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**THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA**

**HOUSE OF REPRESENTATIVES**

**SOCIAL SECURITY LEGISLATION AMENDMENT (IMPROVED SUPPORT  
FOR CARERS) BILL 2009**

**EXPLANATORY MEMORANDUM**

**(Circulated by the authority of the  
Minister for Families, Housing, Community Services and  
Indigenous Affairs, the Hon Jenny Macklin MP)**

# **SOCIAL SECURITY LEGISLATION AMENDMENT (IMPROVED SUPPORT FOR CARERS) BILL 2009**

## **OUTLINE**

This bill provides part of the Government's response to the report of the Carer Payment (child) Review Taskforce and gives effect to a number of measures aimed at improving assistance to carers from 1 July 2009.

The qualification criteria and assessment process for carer payment for care provided to children with disability or a medical condition will be changed to provide a fairer and more equitable process, based on the level of care required, rather than the rigid medical criteria used currently.

A person who qualifies for a carer payment under the new provisions inserted by this bill will automatically qualify for carer allowance.

The provisions in the *Social Security Act 1991* that provide for qualification for carer payment and carer allowance while a care receiver is in hospital, or continued qualification if a care receiver enters hospital, will be amended to allow a person to qualify or remain qualified for carer payment while a care receiver who is a child is in hospital for an unlimited number of days per calendar year.

## **Financial impact statement**

The measures in this bill are part of a 2008 Budget measure of which the legislative component has financial impact as follows:

Total resourcing – all portfolios

2008-09	\$15.5 m
2009-10	\$72.8 m
2010-11	\$89.9 m
2011-12	\$93.3 m

# SOCIAL SECURITY LEGISLATION AMENDMENT (IMPROVED SUPPORT FOR CARERS) BILL 2009

## NOTES ON CLAUSES

**Clause 1** sets out how the Act is to be cited, that is, the *Social Security Legislation Amendment (Improved Support for Carers) Act 2009*.

**Clause 2** provides that the Act commences on 1 July 2009.

**Clause 3** provides that each Act that is specified in a Schedule is amended or repealed as set out in that Schedule.

## Abbreviations

This explanatory memorandum uses the following abbreviations:

- 'Social Security Act' means the *Social Security Act 1991*; and
- 'Social Security Administration Act' means the *Social Security (Administration) Act 1999*.

## **Schedule 1 – Amendment of the Social Security Act 1991**

### **Summary**

This Schedule provides part of the Government's response to the report of the Carer Payment (child) Review Taskforce (the Taskforce) and gives effect to a number of measures aimed at improving assistance to carers from 1 July 2009.

The qualification criteria and assessment process for carer payment for care provided to children with disability or a medical condition will be changed to provide a fairer and more equitable process, based on the level of care required, rather than the rigid medical criteria used currently.

A person who qualifies for a carer payment under the new provisions inserted by this bill will automatically qualify for carer allowance.

The provisions in the Social Security Act that provide for qualification for carer payment and carer allowance while a care receiver is in hospital, or continued qualification if a care receiver enters hospital, will be amended to allow a person to qualify or remain qualified for carer payment while a care receiver who is a child is in hospital for an unlimited number of days per calendar year.

### **Background**

Carer payment provides income support to people who, because of the demands of their caring role, are unable to support themselves through substantial workforce participation. Carer payment is subject to an income and assets test and is paid at the same rate as other social security pensions.

In the 2008-09 Budget, the Government announced measures to expand qualification for carer payment paid in respect of a child. As part of this measure, the Government announced that it would implement a new assessment process to determine qualification for carer payment paid in respect of a child, based on the amount of care required by a child with disability or two or more children with disability, rather than the rigid medical criteria currently used to assess qualification for the payment. The Government also announced that carers of children will be able to access carer payment on a 'short term' or 'per episode' basis and the transition from carer payment paid in respect of a child with a disability to carer payment paid in respect of an adult with a disability would be streamlined.

The Budget measure is part of the Government's response to the report of the carer payment (child) Review Taskforce (the Taskforce). The Taskforce was established in March 2007 to examine the qualification criteria for carer payment and to consider the effectiveness of the payment in providing a safety net for children with a profound disability or severe medical condition.<sup>1</sup> The Taskforce's recommendations are set out in a report entitled *Carer Payment (child): A New Approach*. The measures contained in this bill implement recommendations of the Taskforce.

A new test that assesses the level of care a child requires because of their disability or medical condition is introduced. This test is to be known as the Disability Care Load Assessment (Child) Determination. The current legislative requirement that a child be a 'profoundly disabled child' is considered to be too restrictive and inflexible. The new test will provide a fairer and more objective method of assessing the level of care required by a child. A person who currently qualifies for carer payment for care provided to a profoundly disabled child will continue to do so and will not be required to complete the new test. Any beneficial changes made by this bill will apply to new claimants for carer payment as well as people who are currently receiving carer payment for care provided to a profoundly disabled child or two or more disabled children. The amendments made by this bill will not apply to carers who provide care to higher Adult Disability Assessment Tool (ADAT) score adults.

The new test will be used for carers of one child or multiple children and will be a step in the process of determining whether one or more carers are qualified for each child. The new test will also be used for carers of one or two children who are also providing care for a disabled adult or, alternatively, in cases where there is care provided to more than one child with a disability at the same time. Qualification for carer payment will also be available to separated or divorced parents who exchange the care of two or more children with disability or medical conditions. Carer payment will also be available for care provided on a short term or episodic basis for children who will require care for more than three months but less than six months.

Carer allowance is an income supplement available to people who provide daily care and attention to an adult or child who has a physical, intellectual or psychiatric disability which is permanent and is likely to affect the person for an extended period. Currently, to qualify for carer allowance for care provided to a disabled child or two or more disabled children, a person must meet the requirements of section 953 of the Social Security Act. One of these requirements is that the child's disability appears on the List of Recognised Disabilities or that the child has been assessed and rated under the Child Disability Assessment Tool (CDAT).

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<sup>1</sup> Executive Summary, Carer Payment (child): A New Approach – report of the Carer Payment (child) Review Report, paragraph 1.

The amendments made by this Schedule will also allow a person who qualifies for carer payment under new section 197B, 197C, 197D, 197E, 197G or 197H, or is taken to qualify under one of those provisions by the operation of section 197F, for care provided to a child with disability or medical condition to qualify automatically for carer allowance. Such a person will not have to complete the CDAT in relation to the child or children for whom they qualify for carer payment. A person who is currently receiving carer payment for care provided to a profoundly disabled child or two or more disabled children, and is not receiving carer allowance in respect of that child or children, will also automatically qualify for carer allowance for the care receiver or care receivers.

If a person lodges a claim for carer payment and that claim is refused and the person then lodges a claim for carer allowance within 28 days, the person's claim for carer allowance will be deemed to have been made when they made the claim for carer payment. Also, a person who is receiving carer payment that is suspended or cancelled will be able to make a claim for carer allowance and have their claim backdated to the date that payment of carer payment was suspended or cancelled.

This Schedule commences on 1 July 2009.

### **Explanation of the changes**

**Item 1** is consequential to **item 2** and omits the current definition of ***parenting order*** from subsection 23(1) of the Social Security Act.

**Item 2** inserts a new definition of ***parenting order*** in subsection 23(1) of the Social Security Act. Parenting order is given the same meaning as is given by section 64B of the *Family Law Act 1975*.

