Veterans' Entitlements Act 1986

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This compilation is in 4 volumes

Volume 1:	sections 1–45UY
Volume 2:	**sections 46–93ZG**
Volume 3:	sections 94–216
Volume 4:	Schedules Endnotes

Each volume has its own contents

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About this compilation

This compilation

This is a compilation of the *Veterans' Entitlements Act 1986* that shows the text of the law as amended and in force on 9 April 2020 (the ***compilation date***).

The notes at the end of this compilation (the ***endnotes***) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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Part IIIB—Provisions applying to service pension, income support supplement and veteran payment

Division 1—Ordinary income concept

46 General meaning of ordinary income

A reference in this Act to a person's ordinary income for a period is a reference to the person's gross ordinary income from all sources for the period calculated without any reduction, other than a reduction under Division 2.

Note 1: For ***ordinary income*** see subsection 5H(1).

Note 2: For other provisions affecting the amount of a person's ordinary income see section 46AA (work bonus), sections 46B and 46C (business income), Division 3 (income from financial assets (including income streams (short term) and certain income streams (long term)) and Division 4 (income from income streams not covered by Division 3).

46A Certain amounts taken to be received over 12 months

If a person receives, whether before or after the commencement of this section, an amount that:

(a) is not income within the meaning of Division 3 or 4 of this Part; and

(b) is not:

(i) income in the form of periodic payments; or

(ii) ordinary income from remunerative work undertaken by the person; or

(iii) an exempt lump sum;

the person is, for the purposes of this Act, taken to receive one fifty-second of that amount as ordinary income of the person during each week in the 12 months commencing on the day on which the person becomes entitled to receive that amount.

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Division 1A—Work bonus

46AA Income concession

(1) This section applies to a person if:
  (a) the person's rate of service pension or income support supplement is calculated in accordance with the Rate Calculator; and
  (b) the person has reached qualifying age.

Note: For ***qualifying age*** see section 5Q.

Work bonus income greater than or equal to income concession amount

(2) If the person's work bonus income for a pension period is greater than or equal to the income concession amount for that period, then, for the purposes of Module E of that Rate Calculator, the amount of the person's work bonus income for that period is reduced by an amount equal to the income concession amount.

Note: For ***work bonus income***, see subsection (4BA).

Example 1: David earns $2,300 of work bonus income in a pension period. David's rate of service pension or income support supplement for that period is greater than nil.

David's work bonus income for that period is reduced by $300, leaving David $2,000 of work bonus income for that period.

Example 2: Amy earns $1,000 of work bonus income in a pension period. Amy's rate of service pension or income support supplement for that period is greater than nil.

Amy's work bonus income for that period is reduced by $300, leaving Amy $700 of work bonus income for that period.

(3) If the person's unused concession balance (see section 46AC) is greater than or equal to the amount (the ***current amount***) of the person's work bonus income that remains after applying subsection (2) of this section in relation to a pension period:

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(a) for the purposes of Module E of that Rate Calculator, the person's work bonus income for that period is further reduced to nil; and

(b) if the person's rate of service pension or income support supplement for that period is greater than nil—the person's unused concession balance is reduced by an amount equal to the current amount.

Example 1: To continue example 1 in subsection (2), assume David's unused concession balance is $2,000. The current amount is $2,000.

David's work bonus income for that period is further reduced to nil.

David's unused concession balance is now nil.

Example 2: To continue example 2 in subsection (2), assume Amy's unused concession balance is $1,600. The current amount is $700.

Amy's work bonus income for that period is further reduced to nil.

Amy's unused concession balance is now $900.

(4) If the person's unused concession balance (see section 46AC) is greater than nil but less than the amount of the person's work bonus income that remains after applying subsection (2) of this section in relation to a pension period:

(a) for the purposes of Module E of that Rate Calculator, the person's work bonus income for that period is further reduced by an amount equal to that unused concession balance; and

(b) if the person's rate of service pension or income support supplement for that period is greater than nil—the person's unused concession balance is reduced to nil.

Example: Bill earns $1,300 of work bonus income in a pension period. Bill's rate of service pension or income support supplement for that period is greater than nil.

Under subsection (2), Bill's work bonus income for that period is reduced by $300, leaving Bill $1,000 of work bonus income for that period.

Assume Bill's unused concession balance is $800.

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Under subsection (4), Bill's work bonus income for that period is further reduced by $800 leaving Bill $200 of work bonus income for that period.

Bill's unused concession balance is now nil.

Work bonus income less than income concession amount

(4A) If the person has work bonus income for a pension period but that income is less than the income concession amount for that period:

(a) for the purposes of Module E of that Rate Calculator, the person's work bonus income for that period is reduced to nil; and

(b) if the person's rate of service pension or income support supplement for that period is greater than nil—the person's unused concession balance (see section 46AC) is increased, subject to subsection 46AC(2), by an amount equal to the difference between that income concession amount and that work bonus income (before it was reduced).

Note: For ***work bonus income***, see subsection (4BA).

Example: Emma earns $100 of work bonus income in a pension period. Emma's rate of service pension or income support supplement for that period is greater than nil.

Emma's work bonus income for that period is reduced to nil.

Emma's unused concession balance is increased by $200.

No work bonus income

(4B) If:

(a) the person has no work bonus income for a pension period; and

(b) the person's rate of service pension or income support supplement for that period is greater than nil;

the person's unused concession balance (see section 46AC) is increased, subject to subsection 46AC(2), by an amount equal to the income concession amount for that period.

Note: For ***work bonus income***, see subsection (4BA).

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Definitions

(4BA) For the purposes of this section, a person's ***work bonus income*** for a pension period is the sum of the following:

(a) the person's employment income for that period;

(b) the person's gainful work income for that period.

Note: For ***employment income***, see section 46AB.

(4BB) For the purposes of this section, a person's ***gainful work income*** for a pension period is the amount worked out using the following formula:

$$\frac{\text{Annual amount}}{26}$$

where:

annual amount means the annual amount of ordinary income of the person that is earned, derived or received by the person from gainful work (within the meaning of section 46ABA) undertaken by the person, being the annual amount as last determined by the Commission.

(4C) The ***income concession amount*** for a pension period is $300.

Interpretation

(5) If the person is a member of a couple, apply this section in relation to the person, and to the person's partner, before applying Point SCH6-E3 of Schedule 6.

(5A) If:

(a) the person is a member of a couple; and

(b) the person's partner's work bonus income (within the meaning of section 1073AA of the *Social Security Act 1991*) is reduced by one or more amounts (each of which is a ***reduction amount***) under section 1073AA of that Act;

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then, in applying point SCH6-E3 of Schedule 6, the ordinary/adjusted income of the person's partner is to be reduced by an amount equal to the total of the reduction amounts.

(6) This section is subject to section 46AD (about no double income reductions under this section and section 115G).

46AB Meaning of *employment income*

(1) For the purposes of section 46AA, ***employment income***, in relation to a person, is ordinary income of the person:

(a) that is earned, derived or received, or that is taken to have been earned, derived or received, by the person from remunerative work undertaken by the person as an employee in an employer/employee relationship; and

(b) that includes, but is not limited to:

(i) salary, wages, commissions and employment-related fringe benefits that are so earned, derived or received or taken to have been so earned, derived or received; and

(ii) if the person is engaged on a continuing basis in that employer/employee relationship—a leave payment to the person;

but does not include:

(c) a superannuation payment to the person; or

(d) a payment of compensation, or a payment to the person under an insurance scheme, in relation to the person's inability to earn, derive or receive income from that remunerative work; or

(e) if the person is not engaged on a continuing basis in that employer/employee relationship—a leave payment to the person; or

(f) a payment to the person by a former employer of the person in relation to the termination of the person's employment; or

(g) a comparable foreign pension; or

(h) an instalment of parental leave pay; or

(i) dad and partner pay.

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(2) For the purposes of subsection (1), a leave payment:
  (a) includes a payment in respect of personal/carer's leave, annual leave, maternity leave or long service leave; and
  (b) may be made as a lump sum payment, a payment that is one of a series of regular payments or otherwise; and
  (c) is taken to be made to a person if it is made to another person:
    (i) at the direction of the person or of a court; or
    (ii) on behalf of the person; or
    (iii) for the benefit of the person; or
    (iv) if the person waives or assigns his or her right to the payment.

46ABA Meaning of *gainful work*

(1) For the purposes of this Division, ***gainful work*** is work for financial gain or reward (other than as an employee), where:
  (a) the work involves personal exertion on the part of the person concerned; and
  (b) the work is carried on within or outside Australia.

Disregard managing or administering family financial investments and real property

(2) Work undertaken by a person is taken not to be ***gainful work*** for the purposes of this Division to the extent to which the work consists of the management or administration of any financial investment, or any real property, in which any of the following has a legal or equitable interest:
  (a) a member of the person's family group;
  (b) a company that is a family company in relation to the person;
  (c) the trustee or trustees of a trust that is a family trust in relation to the person.

Note: For ***financial investment***, see subsection 5J(1).

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Disregard domestic duties

(3) Work undertaken by a person is taken not to be ***gainful work*** for the purposes of this Division if the work consists of carrying out:
  (a) domestic tasks; or
  (b) household maintenance tasks; or
  (c) gardening tasks; or
  (d) similar tasks;

  in relation to:
  (e) the person's place of residence; or
  (f) if the person has 2 or more places of residence—any of those places of residence.

Definitions

(4) For the purposes of this section, a ***place of residence*** includes:
  (a) if the place is a dwelling-house—any land or building that is adjacent to the dwelling-house and that is used primarily for private or domestic purposes in association with that dwelling-house; or
  (b) if the place is a flat or home unit—a garage or storeroom that is used for private or domestic purposes in association with the flat or home unit.

(5) In this section:

family company, in relation to a person, means a company where:
  (a) the company is, or its directors are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of any or all of the members of the person's family group; or
  (b) any or all of the members of the person's family group are in a position to cast, or control the casting of, more than 50% of the maximum number of votes that may be cast at a general meeting of the company; or
  (c) both:
    (i) the company has one or more shareholders; and

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(ii) each shareholder is a member of the person's family group.

family group, in relation to a person, means the group consisting of the person and the family members of the person. If the person has no family members, the person is taken to be a family group in the person's own right.

Note: For ***family member***, see subsection 5L(1).

family trust, in relation to a person, means a trust where a member of the person's family group benefits, or is capable (whether by the exercise of a power of appointment or otherwise) of benefiting, under the trust.

46AC Unused concession balance

Initial unused concession balance of nil

(1) A person has an unused concession balance of nil on the first day that is after 30 June 2011 and is a day on which section 46AA applies to the person.

Maximum unused concession balance

(2) If, apart from this subsection, the person's unused concession balance would exceed $7,800, that balance is instead taken to be $7,800.

Example: John has an unused concession balance of $7,700. John earns $100 of work bonus income in a pension period.

Instead of John's unused concession balance increasing to $7,900 under subsection 46AA(4A), John's unused concession balance increases to $7,800.

Effect of ceasing to receive service pension or income support supplement

(3) If the person ceases to receive service pension or income support supplement, the person retains the person's unused concession balance immediately before that cessation.

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Note: If section 46AA applies to the person again, the person's unused concession balance will be that retained balance.

46AD No double income reductions under sections 46AA and 115G

Scope

(1) This section applies if, apart from this section:
   (a) an amount (the ***initial amount***) would be an excluded amount under subsection 115G(1) or (2) in respect of a veteran and a pension period; and
   (b) the veteran's work bonus income (within the meaning of section 46AA) would be reduced by one or more amounts (each of which is a ***reduction amount***) under section 46AA in relation to that period.

Income reduction under section 46AA

(2) If the total of the reduction amounts is more than the initial amount:
   (a) subsection 115G(1) or (2), as the case may be, does not apply in relation to that veteran and that period; and
   (b) subsections 46AA(2) to (4A) do apply in relation to that veteran and that period.

Income reduction under section 115G

(3) If the total of the reduction amounts is less than or equal to the initial amount:
   (a) subsections 46AA(2) to (4A) do not apply to reduce the veteran's work bonus income in relation to that period, but they do apply for the purposes of working out any adjustment to the veteran's unused concession balance in relation to that period (as if those reductions had occurred); and
   (b) subsection 115G(1) or (2), as the case may be, does apply in relation to that veteran and that period.

Note: Subsections 115G(1) and (2) are about excluding income amounts for certain veterans.

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Example: Jim earns $100 of work bonus income in a pension period. Jim's rate of service pension or income support supplement for that period is greater than nil. Assume Jim also has an amount of $100 worked out under subsection 115G(1) in relation to that period.

There is no reduction in Jim's work bonus income under section 46AA for that period, but $100 is excluded under subsection 115G(1).

Under subsection 46AA(4A), Jim's unused concession balance is increased by $200.

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Division 2—Business income

46B Ordinary income from a business—treatment of trading stock

(1) If:
  (a) a person carries on a business; and
  (b) the value of all the trading stock on hand at the end of a tax year is greater than the value of all the trading stock on hand at the beginning of that tax year;

the person's ordinary income for that tax year in the form of profits from the business is to include the amount of the difference in values.

(2) If:
  (a) a person carries on a business; and
  (b) the value of all the trading stock on hand at the end of a tax year is less than the value of all the trading stock on hand at the beginning of that tax year;

the person's ordinary income for that tax year in the form of profits from the business is to be reduced by the amount of the difference in values.

46C Permissible reductions of business income

(1) Subject to subsection (2), if a person carries on a business, the person's ordinary income from the business is to be reduced by:
  (a) losses and outgoings that relate to the business and are allowable deductions for the purposes of section 8-1 of the *Income Tax Assessment Act 1997*; and
  (ba) amounts that relate to the business and can be deducted for the decline in value of depreciating assets under Subdivision 40-B of the *Income Tax Assessment Act 1997*; and

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(c) amounts that relate to the business and are allowable deductions under section 290-60 of the *Income Tax Assessment Act 1997*.

(2) If, under Division 3, a person is taken to receive ordinary income on a financial investment, that ordinary income is not to be reduced by the amount of any expenses incurred by the person because of that investment.

Note: For ***financial investment*** see subsection 5J(1).

(3) If a person's ordinary income for a period includes rental income from a property that is not business income, the person's ordinary income from that property is to be reduced by losses and outgoings that relate to the property and are allowable deductions for the purposes of section 8-1 of the *Income Tax Assessment Act 1997* for that period.

(4) If the amount of the allowable deductions relating to a property for a period under section 8-1 of the *Income Tax Assessment Act 1997* exceeds the amount of the rental income from that property for that period, the amount of the ordinary income from the property for that period is taken to be nil.

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Division 3—Income from financial assets (including income streams (short term) and certain income streams (long term))

46D Deemed income from financial assets—persons other than members of couples

(1) This section applies to a person who is not a member of a couple.

(2) A person who has financial assets is taken, for the purposes of this Act, to receive ordinary income on those assets in accordance with this section.

(3) This is how to work out the ordinary income that the person is taken to receive:

Method statement

Step 1. Calculate the total value of the person's financial assets and compare it with the person's deeming threshold.
Note 1: For ***financial assets*** see subsection 5J(1).
Note 2: For ***deeming threshold*** see subsection 46H(1).

Step 2. This step applies only if the total value of the person's financial assets is equal to or less than the person's deeming threshold. Multiply the total value of the financial assets by the below threshold rate. The result represents the ordinary income that the person is taken to receive per year on his or her financial assets.
Note: For ***below threshold rate*** see subsection 46J(1).

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Step 3. This step applies only if the total value of the person's financial assets is higher than the person's deeming threshold. Work out the person's deemed income as follows:

(a) multiply the deeming threshold by the below threshold rate;

(b) subtract the deeming threshold from the total value of the person's financial assets;

(c) multiply the remainder by the above threshold rate;

Note: For ***above threshold rate*** see subsection 46J(2).

(d) add up the amounts worked out at paragraph (a) and (c): the result represents the ordinary income that the person is taken to receive per year on his or her financial assets.

Example: How deemed income of a person who is not a member of a couple is worked out

Facts: Elaine, a single pensioner, has $36,500 worth of financial assets. $1,500 is in a cheque account not earning any interest. $25,000 is earning 6% in interest and $10,000 is earning 8% in interest. The below threshold rate is 5%. The above threshold rate is 7%.

Result:

Step 1. The total value of Elaine's financial assets ($36,500) is higher than her deeming threshold ($30,000—see subsection 46H(1)). So, the deeming threshold is multiplied by the below threshold rate:

$$\$30{,}000 \times \frac{5}{100} = \$1{,}500$$

Step 2. Elaine's deeming threshold of $30,000 is subtracted from the total value of her financial assets ($36,500). The remainder is $6,500.

Step 3. The amount of $6,500 is multiplied by the above threshold rate (7%):

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$$\$6{,}500 \times \frac{7}{100} = \$455.$$

Step 4. The amounts worked out at Steps 1 and 3 are added together:

$$\$1{,}500 + \$455 = \$1{,}955.$$

The ordinary income that Elaine is deemed to receive from her financial assets is $1,955 per year.

(4) The person is taken, for the purposes of this Act, to receive one fifty-second of the amount calculated under subsection (3) as ordinary income of the person during each week.

46E Deemed income from financial assets—members of a couple

(1) This section applies to the members of a couple.

(2) If one or both of the members of a couple have financial assets, the members of the couple are taken, for the purposes of this Act, to receive together ordinary income on those assets in accordance with this section.

(3) This is how to work out the ordinary income that the couple is taken to receive:

Method statement

Step 1. Calculate the total value of the couple's financial assets and compare it with the couple's deeming threshold.

Note 1: For ***financial assets*** see subsection 5J(1).

Note 2: For ***deeming threshold*** see subsection 46H(2).

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Step 2. This step applies only if the total value of the couple's financial assets is equal to or less than the couple's deeming threshold. Multiply the total value of the financial assets by the below threshold rate. The result represents the ordinary income that the couple is taken to receive per year on their financial assets.

Note: For ***below threshold rate*** see subsection 46J(1).

Step 3. This step applies only if the total value of the couple's financial assets is higher than the couple's deeming threshold. Work out the couple's deemed income as follows:

(a) multiply the deeming threshold by the below threshold rate;

(b) subtract the deeming threshold from the total value of the couple's assets;

(c) multiply the remainder by the above threshold rate;

Note: For ***above threshold rate*** see subsection 46J(2).

(d) add up the amounts worked out at paragraph (a) and (c): the result represents the ordinary income that the couple is taken to receive per year on their financial assets.

Example: How deemed income of a couple is worked out

Facts: Maree and Peter, a couple, have $68,500 worth of financial assets. They have $3,500 in a savings account earning interest at 2.8% and deposits of $25,000 and $40,000 earning 5% p.a. and 8% p.a. in interest respectively. The below threshold rate is 5%. The above threshold rate is 7%.

Result:

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Step 1. The total value of the couple's financial assets ($68,500) is higher than their deeming threshold ($50,000—see subsection 46H(2)). So, the deeming threshold is multiplied by the below threshold rate:

$$\$50{,}000 \times \frac{5}{100} = \$2{,}500$$

Step 2. The couple's deeming threshold of $50,000 is subtracted from the total value of their financial assets ($68,500). The remainder is $18,500.

Step 3. The amount of $18,500 is multiplied by the above threshold rate (7%):

$$\$18{,}500 \times \frac{7}{100} = \$1{,}295$$

Step 4. The amounts worked out at Steps 1 and 3 are added together:

$$\$2{,}500 + \$1{,}295 = \$3{,}795$$

The ordinary income that the couple is deemed to receive from their financial assets is $3,795 per year.

(4) Each member of the couple is taken, for the purposes of this Act, to receive, as ordinary income during each week, an amount calculated according to the formula:

$$\frac{\text{Amount calculated under subsection (3)}}{52} \times \frac{1}{2}$$

46H Deeming threshold

(1) The deeming threshold for a person who is not a member of a couple is $30,000.

(2) The deeming threshold for a couple is $50,000.

Note: The amounts fixed by subsections (1) and (2) are indexed every 1 July. See sections 59A to 59C.

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46J Below threshold rate, above threshold rate

(1) For the purposes of this Division, the below threshold rate is the rate that is the below threshold rate for the purposes of Division 1B of Part 3.10 of the Social Security Act.

(2) For the purposes of this Division, the above threshold rate is the rate that is the above threshold rate for the purposes of Division 1B of Part 3.10 of the Social Security Act.

46K Actual return on financial assets not treated as ordinary income

(1) Subject to subsection (2), any return on a financial asset that a person actually earns, derives or receives is taken, for the purposes of this Act, not to be ordinary income of the person.

(2) If, because of:
  (a) a determination under subsection 46L(1); or
  (b) the operation of subsection 46L(1A);
a financial investment is not to be regarded as a financial asset for the purposes of section 46D or 46E, subsection (1) of this section does not apply to any return on the investment that the person actually earns, derives or receives.

46L Certain money and financial investments not taken into account

(1) The Minister may determine that:
  (a) specified financial investments; or
  (b) a specified class of financial investments;
are not to be regarded as financial assets for the purposes of section 46D or 46E.

(1A) If the Commission makes a determination under section 52Y in relation to a person, any unrealisable asset of the person or the person's partner is not regarded as a financial asset for the purposes of section 46D or 46E.

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(3) A determination under subsection (1) must be in writing.

(4) A determination under subsection (1) takes effect on the day on which it is made or on such other day (whether earlier or later) as is specified in the determination.

46M Valuation and revaluation of certain financial investments

The total value of a person's listed securities and managed investments (being listed securities and managed investments that fluctuate depending on the market) (the ***relevant investments***) is determined in accordance with the following:

(a) an initial total valuation is to be given to the relevant investments on 1 July 1996, or when a new claim is determined, by the method set out in departmental guidelines;

(b) that total valuation continues in effect until the relevant investments are revalued by the method set out in departmental guidelines, and that revaluation must occur:

(i) on 20 March in each calendar year after 1996; and

(ii) on 20 September in each calendar year after 1996; and

(iii) when the person requests a revaluation of one or more of the person's listed securities and managed investments; and

(iv) following an event that affects the relevant investments and is the subject of a recipient notification notice.

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Division 4—Income from income streams not covered by Division 3

Subdivision B—Income streams that are not family law affected income streams

46SA Scope of Subdivision

(1) This Subdivision applies to income streams that are not family law affected income streams.

(2) However, this Subdivision does not apply to:

(a) an asset-tested income stream (long term) that is an account-based pension within the meaning of the *Superannuation Industry (Supervision) Regulations 1994*; or

(b) an asset-tested income stream (long term) that is an annuity (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) provided under a contract that meets the requirements determined in an instrument under subsection 5J(1G) of this Act.

Note 1: For treatment of an income stream mentioned in subsection (2), see Division 3.

Note 2: Part 2 of Schedule 11 to the *Social Services and Other Legislation Amendment Act 2014* preserves the rules in this Subdivision for a certain kind of income stream that was being provided to a person immediately before 1 January 2015 where the person was receiving an income support payment immediately before that day provided that, since that day, that income stream has been provided to the person and the person has been continuously receiving an income support payment.

46T Income from asset-test exempt income stream

(1) For the purpose of working out the annual rate of ordinary income of a person from an asset-test exempt income stream to which this Subdivision applies, the person is taken to receive from that

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income stream each year the amount worked out under section 46U or 46V.

Note: For ***asset-test exempt income stream*** see sections 5JA, 5JB and 5JBA.

(2) Sections 46U and 46V do not apply if:
  (a) the income stream is covered by subsection 5JBA(1); or
  (b) on the income stream's commencement day, there was a reasonable likelihood that the income stream would have been covered by subsection 5JBA(1), but the income stream is no longer covered by that subsection.

Note: See section 46VA.

46U Income—income stream not a defined benefit income stream

If the asset-test exempt income stream to which this Subdivision applies is not a defined benefit income stream, the amount that the person is taken to receive from the income stream each year is worked out as follows:

$$\text{Annual payment} - \frac{\text{Purchase price}}{\text{Relevant number}}$$

where:

annual payment means the amount payable to the person for the year under the income stream.

purchase price has the meaning given by subsection 5J(1).

relevant number has the meaning given by subsection 5J(1).

Example: Mark is 65 years old and single. He purchases an annuity for $100,000 with a term based on life expectancy (i.e. 15.41 years, which he chooses to round up to 16 years). The annuity has all the revised characteristics listed in the legislation. His annual payment from the annuity totals $9,895. Mark's assessable income from this income stream is:

$$\$9{,}895 - \left(\frac{\$100{,}000}{16 \text{ years}}\right) = \$3{,}645$$

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46V Income—income stream is a defined benefit income stream

If the asset-test exempt income stream to which this Subdivision applies is a defined benefit income stream, the amount that the person is taken to receive from the income stream each year is worked out as follows:

Annual payment – Deductible amount

where:

annual payment means the amount payable to the person for the year under the income stream.

deductible amount has the meaning given by subsection 5J(1).

46VA Income from market-linked asset-test exempt income stream

(1) If either of the following conditions is satisfied in relation to the asset-test exempt income stream to which this Subdivision applies:
  (a) the income stream is covered by subsection 5JBA(1);
  (b) on the income stream's commencement day, there was a reasonable likelihood that the income stream would have been covered by subsection 5JBA(1), but the income stream is no longer covered by that subsection;

the annual rate of ordinary income of a person from the income stream is worked out under whichever of subsections (2) and (3) is applicable.

Recipient makes election

(2) If:
  (a) the person has elected that a particular amount is to be the payment, or the total of the payments, to be made under the income stream in respect of a period (the ***payment period***) that:
    (i) consists of the whole or a part of a particular financial year; and

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(ii) begins on or after the income stream's commencement day; and

(b) the election is in force on a particular day in the payment period;

the annual rate of ordinary income of the person from the income stream on that day is worked out using the following formula:

$$\left[\frac{\text{Total payments}}{\text{Days in payment period}} - \frac{\text{Purchase price}}{\text{Relevant number} \times 365}\right] \times 365$$

where:

purchase price has the meaning given by subsection 5J(1).

relevant number has the meaning given by subsection 5J(1).

total payments means the payment, or the total of the payments, to be made under the income stream in respect of the payment period.

Recipient does not make election

(3) If the person has not elected that a particular amount is to be the payment, or the total of the payments, to be made under the income stream in respect of a period (the ***payment period***) that:

(a) consists of the whole or a part of a particular financial year; and

(b) begins on or after the income stream's commencement day;

the annual rate of ordinary income of the person from the income stream on each day during the payment period is worked out using the following formula:

$$\left[\frac{\text{Default amount}}{\text{Days in payment period}} - \frac{\text{Purchase price}}{\text{Relevant number} \times 365}\right] \times 365$$

where:

default amount means 100% of the amount worked out for the financial year using the formula in subsection 5JBA(5) (for pro-rating, see subsection (4)).

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purchase price has the meaning given by subsection 5J(1).

relevant number has the meaning given by subsection 5J(1).

(4) If the income stream's commencement day is not a 1 July, the default amount (within the meaning of subsection (3)) for the financial year starting on the preceding 1 July must be reduced on a pro-rata basis by reference to the number of days in the financial year that are on and after the commencement day.

Exception—income stream's commencement day happens in June

(5) If:
  (a) the income stream's commencement day happens in June; and
  (b) no payment is made under the income stream for the financial year in which the commencement day happens;

subsections (2), (3) and (4) do not apply in working out the annual rate of ordinary income of the person from the income stream on a day in that financial year.

46W Income from asset-tested income stream (long term)

(1) For the purpose of working out the annual rate of ordinary income of a person from an asset-tested income stream (long term) to which this Subdivision applies, the person is taken to receive from that income stream each year the amount worked out under section 46X or 46Y.

(2) Sections 46X and 46Y do not apply to an income stream if section 46YA applies to the income stream.

46X Income—asset-tested income stream (long term) that is not a defined benefit income stream

If the asset-tested income stream (long term) to which this Subdivision applies is not a defined benefit income stream, the amount that the person is taken to receive from the income stream each year is worked out as follows:

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$$\text{Annual payment} - \left(\frac{\text{Purchase price} - \text{Residual capital value}}{\text{Relevant number}}\right)$$

where:

annual payment means the amount payable to the person for the year under the income stream.

purchase price has the meaning given by subsection 5J(1).

relevant number has the meaning given by subsection 5J(1).

residual capital value has the meaning given by subsection 5J(1).

Note: For treatment of asset-tested income streams (short term) see Division 3 of Part IIIB.

Example: Sally is 65 years old and single. She purchases a 10 year annuity for $150,000, with a residual capital value of $20,000. Her total annual annuity payment is $18,337. Sally's assessable income from her 10 year annuity is:

$$\$18{,}337 - \frac{\$150{,}000 - \$20{,}000}{10} = \$5{,}337$$

46Y Income—asset-tested income stream (long term) that is a defined benefit income stream

If the asset-tested income stream (long term) to which this Subdivision applies is a defined benefit income stream, the amount that the person is taken to receive from the income stream each year is worked out as follows:

$$\text{Annual payment} - \text{Deductible amount}$$

where:

annual payment means the amount payable to the person for the year under the income stream.

deductible amount has the meaning given by subsection 5J(1).

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46YA Income from certain low-payment asset-tested income streams

(1) If:

(a) an income stream is an asset-tested income stream (long term) to which this Subdivision applies; and

(b) the income stream is an allocated pension within the meaning of the *Superannuation Industry (Supervision) Regulations 1994*; and

(c) one or more payments have been, or are to be, made under the income stream in respect of a period (the ***payment period***) that:

(i) consists of the whole or a part of a financial year; and

(ii) begins on or after the income stream's commencement day; and

(d) on a day in the payment period, the amount worked out using the formula in subsection (2) is less than the amount worked out using the formula in subsection (3);

the annual rate of ordinary income of a person from the income stream on that day is worked out under subsection (3).

Annual rate based on total payments

(2) For the purposes of paragraph (1)(d), the formula in this subsection is:

$$\left[\frac{\text{Total payments}}{\text{Days in payment period}} - \frac{\text{Purchase price}}{\text{Relevant number} \times 365}\right] \times 365$$

where:

purchase price has the meaning given by subsection 5J(1).

relevant number has the meaning given by subsection 5J(1).

total payments means the payment, or the total of the payments, made, or to be made, under the income stream in respect of the payment period.

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Annual rate based on minimum amount

(3) For the purposes of paragraph (1)(d), the formula in this subsection is:

$$\left(\frac{\text{Minimum amount}}{\text{Days in payment period}} - \frac{\text{Purchase price}}{\text{Relevant number} \times 365} \right) \times 365$$

where:

minimum amount means the minimum amount calculated in accordance with the method determined, by legislative instrument, by the Minister for the purposes of this definition.

purchase price has the meaning given by subsection 5J(1).

relevant number has the meaning given by subsection 5J(1).

Exception—income stream's commencement day happens in June

(4) If:
  (a) the income stream's commencement day happens in June; and
  (b) no payment is made under the income stream for the financial year in which the commencement day happens;

subsections (2) and (3) do not apply in working out the annual rate of ordinary income of the person from the income stream on a day in that financial year.

46YB Income—asset-tested income stream (lifetime)

If the income stream is an asset-tested income stream (lifetime), the amount that the person is taken to receive from the income stream each year is worked out as follows:

$$\text{Annual payment} \times 0.6$$

where:

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annual payment means the amount payable to the person for the year under the income stream.

Subdivision C—Family law affected income streams

46Z Scope of Subdivision

(1) This Subdivision applies to family law affected income streams.

(2) However, this Subdivision does not apply to:
  (a) an asset-tested income stream (long term) that is an account-based pension within the meaning of the *Superannuation Industry (Supervision) Regulations 1994*; or
  (b) an asset-tested income stream (long term) that is an annuity (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) provided under a contract that meets the requirements determined in an instrument under subsection 5J(1G) of this Act.

Note 1: For treatment of an income stream mentioned in subsection (2), see Division 3.

Note 2: Part 2 of Schedule 11 to the *Social Services and Other Legislation Amendment Act 2014* preserves the rules in this Subdivision for a certain kind of income stream that was being provided to a person immediately before 1 January 2015 where the person was receiving an income support payment immediately before that day provided that, since that day, that income stream has been provided to the person and the person has been continuously receiving an income support payment.

46ZA Income from asset-test exempt income streams

(1) For the purpose of working out the annual rate of ordinary income of a person from an asset-test exempt income stream to which this Subdivision applies, the person is taken to receive from that income stream each year:
  (a) if the income stream is not a defined benefit income stream—the amount determined by the Commission under this paragraph; or

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(b) if the income stream is a defined benefit income stream—the amount determined by the Commission under this paragraph.

(2) In making a determination under paragraph (1)(a) or (b), the Commission must comply with any relevant decision-making principles in force under section 46ZC.

46ZB Income from asset-tested income stream (long term)

(1) For the purpose of working out the annual rate of ordinary income of a person from an asset-tested income stream (long term) to which this Subdivision applies, the person is taken to receive from that income stream each year:

(a) if the income stream is not a defined benefit income stream—the amount determined by the Commission under this paragraph; or

(b) if the income stream is a defined benefit income stream—the amount determined by the Commission under this paragraph.

(2) In making a determination under paragraph (1)(a) or (b), the Commission must comply with any relevant decision-making principles in force under section 46ZC.

46ZBA Income from asset-tested income stream (lifetime)

(1) For the purpose of working out the annual rate of ordinary income of a person from an asset-tested income stream (lifetime) to which this Subdivision applies, the person is taken to receive from that income stream each year the amount determined by the Commission under this subsection.

(2) In making a determination under subsection (1), the Commission must comply with any relevant decision-making principles in force under section 46ZC.

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46ZC Decision-making principles

The Commission may, by legislative instrument, formulate principles (***decision-making principles***) to be complied with by it in making decisions under:

(a) paragraph 46ZA(1)(a); or
(b) paragraph 46ZA(1)(b); or
(c) paragraph 46ZB(1)(a); or
(d) paragraph 46ZB(1)(b); or
(e) subsection 46ZBA(1).

