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The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Social Security Legislation Amendment
(Improved Support for Carers) Bill 2009**

No. , 2009

(Families, Housing, Community Services and Indigenous Affairs)

A Bill for an Act to amend the *Social Security Act 1991*, and for related purposes

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1 **A Bill for an Act to amend the *Social Security Act***
2 ***1991, and for related purposes***

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act may be cited as the *Social Security Legislation*
6 *Amendment (Improved Support for Carers) Act 2009.*

7 **2 Commencement**

8 This Act commences on 1 July 2009.

9 **3 Schedule(s)**

10 Each Act that is specified in a Schedule to this Act is amended or
11 repealed as set out in the applicable items in the Schedule

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2

concerned, and any other item in a Schedule to this Act has effect according to its terms.

1
2 **Schedule 1—Amendment of the Social**
3 **Security Act 1991**
4

5 **1 Subsection 23(1) (paragraph (a) of the definition of *family***
6 ***law order*)**

7 Omit “within the meaning of section 64B of the *Family Law Act 1975*”.

8 **2 Subsection 23(1)**

9 Insert:

10 *parenting order* has the meaning given by section 64B of the
11 *Family Law Act 1975*.

12 **3 At the end of Part 1.3**

13 Add:

14 **38E Disability Care Load Assessment (Child) Determination**

15 (1) The Secretary may, by legislative instrument (the *Disability Care*
16 *Load Assessment (Child) Determination*):

- 17 (a) devise a test for assessing the functional ability, behaviour
18 and special care needs of a person aged under 16 (the *child*),
19 that includes an assessment that must be completed only by a
20 treating health professional; and
21 (b) provide a method for rating the care needs of the child; and
22 (c) provide a method for giving a qualifying rating to a person
23 (the *carer*) who is caring for the child that takes into account:
24 (i) the care provided for the child by the carer; and
25 (ii) the assessment completed by the treating health
26 professional.

27 (2) If a carer who is caring for a child also cares for one or more other
28 persons (whether or not aged under 16), the Disability Care Load
29 Assessment (Child) Determination may provide a method for
30 giving a qualifying rating to the carer that takes into account:

- 31 (a) both:
32 (i) the care provided for the child by the carer; and

- 1 (ii) the assessment completed by the treating health
2 professional; and
3 (b) the care provided by the carer for each other person.

4 **38F Treating health professional**

5 The Secretary may, by legislative instrument, determine that a
6 person, or any person included in a class of persons, is a treating
7 health professional for the purposes of this Act (other than for the
8 purposes of the Adult Disability Assessment Tool or the Child
9 Disability Assessment Tool).

10 **4 Subsection 197(1) (definition of *care receiver*)**

11 After “subsection”, insert “197B(1), 197C(1), 197D(1), 197E(1),
12 197G(1), 197H(1) or”.

13 **5 Subsection 197(1)**

14 Insert:

15 *Disability Care Load Assessment (Child) Determination* has the
16 meaning given by subsection 38E(1).

17 **6 Subsection 197(1) (definition of *lower ADAT score adult*)**

18 After “because”, insert “subparagraph 197D(1)(a)(i), or”.

19 **7 Subsection 197(1) (definition of *profoundly disabled child*)**

20 Repeal the definition.

21 **8 Subsection 197(1)**

22 Insert:

23 *treating health professional* means a person who is determined
24 under section 38F to be a treating health professional.

25 **9 Subsections 197(2), (2AA) and (2A)**

26 Repeal the subsections.

27 **10 Before section 198**

28 Insert:

1 **197A Overview—circumstances in which person is qualified for**
2 **carer payment**

- 3 (1) The following sections set out the circumstances in which a person
4 is qualified for a carer payment:
- 5 (a) section 197B (child with a severe disability or severe medical
6 condition);
 - 7 (b) section 197C (2 or more children each with a disability or
8 medical condition);
 - 9 (c) section 197D (disabled adult and one or more children each
10 with a disability or medical condition);
 - 11 (d) section 197E (child who has a terminal condition);
 - 12 (e) section 197F (exchanged care of children);
 - 13 (f) section 197G (short term or episodic care of children);
 - 14 (g) section 197H (extension of short term or episodic care of
15 children);
 - 16 (h) section 198 (disabled adult, or disabled adult and dependent
17 child);
 - 18 (i) section 198AA (hospitalisation).
- 19 (2) In addition, sections 198AB and 198AC allow a person to continue
20 to qualify for a carer payment in certain short-term circumstances.