**Item 3** inserts new sections 38E and 38F into the Social Security Act. The new qualifying provisions introduced into the Social Security Act by this Schedule require, as part of the qualification criteria, that a care giver be given a qualifying rating of intense under the Disability Care Load Assessment (Child) Determination. The Disability Care Load Assessment (Child) Determination will be subject to Parliamentary scrutiny under section 42 of the *Legislative Instruments Act 2003*.

New section 38E provides that the Disability Care Load Assessment (Child) Determination may provide a method for giving a qualifying rating to a person who is a carer that takes into account the care provided by the carer to the child and the assessment completed by a treating health professional. As a part of the process in providing the qualifying rating, the Secretary may devise a test for assessing the functional ability, behaviour and special care needs of a person aged under 16 and a method for rating the care needs of the child. The test is to include an assessment that must be completed by a treating health professional.

If the carer who is caring for a child is also providing care for one or more other people, whether it is other children or a disabled adult, the Disability Care Load Assessment (Child) Determination may provide a method for giving a qualifying rating to the carer that takes into account the care provided for the child by the carer and the assessment completed by the treating health professional and the care provided by the carer for each other person. That is, the instrument may provide for a method to rate the care the carer gives to all care receivers.

New section 38F provides that the Secretary may, by legislative instrument, determine that a person, or any person in a class of persons, is a treating health professional for the purposes of the Social Security Act. The definition of ***treating health professional*** contained in this legislative instrument does not apply for the purposes of the ADAT or the CDAT.

**Item 4** amends the definition of ***care receiver*** in subsection 197(1) of the Social Security Act. The amendment to the definition of care receiver is consequential to **item 10**, which inserts new subsections 197B(1), 197C(1), 197D(1), 197E(1), 197G(1) and 197H(1), all of which include new circumstances in which a child can be considered to be a care receiver.

**Item 5** inserts a definition of ***Disability Care Load Assessment (Child) Determination*** into subsection 197(1) of the Social Security Act. For the purposes of Part 2.5 of the Social Security Act, Disability Care Load Assessment (Child) Determination is given the same meaning as in new subsection 38E(1).

**Item 6** is consequential to **item 10**, which inserts new section 197D into the Social Security Act. **Item 6** expands the definition of ***lower ADAT score adult*** in subsection 197(1) of the Social Security Act to include a disabled adult who is a care receiver because new subparagraph 197D(1)(a)(i) applies.

**Item 8** inserts a definition of ***treating health professional*** into subsection 197(1) of the Social Security Act. For the purposes of Part 2.5 of the Social Security Act, a treating health professional means a person who is determined by the Secretary under new section 38F to be a treating health professional.

**Item 10** inserts new sections 197A, 197B, 197C, 197D, 197E, 197F, 197G, 197H, 197J, and 197K into the Social Security Act. New section 197A contains an overview of the sections under which a person may qualify for a carer payment. Subsection 197A(1) provides that a person qualifies for a carer payment if they meet the requirements of:

- section 197B (child with a severe disability or severe medical condition);
- section 197C (2 or more children each with a disability or medical condition);

- section 197D (disabled adult and one or more children each with a disability or medical condition);
- section 197E (child with a terminal condition);
- section 197F (exchanged care of children);
- section 197G (short term or episodic care of children)
- section 197H (extension of short term or episodic care of children);
- section 198 (disabled adult or disabled adult and dependent child);  
or
- section 198AA (hospitalisation).

New subsection 197A(2) provides that sections 198AB and 198AC allow a person to continue to qualify for a carer payment during certain short term circumstances, that is, an absence from Australia or cessation of care for a temporary period. This clarifies the current legislative provisions, which enable a person to qualify under section 198 or 198AA and remain qualified in situations where constant care is not being provided (section 198AC) or where constant care is not being provided in the residence of the care receiver (section 198AB).

***Qualification – child with a severe disability or severe medical condition***

The criteria for qualification for a carer payment for care provided to one child with a severe disability or a severe medical condition are set out in new section 197B. The terms ‘severe disability’ and ‘severe medical condition’ are not defined in the Social Security Act and are to take their ordinary meaning. Subsection 197B(1) provides that a person is qualified for a carer payment under section 197B if:

- the person personally provides constant care for a person aged under 16 years with a severe disability or severe medical condition (the care receiver) (paragraph 197B(1)(a)); and
- the person has been given a qualifying rating of intense under the Disability Care Load Assessment (Child) Determination for caring for the care receiver (paragraph 197B(1)(b)); and
- a treating health professional, whether or not it is the treating health professional who completed the assessment under the Disability Care Load Assessment (Child) Determination, has certified in writing that, because of the disability or medical condition from which the child suffers:
  - the child will need personal care for a period of six months or more (subparagraph 197B(1)(c)(i)); and



- the personal care is required to be provided by a specified number of people. If a treating health professional has not certified that more than one carer is required to provide care to the child, then only one person can qualify for carer payment in respect of that child (subparagraph 197B(1)(c)(ii)); and
- the provision of constant care by the person must severely restrict the person's capacity to undertake paid employment (paragraph 197B(1)(d)); and
- the requirements of subsections (2), (3) and (4) are met.

The constant care provided by the person must be provided in a private residence that is the home of the care receiver (new subsection 197B(2)). The person must be an Australian resident (new subsection 197B(3)).

New subsection 197B(4) sets out certain requirements to apply to the care receiver. Paragraph 197B(4)(a) provides that the care receiver must require constant care. It is not enough to satisfy this requirement that a person is *providing* constant care to a child. To satisfy this requirement the child must *require* the constant care that the person is providing. Further, the care receiver must be an Australian resident, pass an income test, and pass an assets test or be exempted from the assets test under the rules set out in section 198N.

The following examples illustrate a situation in which a person may be considered to be severely restricted from undertaking paid employment and a situation in which a person will not be considered to be severely restricted from undertaking paid employment.

### **Examples**

#### *Person's capacity to undertake paid employment severely restricted*

Cristina makes a claim for carer payment on the basis that she is personally providing constant care to her child with a medical condition. The provision of that care has been assessed under the Disability Care Load Assessment (Child) Determination and has received a qualifying rating of intense. A treating health professional has also certified that the child will need care for six months or more and that care is to be provided by the mother.

The child attends a special class within a school between the hours of 8:30am and 4:00pm, five days a week. In order to get the child to school, Cristina must begin bathing and feeding the child at 5:00am and drive the child to school at 8am. She picks the child up at 4:00pm each school day and, upon returning home, the child must be constantly supervised and cared for. The child often has seizures during the night, requiring the mother to be alert during the night and she supervises the child with the use of patient monitors. Cristina is also required to attend school in order to care for the child three days a week, and is often called in to the school to assist on the other days of the week. Although the child attends school five days a week, the provision of care outside the schooling hours, together with attendance with the child at school, causes Cristina to be severely restricted from undertaking paid employment. Provided the requirements of subsections 197B(2), (3) and (4) are met, Cristina will qualify for a carer payment.

*Person's capacity to undertake paid employment not severely restricted*

Reginald makes a claim for carer payment on the basis that he is personally providing care to Morey, who has a behavioural disability. Morey attends a special class at school between the hours of 8:30am and 4:00pm, five days a week. In the class, teachers' aides are employed to supervise the children in the class and help them in taking medication. Morey continues to require a level of supervision outside of school.

However, Morey only requires a moderate level of assistance in dressing, bathing and feeding, and he only needs to be attended to occasionally during the night by Reginald. That is, the level of care required by Morey is not substantially more than any other child of his age and the provision of care by Reginald for Morey is not substantially greater than that of a child of the same age who attends school but does not have a behavioural disability. Reginald's capacity to undertake paid employment is not severely restricted as he would be able to work when the child attends school. Reginald does not qualify for a carer payment as he does not meet the requirement of paragraph 197B(1)(d).