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Division 6—Income tests—conversion of foreign currency amounts

47 Application of Division

(1) The Commission may determine in writing that this Division applies in relation to a foreign currency.

(2) This Division applies in relation to a foreign currency in relation to which a determination under subsection (1) is in force.

(3) This Division applies for the purposes of the Rate Calculator.

47A Conversion of foreign currency amounts

The value in Australian currency of a payment received by a person in foreign currency is to be worked out using:

(a) if section 47C applies—the re-assessed exchange rate; or

(b) in any other case—the base exchange rate (see section 47B).

47B Base exchange rate

The base exchange rate for a foreign currency for a foreign exchange period is the average (calculated to 4 decimal places) of the actual market exchange rates available on each working day of the first month of the year to start during the immediately preceding foreign exchange period.

47C Re-assessed exchange rate

(1) If for 10 consecutive working days:

(a) starting after a month of the year in relation to which section 47B operates; and

(b) ending before the next month of the year in relation to which section 47B operates;

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the actual market exchange rate available differs, by at least 10%, from:

(c) unless paragraph (d) applies—the base exchange rate for the next foreign exchange period; or

(d) if a re-assessed exchange rate has already been worked out under this subsection for the purposes of the next foreign exchange period—the last re-assessed exchange rate so worked out;

the re-assessed exchange rate for a foreign currency is the average (calculated to 4 decimal places) of the actual market exchange rates available on those consecutive working days.

(2) Subsection (1) does not apply to a working day if the actual market exchange rate available on that day has been used to work out a re-assessed exchange rate in a previous application of that subsection.

47D Applicability of re-assessed exchange rate

(1) The Commission must determine in writing the day on which a re-assessed exchange rate becomes applicable.

(2) The day determined under subsection (1) is to be no later than 6 weeks after the tenth consecutive working day covered by subsection 47C(1).

(3) A re-assessed exchange rate:

(a) becomes applicable on the day determined under subsection (1), unless a new re-assessed exchange rate has already become applicable; and

(b) remains applicable until:

(i) a new re-assessed exchange rate becomes applicable; or

(ii) the commencement of the next exchange period the base exchange rate for which has been worked out by reference to working days later than those by reference to which the re-assessed exchange rate was worked out.

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47E Rounding off exchange rates

If an exchange rate worked out under this Division would, if it were calculated to 5 decimal places, end in a number greater than 4, the rate worked out is to be taken to be the rate calculated to 4 decimal places and increased by 0.0001.

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Division 7—Income tests—disposal of ordinary income

48 Disposal of ordinary income

(1) For the purposes of this Act, a person ***disposes of ordinary income*** of the person if the person engages in a course of conduct that diminishes, directly or indirectly, the rate of the person's ordinary income and either:

(a) the person receives no consideration in money or money's worth for the diminution; or

(b) the person receives inadequate consideration in money or money's worth for the diminution; or

(c) the Commission is satisfied that the purpose, or the dominant purpose, of the person in engaging in that course of conduct was:

(i) to obtain or enable the person's partner to obtain a service pension, income support supplement, a veteran payment or a social security pension or benefit; or

(ii) to obtain or enable the person's partner to obtain a service pension, income support supplement, a veteran payment or a social security pension or benefit at a higher rate than that which would otherwise have been payable; or

(iii) to ensure that the person or the person's partner would be eligible for benefits under Division 12 of this Part or fringe benefits under the Social Security Act.

Note: For ***amount of disposition*** see section 48A.

(2) Subsection (1) does not apply to a course of conduct consisting of the provision of short-term or long-term residential accommodation to a family member of the person for no payment or payment less than the market value of the provision of the accommodation.

Note: For ***family member*** see subsection 5L(1).

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48A Amount of disposition

If a person disposes of ordinary income, the ***amount of the disposition*** is the amount that, in the Commission's opinion, is:

(a) if the person receives no consideration for the diminution in the rate of the person's ordinary income—the annual rate of the diminution of the person's ordinary income; or

(b) if the person receives consideration for the diminution in the rate of the person's ordinary income—the annual rate of the diminution less the part (if any) of the consideration that the Commission determines, in writing, to be fair and reasonable in all the circumstances of the case.

48B Disposal of ordinary income—not a member of a couple

If a person who is not a member of a couple has, on or after 1 June 1984, disposed of ordinary income of the person, the amount of that disposition is to be included in the person's ordinary income for the purposes of this Act.

Note 1: For ***disposes of income*** see section 48.

Note 2: For ***amount of disposition*** see section 48A.

Note 3: For ***ordinary income*** see subsection 5H(1): ***ordinary income*** includes investment income but does not include maintenance income.

48C Disposal of ordinary income—members of couples

(1) Subject to subsections (2), (3) and (4), if a person who is a member of a couple has, on or after 1 June 1984, disposed of ordinary income of the person:

(a) 50% of the amount of the disposition is to be included in the person's ordinary income; and

(b) 50% of the amount of the disposition is to be included in the person's partner's ordinary income.

Note 1: For ***disposes of income*** see section 48.

Note 2: For ***amount of disposition*** see section 48A.

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(2) If:

(a) amounts are included under subsection (1) in the ordinary income of a person who is a member of a couple and in the person's partner's ordinary income because the person has disposed of ordinary income; and

(b) the person and the person's partner cease to be members of the same couple;

any amount that was included in the ordinary income of the person's former partner because of the disposition is to be included in the person's ordinary income.

(3) If:

(a) amounts are included under subsection (1) in the ordinary income of a person who is a member of a couple and in the person's partner's ordinary income because the person has disposed of ordinary income; and

(b) the person dies;

no amount is to be included in the ordinary income of the person's partner because of the disposition.

(4) If:

(a) an amount is included under subsection (1) in the ordinary income of a person who is a member of a couple and in the person's partner's ordinary income because the person has disposed of ordinary income; and

(b) the person's partner dies;

any amount that would, if the person's partner had not died, be included in the ordinary income of the person's partner because of the disposition is to be included in the person's ordinary income.

Note: For ***ordinary income*** see subsection 5H(1): ***ordinary income*** includes investment income but does not include maintenance income.

48E Dispositions more than 5 years old to be disregarded

This Division does not apply to a disposition of ordinary income that took place:

(a) more than 5 years before the time when:

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(i) the person who disposed of the ordinary income; or

(ii) if the person who disposed of the ordinary income was, at the time of disposition, a member of a couple—the person's partner;

became eligible to receive a service pension, income support supplement or a veteran payment; or

(b) less than 5 years before the time referred to in paragraph (a) and before the time when the Commission is satisfied that the person who disposed of the ordinary income could reasonably have expected that the person or the person's partner would become eligible to receive a service pension, income support supplement or a veteran payment.

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Division 9—New Enterprise Incentive Scheme

50 General effect of Division

This Division adjusts the service pension rate, income support supplement rate or veteran payment rate of a person who is receiving, or whose partner is receiving, payments under the scheme known as the New Enterprise Incentive Scheme (NEIS).

Note: Payments under the NEIS do not count as ordinary income for the purposes of the ordinary income test: see paragraph 5H(8)(x).

50A Reduction in rate of payments under this Part if recipient or partner also receiving payments under NEIS

(1) If:
  (a) an instalment of service pension, income support supplement or veteran payment is payable to a person during a pension period; and
  (b) NEIS is payable to the person during that pension period;

the rate of the payment referred to in paragraph (a) is to be reduced under this Division.

(2) If:
  (a) an instalment of age or invalidity service pension or veteran payment is payable to a person during a pension period; and
  (b) NEIS is payable to the person during that pension period; and
  (c) an instalment of partner service pension or veteran payment in respect of the person is payable to the person's partner during a pension period;

the rate of the partner's payment is also to be reduced under this Division.

(3) If:
  (a) an instalment of income support supplement or veteran payment is payable to a person during a pension period; and
  (b) NEIS is payable to the person during that pension period; and

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(c) an instalment of:
(i) age service pension; or
(ii) invalidity service pension; or
(iii) veteran payment;
is payable to the person's partner during a pension period;

the rate of the partner's payment is also to be reduced under this Division.

50B Rate reduction under this Division

(1) Subject to subsection (2), if a person's rate of payment under Part III or IIIA, or rate of veteran payment, is to be reduced under this Division because of a NEIS payment, the amount of rate reduction is to be equal to the amount of the NEIS payment.

(2) If:
(a) a person's rate of payment under Part III or IIIA, or rate of veteran payment, is to be reduced under this Division because of a NEIS payment; and
(b) the person's partner's rate of payment under Part III or IIIA, or rate of veteran payment, is also to be reduced under this Division (see subsection 50A(2) or (3)) because of the NEIS payment;

the amount of rate reduction for both the person and the person's partner is to be equal to 50% of the amount of the NEIS payment.

(3) A person's rate of payment under Part III or IIIA, or rate of veteran payment, is not to be reduced below nil under subsection (1) or (2).

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Division 11—General provisions relating to the assets test

Subdivision A—Value of person's assets

52 Certain assets to be disregarded in calculating the value of a person's assets

(1) In calculating the value of a person's assets for the purposes of this Act (other than sections 52G, 52H, 52JA, 52JB, 52JC, 52JD, 52ZA and 52ZCA), disregard the following:

(a) if the person is not a member of a couple—the value of any right or interest of the person in the person's principal home that is a right or interest that gives the person reasonable security of tenure in the home;

(b) if the person is a member of a couple—the value of any right or interest of the person in one residence that is the principal home of the person, of the person's partner or of both of them that is a right or interest that gives the person or the person's partner reasonable security of tenure in the home;

(c) the value of any life interest of the person other than:

(i) a life interest in the principal home of the person, of the person's partner or of both of them; or

(ii) a life interest created by the person, by the person's partner or by both of them; or

(iii) a life interest created on the death of the person's partner;

Note: The exclusion from paragraph (1)(c) of the value of a person's life interest mentioned in subparagraph (i), (ii) or (iii) does not result in the value of the interest being included in the person's assets if the interest falls within paragraph (1)(a) or (b).

(d) the value of any asset-test exempt income stream of the person, other than a partially asset-test exempt income stream;

(daa) half of the value of any partially asset-test exempt income stream of the person;

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Note: For ***partially asset-test exempt income stream***, see subsection (1AA).

(da) the value of any foreign superannuation pension of the person;

(e) any amount that is:

(i) received by the person within the immediately preceding period of 90 days; and

(ii) is excluded from the definition of ***income*** in subsection 5H(1) by subsection 5H(4) or (5);

(f) the value of the person's investment in:

(i) a superannuation fund; or

(ii) an approved deposit fund; or

(iiia) an ATO small superannuation account;

until the person:

(iv) reaches pension age; or

(v) commences to receive a pension or annuity out of the fund;

Note: Some investments in superannuation funds, approved deposit funds and ATO small superannuation accounts may be disregarded—see section 52AA.

(fa) if:

(i) the person has a granny flat interest in the person's principal home; and

(ii) the granny flat interest gives the person reasonable security of tenure in the home; and

(iii) the person acquired or retained the granny flat interest before 22 August 1990;

the value of the granny flat interest;

(fb) if:

(i) the person has a granny flat interest in the person's principal home; and

(ii) the person is a person to whom subsection 52Q(2), 52R(2), 52S(2), 52S(5), 52T(2), 52U(2) or 52V(2) applies;

the value of the granny flat interest;

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Note: A person described in subparagraph (ii) will have acquired or retained the granny flat interest on or after 22 August 1990 (see section 52KA).

(fc) if:

(i) the person is a sale leaseback resident; and

(ii) the person is a person to whom subsection 52Q(2), 52R(2), 52S(2), 52S(5), 52T(2), 52U(2) or 52V(2) applies;

the value of any right or interest of the person in the sale leaseback home;

(g) the value of any contingent, remainder or reversionary interest of the person (other than an interest created by the person, by the person's partner or by both of them);

(h) the value of any assets (other than a contingent, remainder or reversionary interest) to which the person is entitled from the estate of a deceased person but which has not been, and is not able to be, received;

(i) the value of any medal or other decoration awarded (whether to the person or another person) for valour that is owned by the person otherwise than for the purposes of investment or a hobby;

(j) the value of:

(i) any cemetery plot acquired by the person for the burial of the person or the person's partner; and

(ii) any funeral expenses paid in advance by the person in respect of the funeral of the person or the person's partner;

(ja) an amount invested in an exempt funeral investment and any return on the investment;

Note: For ***exempt funeral investment*** see section 5PC.

(k) if:

(i) personal property of the person is designed for use by a disabled person; and

(ii) the person, the person's partner or a child who is dependent on the person or the person's partner is disabled;

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the value of the property;

(l) if:

(i) personal property of the person is modified so that it can be used by a disabled person; and

(ii) the person, the person's partner or a child who is dependent on the person or the person's partner is disabled;

the part of the value of the property that is attributable to the modifications;

(m) if the person is provided with a motor vehicle under the Vehicle Assistance Scheme—the value of that motor vehicle;

(ma) if the person is provided with a motor vehicle under the Motor Vehicle Compensation Scheme under section 212 of the MRCA—the value of that motor vehicle;

(n) if the person has sold a residence that was the principal home of the person on terms and has purchased, also on terms, another residence that is the principal home of the person—so much of the balance due to the person in respect of the sale as will be applied by the person in respect of the purchase of the other residence;

Note: For ***principal home*** and other assets test definitions, see sections 5L and 5LA.

(o) the amount of any insurance or compensation payments received by the person because of the loss of, or damage to, buildings, plant or personal effects within the immediately preceding 12 months, or such longer period as the Commission determines for any special reason for a particular payment;

Note: The payments in paragraph (o) are not income for the purposes of this Act (see paragraph 5H(8)(q)).

(oa) if subsection (1C) applies (application of insurance etc. payments to rebuilding etc.)—the amount worked out under that subsection, during the period mentioned in subsection (1D);

(oaa) if a person has received an NDIS amount—the amount worked out under subsection (1DAA);

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(ob) the value of any native title rights and interests of the person, or of a community or group of which the person is a member;

(p) the amount of any accommodation bond balance in respect of an accommodation bond paid by the person;

(pa) the amount of any refundable deposit balance in respect of a refundable deposit paid by the person;

(q) the amount (if any) that the person has retained from a payment made to the person by the Mark Fitzpatrick Trust.

Definitions

(1AA) For the purposes of paragraphs (1)(d) and (daa):

partially asset-test exempt income stream means:

(a) an asset-test exempt income stream that:

(i) is an income stream (other than a defined benefit income stream) covered by subsection 5JA(1) or (1A), 5JB(1) or 5JBA(1); and

(ii) has a commencement day during the period from 20 September 2004 to 19 September 2007 (both dates inclusive); and

(iii) is not covered by principles (if any) determined for the purposes of this subparagraph, by legislative instrument, by the Commission; or

(b) an income stream that:

(i) has a commencement day happening on or after 20 September 2007; and

(ii) is covered by principles determined for the purposes of this subparagraph, by legislative instrument, by the Commission.

(1AB) The Commission may determine principles for the purposes of subparagraph (a)(iii) of the definition of ***partially asset-test exempt income stream*** in subsection (1AA).

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(1AC) The Commission may determine principles for the purposes of subparagraph (b)(ii) of the definition of ***partially asset-test exempt income stream*** in subsection (1AA).

(1A) For the purposes of the application of this section in relation to income support supplement, the reference in subparagraph (1)(f)(iv) to ***pension age*** is taken to be a reference to the qualifying age.

Note: For ***qualifying age*** see section 5Q.

Application of insurance etc. payments to rebuilding etc.

(1B) Subsection (1C) applies if:

(a) a person receives any insurance or compensation payments because of loss of or damage to a building (including the person's principal home) or plant; and

(b) either:

(i) if the building or plant was lost—the person applies the whole or a part of those payments to build another building or plant to replace the building or plant that was lost; or

(ii) if the building or plant was damaged—the person applies the whole or a part of those payments to rebuild, repair or renovate the building or plant.

(1C) For the purposes of paragraph (1)(oa), the amount that may be disregarded is:

(a) the value of the building or plant that is being built, rebuilt, repaired or renovated, to the extent that those payments are so applied; and

(b) if a building whose value is being disregarded under paragraph (a) of this subsection is to be the person's principal home:

(i) the value of the land on which the building is being built, rebuilt, repaired or renovated to the extent that, once the building becomes the person's principal home, the land will, under section 5LA, be included in a reference to the ***principal home***; and

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(ii) the value of any other structure, on that land, that is to be the person's principal home to the extent that the structure was built before the person began applying the payments.

(1D) For the purposes of paragraph (1)(oa), the amount worked out under subsection (1C) may be disregarded during the period:

(a) beginning when the payments are received; and

(b) ending at the earlier of the following times:

(i) 12 months, or such longer period as the Commission determines for any special reason, after that time;

(ii) when the building, rebuilding, repair or renovation of the building or plant is complete.

NDIS amounts

(1DAA) For the purposes of paragraph (1)(oaa), the amount that may be disregarded is the value of the sum of:

(a) the NDIS amounts received by the person; and

(b) any return on those amounts that the person earns, derives or receives;

less the sum of the amounts spent by the person in accordance with an NDIS plan (whether in the person's capacity as an NDIS participant or as a person managing the funding under an NDIS plan for an NDIS participant).

Native title rights and interests

(1DA) In this section:

native title rights and interests means:

(a) native title rights and interests within the meaning of section 223 of the *Native Title Act 1993*; or

(b) any rights and interests of a similar nature under any law of a State, a Territory or a foreign country (whether or not the rights and interests relate to land or waters outside Australia);

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but, to avoid any doubt, does not include any right or interest in a lease or licence, or in a freehold estate.

Application of proceeds of sale of principal home

(1E) Subsection (2) applies if:

(a) a person sells the person's principal home; and

(b) either:

(i) the person does not have a right or interest in a principal home; or

(ii) the person has a right or interest in a principal home that does not give the person reasonable security of tenure in the home; and

(c) before the end of 12 months, or any longer period determined under subsection (2A), after the sale, one or more of the following applies:

(i) the person intends to apply the whole or a part of the proceeds of the sale to build, rebuild, repair or renovate another residence that is to be the person's principal home;

(ii) the person applies the whole or a part of the proceeds of the sale to build, rebuild, repair or renovate another residence that is to be the person's principal home;

(iii) the person intends to apply the whole or a part of the proceeds of the sale to purchase another residence that is to be the person's principal home.

(2) For the purposes of this Part (other than Subdivision B of this Division and Division 3):

(a) if subparagraph (1E)(c)(i) applies—disregard the proceeds, to the extent that the person intends to apply those proceeds to build, rebuild, repair or renovate the other residence, until the earlier of the following times:

(i) the period mentioned in paragraph (1E)(c) ends;

(ii) the Commission becomes satisfied that the person has ceased to have that intention; or

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(b) if subparagraph (1E)(c)(ii) applies—disregard the value of the following, until the end of the period mentioned in paragraph (1E)(c), to the extent that the person applies those proceeds to build, rebuild, repair or renovate that other residence:
  (i) the value of the other residence;
  (ii) the value of the land on which the other residence is being built, rebuilt, repaired or renovated to the extent that, once the building becomes the person's principal home, the land will, under section 5LA, be included in a reference to the ***principal home***;
  (iii) the value of any other structure, on that land, that is to be the person's principal home to the extent that the structure was built before the person began applying those proceeds; or

(c) if subparagraph (1E)(c)(iii) applies—disregard the proceeds, to the extent that the person intends to apply those proceeds to purchase the other residence, until the earlier of the following times:
  (i) the period mentioned in paragraph (1E)(c) ends;
  (ii) the Commission becomes satisfied that the person has ceased to have that intention.

(2A) For the purposes of subsection (1E), the Commission may determine, in writing, a period of up to 24 months if:
  (a) a person who has sold his or her principal home is making reasonable attempts to purchase, build, repair or renovate another residence; and
  (b) the person has been making those attempts within a reasonable period after selling the principal home; and
  (c) the person has experienced delays beyond his or her control in purchasing, building, repairing or renovating the other residence.

Value of certain personal effects of less than $10,000

(3) For the purposes of this section, where:

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(a) the value of any assets of a person or, if the person is a member of a couple, of the person and the person's partner, that consists of the contents of a principal home and of other personal effects that are used primarily within the principal home does not exceed $10,000; and

(b) the assets are used primarily for private or domestic purposes;

the value of the assets is to be taken to be $10,000 unless the person satisfies the Commission that the value of the assets is less than $10,000.

This section subject to sections 52KA to 52X

(4) This section has effect subject to sections 52KA to 52X (special residences).

Note: The total value of the person's assets may be reduced in some circumstances if the person has an exempt bond amount (see clause 15 of Schedule 5) or a refunded amount (see clause 17D of Schedule 5).

52AA Value of superannuation investments determined by Minister to be disregarded

(1) The value of a person's investment in a superannuation fund, an approved deposit fund or an ATO small superannuation account is to be disregarded in calculating the value of the person's assets for the purposes of this Act (other than Division 3 or section 52FA, 52G, 52GA, 52H, 52JA, 52JB, 52JC, 52JD, 52ZA or 52ZCA) if the investment is specified in a determination made under subsection (2).

(2) The Minister may specify:

(a) a specified investment in a superannuation fund, an approved deposit fund or an ATO small superannuation account; or

(b) a specified class of investments in a superannuation fund, an approved deposit fund or an ATO small superannuation account;

in a determination.

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(3) A determination must be in writing.

(4) A determination takes effect on the day on which it is made or on such other day (whether earlier or later) as is specified in the determination.

52A Value of asset-tested income streams that are not defined benefit income streams, asset-tested income streams (lifetime) or family law affected income streams

(1) This section applies to a person's asset-tested income stream if it is not a defined benefit income stream, it is not an asset-tested income stream (lifetime) and it is not a family law affected income stream.

Note: For ***defined benefit income streams***, see section 52B. For ***asset-tested income streams (lifetime)***, see sections 52BAA and 52BAB. For ***family law affected income streams***, see section 52BA.

(2) The value of the income stream is, for the purposes of the assets test, worked out:

(a) if the person receives payments from the income stream 2 or more times a year—in relation to each 6 month period of the income stream's term; and

(b) if the person receives a payment from the income stream only once a year—in relation to each 12 month period of the income stream's term.

(3) If the income stream has an account balance, the value of the income stream, for the purposes of the assets test, is the value of the account balance at the beginning of the 6 month or 12 month period (as the case requires) referred to in subsection (2).

(4) If the income stream does not have an account balance, the value of the income stream is, for the purposes of the assets test, worked out as follows:

$$\text{Purchase price} - \left[\left(\frac{\text{Purchase price} - \text{Residual capital value}}{\text{Relevant number}}\right) \times \text{Term elapsed}\right]$$

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where:

purchase price has the meaning given by subsection 5J(1).

relevant number has the meaning given by subsection 5J(1).

residual capital value has the meaning given by subsection 5J(1).

term elapsed is the number of years of the term that have elapsed since the commencement day of the income stream, rounded down:

(a) in the case of an income stream referred to in paragraph (2)(a)—to the nearest half-year; and

(b) in the case of an income stream referred to in paragraph (2)(b)—to the nearest whole year.

Example: Sally is 65 years old and single. She purchases a 10 year annuity for $150,000 with a residual capital value of $20,000. Her total annual annuity payment is $18,337. Monthly payments commence on 1 January. Her assessable asset for the first six months will be:

$$\$150,000 - \left[\left(\frac{\$150,000 - \$20,000}{10 \text{ years}}\right) \times 0 \text{ year}\right] = \$150,000$$

Her assessable asset after 30 June in that year will be:

$$\$150,000 - \left[\left(\frac{\$150,000 - \$20,000}{10 \text{ years}}\right) \times 0.5 \text{ year}\right] = \$143,500$$

52B Value of asset-tested income streams that are defined benefit income streams

(1) This section applies to a person's asset-tested income stream if it is a defined benefit income stream and it is not a family law affected income stream.

Note: For ***family law affected income streams***, see section 52BA.

(2) The value of the income stream is, for the purposes of the assets test, worked out in relation to each 12 month period of the income stream's term.

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(3) The value of the income stream is, for the purposes of the assets test, worked out as follows:

Annual payment × Pension valuation factor

where:

annual payment means the amount payable to the person for the relevant 12 month period under the income stream.

pension valuation factor means the pension valuation factor that applies to the person in accordance with the determination made by the Minister under subsection (4).

(4) The Minister must, by legislative instrument, make a determination for the purposes of the definition of ***pension valuation factor*** in subsection (3).

52BAA Value of asset-tested income streams (lifetime) that are managed investments

(1) This section applies to a person's asset-tested income stream (lifetime), that does not arise under arrangements that are regulated by the *Superannuation Industry (Supervision) Act 1993*, in relation to a day that is before the person's assessment day (within the meaning of section 52BAB) for the income stream.

Note: For ***asset-tested income stream (lifetime)***, see subsection 5J(1).

(2) However, this section does not apply to a family law affected income stream.

Note: For ***family law affected income streams***, see section 52BA.

Value of income stream

(3) Subject to this section, the value of the person's income stream is, for the purposes of the assets test, the purchase amount for the income stream.

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Purchase amount

(4) For the purposes of this section, the ***purchase amount*** for the income stream is:

(a) subject to paragraph (b)—if one or more amounts have been paid for the income stream, the sum of each compounded amount in relation to an amount paid for the income stream, as worked out under subsection (5), less any commuted amounts; or

(b) if the circumstances determined in an instrument under subsection (7) apply in relation to the income stream—the amount worked out in accordance with that instrument.

(5) A ***compounded amount*** in relation to an amount paid for the income stream is worked out by applying the following formula for each relevant adjustment day (from the earliest to the latest):

$$\text{Compounded amount for the relevant adjustment day} \times \left(1 + \text{Relevant above threshold rate for the relevant adjustment day}\right)$$

where:

compounded amount for the relevant adjustment day means:

(a) for the earliest relevant adjustment day—the amount that was paid for the income stream; or

(b) for each later relevant adjustment day—the result of applying the formula for the most recent earlier relevant adjustment day.

relevant above threshold rate for the relevant adjustment day means the following:

(a) if the relevant adjustment day is the relevant payment day—zero;

(b) if the relevant adjustment day is a 12-month anniversary of the relevant payment day—the rate applicable under subsection 46J(2) for that relevant adjustment day, expressed as a decimal fraction.

relevant adjustment day means each of the following:

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(a) the relevant payment day;
(b) each 12-month anniversary of the relevant payment day.

relevant payment day means the day that the amount was paid for the income stream.

(6) If the income stream is a joint income stream, then, for the purposes of applying subsections (4) and (5) to the person and to a day covered by subsection (1), an amount paid for the income stream is taken to be that amount multiplied by the proportion of the income stream attributable to the person on that day.

(7) The Commission may make a legislative instrument for the purposes of paragraph (4)(b).

52BAB Value of asset-tested income streams (lifetime) that are not managed investments

(1) This section applies to a person's asset-tested income stream (lifetime) in relation to a day that is on or after the person's assessment day for the income stream.

Note 1: For ***asset-tested income stream (lifetime)***, see subsection 5J(1). For ***assessment day***, see subsections (6) and (7) of this section.

Note 2: This section applies separately in relation to each asset-tested income stream (lifetime) of a person.

(2) However, this section does not apply to a family law affected income stream.

Note: For ***family law affected income streams***, see section 52BA.

Value of income stream

(3) Subject to this section, the value of the person's income stream is, for the purposes of the assets test, worked out as follows:

(a) for a day in the period beginning on the person's assessment day for the income stream and ending at the end of the person's threshold day for the income stream:

Purchase amount × 0.6

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(b) for a day after the person's threshold day for the income stream:

Purchase amount × 0.3

Note: For ***threshold day***, see subsections (10) and (11). For ***purchase amount***, see subsection (13).

(4) The Commission may, by legislative instrument, determine one or more methods for working out the value of an asset-tested income stream (lifetime) for persons to whom this section applies.

(5) If one or more amounts worked out in accordance with the instrument are higher than the amount under subsection (3), then the value of the person's income stream is, for the purposes of the assets test, the highest of those amounts.

Assessment day

(6) Subject to subsection (7), for the purposes of this section, a person's ***assessment day*** for an asset-tested income stream (lifetime) is:

(a) if the income stream arises under arrangements that are regulated by the *Superannuation Industry (Supervision) Act 1993*—the latest of the following:

(i) the day the person first satisfies a condition of release that is mentioned in regulations under the *Superannuation Industry (Supervision) Act 1993* and is of a kind determined in an instrument under subsection (9);

(ii) the day the first amount was paid for the income stream;

(iii) the day the person acquired the income stream (if no amount is identifiable as having been paid for the income stream); or

(b) otherwise:

(i) if the commencement day in relation to the income stream is before the day the person reaches pension age—the commencement day in relation to the income stream; or

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(ii) in any other case—the latest of the day the first amount was paid for the income stream, the day the person reaches pension age and the day the person acquired the income stream (if no amount is identifiable as having been paid for the income stream).

Note: For ***commencement day***, see subsection 5J(1). For ***pension age***, see section 5Q.

(7) For the purposes of this section, a person's ***assessment day*** for an asset-tested income stream (lifetime) that reverted to the person as a reversionary beneficiary is:

(a) if the income stream reverted to the person on or after the commencement day in relation to the income stream—the day of the reversion; or

(b) if the income stream reverted to the person before the commencement day in relation to the income stream and the income stream arises under arrangements that are regulated by the *Superannuation Industry (Supervision) Act 1993*:

(i) if the commencement day in relation to the income stream is before the day the person first satisfies a condition of release that is mentioned in regulations under the *Superannuation Industry (Supervision) Act 1993* and is of a kind determined in an instrument under subsection (9)—the commencement day in relation to the income stream; or

(ii) in any other case—the later of the day of the reversion and the day the person first satisfies a condition of release that is mentioned in regulations under the *Superannuation Industry (Supervision) Act 1993* and is of a kind determined in an instrument under subsection (9); or

(c) if the income stream reverted to the person before the commencement day in relation to the income stream and the income stream does not arise under arrangements that are regulated by the *Superannuation Industry (Supervision) Act 1993*:

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(i) if the commencement day in relation to the income stream is before the day the person reaches pension age—the commencement day in relation to the income stream; or

(ii) in any other case—the later of the day of the reversion and the day the person reaches pension age.

Note: For ***commencement day***, see subsection 5J(1). For ***pension age***, see section 5Q.

(8) For the purposes of the application of subsection (6) or (7) in relation to income support supplement, the references in that subsection to pension age are taken to be references to qualifying age.

Note: For ***qualifying age***, see section 5Q.

(9) The Commission may, by notifiable instrument, determine a kind of condition of release for the purposes of subparagraphs (6)(a)(i) and (7)(b)(i) and (ii).

Threshold day

(10) Subject to subsection (11), for the purposes of this section, a person's ***threshold day*** for an asset-tested income stream (lifetime) is worked out using the following method statement:

Method statement

Step 1. Work out, in relation to a man aged 65 on the person's assessment day for the income stream, the number of expected years remaining in the man's life, by reference to the instrument in force under subsection (12) on that assessment day, rounded down to the nearest whole number of years.

Note: The number of expected years remaining in a 65-year old man's life is used no matter how old the person is and whether the person is a man or a woman.

Step 2. Increase the number of years at step 1 by 65.

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Step 3. Subject to step 4, the person's ***threshold day*** for the income stream is the later of the following days:

(a) the day before the person reaches the age in years worked out at step 2;

(b) the last day of the 5-year period beginning on the person's assessment day for the income stream.

Step 4. If the income stream is a joint income stream, the person's ***threshold day*** for the income stream is the later of the following days:

(a) the day before the oldest of the persons, to whom a proportion of the income stream is attributable on the person's assessment day for the income stream, reaches the age in years worked out at step 2;

(b) the last day of the 5-year period beginning on the person's assessment day for the income stream.

(11) If:

(a) an asset-tested income stream (lifetime) reverts to a person as a reversionary beneficiary on the death of another person; and

(b) before the death of the other person, the other person's assessment day for the income stream had occurred;

then:

(c) if, before the death of the other person, the other person's threshold day for the income stream had not occurred—the reversionary beneficiary's ***threshold day*** for the income stream is taken to be the day that would have been the other person's threshold day if the other person had not died; and

(d) if, before the death of the other person, the other person's threshold day for the income stream had occurred—the reversionary beneficiary's ***threshold day*** for the income stream is taken to be the other person's threshold day; and

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(e) if the reversionary beneficiary's assessment day for the income stream worked out under subsection (7) is on or after the reversionary beneficiary's threshold day for the income stream worked out under paragraph (c) or (d) of this subsection:
  (i) paragraph (3)(a) is taken not to apply to the reversionary beneficiary and the income stream; and
  (ii) paragraph (3)(b) is taken to apply to the reversionary beneficiary and the income stream for a day that is on or after the reversionary beneficiary's assessment day for the income stream.

(12) The Commission may make a notifiable instrument for the purposes of step 1 of the method statement in subsection (10). If there are Life Tables published by the Australian Government Actuary, the Commission must be satisfied that the instrument is consistent with the latest of those Life Tables.

Purchase amount

(13) For the purposes of this section, the ***purchase amount*** for the income stream is:
  (a) subject to paragraph (b)—if one or more amounts have been paid for the income stream—the sum of:
    (i) each compounded amount in relation to an amount paid for the income stream before the person's assessment day for the income stream, as worked out under subsection (14); and
    (ii) each amount paid for the income stream on or after that assessment day;

  less any commuted amounts; or
  (b) if the circumstances determined in an instrument under subsection (16) apply in relation to the income stream—the amount worked out in accordance with that instrument.

