new rules can be paid to a third party if the eligible individual dies before receiving their full entitlement.

A New Tax System (Family Assistance) (Administration) Act 1999

Section 47 of the Family Assistance Administration Act provides for the payment of baby bonus (and maternity immunisation allowance). **Items 2 to 6** amend various provisions in section 47 to ensure that baby bonus is paid in 13 fortnightly instalments to claimants who have turned 18 and who are subject to income management.

The substantive rules are set out in new subsections 47(1A) and (1B), inserted by **item 2**.

New subsection 47(1A) does two things. First, it ensures that a person who has turned 18 when they claim the baby bonus and who is subject to income management on the date of determination of their claim is paid their baby bonus in 13 fortnightly instalments. Second, it enables the Minister to specify, in a legislative instrument, a class of individuals that are to be paid their baby bonus in 13 fortnightly instalments.

Instalments of baby bonus are to be paid at such time as the Secretary considers appropriate and into a bank account nominated and maintained by the claimant, although there would be discretion for the instalments to be paid to the claimant in another manner. The relevant rules are at the end of new subsection 47(1A) and in new subsection 47(1B). If the claimant is subject to the income management regime under new Part 3B of the Social Security Administration Act, then the claimant's instalments of baby bonus will be paid in accordance with that regime.

The amendments made by **items 3 and 5** are technical and make it clear that the instalment regimes set out in subsections 47(2) and (3) operate despite the rule in subsection 47(1) (payment of baby bonus in a lump sum). A note at the end of **item 3** also omits the existing heading to subsection 47(2).

Item 4 inserts a new paragraph into subsection 47(2) so that the instalment regime set out in subsection 47(2) (payment of baby bonus by 6 fortnightly instalments) cannot apply to claimants covered by new subsection 47(1A).

Subsection 47(4) enables the Secretary to change the day on which instalment periods are to begin in relation to a claimant or class of claimants.

Subsection 47(6) enables the Secretary to change the day on which an instalment is paid where payment cannot reasonably be made on the designated day (for example, if the day is a public holiday).

Item 6 ensures that the rules in subsections 47(4) and (6) also apply in relation to the payment of baby bonus by instalment under new subsection 47(1A).

Item 7 provides that the amendments made by this Schedule apply to claims for baby bonus made after this item commences (that is, the day after this Act receives the Royal Assent).

Schedule 3 – Northern Territory CDEP transitional payment

Summary

Beginning in September 2007, the Community Development Employment Projects (CDEP) program in the Northern Territory will progressively be replaced with other employment services. This change will involve the movement of CDEP participants into real jobs, training or appropriate income support including Work for the Dole.

These legislative amendments are designed to assist CDEP participants who move onto income support by establishing a Northern Territory CDEP transition payment. The payment will make up the difference between average earnings from CDEP Scheme payments and income support payments at 23 July 2007 (being the date of announcement of the CDEP changes by the Minister for Families, Community Services and Indigenous Affairs, and the Minister for Employment and Workplace Relations) and the payments made under income support arrangements after the changes to CDEP. Broadly, the payment will assist eligible individuals to manage any changes in income that may result from their move to income support.

The CDEP changes will occur on a community by community basis. Each Northern Territory CDEP provider will be issued with a transition day date at which time CDEP Scheme participants will cease to be paid CDEP Scheme payments. The Northern Territory CDEP transition payment will be available to people in the Northern Territory who were receiving CDEP scheme payments on 23 July 2007. The payment will be available on or after the day the CDEP provider's CDEP transition date, and until 30 June 2008.

The transition payment will be calculated by determining an amount, as at 23 July 2007, of average CDEP scheme payments plus income support. From this amount, a person's fortnightly income support rate and remote area allowance (as at the date the person applies and is determined to be qualified for income support after the CDEP transition date) will be deducted to provide for a fortnightly transition payment. The maximum fortnightly rate that the payment can be is \$794.80.

For some former CDEP recipients, the amount of the Northern Territory CDEP transition payment will be nil as they will receive more on income support than they would have received through participating in the CDEP Scheme.

The Northern Territory CDEP transition payment ceases to be payable to people who are in a compliance non-payment period or to those who are in receipt of CDEP Scheme payments.

If a person's income support payment is quarantined, the Northern Territory CDEP transition payment will also be quarantined in line with other social security payments.

Background

In moving CDEP participants onto income support, the government has made a commitment to minimise any associated loss of government-subsidised income. A person participating in CDEP can receive income from a number of sources and this income can be more than the amount a person could receive from income support payments. In order to assist eligible individuals to manage any changes in income that may result from their move to income support, the government has introduced a new payment for former CDEP participants in the Northern Territory, being the Northern Territory CDEP transition payment.