***Qualification – two or more children each having a disability or medical condition***

The criteria for qualification for a carer payment for care provided to two or more children, each of whom have disability or a medical condition, are set out in new section 197C. Subsection 197C(1) provides that a person is qualified for a carer payment if:

- the person personally provides constant care for two or more people (care receivers) aged under 16 with a disability or medical condition (paragraph 197C(1)(a)); and
- the person has been given a qualifying rating of intense under the Disability Care Load Assessment (Child) Determination for caring for the care receivers (paragraph 197C(1)(b)); and
- a treating health professional, whether or not it is the treating health professional who completed the assessment under the Disability Care Load Assessment (Child) Determination, has certified in writing that, because of the disability or medical condition from which each care receiver suffers:
  - each care receiver will need personal care for a period of six months or more (subparagraph 197C(1)(c)(i)); and
  - the personal care is required to be provided by a specified number of people. If a treating health professional has not certified that more than one carer is required to provide care to the care receivers, then only one person can qualify for carer payment in respect of the care receivers (subparagraph 197C(1)(c)(ii)); and
- the provision of constant care by the person must severely restrict the person's capacity to undertake paid employment (paragraph 197C(1)(d)); and
- the requirements of subsections (2), (3) and (4) are met (paragraph 197C(1)(e)).

The constant care provided by the person must be provided in a private residence that is the home of the care receivers (new subsection 197C(2)). The person must be an Australian resident (new subsection 197C(3)).

New subsection 197C(4) sets out certain requirements that apply to the care receivers. Paragraph 197C(4)(a) provides that the care receivers must require constant care. It is not enough to satisfy this requirement that a person is *providing* constant care to the care receivers. To satisfy this requirement the care receivers must *require* the constant care that the person is providing. Further, each of the care receivers must be an Australian resident, pass an income test, and pass an assets test or be exempted from the assets test under the rules set out in section 198N.

The following example illustrates a situation in which a person can qualify for care provided to two children with disability.

## Example

Nathalie cares for her two children, each with disability. The provision of care in respect of the combination of the two children severely restricts Nathalie's capacity to undertake paid employment. Nathalie is not qualified for a carer payment under section 197B as neither child has a severe disability or severe medical condition. It is only when their care load is combined that a qualifying rating of intense is achieved under the Disability Care Load Assessment (Child) Determination. A treating health professional has certified that the children both need care for six months or more and that care is to be provided by one person. Provided Nathalie meets the requirements in subsections 197C(2) and (3) and the children meet the requirements of subsection 197C(4), Nathalie qualifies for a carer payment.

### ***Qualification – disabled adult and one or more children each having a disability or medical condition***

The criteria for qualification for a carer payment for care provided to a disabled adult and one or more children, each with a disability or medical condition, are set out in new section 197D. The amendment made by **item 12** means that, if new section 197D applies to a person, then paragraph 198(2)(d) cannot apply. Subsection 197D(1) provides that a person qualifies for carer payment if:

- the person personally provides constant care to both or all of the following care receivers:
  - a disabled adult who has been assessed and rated under the ADAT and given a score under that Tool of at least 20, being a score calculated on the basis of a total professional questionnaire score of at least eight (subparagraph 197D(1)(a)(i));
  - one or more children who each have a disability or medical condition (subparagraph 197D(1)(a)(ii)); and
- the person has been given a qualifying rating of intense under the Disability Care Load Assessment (Child) Determination for caring for the care receivers (paragraph 197D(1)(b)); and
- a treating health professional, whether or not it is the treating health professional who completed the assessment under the Disability Care Load Assessment (Child) Determination, has certified in writing that, because of the disability or medical condition from which each care receiver who is a child suffers:
  - the care receiver will need personal care for a period of six months or more (subparagraph 197D(1)(c)(i)); and

- the personal care is required to be provided by a specified number of people. If a treating health professional has not certified that more than one carer is required to provide care to the care receivers who are children, then only one person can qualify for carer payment in respect of the care receivers (subparagraph 197D(1)(c)(ii)); and
- the provision of constant care by the person must severely restrict the person's capacity to undertake paid employment (paragraph 197D(1)(d)); and
- the person is not qualified under paragraph 198(2)(a) for a carer payment (if the disabled adult for whom the person is providing care has been given a score under the ADAT of at least 25, based on a total professional questionnaire score of at least 10 and the person qualifies under section 198, then the person cannot also qualify under section 197D) (paragraph 197D(1)(e)); and
- the requirements of subsections (2), (3) and (4) are met (paragraph 197D(1)(f)).

The constant care provided by the person must be provided in a private residence that is the home of all the care receivers (new subsection 197D(2)). The person must be an Australian resident (new subsection 197D(3)).

New subsection 197D(4) sets out certain requirements to apply to the care receivers. Paragraph 197D(4)(a) provides that the care receivers must require constant care. It is not enough to satisfy this requirement that a person is *providing* constant care to the care receivers. To satisfy this requirement the care receivers must *require* the constant care that the person is providing. Further, each of the care receivers must be an Australian resident, pass an income test, and pass an assets test or be exempted from the assets test under the rules set out in section 198N.

The following example illustrates a situation where a person would be qualified for carer payment for care provided to a disabled adult and two children, each with disability.

## **Example**

### *Caring for a disabled adult and two children, each with disability*

Esmay is caring for her two children, each of whom have a disability. Esmay is also caring for her mother. Esmay, her mother, and her two children all live in the same house. The care that Esmay provides to all of the care receivers severely restricts her capacity to undertake paid employment. None of the care receivers qualifies Esmay for carer payment in their own right. However, when the care that Esmay provides to her two children is combined with the care that she provides to her mother, a qualifying rating of intense is achieved under the Disability Care Load Assessment (Child) Determination. Provided the other requirements of subsection 197D(1), as well as the requirements of subsections 197D(2), (3) and (4), are met, then Esmay qualifies for a carer payment.

### **Qualification – child who has a terminal condition**

The criteria for qualification for a carer payment with respect to a child with a terminal condition are set out in new section 197E.

New subsection 197E(1) provides that a person is qualified for a carer payment if:

- the person personally provides constant care for a person (the care receiver) aged under 16 (paragraph 197E(1)(a)); and
- a medical practitioner has certified in relation to the care receiver that:
  - the care receiver has a terminal condition (subparagraph 197E(1)(b)(i)); and
  - the average life expectancy for a child with the same or a similar condition is not substantially longer than 24 months (subparagraph 197E(1)(b)(ii)); and
  - because of the condition, the care receiver will need continuous personal care for the remainder of his or her life (subparagraph 197E(1)(b)(iii)); and
  - the personal care is required to be provided by a specified number of people (subparagraph 197E(1)(b)(iv)); and
- the provision of constant care by the person must severely restrict the person's capacity to undertake paid employment (paragraph 197E(1)(c)); and
- the requirements of subsections (3), (4) and (5) are met (paragraph 197E(1)(d)).

New subsection 197E(2) provides that, if a person has qualified for a carer payment under subsection 197E(1) and the care receiver turns 16, the person will remain qualified for a carer payment under new section 197E until the earlier of the following:

- the person no longer qualifies for a carer payment (for example, the child recovers from the terminal condition); or
- the care receiver turns 18.

The constant care provided by the person must be provided in a private residence that is the home of the care receiver (subsection 197E(3)). The person must be an Australian resident (subsection 197E(4)).