21 **197B Qualification—child with a severe disability or severe medical**
22 **condition**

23 *Child with a severe disability or severe medical condition*

- 24 (1) A person is qualified for a carer payment if:
- 25 (a) the person personally provides constant care for a person (the
26 **care receiver**) aged under 16 with a severe disability or
27 severe medical condition; and
 - 28 (b) the person has been given a qualifying rating of intense under
29 the Disability Care Load Assessment (Child) Determination
30 for caring for the care receiver; and
 - 31 (c) a treating health professional has certified in writing that,
32 because of that disability or condition:
 - 33 (i) the care receiver will need personal care for 6 months or
34 more; and

- 1 (ii) the personal care is required to be provided by a
2 specified number of persons; and
3 (d) the provision of constant care by the person severely restricts
4 the person's capacity to undertake paid employment; and
5 (e) the requirements of subsections (2), (3) and (4) are met.

6 *Constant care in home*

- 7 (2) The constant care must be provided in a private residence that is
8 the home of the care receiver.

9 *Person must be Australian resident*

- 10 (3) The person must be an Australian resident.

11 Note: For *Australian resident* see section 7.

12 *Care receiver: residence and income and assets tests etc.*

- 13 (4) The care receiver must:
14 (a) require constant care; and
15 (b) be an Australian resident; and
16 (c) pass the income test under section 198A; and
17 (d) either:
18 (i) pass the assets test under section 198D; or
19 (ii) be the subject of a decision in force under subsection
20 198N(2), (3) or (4) that subparagraph (i) does not
21 disqualify the person providing the constant care from
22 carer payment.

23 **197C Qualification—2 or more children each with a disability or**
24 **medical condition**

25 *Children each with a disability or medical condition*

- 26 (1) A person is qualified for a carer payment if:
27 (a) the person personally provides constant care for 2 or more
28 persons (the *care receivers*) aged under 16 each with a
29 disability or medical condition; and
30 (b) the person has been given a qualifying rating of intense under
31 the Disability Care Load Assessment (Child) Determination
32 for caring for the care receivers; and
-

- 1 (c) in relation to each care receiver—a treating health
2 professional has certified in writing that, because of that
3 disability or condition:
4 (i) the care receiver will need personal care for 6 months or
5 more; and
6 (ii) the personal care is required to be provided by a
7 specified number of persons; and
8 (d) the provision of constant care by the person severely restricts
9 the person’s capacity to undertake paid employment; and
10 (e) the requirements of subsections (2), (3) and (4) are met.

11 *Constant care in home*

- 12 (2) The constant care must be provided in a private residence that is
13 the home of the care receivers.

14 *Person must be Australian resident*

- 15 (3) The person must be an Australian resident.

16 Note: For **Australian resident** see section 7.

17 *Care receivers: residence and income and assets tests etc.*

- 18 (4) The care receivers must:
19 (a) require constant care; and
20 (b) be Australian residents; and
21 (c) pass the income test under section 198A; and
22 (d) either:
23 (i) pass the assets test under section 198D; or
24 (ii) be the subject of a decision in force under subsection
25 198N(2), (3) or (4) that subparagraph (i) does not
26 disqualify the person providing the constant care from
27 carer payment.

28 **197D Qualification—disabled adult and one or more children each**
29 **with a disability or medical condition**

30 *Disabled adult and one or more children each with a disability or*
31 *medical condition*

- 32 (1) A person is qualified for a carer payment if:
-

- 1 (a) the person personally provides constant care for both or all of
2 the following persons (the *care receivers*):
3 (i) a disabled adult who has been assessed and rated under
4 the Adult Disability Assessment Tool and given a score
5 under that assessment tool of at least 20, being a score
6 calculated on the basis of a total professional
7 questionnaire score of at least 8;
8 (ii) one or more persons aged under 16 each with a
9 disability or medical condition; and
10 (b) the person has been given a qualifying rating of intense under
11 the Disability Care Load Assessment (Child) Determination
12 for caring for the care receivers; and
13 (c) in relation to each care receiver who is aged under 16—a
14 treating health professional has certified in writing that,
15 because of that disability or condition:
16 (i) the care receiver will need personal care for 6 months or
17 more; and
18 (ii) the personal care is required to be provided by a
19 specified number of persons; and
20 (d) the provision of constant care by the person severely restricts
21 the person's capacity to undertake paid employment; and
22 (e) the person is not qualified for a carer payment under
23 section 198 because of paragraph 198(2)(a) for caring for the
24 care receiver who is the disabled adult; and
25 (f) the requirements of subsections (2), (3) and (4) are met.

26 *Constant care in home*

- 27 (2) The constant care must be provided in a private residence that is
28 the home of the care receivers.

29 *Person must be Australian resident*

- 30 (3) The person must be an Australian resident.

31 Note: For *Australian resident* see section 7.

32 *Care receivers: residence and income and assets tests etc.*

- 33 (4) The care receivers must:
34 (a) require constant care; and
35 (b) be Australian residents; and
-

- 1 (c) pass the income test under section 198A; and
- 2 (d) either:
 - 3 (i) pass the assets test under section 198D; or
 - 4 (ii) be the subject of a decision in force under subsection
 - 5 198N(2), (3) or (4) that subparagraph (i) does not
 - 6 disqualify the person providing the constant care from
 - 7 carer payment.