People will generally be moved off the CDEP Scheme on a community-by-community basis. During the transition phase, CDEP providers will be supported in moving from delivering CDEP services to other arrangements. A new Programme Funding Agreement will be offered to current CDEP providers that will provide funding for the ongoing delivery of critical CDEP activities until other arrangements are place.

Explanation of the changes

Income Tax Assessment Act 1936

Item 1 inserts new subparagraph 160AAA(1)(d) to include the Northern Territory CDEP transition payment as a rebateable benefit for the purposes of income tax assessment. This ensures that the Northern Territory CDEP transition payment is, for tax purposes, treated the same as payments that are currently made under the CDEP Scheme.

Social Security Act 1991

Item 2 amends subsection 23(1) to insert a definition of ***CDEPManager***. CDEPManager is the computer system used by the Department and CDEP Scheme providers to assist with the management of CDEP. In particular, CDEPManager is used to manage information on CDEP participants and CDEP activities.

Item 3 amends subsection 23(1) to insert a new definition of ***CDEP Scheme Provider***. A CDEP Scheme Provider is a person or organisation that is a party to a Programme Funding Agreement with the Commonwealth under which the person or organisation receives Commonwealth funding to deliver the CDEP Scheme.

Item 4 amends subsection 23(1) to insert a new definition of **Northern Territory CDEP transition payment**. Broadly, this is a payment contained in Part 2.27 which is made to former CDEP Scheme participants who transition from the CDEP Scheme to income support payments. Its purpose is to support people as the payment of CDEP Scheme payments cease. As CDEP in the Northern Territory is progressively phased out, people who move onto income support may have a change in their level of income. The Northern Territory CDEP transition payment is to assist people to manage any changes resulting from moving off CDEP Scheme payments.

Item 5 amends subsection 23(1) to insert a definition of **transition day**. Broadly, the transition day is the day on which a CDEP Scheme Provider will cease to provide Commonwealth funded CDEP payments to CDEP Scheme participants.

Item 6 inserts a new part to Chapter 2. This new Part 2.27 creates the Northern Territory CDEP transition payment. Division 1 of Part 2.27 sets out qualification and payability criteria for the new payment.

Qualification for Northern Territory CDEP transition payment

New **section 1061ZAAL** provides that a person is qualified for the Northern Territory CDEP transition payment if the person was eligible to participate in the CDEP Scheme and was recorded as active in CDEPManager on 23 July 2007. To qualify for the transition payment, a person must also not have had a break from participating in the CDEP Scheme for more than 12 consecutive weeks during the period between 23 July 2007 and the transition day (the day CDEP Scheme payments will be ceased in relation to the person's provider). Any period of approved leave is disregarded for the purposes of calculating the 12 weeks. The eligibility criteria for the CDEP Scheme is available at www.workplace.gov.au.

These are the CDEP eligibility criteria as at 23 July 2007 and are the criteria that a person will need to meet on that day.

New paragraph 1061ZAAL(1)(e) allows for additional criteria to be included in subsection 1061ZAAL(1) by legislative instrument.

New **subsection 1061ZAAM(1)** outlines that CDEP Scheme providers will be given a notice which will specify a date on which they are to cease making Commonwealth funded payments to CDEP Scheme participants. The date specified in the notice will be specific to each CDEP Scheme provider. For a person who is or has been registered with that CDEP Scheme provider, this is the person's transition date. This date can be varied if the intended transition day contained in the notice has not arrived (see subsection 1061ZAAM(3)).

Subsection 1061ZAAM (2) is intended to assist readers as the notice given under subsection 1061ZAAM(1) is not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*. Therefore, the provision is merely declaratory of the law.

The purpose of subsection 1061ZAAM(5) is to provide that, in effect, a person can only have one transition day. If a person is with a CDEP Scheme provider which ceases making CDEP Scheme payments, and the person subsequently moves to another provider which is still paying CDEP Scheme payments, then even if the second provider ceases to make such payments the person's transition day (for the purposes of qualifying for the transition payment) is the transition day which occurred with the first provider. The rate of the Northern Territory transition payment will be worked out relevant to the person's first transition day (although where appropriate the rate can be varied).

Payability of Northern Territory CDEP transition payment

Under new **section 1061ZAAN** the Northern Territory CDEP transition payment will also not be payable unless a person:

- before the transition day has made a claim for a social security benefit or social security pension which was granted or is yet to be granted; or
- makes a claim for a social security benefit or pension on or after the transition day.

Making a claim for a social security pension or benefit is necessary as the amount of a person's pension or benefit is required to calculate a person's transition payment.

New **section 1061ZAAO** provides the Northern Territory CDEP transition payment will also not be payable if a person is receiving CDEP Scheme payments.