New subsection 197E(5) sets out certain requirements to apply to the care receiver. Paragraph 197E(5)(a) provides that the care receiver must require constant care. It is not enough to satisfy this requirement that a person is *providing* constant care to the care receiver. To satisfy this requirement the care receiver must *require* the constant care that the person is providing. Further, the care receiver must be an Australian resident, pass an income test, and pass an assets test or be exempted from the assets test under the rules set out in section 198N.

#### ***Qualification – exchanged care of children***

New section 197F allows a person to qualify for carer payment under new section 197B, 197C, 197D, 197E, 197G or 197H, despite the fact that the person is not providing constant care to the same care receiver or same care receivers (new subsection 197F(1)).

New subsection 197F(2) provides that section 197F applies to a person if:

- the person is a parent of two or more people aged under 16 (paragraph 197F(2)(a)); and
- the person (the carer) is personally providing care for at least two of those people (the care receivers) (paragraph 197F(2)(b)); and
- the care receivers would qualify the carer for a carer payment under section 197B, 197C, 197D, 197E, 197G or 197H, apart from:
  - the fact that the person is not personally providing constant care for the care receivers; and
  - the fact that each of the care receivers has or may have more than one home (paragraph 197F(2)(c)); and
- the circumstances in subsection (3) apply in relation to each of the care receivers (paragraph 197F(2)(d)).

New subsection 197F(3) provides that the circumstances that must apply to each care receiver for section 197F to apply are:

- under one or more registered parenting plans, parenting plans or parenting orders that are in force, the care receiver is to live with, or spend time with, the person and the care receiver's other parent (whether or not the care receiver is to live with, or spend time with, someone else) (paragraph 197F(3)(a)); and
- the length or percentage of time that the care receiver is to live with, or spend time with, the person and the other parent is specified in, or worked out in accordance with, the plans or orders (paragraph 197F(3)(b)); and
- the person personally provides constant care for the care receiver when the care receiver is living with, or spending time with, the person (paragraph 197F(3)(c)); and
- the person does not personally provide constant care for the care receiver only because the terms of the plans or orders require the care receiver to live with, or spend time with, the other parent or someone else (paragraph 197F(3)(d)); and
- when the person is not personally providing care for the care receiver, the person is personally providing care for one or more other care receivers in relation to whom this subsection also applies (paragraph 197F(3)(e)).

If this section applies to a person, the person is taken to be qualified for a carer payment under section 197B, 197C, 197D, 197E, 197G or 197H, or a combination of them, for caring for the care receivers or for people who include the care receivers, as the case requires (subsection 197F(4)). For example, in a week when a person is caring for a child with severe disability, they are taken to qualify under section 197B, and in the next week, when they are caring for two children with disability, they are taken to qualify under section 197C, despite the fact that they are not providing constant care to the same child or same children constantly.

The following examples illustrate situations in which a person may be taken to be qualified for a carer payment because of the application of section 197F.



## Examples

### *Separated parents caring for two children, each with a severe disability or a severe medical condition*

Georgie and Blain, the parents of two children (Jacalin and Rose) each of whom have a severe disability, separate. Georgie and Blain draw up a parenting plan, which provides that Jacalin and Rose are to live with each of them on a week-about basis. That is, in any given week, Georgie will have one child and Blain will have the other. Both Georgie and Blain make claims for carer payment and the care that each of them provides to Jacalin, combined with the assessment of the level of care required by Jacalin by a treating health professional, receives a qualifying rating of intense on the Disability Care Load Assessment (Child) Determination. The care that they provide to Rose, combined with the assessment of the level of care required by Rose by a treating health professional, receives a qualifying rating of intense. A treating health professional has certified that each child requires care to be provided by one person. Additionally, both Jacalin and Rose require constant care and the care that Georgie and Blain provide to the children severely restricts their capacity to undertake paid employment.

Therefore, if Georgie or Blain were providing constant care to either Jacalin or Rose they would qualify for carer payment under section 197B. However, Georgie and Blain are not providing constant care to either of their children because of the operation of the parenting plan. The operation of section 197F allows Georgie and Blain to qualify for a carer payment under section 197B.

### *Separated parents caring for two children, each with a severe disability or a severe medical condition, one parent sharing the care with the children's grandparents*

In the example above, if the parenting plan were to state that Jacalin and Rose are to live with Blain on a week-about basis and spend the week that they are not with Blain living with Georgie for four days and their grandparents for three days, Blain would be able to rely on section 197F to qualify for carer payment and Georgie would not. The grandparents of the children would be unable to qualify for carer payment by relying on section 197F as they are not, in this example, parents of the children.

*Separated parents caring for one child with severe disability or severe medical condition and two children, each with disability or medical condition*

Molly and Jaxson are the parents of three children: Whitney, who has a severe medical condition, and Bernice and Charline, both of whom have disability. Molly and Jaxson separate and they draw up a parenting plan, which provides that Jaxson will have care of Whitney while Molly has care of Bernice and Charline. The parents will exchange the care of the children on a fortnightly basis such that Bernice and Charline will always remain together.

Jaxson makes a claim for carer payment. The care that he provides to Whitney achieves a qualifying rating of intense on the Disability Care Load Assessment (Child) Determination. Additionally, the care that Jaxson provides to Bernice and Charline (when he has them in his care) achieves a qualifying rating of intense. If Jaxson were providing constant care to Whitney, he would qualify for carer payment under section 197B. If Jaxson were providing constant care to Bernice and Charline, he would qualify for carer payment under section 197C. Because of the parenting plan that Jaxson has made with Molly, Jaxson is providing constant care, but he is not providing constant care to either Whitney, or the combination of Bernice and Charline. Provided that Jaxson meets the other requirements set out in subsections 197B(2) and (3) and 197C(2) and (3) and the children meet the requirements of subsections 197B(4) and 197C(4), the effect of section 197F is that Jaxson is taken to qualify for carer payment under sections 197B and 197C.

*Parent caring for two children with severe disability born to different former spouses*

Wade and Maxine are the parents of Wadine who has severe disability. Wade and Maxine separate and create a parenting plan providing that Wadine is to spend equal time with each parent. Maxine has another child, Bayne, who also has severe disability, with another partner and they separate. Maxine and Bayne's father create a parenting plan, which states that Bayne is to spend equal time with each parent. Maxine has the care of Bayne when she does not have care of Wadine.

Maxine lodges a claim for carer payment and the care that she provides to Wadine, combined with the assessment of care needed by Wadine by a treating health professional achieves a qualifying rating of intense. The care that Maxine provides to Bayne, combined with the assessment by a treating health professional of care needed by Bayne, also achieves a qualifying rating of intense.

If Maxine were providing constant care to either Wadine or Bayne, she would satisfy the requirements of section 197B. However, because of the parenting plans that she has with the children's fathers, she does not provide constant care to either child. Nevertheless, Maxine does have the care of one of the children at all times and, therefore, because of the operation of section 197F, Maxine is taken to qualify for carer payment under section 197B.

### ***Qualification – short term or episodic care of children***

New section 197G provides that a person may qualify for a carer payment for short term or episodic care. Short term care refers to care provided to a care receiver aged under 16 for a one-off incident (for example, a child is involved in an accident and sustains injuries that will require care for a period of five months). Episodic care refers to care provided to a care recipient aged under 16 on a recurring or episodic basis where each episode is expected to last for at least three months and less than six months (for example, a child has leukaemia and will require at least two courses of chemotherapy, each of which will mean that the child will require constant care for a period of three months).