8 **197E Qualification—child who has a terminal condition**

- 9 (1) A person is qualified for a carer payment if:
 - 10 (a) the person personally provides constant care for a person (the
 - 11 *care receiver*) aged under 16; and
 - 12 (b) a medical practitioner certifies in relation to the care receiver
 - 13 that:
 - 14 (i) the care receiver has a terminal condition; and
 - 15 (ii) the average life expectancy for a child with the same or
 - 16 a similar condition is not substantially longer than 24
 - 17 months; and
 - 18 (iii) because of the condition the care receiver will need
 - 19 personal care for the remainder of his or her life; and
 - 20 (iv) the personal care is required to be provided by a
 - 21 specified number of persons; and
 - 22 (c) the provision of constant care by the person severely restricts
 - 23 the person's capacity to undertake paid employment; and
 - 24 (d) the requirements of subsections (3), (4) and (5) are met.
- 25 (2) Despite paragraph (1)(a), the person remains qualified for a carer
- 26 payment under this section after the care receiver turns 16 until the
- 27 earlier of the following:
 - 28 (a) the person no longer otherwise qualifies for a carer payment
 - 29 under this section for caring for the care receiver;
 - 30 (b) the care receiver turns 18.

31 *Constant care in home*

- 32 (3) The constant care must be provided in a private residence that is
- 33 the home of the care receiver.

1 *Person must be Australian resident*

2 (4) The person must be an Australian resident.

3 Note: For *Australian resident* see section 7.

4 *Care receiver: residence and income and assets tests etc.*

5 (5) The care receiver must:

6 (a) require constant care; and

7 (b) be an Australian resident; and

8 (c) pass the income test under section 198A; and

9 (d) either:

10 (i) pass the assets test under section 198D; or

11 (ii) be the subject of a decision in force under subsection
12 198N(2), (3) or (4) that subparagraph (i) does not
13 disqualify the person providing the constant care from
14 carer payment.

15 **197F Qualification—exchanged care of children**

16 *Purpose of section*

17 (1) The purpose of this section is to allow a person to qualify under
18 section 197B, 197C, 197D, 197E, 197G or 197H, or a combination
19 of them, for a carer payment for caring for persons who are or
20 include 2 or more persons aged under 16 despite the fact that the
21 person is not personally providing constant care for the same
22 persons.

23 *When section applies*

24 (2) This section applies if:

25 (a) the person is a parent of 2 or more persons aged under 16;
26 and

27 (b) the person (the *carer*) is personally providing care for at least
28 2 of those persons (the *care receivers*); and

29 (c) the care receivers would qualify the carer for a carer payment
30 under section 197B, 197C, 197D, 197E, 197G or 197H, apart
31 from:

32 (i) the fact that the carer is not personally providing
33 constant care for the care receivers; and

- 1 (ii) the fact that each care receiver has or may have more
- 2 than one home; and
- 3 (d) the circumstances in subsection (3) apply in relation to each
- 4 of the care receivers.

5 *Circumstances—family law arrangements*

- 6 (3) The circumstances are:
 - 7 (a) under one or more registered parenting plans, parenting plans
 - 8 or parenting orders that are in force, the care receiver is to
 - 9 live with, or spend time with the carer and the care receiver's
 - 10 other parent (whether or not the care receiver is to live with,
 - 11 or spend time with, someone else); and
 - 12 (b) the length or percentage of time (however described) that the
 - 13 care receiver is to live with, or spend time with, the carer and
 - 14 the other parent is specified in, or worked out in accordance
 - 15 with, the plans or orders; and
 - 16 (c) the carer personally provides constant care for the care
 - 17 receiver when the care receiver is living with, or spending
 - 18 time with, the carer; and
 - 19 (d) the carer does not personally provide constant care for the
 - 20 care receiver only because the terms of the plans or orders
 - 21 require the care receiver to live with, or spend time with, the
 - 22 other parent or someone else; and
 - 23 (e) when the carer is not personally providing care for the care
 - 24 receiver, the carer is personally providing care for one or
 - 25 more other care receivers in relation to whom this subsection
 - 26 also applies.

27 *Qualification for a carer payment*

- 28 (4) If this section applies, the carer is taken to be qualified for a carer
- 29 payment under section 197B, 197C, 197D, 197E, 197G or 197H,
- 30 or a combination of them, for caring for the care receivers or for
- 31 persons who include the care receivers, as the case requires.