(14) A ***compounded amount*** in relation to an amount paid for the income stream before the person's assessment day for the income

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stream is worked out by applying the following formula for each relevant adjustment day (from the earliest to the latest):

$$\text{Compounded amount for the relevant adjustment day} \times \left(1 + \text{Relevant above threshold rate for the relevant adjustment day}\right)$$

where:

compounded amount for the relevant adjustment day means:

(a) for the earliest relevant adjustment day—the amount that was paid for the income stream; or

(b) for each later relevant adjustment day—the result of applying the formula for the most recent earlier relevant adjustment day.

relevant above threshold rate for the relevant adjustment day means:

(a) if the relevant adjustment day is a 12-month anniversary of the relevant payment day—the rate applicable under subsection 46J(2) for that relevant adjustment day, expressed as a decimal fraction; or

(b) if the relevant adjustment day is the assessment day—the amount worked out in accordance with the following formula:

$$\text{The rate applicable under subsection 46J(2) for that day, expressed as a decimal fraction} \times \frac{\text{Relevant number of days}}{365}$$

relevant adjustment day means each of the following:

(a) each 12-month anniversary of the relevant payment day that happens before the person's assessment day;

(b) the person's assessment day.

Note: For ***assessment day***, see subsections (6) and (7).

relevant number of days means the number of days in the period:

(a) beginning on the day after:

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(i) if the assessment day is at least 12 months after the relevant payment day—the most recent 12-month anniversary of the relevant payment day; or

(ii) otherwise—the relevant payment day; and

(b) ending at the end of the assessment day.

relevant payment day means the day that the amount was paid for the income stream.

(15) If the income stream is a joint income stream, then, for the purposes of applying subsections (13) and (14) to the person and to a day covered by subsection (1), an amount paid for the income stream is taken to be that amount multiplied by the proportion of the income stream attributable to the person on that day.

(16) The Commission may make a legislative instrument for the purposes of paragraph (13)(b).

52BA Value of asset-tested FLA income streams

(1) This section applies to family law affected income streams.

(2) The value of an income stream that is not a defined benefit income stream is, for the purposes of the assets test, determined by the Commission.

(3) The value of an income stream that is a defined benefit income stream is, for the purposes of the assets test, determined by the Commission.

(4) In making a determination under subsection (2) or (3), the Commission must comply with any relevant decision-making principles in force under subsection (5).

(5) The Commission may, by legislative instrument, formulate principles (***decision-making principles***) to be complied with by it in making decisions under:

(a) subsection (2); or

(b) subsection (3).

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52BB Value of partially asset-test exempt income streams

(1) This section applies to income streams covered by paragraph 52(1)(daa).

(2) The value of such an income stream is, for the purposes of paragraph 52(1)(daa), worked out as follows:
  (a) if the income stream is a family law affected income stream—under section 52BA;
  (b) otherwise—under section 52A;

as if the income stream were an asset-tested income stream to which that section applied.

52BC Value of superannuation reserves for superannuation funds of 4 members or less

(1) This section applies in calculating the value of a person's investment in a superannuation fund if:
  (a) the fund has 4 or fewer members; and
  (b) the fund has reserves (within the meaning of section 115 of the *Superannuation Industry (Supervision) Act 1993*).

Note: The value of a person's investment in a superannuation fund is only included in the value of the person's assets after the person reaches pension age or starts to receive a pension or annuity out of the fund (see paragraph 52(1)(f)).

(2) Despite paragraph 52(1)(g), the value of the person's investment in the superannuation fund includes the following amount:

$$\frac{\text{Person's interest in the fund}}{\text{Total interest in the fund}} \times \text{Value of the fund's reserves}$$

(3) However, if it is not possible to work out the person's interest in the superannuation fund, the value of the person's investment in the fund includes the following amount:

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$$\frac{\text{Value of the fund's reserves}}{\text{Number of members in the fund}}$$

52C Effect of charge or encumbrance on value of assets

(1) Where there is a charge or encumbrance over particular assets of the person, the value of the assets, for the purposes of calculating the value of the person's assets for the purposes of this Act (other than Division 3 and sections 52G, 52H, 52JA, 52JB, 52JC and 52JD), is to be reduced by the value of that charge or encumbrance.

Note: This section does not apply to an asset to which section 52CA (primary production assets) applies.

(1A) Subsection (1) does not apply to a charge that arises under section 52ZF.

Note: See subsection (5) for a charge that arises under section 52ZF.

(2) Subsection (1) does not apply to a charge or encumbrance over an asset of a person to the extent that:

(a) the charge or encumbrance is a collateral security; or

(b) the charge or encumbrance was given for the benefit of a person other than the person or the person's partner.

(3) Subsection (1) does not apply to a charge or encumbrance over assets that are to be disregarded under section 52.

Exception for an asset-tested income stream (long-term)

(3A) Subsection (1) does not apply to an asset that is an asset-tested income stream (long-term).

(3B) Subsection (1) does not apply to an asset that is a partially asset-test exempt income stream (within the meaning of section 52).

(3C) Subsection (1) does not apply to an asset that is an asset-tested income stream (lifetime).

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(4) Where:
  (a) there is a charge or encumbrance over assets; and
  (b) the charge does not arise under section 52ZF; and
  (c) the assets consist of assets whose value is to be disregarded under section 52 and other assets;

the amount to be deducted under subsection (1) is:

$$\frac{\text{Value of the charge or encumbrance} \times \text{Value of the other assets}}{\text{Value of all the assets}}$$

(5) If:
  (a) a person is or was participating in the pension loans scheme; and
  (b) either:
    (i) the person's real assets are subject to a charge under section 52ZF; or
    (ii) if the person is a member of a couple—the couple's real assets are subject to a charge under section 52ZF;

then the value of those real assets, for the purposes of calculating the value of the person's assets for the purposes of this Act (other than Division 3 and sections 52G, 52H, 52JA, 52JB, 52JC and 52JD), is to be reduced by the amount of the debt owed by the person under section 52ZC because of that participation.

Note: If there are other charges or encumbrances over any of those real assets, there may be a further reduction under subsection (1) in the value of those assets.

(6) This section has effect subject to sections 52KA to 52X (special residences).

52CA Effect of certain liabilities on value of assets used in primary production

(1) For the purposes of working out the value of a person's assets under this Act, if:
  (a) the person is:

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(i) a primary producer; or
(ii) a family member of a primary producer; and

(b) the person has assets (including real property) that are, in the Commission's opinion, used for the purposes of carrying on that primary production; and

(c) the person also has liabilities that are, in the Commission's opinion, related to the carrying on of the primary production;

then:

(d) section 52C does not apply in relation to the assets referred to in paragraph (b); and

(e) those assets are taken to be a single asset (the ***primary production asset***); and

(f) the value of that single asset is worked out under subsection (2).

Note: For ***family member*** see subsection 5L(1).

(2) The value of a person's primary production asset is worked out in the following way:

Method statement

Step 1. Add together the value of the assets referred to in paragraph (1)(b): the result is called the ***unencumbered value***.

Step 2. Add together the value of the liabilities referred to in paragraph (1)(c): the result is called the ***total liability***.

Step 3. Take the total liability away from the unencumbered value: the result is the value of the person's primary production asset.

(3) If the result under Step 3 of the Method statement is less than nil, the value of the primary production asset is taken to be nil.

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52CB Value of life policy

(1) This section applies in relation to a person and a day (the ***assessment day***) if:

(a) the person has reached:

(i) pension age; or

(ii) in relation to income support supplement—qualifying age; and

(b) the person is the owner (within the meaning of subsection 10(2) of the *Life Insurance Act 1995*) of a life policy covered by paragraph 9(1)(a) or (b) of that Act; and

(c) the person became the owner of the policy after the person reached that age; and

(d) the sum of each amount paid for the policy (regardless of who paid the amount) in any period of 12 months exceeds 15% of the maximum death benefit that would be payable in the event of the death of the person whose life is insured on the assessment day.

Note: For ***pension age*** and ***qualifying age***, see section 5Q.

(2) The value of the life policy on the assessment day is, for the purposes of the assets test, the higher of the following:

(a) the amount that would be payable to the person covered by paragraph (1)(b) if the policy were surrendered on that day;

(b) the sum of each amount paid for the policy by the person covered by paragraph (1)(b), less any commuted amounts.

52D Loans

If a person lends an amount after 22 May 1986, the value of the assets of the person for the purposes of this Act includes so much of that amount as remains unpaid but does not include any amount payable by way of interest under the loan.

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Subdivision B—Dispositions of assets (general provisions)

52E Disposal of assets

For the purposes of this Act, a person ***disposes of assets*** of the person if the person engages in a course of conduct that diminishes, directly or indirectly, the value of the person's assets and:

(a) the person receives no consideration in money or money's worth for the diminution in the value of the person's assets; or

(b) the person receives inadequate consideration in money or money's worth for the diminution in the value of the person's assets; or

(c) the Commission is satisfied that the purpose, or the dominant purpose, of the person in engaging in that course of conduct was:

(i) to obtain or enable the person's partner to obtain a service pension, income support supplement, a veteran payment or a social security pension or benefit; or

(ii) to obtain or enable the person's partner to obtain a service pension, income support supplement, a veteran payment or a social security pension or benefit at a higher rate than that which would otherwise have been payable; or

(iii) to ensure that the person or the person's partner would be eligible for benefits under Division 12 of this Part or fringe benefits under the Social Security Act.

Note: Under Subdivision B of Division 11A of Part IIIB, certain transfers of assets to special disability trusts can be taken not to be disposals of the assets (but this can be subject to a limit on the aggregate value of the transfers).

52F Amount of disposition

Where a person disposes of assets, the ***amount of the disposition*** is:

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(a) if the person receives no consideration for the diminution in the value of the assets—an amount equal to the amount of the diminution in the value of the assets; or

(b) if the person receives consideration for the diminution in the value of the assets—an amount equal to the amount of the diminution in the value of the assets less the amount of the consideration received by the person in respect of the diminution.

Note: If subsection 52ZZZWM(2) applies in relation to the transfer of an asset to a special disability trust, that subsection has the effect of reducing the amount of the disposal or disposition.

52FAAA Application of asset deprivation rules to cease in respect of certain assets

If:

(a) a person, or a person's partner, has:

(i) acquired an asset; or

(ii) received consideration that is not inadequate consideration for an asset; and

(b) the value of the asset is included in the value of the person's assets by Subdivision BA or BB because of a previous disposition of the asset; and

(c) the person has, by document lodged at an office of the Department in Australia in accordance with section 5T, notified the Department of the circumstances covered by paragraphs (a) and (b);

whichever of Subdivisions BA and BB is applicable ceases, from the start of the day on which the document is lodged, to apply in respect of that disposition of the asset.

Subdivision BA—Dispositions of assets before 1 July 2002

52FAA Application

This Subdivision applies only to dispositions of assets that took place before 1 July 2002.

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52FA Disposal of assets in pre-pension years—not a member of a couple

(1) If:

(a) a person is not a member of a couple when the person claims a service pension, an income support supplement or a social security pension; and

(b) the person disposes of an asset of the person during a pre-pension year of the person; and

(c) the amount of that disposition, or the sum of that amount and of the amounts (if any) of other dispositions of assets previously made by the person during that pre-pension year, exceeds $10,000;

then, for the purposes of determining whether the pension is payable to the person, there is to be included in the value of the person's assets for the period of 5 years that starts on the day on which the disposition took place:

(d) the amount by which the sum of the amount of the first-mentioned disposition of assets and of the amounts (if any) of other dispositions of assets previously made by the person during that pre-pension year exceeds $10,000; or

(e) the amount of the first-mentioned disposition;

whichever is the lesser amount.

Note 1: For ***disposes of assets*** see section 52E.

Note 2: For ***amount of disposition*** see section 52F.

Note 3: If a pension is payable to the person, section 52G operates to determine the rate of payment and section 52FA ceases to apply to the person.

52G Disposal of assets in pension years—not a member of a couple

(1) If, on or after 1 March 1986 and before 1 July 2002:

(a) a person who is not a member of a couple has, during a pension year of the person, disposed of assets of the person; and

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(b) the amount of that disposition of assets, or the sum of that amount and of the amounts (if any) of other dispositions of assets previously made by the person during that pension year, exceeds $10,000;

then, for the purposes of this Act, there is to be included in the value of the person's assets for the period of 5 years that starts on the day on which the disposition takes place:

(c) the amount by which the sum of the amount of the first-mentioned disposition of assets, and of the amounts (if any) of other dispositions of assets previously made by the person during that pension year, exceeds $10,000; or

(d) the amount of the first-mentioned disposition of assets;

whichever is the lesser amount.

52GA Disposal of assets in pre-pension years—members of couples

(1) Subject to subsections (3), (4) and (5), if:

(a) a person disposes of an asset; and

(b) the person is a member of a couple when the person or the person's partner claims a service pension, an income support supplement or a social security pension; and

(c) the person disposes of the asset:

(i) during a pre-pension year of the person; or

(ii) if the person does not claim a service pension, an income support supplement or a social security pension but the person's partner claims such a pension—during a pre-pension year of the person's partner; and

(d) the amount of that disposition, or the sum of that amount and the amounts (if any) of other dispositions of assets previously made by the person or the person's partner during that pre-pension year, exceeds $10,000;

then, for the purposes of determining whether the pension is payable to the person:

(e) there is to be included in the value of the person's assets for the period of 5 years that starts on the day on which the disposition took place:

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(i) 50% of the amount by which the sum of the amount of the first-mentioned disposition and of the amounts (if any) of other dispositions of assets previously made by the person or the person's partner during that pre-pension year exceeds $10,000; or

(ii) 50% of the amount of the first-mentioned disposition;

whichever is the lesser amount; and

(f) there is to be included in the value of the assets of the person's partner for the period of 5 years that starts on the day on which the disposition took place:

(i) 50% of the amount by which the sum of the amount of the first-mentioned disposition and of the amounts (if any) of other dispositions of assets previously made by the person or the person's partner during that pre-pension year exceeds $10,000; or

(ii) 50% of the amount of the first-mentioned disposition;

whichever is the lesser amount.

Note 1: For ***disposes of assets*** see section 52E.

Note 2: For ***amount of disposition*** see section 52F.

Note 3: If a pension is payable to the person, section 52H operates to determine the rate of payment and section 52GA ceases to apply to the person.

(3) If:

(a) amounts are included under subsection (1) in the value of the assets of a person who is a member of a couple and in the value of the assets of the person's partner because of a disposition of an asset by the person; and

(b) the person and the person's partner cease to be members of the same couple;

any amount that was included in the value of the person's former partner's assets because of that disposition is to be included in the value of the person's assets.

(4) If:

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(a) an amount is included under subsection (1) in the value of the assets of a person who is a member of a couple and in the value of the assets of the person's partner because of a disposition of an asset by the person; and

(b) the person dies;

an amount is not to be included in the value of the assets of the person's partner because of that disposition.

(5) If:

(a) an amount is included under subsection (1) in the value of the assets of a person who is a member of a couple and in the value of the assets of the person's partner because of a disposition of an asset by the person; and

(b) the partner dies;

any amount that would, if the partner had not died, be included in the value of the partner's assets because of the disposition is to be included in the value of the person's assets.

52H Disposal of assets in pension years—members of couples

(1) Subject to subsections (3) and (4), where, on or after 1 March 1986 and before 1 July 2002:

(a) a person who is a member of a couple has disposed of assets of the person:

(i) during a pension year of the person; or

(ii) if the person is not receiving a service pension, income support supplement or a social security pension but the person's partner is receiving such a pension—during a pension year of the person's partner; and

(b) the amount of that disposition of assets, or the sum of that amount and the amounts (if any) of other dispositions of assets previously made by the person or the person's partner during that pension year, exceeds $10,000;

then, for the purposes of this Act:

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(c) there is to be included in the value of the person's assets for the period of 5 years that starts on the day on which the disposition takes effect:
  (i) 50% of the amount by which the sum of the amount of the first-mentioned disposition of the assets and of the amounts (if any) of other dispositions of assets previously made by the person or the person's partner during the pension year exceeds $10,000; or
  (ii) 50% of the amount of the first-mentioned disposition of assets;

  whichever is the lesser amount; and

(d) there is to be included in the value of the assets of the person's partner for the period of 5 years that starts on the day on which the disposition takes place:
  (i) 50% of the amount by which the sum of the amount of the first-mentioned disposition of the assets and of the amounts (if any) of other dispositions of assets previously made by the person or the person's partner during the pension year exceeds $10,000; or
  (ii) 50% of the amount of the first-mentioned disposition of assets;

  whichever is the lesser amount.

(3) Where:
  (a) amounts are included under subsection (1) in the value of a person's assets who is a member of a couple and in the assets of the person's partner because of a disposition of assets by the person; and
  (b) the person and the person's partner cease to be members of the same couple;

  any amount that was included in the value of the person's former partner's assets because of that disposition is to be included in the value of the person's assets.

(4) Where:
  (a) an amount is included under subsection (1) in the value of the assets of a person who is a member of a couple and the value

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of the assets of the person's partner because the person has disposed of an asset; and

(b) the person dies;

no amount is to be included in the value of the assets of the person's partner because of that disposition.

(5) Where:

(a) an amount is included under subsection (1) in the value of the assets of a person who is a member of a couple and in the value of the assets of the person's partner because the person has disposed of an asset; and

(b) the person's partner dies;

any amount that would, if the person's partner had not died, be included in the value of the assets of the person's partner because of the disposition is to be included in the value of the person's assets.

52J Dispositions more than 5 years old to be disregarded

This Subdivision does not apply to a disposition of assets that took place:

(a) more than 5 years before the time when:

(i) the person who disposed of those assets; or

(ii) if that person was, at the time when that disposition took place, a member of a couple—that person's partner;

became eligible to receive a service pension or income support supplement; or

(b) less than 5 years before the time referred to in paragraph (a) and before the time when the Commission is satisfied that the person who disposed of those assets could reasonably have expected that the person or the person's partner would become eligible to receive a service pension or income support supplement.

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Subdivision BB—Dispositions of assets on or after 1 July 2002

52JA Disposition of assets in tax year—individuals

Dispositions to which section applies

(1) This section applies to a disposition (the ***relevant disposition***) on or after 1 July 2002 of an asset by a person who is not a member of a couple at the time of the relevant disposition.

Increase in value of assets

(2) If the amount of the relevant disposition, or the sum of that amount and the amounts (if any) of other dispositions of assets previously made by the person during the tax year in which the relevant disposition took place, exceeds $10,000, then, for the purposes of this Act, the lesser of the following amounts is to be included in the value of the person's assets for the period of 5 years starting on the day on which the relevant disposition took place:
   (a) the amount of the relevant disposition;
   (b) the amount by which the sum of the amount of the relevant disposition and the amounts (if any) of other dispositions of assets previously made by the person during the tax year in which the relevant disposition took place, exceeds $10,000.

Previous joint dispositions

(3) If, during the tax year in which the relevant disposition took place but before the time of the relevant disposition, the person was a member of a couple who jointly disposed of an asset, a reference in subsection (2) to the amounts (if any) of other dispositions of assets previously made by the person during that tax year includes a reference to one-half of the amount of the joint disposition.

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52JB Dispositions of assets in 5 year period—individuals

Disposition to which section applies

(1) This section also applies to a disposition (the ***relevant disposition***) on or after 1 July 2002 of an asset by a person who is not a member of a couple at the time of the relevant disposition.

Increase in value of assets

(2) If:

(a) the sum of the amount of the relevant disposition and the amounts of any previous dispositions of assets made during the rolling period by the person;

less

(b) the sum of any amounts included in the value of the person's assets during the rolling period under section 52JA, 52JC or 52JD or any previous application or applications of this section;

exceeds $30,000, then, for the purposes of this Act, the lesser of the following amounts is to be included in the value of the person's assets for the period of 5 years starting on the day on which the relevant disposition took place:

(c) an amount equal to the excess;

(d) the amount of the relevant disposition.

Previous joint dispositions

(3) If, during the rolling period but before the time of the relevant disposition, the person was a member of a couple who jointly disposed of an asset, the reference in paragraph (2)(a) to the amounts of any previous dispositions during the rolling period of assets by the person includes a reference to one-half of the amount of the joint disposition.

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Rolling period

(4) For the purposes of this section, the ***rolling period*** is the period comprising the tax year in which the relevant disposition took place and such (if any) of the 4 previous tax years as occurred after 30 June 2002.

52JC Disposition of assets in tax year—members of couples

Dispositions to which section applies

(1) If there is a disposition (the ***relevant disposition***) on or after 1 July 2002 of an asset by:
   (a) a person who, at the time of the relevant disposition, is a member of a couple; or
   (b) the person referred to in paragraph (a) and the person who is, at that time, the partner of the person referred to in that paragraph;

   subsection (2) has effect.

Increase in value of assets

(2) Subject to this section, if the amount of the relevant disposition, or the sum of that amount and the amounts (if any) of other dispositions of assets previously made by the person, the person's partner, or the person and the person's partner, during the tax year in which the relevant disposition took place (whether before or after they became members of the couple), exceeds $10,000, then, for the purposes of this Act, the lesser of the following amounts is to be included in the value of the assets of the person and in the value of the assets of the partner for the period of 5 years starting on the day on which the relevant disposition took place:
   (a) one-half of the amount of the relevant disposition;
   (b) one-half of the amount by which the sum of the amount of the relevant disposition, and the amounts (if any) of other dispositions of assets previously made by the person, the partner, or the person and the partner, during the tax year in which the relevant disposition took place, exceeds $10,000.

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Effect of ceasing to be member of couple

(3) If, after the disposition referred to in paragraph (1)(a), the person and the person's partner cease to be members of the same couple:
   (a) no amount is to be included after the cessation in the value of the assets of the former partner because of that disposition; and
   (b) any amount that would, apart from this subsection, have been so included is to be included in the value of the assets of the person.

Effect of death of person

(4) If, after the disposition referred to in paragraph (1)(a), the person dies, no amount is to be included in the value of the assets of the person's partner because of that disposition.

Effect of death of partner

(5) If, after the disposition referred to in paragraph (1)(a), the person's partner dies, any amount that, if the partner had not died, would have been included in the value of the assets of the partner because of that disposition is to be included in the value of the assets of the person.

52JD Disposition of assets in 5 year period—members of couples

Dispositions to which section applies

(1) If there is a disposition (the ***relevant disposition***) on or after 1 July 2002 of an asset by:
   (a) a person who, at the time of the relevant disposition, is a member of a couple; or
   (b) the person referred to in paragraph (a) and the person who is, at that time, the partner of the person referred to in that paragraph;

subsection (2) has effect.

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Increase in value of assets

(2) Subject to this section, if:

(a) the sum of the amount of the relevant disposition and the amounts of any previous dispositions of assets made during the rolling period by the person, the person's partner or the person and the person's partner;

less

(b) the sum of any amounts included in the value of the assets of the person or of the partner during the rolling period under section 52JA, 52JB or 52JC or any previous application or applications of this section;

exceeds $30,000, then, for the purposes of this Act, the lesser of the following amounts is to be included in the value of the assets of the person and in the value of the assets of the partner for the period of 5 years starting on the day on which the relevant disposition took place:

(c) an amount equal to one-half of the excess;

(d) one-half of the amount of the relevant disposition.

Effect of ceasing to be member of couple

(3) If, after the disposition referred to in paragraph (1)(a), the person and the person's partner cease to be members of the same couple:

(a) no amount is to be included after the cessation in the value of the assets of the former partner because of that disposition; and

(b) any amount that would, apart from this subsection, have been so included is to be included in the value of the assets of the person.

Effect of death of person

(4) If, after the disposition referred to in paragraph (1)(a), the person dies, no amount is to be included in the value of the assets of the person's partner because of that disposition.

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Effect of death of partner

(5) If, after the disposition referred to in paragraph (1)(a), the person's partner dies, any amount that, if the partner had not died, would have been included in the value of the assets of the partner because of that disposition is to be included in the value of the assets of the person.

Rolling period

(6) For the purposes of this section, the ***rolling period*** is the period comprising the tax year in which the relevant disposition took place and such (if any) of the 4 previous tax years as occurred after 30 June 2002.

52JE Certain dispositions to be disregarded

This Subdivision does not apply to a disposition of assets that took place:

(a) more than 5 years before the time when:
  (i) the person who disposed of those assets; or
  (ii) if that person was, at the time when that disposition took place, a member of a couple—that person's partner;

  became eligible to receive a service pension, income support supplement or a veteran payment; or

(b) less than 5 years before the time referred to in paragraph (a) and before the time when the Commission is satisfied that the person who disposed of those assets could reasonably have expected that the person or the person's partner would become eligible to receive a service pension, income support supplement or a veteran payment.

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Subdivision C—Provisions relating to special residences and special residents

52KA Application of Subdivision to granny flat residents

This Subdivision applies to a granny flat resident only if the resident acquired or retained the person's granny flat interest in the person's principal home on or after 22 August 1990.

52L Basis for different treatment

This Subdivision's operation on a special resident depends on:

(a) whether the resident is:
  (i) not a member of a couple; or
  (ii) a member of an ordinary couple; or
  (iii) a member of an illness separated couple; or
  (iv) a member of an ordinary couple with different principal homes; and
(b) the resident's entry contribution; and
(c) the resident's extra allowable amount.

52M Entry contribution

(1) A special resident's entry contribution is:
  (a) if the resident is not a member of a couple—the resident's individual residence contribution; or
  (b) if the resident is a member of a couple, shares the resident's principal home with the resident's partner and is not a member of an illness separated couple—an amount equal to 50% of the resident's individual residence contribution and of the partner's individual residence contribution; or
  (c) if the resident is a member of an illness separated couple—the resident's individual residence contribution; or
  (d) if:
    (i) the resident is a member of an ordinary couple with different principal homes; and

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(ii) the principal home of the resident's partner is not a special residence;

the resident's individual residence contribution; or

(e) if:

(i) the resident is a member of an ordinary couple with different principal homes; and

(ii) the principal home of the resident's partner is also a special residence;

an amount equal to 50% of the resident's individual residence contribution and of the partner's individual residence contribution.

(1A) A special resident's entry contribution is the resident's individual residence contribution plus the amount paid, or agreed to be paid, for the resident's current right (if any) to share the resident's principal home with a partner if:

(a) the resident was a member of a couple at the time when the resident took up residence in the retirement village or granny flat; and

(b) the resident has ceased to be a member of a couple.

(1B) A special resident's entry contribution is the resident's individual residence contribution if:

(a) the resident was a member of a couple at the time when the sale leaseback agreement was entered into; and

(b) the resident has ceased to be a member of a couple.

(1C) For the purposes of this Division, the ***individual residence contribution*** is:

(a) for a retirement village resident—the total amount paid, or agreed to be paid, for the resident's current right to live in the retirement village; and

(b) for a granny flat resident—the total amount paid, or agreed to be paid, for the resident's current right to live in the granny flat; and

(c) for a sale leaseback resident—the deferred payment amount.

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Note: For ***deferred payment amount*** see section 5MB.

(1D) For the purposes of paragraph (1C)(b):

(a) the total amount paid to obtain a person's current right to live in a granny flat is the amount equal to the value of the person's granny flat interest; and

(b) the value of a person's granny flat interest is:

(i) unless subparagraph (ii) applies—the amount paid, or agreed to be paid, for the interest; or

(ii) if the Commission considers that, for any special reason in any particular case, that value should be another amount—that other amount.

(2) An amount that is rent or a residential care charge for the purposes of this Act is to be disregarded in applying subsections (1), (1A) and (1B).

Note: For ***residential care charge***, see subsection 5N(1).

52N Extra allowable amount

Retirement village residence taken up before 12 June 1989

(1) If a retirement village resident became entitled to take up residence in the retirement village before 12 June 1989, the resident's ***extra allowable amount*** is:

(a) if the resident is not a member of a couple—$64,000; or

(b) if the resident is a member of an illness separated couple—$64,000; or

(c) in any other case—$32,000.

Retirement village residence taken up on or after 12 June 1989

(2) If a retirement village resident became entitled to take up residence in the retirement village on or after 12 June 1989, the resident's ***extra allowable amount*** is:

(a) if the resident is not a member of a couple—the amount that, as at the time when the person becomes entitled to take up

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that residence, is the difference between the ***single*** property owner AVL and the ***single*** non-property owner AVL; or

(b) if the resident is a member of an illness separated couple—the amount that, as at the time when the person becomes entitled to take up that residence, is the difference between the ***single*** AVL and the ***single*** non-property owner AVL; or

(c) in any other case—the amount that, as at the time when the person becomes entitled to take up that residence, is the difference between the ***partnered*** property owner AVL and the ***partnered*** non-property owner AVL.

Granny flat residence

(2A) A granny flat resident's extra allowable amount is:

(a) if the resident is not a member of a couple—the amount that, as at the time when the resident becomes entitled to the granny flat interest, is the difference between the pension ***single*** property owner AVL and the pension ***single*** non-property owner AVL; or

(b) if the resident is a member of an illness separated couple—the amount that, as at the time when the resident becomes entitled to the granny flat interest, is the difference between the pension ***single*** property owner AVL and the pension ***single*** non-property owner AVL; or

(c) in any other case—the amount that, as at the time when the resident becomes entitled to the granny flat interest, is the difference between the pension ***partnered*** property owner AVL and the pension ***partnered*** non-property owner AVL.

Sale leaseback home

(2B) A sale leaseback resident's ***extra allowable amount*** is:

(a) if the resident is not a member of a couple—the amount that, as at the time when the sale leaseback agreement is entered into, is the difference between the pension (single) property owner AVL and the pension (single) non-property owner AVL; or

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(b) if the resident is a member of an illness separated couple—the amount that, as at the time when the sale leaseback agreement is entered into, is the difference between the pension (single) property owner AVL and the pension (single) non-property owner AVL; or

(c) in any other case—the amount that, as at the time when the sale leaseback agreement is entered into, is the difference between the pension (partnered) property owner AVL and the pension (partnered) non-property owner AVL.

(3) For the purposes of this section, a person becomes entitled to take up residence in a retirement village when the person becomes entitled to take up residence in a retirement village pursuant to the agreement under which the person's current right to live in the retirement village arises.

(4) In this section, ***pension "single" property owner AVL***, ***pension "single" non-property owner AVL***, ***pension "partnered" property owner AVL*** and ***pension "partnered" non-property owner AVL*** have the same meaning as in Division 18.

52P Renegotiation of retirement village agreement

If a person who has a right to live in a retirement village under an agreement enters into a new agreement under which the person obtains a right to live in the retirement village, then, for the purposes of this Division, the total amount paid, or agreed to be paid, for the person's current right to live in the retirement village is the sum of the following amounts:

(a) the total amount paid under the new agreement for that right;

(b) so much (if any) of:

(i) any amount paid under an earlier agreement to obtain a right for the person to live in the retirement village; and

(ii) any amount that was, or would have been, payable to the person upon the termination of an earlier agreement;

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as ought, in the Commission's opinion, to be attributed to the cost of the person's current right to live in the retirement village.

52Q Residents who are not members of a couple

(1) This section applies to a special resident who is not a member of a couple.

Entry contribution more than extra allowable amount

(2) Where:
  (a) this section applies to a special resident; and
  (b) the person's entry contribution was more than the extra allowable amount;

the person is to be taken, for the purposes of this Act, to be a property owner.

Entry contribution equal to or below extra allowable amount

(3) Where:
  (a) this section applies to a special resident; and
  (b) the person's entry contribution was equal to or less than the extra allowable amount;

then, for the purposes of this Act:
  (c) the person is to be taken not to have a right or interest in relation to the person's principal home; and
  (d) the person's assets are to be taken to include an asset the value of which is equal to the amount of the person's entry contribution; and
  (e) subsection 52(1) and sections 52G, 52JA and 52JB do not apply to an asset that the person is, because of paragraph (d) of this subsection, to be taken to have.

(4) Subsection (3) applies:
  (a) whether or not the person actually has any right or interest in the person's principal home; and

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(b) whatever the value of any right or interest that the person does have in the person's principal home.

52R Members of couples

(1) This section applies to a special resident if:
  (a) the resident is a member of a couple; and
  (b) the resident shares the person's principal home with the resident's partner.

Entry contribution more than extra allowable amount

(2) Where:
  (a) this section applies to a special resident; and
  (b) the person's entry contribution was more than the extra allowable amount;

the person is to be taken, for the purposes of this Act, to be a property owner.

Entry contribution equal to or below extra allowable amount

(3) Where:
  (a) this section applies to a special resident; and
  (b) the person's entry contribution was equal to or less than the extra allowable amount;

then, for the purposes of this Act:
  (c) the person is to be taken not to have a right or interest in relation to the person's principal home; and
  (d) the person's assets are to be taken to include an asset the value of which is equal to the amount of the person's entry contribution; and
  (e) subsection 52(1) and section 52H do not apply to an asset that the person is, because of paragraph (d) of this subsection, to be taken to have.

(4) Subsection (3) applies:

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(a) whether or not the person actually has any right or interest in the person's principal home; and
(b) whatever the value of any right or interest that the person does have in the person's principal home.

52S Members of illness separated couple (both in special residences)

(1) This section applies to a special resident if:
(a) the resident is a member of an illness separated couple; and
(b) the principal home of the resident's partner is also a special residence.

Both entry contributions above extra allowable amount

(2) Where:
(a) this section applies to a special resident; and
(b) the person's entry contribution, and the entry contribution of the person's partner, were each more than the extra allowable amount concerned;

then, for the purposes of this Act:
(c) the person is to be taken to be a property owner; and
(d) any right or interest of the person in the principal home of the person's partner is to be disregarded in calculating the actual value of the person's assets; and
(e) any right or interest of the person's partner in his or her principal home, or in the person's principal home, is to be disregarded in calculating the actual value of the partner's assets.

Both entry contributions equal to or below extra allowable amount

(3) Where:
(a) this section applies to a special resident; and
(b) the person's entry contribution, and the entry contribution of the person's partner, were each equal to or less than the extra allowable amount concerned;

then, for the purposes of this Act:

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(c) the person is to be taken not to have a right or interest in relation to the person's principal home; and

(d) the person's assets are to be taken to include an asset the value of which is equal to the amount of the person's entry contribution; and

(e) subsection 52(1) and section 52H do not apply to the asset that the person is, because of paragraph (d) of this subsection, taken to have.

(4) Subsection (3) applies:

(a) whether or not the person actually has any right or interest in the person's principal home; and

(b) whatever the value of any right or interest that the person does have in the person's principal home.