The criteria for qualification for a carer payment in respect of care provided to a child or children on a short term or episodic basis are set out in new section 197G. New subsection 197G(1) provides that the Secretary may determine that a person is qualified for a carer payment for a period in respect of a child or children (care receiver or care receivers) if:

- the person personally provides constant care to the care receiver or care receivers, each with :
  - a severe disability or severe medical condition; or
  - a disability or medical condition; and
- each care receiver is aged under 16 at the start of the period; and
- a treating health professional, in relation to each care receiver, has certified in writing that, because of the severe disability or severe medical condition or the disability or medical condition:
  - each carer receiver will need personal care for a period of at least three months but less than six months; and
  - the care is required to be provided by a specified number of people. If a treating health professional has not certified that more than one carer is required to provide care to the care receivers who are children, then only one person can qualify for carer payment in respect of the care receivers; and

- apart from the fact that the care receiver, or care receivers, will need personal care for less than six months, the person would qualify for a carer payment:
  - under section 197B or 197C (whether or not because of section 197F) for caring for the care receiver or care receivers; or
  - under section 197D (whether or not because of section 197F) for caring for the care receiver or care receivers.

The period that the person is determined to be qualified for carer payment must be three months or more and less than six months and is not to begin before the person's start date determined under section 41 and Schedule 2 to the Social Security Administration Act (new subsection 197G(2)). If carer payment is not payable to a person who is qualified under this section for a period of three months or more from their start date, then the Secretary cannot determine the person is qualified under section 197G.

A person will remain qualified until the end of the period determined by the Secretary under new subsection 197G(1), even if the care receiver or care receivers turn 16 before the end of the period (new subsection 197G(3)). That is, if a person is qualified for carer payment under this section for a period of four months for a care receiver who is, at the start of the period, aged 15 and 10 months, the person will remain qualified for carer payment until the end of the four-month period. This is despite the fact that, two months into the period, the care receiver will turn 16.

The following examples illustrate situations in which a person may qualify for carer payment for care provided on a short term or episodic basis.

### **Examples**

#### *Short term care for one child with a severe medical condition*

Gregor sustains severe injuries in an accident and requires a number of surgeries over a period of five months. The care required by Gregor, who is aged 14, severely restricts the capacity of his father to undertake paid employment for that five-month period and it is expected that, after that period, Gregor will recover. Gregor's father makes a claim for carer payment. The provision of care provided by his father is given a qualifying rating of intense under the Disability Care Load Assessment (Child) Determination. A treating health professional has certified that Gregor requires personal care for a five-month period and, provided that his father satisfies the requirements of subsections 197B(2) and (3) and Gregor meets the requirements of subsection 197B(4), the Secretary may determine that Gregor's father is qualified for carer payment for a period of five months.

*Episodic care for one child with a severe medical condition*

Cacee has leukaemia and requires chemotherapy. Cacee has severe side effects from the chemotherapy and requires constant personal care for a period of four months. The nature of leukaemia is that it is likely that Cacee will require chemotherapy again in the future for a similar period of time. The provision of care by Cacee's father, Lynden, severely restricts his capacity to undertake paid employment.

Lynden makes a claim for carer payment. The provision of care by Lynden is given a qualifying rating of intense. Apart from the fact that Cacee only requires care for four months, the requirements of section 197B are met and Lynden qualifies for carer payment under section 197G. The Secretary then makes a determination that Lynden is qualified for a carer payment for a specified period. At the end of the period, Cacee no longer requires constant personal care and the payment of carer payment to Lynden is automatically cancelled.

A few months after the first round of chemotherapy, Cacee requires a second round of chemotherapy and will require constant personal care for a period of four and a half months. Provided that the requirements of section 197B are met (apart from the fact that Cacee requires care for less than six months), Lynden will again qualify for carer payment under section 197G. This time, the period that Lynden is qualified for carer payment is determined by the Secretary to be four and a half months.

*Parent caring for a disabled adult and two children with disability*

Gade has two children, Maddox and Shiloh. Gade also provides care for her mother, Alma. Maddox does not have a disability or a medical condition. The care that Gade provides to Shiloh and Alma does not achieve a qualifying rating of intense (despite the fact that the elderly mother has an ADAT score of 20 with a health professional score of eight).

Maddox is involved in an accident and will require care for a four-month period. When the care that Gade provides to Maddox is combined with the care that Gade provides to Shiloh and Alma, a qualifying rating of intense is achieved.

If Maddox were to require care for six months or more, Gade would qualify for carer payment under section 197D. That is, her capacity to undertake paid employment is severely restricted by the care that she provides, the care is provided in a private residence that is the home of the care receivers, the mother is an Australian resident, and the care receivers meet the requirements set out in subsection 197D(4). As Maddox only requires care for four months, Gade does not qualify under section 197D. However, the Secretary may determine that Gade is qualified for carer payment for a period of four months under section 197G.

### ***Qualification – extension of short term or episodic care***

A person who has qualified for a carer payment under new section 197G for care provided to a care receiver or care receivers on a short term or episodic basis, and who finds that the reason for the care will extend beyond the period determined by the Secretary, may apply for an extension of the period. New section 197H will apply if:

- a person is qualified for a carer payment for one or more people (the care receiver or care receivers) aged under 16 for a period:
  - under section 197G; or
  - if section 197H has previously applied to the person and the care receiver or care receivers – under the most recent application of section 197H (that is, the person has already had one or more extensions of the current short term care); and
- in relation to each care receiver, before the end of the period last determined by the Secretary and before the care receiver or care receivers turn 16, the person provides the Secretary with a certificate from a treating health professional certifying that:
  - because the care receiver's severe disability or severe medical condition, or the care receiver's disability or medical condition, the care receiver/s will need personal care for a period of less than three months, starting immediately after the end of the preceding period; and
  - the severe disability or severe medical condition, or disability or condition, is the same as, or related to, the severe disability or severe medical condition, or disability or medical condition, that necessitated the personal care for the preceding period; and
  - the care is required to be provided by a specified number of people. If a treating health professional has not certified that more than one carer is required to provide care to the care receivers who is a child, then only one person can qualify for carer payment in respect of the care receivers.

New subsection 197H(2) provides that a person is qualified for a further period if:

- apart from the fact that the care receiver or care receivers will need personal care for less than six months, the person would qualify for a carer payment:
  - under section 197B or 197C (whether or not because of section 197F) for caring for the care receiver or care receivers; or
  - under section 197D (whether or not because of section 197F) for caring for the care receiver and another person; and
- the Secretary determines that a carer payment should be granted to the person for the period.

The Secretary may extend the period under new subsection 197H(2) for a period that ends not later than six months after the start date for carer payment determined under section 197G (new subsection 197H(3)). That is, each individual period of short term or episodic care cannot last for longer than six months.

A person will remain qualified under this section if, during the period determined by the Secretary under new subsection 197H(2), the care receiver or carer receivers turn 16 (new subsection 197H(4)).

### **Example**

In the example above in relation to qualification under section 197G, before the end of the period determined by the Secretary, Gade finds out Maddox will require further surgery and will require care for a month after the end of the initial period. Gade gives the Secretary a certificate signed by a treating health professional that states that Maddox will require care for a further period of a month because of surgery associated with the same condition. Therefore, the Secretary may determine that Gade is qualified for carer payment for a further month. Gade would be able to obtain further extensions, of at least one day per extension, for a period of up to six months from the start date of carer payment in relation to the medical condition/disability if, before the end of each period, she provides a certificate from a treating health professional, stating that Maddox requires care for a further period.