32 Example: The parents of 3 children each with a disability or medical condition
33 are divorced. Under a registered parenting plan covering all 3
34 children, one parent (the *first parent*) personally provides care in week
35 1 to:

- 36 (a) one of the children covered by the plan; and
 - 37 (b) another child who is similarly disabled but who is not covered by
 - 38 the plan.
-

- 1 The other parent personally provides care for the other 2 children
2 covered by the plan. In week 2, the parents swap care arrangements
3 for the children covered by the plan.
- 4 The first parent would not qualify for a carer payment under
5 section 197C because he or she is not providing constant care for the
6 same children. However, this section allows the first parent to qualify
7 for a carer payment for providing care for different children.

8 **197G Qualification—short term or episodic care of children**

9 *Secretary's determination*

- 10 (1) The Secretary may determine that a person is qualified for a carer
11 payment for a period if:
- 12 (a) the person is personally providing constant care for one or
13 more persons (the *care receiver* or *care receivers*) each with:
- 14 (i) a severe disability or severe medical condition; or
15 (ii) a disability or medical condition; and
- 16 (b) each care receiver is aged under 16 at the start of the period;
17 and
- 18 (c) in relation to each care receiver—a treating health
19 professional has certified in writing that, because of the
20 severe disability or severe medical condition, or because of
21 the disability or medical condition:
- 22 (i) the care receiver will need personal care for at least 3
23 months but less than 6 months; and
- 24 (ii) the care is required to be provided by a specified
25 number of persons; and
- 26 (d) apart from the fact that the care receiver, or care receivers,
27 will need personal care for less than 6 months, the person
28 would qualify for a carer payment:
- 29 (i) under section 197B or 197C (whether or not because of
30 section 197F) for caring for the care receiver or care
31 receivers; or
- 32 (ii) under section 197D (whether or not because of
33 section 197F) for caring for the care receiver and
34 another person.

35 *Limits on period determined*

- 36 (2) The period determined by the Secretary:
- 37 (a) must be 3 months or more and less than 6 months; and
-

1 (b) must not begin before the person's start day.

2 *Person may remain qualified until end of period even if care*
3 *receiver turns 16*

4 (3) A person does not cease to be qualified for a carer payment under
5 this section only because the care receiver (or any of them) turns
6 16 before the end of the period determined by the Secretary.

7 **197H Qualification—extension of short term or episodic care**

8 *Extension of qualification under section 197G*

9 (1) This section applies if:

10 (a) a person is qualified for a carer payment for caring for one or
11 more persons (the *care receiver* or *care receivers*) aged under
12 16 for a period (the *preceding period*):

13 (i) under section 197G; or

14 (ii) if this section has previously applied to the person and
15 the care receiver or care receivers—under the most
16 recent application of this section; and

17 (b) in relation to each care receiver—before the end of the
18 preceding period, and before the care receiver (or any of
19 them) turns 16, the person gives the Secretary a certificate
20 from a treating health professional certifying that:

21 (i) because of a severe disability or severe medical
22 condition, or a disability or medical condition, the care
23 receiver will need personal care for a further period of
24 less than 3 months starting immediately after the end of
25 the preceding period; and

26 (ii) the severe disability or severe medical condition, or
27 disability or medical condition, is the same as, or related
28 to, the severe disability or severe medical condition, or
29 disability or medical condition, that necessitated the
30 care for the preceding period; and

31 (iii) the care is required to be provided by a specified
32 number of persons.

33 *Person qualified for further period determined by Secretary*

34 (2) The person is qualified for a carer payment for a further period if:

- 1 (a) apart from the fact that the care receiver or care receivers will
2 need personal care for less than 6 months, the person would
3 qualify for a carer payment:
4 (i) under section 197B or 197C (whether or not because of
5 section 197F) for caring for the care receiver or care
6 receivers; or
7 (ii) under section 197D (whether or not because of
8 section 197F) for caring for the care receiver and
9 another person; and
10 (b) the Secretary determines that a carer payment should be
11 granted to the person for the period.
- 12 (3) The period determined must end not later than 6 months after the
13 first day on which the person started to receive a carer payment
14 under section 197G.

15 *Person may remain qualified until end of period even if care*
16 *receiver turns 16*

- 17 (4) A person does not cease to be qualified for a carer payment under
18 this section only because the care receiver (or any of them) turns
19 16 before the end of the period determined by the Secretary.

20 **197J Qualification following qualification for short term or episodic** 21 **care**

22 *Purpose of section*

- 23 (1) The purpose of this section is to treat a person as qualified for a
24 carer payment under section 197B, 197C or 197D, or because of
25 197F, for caring for:
26 (a) one or more persons aged under 16; or
27 (b) persons who include one or more persons aged under 16;
28 if, immediately beforehand, the carer was qualified for a carer
29 payment under section 197G or 197H (whether or not because of
30 section 197F) for caring for the person or persons aged under 16.