Person's entry contribution above extra allowable amount/partner's entry contribution equal to or below extra allowable amount

(5) Where:

(a) this section applies to a special resident; and

(b) the person's entry contribution was more than the extra allowable amount; and

(c) the person's partner's entry contribution was equal to or less than the extra allowable amount;

the following provisions apply for the purposes of the application of this Act to the person and to the person's partner:

(d) the person is to be taken to be a property owner;

(e) both the person, and the person's partner, are taken not to have a right or interest in relation to the partner's principal home;

(ea) the assets of the person's partner are taken to include an asset whose value is equal to the amount of the partner's entry contribution;

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(eb) subsection 52(1) and section 52H do not apply to the asset that the person's partner is, because of paragraph (ea), taken to have;

(f) any right or interest of the person's partner in the person's principal home is to be disregarded in calculating the actual value of the partner's assets;

(g) the assets value limit for the person and the person's partner is to be taken to be $237,500.

Note: The amount in paragraph (g) is adjusted annually (see section 59J).

(6) Subsection (5) applies:

(a) whether or not the person's partner actually has any right or interest in the partner's principal home; and

(b) whatever the value of any right or interest that the partner does have in the partner's principal home.

52T Members of illness separated couple (partner not in special residence and partner property owner)

(1) This section applies to a special resident if:

(a) the resident is a member of an illness separated couple; and

(b) the principal home of the resident's partner is not a special residence; and

(c) the right or interest of the resident's partner in the partner's principal home is to be disregarded because of paragraph 52(1)(b).

Entry contribution more than extra allowable amount

(2) Where:

(a) this section applies to a special resident; and

(b) the person's entry contribution was more than the extra allowable amount;

then:

(c) for the purposes of this Act, the person is to be taken to be a property owner; and

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(d) any right or interest of the person in the principal home of the person's partner referred to in paragraph (1)(c) is to be disregarded in calculating the actual value of the person's assets for the purposes of this Act; and

(e) any right or interest of the person's partner in the person's principal home is also to be disregarded in calculating the actual value of the assets of the person's partner for the purposes of this Act.

Entry contribution equal to or below extra allowable amount

(3) Where:

(a) this section applies to a special resident; and

(b) the person's entry contribution was equal to or less than the extra allowable amount;

the following provisions apply for the purposes of the application of this Act to the person and to the person's partner:

(c) both the person, and the person's partner, are taken not to have a right or interest in relation to the person's principal home;

(ca) the person's assets are taken to include an asset whose value is equal to the amount of the person's entry contribution;

(cb) subsection 52(1) and section 52H do not apply to the asset that the person is, because of paragraph (ca), taken to have;

(d) any right or interest of the person in the principal home of the person's partner referred to in paragraph (1)(c) is to be disregarded in calculating the actual value of the person's assets;

(e) the assets value limit of the person and the person's partner is to be taken to be $237,500.

Note: The amount in paragraph (e) is adjusted annually (see section 59J).

(4) Subsection (3) applies:

(a) whether or not the person actually has any right or interest in the person's principal home; and

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(b) whatever the value of any right to interest that the person does have in the person's principal home.

52U Members of illness separated couple (partner not in special residence and partner not property owner)

(1) This section applies to a special resident if:
  (a) the resident is a member of an illness separated couple; and
  (b) the principal home of the resident's partner is not a special residence; and
  (c) the resident's partner does not have a right or interest in the partner's principal home that is to be disregarded because of paragraph 52(1)(b).

Entry contribution more than extra allowable amount

(2) Where:
  (a) this section applies to a special resident; and
  (b) the person's entry contribution was more than the extra allowable amount;

the following provisions apply for the purposes of the application of this Act to the person and to the person's partner:
  (c) the person is to be taken to be a property owner;
  (d) any right or interest of the person's partner in the person's principal home is to be disregarded in calculating the actual value of the partner's assets;
  (e) the assets value limit of the person and the person's partner is to be taken to be $237,500.

Note: The amount in paragraph (e) is adjusted annually (see section 59J).

(3) Subsection (2) applies:
  (a) whether or not the person actually has any right or interest in the person's principal home; and
  (b) whatever the value of any right or interest that the person does have in the person's principal home.

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Entry contribution equal to or below extra allowable amount

(4) Where:
  (a) this section applies to a special resident; and
  (b) the person's entry contribution was equal to or less than the extra allowable amount;

then, the following provisions apply for the purposes of the application of this Act to the person and to the person's partner:
  (c) both the person, and the person's partner, are to be taken not to have a right or interest in relation to the person's principal home;
  (d) the person's assets are to be taken to include an asset the value of which is equal to the amount of the person's entry contribution;
  (e) subsection 52(1) and sections 52G, 52H, 52JA, 52JB, 52JC and 52JD do not apply to the asset that the person is, because of paragraph (d) of this subsection, taken to have.

52V Members of ordinary couple with different principal homes (both in special residences)

(1) This section applies to a special resident if:
  (a) the resident is a member of an ordinary couple with different principal homes; and
  (b) the principal home of the resident's partner is also a special residence.

Both entry contributions above extra allowable amount

(2) If:
  (a) this section applies to a special resident; and
  (b) the resident's entry contribution, and the partner's entry contribution, were each more than the extra allowable amount concerned;

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then, for the purposes of this Act:

(c) the resident and the partner are each to be taken to be property owners; and

(d) the value of the resident's principal home is taken to be the resident's individual residence contribution; and

(e) the value of the partner's principal home is taken to be the partner's individual residence contribution; and

(f) any right or interest of the resident in:

(i) the more valuable of the two principal homes; or

(ii) where the value of the two principal homes is the same—the principal home of the younger person;

(the ***more valuable principal home***) is to be disregarded in calculating the actual value of the resident's assets; and

(g) any right or interest of the partner in the more valuable principal home is to be disregarded in calculating the actual value of the partner's assets; and

(h) the assets of the person whose principal home is not the more valuable principal home are to be taken to include an asset the value of which is equivalent to the amount of that person's entry contribution.

Both entry contributions equal to or below extra allowable amount

(3) If:

(a) this section applies to a special resident; and

(b) the resident's entry contribution, and the partner's entry contribution, were each less than or equal to the extra allowable amount concerned;

then, for the purposes of this Act:

(c) the resident and the partner are each to be taken not to have a right or interest in relation to the resident's principal home or the partner's principal home; and

(d) the resident's assets are taken to include an amount equal to the resident's individual residence contribution; and

(e) the partner's assets are taken to include an amount equal to the partner's individual residence contribution.

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(4) Subsection (2) applies:
  (a) whether or not the resident actually has any right or interest in the resident's principal home; and
  (b) whatever the value of any right or interest that the resident does have in the resident's principal home; and
  (c) whether or not the partner actually has any right or interest in the partner's principal home; and
  (d) whatever the value of any right or interest that the partner does have in the partner's principal home.

52W Members of ordinary couple with different principal homes (partner not in special residence and partner property owner)

(1) This section applies to a special resident if:
  (a) the resident is a member of an ordinary couple with different principal homes; and
  (b) the principal home of the resident's partner is not a special residence; and
  (c) the right or interest of the resident's partner in the partner's principal home would, but for this section, be disregarded because of paragraph 52(1)(b).

(2) If this section applies to a special resident, then, for the purposes of this Act:
  (a) the resident and the resident's partner are each to be taken to have a right or interest in a principal home to which paragraph 52(1)(b) applies; and
  (b) the value of the resident's principal home is to be taken to be the amount of the resident's entry contribution; and
  (c) any right or interest of the resident in:
    (i) the more valuable of the two principal homes; or
    (ii) where the value of the two principal homes is the same—the principal home that is not a special residence;

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(the ***more valuable principal home***) is to be disregarded in calculating the actual value of the resident's assets; and

(d) any right or interest of the partner in the more valuable principal home is to be disregarded in calculating the actual value of the partner's assets; and

(e) the assets of the person whose principal home is not the more valuable principal home are to be taken to include an asset whose value is equivalent to the value of the less valuable principal home.

52X Members of ordinary couple with different principal homes (partner not in special residence and partner not property owner)

(1) This section applies to a special resident if:

(a) the resident is a member of an ordinary couple with different principal homes; and

(b) the principal home of the resident's partner is not a special residence; and

(c) the partner does not have a right or interest in the partner's principal home that is to be disregarded because of paragraph 52(1)(b).

Entry contribution above extra allowable amount

(2) If:

(a) this section applies to a special resident; and

(b) the resident's entry contribution was more than the amount that would be the extra allowable amount if the resident were not a member of a couple;

then, for the purposes of this Act, the resident and the partner are each to be taken to have a right or interest in a principal home to which paragraph 52(1)(b) applies.

Entry contribution equal to or below extra allowable amount

(3) If:

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(a) this section applies to a special resident; and
(b) the resident's entry contribution was equal to or less than the amount that would be the extra allowable amount if the resident were not a member of a couple;

then, the following provisions apply for the purposes of the application of this Act to the resident and to the resident's partner:

(c) both the resident, and the partner, are to be taken not to have a right or interest in relation to the resident's principal home; and
(d) the resident's assets are to be taken to include an asset whose value is equal to the amount of the resident's entry contribution.

(4) Subsection (3) applies:
(a) whether or not the resident actually has any right or interest in the resident's principal home; and
(b) whatever the value of any right or interest that the resident does have in the resident's principal home; and
(c) whether or not the partner actually has any right or interest in the resident's principal home; and
(d) whatever the value of any right or interest that the partner does have in the resident's principal home.

Subdivision D—Financial hardship

52Y Access to financial hardship rules

(1) Where:
(a) either:
(i) a service pension, income support supplement or a veteran payment is not payable to a person because of the application of an assets test; or
(ii) a person's service pension rate, income support supplement rate or veteran payment rate is determined by the application of an assets test; and
(b) either:

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(i) sections 48B and 48C (disposal of income) and 52G, 52H, 52JA, 52JB, 52JC and 52JD (disposal of assets) do not apply to the person; or

(ii) the Commission determines in writing that the application of those sections to the person should, for the purposes of this section, be disregarded; and

(c) the person, or the person's partner, has an unrealisable asset; and

(d) the person lodges, at an office of the Department in Australia in accordance with section 5T, a written request that this section apply to the person; and

(e) the Commission is satisfied that the person would suffer severe financial hardship if this section did not apply to the person;

the Commission must determine in writing that this section applies to the person.

Note: For ***unrealisable asset*** see subsections 5L(11) and (12).

(2) If a request is lodged under paragraph (1)(d), the Secretary:

(a) must investigate the matters that the request relates to; and

(b) must, when the investigation is complete, submit to the Commission for its consideration:

(i) the request; and

(ii) the evidence that the person who made the request provided in support of the request; and

(iii) any documents that are relevant to the request and are under the Department's control (including any evidence or documents relevant to the request that are obtained in the course of the investigation).

(3) A determination under subsection (1) takes effect:

(a) on the day on which the request under paragraph (1)(d) was lodged; or

(b) if the Commission so determines in the special circumstances of the case—on a day not more than 6 months before the day referred to in paragraph (a).

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52Z Application of financial hardship rules

Value of unrealisable asset to be disregarded

(1) If section 52Y applies to a person, the value of:
  (a) any unrealisable asset of the person; and
  (b) any unrealisable asset of the person's partner;
is to be disregarded in working out the person's service pension rate, income support supplement rate or veteran payment rate.

Deduction from maximum payment rate

(2) If section 52Y applies to a person, there is to be deducted from the person's service pension maximum payment rate, income support supplement maximum payment rate or veteran payment maximum payment rate an amount equal to the person's adjusted annual rate of ordinary income.

Adjusted annual rate of ordinary income

(3) A person's ***adjusted annual rate of ordinary income*** is an amount per year equal to the sum of:
  (a) the person's annual rate of ordinary income (other than income from assets); and
  (b) the person's annual rate of ordinary income from assets that are not assets tested; and
  (c) either:
    (i) the person's annual rate of ordinary income from unrealisable assets; or
    (ii) the person's notional annual rate of ordinary income from unrealisable assets;
  whichever is the greater; and
  (d) an amount per year equal to $19.50 for each $250 of the value of the person's assets (other than disregarded assets).

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(3A) In working out the ordinary income of a person for the purposes of subsection (3), the following payments and amounts are to be counted:

(a) a payment of an instalment of pension under Part II or IV;

(b) a payment of an instalment of a pension (other than a pension payable in respect of a child) payable because of subsection 4(6) or (8B) of the *Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Act 1986*;

(d) a payment (other than a payment referred to in paragraph (a) or (b)) that is a payment in respect of incapacity or death resulting from employment in connection with a war or war-like operations in which the Crown has been engaged;

(da) a payment of compensation (other than a payment covered by paragraph (d)) to the extent that the payment is taken into account:

(i) under Division 5A of Part II; or

(ii) under section 74;

to reduce a disability pension payable to the person under Part II or Part IV, as the case requires;

(e) a payment by way of allowance (other than loss of earnings allowance) under Part VI of this Act;

(f) a payment, by a foreign country, of an allowance or annuity that is of a similar kind to decoration allowance payable under section 102 or to Victoria Cross allowance payable under section 103;

(fa) a payment under Part VIB (prisoner of war recognition supplement);

(g) a payment of a weekly amount under section 68, 71 or 75 of the MRCA (permanent impairment);

(h) a payment of a Special Rate Disability Pension under Part 6 of Chapter 4 of the MRCA;

(i) if subsection 204(5) of the MRCA applies to a person—an amount per fortnight worked out under section 5I of this Act;

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(j) a payment of a weekly amount mentioned in paragraph 234(1)(b) of the MRCA (including a reduced weekly amount because of a choice under section 236 of the MRCA) (wholly dependent partner payment).

Note 1: Subsection 204(5) of the MRCA reduces a Special Rate Disability Pension by reference to amounts of Commonwealth superannuation that the person has received or is receiving.

Note 2: The payments and amounts referred to in this subsection would not be considered ordinary income elsewhere in this Act (see subsections 5H(1) and (8)).

Assets tested asset

(4) For the purposes of subsection (3), an asset is ***not assets tested*** if the asset's value is disregarded under subsection 52(1).

Notional annual rate of ordinary income from unrealisable assets

(5) A person's ***notional annual rate of ordinary income*** from unrealisable assets is:
(a) the amount per year equal to 2.5% of the value of the person's and the person's partner's unrealisable assets; or
(b) the amount per year that could reasonably be expected to be obtained from a purely commercial application of the person's and the person's partner's unrealisable assets;
whichever is the less.

(6) Subsection (2) applies:
(a) subject to subsection (8); and
(b) despite the Rate Calculator and section 45S (calculation of rate of income support supplement).

(7) Where:
(a) a person has disposed of assets and section 52G, 52H, 52JA, 52JB, 52JC or 52JD applies to the disposition; and
(b) the Commission has made a determination under subparagraph 52Y(1)(b)(ii) in relation to the disposition;

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this section applies to the person as if the person had not disposed of the assets.

(8) Where the sum of the rate of service pension, income support supplement or veteran payment that would, apart from this subsection, be payable to a person and the annual rate of income of the person exceeds the maximum payment rate, the rate so payable is to be reduced by the amount per year of the excess.

Subdivision E—Pension loans scheme

52ZAAA *Pension loans scheme* definitions

(1) In this Subdivision, unless the contrary intention appears:

dispose of real assets has its ordinary meaning.

maximum payment rate, in relation to a service pension or an income support supplement, means the rate worked out in relation to that pension or supplement at Step 4 of Method statement 1, Step 4 of Method statement 2 or Step 4 of Method statement 5, as the case may be, in Module A of the Rate Calculator.

nominated amount means the amount (if any) specified to be the nominated amount under paragraph 52ZD(1A)(b) or subsection 52ZE(1) (as the case may be).

real assets, in relation to a person or couple, means the real property (including the principal home) of the person or couple in Australia, but does not include any real property specified under paragraph 52ZD(1A)(a).

(2) For the purposes of this Subdivision, a reference to a charge under section 52ZF includes a reference to a charge continued in force by subsection 52ZF(3) or paragraph 52ZG(2A)(b).

(3) For the purposes of this Subdivision, a person is ***participating in the pension loans scheme*** if:

(a) the person has made a request to participate in the scheme under section 52ZD; and

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(b) because of the request, the rate of the pension payable to the person is the rate covered by paragraph 52ZB(1)(e); and

(c) the person owes a debt to the Commonwealth under section 52ZC.

52ZA Eligibility for participation in pension loans scheme

Person not member of a couple

(1) A person who is not a member of a couple is eligible to participate in the pension loans scheme if:

(a) the person is receiving or is eligible for a service pension or income support supplement; and

(d) the person has reached:

(i) if the person is receiving or is eligible for service pension—pension age; or

(ii) if the person is receiving or is eligible for income support supplement—qualifying age; and

(da) the person is not bankrupt; and

(db) the person is not subject to a personal insolvency agreement under Part X of the *Bankruptcy Act 1966*; and

(dc) the Commission is satisfied that there is adequate and appropriate insurance in relation to the person's real assets; and

(e) either:

(i) the Commission is satisfied that the value of the person's real assets (after deduction of any nominated amount) is sufficient to secure the payment of any debt that may become payable to the Commonwealth under this Subdivision; or

(ii) subsection (3) applies to the person.

Note 2: For ***real assets*** see subsection 52ZAAA(1).

Note 3: For ***nominated amount***, see subsection 52ZAAA(1).

Note 4: For ***pension age*** see section 5QA.

Note 5: For ***qualifying age*** see section 5Q.

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Person member of a couple

(2) A person who is a member of a couple is eligible to participate in the pension loans scheme if:
  (a) the person is receiving or is eligible for a service pension or income support supplement; and
  (d) the person:
    (i) is a veteran and has reached pension age; or
    (ii) is the partner of a veteran referred to in subparagraph (i); or
    (iii) is receiving or is eligible for an income support supplement and has reached qualifying age; and
  (da) the person is not bankrupt; and
  (db) the person is not subject to a personal insolvency agreement under Part X of the *Bankruptcy Act 1966*; and
  (dc) the Commission is satisfied that there is adequate and appropriate insurance in relation to the couple's real assets; and
  (e) either:
    (i) the Commission is satisfied that the value of the couple's real assets (after deduction of any nominated amount) is sufficient to secure the payment of any debt that may become payable to the Commonwealth under this Subdivision; or
    (ii) subsection (3) applies to both of the members of the couple.

Note 2: For ***real assets*** see subsection 52ZAAA(1).

Note 3: For ***nominated amount***, see subsection 52ZAAA(1).

Note 4: For ***pension age*** see section 5QA.

Note 5: For ***qualifying age*** see section 5Q.

Attributable stakeholder of a company or trust

(3) This subsection applies to a person if:
  (a) either:

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(i) the person is an attributable stakeholder of a company or trust (within the meaning of Division 11A); or

(ii) the person is a member of a couple and the other member of the couple is an attributable stakeholder of a company or trust (within the meaning of Division 11A); and

(b) the company or trustee has given the Commonwealth a guarantee that the company or trustee will pay any debt that may become payable to the Commonwealth by the person under this Subdivision; and

(c) the company's or trustee's liability under the guarantee is secured by a charge against real property of the company or trust in Australia; and

(d) the Commission is satisfied that the value of that real property is sufficient to secure the payment of any amount that may become payable by the company or trustee under the guarantee; and

(e) the Commission has, by writing, approved the guarantee and the charge.

Value of real property

(4) In working out the value of real property for the purposes of subparagraph (1)(e)(i) or (2)(e)(i) or paragraph (3)(d):

(a) disregard section 52C; and

(b) the Commission may take into account any charge or encumbrance over the property.

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52ZB Effect of participation in pension loans scheme—pension rate

(1) If:

(a) a person is eligible to participate in the pension loans scheme; and

(b) the person makes a request to participate under section 52ZD; and

(d) the Commission is satisfied that the amount of any debt that becomes payable by the person to the Commonwealth under this Subdivision is readily recoverable;

then:

(e) the rate of the pension payable to the person by operation of the scheme is to be:

(i) 1.5 multiplied by the maximum payment rate; or

(ii) some other rate nominated by the person;

whichever is the lower.

Note: For ***maximum payment rate*** see subsection 52ZAAA(1).

(2) The pension at the rate payable by operation of the scheme is payable on and from the day on which the request is lodged.

(3) For the purposes of section 53A (fringe benefits), if but for the operation of the scheme the person would not have received a service pension or income support supplement, the person is to be taken to be a person who is not receiving a service pension or income support supplement.

(4) For the purposes of Subdivision C of Division 12 (treatment benefits), if but for the operation of the scheme the person would not have received a service pension or income support supplement, the person is to be taken to be a person who is not receiving an age or invalidity service pension.

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52ZC Effect of participation in pension loans scheme—creation of debt

(1) If the rate of the pension payable by operation of the pension loans scheme is more than the rate that would have been received by the person but for the operation of the scheme, the person owes a debt to the Commonwealth.

(3) This is how to work out the amount of the debt owed by the person from time to time:

Method statement

Step 1. Work out the sum of the amount of pension received by the person from time to time under the pension loans scheme: the result is the ***primary loan amount***.

Step 2. Take away from the primary loan amount the sum of the amount of pension (if any) that would have been received by the person but for the operation of the scheme: the result is the ***basic amount of debt***.

Step 3. Add to the basic amount of debt the amount of interest payable. The interest payable is compound interest at the rate fixed by the legislative instrument made under subsection 1135(4) of the *Social Security Act 1991* and compounding fortnightly: the result is the ***amount of debt including interest***.

Step 4. Add to the amount of debt including interest the amount of any registration costs payable by the person under subsection 52ZL(4): the result is the ***total amount of debt***.

Step 5. From the total amount of debt take away any amount of the debt already paid to the Commonwealth: the result is the current amount of debt owed by the person.

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52ZCA Effect of participation in pension loans scheme—maximum loan available

(1) The maximum loan available to a person under the pension loans scheme is the amount worked out using the formula:

$$\text{Age component amount} \times \frac{\text{Value of real assets}}{10{,}000}$$

where:

age component amount means the amount that is specified in a determination under subsection 1135A(3) of the *Social Security Act 1991* and that relates to:

(a) if the person is not a member of a couple—the age the person turned on his or her last birthday; or

(b) if the person is a member of a couple—the age the younger member of the couple turned on his or her last birthday.

value of real assets means:

(a) if neither subparagraph 52ZA(1)(e)(ii) nor subparagraph 52ZA(2)(e)(ii) applied to the person when the person made his or her request to participate in the pension loans scheme—the value of the real assets (after deduction of any nominated amount); or

(b) if subparagraph 52ZA(1)(e)(ii) or (2)(e)(ii) applied to the person when the person made his or her request to participate in the pension loans scheme—the value of the charge referred to in paragraph 52ZA(3)(c).

Note 1: For ***real assets*** see subsection 52ZAAA(1).

Note 2: For ***nominated amount*** see subsection 52ZAAA(1).

(2) For the purposes of subsection (1), the following provisions have effect:

(a) if, but for this paragraph, the value of real assets would be an amount that exceeds $10,000 but is not a multiple of $10,000, the value is to be taken to be the next lower amount that is a multiple of $10,000;

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(b) if, but for this paragraph, the value of real assets would be less than $10,000, the value is to be taken to be nil.

52ZD Need for a request to participate

(1) A person who wants to participate in the pension loans scheme must make a request to participate in accordance with this section.

(1A) A request under subsection (1) must:

(a) specify any real property that is not to be included in working out the value of real assets for the purposes of sections 52ZA and 52ZCA, or that is not to be subject to a charge under section 52ZF; and

(b) specify an amount (if any) to be the nominated amount for the purposes of this Subdivision; and

(c) specify the rate of the pension (if any) nominated by the person for the purposes of subparagraph 52ZB(1)(e)(ii).

(1B) Paragraphs (1A)(a) and (b) do not apply if subparagraph 52ZA(1)(e)(ii) or (2)(e)(ii) applied to the person when the person made his or her request to participate in the pension loans scheme.

(2) The request must be signed:

(a) if the person is not a member of a couple—by the person; or

(b) if the person is a member of a couple—by both members of the couple.

(3) The request must be:

(a) in writing; and

(b) in a form approved by the Commission; and

(c) lodged at an office of the Department in Australia in accordance with section 5T.

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52ZE Need for a request to later nominate or change nominated amount or rate of pension

(1) A person who is participating in the pension loans scheme and who wants to:
  (a) nominate an amount to be the nominated amount for the purposes of this Subdivision; or
  (b) nominate a rate of pension for the purposes of subparagraph 52ZB(1)(e)(ii); or
  (c) change the nominated amount earlier specified; or
  (d) change the rate of the pension earlier specified;

must make a request that specifies the nomination or change (as the case may be).

(1A) Paragraphs (1)(a) and (c) do not apply if subparagraph 52ZA(1)(e)(ii) or (2)(e)(ii) applied to the person when the person made his or her request to participate in the pension loans scheme.

(2) A request under subsection (1) must be signed:
  (a) if the person is not a member of a couple—by the person; or
  (b) if the person is a member of a couple—by both members of the couple.

(3) The request must:
  (a) be in writing; and
  (b) be lodged at an office of the Department in Australia in accordance with section 5T.

52ZEA Non-receipt of service pension or income support supplement

(1) This section applies for the purposes of a provision (the ***relevant provision***) of this or another Act if:
  (a) the relevant provision provides a benefit (whether the benefit is a pension, benefit, payment, supplement, subsidy, seniors health card or any other sort of benefit) to a person; and

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(b) in relation to that benefit, it is necessary to work out whether:
  (i) the person or another person is receiving or is not receiving a service pension or income support supplement or a particular kind of service pension; or
  (ii) the person or another person is a recipient or is not a recipient of a service pension or income support supplement or a particular kind of service pension; or
  (iii) a service pension or income support supplement, or a particular kind of service pension, is payable to the person or another person.

(2) For the purposes of the relevant provision:
  (a) a person is taken not to be receiving a service pension or income support supplement or the particular kind of service pension; and
  (b) a person is taken not to be a recipient of a service pension or income support supplement or the particular kind of service pension; and
  (c) a service pension or income support supplement, or the particular kind of service pension, is taken not to be payable to the person;

  merely because:
  (d) the person receives a service pension or income support supplement, or the kind of service pension, at a rate worked out under this Subdivision; or
  (e) a service pension or income support supplement, or the kind of service pension, is payable to the person at a rate worked out under this Subdivision.

(3) Subsection (2) does not apply in relation to a person and a day if on that day:
  (a) the person is receiving a service pension or income support supplement at a rate worked out under this Subdivision; and
  (b) but for the operation of this Subdivision, the person would have been receiving that service pension or income support supplement at a rate greater than nil.

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52ZF Existence of debt results in charge over real assets

Person not member of a couple

(1) If a person who is not a member of a couple owes a debt to the Commonwealth under section 52ZC, the person's real assets are subject to a charge in favour of the Commonwealth to secure the payment of the debt to the Commonwealth.

Person member of a couple

(2) If:
  (a) a person who is a member of a couple owes a debt to the Commonwealth under section 52ZC; and
  (b) the person's partner has signed the person's request under subsection 52ZD(2);

the couple's real assets are subject to a charge in favour of the Commonwealth to secure the payment of a debt to the Commonwealth.

(3) If:
  (a) the pension loans scheme ceases to operate in relation to a person because of the effect of section 52ZJ, 52ZJA or 52ZK; and
  (b) at the time the scheme ceases to operate, the person owes a debt to the Commonwealth because of the person's participation in the scheme;

any charge in favour of the Commonwealth under subsection (1) or (2) of this section continues in relation to the real assets until the debt is repaid or recovered.

Note 1: Section 52ZJ provides that a person ceases to participate in the scheme if the debt owed by the person exceeds the maximum loan available.

Note 1A: Section 52ZJA provides that the scheme ceases to operate in relation to a person if the Commission is satisfied that the person ceases to be eligible to participate in the scheme and the Commission determines that the scheme ceases to operate in relation to the person.

Note 2: Section 52ZK provides for a person to withdraw from the scheme.

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(4) This section does not apply if subparagraph 52ZA(1)(e)(ii) or (2)(e)(ii) applied to the person when the person made his or her request to participate in the pension loans scheme.

52ZG Debt not to be recovered until after death

(1) The Commonwealth is not entitled to recover a debt under section 52ZC from a person until after the person's death.

(2) In the following circumstances, the Commonwealth is not entitled to recover the debt until after the person's death and after:

(a) if:

(i) the person was a member of a couple at the time of death; and

(ii) the person's partner survives the person; and

(iii) an amount of bereavement payment is payable to the partner because of the person's death;

the end of the bereavement period; or

(b) if:

(i) the person was a member of a couple at the time of death; and

(ii) the person's partner survives the person; and

(iii) the person's partner has the use of the assets or part of the assets that are subject to a charge; and

(iv) the partner has reached:

(A) if the partner is a veteran—pension age; or

(B) if the partner is not a veteran—the age that would be his or her pension age if he or she were a veteran;

the death of the partner.

Note: For ***pension age*** see section 5QA.

(2A) In relation to the period between the person's death and the time of recovery of the debt by the Commonwealth:

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(a) compound interest continues to accrue, and forms part of the debt, in accordance with Step 3 of the Method statement in subsection 52ZC(3); and

(b) the charge in favour of the Commonwealth under section 52ZF continues in relation to the real assets until the debt is recovered.

(3) This section is subject to section 52ZH (enforcement of charge if assets change hands).

(4) If the Commission determines in writing that the debt is to be recovered before the events referred to in subsection (1) or (2), the debt may be so recovered in spite of those subsections.

52ZH Enforcement of charge

(1) If:

(a) real assets of a person are subject to a charge under section 52ZF; and

(b) any of those real assets cease to be real assets of the person; and

(c) the person receives proceeds from the sale or other disposal of the real assets;

the Commonwealth may recover from the person, out of those proceeds, the whole or part of the debt secured by the charge.

(2) If:

(a) real assets of a person are subject to a charge under section 52ZF; and

(b) any of those real assets are disposed of to another person (in this section called the ***new owner***);

the Commonwealth may, subject to subsection (3), enforce the charge against those real assets.

(2A) For the purposes of paragraph (2)(b), it does not matter whether:

(a) the disposal of the real assets is by way of sale, transfer, gift, will or otherwise; or

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(b) the disposal is by the person referred to in paragraph (2)(a) or any other person.

(3) The Commonwealth may not enforce the charge against the real assets if the new owner is a genuine purchaser for value without notice of the charge.

52ZJ Person ceases to participate in pension loans scheme if debt exceeds maximum loan available

If:

(a) a person is participating in the pension loans scheme; and

(b) the debt owed by the person under section 52ZC exceeds the maximum loan available to the person under the scheme;

the scheme ceases to operate in relation to the person on the first day on which the debt exceeds the maximum loan available.

Note 1: The maximum loan available is worked out by using the formula set out in subsection 52ZCA(1).

Note 2: For repayment or recovery of the debt owed by the person see section 52ZKA and section 52ZG.

52ZJA Commission may cease person's participation in pension loans scheme

(1) If:

(a) a person is participating in the pension loans scheme; and

(b) the Commission is satisfied that the person ceases to be eligible to participate in the scheme;

the Commission may, in writing, determine that the scheme ceases to operate in relation to the person. The scheme ceases to operate in relation to the person at the beginning of the first pension period for the service pension or income support supplement being paid to the person that begins after the determination is made.

Note: For repayment or recovery of the debt owed by the person, see sections 52ZG and 52ZKA.

(2) The Commission must give the person notice of the determination.

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(3) A determination under subsection (1) is not a legislative instrument.

52ZK Person withdraws from pension loans scheme

(1) If a person who is participating in the pension loans scheme makes a request to withdraw from the scheme, the scheme ceases to operate in relation to the person on the day on which the request is lodged.

Note: For repayment or recovery of the debt owed by the person, see sections 52ZG and 52ZKA.

(2) A request under subsection (1) must be signed:
(a) if the person is not a member of a couple—by the person; or
(b) if the person is a member of a couple—by both members of the couple.

(3) The request must:
(a) be in writing; and
(b) be lodged at an office of the Department in Australia in accordance with section 5T.

(4) A request lodged in accordance with section 5T is taken to have been made on a day determined under that section.

52ZKA Repayment or recovery of debt after pension loans scheme ceases to operate

(1) The debt owed by a person under section 52ZC, at the time the pension loans scheme ceases to operate in relation to the person by operation of section 52ZJ, 52ZJA or 52ZK, may be repaid by the person at any time.

Note 1: Section 52ZJ provides that a person ceases to participate in the scheme if the debt owed by the person exceeds the maximum loan available.

Note 1A: Section 52ZJA provides that the scheme ceases to operate in relation to a person if the Commission is satisfied that the person ceases to be

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eligible to participate in the scheme and the Commission determines that the scheme ceases to operate in relation to the person.

Note 2: Section 52ZK provides for a person to withdraw from the scheme.

(2) If the debt owed by the person is not repaid by the person at the time the scheme ceases to operate in relation to the person, compound interest continues to accrue, and forms part of the debt, in accordance with Step 3 of the Method statement in subsection 52ZC(3), until the debt is repaid or recovered.

(3) If the debt is not repaid under subsection (1) of this section, subject to section 52ZG the Commonwealth is entitled to recover the debt.

Note: Section 52ZG provides that a debt cannot be recovered from a person until after the person's death.

52ZL Registration of charge

(1) If real assets are subject to a charge under section 52ZF, the Commission may lodge a notice in writing of the charge with the appropriate officer of the State or Territory in which the real assets are situated.

(2) The appropriate officer may register the charge as if the Commission's notice were an instrument of charge or encumbrance duly executed under the laws in force in the State or Territory.

(3) The Secretary may require the person whose real assets are subject to the charge to execute an instrument relating to the registration of the charge.

(4) If the Commonwealth incurs costs associated with:
   (a) the registration of the charge; or
   (b) the registration of the discharge of the charge;

   those costs are payable by the person whose real assets are subject to the charge.