New **section 1061ZAAP** outlines that the Northern Territory CDEP transition payment will not be payable if, as worked out in accordance with new section 1061ZAAS, the payment would be less than \$5.

New **section 1061ZAAQ** provides that the Northern Territory CDEP transition payment is not payable if a compliance penalty period applied in relation to a person. This means that, if a person's income support payment is not payable due to the imposition of a compliance penalty period, the Northern Territory CDEP transition payment will also not be paid. In the event a person decides to, in effect, self-serve the compliance penalty period and cancels their income support payment, the Northern Territory CDEP transition payment will remain not payable until the compliance penalty period has finished.

New **section 1061ZAAR** provides that the Northern Territory transition payment will not be paid after 1 July 2008. The intention of the transition payment is to assist people in adjusting when moving from CDEP Scheme payments to income support during the transition phase. It is not intended to be a long term income support payment. People who move onto income support will be provided training and employment services to assist them into real jobs.

Rate of Northern Territory CDEP transition payment

Division 2 of Part 2.27 sets out the rate of the Northern Territory CDEP transition payment.

Broadly, the method of calculation is designed so that a person who ceases to be paid CDEP Scheme payments and moves onto income support will not receive less money as an income support recipient as opposed to the amount they received from CDEP Scheme payments and income support payments. CDEP Scheme payments are fortnightly payments made from the wages component grant under the CDEP Scheme (see current subsection 23(1)).

The establishment of the Northern Territory CDEP transition payment was announced on 23 July 2007 and the inclusion of 23 July 2007 as being the relevant date for the calculations in section 1061ZAAT is so that people do not arrange their participation in the CDEP Scheme in such a way as to maximise the rate of the Northern Territory CDEP transition payment.

New **section 1061ZAAS** provides that the rate of the Northern Territory CDEP transition payment will be the excess of the person's pre-transition fortnightly income as calculated in accordance with new section 1061ZAAT, over the amount of the person's post-transition day fortnightly income as calculated in accordance with new section 1061ZAAU. However, if the Secretary considers that the calculation of the rate is not appropriate, the Secretary can determine a rate that is to be paid to the person. This is to ensure that if for some reason the calculation does not appropriately provide for what a person would receive through income support and CDEP Scheme payments on 23 July 2007, then an appropriate rate can be calculated. This calculation must be made subject to any guidelines (if any) that are contained in legislative instrument rules. While generally the Northern Territory CDEP transition payment will be paid in fortnightly instalments similar to other social security payments, the rate of the transition payment is a daily rate (see subsection 1061ZAAS(1)).

New **section 1061ZAAT** outlines the method for calculating a person's pre-23 July 2007 fortnightly income. The period over which the person's income is to be averaged will depend on the person's circumstances, but it will not be greater than a 13 week period and it must end on 23 July 2007. The intention is that the period will be less than 13 weeks if the person was participating in the CDEP Scheme for less than 13 consecutive weeks prior to 23 July 2007 or if the person changed CDEP Scheme providers within the 13 week period immediately prior to 23 July 2007. If a person falls within either of these circumstances, the period will be the period for which the person has been with their most recent CDEP Scheme provider or has been participating in the CDEP Scheme.

In the event a person had only been participating in the CDEP Scheme for less than one fortnight prior to 23 July 2007, the income earned by that person will be calculated on a pro rata basis in order to determine the average fortnightly income.

For some social security benefits, even where a person is qualified for that benefit, participation in the CDEP Scheme results in no rate payable. However, for certain pensions and benefits a person can receive both an amount of pension or benefit in addition to CDEP Scheme payments. The amount of a person's payment is decreased against CDEP Scheme payments received (see current section 1188C). However, to ensure that when people leave the CDEP Scheme, the total amount that was payable to a person is accounted for it is appropriate that any amount of pension or benefit is included in the calculation.

Any fortnightly provision rate of social security benefit or social security pension which a person was receiving on 23 July 2007 will also be calculated to determine the fortnightly amount of income. This amount of pension or benefit will be added together with the average fortnightly CDEP Scheme payments. If a person was receiving the remote area allowance and/or the CDEP Scheme Participant supplement on 23 July 2007, this will also be added on to the CDEP wages and income support to determine a person's overall pre-transition fortnightly income.

However, if the Secretary considers this calculation as not being appropriate, the Secretary can determine a different amount of the person's pre-23 July 2007 fortnightly income. However, in doing so, the Secretary must have regard to the person's income as at 23 July 2007 from CDEP Scheme payments and any social security pension or benefit. This is necessary to ensure that any anomalous situations that arise can be adequately provided for.