31 *Person taken to be qualified*

- 32 (2) If:

- 1 (a) a person is qualified for a carer payment for caring for one or
2 more care receivers aged under 16 for a period (the
3 ***preceding period***):
4 (i) under section 197G; or
5 (ii) if section 197H has applied to the person and the care
6 receiver or care receivers—under the most recent
7 application of that section; and
8 (b) before the end of the preceding period, and before the care
9 receiver (or any of them) turns 16, the person gives the
10 Secretary a certificate in relation to each of them as required
11 by whichever of subsection (3) or (4) applies; and
12 (c) apart from paragraph 197B(1)(c), 197C(1)(c) or 197D(1)(c),
13 the person would be qualified (whether or not because of
14 section 197F) for a carer payment for caring for the care
15 receiver or care receivers or for persons who include at least
16 one of them;
17 the person is taken to qualify under section 197B, 197C or 197D
18 (as the case requires) for caring for the care receiver or care
19 receivers or for persons who include at least one of them.
20 Note: Paragraphs 197B(1)(c), 197C(1)(c) and 197D(1)(c) require that a
21 treating health professional has certified that the care receiver, or each
22 of them, will need personal care for 6 months or more.
- 23 (3) If the person was qualified for a carer payment under section 197G
24 or 197H for caring for a care receiver with a severe disability or
25 severe medical condition, there must be a certificate from a treating
26 health professional certifying that:
27 (a) because of a severe disability or severe medical condition the
28 duration of the personal care needed by the care receiver is 6
29 months or more; and
30 (b) the severe disability or severe medical condition is the same
31 as, or related to, the severe disability or severe medical
32 condition that necessitated the care for the preceding period;
33 and
34 (c) the care is required to be provided by a specified number of
35 persons.
- 36 (4) If the person was qualified for a carer payment under section 197G
37 or 197H for caring for one or more care receivers aged under 16
38 each with a disability or medical condition, there must be a

- 1 certificate in relation to each care receiver from a treating health
2 professional certifying that:
- 3 (a) because of a disability or medical condition, the duration of
4 the personal care needed by the care receiver is 6 months or
5 more; and
- 6 (b) the disability or condition is the same as, or related to, the
7 disability or condition that necessitated the care for the
8 preceding period; and
- 9 (c) the care is required to be provided by a specified number of
10 persons.
- 11 (5) For the purposes of paragraphs (3)(a) and (4)(a):
- 12 (a) the 6 months includes any preceding periods under
13 section 197G or under an application of section 197H; and
- 14 (b) it does not matter if the treating health professional who
15 certified under those sections is the same treating health
16 professional referred to in subsection (3) or (4) or not.

17 **197K Remaining qualified for up to 3 months after child turns 16**

- 18 (1) This section applies if:
- 19 (a) a person is qualified for a carer payment for caring for a care
20 receiver aged under 16 under one of the following provisions:
- 21 (i) section 197B, 197C or 197D (whether or not because of
22 section 197F);
- 23 (ii) paragraph 198(2)(d); and
- 24 (b) the care receiver turns 16; and
- 25 (c) the care receiver has not been assessed and rated and given a
26 score under the Adult Disability Assessment Tool.
- 27 (2) If, apart from the care receiver turning 16, the person would remain
28 qualified for a carer payment under that provision, the person
29 remains qualified under that provision for 3 months after the care
30 receiver turns 16.

31 **11 Paragraphs 198(2)(b) and (c)**

32 Repeal the paragraphs.

33 Note 1: The heading to section 198 is replaced by the heading "**Qualification—disabled adult**
34 **or disabled adult and dependent child**".

35 Note 2: The heading to subsection 198(2) is replaced by the heading "*Constant care for*
36 *disabled adult or disabled adult and a dependent child*".

1 **12 At the end of paragraph 198(2)(d)**

2 Add:
3 ; and (iv) section 197D does not apply in respect of the care
4 receivers.

5 **13 Subsection 198(2) (notes 1 and 2)**

6 Repeal the notes, substitute:
7 Note: In a paragraph (d) case, subsection (9) deems certain supervision to
8 constitute care.

9 **14 Paragraph 198(5)(a)**

10 Repeal the paragraph.

11 **15 Subsections 198(8) and (10)**

12 Repeal the subsections.

13 **16 Section 198AA**

14 Repeal the section, substitute:

15 **198AA Qualification for carer payment—hospitalisation**

16 *Participating in care of person in hospital (not qualified under*
17 *section 197G or 197H)*

- 18 (1) A person (the *carer*) is qualified for a carer payment if:
- 19 (a) the carer is participating in the care, in hospital, of one of the
20 following persons (the *hospitalised person*):
- 21 (i) a disabled adult;
- 22 (ii) a child with a severe disability or medical condition;
- 23 (iii) a child with a disability or medical condition;
- 24 (iv) a child who has a terminal condition;
- 25 (v) a dependent child of a disabled adult; and
- 26 (b) it is reasonable to assume that, if the hospitalised person were
27 not in hospital, the carer would qualify, except under
28 section 197G or 197H (whether or not because of
29 section 197F), for a carer payment for:
- 30 (i) the hospitalised person; or
31 (ii) the hospitalised person and another person or persons;
32 and
-