### ***Qualification following qualification for short term or episodic care***

The purpose of section 197J is to treat a person as qualified under section 197B, 197C or 197D, or because of 197F, if the person was qualified for a carer payment under section 197G or 197H and if the care receiver or care receivers who are aged under 16 require care for a period of six months or more. That is, if a person is qualified for a carer payment for care provided on a short term or episodic basis and, during the period in which they are qualified, a treating health professional certifies that the care receiver or care receivers will require care for six months or more, the person will qualify for carer payment under whichever of sections 197B, 197C and 197D applies (whether or not it applies because of the application of section 197F). The six months or more includes any preceding short term or episodic periods under section 197G or 197H (paragraph 197J(5)(a)).

Subsection 197J(2) provides that a person is taken to be qualified under section 197B, 197C or 197D for caring for the care receiver or care receivers or for people who include at least one of them if:

- a person is qualified for a carer payment for caring for one or more care receivers aged under 16 for a period (the preceding period):
  - under section 197G; or
  - if section 197H has applied to the person and the care receiver or care receivers – under the most recent application of that section; and
- before the end of the preceding period, and before the care receiver (or any of them) turns 16, the person gives the Secretary a certificate in relation to each of them as required by whichever of subsection (3) or (4) applies; and
- apart from paragraph 197B(1)(c) or 197C(1)(c) or 197D(1)(c), the person would be qualified (whether or not because of section 197F) for caring for the care receiver or care receivers or for persons who include one of them. That is, the person meets all of the criteria to qualify for carer payment except for the requirement for a treating health professional to certify that the care receiver or care receivers will need personal care for six months or more.

If the person was qualified under section 197G or 197H for caring for a care receiver with a severe disability or severe medical condition, for the person to be deemed to be qualified under section 197B, a treating health professional must certify that:

- because of a severe disability or severe medical condition the duration of the personal care needed by the care receiver is 6 months or more; and



- the severe disability or severe medical condition is the same as, or related to, the severe disability or severe medical condition that necessitated the care for the preceding period; and
- the care is required to be provided by a specified number of persons.

If the person was qualified under section 197G or 197H for caring for one or more care receivers aged under 16, each with a disability or medical condition, for the person to be deemed to be qualified under either section 197C or 197D, there must be a certificate in relation to each care receiver from a treating health professional certifying that:

- because of a disability or medical condition, the duration of the personal care needed by the care receiver is six months or more; and
- the disability or condition is the same as, or related to, the disability or condition that necessitated the care for the preceding period; and
- the care is required to be provide by a specified number of people.

The duration of the personal care needed by the care receiver includes any preceding periods under section 197G or 197H. Additionally, it does not matter if the treating health professional who certified that the child needs care for greater than six months is the same treating health professional who initially gave a certificate in relation to the child.

***Remaining qualified for up to three months after child turns 16***

New subsection 197K(2) provides that a person is able to remain qualified for a carer payment for a period up to three months after a care receiver who is a child turns 16 if the criteria set out in new subsection 197K(1) are satisfied. The criteria in new subsection 198K(1) are as follows:

- the person is qualified for a carer payment under:
  - section 197B, 197C or 197D (whether or not because of section 197F); or
  - paragraph 198(2)(d); and
- the care receiver or one of the care receivers turns 16; and
- the care receiver has not been assessed and rated and given a score under the ADAT.

This provision will allow a person a longer period of time to complete the ADAT and lodge the tool with the Secretary. This provision does not apply to a person who is qualified for carer payment under section 197E, 197G or 197H.

## Example

Mikel qualifies for carer payment for his son Frederik. Due to his caring commitments, Mikel is unable to complete the ADAT prior to Frederik turning 16. Mikel lodges a completed ADAT two months after Frederik's birthday. Mikel remains qualified for carer payment under section 197B until Frederik is given a score under the ADAT. If Frederik receives a score of at least 25 calculated on the basis of a professional questionnaire score of at least 10, then Mikel will remain qualified for carer payment (although he will now be qualified under paragraph 198(2)(a)). If Frederik does not receive the requisite score on the ADAT, then Mikel's carer payment should be cancelled as of the date the Secretary calculates Frederik's score.

If, in the above example, Mikel did not provide a new claim for Frederik prior to the date three months after Frederik's birthday, Mikel's carer payment would be cancelled on that date.

**Item 11** repeals paragraphs 198(2)(b) and (c).

Paragraph 198(2)(b) provides that a person may qualify for carer payment for constant care provided to a ***profoundly disabled child***. Subsection 197(1) provides that profoundly disabled child has the meaning given by subsections 197(2), (2AA) and (2A). The definition of profoundly disabled child found in subsection 197(1) is repealed by **item 7** and subsections 197(2), (2AA) and (2A) are repealed by **item 9**. Subsection 198(10) applies to carers of children who are considered to be profoundly disabled under subsection 197(2AA). Subsection 198(10) is repealed by **item 15**.

The qualification provision for care provided to a profoundly disabled child is replaced by new section 197B (which makes use of the new Disability Care Load Assessment (Child) Determination) and new section 197E (which provides for qualification for care provided to a child with a terminal condition).

Paragraph 198(2)(c) enables a person to qualify for a carer payment in respect of constant care of two or more disabled children provided, in accordance with subsection 198(8), if the children require a level of care that is at least equivalent to the level of care required by a profoundly disabled child. Subsection 198(8) is repealed by **item 15**.

The qualification provision for care provided to two or more disabled children is replaced by new section 197C, which provides for qualification for carer payment for care provided to two or more children whose level of care is assessed by the new Disability Care Load Assessment (Child) Determination.

**Item 12** inserts new subparagraph 198(2)(d)(iv). This new subparagraph provides that paragraph 198(2)(d) applies where the person is not qualified for carer payment under section 197D for caring for care receivers. The effect of this provision is that, if a person is qualified for carer payment under new section 197D, then paragraph 198(2)(d) cannot apply to them and they can only qualify for carer payment under section 197D, which is a more beneficial provision.

**Item 13** repeals notes 1 and 2 found in subsection 198(2) and replaces them with a single note, which is the same as the previous note 2. The repeal of note 1 is consequential upon **item 15**.

**Item 14** repeals paragraph 198(5)(a). **Item 14** is consequential to **item 10**, which inserts new paragraphs 197B(4)(a), 197C(4)(a), 197D(4)(a) and 197E(5)(a) into the Social Security Act.

**Item 16** repeals section 198AA and inserts a new section 198AA. New subsection 198AA(1) provides for qualification for carer payment when a person is participating in the care of a person in hospital when the person is not qualified under section 197G or 197H. New subsection 198AA(1) provides that a person (the carer) is qualified for a carer payment if:

- the carer is participating in the care, in hospital, of one or more of the following people (the ***hospitalised person***):
  - a disabled adult;
  - a child with a severe disability or medical condition;
  - a child with a disability or medical condition;
  - a child who has a terminal condition; or
  - a dependent child of a disabled adult; and
- it is reasonable to assume that, if the hospitalised person were not in hospital, the carer would qualify, except under section 197G or 197H (whether or not because of section 197F), for a carer payment for the hospitalised person or the hospitalised person and another person or persons; and
- a requirement in subsection (2) is met. That is, the hospitalised person is terminally ill or it is reasonable to expect that, when the person leaves hospital, the hospitalised person will reside in a private residence that is the home of the hospitalised person.

However, if the carer is participating in the care of a disabled adult in hospital, the period, or sum of the periods, for which the carer can be qualified under subsection 198AA(1) is limited to 63 days in any calendar year (subsection 198AA(3)). The note to subsection 198AA(3) directs the reader to the fact that there is no limit on hospital admission days under subsection 198AA(1) for a hospitalised person who is a child.