New **section 1061ZAAU** outlines the method for calculating a person's post-transition day fortnightly income. The post-transition day fortnightly income will be the fortnightly provisional rate of social security benefit or provisional annual payment rate (expressed as a fortnightly rate) of social security pension (if the person is receiving the amount) plus the remote area allowance (if the person is receiving the amount) calculated on the person's start day or another day determined by the Secretary.

To be granted a claim (see section 37 of the Administration Act) for the Northern Territory CDEP transition payment a person will need to be both qualified and payable for the Northern Territory CDEP transition payment. The person's start date for the transition payment will be worked out under the normal rules applying to social security payments (see Schedule 2 of the Administration Act). Broadly, this will be the day the person claimed for the transition payment or if the person claims before he or she is qualified, the first day the person becomes qualified for the transition payment.

New subsection 1061ZAAU(3) provides that, if the Secretary considers the calculation as not being appropriate, the Secretary can determine the amount of the person's post-23 July 2007 fortnightly income. However, in making any determination under section 1061ZAAU the Secretary must have regard to guidelines (if any) set out in legislative instrument rules.

New **section 1061ZAAV** provides that the maximum fortnightly rate of the Northern Territory CDEP transition payment under section 1061AAR is \$794.80. This figure is based on the maximum income a person could receive through CDEP Scheme payments as at 23 July 2007 (maximum allowable quarterly CDEP payments calculated as fortnightly payments).

Northern Territory CDEP transition payment – miscellaneous rules

Division 3 of Part 2.27 sets out miscellaneous rules in relation to Northern Territory CDEP transition payment.

New **section 1061ZAAW** provides that the Secretary may, by legislative instrument, make rules in relation to any matters under the new Part 2.27, the qualification and payability rules and/or matters in relation to the Northern Territory CDEP transition payment. The section also provides that the rules imposed by legislative instrument will be in addition to those imposed by the new Part 2.27.

Item 7 inserts new subsection 1188B(2A). This subsection provides that a person participating in CDEP transitional activities is not a CDEP Scheme participant. This does not preclude a person who is eligible to be part of a CDEP Scheme to forgo the Northern Territory CDEP transition payment and transfer to a provider who is still operating under the CDEP Scheme. However, currently, **CDEP Scheme participants** as defined in the Social Security Act are unable to access the maximum basic rate of certain payments and the remote area allowance. People in the Northern Territory who are moving from the CDEP Scheme to income support will need to be able to access income support on the same basis as all other income support recipients.

Item 8 inserts new sections 1188BA and 1188BB into Part 3.15A of the Social Security Act. Under new section 1188BA the Secretary may, in writing, approve activities as CDEP transitional activities. This approval is not necessarily intended to be an approval in respect of individual recipients. It is intended that these activities will be set out in the new Programme Funding Agreement which will be offered to current CDEP providers. Such activities are likely to be similar to those currently undertaken through the CDEP Scheme. Any activity tested income support recipients will also have the activities set out in their Activity Agreement.

Subsection 1188BA(2) is intended to assist readers as the approval under subsection 1188BA(1) is not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*. Therefore, the provision is merely declaratory of the law.

New section 1188BB clarifies that a person who engages in Northern Territory CDEP transitional activities is not taken to be an employee merely because of undertaking those activities for purposes of the following legislation:

- *Occupational Health and Safety Act 1991*;
- *Safety, Rehabilitation and Compensation Act 1988*;
- *Superannuation Guarantee (Administration) Act 1992*; or
- *Workplace Relations Act 1996*.

Social Security (Administration Act) 1999

Item 9 inserts new paragraph 52(1)(l). This means that the Northern Territory CDEP transition payment will continue to be payable to a person if a person is overseas for such times as the Secretary determines.

Item 10 inserts new subsection 138(3). This subsection provides that paragraphs 138(1)(a) and 138(1)(c) do not apply to decisions that are made in relation to the Northern Territory CDEP transition payment.

Item 11 inserts new paragraph 144(daa). This paragraph has the effect that decisions under the Social Security Act or the Social Security Administration Act in relation to the Northern Territory CDEP transition payment are not reviewable by the Social Security Appeals Tribunal, or consequently the Administrative Appeals Tribunal. However, any decisions will still be subject to internal review, either at the request of the person or as an own motion review by the Secretary (or delegate). The exclusion of external merits review is considered appropriate as this payment is a short term transitional payment that is above other payments available to all other income support recipients including people who cease to participate in the CDEP Scheme in other circumstances. The internal review mechanism will ensure adequate oversight in the correct calculation of payments.

Item 12 includes in the definition of ***social security periodic payment***, Northern Territory CDEP transition payment. This means that the rules which apply to social security periodic payments will also apply to the Northern Territory CDEP transition payment except where the Act provides otherwise.