- 1 (c) a requirement in subsection (2) is met.
- 2 (2) For the purposes of paragraph (1)(c), the requirements are that
3 either:
4 (a) the hospitalised person is terminally ill; or
5 (b) it is reasonable to expect that, upon leaving hospital, the
6 hospitalised person:
7 (i) will reside in a private residence that is the home of the
8 hospitalised person; or
9 (ii) if the carer would qualify for a carer payment because
10 of section 197F for the hospitalised person—will reside
11 in a private residence that is a home of the hospitalised
12 person.

13 *Limit on qualification under subsection (1)*

- 14 (3) However, the period, or the sum of the periods, for which the carer
15 can be qualified under subsection (1) for a hospitalised person who
16 is a disabled adult is 63 days in any calendar year.

17 Note: There is no limit under subsection (1) for a hospitalised person who is
18 a child.

19 *Short term or episodic care of child (qualified under section 197G*
20 *or 197H)*

- 21 (4) A person (the *carer*) qualifies for a carer payment if:
22 (a) the carer is participating in the care, in hospital, of one of the
23 following persons (the *hospitalised person*):
24 (i) a child with a severe disability or medical condition;
25 (ii) a child with a disability or medical condition; and
26 (b) the Secretary determines in writing that, if the hospitalised
27 person were not in hospital, the carer would qualify under
28 section 197G or 197H (whether or not because of
29 section 197F) for a carer payment for a period or periods for:
30 (i) the hospitalised person; or
31 (ii) the hospitalised person and another person or persons;
32 and
33 (c) it is reasonable to expect that, upon leaving hospital, the
34 hospitalised person:
35 (i) will reside in a private residence that is the home of the
36 hospitalised person; or
-

- 1 (ii) if the carer would qualify for a carer payment because
2 of section 197F for the hospitalised person—will reside
3 in a private residence that is a home of the hospitalised
4 person.

5 However, the period, or the sum of the periods, for which the carer
6 can be qualified under this subsection for the hospitalised person
7 must not exceed the period, or the sum of the periods, determined
8 under paragraph (b).

9 (5) A person (the *carer*) qualifies for a carer payment if:

- 10 (a) the carer is participating in the care, in hospital, of one of the
11 following persons (the *hospitalised person*):
12 (i) a child with a severe disability or medical condition;
13 (ii) a child with a disability or medical condition; and
14 (b) immediately before the carer began participating in that care,
15 the carer was qualified under section 197G or 197H (whether
16 or not because of section 197F) for a carer payment for a
17 period for:
18 (i) the hospitalised person; or
19 (ii) the hospitalised person and another person or persons;
20 and
21 (c) the person would cease to be qualified under section 197G or
22 197H for a carer payment for the balance of the period only
23 because the person is participating in the care of the
24 hospitalised person in hospital; and
25 (d) it is reasonable to expect that, upon leaving hospital, the
26 hospitalised person:
27 (i) will reside in a private residence that is the home of the
28 hospitalised person; or
29 (ii) if the carer would qualify for a carer payment because
30 of section 197F for the hospitalised person—will reside
31 in a private residence that is a home of the hospitalised
32 person.

33 However, the period, or the sum of the periods, for which the carer
34 can be qualified under this subsection for the hospitalised person
35 must not exceed the balance of the period referred to in
36 paragraph (c).

37 **17 Section 952 (at the end of the definition of *care receiver*)**

38 Add “and section 954B”.

1 **18 After section 954A**

2 Insert:

3 **954B Qualification for carer allowance—receiving carer payment**
4 **for caring for child or children**

5 While:

6 (a) a person is receiving a carer payment for caring for one or
7 more persons (the *care receiver* or *care receivers*) other than:

8 (i) a care receiver referred to in subparagraph
9 197D(1)(a)(i); or

10 (ii) a care receiver referred to in paragraph 198(2)(a) or (d);
11 and

12 (b) the person is not, apart from this section, qualified for carer
13 allowance for the care receiver or care receivers;

14 the person is qualified for carer allowance for each care receiver.

15 Note: For the effect of 2 people being qualified for carer allowance for the
16 same care receiver, see sections 964 and 965.

17 **19 Paragraph 955(1)(b)**

18 After “qualify”, insert “, under section 953, 954 or 954A,”.

19 Note: The following heading to subsection 955(1) is inserted “*Participating in care of person*
20 *in hospital*”.

21 **20 Subsection 955(2)**

22 Repeal the subsection, substitute:

23 *Limit on qualification under subsection (1) for disabled adult*

24 (2) However, the period, or the sum of the periods, for which the one
25 or more persons can be qualified under subsection (1) for a
26 hospitalised person who is a disabled adult is 63 days in any
27 calendar year.