New subsection 198AA(4) provides for qualification for a carer payment while a person (the carer) is participating in the care of a hospitalised person who is either a child with a severe disability or medical condition or a child with a disability or medical condition who requires care on a short term or episodic basis. A person qualifies for carer payment under this section where, if the hospitalised person were not in hospital, the carer would qualify for carer payment under section 197G or 197H (whether or not because of the operation of section 197F) for a period or periods for the hospitalised person or the hospitalised person and another person or persons (paragraph 198AA(4)(b)). Additionally, it must be reasonable to assume that, upon leaving hospital, the hospitalised person will reside in a private residence that is the home or a home of the hospitalised person (paragraph 198AA(4)(c)). This subsection applies in a situation in which the carer was not qualified under section 197G or 197H before the care receiver entered hospital.

New subsection 198AA(5) applies in a situation in which the carer was not qualified for carer payment under section 197G or 197H before the care receiver went into hospital, but the carer would qualify under one of these two sections if the care receiver were not in hospital.

New subsection 198AA(5) provides that a person (the carer) continues to qualify for carer payment if the carer is participating in the care, in hospital, of either a child with a severe disability or medical condition or a child with a disability or medical condition. Subsection 198AA(4) requires that, immediately before the carer began participating in the care of the hospitalised person, the carer was qualified under section 197G or 197H for a carer payment for a period for the hospitalised person or the hospitalised person and another person or persons. Additionally, it must be reasonable to assume that, upon leaving hospital, the hospitalised person would reside in a private residence that is a home or the home of the hospitalised person.

Subsection 198AA(4) allows a person to remain qualified under section 197G or 197H for the balance of the period determined by the Secretary. It does not allow for a person's carer payment to be extended under either of those sections (if a person is qualified for carer payment under section 197G or 197H, the period in which they are qualified can only be extended by an application of section 197H or if they are deemed to be qualified under section 197B, 197C or 197D by the application of section 197K).

## Examples

The following examples illustrate the situations in which a carer may qualify for carer payment under the new section 198AA.

### *Carer caring for a child with severe disability – claim lodged during period of hospitalisation*

The mother of a newly-born child with severe disability claims carer payment. The child will require constant care for the rest of his life and cannot be released from hospital until the mother is able to understand and cope with the child's care regime. The mother attends the hospital every day to participate in, and receive training in, the child's care. It is not known for how long the child will have to remain in hospital. Carer payment will be granted under subsection 198AA(3), provided all other qualification requirements in section 197B are met (for example, the requirement for the care receiver to be an Australian resident and to pass an income and assets test).

### *Carer caring for a disabled adult – claim lodged during period of hospitalisation*

The partner of a person diagnosed with terminal cancer lodges a carer payment claim shortly after the person is hospitalised. It is not expected that the person will live more than three months and it is unlikely that the person will return home. The person's partner attends the hospital on a daily basis to be with the person and participate in their care. Carer payment will be granted under section 198AA, provided all other qualification requirements are satisfied.

### *Carer caring for a disabled adult and a child with disability – one party in hospital at time of claim lodgement*

Somma and Hadden have a child, Clayton, who has a medical condition. Somma is involved in a car accident. Somma will be hospitalised for 30 days until her condition is stabilised and she can be released into her partner, Hadden's, care. Somma has a permanent condition as a result of injuries sustained in the accident. Somma's ADAT score is 20 with a professional score of eight. When Somma and Clayton's care needs are combined, Hadden achieves a qualifying rating of intense under the Disability Care Load Assessment (Child) Determination.

Since the accident, Hadden has taken extended leave from work to care for Somma and Clayton. Hadden attends to Somma's needs in hospital and participates in her rehabilitation program. He also continues to care for Clayton. On Somma's release, Hadden will be providing constant care for Somma and Clayton at home. Carer payment will be granted, provided all other qualification requirements are satisfied.

**Item 20** repeals subsection 955(2) and substitutes a new subsection 955(2). Section 955 provides for qualification for carer allowance for carers who participate in the care of a disabled child or a disabled adult who is in hospital. Currently, a person who is qualified for carer allowance because of the application of 955 can only remain qualified while the disabled child or disabled adult is in hospital for 63 days in a calendar year. New subsection 955(2) limits the number of days that a person who is caring for a disabled adult in hospital can qualify or remain qualified for carer allowance to 63 days. The note to subsection 955(2) directs the reader to the fact that there is no limit on the number of days for which a person can qualify or remain qualified for caring for a disabled child in hospital.

**Item 17** amends section 952 by inserting at the end of the definition of **care receiver** the words 'and section 954B'.

**Item 18** inserts new section 954B.

New section 954B provides that, while a person is receiving a carer payment and is not qualified for carer allowance except under new section 954B, the person is qualified for a carer allowance for a care receiver who is not a disabled adult referred to in subparagraph 197D(1)(a)(i) or 198(2)(a), nor a disabled adult or a dependent child of the disabled adult referred to in paragraph 198(2)(d). New section 954B only applies to care receivers who are children who singularly, or combined with another child or an adult, qualify the person for carer payment.

A note has been included to direct the reader to sections 964 and 965. Section 964 provides that carer allowance is not payable to two people for the same care receiver or care receivers unless the Secretary has made a declaration under section 981. Section 965 provides that carer allowance is not payable to more than one member of a couple.

### **Example**

Clarice qualifies for carer payment under section 197C for the care of her two children each with disability. Clarice is not qualified for carer allowance under section 953 for either of the children. Therefore, Clarice qualifies for carer allowance for each of the children under section 954B.

However, Hannibal is qualified for carer allowance for one of the children under section 953 and is receiving carer allowance for that child. As Clarice and Hannibal are members of a couple, section 965 applies and carer allowance is not payable to Clarice. The Secretary makes a determination declaring that both Clarice and Hannibal are qualified for carer allowance and Hannibal is the member of the couple to whom carer allowance is payable in relation to that child. Clarice receives carer allowance for the care she provides to the other child.

**Items 19, 21 and 22** amend paragraph 955(1)(b), section 956 and paragraph 957(1)(a) to clarify that those provisions only apply to a person who qualifies for carer allowance under section 953, 954 or 954A. **Item 19** inserts the phrase 'under section 953, 954 or 954A' after the word "qualify" in paragraph 955(1)(b). Section 955 allows a person to claim carer allowance while a care receiver is in hospital or to continue to receive it while the care receiver is in hospital. This provision will not apply to people who qualify for carer allowance under new section 954B as the hospitalisation provisions found in section 198AA will apply to them.

**Item 21** inserts the phrase 'under section 953, 954 and 954A' after the word 'qualified' in section 956. Section 956 allows for the continuation of the person's qualification for carer allowance during the person's or a care receiver's absence from Australia. The portability provisions in section 198AB will apply to a person who is qualified for carer allowance under new section 954B.

**Item 22** inserts in paragraph 957(1)(a) the phrase 'under section 953, 954 and 954A'. Section 957 deals with situations where there is a cessation of care. Subsection 957(1) deals with the situation when a person qualifies for carer allowance because care and attention is provided on a daily basis and that care temporarily ceases to be provided. Under this amendment, subsection 957(1) will only apply to people who qualify under the existing qualification provisions for carer allowance. A person who qualifies for carer allowance under new section 954B will be able to rely on the temporary cessation of care provisions in section 198AC.

**Item 23** inserts the words 'under section 953' into paragraph 957(4)(a). Subsection 957(4) allows a person who qualifies for carer allowance for care provided to a child or children to remain qualified for carer allowance during periods of cessation of care during which the child (or children) are receiving education, training or treatment (other than treatment in hospital). This section will not apply to a person who is qualified under new section 954B as the rules relating to temporary cessation of care under section 198AC will apply to them. There is no equivalent provision in relation to carer payment as, in such a situation, the carer would not be providing constant care and could not be considered to be qualified for carer payment.