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52ZM Manner of enforcement of charge

If a charge against real assets is enforceable under this Subdivision, the Commission may enforce the charge against those real assets or against part of those real assets in any manner that the Commission determines in writing.

Subdivision F—Commutation of asset-test exempt income stream

52ZMA Debt resulting from commutation of asset-test exempt income stream contrary to subsection 5JA(2), 5JB(2) or 5JBA(2)

(1) If:

(a) a person is provided with an asset-test exempt income stream for a period beginning on the first day in respect of which an income stream payment was made to the person and ending on the last day in respect of which an income stream payment was made to the person; and

(b) during the whole or any part of that period an amount of service pension, income support supplement or veteran payment has been paid to the person; and

(c) the whole or any part of the income stream is commuted contrary to the contract or governing rules under which the income stream was provided on the commencement day of the income stream; and

(d) the amount of service pension, income support supplement or veteran payment that has been paid to the person for that period is more than the amount that would have been payable to the person for that period had the income stream not been an asset-test exempt income stream for the purposes of this Act for that period;

an amount worked out under subsection (2) is a debt due to the Commonwealth.

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(2) That amount is an amount equal to the difference between the amount of service pension, income support supplement or veteran payment that has been paid to the person during the period worked out under subsection (3) and the amount that would have been so paid to the person had the income stream not been an asset-test exempt income stream for the purposes of this Act for that period.

(3) The period for the purposes of subsection (2) is the period that:
  (a) began on:
    (i) the day 5 years before the day the income stream was commuted; or
    (ii) the commencement day of the income stream; or
    (iii) 20 September 2001;
    whichever is the latest; and
  (b) ended when the income stream was commuted.

(4) In working out the asset value of the income stream had the income stream not been an asset-test exempt income stream for the period referred to in subsection (2), assume that the income stream was asset tested from the commencement day and that the asset value of the income stream is depleted in accordance with the formula in subsection 52A(4).

(5) Subject to subsection (6), if:
  (a) an asset-test exempt income stream (the ***old income stream***) is commuted, in whole or in part; and
  (b) part, but not the whole, of the payment resulting from the commutation of the old income stream (the ***commutation payment***) is transferred directly to the purchase of another asset-test exempt income stream (the ***new income stream***);

  the following paragraphs have effect for the purposes of this section:
  (c) the new income stream is taken to have the same commencement day as:
    (i) the old income stream; or

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(ii) if the old income stream was one of a succession of asset-test exempt income streams—the first income stream in that succession;

(d) if the old income stream was not one of a succession of asset-test exempt income streams—income stream payments made under the old income stream are taken to have been made under the new income stream;

(e) if the old income stream was one of a succession of asset-test exempt income streams—income stream payments made under any of the income streams in that succession are taken to have been made under the new income stream.

(6) Subsection (5) does not apply if the amount used in the purchase of the new income stream represents the whole of the commutation payment remaining after the use of part of the commutation payment in the payment of:

(a) a hardship amount; or

(b) superannuation contributions surcharge that the person is liable to pay in his or her capacity as purchaser of the old income stream.

(7) Subject to subsection (8), if:

(a) the whole of an asset-test exempt income stream is commuted; and

(b) no part of the payment resulting from the commutation of the income stream is transferred directly to the purchase of another asset-test exempt income stream; and

(c) the commuted income stream was one of a succession of asset-test exempt income streams;

the following paragraphs have effect for the purposes of this section:

(d) the commuted income stream is taken to have had the same commencement day as the first income stream in that succession;

(e) income stream payments made under any of the income streams in that succession (other than the commuted income

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stream) are taken to have been, at the time when they were made, payments under the commuted income stream.

(8) Subsection (7) does not apply if the whole of the payment resulting from the commutation of the old income stream is used in the payment of:
  (a) a hardship amount; or
  (b) superannuation contributions surcharge that the person is liable to pay in his or her capacity as purchaser of the old income stream.

(9) For the purposes of this section:
  (a) 2 or more asset-test exempt income streams constitute a succession of asset-test exempt income streams if each income stream (other than the first of those income streams to be provided) has been funded by means of the payment, or part of the payment, resulting from the commutation of another of those income streams; and
  (b) an income stream is the first income stream in a succession of income streams if it is the first of those income streams to be provided.

(10) In this section:

hardship amount has the same meaning as in subsection 5JA(7).

(11) This section does not apply to an income stream in relation to which a determination under subsection 5JA(5), 5JB(4) or 5JBA(11) is in force.

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Division 11A—Means test treatment of private companies and private trusts

Subdivision A—Introduction

52ZN Simplified outline

The following is a simplified outline of this Division:

- This Division sets up a system for the attribution to individuals of the assets and income of private companies and private trusts (sections 52ZZK and 52ZZR).
- Attribution starts on 1 January 2002.
- For an asset or income to be attributed to an individual:
  - (a) the company must be a designated private company or the trust must be a designated private trust (sections 52ZZA and 52ZZB); and
  - (b) the company must be a controlled private company in relation to the individual or the trust must be a controlled private trust in relation to the individual (sections 52ZZC and 52ZZH); and
  - (c) the individual must be an attributable stakeholder of the company or trust (section 52ZZJ).
- A company or trust will be a controlled private trust or a controlled private company if the individual passes a control test or a source test.

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- An individual will not be an attributable stakeholder of a trust if the trust is a concessional primary production trust in relation to the individual.
- The asset deprivation rules and the income deprivation rules are modified if attribution happens.

52ZO Definitions

In this Division, unless the contrary intention appears:

actively involved with a primary production enterprise has the meaning given by section 52ZW.

actual transfer, in relation to property or services, means a transfer of the property or services other than a transfer that is taken to have been made because of subsection 52ZV(1), (3) or (4).

adjusted net primary production income (in Subdivision K) has the meaning given by section 52ZZZL.

adjusted net value (in Subdivision K) has the meaning given by section 52ZZZK.

arm's length amount, in relation to an actual transfer of property or services to a company or a trust, means the amount that the company or trust could reasonably be expected to have been required to pay to obtain the property or the services concerned from the transferor under a transaction where the parties to the transaction are dealing with each other at arm's length in relation to the transaction.

asset attribution percentage has the meaning given by section 52ZZJ.

associate has the meaning given by section 52ZQ.

attributable stakeholder has the meaning given by section 52ZZJ.

attribution period has the meaning given by section 52ZZQ.

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business partnership means a partnership within the meaning of the *Income Tax Assessment Act 1997*.

child: without limiting who is a child of a person for the purposes of this Division, each of the following is the ***child*** of a person:

(a) an adopted child, step-child or foster-child of the person;

(b) someone who is a child of the person within the meaning of the *Family Law Act 1975*.

company has the same meaning as in the *Income Tax Assessment Act 1997*.

concessional primary production trust has the meaning given by section 52ZZZF.

constituent document, in relation to a company, means:

(a) the memorandum and articles of association of the company; or

(b) any rules or other documents constituting the company or governing its activities.

control includes control as a result of, or by means of, trusts, agreements, arrangements, understandings and practices, whether or not having legal or equitable force and whether or not based on legal or equitable rights.

controlled private company has the meaning given by section 52ZZC.

controlled private trust has the meaning given by section 52ZZH.

decision-making principles means decision-making principles under section 52ZZZQ.

derivation period has the meaning given by section 52ZZP.

designated private company has the meaning given by section 52ZZA.

designated private trust has the meaning given by section 52ZZB.

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director includes any person (by whatever name called) occupying the position of a director of a company.

entity means any of the following:

(a) an individual;
(b) a company;
(c) a trust;
(d) a business partnership;
(e) a corporation sole;
(f) a body politic.

group includes:

(a) one entity alone; or
(b) a number of entities, even if they are not in any way associated with each other or acting together.

income attribution percentage has the meaning given by section 52ZZJ.

interest in a share has the meaning given by section 52ZZG.

majority voting interest, in relation to a company, has the meaning given by section 52ZS.

primary production enterprise means a business in Australia that consists of primary production.

property includes money.

relative, in relation to a person, has the meaning given by section 52ZP.

scheme means:

(a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings; or

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(b) any scheme, plan, proposal, action, course of action or course of conduct, whether there are 2 or more parties or only one party involved.

services includes any benefit, right (including a right in relation to, and an interest in, real or personal property), privilege or facility and, without limiting the generality of the foregoing, includes a benefit, right, privilege, service or facility that is, or is to be, provided under:

(a) an arrangement for or in relation to:
  (i) the performance of work (including work of a professional nature), whether with or without the provision of property; or
  (ii) the provision of, or of the use of facilities for, entertainment, recreation or instruction; or
  (iii) the conferring of benefits, rights or privileges for which remuneration is payable in the form of a royalty, tribute, levy or similar exaction; or
(b) a contract of insurance; or
(c) an arrangement for or in relation to the lending of money.

share includes stock.

spouse includes, in relation to a person who is a member of a couple (as defined by section 5E), the other member of the couple.

subsidiary has the same meaning as in the *Corporations Act 2001*.

sufficiently influenced, in relation to a company, has the meaning given by section 52ZR.

transfer:

(a) in relation to property—includes dispose of (whether by assignment, declaration of trust or otherwise) or provide; and
(b) in relation to services—includes allow, confer, give, grant, perform or provide.

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trust means a person in the capacity of trustee or, as the case requires, a trust estate.

trustee has the same meaning as in the *Income Tax Assessment Act 1997*.

underlying transfer, in relation to a transfer of property or services to an entity, means:

(a) if that transfer was an actual transfer—the actual transfer; or
(b) if that transfer was taken to have been made because of subsection 52ZV(1)—the actual transfer referred to in that subsection; or
(c) if that transfer was taken to have been made because of subsection 52ZV(3)—the actual transfer referred to in paragraph 52ZV(3)(b); or
(d) if that transfer was taken to have been made because of subsection 52ZV(4)—the actual transfer referred to in paragraph 52ZV(4)(c).

voting power has the meaning given by section 52ZZE.

52ZP Relatives

(1) For the purposes of this Division, a ***relative***, in relation to a person (the ***first person***), means any of the following:
(a) the spouse of the first person;
(b) a parent, grandparent, brother, sister, uncle, aunt, nephew, niece, first cousin, second cousin or lineal descendant of the first person;
(c) the spouse of a person covered by paragraph (b);
(d) a parent, grandparent, brother, sister, uncle, aunt, nephew, niece, first cousin, second cousin or lineal descendant of the spouse of the first person;
(e) the spouse of a person covered by paragraph (d);
(f) a child of a person covered by any of the preceding paragraphs.

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(2) For the purposes of this section, if one person is the child of another person because of the definition of ***child*** in section 52ZO, relationships traced to or through the person are to be determined on the basis that the person is the child of the other person.

52ZQ Associates

(1) For the purposes of this Division, in determining:
  (a) whether a trust is a designated private trust; or
  (b) whether a company is a controlled private company in relation to an individual; or
  (c) whether a trust is a controlled private trust in relation to an individual; or
  (d) whether a trust is a concessional primary production trust in relation to an individual;

the following are ***associates*** of an individual:
  (e) a relative of the individual;
  (f) an entity who, in matters relating to the trust or company:
    (i) acts, or is accustomed to act; or
    (ii) under a contract or an arrangement or understanding (whether formal or informal), is intended or expected to act;

    in accordance with the directions, instructions or wishes of:
    (iii) the individual; or
    (iv) the individual and another entity who is an associate of the individual because of another paragraph of this subsection;
  (g) an entity that is a declared associate of the individual (see subsection (2));
  (h) a business partner of the individual or a business partnership in which the individual is a business partner;
  (i) if a business partner of the individual is an individual—the spouse or a child of that business partner;
  (j) a trustee of a trust, where:
    (i) the individual; or

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(ii) another entity that is an associate of the individual because of another paragraph of this subsection;

benefits or is capable (whether by the exercise of a power of appointment or otherwise) of benefiting under the trust, either directly or through any interposed companies, business partnerships or trusts;

(k) a company, where the company is sufficiently influenced by:
  (i) the individual; or
  (ii) another entity that is an associate of the individual because of another paragraph of this subsection; or
  (iii) another company that is an associate of the individual because of another application of this paragraph; or
  (iv) 2 or more entities covered by the preceding subparagraphs;

(l) a company, where a majority voting interest in the company is held by:
  (i) the individual; or
  (ii) the entities that are associates of the individual because of any of the preceding paragraphs of this subsection; or
  (iii) the individual and the entities that are associates of the individual because of any of the preceding paragraphs of this subsection.

Declared associate

(2) The Commission may, by legislative instrument, determine that each entity included in a specified class of entities is taken to be a ***declared associate*** of an individual for the purposes of this section.

(3) A determination under subsection (2) has effect accordingly.

52ZR When a company is sufficiently influenced by an entity

For the purposes of this Division, a company is ***sufficiently influenced*** by an entity or entities if the company, or its directors:

(a) are accustomed or under an obligation (whether formal or informal); or

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(b) might reasonably be expected;

to act in accordance with the directions, instructions or wishes of the entity or entities.

52ZS Majority voting interest in a company

For the purposes of this Division, an entity or entities hold a ***majority voting interest*** in a company if the entity or entities are in a position to cast, or control the casting of, more than 50% of the maximum number of votes that might be cast at a general meeting of the company.

52ZT Entitled to acquire

For the purposes of this Division, an entity is ***entitled to acquire*** anything that the entity is absolutely or contingently entitled to acquire, whether because of any constituent document of a company, the exercise of any right or option or for any other reason.

52ZU Transfer of property or services

(1) A reference in this Division to the ***transfer of property or services to a trust*** includes a reference to the transfer of such property or services by way of the creation of the trust.

(2) For the purposes of this Division, if an entity acquires property that did not previously exist, the property is taken to have existed immediately before the acquisition and to have been transferred by the entity who created the property.

(3) For the purposes of this Division, property or services are taken to have been transferred to an entity if the property or services have been applied for the benefit of, or in accordance with the directions of, the entity.

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(4) Without limiting the generality of subsection (3), a reference in that subsection to the ***application of property or services for the benefit of an entity*** includes a reference to the application of property or services in the discharge, in whole or in part, of a debt due by the entity.

52ZV Constructive transfers of property or services to an entity

(1) For the purposes of this Division, if an entity (the ***prime entity***) causes another entity to actually transfer property or services to a third entity, the prime entity is taken to have transferred the property or services (instead of the other entity).

(2) Subsection (1) does not limit the operation of subsection (3).

(3) If, under a scheme:
   (a) an entity (the ***scheme entity***) actually transfers property or services to another entity; and
   (b) property or services are actually transferred to a third entity at a particular time otherwise than by the scheme entity;

   the Commission may, for the purposes of this Division, treat the property or services mentioned in paragraph (b) as having been transferred by the scheme entity to the third entity (instead of by any other entity) at that time to such extent as the Commission considers reasonable.

(4) If:
   (a) an individual transfers property or services to an entity (the ***interposed entity***), being a company, a business partnership or a trust; and
   (b) a winding-up event occurs in relation to the interposed entity; and
   (c) an actual transfer of property or services is made to another entity (the ***ultimate transferee***) at a particular time as a consequence of the interposed entity being wound-up or ceasing to exist;

   the Commission may, for the purposes of this Division, treat the property or services mentioned in paragraph (c) as having been

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transferred by the individual to the ultimate transferee (instead of by any other entity) at that time to such extent as the Commission considers reasonable.

(5) For the purposes of this section, each of the following events is a ***winding-up event*** in relation to a company:
  (a) the company passes a resolution for its winding-up;
  (b) an order is made for the winding-up of the company;
  (c) any similar event.

(6) For the purposes of this section, a ***winding-up event*** occurs in relation to a business partnership if the business partnership ceases to exist for the purposes of the *Income Tax Assessment Act 1997*.

(7) For the purposes of this section, a ***winding-up event*** occurs in relation to a trust if:
  (a) the trust commences to be wound-up; or
  (b) the trust ceases to exist for the purposes of the *Income Tax Assessment Act 1997*.

52ZW Active involvement with a primary production enterprise

For the purposes of this Division, an individual is taken to have been ***actively involved with a primary production enterprise*** if, and only if, the individual:
  (a) has contributed a significant part of his or her labour to the development of the enterprise; or
  (b) has undertaken educational studies or training in a field that, in the opinion of the Commission, is relevant to the development or management of the enterprise.

52ZX Power to veto decisions of a trustee

For the purposes of this Division, if the decisions of a trustee are subject to the consent of an entity, the entity is taken to be able to veto the decisions of the trustee.

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52ZY Extra-territorial operation

(1) This Division extends to acts, omissions, matters and things outside Australia.

(2) Disregard subsection (1) in determining whether a provision of this Act (other than this Division) extends to acts, omissions, matters and things outside Australia.

52ZZ Application to things happening before commencement

The use of the present tense in a provision of this Division does not imply that the provision does not apply to things happening before the commencement of this Division.

Subdivision B—Designated private companies

52ZZA Designated private companies

(1) For the purposes of this Division, a company is a ***designated private company*** at a particular time if:
  (a) the company satisfies at least 2 of the following conditions in relation to the last financial year that ended before that time:
    (i) the consolidated revenue for the financial year of the company and its subsidiaries is less than $25 million, or any other amount prescribed by regulations made for the purposes of paragraph 45A(2)(a) of the *Corporations Act 2001*;
    (ii) the value of the consolidated gross assets at the end of the financial year of the company and its subsidiaries is less than $12.5 million, or any other amount prescribed by regulations made for the purposes of paragraph 45A(2)(b) of the *Corporations Act 2001*;
    (iii) the company and its subsidiaries have fewer than 50, or any other number prescribed by regulations made for the purposes of paragraph 45A(2)(c) of the *Corporations Act 2001*, employees at the end of the financial year; or

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(b) the company came into existence after the end of the last financial year that ended before that time; or

(c) the company is a declared private company (see subsection (2));

and the company is not an excluded company (see subsection (5)).

Declared private company

(2) The Commission may, by legislative instrument, declare that each company included in a specified class of companies is a ***declared private company*** for the purposes of this section.

(3) A declaration under subsection (2) has effect accordingly.

Excluded companies

(5) The Commission may, by legislative instrument, declare that each company included in a specified class of companies is an ***excluded company*** for the purposes of this section.

(6) A declaration under subsection (5) has effect accordingly.

Definitions

(8) In this section:

consolidated revenue has the same meaning as in section 45A of the *Corporations Act 2001*.

financial year, in relation to a company, means:

(a) a period of 12 months beginning on 1 July; or

(b) if some other period is the company's tax year—that other period.

value of consolidated gross assets has the same meaning as in section 45A of the *Corporations Act 2001*.

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Subdivision C—Designated private trusts

52ZZB Designated private trusts

(1) For the purposes of this Division, a trust is a ***designated private trust*** unless:
  (a) all of the following conditions are satisfied:
    (i) the trust is a fixed trust;
    (ii) the units in the trust are held by 50 or more persons;
    (iii) the trust was not created, continued in existence or operated under a scheme that was entered into or carried out for the sole or dominant purpose of enabling any individual or individuals to avoid the application of this Division and/or Part 3.18 of the Social Security Act; or
  (b) the trust is a complying superannuation fund (see subsection (3)); or
  (c) the trust is an excluded trust (see subsection (4)).

(2) For the purposes of subparagraph (1)(a)(ii), an individual and his or her associates are taken to be one person.

Complying superannuation funds

(3) For the purposes of this section, a fund is a ***complying superannuation fund*** at a particular time if:
  (a) that time occurs during a particular tax year of the fund; and
  (b) under section 45 of the *Superannuation Industry (Supervision) Act 1993*, the fund is a complying superannuation fund for the purposes of the *Income Tax Assessment Act 1997* in relation to that tax year.

Excluded trusts

(4) The Commission may, by legislative instrument, declare that each trust included in a specified class of trusts is an ***excluded trust*** for the purposes of this section.

(5) The declaration has effect accordingly.

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Definitions

(7) In this section:

fixed trust means a trust where persons have fixed entitlements to all of the income and corpus of the trust.

income means income within the ordinary meaning of that expression.

unit, in relation to a trust, includes a beneficial interest, however described, in the property or income of the trust.

Subdivision D—Controlled private companies

52ZZC Controlled private companies

(1) For the purposes of this Division, a company is a ***controlled private company*** in relation to an individual if the company is a designated private company and:
  (a) the individual passes the ***control test*** set out in subsection (2); or
  (b) the individual passes the ***source test*** set out in subsection (3).

Control test

(2) For the purposes of this section, an individual ***passes the control test*** in relation to a company if:
  (a) the aggregate of:
    (i) the direct voting interests in the company that the individual holds; and
    (ii) the direct voting interests in the company held by associates of the individual;

    is 50% or more; or
  (b) the aggregate of:
    (i) the direct control interests in the company that the individual holds; and

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(ii) the direct control interests in the company held by associates of the individual;

is 15% or more; or

(c) the company is sufficiently influenced by:

(i) the individual; or

(ii) an associate of the individual; or

(iii) 2 or more entities covered by the preceding subparagraphs; or

(d) the individual (either alone or together with associates) is in a position to exercise control over the company.

Source test

(3) For the purposes of this section, an individual ***passes the source test*** in relation to a company if:

(a) the individual has transferred property or services to the company after 7.30 pm, by standard time in the Australian Capital Territory, on 9 May 2000; and

(b) the underlying transfer was made for no consideration or for a consideration less than the arm's length amount in relation to the underlying transfer.

No double counting

(4) In calculating the aggregate referred to in paragraph (2)(a), a direct voting interest held because of subsection 52ZZD(2) is not to be counted under subparagraph (2)(a)(i) to the extent to which it is calculated by reference to a direct voting interest in the company that is taken into account under subparagraph (2)(a)(ii).

(5) In calculating the aggregate referred to in paragraph (2)(b), a direct control interest held because of subsection 52ZZF(4) is not to be counted under subparagraph (2)(b)(i) to the extent to which it is calculated by reference to a direct control interest in the company that is taken into account under subparagraph (2)(b)(ii).

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52ZZD Direct voting interest in a company

(1) An entity holds a ***direct voting interest*** in a company at a particular time equal to the percentage of the voting power in the company that the entity is in a position to control at that time.

(2) If:
   (a) an entity holds a direct voting interest (including a direct voting interest that is taken to be held because of one or more previous applications of this subsection) in a company (the ***first level company***); and
   (b) the first level company holds a direct voting interest in another company (the ***second level company***);

   the entity is taken to hold a direct voting interest in the second level company equal to the percentage worked out using the formula:

   $$\text{First level percentage} \times \text{Second level percentage}$$

   where:

   first level percentage means the percentage of the direct voting interest held by the entity in the first level company.

   second level percentage means the percentage of the direct voting interest held by the first level company in the second level company.

52ZZE Voting power

(1) A reference in this Subdivision to the ***voting power*** in a company is a reference to the total rights of shareholders to vote, or participate in any decision-making, concerning any of the following:
   (a) the making of distributions of capital or profits of the company to its shareholders;
   (b) the constituent document of the company;
   (c) any variation of the share capital of the company;
   (d) any appointment of a director of the company.

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(2) A reference in this Subdivision to ***control of the voting power*** in a company is a reference to control that is direct or indirect, including control that is exercisable as a result of or by means of arrangements or practices:
  (a) whether or not having legal or equitable force; and
  (b) whether or not based on legal or equitable rights.

(3) If the percentage of total rights to vote or participate in decision-making differs as between different types of voting or decision-making, the highest of those percentages applies for the purposes of this section.

(4) If a company:
  (a) is limited both by shares and by guarantee; or
  (b) does not have a share capital;
  this section has effect as if the members or policy holders of the company were shareholders in the company.

52ZZF Direct control interest in a company

(1) An entity holds a ***direct control interest*** in a company at a particular time equal to the percentage of the total paid-up share capital of the company in which the entity holds an interest at that time.

(2) An entity also holds a ***direct control interest*** in a company at a particular time equal to the percentage that the entity holds, or is entitled to acquire, at that time of the total rights to distributions of capital or profits of the company to its shareholders on winding-up.

(3) An entity also holds a ***direct control interest*** in a company at a particular time equal to the percentage that the entity holds, or is entitled to acquire, at that time of the total rights to distributions of capital or profits of the company to its shareholders, otherwise than on winding-up.

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(4) If:
  (a) an entity holds a particular type of direct control interest (including a direct control interest that is taken to be held because of one or more previous applications of this subsection) in a company (the ***first level company***); and
  (b) the first level company holds the same type of direct control interest in another company (the ***second level company***);

the entity is taken to hold that type of direct control interest in the second level company equal to the percentage worked out using the formula:

First level percentage × Second level percentage

where:

first level percentage means the percentage of the direct control interest held by the entity in the first level company.

second level percentage means the percentage of the direct control interest held by the first level company in the second level company.

52ZZG Interest in a share

(1) This section applies for the purpose of working out the percentage of a company's total paid-up share capital in which an entity holds an interest.

(2) Subject to this section, for the purposes of this Subdivision, an entity holds an ***interest in a share*** if the entity has any legal or equitable interest in the share.

(3) For the purposes of this Subdivision, an entity is taken to hold an ***interest in a share*** if:
  (a) the entity has entered into a contract to purchase the share; or
  (b) the entity has a right (otherwise than because of having an interest under a trust) to have the share transferred to the entity or to the entity's order (whether the right is exercisable

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presently or in the future and whether or not on the fulfilment of a condition); or

(c) the entity has a right to acquire the share, or an interest in the share, under an option (whether the right is exercisable presently or in the future and whether or not on the fulfilment of a condition); or

(d) the entity is otherwise entitled to acquire the share or an interest in the share; or

(e) the entity is entitled (otherwise than because of having been appointed as a proxy or representative to vote at a meeting of members of the company or of a class of its members) to exercise or control the exercise of a right attached to the share.

(4) Subsection (3) does not, by implication, limit subsection (2).

(5) An entity is taken to hold an ***interest in a share*** even if the entity holds the interest in the share jointly with another entity.

(6) For the purpose of determining whether an entity holds an interest in a share, it is immaterial that the interest cannot be related to a particular share.

(7) An interest in a share is not to be disregarded only because of:

(a) its remoteness; or

(b) the manner in which it arose; or

(c) the fact that the exercise of a right conferred by the interest is, or is capable of being made, subject to restraint or restriction.

Subdivision E—Controlled private trusts

52ZZH Controlled private trusts

(1) For the purposes of this Division, a trust is a ***controlled private trust*** in relation to an individual if the trust is a designated private trust and:

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(a) the individual passes the ***control test*** set out in subsection (2); or

(b) the individual passes the ***source test*** set out in subsection (3).

Control test

(2) For the purposes of this section, the individual ***passes the control test*** in relation to a trust if:

(a) the individual, or an associate of the individual (other than an associate covered by paragraph 52ZQ(1)(j)), is the trustee, or any of the trustees, of the trust; or

(b) a group in relation to the individual was able to remove or appoint the trustee, or any of the trustees, of the trust; or

(c) a group in relation to the individual was able to vary the trust deed or to veto the decisions of the trustee; or

(ca) it could reasonably be expected that the trustee of the trust would make an application of the corpus or income of the trust to the individual if the individual could not meet his or her reasonable costs of living; or

(d) the aggregate of:

(i) the beneficial interests in the corpus or income of the trust held by the individual (whether directly or indirectly); and

(ii) the beneficial interests in the corpus or income of the trust held by associates of the individual (whether directly or indirectly);

is 50% or more; or

(da) either or both of the following apply:

(i) the individual is eligible to receive an application of the corpus or income of the trust;

(ii) one or more of the individual's associates are eligible to receive an application of the corpus or income of the trust;

and the aggregate number of entities covered by subparagraphs (i) and (ii) is 50% or more of the total number

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of entities eligible to receive an application of the corpus or income of the trust; or

(e) a group in relation to the individual had the power (by means of the exercise by the group of any power of appointment or revocation or otherwise) to obtain, with or without the consent of any other entity, the beneficial enjoyment of the corpus or income of the trust; or

(f) a group in relation to the individual was able in any manner whatsoever, whether directly or indirectly, to control the application of the corpus or income of the trust; or

(g) a group in relation to the individual was capable under a scheme of gaining the enjoyment or the control referred to in paragraph (e) or (f); or

(h) a trustee of the trust was accustomed or under an obligation (whether formally or informally) or might reasonably be expected to act in accordance with the directions, instructions or wishes of a group in relation to the individual.

(2A) For the purposes of paragraph (2)(da), an entity is eligible to receive an application of the corpus or income of the trust if the trustee of the trust has a discretion to make an application of the corpus or income of the trust to the entity.

(2B) For the purposes of applying paragraph (2)(da) at a particular time, subparagraph (2)(da)(i) is taken to apply at that particular time to the individual if the individual was eligible to receive an application of the corpus or income of the trust at any time during:

(a) the period beginning at the start of the tax year in which that particular time occurs and ending at that particular time; or

(b) the preceding tax year.

(2C) For the purposes of applying paragraph (2)(da) at a particular time, subparagraph (2)(da)(ii) is taken to apply at that particular time to an entity that is an associate of the individual at that particular time if:

(a) the entity was eligible to receive an application of the corpus or income of the trust at any time during:

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(i) the period beginning at the start of the tax year in which that particular time occurs and ending at that particular time; or
(ii) the preceding tax year; and
(b) the entity was an associate of the individual at the time the entity was so eligible.

(2D) For the purposes of applying paragraph (2)(da) at a particular time, in working out the total number of entities eligible to receive an application of the corpus or income of the trust, take into account an entity that was eligible to receive an application of the corpus or income of the trust at any time during:
(a) the period beginning at the start of the tax year in which that particular time occurs and ending at that particular time; or
(b) the preceding tax year.

(2E) No paragraph of subsection (2) limits any other paragraph of that subsection.

Source test

(3) For the purposes of this section, an individual ***passes the source test*** in relation to a trust if:
(a) the individual has transferred property or services to the trust after 7.30 pm, by standard time in the Australian Capital Territory, on 9 May 2000; and
(b) the underlying transfer was made for no consideration or for a consideration less than the arm's length amount in relation to the underlying transfer.

Group

(4) A reference in this section to a ***group*** in relation to an individual is a reference to:
(a) the individual acting alone; or
(b) an associate of the individual acting alone; or
(c) the individual and one or more associates of the individual acting together; or

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(d) 2 or more associates of the individual acting together.

Income

(5) In this section:

income means income within the ordinary meaning of that expression.

52ZZI Interest in a trust

(1) For the purposes of this Subdivision, if an entity:
  (a) has entered into a contract to purchase a beneficial interest in the corpus or income of a trust; or
  (b) has a right, otherwise than by reason of holding an interest in a trust, to have such an interest transferred to the entity or to the entity's order (whether the right is exercisable presently or in the future) and whether on the fulfilment of a condition or not; or
  (c) has the right to acquire such an interest under an option (whether the right is exercisable presently or in the future) and whether on the fulfilment of a condition or not; or
  (d) is otherwise entitled to acquire such an interest;

the entity is taken to hold that interest in the trust.

(2) An entity is taken to hold an interest in the corpus or income of a trust even if the entity holds the interest jointly with another entity.

(3) An interest in the corpus or income of a trust is not to be disregarded only because of:
  (a) its remoteness; or
  (b) the manner in which it arose; or
  (c) the fact that the exercise of a right conferred by the interest is, or is capable of being made, subject to restraint or restriction.

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(4) In this section:

income means income within the ordinary meaning of that expression.

Subdivision F—Attributable stakeholders and attribution percentages

52ZZJ Attributable stakeholder, asset attribution percentage and income attribution percentage

Company

(1) For the purposes of this Division, if a company is a controlled private company in relation to an individual:
  (a) the individual is an ***attributable stakeholder*** of the company unless the Commission otherwise determines; and
  (b) if the individual is an attributable stakeholder of the company—the individual's ***asset attribution percentage*** in relation to the company is:
    (i) 100%; or
    (ii) if the Commission determines a lower percentage in relation to the individual and the company—that lower percentage; and
  (c) if the individual is an attributable stakeholder of the company—the individual's ***income attribution percentage*** in relation to the company is:
    (i) 100%; or
    (ii) if the Commission determines a lower percentage in relation to the individual and the company—that lower percentage.

Trust

(2) For the purposes of this Division, if:
  (a) a trust is a controlled private trust in relation to an individual; and

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(b) the trust is not a concessional primary production trust in relation to the individual (see section 52ZZZF);

then:

(c) the individual is an ***attributable stakeholder*** of the trust unless the Commission otherwise determines; and

(d) if the individual is an attributable stakeholder of the trust—the individual's ***asset attribution percentage*** in relation to the trust is:

(i) 100%; or

(ii) if the Commission determines a lower percentage in relation to the individual and the trust—that lower percentage; and

(e) if the individual is an attributable stakeholder of the trust—the individual's ***income attribution percentage*** in relation to the trust is:

(i) 100%; or

(ii) if the Commission determines a lower percentage in relation to the individual and the trust—that lower percentage.

(2A) The only ***attributable stakeholder*** of a special disability trust is the principal beneficiary of the trust.

Note 1: For ***special disability trust***, see section 52ZZZW.

Note 2: For ***principal beneficiary*** of a special disability trust, see subsection 52ZZZWA(1).

Determinations

(3) A determination under this section is to be in writing.

(4) A determination under this section has effect accordingly.

(5) In making a determination under this section, the Commission must comply with any relevant decision-making principles.

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Subdivision G—Attribution of income of controlled private companies and controlled private trusts

52ZZK Attribution of income

(1) For the purposes of this Act, if:

(a) during a particular derivation period of a company or trust, the company or trust derives an amount that is ordinary income; and

(b) an individual is an attributable stakeholder of the company or a trust throughout the attribution period that relates to the derivation period of the company or trust; and

(c) the attribution period begins on or after 1 January 2002; and

(d) if that amount:

(i) had been derived by the individual instead of by the company or trust; and

(ii) in the case of income accounted for on an accrual basis as mentioned in subsection (5)—had been so derived by the individual on a cash basis;

that amount would have been ordinary income of the individual; and

(e) that amount is not excluded income (see subsection (2));

then, in addition to any other ordinary income of the individual, the individual is taken to receive, during that attribution period, ordinary income at an annual rate equal to the individual's income attribution percentage of the amount worked out using the formula:

$$\frac{\text{Amount referred to in paragraph (a)}}{\text{Number of days in the derivation period}} \times 365$$

Note: For attribution of the income of a special disability trust, see section 52ZZZWI.