28 Note: There is no limit for a hospitalised person who is a child.

29 **21 Section 956**

30 After “qualified”, insert “, under section 953, 954 or 954A,”.

31 **22 Paragraph 957(1)(a)**

32 After “qualified”, insert “, under section 953, 954 or 954A,”.

1 **23 Paragraph 957(4)(a)**

2 After “qualified”, insert “under section 953”.

3 **24 Paragraph 965(2)(b)**

4 Before “each”, insert “both members of the couple are qualified under
5 section 953, 954 or 954A for carer allowance—”.

6 **25 After paragraph 965(2)(b)**

7 Insert:

8 and (ba) only one of the members of the couple is qualified under
9 section 953, 954 or 954A for carer allowance—that member
10 has made a claim for carer allowance (whether or not one of
11 them is receiving carer allowance);

12 **26 Subsection 974(3)**

13 Omit “qualified for carer allowance apart”, substitute “qualified under
14 section 953, apart”.

15 **27 Paragraphs 992J(1)(a) and 992L(1)(a)**

16 After “this section”, insert “or section 954B”.

17 **28 Paragraph 992MB(1)(b)**

18 Repeal the paragraph, substitute:

19 (b) either:

- 20 (i) the instalment was for a care receiver who was a
21 disabled child or for care receivers who were 2 disabled
22 children; or
23 (ii) the instalment was for a care receiver referred to in
24 paragraph 954B(a).

25 **29 At the end of Schedule 1A**

26 Add:

27 **137 Application—general**

28 Subject to clauses 138 and 140, the amendments made by items 1
29 to 16 of Schedule 1 to the *Social Security Legislation Amendment*
30 *(Improved Support for Carers) Act 2009* apply to claims for a carer
31 payment made on or after the commencement of this clause.

1 **138 Application—subsections 198AA(1) and (3)**

2 Subsections 198AA(1) and (3) of this Act as amended by the
3 *Social Security Legislation Amendment (Improved Support for*
4 *Carers) Act 2009* apply to a person who:

- 5 (a) is receiving a carer payment immediately before 1 July 2009;
6 or
7 (b) makes a claim for a carer payment on or after 1 July 2009.

8 **139 Application—subsection 955(2)**

9 Subsection 955(2) of this Act as amended by the *Social Security*
10 *Legislation Amendment (Improved Support for Carers) Act 2009*
11 applies to a person who:

- 12 (a) is receiving carer allowance immediately before 1 July 2009;
13 or
14 (b) makes a claim for a carer allowance on or after 1 July 2009.

15 **140 Person whose carer payment was cancelled on or after 1 July**
16 **2008 and before 1 July 2010**

17 *Circumstances in which clause applies*

- 18 (1) This clause applies if:
19 (a) a person (the *carer*) received or receives a carer payment on
20 or after 1 July 2008 for caring for one or more persons aged
21 under 16; and
22 (b) the carer was or is qualified for the payment under paragraph
23 198(2)(b) or (c) of this Act (whether or not because of
24 clause 141); and
25 (c) the payment was cancelled:
26 (i) with effect before the commencement of this clause; or
27 (ii) with effect on or after that commencement and before
28 1 July 2010; and
29 (d) on or after 1 July 2009 and before 1 July 2010, the carer
30 makes a claim for a carer payment for caring for the same
31 person or persons aged under 16.

1 *Claim may be assessed as if paragraphs 198(2)(b) and (c) had not*
2 *been repealed*

3 (2) In addition to being assessed against this Act as in force after the
4 commencement of this clause, the carer's claim may be assessed as
5 if paragraphs 198(2)(b) and (c) of this Act had not been repealed.

6 Note: The effect of subclause (2) is that the person may qualify for a carer
7 payment under paragraph 198(2)(b) or (c) or section 197B, 197C or
8 197E.

9 (3) Subject to clause 141, if, because of subclause (2), the person is
10 qualified for a carer payment under paragraph 198(2)(b) or (c) of
11 this Act, this Act (as in force immediately before 1 July 2009)
12 applies in relation to the person.

13 **141 Saving—profoundly disabled child and disabled child**

14 *Profoundly disabled child and disabled child*

15 (1) Subject to this clause, if a person was receiving a carer payment
16 immediately before 1 July 2009 because the person was qualified
17 for that payment under paragraph 198(2)(b) or (c) of this Act, this
18 Act (as in force immediately before that time) continues to apply in
19 relation to the person.