**Items 24 and 25** amend paragraph 965(2)(b) so that subsection 965(2) can apply to a member of a couple who has made a claim for carer allowance under section 953 or who is automatically qualified for carer allowance under section 954B. New section 12F of the Social Security Administration Act (inserted by **item 1 of Schedule 2**) provides that a person who is qualified for carer allowance under new section 954B does not have to make a claim. Subsection 965(2) deals with a situation where both members of a couple qualify for carer allowance for the same care receiver/s. Where this happens, the Secretary must make a declaration that each member of the couple qualifies for carer allowance and name one of them as the person to whom the allowance is payable. In making the declaration, the Secretary is to continue to have regard to which member of the couple is the primary carer (subsection 965(5)). **Item 24** omits the word 'each' from paragraph 965(2)(b) and inserts the phrase 'if both members of the couple are qualified under section 953, 954 or 954A for carer allowance-each'. **Item 25** inserts new paragraph 965(2)(ba) which provides that if only one of the members of the couple is qualified under section 953, 954, 954A for carer allowance that member has made a claim for carer allowance.

**Item 26** omits the phrase 'qualified for carer allowance apart' in subsection 974(3) and inserts the phrase 'qualified under section 953, apart'. This is to clarify that the provision only applies to a person who is qualified for carer allowance under section 953.

**Item 27** inserts 'or section 954B' in paragraphs 992J(1)(a) and 992L(1)(a). This clarifies that these provision only apply in relation to a person who is qualified for carer allowance under section 953. The bereavement provisions in Part 2.5 of the Social Security Act will apply to a person who is qualified under new section 954B.

**Item 28** repeals paragraph 992MB(1)(b) and inserts new paragraph 992MB(1)(b). New paragraph 992MB(1)(b) provides that a person is entitled to child disability assistance if the person is qualified for carer allowance because of care they provide to a disabled child or for two disabled children under new section 954B.

**Item 29** adds to Schedule 1A to the Social Security Act new savings and application provisions, in the form of new clauses 137, 138, 139 and 140, relevant to the repeal of the current qualification provisions for care provided to a profoundly disabled child or two or more disabled child.

Clause 137 is a saving provision that applies to a person who was receiving carer payment immediately before 1 July 2009 because the person was qualified for that payment under paragraph 198(2)(b) (profoundly disabled child) or paragraph 198(2)(c) (two or more disabled children). Subclause 137(1) provides that, despite the repeal of paragraphs 198(2)(b) and (c), the Social Security Act as in force immediately before 1 July 2009 continues to apply to a person qualified under those paragraphs.



However, the beneficial changes to carer payment made by this Schedule will apply to a person who is qualified for carer payment under either paragraph 198(2)(b) or (c). The changes to the Social Security Act that will apply to a person who remains qualified under paragraphs 198(2)(b) or (c) are:

- the person will be able to rely upon new paragraph 198K(1)(a) to remain qualified for up to three months after the child or one of the children for whom they are providing care turns 16 (subclause 137(2));
- the person will be able to remain qualified for carer payment if the child is hospitalised for an unlimited number of days, provided they are participating in the care of the child in hospital (and they meet the other requirements of new subsection 198AA) (subclause 137(3)); and
- the person will automatically qualify for carer allowance under new section 954B (if they are not already qualified for carer allowance under section 953 for the child or children) (subclause 137(4)).

If a person is receiving carer payment because clause 140 applies, then the Social Security Act as in force immediately before 1 July 2009 applies to the person. The same beneficial changes outlined above that apply to a person who remains qualified for carer payment under paragraph 198(2)(b) or (c) apply.

Clause 140 applies to a person who was receiving carer payment for care provided to a profoundly disabled child or two or more disabled children, and whose carer payment was cancelled on or after 1 July 2008 and before 1 July 2010. If a person whose carer payment was cancelled between 1 July 2008 and 1 July 2010 makes a claim for carer payment for caring for the same child or children, then the person's claim may be assessed as if paragraphs 198(2)(b) and (c) had not been repealed. The person may also be assessed under the new provisions of the Social Security Act inserted by this Schedule. That is, the old or new rules in relation to qualification for carer payment for care provided to a child or children with disability may apply to a person who was receiving carer payment on or after 1 July 2008 because they were qualified under paragraph 198(2)(b) or (c).

While the amendments made by this Schedule will generally apply to claims for carer payment made on or after 1 July 2009, new subclause 138(1) provides that new subsections 198AA(1) and (2) will apply to a person who is receiving carer payment immediately before 1 July 2009 as well as to a person who makes a claim for carer payment on or after 1 July 2009. Subsections 198AA(3) and (4) will apply to a person who makes a claim for carer payment on or after 1 July 2009. Subsections 198AA(3) and (4) only apply in relation to a person who is qualified, or would be qualified, for carer payment under new section 197F or 197G and, as such, cannot apply to a person who is receiving carer payment immediately before 1 July 2009.

New subsection 955(2), which provides that qualification or continued qualification for carer allowance while a care receiver is hospitalised is only limited in relation to care provided to a disabled adult, applies to a person who is receiving carer allowance immediately before 1 July 2009 or makes a claim for carer allowance on or after 1 July 2009 (subclause 139).

## **Schedule 2 – Amendment of the Social Security Act Administration Act 1999**

### **Summary**

This Schedule amends the Social Security Administration Act in relation to the administrative structure necessary for the carer allowance amendments made by Schedule 1.

### **Background**

The provisions in the Social Security Administration Act relating to claims for, and automatic suspension or cancellation of, carer allowance require amendment to reflect the changes made to carer allowance. A transitional provision in relation to carer allowance is included in the Schedule.

No equivalent amendments in relation to carer payment are included in this Schedule.

Further amendments of a consequential and transitional nature will be introduced in a separate bill prior to commencement of this bill.

This Schedule commences on 1 July 2009.

### **Explanation of the changes**

**Item 1** inserts new section 12F, which provides that a claim for carer allowance is not required if a person is qualified for carer allowance under section 954B.

**Item 2** inserts new section 15A. New subsection 15A(1) provides that, if a person makes a claim for a carer payment which is rejected, the person may, within 28 days of being notified of the rejection, make a claim for carer allowance and, if the person is subsequently found to be qualified for carer allowance under section 953, the Secretary may take the claim for carer allowance to have been made on the day that the claim for a carer payment was made. This section will not apply to a person who makes a claim for carer payment under paragraph 198(2)(a) or (d) of the Social Security Act.

New subsection 15A(2) provides that, if a person (the carer) is receiving carer payment for caring for one or more people, the carer is qualified other than under paragraph 198(2)(a) or (d), and the carer's carer payment is suspended or cancelled, the person may, within 28 days of being notified of the suspension or cancellation, make a claim for carer allowance. If the person is subsequently found to be qualified for carer allowance under section 953, the Secretary may take the claim for carer allowance to have been made on the day that the claim for a carer payment was suspended or cancelled.

**Item 4** provides that new subsection 15A(2) of the Social Security Administration Act applies to a person who was qualified for carer payment under paragraph 198(2)(b) or (c) of the Social Security Act and who remains qualified because of subclause 141(1) of Schedule 1A to that Act or who becomes qualified because of subclause 140(3) of Schedule 1A to that Act.

**Item 3** inserts new section 95B. New section 95B provides that, if a person is receiving carer allowance because they are qualified under new section 954B and the person's carer payment is suspended or cancelled, then the person's carer allowance is suspended or cancelled on the same day.