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Excluded income

(2) The Commission may, by writing, determine that, for the purposes of the application of subsection (1) to a specified individual and a specified company or trust, a specified amount is ***excluded income***.

(3) A determination under subsection (2) has effect accordingly.

(4) In making a determination under subsection (2), the Commission must comply with any relevant decision-making principles.

Accrual v. cash accounting

(5) If the income of a company or trust is accounted for on an accrual basis for the purposes of section 6-5 of the *Income Tax Assessment Act 1997*, the ordinary income of the company or trust is accounted for on an accrual basis for the purposes of this section.

(6) If the income of a company or trust is accounted for on a cash basis for the purposes of section 6-5 of the *Income Tax Assessment Act 1997*, the ordinary income of the company or trust is accounted for on a cash basis for the purposes of this section.

52ZZL No double counting of attributed income

(1) If:
  (a) a company makes a distribution of capital or profits of the company to a particular shareholder of the company; and
  (b) the shareholder is an individual; and
  (c) the individual is an attributable stakeholder of the company;

the Commission may, by writing:
  (d) determine that, for the purposes of this Act, the ordinary income of the individual does not include the amount or value distributed to the individual; or
  (e) determine that, for the purposes of this Act, the ordinary income of the individual does not include so much of the amount or value distributed to the individual as is specified in the determination.

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(2) If:
  (a) a trust:
    (i) makes a distribution (whether in money or in other property) to a particular beneficiary of the trust; or
    (ii) credits an amount to a particular beneficiary of the trust; and
  (b) the beneficiary is an individual; and
  (c) the individual is an attributable stakeholder of the trust;

the Commission may, by writing:
  (d) determine that, for the purposes of this Act, the ordinary income of the individual does not include the amount distributed or credited to the individual; or
  (e) determine that, for the purposes of this Act, the ordinary income of the individual does not include so much of the amount distributed or credited to the individual as is specified in the determination.

(3) In making a determination under this section, the Commission must comply with any relevant decision-making principles.

(4) This section is to be disregarded for the purposes of paragraph 52ZZK(1)(d).

52ZZM Ordinary income of a company or trust

(1) For the purposes of this Subdivision, the ordinary income of a company or trust is to be worked out as if:
  (a) exempt lump sums were not excluded from the definition of ***ordinary income*** in subsection 5H(1); and
  (b) each reference in section 5H to a person included a reference to a company or trust; and
  (c) the following provisions had not been enacted:
    (i) section 46Q;
    (ii) subsection 5H(8);
    (iii) subsections 5H(12) and (12A);
    (iv) Divisions 1, 2, 3, 4, 6 and 7.

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(2) Paragraphs (1)(a) and (c) have effect subject to paragraph 52ZZK(1)(d).

(3) A reference in this Subdivision to the ordinary income of a company or trust is a reference to the company's or trust's gross ordinary income from all sources calculated without any reduction, other than a reduction under section 52ZZN or 52ZZO.

52ZZN Ordinary income from a business—treatment of trading stock

(1) For the purposes of this Subdivision, if:
  (a) a company or trust carries on a business; and
  (b) the value of all the trading stock on hand at the end of a derivation period is greater than the value of all the trading stock on hand at the beginning of that derivation period;

the company's or trust's ordinary income for that derivation period in the form of profits from the business is to include the amount of the difference in values.

(2) For the purposes of this Subdivision, if:
  (a) a company or trust carries on a business; and
  (b) the value of all the trading stock on hand at the end of a derivation period is less than the value of all the trading stock on hand at the beginning of that derivation period;

the company's or trust's ordinary income for that derivation period in the form of profits from the business is to be reduced by the amount of the difference in values.

52ZZO Permissible reductions of business and investment income

(1) For the purposes of this Subdivision, if a company or trust carries on a business or holds an investment, the company's or trust's ordinary income from the business or investment is to be reduced by:

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(a) losses and outgoings that relate to the business or investment and are allowable deductions for the purposes of section 8-1 of the *Income Tax Assessment Act 1997*; and

(ba) amounts that relate to the business or investment and can be deducted for the decline in value of depreciating assets under Subdivision 40-B of the *Income Tax Assessment Act 1997*; and

(c) amounts that relate to the business or investment and are allowable deductions under any other provision of the *Income Tax Assessment Act 1936* or the *Income Tax Assessment Act 1997*.

(2) However, the rule in subsection (1) does not apply to:

(a) an ineligible deduction (see subsection (3)); or

(b) an ineligible amount (see subsection (4)); or

(c) an ineligible part of a deduction (see subsection (5)).

(3) The Commission may, by legislative instrument, determine that a specified deduction is an ***ineligible deduction*** for the purposes of this section.

(4) The Commission may, by legislative instrument, determine that a specified amount is an ***ineligible amount*** for the purposes of this section.

(5) The Commission may, by legislative instrument, determine that a specified part of a specified deduction is an ***ineligible part*** of the deduction for the purposes of this section.

(6) A determination under subsection (3), (4) or (5) has effect accordingly.

52ZZP Derivation periods

(1) For the purposes of this Division:

(a) if a company or trust was in existence throughout a tax year of the company or trust—the tax year is a ***derivation period*** of the company or trust; and

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(b) if a company or trust was in existence during a part of a tax year of the company or trust—that part of the tax year is a ***derivation period*** of the company or trust.

(2) Subsection (1) has effect subject to subsection (3).

(3) The Commission may, by writing, determine that, for the purposes of the application of this Subdivision to a specified individual and a specified company or trust, a specified period is a ***derivation period*** of the company or trust.

(4) A determination under subsection (3) has effect accordingly.

(5) In making a determination under subsection (3), the Commission must comply with any relevant decision-making principles.

(6) To avoid doubt, for the purposes of the application of this Subdivision to a particular individual and a particular company or trust, it is not necessary that the individual be an attributable stakeholder of the company or trust throughout a derivation period of the company or trust.

(7) A derivation period may begin or end before the commencement of this Division.

52ZZQ Attribution periods

(1) The Commission may, by writing, determine that, in the event that a specified individual is an attributable stakeholder of a specified company or trust at a specified time (the ***start time***):

(a) a period beginning at the start time and ending at whichever is the earlier of the following times:

(i) the later time specified in the determination;

(ii) the time when the individual ceases to be an attributable stakeholder of the company or trust;

is an attribution period for the purposes of the application of this Division to the individual and the company or trust; and

(b) that attribution period relates to a specified derivation period of the company or trust.

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(2) A determination under subsection (1) has effect accordingly.

(3) The Commission must ensure that, if an individual is an attributable stakeholder of a company or of a trust at a particular time on or after 1 January 2002, that time is included in an attribution period.

(4) An attribution period may, but is not required to, overlap (in whole or in part) the derivation period to which it relates.

(5) An attribution period does not have to be of the same length as the derivation period to which it relates.

(6) Attribution periods do not have to be of the same length.

(7) In making a determination under this section, the Commission must comply with any relevant decision-making principles.

Subdivision H—Attribution of assets of controlled private companies and controlled private trusts

52ZZR Attribution of assets

(1) For the purposes of this Act, if:
  (a) an individual is an attributable stakeholder of a company or trust at a particular time on or after 1 January 2002; and
  (b) at that time, the company or trust owns a particular asset (whether alone or jointly or in common with another entity or entities); and
  (c) if, at that time, that asset had been owned by the individual instead of by the company or trust, the value of the asset would not be required to be disregarded by any express provision of this Act; and
  (d) at that time, the asset is not an excluded asset (see subsection (2));

there is to be included in the value of the individual's assets an amount equal to the individual's asset attribution percentage of the value of the asset referred to in paragraph (b).

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Note: For attribution of the assets of a special disability trust, see section 52ZZZWK.

Excluded assets

(2) The Commission may, by writing, determine that, for the purposes of the application of subsection (1) to a specified individual and a particular company or trust, a specified asset is an ***excluded asset***.

(3) A determination under subsection (2) has effect accordingly.

(4) In making a determination under subsection (2), the Commission must comply with any relevant decision-making principles.

52ZZS When attributed asset is unrealisable

(1) For the purposes of this Act, if:
   (a) an individual is an attributable stakeholder of a company or trust at a particular time on or after 1 January 2002; and
   (b) at that time, the company or trust owns a particular asset (whether alone or jointly or in common with another entity or entities); and
   (c) under section 52ZZR, there is included in the value of the individual's assets an amount equal to the individual's asset attribution percentage of the value of the asset held by the company or trust;

   the amount referred to in paragraph (c) is taken not to be an unrealisable asset of the individual unless the asset referred to in paragraph (b) is an unrealisable asset of the company or trust.

(2) For the purposes of this section, in determining whether an asset is an unrealisable asset of a company or trust, ignore any limitation or restriction:
   (a) in the constituent document of the company or the trust deed of the trust, as the case requires; or
   (b) under a scheme that was entered into or carried out for the sole or dominant purpose of enabling any individual or

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individuals to avoid the application of this section and/or section 1208F of the Social Security Act.

(3) For the purposes of this section, in determining whether an asset is an unrealisable asset of a company or trust, subsections 5L(11) and (12) have effect as if each reference in those subsections to a person included a reference to a company or trust.

52ZZT Effect of charge or encumbrance on value of assets

Charge or encumbrance relating to a single asset

(1) For the purposes of the application of this Subdivision (other than this section) to a particular individual and a particular company or trust, if:
   (a) there is a charge or encumbrance over a particular asset of the company or trust; and
   (b) the charge or encumbrance relates exclusively to that asset;

   the value of the asset is to be reduced by the value of the charge or encumbrance.

(2) Subsection (1) does not apply to a charge or encumbrance over an asset of a company or trust to the extent that:
   (a) the charge or encumbrance is a collateral security; or
   (b) the charge or encumbrance was given for the benefit of an entity other than the company or trust; or
   (c) the value of the charge or encumbrance is excluded under subsection (6).

Charge or encumbrance relating to 2 or more assets

(3) For the purposes of the application of this Subdivision (other than this section) to a particular individual and a particular company or trust, if:
   (a) there is a charge or encumbrance over a particular asset (the ***first asset***) of the company or trust; and

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(b) the charge or encumbrance relates to the first asset and one or more other assets of the company or trust;

the value of the first asset is to be reduced by the amount worked out using the formula:

$$\text{Value of the charge or encumbrance} \times \frac{\text{Value of the first asset}}{\text{Total value of the first asset and the other assets}} \times \frac{\text{Total value of attributable assets subject to the charge or encumbrance}}{\text{Total value of assets subject to the charge or encumbrance}}$$

(4) Subsection (3) does not apply to a charge or encumbrance over an asset of the company or trust to the extent that:

(a) the charge or encumbrance was given for the benefit of an entity other than the company or trust; or

(b) the value of the charge or encumbrance is excluded under subsection (6).

(5) If (apart from this section), under section 52ZZR, there is included in the value of the individual's assets an amount equal to the individual's asset attribution percentage of the value of an asset held by the company or trust, the asset held by the company or trust is an ***attributable asset*** for the purposes of subsection (3).

Exclusion

(6) The Commission may, by writing, determine that, for the purposes of the application of this section to a specified individual and a specified company or trust, the whole or a specified part of a specified charge or encumbrance over one or more of the assets of the company or trust is excluded for the purposes of paragraphs (2)(c) and (4)(b).

(7) A determination under subsection (6) has effect accordingly.

(8) In making a determination under subsection (6), the Commission must comply with any relevant decision-making principles.

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52ZZU Effect of unsecured loan on value of assets

(1) For the purposes of the application of this Subdivision to a particular individual and a particular company or trust, if:
  (a) the company or trust is the borrower under a loan; and
  (b) the loan is not secured by a charge or encumbrance over one or more of the assets of the company or trust;

  the Commission may, by writing, determine that the value of a specified asset of the company or trust is to be reduced by the whole, or a specified part, of the amount of the loan.

(2) A determination under subsection (1) has effect accordingly.

(3) In making a determination under subsection (1), the Commission must comply with any relevant decision-making principles.

52ZZV Value of company's or trust's assets etc.

(1) For the purposes of this Subdivision, the value of a company's or trust's assets, or of a charge or encumbrance on such assets, is to be worked out as if:
  (a) each reference in sections 5L and 5LA to a person included a reference to a company or trust; and
  (b) Subdivision A of Division 11 (other than section 52D) had not been enacted.

(2) Paragraph (1)(b) has effect subject to paragraph 52ZZR(1)(c).

Subdivision I—Modification of asset deprivation rules

52ZZW Individual disposes of asset to company or trust

(1) If:
  (a) an individual transfers property to a company or trust on or after 1 January 2002; and
  (b) either:
    (i) as a result of the transfer, the individual became an attributable stakeholder of the company or trust; or

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(ii) at the time of the transfer, the individual was an attributable stakeholder of the company or trust; and

(c) the transfer amounts to a disposal by the individual of an asset of the individual;

the Commission may, by writing, determine that Subdivisions BA and BB of Division 11 and sections 45UT and 45UTA apply to that disposal as if:

(d) the amount of the disposition were nil; or

(e) the amount of the disposition were reduced by the amount specified in the determination.

(2) In making a decision under this section, the Commission must comply with any relevant decision-making principles.

52ZZX Disposal of asset by company or trust

(1) If:

(a) an individual is an attributable stakeholder of a company or trust; and

(b) the company or trust disposes of an asset of the company or trust;

Subdivisions BA and BB of Division 11 and sections 45UT and 45UTA apply, and are taken to have applied, as if:

(c) the individual had disposed of an asset of the individual; and

(d) the amount of the disposition referred to in paragraph (c) were equal to the individual's asset attribution percentage of the amount of the disposition referred to in paragraph (b).

(2) Subsection (1) has effect subject to subsection (3).

Commission determinations

(3) The Commission may, by writing:

(a) determine that the disposal of a specified asset is exempt from subsection (1); or

(b) determine that subsection (1) has effect, in relation to the disposal of a specified asset, as if the reference in

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paragraph (1)(d) to the individual's asset attribution percentage were a reference to such lower percentage as is specified in the determination.

(4) A determination under subsection (3) has effect accordingly.

(5) In making a determination under subsection (3), the Commission must comply with any relevant decision-making principles.

General disposal

(6) For the purposes of subsection (1), a company or trust ***disposes*** of assets of the company or trust if:

(a) on or after 1 January 2002, the company or trust, or an attributable stakeholder of the company or trust, engages in a course of conduct that directly or indirectly:

(i) destroys all or some of the company's or trust's assets; or

(ii) disposes of all or some of the company's or trust's assets; or

(iii) diminishes the value of all or some of the company's or trust's assets; and

(b) one of the following subparagraphs is satisfied:

(i) the company or trust receives no consideration in money or money's worth for the destruction, disposal or diminution;

(ii) the company or trust receives inadequate consideration in money or money's worth for the destruction, disposal or diminution;

(iii) the Commission is satisfied that the purpose, or the dominant purpose, of the company, trust or stakeholder in engaging in that course of conduct was to obtain an income support advantage for an attributable stakeholder of the company or trust (who may be the first-mentioned stakeholder) or for a relative of an attributable stakeholder of the company or trust; and

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(c) in the case of a company—the disposal is not by way of making a distribution of capital or profits of the company to a shareholder of the company; and

(d) in the case of a trust—the disposal is not by way of:

(i) making a distribution (whether in money or in other property) to a beneficiary of the trust; or

(ii) crediting an amount to a beneficiary of the trust.

(7) If a company or trust disposes of assets as mentioned in subsection (6), the amount of the disposition is:

(a) if the company or trust receives no consideration for the destruction, disposal or diminution—an amount equal to:

(i) the value of the assets that are destroyed; or

(ii) the value of the assets that are disposed of; or

(iii) the amount of the diminution in the value of the assets whose value is diminished; or

(b) if the company or trust receives consideration for the destruction, disposal or diminution—an amount equal to:

(i) the value of the assets that are destroyed; or

(ii) the value of the assets that are disposed of; or

(iii) the amount of the diminution in the value of the assets whose value is diminished;

less the amount of the consideration received by the company or trust in respect of the destruction, disposal or diminution.

Disposal by way of distribution

(8) For the purposes of subsection (1), if a company makes a distribution of capital or profits of the company to a shareholder of the company on or after 1 July 2000:

(a) the company is taken to have disposed of an asset of the company; and

(b) the amount of the disposition is equal to the amount or value distributed to the shareholder.

(9) For the purposes of subsection (1), if a trust:

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(a) makes a distribution (whether in money or in other property) to a beneficiary of the trust on or after 1 July 2000; or

(b) credits an amount to a beneficiary of the trust on or after 1 July 2000;

then:

(c) the trust is taken to have disposed of an asset of the trust; and

(d) the amount of the disposition is equal to the amount or value distributed or credited to the beneficiary.

Obtaining an income support advantage

(10) For the purposes of this section, an entity has a purpose of obtaining an income support advantage for an individual (who may be the entity) if the entity has a purpose of:

(a) enabling the individual to obtain any of the following:

(i) a service pension;

(ii) income support supplement;

(iia) a veteran payment;

(iii) a social security pension;

(iv) a social security benefit; or

(b) enabling the individual to obtain any of the following at a higher rate than would otherwise have been payable:

(i) a service pension;

(ii) income support supplement;

(iia) a veteran payment;

(iii) a social security pension;

(iv) a social security benefit; or

(c) ensuring that the individual would be eligible for benefits under Division 12 of this Part or fringe benefits under the Social Security Act.

52ZZY Individual ceases to be an attributable stakeholder of a company or trust

If:

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(a) an individual ceases to be an attributable stakeholder of a company or trust on or after 1 January 2002; and

(b) immediately before the cessation, the company or trust owned a particular asset (whether alone or jointly or in common with another entity or entities);

Subdivisions BA and BB of Division 11 and sections 45UT and 45UTA have effect as if:

(c) the individual had disposed of an asset of the individual; and

(d) the amount of the disposition referred to in paragraph (c) were equal to the individual's asset attribution percentage of the value of the asset referred to in paragraph (b), worked out immediately before the cessation.

52ZZZ Individual disposes of asset to company or trust before 1 January 2002—individual is attributable stakeholder

(1) If:

(a) an individual has transferred property to a company or trust before 1 January 2002; and

(b) the transfer amounts to a disposal by the individual of an asset of the individual; and

(c) apart from this section:

(i) under Subdivision BA or BB of Division 11, as a result of the disposition, a particular amount is included in the value of the individual's assets for the period of 5 years that starts on the day on which the disposition took place; and

(ii) that 5-year period ends after 1 January 2002; and

(d) the individual is an attributable stakeholder of the company or trust on 1 January 2002;

the Commission may, by writing, determine that:

(e) in a case where the individual's asset attribution percentage is 100%—Subdivisions BA and BB of Division 11 and sections 45UT and 45UTA have effect, in relation to the disposal of the asset referred to in paragraph (b), as if references in those Subdivisions and sections to the period of

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5 years starting on the day on which the disposition took place were references to the period:

(i) beginning on the day on which the disposition took place; and

(ii) ending immediately before 1 January 2002; or

(f) in a case where the individual's asset attribution percentage is less than 100%—Subdivisions BA and BB of Division 11 and sections 45UT and 45UTA have effect on and after 1 January 2002, in relation to the disposal of the asset referred to in paragraph (b), as if the amount of the disposition were reduced by:

(i) the individual's asset attribution percentage as at 1 January 2002; or

(ii) if a higher percentage is specified in the determination—that higher percentage.

(2) A determination under subsection (1) has effect accordingly.

(3) In making a determination under subsection (1), the Commission must comply with any relevant decision-making principles.

52ZZZA Individual disposes of asset to company or trust before 1 January 2002—individual's spouse is attributable stakeholder

(1) If:

(a) an individual has transferred property to a company or trust before 1 January 2002; and

(b) the transfer amounts to a disposal by the individual of an asset of the individual; and

(c) apart from this section:

(i) under Subdivision BA or BB of Division 11, as a result of the disposition, a particular amount is included in the value of the individual's assets for the period of 5 years that starts on the day on which the disposition took place; and

(ii) that 5-year period ends after 1 January 2002; and

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(d) the individual's spouse is an attributable stakeholder of the company or trust on 1 January 2002;

the Commission may, by writing, determine that:

(e) in a case where the spouse's asset attribution percentage is 100%—Subdivisions BA and BB of Division 11 and sections 45UT and 45UTA have effect, in relation to the disposal of the asset referred to in paragraph (b), as if references in those Subdivisions and sections to the period of 5 years starting on the day on which the disposition took place were references to the period:

(i) beginning on the day on which the disposition took place; and

(ii) ending immediately before 1 January 2002; or

(f) in a case where the spouse's asset attribution percentage is less than 100%—Subdivisions BA and BB of Division 11 and sections 45UT and 45UTA have effect on and after 1 January 2002, in relation to the disposal of the asset referred to in paragraph (b), as if the amount of the disposition were reduced by the spouse's asset attribution percentage as at 1 January 2002.

(2) A determination under subsection (1) has effect accordingly.

(3) In making a determination under subsection (1), the Commission must comply with any relevant decision-making principles.

Subdivision J—Modification of income deprivation rules

52ZZZB Individual disposes of ordinary income to company or trust

(1) If:

(a) an individual transfers property to a company or trust on or after 1 January 2002; and

(b) either:

(i) as a result of the transfer, the individual became an attributable stakeholder of the company or trust; or

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(ii) at the time of the transfer, the individual was an attributable stakeholder of the company or trust; and

(c) the transfer amounts to a disposal by the individual of ordinary income of the individual; and

(d) if the ordinary income is income from an asset—the course of conduct that constituted the disposition of the income did not also constitute a disposition of the asset;

the Commission may, by writing, determine that Division 7 applies, and is taken to have applied, to the disposal referred to in paragraph (c) as if:

(e) the amount of the disposition were nil; or

(f) the amount of the disposition were reduced by the amount specified in the determination.

(2) In making a decision under this section, the Commission must comply with any relevant decision-making principles.

52ZZZC Disposal of income by company or trust

(1) If:

(a) an individual is an attributable stakeholder of a company or trust; and

(b) the company or trust disposes of ordinary income of the company or trust; and

(c) if that income had been income of the individual instead of the company or trust, the income would have been ordinary income of the individual; and

(d) if the ordinary income is income from an asset—the course of conduct that constituted the disposition of the income did not also constitute a disposition of the asset;

Division 7 applies, and is taken to have applied, as if:

(e) the individual had disposed of ordinary income of the individual; and

(f) the amount of the disposition referred to in paragraph (e) were equal to the individual's income attribution percentage of the amount of the disposition referred to in paragraph (b).

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(2) Subsection (1) has effect subject to subsection (3).

Commission determinations

(3) The Commission may, by writing:
  (a) determine that the disposal of specified ordinary income is exempt from subsection (1); or
  (b) determine that subsection (1) has effect, in relation to the disposal of specified ordinary income, as if the reference in paragraph (1)(f) to the individual's income attribution percentage were a reference to such lower percentage as is specified in the determination.

(4) A determination under subsection (3) has effect accordingly.

(5) In making a determination under subsection (3), the Commission must comply with any relevant decision-making principles.

General disposal

(6) For the purposes of subsection (1), a company or trust ***disposes*** of ordinary income of the company or trust if:
  (a) on or after 1 January 2002, the company or trust, or an attributable stakeholder of the company or trust, engages in a course of conduct that directly or indirectly:
    (i) destroys the source of the income; or
    (ii) disposes of the income or the source of the income; or
    (iii) diminishes the income; and
  (b) one of the following subparagraphs is satisfied:
    (i) the company or trust receives no consideration in money or money's worth for the destruction, disposal or diminution;
    (ii) the company or trust receives inadequate consideration in money or money's worth for the destruction, disposal or diminution;
    (iii) the Commission is satisfied that the purpose, or the dominant purpose, of the company, trust or stakeholder

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in engaging in that course of conduct was to obtain an income support advantage for an attributable stakeholder of the company or trust (who may be the first-mentioned stakeholder) or for a relative of an attributable stakeholder of the company or trust; and

(c) in the case of a company—the disposal is not by way of making a distribution of capital or profits of the company to a shareholder of the company; and

(d) in the case of a trust—the disposal is not by way of:

(i) making a distribution (whether in money or in other property) to a beneficiary of the trust; or

(ii) crediting an amount to a beneficiary of the trust.

(7) If a company or trust disposes of ordinary income as mentioned in subsection (6), the amount of the disposition is:

(a) if the company or trust receives no consideration for the destruction, disposal or diminution—the annual rate of the diminution of the income because of the destruction, disposal or diminution; or

(b) if the company or trust receives consideration for the destruction, disposal or diminution—the annual rate of the diminution of the income because of the destruction, disposal or diminution less the part (if any) of the consideration that the Commission considers to be fair and reasonable in all the circumstances of the case.

Obtaining an income support advantage

(8) For the purposes of this section, an entity has a purpose of obtaining an income support advantage for an individual (who may be the entity) if the entity has a purpose of:

(a) enabling the individual to obtain any of the following:

(i) a service pension;

(ii) income support supplement;

(iia) a veteran payment;

(iii) a social security pension;

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(iv) a social security benefit; or

(b) enabling the individual to obtain any of the following at a higher rate than would otherwise have been payable:

(i) a service pension;

(ii) income support supplement;

(iia) a veteran payment;

(iii) a social security pension;

(iv) a social security benefit; or

(c) ensuring that the individual would be eligible for benefits under Division 12 of this Part or fringe benefits under the Social Security Act.

Ordinary income

(9) In this section:

ordinary income, in relation to a company or trust, has the same meaning as in Subdivision G.

52ZZZD Individual disposes of income to company or trust before 1 January 2002—individual is attributable stakeholder

(1) If:

(a) an individual has transferred property to a company or trust before 1 January 2002; and

(b) the transfer amounts to a disposal by the individual of ordinary income of the individual; and

(c) apart from this section, under Division 7, as a result of the disposition referred to in paragraph (b), a particular amount is included in the individual's ordinary income; and

(d) the individual is an attributable stakeholder of the company or trust on 1 January 2002;

the Commission may, by writing, determine that:

(e) in a case where the individual's income attribution percentage is 100%—Division 7 has effect on or after 1 January 2002, in relation to the disposal of the income

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referred to in paragraph (b), as if the amount of the disposition were nil; or

(f) in a case where the individual's income attribution percentage is less than 100%—Division 7 has effect on and after 1 January 2002, in relation to the disposal of the income referred to in paragraph (b), as if the amount of the disposition were reduced by:

(i) the individual's income attribution percentage as at 1 January 2002; or

(ii) if a higher percentage is specified in the determination—that higher percentage.

(2) A determination under subsection (1) has effect accordingly.

(3) In making a determination under subsection (1), the Commission must comply with any relevant decision-making principles.

52ZZZE Individual disposes of income to company or trust before 1 January 2002—individual's spouse is attributable stakeholder

(1) If:

(a) an individual has transferred property to a company or trust before 1 January 2002; and

(b) the transfer amounts to a disposal by the individual of ordinary income of the individual; and

(c) apart from this section, under Division 7, as a result of the disposition referred to in paragraph (b), a particular amount is included in the individual's ordinary income; and

(d) the individual's spouse is an attributable stakeholder of the company or trust on 1 January 2002;

the Commission may, by writing, determine that:

(e) in a case where the spouse's income attribution percentage is 100%—Division 7 has effect on or after 1 January 2002, in relation to the disposal of the income referred to in paragraph (b), as if the amount of the disposition were nil; or

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(f) in a case where the spouse's income attribution percentage is less than 100%—Division 7 has effect on and after 1 January 2002, in relation to the disposal of the income referred to in paragraph (b), as if the amount of the disposition were reduced by the spouse's income attribution percentage as at 1 January 2002.

(2) A determination under subsection (1) has effect accordingly.

(3) In making a determination under subsection (1), the Commission must comply with any relevant decision-making principles.

Subdivision K—Concessional primary production trusts

52ZZZF Concessional primary production trusts

(1) For the purposes of this Division, a trust is a ***concessional primary production trust*** in relation to an individual at a particular time (the ***test time***), if:

(a) at the test time, the trust is a controlled private trust in relation to the individual; and

(b) at the test time, either:

(i) the trust carries on a primary production enterprise (the ***first primary production enterprise***); or

(ii) the trust makes an asset available to another entity, the other entity carries on a primary production enterprise (the ***first primary production enterprise***), and the asset is used by the other entity wholly or principally for the purposes of carrying on the first primary production enterprise; and

(c) at the test time, more than 70% of the net value of the assets of the trust (excluding the net value of the principal home of the individual if that principal home is owned by the trust) relates to assets used wholly or principally for the purposes of carrying on a primary production enterprise; and

(d) at the test time, the sum of:

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(i) the total adjusted net value of assets that are owned or controlled by the individual and used wholly or principally for the purposes of carrying on a primary production enterprise; and

(ii) the total adjusted net value of assets that are owned or controlled by the individual's spouse and used wholly or principally for the purposes of carrying on a primary production enterprise;

is less than the primary production attribution threshold (as defined by subsection (6)); and

(e) if:

(i) the individual or the individual's spouse had adjusted net primary production income for the last tax year that ended before the test time; and

(ii) the individual or the individual's spouse had adjusted net primary production income for the tax year that preceded the tax year first referred to in subparagraph (i); and

(iii) the individual or the individual's spouse had adjusted net primary production income for the tax year that preceded the tax year first referred to in subparagraph (ii);

the average of the following amounts is less than the amount specified in clause 19 of Schedule 1 to the *A New Tax System (Family Assistance) Act 1999* (subject to any indexation under Schedule 4 to that Act):

(iv) the total adjusted net primary production income of the individual and the individual's spouse for the tax year referred to in subparagraph (i);

(v) the total adjusted net primary production income of the individual and the individual's spouse for the tax year first referred to in subparagraph (ii);

(vi) the total adjusted net primary production income of the individual and the individual's spouse for the tax year first referred to in subparagraph (iii); and

(f) if:

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(i) neither the individual nor the individual's spouse had adjusted net primary production income for the last tax year that ended before the test time; or

(ii) neither the individual nor the individual's spouse had adjusted net primary production income for the tax year that preceded the tax year referred to in subparagraph (i); or

(iii) neither the individual nor the individual's spouse had adjusted net primary production income for the tax year that preceded the tax year referred to in subparagraph (ii);

the Commission, by writing, determines that this paragraph applies to the individual and the trust; and

(g) at the test time, the individual is not actively involved with the first primary production enterprise; and

(h) at the test time, an eligible descendant of the individual is actively involved with the first primary production enterprise; and

(i) if, at the test time, the individual is able to appoint the trustee, or any of the trustees, of the trust—there is a provision of the trust deed to the effect that that ability may only be exercised:

(i) if the trustee concerned dies, resigns or becomes subject to a legal disability; or

(ii) in accordance with a statutory law relating to the appointment of trustees; and

(j) if, at the test time, the individual is able to veto or direct the decisions of the trustee—there is a provision of the trust deed to the effect that that ability may only be exercised:

(i) in relation to the sale of land used for the purposes of carrying on the first primary production enterprise; or

(ii) in relation to the sale of fishing rights or timber rights used for the purposes of carrying on the first primary production enterprise; or

(iii) in accordance with a statutory law relating to the appointment of trustees; and

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(k) at the test time, there is a provision of the trust deed to the effect that neither the individual, nor the individual's spouse, is, or is capable of becoming, the trustee, or any of the trustees, of the trust; and

(l) at the test time, a group in relation to the individual is not able to vary a provision covered by paragraph (i), (j) or (k); and

(m) at the test time, neither the individual, nor the individual's spouse, is able to vary the trust deed; and

(n) at the test time, neither the individual, nor the individual's spouse:

(i) benefits or is capable (whether by the exercise of a power of appointment or otherwise) of benefiting under the trust, either directly or through any interposed companies, business partnerships or trusts; or

(ii) receives any remuneration or other benefits from the trust otherwise than in the capacity of beneficiary of the trust.

(2) For the purposes of the application of paragraphs (1)(e) and (f) to a particular tax year, a person is the ***individual's spouse*** if, and only if:

(a) the person was the spouse of the individual at any time during the tax year; and

(b) the person is the spouse of the individual at the test time.

(3) In making a determination under paragraph (1)(f), the Commission must comply with any relevant decision-making principles.

(3A) For the purposes of paragraph (1)(h), an ***eligible descendant***, in relation to a person, is:

(a) a child, step-child or adopted child of the person or of a partner of the person; or

(b) a descendant in direct line of a child described in paragraph (a); or

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(c) any other person who, in the opinion of the Commission, should be treated for the purposes of this definition as a person described in paragraph (a) or (b).

(4) Paragraph (1)(n) does not apply to any of the following benefits:
(a) food that:
(i) is derived from the first primary production enterprise; and
(ii) is for the personal consumption of the individual or the individual's spouse;
(b) residential accommodation for the individual or the individual's spouse, where that accommodation is the principal home of the individual;
(c) if paragraph (b) applies—water, fuel, gas or electricity for use in that residential accommodation;
(d) any other non-cash benefit that is minor and provided on a basis that is infrequent and irregular.

(5) Subparagraph (1)(n)(ii) has effect subject to section 52ZZZG.

(6) For the purposes of this section, the ***primary production attribution threshold*** is $750,000.

(7) A reference in this section to a ***group*** in relation to an individual is a reference to:
(a) the individual acting alone; or
(b) an associate of the individual acting alone; or
(c) the individual and one or more associates of the individual acting together; or
(d) 2 or more associates of the individual acting together.