20 *Remaining qualified for up to 3 months after child turns 16*

21 (2) Despite the repeal of paragraphs 198(2)(b) and (c) of this Act by
22 the *Social Security Legislation Amendment (Improved Support for*
23 *Carers) Act 2009*, paragraph 197K(1)(a) of this Act applies to a
24 person as if that paragraph included a reference to a person:
25 (a) who was qualified for a carer payment under either of the
26 repealed paragraphs; and
27 (b) who:
28 (i) remains qualified for a carer payment because of
29 subclause (1); or
30 (ii) becomes qualified for a carer payment because of
31 subclause 140(3).

32 *Unlimited hospitalisation*

33 (3) Despite the repeal of paragraphs 198(2)(b) and (c) of this Act by
34 the *Social Security Legislation Amendment (Improved Support for*

- 1 *Carers) Act 2009*, subsection 198AA(1) of this Act applies to a
2 person as if that subsection included a reference to a person:
3 (a) who was qualified for a carer payment under either of the
4 repealed paragraphs; and
5 (b) who:
6 (i) remains qualified for a carer payment because of
7 subclause (1); or
8 (ii) becomes qualified for a carer payment because of
9 subclause 140(3).

10 *Automatic qualification for carer allowance*

- 11 (4) Despite the repeal of paragraphs 198(2)(b) and (c) of this Act by
12 the *Social Security Legislation Amendment (Improved Support for*
13 *Carers) Act 2009*, section 954B of this Act applies to a person as if
14 paragraph 954B(a) included a reference to a person:
15 (a) who was qualified for a carer payment under either of the
16 repealed paragraphs; and
17 (b) who:
18 (i) remains qualified for a carer payment because of
19 subclause (1); or
20 (ii) becomes qualified for a carer payment because of
21 subclause 140(3).

1
2 **Schedule 2—Amendment of the Social**
3 **Security (Administration) Act 1999**
4

5 **1 After section 12E**

6 Insert:

7 **12F Carer allowance**

8 A claim is not required for carer allowance if the person qualifies
9 for the carer allowance under section 954B.

10 **2 At the end of Subdivision B of Division 1 of Part 3**

11 Add:

12 **15A Deemed claim—certain claims for carer allowance**

13 *Claim for carer payment rejected*

14 (1) For the purposes of the social security law, if:

- 15 (a) on or after 1 July 2009, a person (the *carer*) makes a claim
16 for a carer payment for caring for a person because the carer
17 is qualified for the payment other than under paragraph
18 198(2)(d); and
19 (b) the Secretary makes a determination rejecting the claim; and
20 (c) within 28 days of being notified of the determination, the
21 carer makes a claim for carer allowance for caring for the
22 person; and
23 (d) the carer is qualified under section 953 of the 1991 Act for
24 carer allowance for the person; and
25 (e) the Secretary is satisfied that it is reasonable that this section
26 be applied;

27 the carer is taken to have made a claim for carer allowance on the
28 day on which the carer made the claim for a carer payment.

29 *Carer payment suspended or cancelled*

30 (2) For the purposes of the social security law, if:

- 31 (a) on or after 1 July 2009, a person (the *carer*) is receiving the
32 carer payment for caring for one or more persons because the

- 1 carer is qualified for the payment other than under paragraph
2 198(2)(d); and
- 3 (b) the Secretary makes a determination cancelling or suspending
4 the carer's carer payment; and
- 5 (c) within 28 days of being notified of the determination, the
6 carer makes a claim for carer allowance for caring for the
7 person; and
- 8 (d) the carer is qualified under section 953 of the 1991 Act for
9 carer allowance for the person; and
- 10 (e) the Secretary is satisfied that it is reasonable that this section
11 be applied;
- 12 the carer is taken to have made a claim for carer allowance on the
13 day after the day on which the cancellation or suspension took
14 effect.

15 **3 After section 95A**

16 Insert:

17 **95B Automatic suspension or cancellation—carer allowance**

18 If:

- 19 (a) a person is receiving a carer allowance because the person is
20 qualified for that allowance under section 954B of the 1991
21 Act (receiving carer payment); and
- 22 (b) the person's carer payment is suspended or cancelled;
23 the carer allowance is by force of this section, suspended or
24 cancelled, as the case may be, on the same day that the person's
25 carer payment is suspended or cancelled.

26 **4 Transitional provision—deemed claim for carer allowance**

27 Despite the repeal of paragraphs 198(2)(b) and (c) of the *Social Security*
28 *Act 1991* by this Act, subsection 15A(2) of the *Social Security*
29 *(Administration) Act 1999* applies to a person as if paragraph 15A(2)(a)
30 included a reference to a person:

- 31 (a) who was qualified for a carer payment under either of the
32 repealed paragraphs; and
- 33 (b) who:
- 34 (i) remains qualified for a carer payment because of
35 subclause 141(1) of Schedule 1A to the *Social Security*
36 *Act 1991*; or
-

- 1 (ii) becomes qualified for a carer payment because of
2 subclause 140(3) of Schedule 1A to the *Social Security*
3 *Act 1991*.