52ZZZG Individual ceases to be an attributable stakeholder of a trust—receipt of remuneration or other benefits from trust during asset deprivation period

(1) For the purposes of this section, if:

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(a) an individual ceases to be an attributable stakeholder of a trust on or after 1 January 2002; and
(b) immediately after the cessation, the trust was a concessional primary production trust in relation to the individual; and
(c) under section 52ZZY, as a result of the cessation, Subdivision BA or BB of Division 11 has effect as if the individual had disposed of an asset of the individual; and
(d) under Subdivision BA or BB of Division 11, as a result of the disposition, a particular amount is included in the value of the individual's assets for the period of 5 years that starts on the day on which the disposition took place;

then:

(e) the period referred to in paragraph (d) is the ***asset deprivation period*** in relation to the individual and the trust; and
(f) throughout the asset deprivation period, the trust is a ***special primary production trust*** of the individual; and
(g) each one of the 5 years that constitutes the asset deprivation period is an ***asset deprivation year*** in relation to the individual and the trust.

(2) If:

(a) a trust (the ***first trust***) is a special primary production trust in relation to an individual; and
(b) the individual and/or the individual's spouse received one or more benefits (the ***first benefits***) from the trust during a period that is an asset deprivation year (the ***first asset deprivation year***) in relation to the individual and the trust;

subparagraph 52ZZZF(1)(n)(ii) does not apply to the first benefits, so long as the sum of the following amounts is less than the amount specified in clause 19 of Schedule 1 to the *A New Tax System (Family Assistance) Act 1999* (subject to any indexation under Schedule 4 to that Act):

(c) the total of the amount or value of the first benefits;
(d) if:
    (i) another trust is a special primary production trust in relation to the individual; and

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(ii) the asset deprivation period in relation to the individual and that other trust overlaps, in whole or in part, the first asset deprivation year; and

(iii) the individual and/or the individual's spouse received one or more benefits (the ***second benefits***) from that other trust during the period of the overlap;

the total of the amount or value of the second benefits;

(e) if:

(i) another trust is a special primary production trust in relation to the individual's spouse; and

(ii) the asset deprivation period in relation to the individual's spouse and that other trust overlaps, in whole or in part, the first asset deprivation year; and

(iii) the individual's spouse and/or the individual received one or more benefits (the ***third benefits***) from that other trust during the period of the overlap;

the total of the amount or value of the third benefits.

(3) Subsection (2) does not apply to any of the following benefits:

(a) food that:

(i) is derived from the first primary production enterprise referred to in section 52ZZZF; and

(ii) is for the personal consumption of the individual or the individual's spouse;

(b) residential accommodation for the individual or the individual's spouse, where that accommodation is the principal home of the individual;

(c) if paragraph (b) applies—water, fuel, gas or electricity for use in that residential accommodation;

(d) any other non-cash benefit that is minor and provided on a basis that is infrequent and irregular.

(4) In this section:

benefit, in relation to a trust, means any remuneration or other benefit received from the trust otherwise than in the capacity of beneficiary of the trust.

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52ZZZH Net value of asset

(1) For the purposes of this Subdivision, the ***net value*** of an asset is the value of the asset, without any reduction other than a reduction under subsection (2).

(2) The Commission may, by writing, determine that the value of a specified asset is to be reduced by the whole or a specified part of a specified liability.

(3) A determination under this section has effect accordingly.

(4) In making a determination under this section, the Commission must comply with any relevant decision-making principles.

52ZZZI Value of entity's assets

For the purposes of this Subdivision, the value of an entity's assets is to be worked out as if:

(a) each reference in sections 5L and 5LA to a person included a reference to an entity; and

(b) Subdivision A of Division 11 (other than section 52D) had not been enacted.

52ZZZJ When asset is controlled by an individual

(1) For the purposes of this Subdivision, an asset is ***controlled*** by an individual if, and only if:

(a) all of the following conditions are satisfied:

(i) the asset is owned by a company;

(ii) the company is a controlled private company in relation to the individual;

(iii) no determination is in force under subsection (2) in relation to the asset and the individual; or

(b) all of the following conditions are satisfied:

(i) the asset is owned by a trust;

(ii) the trust is a controlled private trust in relation to the individual;

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(iii) no determination is in force under subsection (2) in relation to the asset and the individual; or

(c) both:

(i) the asset is owned by a business partnership; and

(ii) the individual is a partner in the partnership.

(2) If the asset is owned by a company or trust, the Commission may, by writing, determine that, for the purposes of this Subdivision, the asset is taken not to be controlled by the individual.

(3) In making a determination under subsection (2), the Commission must comply with any relevant decision-making principles.

52ZZZK Adjusted net value of asset

(1) For the purposes of this Subdivision, the ***adjusted net value*** of an asset owned by an individual is 100% of the net value of the asset.

(2) For the purposes of this Subdivision, the ***adjusted net value*** of an asset controlled by an individual is:

(a) if the entity that owns the asset is a company and the company is a controlled private company in relation to the individual:

(i) 100% of the net value of the asset; or

(ii) if the Commission, by writing, determines a lower percentage in relation to the individual and the asset—that lower percentage of the net value of the asset; or

(b) if the entity that owns the asset is a trust and the trust is a controlled private trust in relation to the individual:

(i) 100% of the net value of the asset; or

(ii) if the Commission, by writing, determines a lower percentage in relation to the individual and the asset—that lower percentage of the net value of the asset; or

(c) if the entity that owns the asset is a business partnership—the individual's share of the net value of the asset.

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(3) In making a determination under this section, the Commission must comply with any relevant decision-making principles.

52ZZZL Adjusted net primary production income

(1) For the purposes of this Subdivision, the ***adjusted net primary production income*** of an individual for a particular tax year is the sum of:

(a) if the individual carried on a primary production enterprise throughout that tax year—100% of the net income of that primary production enterprise for that tax year; and

(b) if a company carried on a primary production enterprise throughout that tax year and the company was a controlled private company in relation to the individual throughout that tax year:

(i) 100% of the net income of that primary production enterprise for that tax year; or

(ii) if the Commission, by writing, determines a lower percentage in relation to the individual and the enterprise—that lower percentage of the net income of that primary production enterprise for that tax year; and

(c) if a trust carried on a primary production enterprise throughout that tax year and the trust was a controlled private trust in relation to the individual throughout that tax year:

(i) 100% of the net income of that primary production enterprise for that tax year; or

(ii) if the Commission, by writing, determines a lower percentage in relation to the individual and the enterprise—that lower percentage of the net income of that primary production enterprise for that tax year; and

(d) if:

(i) a business partnership carried on a primary production enterprise throughout that tax year; and

(ii) the individual was a partner in the partnership throughout that tax year;

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the individual's share of the net income of that primary production enterprise for that tax year.

(2) In making a determination under this section, the Commission must comply with any relevant decision-making principles.

52ZZZM Net income of a primary production enterprise

(1) For the purposes of this Subdivision, if an entity carries on a primary production enterprise during a tax year of the entity, the ***net income*** of that primary production enterprise for that tax year is the entity's gross ordinary income from the carrying on of that enterprise calculated without any reduction, other than a reduction under section 52ZZZN or 52ZZZO.

(2) For the purposes of this Subdivision, the net income of a primary production enterprise is to be worked out as if:
   (a) exempt lump sums were not excluded from the definition of ***ordinary income*** in subsection 5H(1); and
   (b) each reference in section 5H to a person included a reference to an entity; and
   (c) the following provisions had not been enacted:
      (i) section 46Q;
      (ii) subsection 5H(8);
      (iii) subsections 5H(12) and (12A);
      (iv) Divisions 1, 2, 3, 4, 6 and 7.

52ZZZN Net income from a primary production enterprise—treatment of trading stock

(1) For the purposes of this Subdivision, if:
   (a) an entity carries on a primary production enterprise; and
   (b) the value of all the trading stock on hand at the end of a tax year is greater than the value of all the trading stock on hand at the beginning of that tax year;

   the entity's income for that tax year in the form of profits from the enterprise is to include the amount of the difference in values.

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(2) For the purposes of this Subdivision, if:
  (a) an entity carries on a primary production enterprise; and
  (b) the value of all the trading stock on hand at the end of a tax year is less than the value of all the trading stock on hand at the beginning of that tax year;

the entity's income for that tax year in the form of profits from the enterprise is to be reduced by the amount of the difference in values.

52ZZZO Permissible reductions of income from carrying on a primary production enterprise

(1) For the purposes of this Subdivision, if an entity carries on a primary production enterprise, the entity's income from the primary production enterprise is to be reduced by:
  (a) losses and outgoings that relate to the primary production enterprise and are allowable deductions for the purposes of section 8-1 of the *Income Tax Assessment Act 1997*; and
  (ba) amounts that relate to the primary production enterprise and can be deducted for the decline in value of depreciating assets under Subdivision 40-B of the *Income Tax Assessment Act 1997*; and
  (c) amounts that relate to the primary production enterprise and are allowable deductions under any other provision of the *Income Tax Assessment Act 1936* or the *Income Tax Assessment Act 1997*.

(2) However, the rule in subsection (1) does not apply to:
  (a) an ineligible deduction (see subsection (3)); or
  (b) an ineligible amount (see subsection (4)); or
  (c) an ineligible part of a deduction (see subsection (5)).

(3) The Commission may, by legislative instrument, determine a specified deduction is an ***ineligible deduction*** for the purposes of this section.

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(4) The Commission may, by legislative instrument, determine that a specified amount is an ***ineligible amount*** for the purposes of this section.

(5) The Commission may, by legislative instrument, determine that a specified part of a specified deduction is an ***ineligible part*** of the deduction for the purposes of this section.

(6) A determination under subsection (3), (4) or (5) has effect accordingly.

Subdivision L—Anti-avoidance

52ZZZP Anti-avoidance

(1) If:
  (a) one or more entities enter into, commence to carry out, or carry out, a scheme; and
  (b) it would be concluded that the entity, or any of the entities, who entered into, commenced to carry out, or carried out, the scheme did so for the sole or dominant purpose of obtaining an income support advantage for an individual (who may be the entity or one of the entities);

the Commission may, by writing, make any or all of the following determinations:
  (c) a determination that this Division has, and is taken to have had, effect as if the individual were an attributable stakeholder of a specified company or trust at a specified time or during a specified period;
  (d) a determination that this Division has, and is taken to have had, effect as if a specified asset were owned by a specified company or trust at a specified time or during a specified period;
  (e) a determination that this Division has, and is taken to have had, effect as if specified income had been derived by a specified company or trust at a specified time or during a specified period.

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(2) A determination under subsection (1) has effect accordingly.

Obtaining an income support advantage

(3) For the purposes of this section, an entity has a purpose of obtaining an income support advantage for an individual (who may be the entity) if the entity has a purpose of:
  (a) enabling the individual to obtain any of the following:
    (i) a service pension;
    (ii) income support supplement;
    (iia) a veteran payment;
    (iii) a social security pension;
    (iv) a social security benefit; or
  (b) enabling the individual to obtain any of the following at a higher rate than would otherwise have been payable:
    (i) a service pension;
    (ii) income support supplement;
    (iia) a veteran payment;
    (iii) a social security pension;
    (iv) a social security benefit; or
  (c) ensuring that the individual would be eligible for benefits under Division 12 of this Part or fringe benefits under the Social Security Act.

Subdivision M—Decision-making principles

52ZZZQ Decision-making principles

The Commission may, by legislative instrument, formulate principles (***decision-making principles***) to be complied with by it in making decisions under:
  (a) section 52ZZJ; or
  (b) subsection 52ZZK(2); or
  (c) section 52ZZL, 52ZZP or 52ZZQ; or
  (d) subsection 52ZZR(2); or

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(e) subsection 52ZZT(6) or 52ZZU(1); or
(f) section 52ZZW; or
(g) subsection 52ZZX(3), 52ZZZ(1) or 52ZZZA(1); or
(h) section 52ZZZB; or
(i) subsection 52ZZZC(3), 52ZZZD(1) or 52ZZZE(1); or
(j) paragraph 52ZZZF(1)(f); or
(k) section 52ZZZH; or
(l) subsection 52ZZZJ(2); or
(m) section 52ZZZK or 52ZZZL.

Subdivision N—Information management

52ZZZR Transitional period

For the purposes of this Subdivision, the ***transitional period*** is the period:

(a) beginning on the commencement of this Division; and
(b) ending immediately before 1 January 2002.

52ZZZS Information-gathering powers

In determining the scope of the power conferred on the Secretary during the transitional period by section 128 to require the provision of information, or the production of a document, it is to be assumed that:

(a) section 52ZN (simplified outline) had effect as if the reference in that section to 1 January 2002 were a reference to the first day of the transitional period; and
(b) section 52ZZK (attribution of income) had effect, in relation to a particular individual and a particular company or trust, as if:
    (i) a tax year of the company or trust, being a tax year specified in the notice imposing the requirement, were a derivation period of the company or trust; and
    (ii) a period specified in the notice imposing the requirement were an attribution period of the company

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or trust, and that attribution period related to a specified derivation period of the company or trust; and

(iii) the reference in paragraph 52ZZK(1)(c) to 1 January 2002 were a reference to the first day of the transitional period; and

(iv) sections 52ZZP and 52ZZQ had not been enacted; and

(c) section 52ZZR (attribution of assets) had effect as if the reference in paragraph 52ZZR(1)(a) to 1 January 2002 were a reference to the first day of the transitional period.

52ZZZT Commission may obtain tax information

(1) If the Commission has reason to believe that the Commissioner of Taxation has information (other than a tax file number) that may be relevant to the operation of this Division, the Commission may, by written notice given to the Commissioner of Taxation, require the Commissioner of Taxation to give to the Commission any such information.

(2) If the Commission has reason to believe that the relationship (whether direct or indirect) between:

(a) a particular trust; and

(b) a particular individual or an associate of a particular individual;

may be relevant to the operation of this Division, the Commission may, by written notice given to the Commissioner of Taxation, require the Commissioner of Taxation to give to the Commission the tax file number of the trust.

(3) The Commissioner of Taxation must comply with a requirement under subsection (1) or (2).

(4) Subsections (1) and (2) do not, by implication, limit a power conferred by:

(a) paragraph 16(4)(d) of the *Income Tax Assessment Act 1936*; or

(b) section 128 of this Act.

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(5) A tax file number provided to the Commission under subsection (2) may only be used for the following purposes:
  (a) to detect cases in which amounts of service pension, income support supplement or veteran payment have been paid when they should not have been paid;
  (b) to verify, in respect of persons who have made claims for service pension or income support supplement, the qualification of those persons for those payments or to verify the eligibility of persons for veteran payment;
  (c) to establish whether the rates at which service pension, income support supplement or veteran payment are being, or have been, paid are, or were, correct.

(6) In determining the scope of a power conferred during the transitional period by subsection (1), (2) or (5), it is to be assumed that:
  (a) section 52ZN (simplified outline) had effect as if the reference in that section to 1 January 2002 were a reference to the first day of the transitional period; and
  (b) section 52ZZK (attribution of income) had effect, in relation to a particular individual and a particular company or trust, as if:
    (i) a tax year of the company or trust, being a tax year specified in a written notice given to the Commissioner of Taxation by the Commission, were a derivation period of the company or trust; and
    (ii) a period specified in a written notice given to the Commissioner of Taxation by the Commission were an attribution period of the company or trust, and that attribution period related to a specified derivation period of the company or trust; and
    (iii) the reference in paragraph 52ZZK(1)(c) to 1 January 2002 were a reference to the first day of the transitional period; and
    (iv) sections 52ZZP and 52ZZQ had not been enacted; and

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(c) section 52ZZR (attribution of assets) had effect as if the reference in paragraph 52ZZR(1)(a) to 1 January 2002 were a reference to the first day of the transitional period.

52ZZZU Disclosure of tax information

In determining the scope of the power conferred on a person (the ***tax official***) during the transitional period by paragraph 16(4)(d) of the *Income Tax Assessment Act 1936* to communicate information for the purpose of the administration of any law of the Commonwealth relating to pensions, it is to be assumed that:

(a) section 52ZN (simplified outline) had effect as if the reference in that section to 1 January 2002 were a reference to the first day of the transitional period; and

(b) section 52ZZK (attribution of income) had effect, in relation to a particular individual and a particular company or trust, as if:

(i) a tax year of the company or trust, being a tax year specified in a written notice given to the tax official by the Commission, were a derivation period of the company or trust; and

(ii) a period specified in a written notice given to the tax official by the Commission were an attribution period of the company or trust, and that attribution period related to a specified derivation period of the company or trust; and

(iii) the reference in paragraph 52ZZK(1)(c) to 1 January 2002 were a reference to the first day of the transitional period; and

(iv) sections 52ZZP and 52ZZQ had not been enacted; and

(c) section 52ZZR (attribution of assets) had effect as if the reference in paragraph 52ZZR(1)(a) to 1 January 2002 were a reference to the first day of the transitional period.

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52ZZZV Disclosure of tax file number information

In determining the scope of paragraph 202(hc) of the *Income Tax Assessment Act 1936*, and sections 8WA and 8WB of the *Taxation Administration Act 1953*, during the transitional period, it is to be assumed that:

(a) section 52ZN (simplified outline) had effect as if the reference in that section to 1 January 2002 were a reference to the first day of the transitional period; and

(b) section 52ZZK (attribution of income) had effect, in relation to a particular individual and a particular company or trust, as if:

(i) a tax year of the company or trust, being a tax year specified in a written notice given to the Commissioner of Taxation by the Commission, were a derivation period of the company or trust; and

(ii) a period specified in a written notice given to the Commissioner of Taxation by the Commission were an attribution period of the company or trust, and that attribution period related to a specified derivation period of the company or trust; and

(iii) the reference in paragraph 52ZZK(1)(c) to 1 January 2002 were a reference to the first day of the transitional period; and

(iv) sections 52ZZP and 52ZZQ had not been enacted; and

(c) section 52ZZR (attribution of assets) had effect as if the reference in paragraph 52ZZR(1)(a) to 1 January 2002 were a reference to the first day of the transitional period.

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Division 11B—Private financial provision for certain people with disabilities

Subdivision A—Special disability trusts

52ZZZW What is a *special disability trust*?

A trust is a ***special disability trust*** if the following requirements of this Subdivision are complied with:

(a) the beneficiary requirements (see section 52ZZZWA);
(b) the trust purpose requirements (see section 52ZZZWB);
(c) the trust deed requirements (see section 52ZZZWC);
(d) the trustee requirements (see section 52ZZZWD);
(e) the trust property requirements (see section 52ZZZWE);
(ea) the trust expenditure requirements, if any (see section 52ZZZWEA);
(f) the reporting requirements (see section 52ZZZWF);
(g) the audit requirements (see section 52ZZZWG).

Note: The Commission may waive one or more requirements in certain circumstances (see section 52ZZZWH).

52ZZZWA Beneficiary requirements

Single beneficiary rule

(1) The trust must have no more than one beneficiary (the ***principal beneficiary***), not including any residuary beneficiary.

Impairment or disability conditions

(2) If the principal beneficiary has reached 16 years of age:
(a) the beneficiary must:
(i) be eligible for invalidity service pension; or

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(ii) be eligible for income support supplement and be permanently incapacitated for work in the circumstances set out in a determination under section 45QA; or

(iii) have an impairment that would qualify the person for disability support pension under the Social Security Act; and

(b) the beneficiary must:

(i) have a disability that would, if the person had a sole carer, qualify the carer for carer payment, or carer allowance, under the Social Security Act; or

(ii) be living in an institution, hostel or group home in which care is provided for people with disabilities, and for which funding is provided (wholly or partly) under an agreement, between the Commonwealth, the States and the Territories, nominated by the Commission under subsection (3); and

(c) the beneficiary must have a disability as a result of which either:

(i) he or she is not working, and has no likelihood of working, for more than 7 hours a week for a wage that is at or above the relevant minimum wage within the meaning of subsection 23(1) of the Social Security Act; or

(ii) he or she is working for wages set in accordance with the program administered by the Commonwealth known as the supported wage system.

(3) The Commission may, by legislative instrument, nominate an agreement for the purpose of subparagraph (2)(b)(ii).

(4) If the principal beneficiary is under 16 years of age, subsection (4A) must apply to him or her.

(4A) This subsection applies if:

(a) the principal beneficiary is a person with a severe disability or a severe medical condition; and

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(b) another person (the ***carer***) has been given a qualifying rating of intense under the Disability Care Load Assessment (Child) Determination (within the meaning of the Social Security Act) for caring for the principal beneficiary; and

(c) a treating health professional (within the meaning of that Act) has certified in writing that, because of that disability or condition:

(i) the principal beneficiary will need personal care for 6 months or more; and

(ii) the personal care is required to be provided by a specified number of persons; and

(d) the carer has certified in writing that the principal beneficiary will require the same care, or an increased level of care, to be provided to him or her in the future.

Living beneficiary rule

(5) A trust stops being a special disability trust when the principal beneficiary dies.

Single trust rule

(6) A trust is not a special disability trust for a particular principal beneficiary if, at the time of its creation, there is already another trust in existence for that person that is:

(a) a special disability trust; or

(b) a special disability trust within the meaning of the Social Security Act.

52ZZZWB Trust purpose requirements

Primary purpose—care and accommodation for principal beneficiary

(1) Subject to this section, the primary purpose of the trust during the lifetime of the principal beneficiary, as provided by the trust deed for the trust, must be to meet reasonable care and accommodation needs of the beneficiary.

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Note: The provision of care and accommodation for the principal beneficiary is also dealt with at section 52ZZZWE.

Other purposes

(2) The trust may have other purposes that are:
  (a) both ancillary to the primary purpose and necessary or desirable to facilitate the achievement of that purpose; or
  (b) primarily for the benefit of the principal beneficiary.

Note 1: A particular purpose may be covered by both of paragraphs (2)(a) and (b).

Note 2: The application of the income and assets of the trust for purposes (other than the primary purpose) that are primarily for the benefit of the principal beneficiary is dealt with by section 52ZZZWEA.

Guidelines relating to purposes

(3) If guidelines are made under subsection (4) then, for the purposes of this section:
  (a) the reasonable care and accommodation needs of a principal beneficiary of a special disability trust must be decided in accordance with the guidelines if they deal with those needs; and
  (b) purposes, other than the primary purpose of a special disability trust, that are primarily for the benefit of the principal beneficiary of a trust must be decided in accordance with the guidelines if they deal with those other purposes.

(4) The Commission may, by legislative instrument, make guidelines for deciding either or both of the following for the purposes of this section:
  (a) what are, and what are not, reasonable care and accommodation needs for beneficiaries of trusts;
  (b) what are, and what are not, trusts' purposes, other than the primary purpose described in subsection (1), that are primarily for the benefit of beneficiaries of the trusts.

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52ZZZWC Trust deed requirements

Compliance with determination

(1) If a determination is made under subsection (2), the trust deed for the trust must comply with the determination.

(2) The Commission may, by legislative instrument, determine one or more of the following:
  (a) the form of the trust deed required for a special disability trust;
  (b) provisions which must be included in the trust deed;
  (c) the form of those provisions;
  (d) provisions which cannot be included in the trust deed.

Contravention of trust deed

(3) A person must not contravene a provision of the trust deed that is required by this section to be included in the deed (whether or not the provision is required to be included in any particular form).

52ZZZWD Trustee requirements

(1) A trustee of the trust who is an individual must:
  (a) be an Australian resident; and
  (b) not have been convicted at any time (including a time before the commencement of this section) of any of the following offences:
    (i) an offence of dishonest conduct against, or arising out of, a law of the Commonwealth, a State, a Territory or a foreign country;
    (ii) an offence against, or arising out of, this Act, the Social Security Act or the *Social Security (Administration) Act 1999*; and
  (c) not have been disqualified at any time (including a time before the commencement of this section) from managing corporations under the *Corporations Act 2001*.

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(2) In addition, if a trustee of the trust is a corporation, subsection (1) applies to each director of the trustee.

52ZZZWE Trust property requirements

(1) The assets of the trust must not include any asset transferred to the trust by the principal beneficiary of the trust, or the principal beneficiary's partner, unless:
   (a) the transferred asset is all or part of a bequest, or of a superannuation death benefit; and
   (b) the transferor received the bequest or superannuation death benefit not more than 3 years before transferring the transferred asset.

(2) The assets of the trust must not include any compensation received by or on behalf of the principal beneficiary.

(3) The trust must not be used to pay an immediate family member, or a child, of the principal beneficiary for the provision to the beneficiary of:
   (a) care services; or
   (b) services for the repair or maintenance of the beneficiary's accommodation.

Note: For ***immediate family member***, see subsection 5Q(1).

(4) The trust must not be used to purchase or lease property from an immediate family member, or a child, of the principal beneficiary, even if the property is to be used for the beneficiary's accommodation.

Note: For ***immediate family member***, see subsection 5Q(1).

(5) In this section:

child, of a principal beneficiary, means the following (no matter how old the child is):
   (a) a natural child, adopted child or step-child of the beneficiary;
   (b) someone who is a child of the person within the meaning of the *Family Law Act 1975*.

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property includes:

(a) a right to accommodation for life in a residence; and

(b) a life interest in a residence.

52ZZZWEA Trust expenditure requirements

Limit on expenditure for purposes other than primary purpose

(1) If:

(a) a determination has been made under subsection (3); and

(b) the trust has one or more purposes, other than its primary purpose described in subsection 52ZZZWB(1), that are primarily for the benefit of the principal beneficiary;

the total value of the income and assets of the trust applied for those other purposes in a tax year must not exceed the value specified in the determination for that year.

Note: For ***tax year*** see subsection 5Q(1).

Instruments fixing limits and purposes to be taken into account

(2) If guidelines are made under paragraph 52ZZZWB(4)(b), the question whether a purpose for which income and assets of a trust have been applied is one of the other purposes described in subsection (1) must be decided in accordance with the guidelines.

Note: Paragraph 52ZZZWB(4)(b) provides for guidelines for deciding what are, and what are not, trusts' purposes, other than the primary purpose described in subsection 52ZZZWB(1), that are primarily for the benefit of beneficiaries of the trusts.

(3) The Commission may, by legislative instrument, determine the total value of income and assets of a special disability trust that may be applied in a specified tax year for purposes, other than the primary purpose described in subsection 52ZZZWB(1), that are primarily for the benefit of the principal beneficiary of the trust.

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52ZZZWF Reporting requirements

(1) The trustees of the trust must, on or before 31 March each year, give the Commission written financial statements about the trust in relation to the financial year ending on 30 June in the previous year.

(2) The financial statements must be prepared by:
  (a) if a determination is made under subsection (4) that requires such financial statements to be prepared by a person with stated qualifications—such a person; or
  (b) whether or not such a determination is made—a person approved by the Commission for the purpose.

(3) If a determination is made under subsection (4) that requires financial statements to include information of a stated kind, the financial statements must include information of that kind.

(4) The Commission may, by legislative instrument, make determinations for the purposes of this section.

52ZZZWG Audit requirements

Trustee duties

(1) The trustees of the trust must, within a reasonable time after receiving a request under subsection (3):
  (a) cause an audit of the trust to be carried out in relation to the period mentioned in subsection (2); or
  (b) if, at the time of the request for the audit, an audit (the ***earlier requested audit***) of the trust had already been carried out, or was being carried out, for the purpose of this section in relation to that period—give a copy of the report of the earlier requested audit to the person making the request.

Audit period

(2) The audit must relate to:

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(a) the financial year ending on the 30 June last preceding the request; or
(b) if a determination is made under subsection (7) that provides for a different period—that period.

Who may request audit

(3) The following persons may request an audit of the trust for the purposes of this section:
(a) the principal beneficiary;
(b) an immediate family member of the principal beneficiary;
(c) a person who is, under the law of the Commonwealth, a State or a Territory, the legal guardian or financial administrator of the principal beneficiary;
(d) a person who is otherwise acting as the principal beneficiary's guardian on a long-term basis;
(e) the Commission.

Note: For ***immediate family member***, see subsection 5Q(1).

Copies of audit report

(4) If an audit report for a trust is given to the trustees for the purpose of subsection (1), the trustees must, within a reasonable time, give a copy of the report to:
(a) the person requesting the audit; and
(b) if the guardian or administrator mentioned in paragraph (3)(c) did not request the audit—the guardian or administrator; and
(c) if the Commission did not request the audit—the Commission.

Auditor qualifications and required information

(5) The audit must be prepared by:
(a) if a determination is made under subsection (7) that requires such audits to be prepared by a person with stated qualifications—such a person; or

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(b) whether or not such a determination is made—a person approved by the Commission for the purpose.

(6) If a determination is made under subsection (7) that requires audits requested under this section to include information of a stated kind, the audit must include information of that kind.

(7) The Commission may, by legislative instrument, make determinations for the purposes of this section.

52ZZZWH Waiver of contravention of this Division

(1) A contravention of a requirement of this Division concerning a particular matter, in relation to a trust that would be a special disability trust if it were not for the contravention, does not prevent the trust being a special disability trust if:
   (a) the Commission, by written notice (a ***waiver notice***) to the trustees, waives the requirement as it concerns that matter; and
   (b) in a case where the waiver notice requires the trustees to comply with any conditions relating to the matter—the trustees comply with those conditions within the time or times (if any) stated in the waiver notice.

(2) A waiver notice has effect, subject to any conditions mentioned in paragraph (1)(b):
   (a) from:
      (i) the time of the contravention; or
      (ii) if the waiver notice states a time for the start of its period of effect that is after the time of the contravention—the stated time; and
   (b) if the waiver notice states a time for the end of its period of effect—until the stated time.

(3) If guidelines are made under subsection (4), a decision in relation to giving a waiver notice to the trustees of the trust must be made in accordance with the guidelines.

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(4) The Commission may, by legislative instrument, make guidelines for deciding any or all of the following:
  (a) whether or not to give waiver notices to trustees of trusts;
  (b) what conditions to include in waiver notices;
  (c) the periods during which waiver notices are to have effect.

Subdivision B—Income of special disability trusts

52ZZZWI Attribution of income

(1) For the purposes of this Act, an amount of income that a special disability trust derives is taken not to be income received by any individual.

Note: For ***special disability trust***, see section 52ZZZW.

(2) This section has effect despite Subdivision G of Division 11A of Part IIIB and any other provisions of this Act.

52ZZZWJ Income amounts from special disability trusts

An income amount that the principal beneficiary of a special disability trust receives is not income of the beneficiary for the purposes of this Act to the extent that consideration for the income amount was provided by a distribution from the trust.

Note 1: For ***income amount***, see section 5H.

Note 2: For ***special disability trust***, see section 52ZZZW.

Subdivision C—Assets of special disability trusts

52ZZZWK Attribution of assets

(1) For the purposes of this Act, the assets of a special disability trust are not to be included in the assets of the principal beneficiary of the trust.

Note: For ***special disability trust***, see section 52ZZZW.

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(2) However, this section does not apply to the extent that the value of the assets owned by the trust exceeds the trust's asset value limit.

(3) The ***asset value limit*** of a special disability trust is $500,000.

Note: This amount is indexed annually on 1 July (see sections 59B to 59E).

(4) For the purposes of subsection (2), disregard the value of any right or interest of the trust in the principal home of the principal beneficiary of the trust.

Note: For ***principal home***, see subsections 5L(5) to (7).

(5) This section has effect despite Subdivision H of Division 11A of Part IIIB and any other provisions of this Act.

Subdivision D—Transfers to special disability trusts

52ZZZWL Effect of certain transfers to special disability trusts

(1) If a person transfers an asset (the ***transferred asset***) to a special disability trust, the transfer is taken not to be a disposal of the asset (within the meaning of section 52E) if:

(a) the person is an immediate family member of the principal beneficiary of the trust; and

(b) the person, or the person's partner:

(i) is receiving a service pension and has reached pension age; or

(ii) is receiving income support supplement and has reached qualifying age; or

(iia) is receiving a veteran payment and has reached pension age (within the meaning of subsections 5QB(2), (3), (4) and (5)); or

(iii) is receiving a social security pension and has reached pension age within the meaning of the Social Security Act; and

(c) the person receives no consideration, and is not entitled to any consideration, for the transfer; and

(d) the transfer is unconditional; and

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(e) the value of the transferred asset does not exceed $500,000; and

(f) in a case where there has already been a transfer to which this section has applied (an ***exempt transfer***), by that person or any other person, to the trust or any other special disability trust that had the same principal beneficiary—the sum of:

(i) the values of all of the assets transferred, by exempt transfers that have already been made, to the trust or any other special disability trust that had the same principal beneficiary; and

(ii) the value of the transferred asset;

does not exceed $500,000.

Note 1: For ***special disability trust***, see section 52ZZZW.

Note 2: For ***immediate family member***, see subsection 5Q(1).

Note 3: For ***pension age*** (except for the purposes of subparagraph (1)(b)(iia) or (iii) of this section), see subsection 5Q(1).

Note 3A: For ***qualifying age*** see section 5Q.

Note 4: For ***service pension***, ***social security pension*** and ***veteran payment***, see subsection 5Q(1).

Note 5: Part IIIA deals with income support supplement.

(2) This section has effect subject to sections 52ZZZWM and 52ZZZWP.

(3) In this section:

other special disability trust includes a special disability trust within the meaning of the Social Security Act.

value, of an asset transferred to a special disability trust, means the market value of the asset at the time of the transfer.

52ZZZWM The effect of exceeding the $500,000 limit

(1) If section 52ZZZWL would apply to a transfer of an asset except for the fact that the value of the transferred asset exceeds $500,000, that section does not prevent the transfer from being a disposal of

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the asset, but the amount of the disposal or disposition is taken to be the amount of the excess.

(2) If:

(a) section 52ZZZWL would apply to a transfer of an asset but for the fact that the sum of:

(i) the values of all of the exempt transfers that have already been made to the trust or any other special disability trust that had the same principal beneficiary; and

(ii) the value of the transferred asset;

exceeds $500,000; and

(b) that sum would not exceed $500,000 if the value of the transferred asset were disregarded;

that section does not prevent the transfer from being a disposal or disposition of the asset, but the amount of the disposal or disposition is taken to be the amount of the excess referred to in paragraph (a).

(3) This section has effect subject to section 52ZZZWP.

(4) In this section:

other special disability trust includes a special disability trust within the meaning of the Social Security Act.

value, of an asset transferred to a special disability trust, means the market value of the asset at the time of the transfer.

52ZZZWN Transfers by the immediate family members prior to reaching pension age etc.

(1) If:

(a) an immediate family member of the principal beneficiary of a special disability trust transfers an asset to the trust; and

(b) at the time of the transfer, neither the immediate family member nor the partner of the immediate family member is a person who:

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(i) is receiving a service pension and has reached pension age; or

(ii) is receiving income support supplement and has reached qualifying age; or

(iia) is receiving a veteran payment and has reached pension age (within the meaning of subsections 5QB(2), (3), (4) and (5)); or

(iii) is receiving a social security pension and has reached pension age within the meaning of the Social Security Act;

the immediate family member is taken for the purposes of this Division only to transfer the asset to the trust at the earliest time at which subparagraph (b)(i), (ii), (iia) or (iii) applies to the immediate family member or partner.

Note 1: For ***special disability trust***, see section 52ZZZW.

Note 2: For ***immediate family member***, see subsection 5Q(1).

Note 3: For ***pension age*** (except for the purposes of subparagraph (1)(b)(iia) or (iii) of this section), see subsection 5Q(1).

Note 3A: For ***qualifying age*** see section 5Q.

Note 4: For ***service pension***, ***social security pension*** and ***veteran payment***, see subsection 5Q(1).

Note 5: Part IIIA deals with income support supplement.

(2) However, if under subsection (1) transfers of assets to the trust by different immediate family members are taken to have been made on the same day, the transfers are taken to have been made on that day in the order in which they would have been taken to be made but for this Division.

Note: For ***immediate family member***, see subsection 5Q(1).

(3) This section does not affect the operation of Division 11 of Part IIIB or any other provision of this Act outside of this Division.

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52ZZZWO Transfers by principal beneficiaries or partners

(1) If a person transfers an asset to a special disability trust, the transfer is taken not to be a disposal of the asset (within the meaning of section 52E) if:

(a) the person is the principal beneficiary of the trust, or the principal beneficiary's partner; and

(b) the person receives no consideration, and is not entitled to any consideration, for the transfer; and

(c) the transfer is unconditional.

Note 1: For ***special disability trust***, see section 52ZZZW.

Note 2: Section 52ZZZWE limits the circumstances in which the principal beneficiary or the principal beneficiary's partner can transfer assets to the trust.

(2) This section has effect subject to section 52ZZZWP.

52ZZZWP Cessation of special disability trusts

(1) If:

(a) a special disability trust ceases to exist or ceases to be a special disability trust; and

(b) a person had transferred an asset to the trust during the period of 5 years immediately preceding the cessation; and

(c) section 52ZZZWL, 52ZZZWM or 52ZZZWO applied to the transfer;

then the transfer is taken, after the cessation, to be a disposal or disposition of the asset that occurred at the time of the transfer.

(2) The amount of the disposal or disposition is taken to be the amount worked out using the formula:

$$\left(\text{Asset value} \times \frac{\text{Final value of trust assets}}{\text{Initial value of trust assets}}\right) + \text{Subsection 52ZZZWM(2) amount}$$

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where:

asset value means:

(a) if section 52ZZZWL or 52ZZZWO applied to the transfer—the value of the asset at the time of the transfer; or

(b) if subsection 52ZZZWM(1) applied to the transfer—$500,000; or

(c) if subsection 52ZZZWM(2) applied to the transfer—the difference between the value of the asset at the time of the transfer and the amount that was taken under that subsection to be the amount of the disposal or disposition of the asset.

final value of trust assets means the value of all of the assets of the trust at the time of the cessation.

initial value of trust assets means the value of all of the assets of the trust at the time of the transfer.

subsection 52ZZZWM(2) amount means the amount (if any) that was taken under subsection 52ZZZWM(2) to be the amount of the disposal or disposition of the asset.

(3) If the special disability trust ceases to exist, or ceases to be a special disability trust, because the principal beneficiary dies, the value of the asset at the time of the transfer is taken for the purposes of this section to be the value of so much (if any) of the asset as has not been returned to the person who had transferred the asset to the trust.

(4) This section does not affect the application of section 52ZZZWL, 52ZZZWM or 52ZZZWO to the transfer prior to the cessation.

52ZZZWQ Effect of this Subdivision

This Subdivision (other than section 52ZZZWN) has effect despite Subdivision B of Division 11 of Part IIIB and any other provisions of this Act.

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Division 12—Service pensioner and income support supplement recipient benefits

Subdivision A—Introduction

53 Fringe benefits and treatment at Departmental expense for certain service pensioners

(1) If a person is eligible for fringe benefits, benefits and concessions of various kinds may be made available to the person by the Commonwealth, State and Territory governments and authorities and local authorities.

Note: If a person is eligible for fringe benefits in accordance with this Division, benefits and concessions under the *National Health Act 1953* may be made available to the person.

(2) If:
(a) a veteran is receiving an age or invalidity service pension; and
(b) the veteran satisfies the conditions in section 53D;
the veteran may be entitled to certain medical treatment at Departmental expense.

(3) Section 85 provides further treatment entitlements for veterans.

Subdivision B—Fringe benefits

53A Fringe benefits

(1) A person who is receiving a service pension or income support supplement is eligible for fringe benefits.

(1A) A person is eligible for fringe benefits if:
(a) immediately before 1 January 2017, the person was receiving a service pension or income support supplement; and

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(b) the Commission is satisfied that the rate of that pension or supplement was nil on 1 January 2017 because of the operation of the amendments made by Part 1 of Schedule 3 to the *Social Services Legislation Amendment (Fair and Sustainable Pensions) Act 2015*; and

(c) the person is not otherwise eligible under this section for fringe benefits.

(2) If:

(a) a person is receiving an invalidity service pension; and

(b) the person ceases to be eligible for that pension because the person ceases to be permanently incapacitated for work; and

(c) the circumstances in which the person ceases to be permanently incapacitated for work are continued fringe benefits eligibility circumstances in accordance with a determination under section 53B;

the person remains eligible for fringe benefits for the shorter of the following periods:

(d) the period those continued fringe benefits eligibility circumstances continue to exist;

(e) the period of 12 months beginning on the day the person ceased to be eligible for that pension.

53B Commission must determine continued fringe benefits eligibility circumstances

(1) The Commission must, by written determination, state that specified circumstances in which persons cease to be permanently incapacitated for work are continued fringe benefits eligibility circumstances for the purposes of subsection 53A(2).

Variation or revocation

(2) The Commission may, by written determination, vary or revoke a determination under subsection (1).

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Legislative instrument

(3) A determination under this section is a legislative instrument.

Subdivision C—Treatment at Departmental expense

53D Eligibility for treatment at Departmental expense

(1) A veteran who is receiving an age or invalidity service pension is eligible to be provided with treatment under Part V for any injury suffered, or disease contracted, by the veteran if:

(a) the veteran is a veteran to whom section 53E applies; and

(ab) the veteran is a veteran within the meaning of paragraph (a) of the definition of ***veteran*** in subsection 5C(1); and

(b) the veteran is not a veteran only because the veteran has rendered service as described in item 3 of the table in subsection 6A(1) or as described in subsection 6C(2).

Note 2: A partner service pensioner may be eligible to be provided with treatment under Part V if he or she is receiving a pension under Part II at 50% of the general rate or higher (see subsection 85(7)).

Note 3: Some veterans who are not receiving an age or invalidity service pension because of Division 3 of Part IIIB are treated as continuing to be eligible under section 53D to be provided with treatment under Part V (see section 83 of the *Veterans' Affairs Legislation Amendment Act 1992*).

Note 4: A veteran who was taken to be eligible for fringe benefits because of subsection 17(1) or (2) of the *Veterans' Entitlements (Rewrite) Transition Act 1991* as in force immediately before the commencement of Schedule 5 to the *Veterans' Affairs Legislation Amendment (Budget and Compensation Measures) Act 1997* and who is receiving an age or invalidity service pension is eligible under section 53D to be provided with treatment under Part V if paragraph 53D(1)(b) applies to the veteran.

(2) Paragraph (1)(b) does not make a veteran ineligible to be provided with treatment under Part V if the veteran satisfies the Commission that the veteran was domiciled in Australia or an external Territory immediately before the veteran's appointment or enlistment for

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service as described in item 3 of the table in subsection 6A(1) or as described in subsection 6C(2).

Note: Section 11B may affect a person's domicile immediately before appointment or enlistment.

(3) If a veteran's service pension is suspended, the Commission may determine that the veteran is to be treated, for the purposes of this section, as if the veteran were continuing to receive the service pension during the whole or a specified part of the period of suspension.

(4) A determination under subsection (3) must be in writing.

(4A) If:

(a) a veteran begins to receive a veteran payment on a day; and

(b) on the day before that day the veteran was receiving an age or invalidity service pension;

then, for the purposes of this section, the veteran is taken to be receiving an age or invalidity service pension, and paragraph (1)(a) is taken to be satisfied, while the veteran is receiving that veteran payment.

(5) This section applies to an injury suffered, or a disease contracted, by a veteran whether before or after the commencement of this section.

53E Veterans to satisfy certain conditions

(1) This section applies to a veteran if:

(a) the veteran is permanently blind; or

(b) the veteran's rate of service pension is neither income reduced nor assets reduced; or

(c) the veteran's rate of service pension is either income reduced or assets reduced, but the reduction does not exceed the income/assets reduction limit applicable to the veteran.

Note: For ***income/assets reduction limit*** see subsection (2).

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Section 53E

(2) The ***income/assets reduction limit*** applicable to a veteran is worked out by using Table 53E. Work out which item in the table applies to the veteran by identifying his or her family situation. The applicable income/assets reduction limit is the amount in column 3 of that item.

Table 53E—Income/Assets Reduction Limit

Column 1 Item	Column 2 Family situation	Column 3 Basic reduction per year	Column 4 Basic reduction per fortnight
1	Not a member of a couple	$1,924	$74
2	Partnered	$1,664	$64

Note 1: For ***member of a couple*** and ***partnered*** see section 5E.

Note 3: Members of illness separated and respite care couples are covered by item 2 of the table.

Note 4: The basic reduction and additional reduction are indexed 6 monthly in line with CPI increases (see sections 59B to 59E).

(3) If, on a particular day:

(a) the annual rate of a veteran's ordinary income increases; and

(b) as a result of the increase, the veteran's rate of service pension is income reduced by an amount that is not more than 150% of the income/assets reduction limit applicable to the veteran;

this section continues to apply to the veteran until:

(c) the end of the period of 13 weeks starting on that day; or

(d) the reduction exceeds 150% of the income/assets reduction limit applicable to the veteran;

whichever happens first.

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Division 12A—Payments after bereavement

Subdivision A—Bereavement period

53H Definition

In this Division:

bereavement period, in relation to a person's death, means the period of 98 days starting on the day on which the person died.

Note: Payments under this Division are not affected by unrepaid advance payments of pension.

Subdivision B—Death of pensioner's partner (where partner was receiving a pension or a social security pension)

53J Application

This Subdivision applies if:

(a) a person (the ***pensioner***) is receiving a pension; and

(b) the pensioner is a member of a couple; and

(c) the other member of the couple (the ***partner***) dies; and

(d) immediately before the partner died, the partner was receiving a pension or a social security pension.

Note: Even though the partner may not actually have been receiving an amount of social security pension because the rate of the pension was nil, in some cases the partner will have been taken to be receiving the pension if adjusted disability pension (within the meaning of section 118NA) was payable to the person or the partner: see subsection 23(1D) of the Social Security Act.

53K What happens if pensioner's reassessed rate equals or exceeds combined pensioner couple rate

(1) This section applies during the bereavement period if the rate of pension applicable to the pensioner as a result of the partner's death is equal to or greater than the sum of the rates of pension or

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social security pension that were payable to the pensioner and the partner on the last day of the last pension period that ended before the partner died.

(2) The rate of pension that becomes applicable in respect of the pensioner as a result of the partner's death applies with effect from the day of the partner's death.

(3) Part of the rate of pension payable to the pensioner is taken to be bereavement payment. The part concerned is equal to the rate of pension or social security pension payable to the partner on the last day of the last pension period that ended before the partner died.

(4) This section has effect subject to sections 53M and 53NAA.

53L What happens if pensioner's reassessed rate is less than combined pensioner couple rate

(1) This section applies during the bereavement period if the rate of pension applicable to the pensioner as a result of the partner's death is less than the sum of the rates of pension or social security pension that were payable to the pensioner and the partner on the last day of the last pension period that ended before the partner died.

(2) Pension continues to be payable to the pensioner during the bereavement period at the rate at which it was payable immediately before the partner's death.

(3) The rate of pension that, apart from subsection (2), would be applicable in respect of the pensioner as a result of the partner's death applies with effect from the day after the end of the bereavement period.

(4) There is payable to the pensioner, for each day in the bereavement period, a bereavement payment calculated at the rate of the pension or social security pension that was payable to the partner on the last day of the last pension period that ended before the partner died.

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(5) All or any of the bereavement payments payable to the pensioner under subsection (4) may be paid in advance in a lump sum.

(6) This section has effect despite subsection 38C(2) but is subject to sections 53M and 53NAA.

53M Determination of amount of pension and social security pension

(1) This section applies in determining for the purposes of section 53K or 53L the rates of pension or social security pension that were payable to the pensioner and the partner on the last day of the last pension period that ended before the day of the partner's death.

(2) If the pensioner and partner were an illness separated couple or a respite care couple on the last day of the last pension period that ended before the day of the partner's death, the rates of pension or social security pension referred to in subsection (1) are to be worked out as if the pensioner and partner were not members of an illness separated couple or respite care couple but remained members of a couple.

(3) If the partner was a war widow or war widower who was receiving a service pension, the rate of that pension that was payable to the partner on the last day of the last pension period that ended before the day of the partner's death is taken to be the rate that would have been payable if Method statement 1 or Method statement 2 (whichever is appropriate) in Module A of the Rate Calculator had applied in working out the rate of the pension and Method statement 3 or Method statement 4, as the case may be, in that Module had not applied.

(4) If the partner was a war widow or war widower who was receiving an income support supplement, the rate of that supplement that was payable to the partner on the last day of the last pension period that ended before the day of the partner's death is taken to be:

(a) in respect of a partner who was not permanently blind—the rate that would have been payable if the ceiling rate were

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greater than the adjusted income reduced rate and the assets reduced rate; or

(b) in respect of a partner who was permanently blind—the sum of:

(i) the maximum basic rate under point SCH6-B1; and

(ii) the partner's pension supplement amount (worked out as if the partner was receiving a service pension worked out under subpoint SCH6-A1(2) of Schedule 6).

(5) In determining under subsection (4) the rate of the income support supplement that was payable to the partner on the last day of the last pension period that ended before the day of the partner's death, it is to be assumed that the adjusted income of the partner did not include the income referred to in paragraph (c), (ca) or (cb) of the definition of ***adjusted income*** in subsection 5H(1).

(6) If the partner was a war widow or war widower who was receiving a social security pension, the rate of that pension that was payable to the partner on the last day of the last pension period that ended before the day of the partner's death is taken to be the rate that would have been payable if:

(a) subsections 1064(5) and (6) and 1065(4) and (5) of the Social Security Act had not been enacted; and

(b) the ordinary income of the partner did not include any instalment of pension that was payable to the partner under subsection 30(1).

(7) If DFISA was payable to the partner in relation to a social security pension the partner was receiving, then the rate of that pension on the last day of the last pension period that ended before the day of the partner's death is increased by the rate of DFISA that was payable to the partner on that day.

53N Transfer to another pension

(1) This section applies if, on a day during the bereavement period, the pensioner:

(a) ceases to receive the pension; and

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(b) begins to receive another pension or to receive a social security pension.

(2) If the pensioner receives, for a day occurring during the remainder of the bereavement period, a payment of the other pension or of the social security pension, part of the payment is taken to be a bereavement payment. The part concerned is the amount representing the rate of pension or social security pension payable to the partner on the last day of the last pension period that ended before the day of the partner's death.

(3) This section has effect subject to section 53NAA.

53NAA Matters affecting bereavement payments under this Subdivision

If:

(a) bereavement payments mentioned in subsection 53K(3), 53L(4) or 53N(2) are payable to the pensioner in relation to the death of the partner; and

(b) after the partner died, an amount of a pension, or a social security pension, to which the partner would have been entitled if the partner had not died has been paid under this Act or the *Social Security Act 1991*; and

(c) the Commission is not satisfied that the pensioner has not had the benefit of that amount;

the following provisions have effect:

(d) the amount referred to in paragraph (b) is not recoverable from the pensioner or from the personal representative of the partner, except to the extent (if any) that the amount exceeds the amount of the bereavement payments referred to in paragraph (a);

(e) the amount of the bereavement payments referred to in paragraph (a) is to be reduced by the amount referred to in paragraph (b).

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53NA No liability of financial institution for certain payments to pensioner

(1) This section applies if:
  (a) after the partner died, an amount (the ***partner's amount***) of pension, DFISA or social security pension to which the partner would have been entitled if the partner had not died is paid into an account with a financial institution; and
  (b) the institution pays to the pensioner, out of that account, an amount that is not more than the partner's amount.

(2) The financial institution is not liable to any action, claim or demand in respect of the payment to the pensioner.

(3) Subsection (2) has effect despite any other law.

Subdivision C—Death of pensioner

53P Application

This Subdivision applies if:
  (a) a person (the ***pensioner***) is receiving a pension; and
  (b) either:
    (i) the pensioner is not a member of a couple; or
    (ii) the pensioner is a member of a couple and the pensioner's partner is not receiving a service pension or income support supplement, is not receiving a social security pension and is not receiving a social security benefit; and
  (c) the pensioner dies.

53Q Payment of one instalment

(1) Sections 123 to 123E do not apply as a result of the pensioner's death, but there is payable to any person whom the Commission thinks appropriate an amount equal to the amount of pension that would have been payable to the pensioner for the period of 14 days

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after the day on which the pensioner died calculated at the rate at which pension would have been payable to the pensioner (including, to remove any doubt, any amount of pension payable under this Division) on those days if the pensioner had not died.

(2) If the amount is paid under subsection (1) in respect of the pensioner, the Commonwealth is not liable to any action, claim or demand for further payment under that subsection in respect of the pension.

(3) If a lump sum bereavement payment made to the pensioner under this Division before the pensioner's death included an amount for a pension period that occurred after the day of the pensioner's death, the amount is not recoverable from the pensioner's estate.

Subdivision D—Death of dependent child

53R Application

This Subdivision applies if:

(a) a person (the ***pensioner***) is receiving a pension; and

(b) a dependent child dies.

53S When reassessed pension rate in respect of pensioner comes into effect

(1) Pension continues to be payable to the pensioner during the bereavement period as if the child had not died.

(2) The rate of pension that becomes applicable to the pensioner as a result of the child's death applies with effect from the day after the end of the bereavement period.

53T Bereavement payment

(1) Part of each instalment of pension that is paid to the pensioner for a pension payday that occurs during the bereavement period is taken

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to be a bereavement payment. The part concerned is so much of the instalment as related to the child.

(2) All or any of the bereavement payments payable to the pensioner under subsection (1) may be paid in advance in a lump sum.

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Division 13—Recipient obligations

54 Secretary may require notification of an event or change of circumstances

(1) The Secretary may give a person:
  (a) to whom a service pension, income support supplement or a veteran payment is being paid; or
  (b) whose claim or application for a service pension or income support supplement, or whose eligibility for a veteran payment, is under consideration by the Commission or the Administrative Appeals Tribunal; or
  (c) who is receiving benefits under Division 12;

a notice that requires the person to inform the Department, or an officer specified in the notice, if:
  (d) a specified event or change of circumstances occurs; or
  (e) the person becomes aware that a specified event or change of circumstances is likely to occur.

(2) A reference in subsection (1) to a person to whom a service pension, income support supplement or veteran payment is being paid includes a person to whom the whole or a part of the pension, supplement or payment is being paid for the purpose of being applied for the benefit of the person entitled to the pension, supplement or payment.

(3) An event or change of circumstances is not to be specified in a notice under subsection (1) unless the occurrence of that event or change of circumstances might affect:
  (a) the payment to the person of the pension or veteran payment; or
  (b) the provision of benefits under Division 12.

(4) A notice under subsection (1):
  (a) must be in writing; and
  (b) may be given personally or by post; and

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(c) must specify the period within which, and, subject to subsection (4A), the manner in which the person is to give the information to the Department or specified officer.

(4A) A document lodged as a consequence of a notice issued under subsection (1) that requires a person to inform the Department of the occurrence, or likely occurrence, of a specified event or change of circumstances:

(a) is to be lodged at an office of the Department in Australia in accordance with section 5T; and

(b) is taken to have been lodged on a day determined under that section.

(5) The period specified under paragraph (4)(c) must end not later than 14 days after:

(a) the day on which the event or change of circumstances occurs; or

(b) the day on which the person becomes aware that the event or change of circumstances is likely to occur.

(5A) If the Secretary is satisfied that there are special circumstances related to the person to whom the notice under subsection (1) is to be given, the period to be specified under paragraph (4)(c) is such period as the Secretary directs in writing, being a period that ends not less than 15 days, and not more than 28 days, after:

(a) the day on which the event or change of circumstances occurs; or

(b) the day on which the person becomes aware that the event or change of circumstances is likely to occur.

(5AA) In spite of subsection (5), if a notice under subsection (1) specifies an event that consists of the death of a person, the person to whom the notice is given is taken, for the purposes of this Act, to have informed the Department or the officer specified in the notice, as the case may be, of the death within the period specified in the notice if he or she informs the Department or officer of the death within the bereavement period.

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(6) A person must not fail to comply with a notice under subsection (1).

Penalty: Imprisonment for 6 months or 10 penalty units, or both.

(7) An offence under subsection (6) is an offence of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(8) A person does not commit an offence under subsection (6) to the extent that the person is not capable of complying with the notice.

Note: The defendant bears an evidential burden in relation to the matter in subsection (8). See subsection 13.3(3) of the *Criminal Code*.

54A Secretary may require recipient to give information relevant to payment of service pension, income support supplement or veteran payment

(1) The Secretary may give a person:

(a) to whom a service pension, income support supplement or a veteran payment is being paid; or

(b) whose claim or application for a service pension or income support supplement, or whose eligibility for a veteran payment, is under consideration by the Commission or the Administrative Appeals Tribunal; or

(c) who is receiving benefits under Division 12;

a notice that requires the person to give the Department, or an officer specified in the notice, a statement in writing about a matter that might affect:

(d) the payment to the person of the service pension, income support supplement or veteran payment; or

(e) the provision of benefits under Division 12.

(2) A reference in subsection (1) to a person to whom a service pension, income support supplement or a veteran payment is being paid includes a person to whom the whole or a part of the pension, supplement or payment is being paid for the purpose of being

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applied for the benefit of the person entitled to the pension, supplement or payment.

(3) A notice under subsection (1):
  (a) must be in writing; and
  (b) may be given personally or by post; and
  (c) must specify the period within which, and, subject to subsection (3A), the manner in which the person is to give the information to the Department or specified officer.

(3A) A document lodged as a consequence of a notice issued under subsection (1) that requires a person to inform the Department about a matter of a kind specified in that subsection:
  (a) is to be lodged at an office of the Department in Australia in accordance with section 5T; and
  (b) is taken to have been lodged on a day determined under that section.

(4) The period specified under paragraph (3)(c) must end at least 14 days after the day on which the notice is given.

(5) A statement given in response to a notice under subsection (1) must be in accordance with a form approved by the Commission.

(6) A person must not fail to comply with a notice under subsection (1).

Penalty: Imprisonment for 6 months or 10 penalty units, or both.

(7) An offence under subsection (6) is an offence of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(8) A person does not commit an offence under subsection (6) to the extent that the person is not capable of complying with the notice.

Note: The defendant bears an evidential burden in relation to the matter in subsection (8). See subsection 13.3(3) of the *Criminal Code*.

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54AA Secretary may require recipient to give information, produce documents or appear before an officer

(1) The Secretary may give to a person who is receiving a service pension, income support supplement, a veteran payment or benefits under Division 12 a notice requiring the person:
  (a) to provide the Department, or an officer specified in the notice, with information; or
  (b) to produce to the Department, or an officer specified in the notice, documents in the custody or under the control of the person; or
  (c) to appear before an officer of the Department specified in the notice to answer questions;

relating to a matter that may affect the payment of the pension, supplement or payment or the provision of the benefits.

(2) A reference in subsection (1) to a person receiving a service pension, income support supplement or a veteran payment includes a person to whom the whole or a part of the pension, supplement or payment is being paid for the purpose of being applied for the benefit of the person entitled to the pension, supplement or payment.

(3) The Secretary may give to a person whose claim or application for a service pension or income support supplement is under consideration by the Commission or the Administrative Appeals Tribunal a notice requiring the person:
  (a) to provide the Department, or an officer specified in the notice, with information; or
  (b) to produce to the Department, or an officer specified in the notice, documents in the custody or under the control of the person; or
  (c) to appear before an officer of the Department specified in the notice to answer questions;

relating to the claim or application.

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(4) Subject to subsections (4A) and (5), the notice:
  (a) must be in writing; and
  (b) may be given personally or by post; and
  (c) must specify:
    (i) when and how the person is to provide the information or produce the documents; or
    (ii) when and where the person is to appear before the officer.

(4A) A document lodged as a consequence of a notice under subsection (1) or (3) that requires a person to provide the Department with information of a kind to which paragraph (a) of that subsection applies:
  (a) is to be lodged at an office of the Department in Australia in accordance with section 5T; and
  (b) is taken to have been lodged on a day determined under that section.

(5) The person must not be required to provide the information, produce the documents or appear to answer questions within a period of less than 14 days after the notice is given.

(6) The Secretary may require the person to give or verify the information or answers:
  (a) on oath or affirmation; and
  (b) either orally or in writing.

  The Secretary or specified officer may administer an oath or affirmation to the person.

(7) A person must not fail to comply with a notice under subsection (1) or (3).

  Penalty: Imprisonment for 6 months.

(8) An offence under subsection (7) is an offence of strict liability.

  Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

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(9) A person does not commit an offence under subsection (7) to the extent that the person is not capable of complying with the notice.

Note: The defendant bears an evidential burden in relation to the matter in subsection (9). See subsection 13.3(3) of the *Criminal Code*.

54B Document served with a section 54 notice

(1) A notice under subsection 54(1) is taken to specify an event or change of circumstances if:
  (a) the notice refers to a document that sets out the event or change of circumstances; and
  (b) a copy of the document is given to the person with the notice.

(2) If a notice specifies an event or change of circumstances by reference to a document under subsection (1), the notice may specify the period within which a person is to give the information to the Department or specified officer by reference to the period set out in the document for notification of the event or change of circumstances.

54BA Secretary may require person or person's partner to take action to obtain a comparable foreign pension

(1) If:
  (a) a person is receiving a service pension, income support supplement or a veteran payment; and
  (b) the Secretary is satisfied that the person may be entitled to a comparable foreign pension if the person applied for that pension;

the Secretary may give the person a notice that requires the person to take reasonable action to obtain the comparable foreign pension.

Note: For the consequences of a failure to comply with the notice see section 56EB.

(1A) If:
  (a) a person is receiving a service pension, income support supplement or a veteran payment; and

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(b) the Secretary is satisfied that the person's partner (if any) may be entitled to a comparable foreign pension if the partner applied for that pension;

the Secretary may give the person a notice that requires the partner to take reasonable action to obtain the comparable foreign pension.

Note: For the consequences of a failure to comply with the notice see section 56EB.

(2) A notice under subsection (1) or (1A):
(a) must be in writing; and
(b) must be given personally or by post; and
(c) must specify the period within which the reasonable action is to be taken.

(3) The period specified under paragraph (2)(c) must end at least 14 days after the day on which the notice is given.

(4) For the purposes of this section, a person takes reasonable action to obtain a comparable foreign pension only if the person takes reasonable action to obtain the pension at the highest rate applicable to the person.

54C Interpretation

In this Division:

officer means a person performing duties, or exercising powers or functions, under or in relation to this Act.

person includes an unincorporated body.

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Division 14—Pensioners in certain institutions

55 Service pension, income support supplement or veteran payment may be suspended or forfeited when person in gaol or in psychiatric confinement following criminal charge

(1) Subject to subsection (3), an instalment of a service pension, income support supplement or a veteran payment is not payable to a person in respect of a day on which the person is:
  (a) in gaol; or
  (b) undergoing psychiatric confinement because the person has been charged with an offence.

Note: While an instalment is not payable to a person, the person is not entitled to benefits under Division 12 because the person is not ***receiving a service pension or income support supplement*** unless a determination is in force under subsection 53D(3), 55A(1) or 85(8).

(3) Subsection (1) does not apply to so much of an instalment as has been redirected under a direction given under section 55A.

Meaning of ***in gaol***

(4) For the purposes of this Act, a person is ***in gaol*** if:
  (a) the person is being lawfully detained (in prison or elsewhere) while under sentence for conviction of an offence and not on release on parole or licence; or
  (b) the person is undergoing a period of custody pending trial or sentencing for an offence.

Meaning of ***psychiatric confinement***

(5) Subject to subsection (6), ***psychiatric confinement*** in relation to a person includes confinement in:
  (a) a psychiatric section of a hospital; and
  (b) any other place where persons with psychiatric disabilities are, from time to time, confined.

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(6) The confinement of a person in a psychiatric institution during a period when the person is undertaking a course of rehabilitation is not to be taken to be ***psychiatric confinement***.

55A Instalments may be redirected to partner or child

(1) If:
  (a) an instalment of a person's service pension, income support supplement or veteran payment would, but for this section, not be payable because of section 55; and
  (b) the person has a partner or a child;

the Commission may direct that the whole, or a specified part, of the instalment is to be paid to:
  (c) the partner; or
  (d) the child; or
  (e) someone else approved by the Commission.

(2) A payment made under paragraph (1)(e) is to be applied for the benefit of the partner or the child.

(3) If a payment is made under subsection (1) to the partner or a child of the person who is in gaol or undergoing psychiatric confinement because the person has been charged with an offence, the payment is to be taken, for all the purposes of this Act, to be a payment made to the person in gaol or psychiatric confinement.

Note: This subsection has the effect that the person is receiving the service pension or income support supplement on a payday if the instalment for that payday has been wholly or partly redirected under this section: for instance, the person would be eligible for fringe benefits. This person is not eligible for another income support payment.

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Division 15—Variation and termination

56 Automatic termination or rate reduction—recipient complying with section 54 notification obligations

(1) Where:

(a) a person who is receiving a service pension, income support supplement or a veteran payment is given a notice under section 54; and

(b) the notice requires the person to inform the Department or a specified officer of the occurrence of an event or change in circumstances within a specified period (in this section called the ***notification period***); and

(c) the event or change in circumstances occurs; and

(d) the person informs the Department or specified officer of the occurrence of the event or change in circumstances within the notification period in accordance with the notice; and

(e) because of the occurrence of the event or change in circumstances:

(i) the person ceases to be eligible for the pension, income support supplement or veteran payment; or

(ii) the pension, income support supplement or veteran payment would, but for this section, cease to be payable to the person;

the pension, income support supplement or veteran payment continues to be payable to the person until the end of the notification period and then ceases to be payable to the person.

(2) If the pension, income support supplement or veteran payment ceases to be payable to the person under subsection (1), the pension, supplement or payment is cancelled.

Note: The person's eligibility for benefits under Division 12 will also cease.

(3) If:

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(a) a person who is receiving a service pension, income support supplement or a veteran payment is given a notice under section 54; and
(b) the notice requires the person to inform the Department or a specified officer of the occurrence of an event or change in circumstances within a specified period (the ***notification period***); and
(c) the event or change in circumstances occurs; and
(d) the person informs the Department or specified officer of the occurrence of the event or change in circumstances within the notification period in accordance with the notice; and
(e) because of the occurrence of the event or change in circumstances, the person's rate of pension, income support supplement or veteran payment is to be reduced;

then, except as otherwise provided by this Act, the pension, income support supplement or veteran payment becomes payable to the person at the reduced rate immediately after the end of the notification period.

56A Automatic termination—recipient not complying with section 54 notification obligations

(1) Where:
(a) a person who is receiving a service pension, income support supplement or a veteran payment is given a notice under section 54; and
(b) the notice requires the person to inform the Department or a specified officer of the occurrence of an event or change in circumstances within a specified period (in this section called the ***notification period***); and
(c) the event or change in circumstances occurs; and
(d) the person does not inform the Department or specified officer of the occurrence of the event or change in circumstances within the notification period in accordance with the notice; and

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(e) because of the occurrence of the event or the change in circumstances:
  (i) the person ceases to be eligible for the pension, income support supplement or veteran payment; or
  (ii) the pension, income support supplement or veteran payment ceases to be payable to the person;

the pension, income support supplement or veteran payment ceases to be payable to the person on the day on which the event or change in circumstances occurs.

(2) If the pension, income support supplement or veteran payment ceases to be payable to the person under subsection (1), the pension, supplement or payment is cancelled.

Note: The person's eligibility for benefits under Division 12 will also cease.

56B Automatic rate reduction—recipient not complying with section 54 notification obligations

Where:

(a) a person who is receiving a service pension, income support supplement or a veteran payment is given a notice under section 54; and
(b) the notice requires the person to inform the Department or a specified officer of the occurrence of an event or change in circumstances within a specified period (in this section called the ***notification period***); and
(c) the event or change in circumstances occurs; and
(d) the person does not inform the Department or specified officer of the occurrence of the event or change in circumstances within the notification period in accordance with the notice; and
(e) because of the occurrence of the event or change in circumstances, the person's rate of pension, income support supplement or veteran payment is to be reduced;

then, except where otherwise provided for by this Act, the pension, income support supplement or veteran payment becomes payable

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to the person at the reduced rate on the day on which the event or change in circumstances occurs.

56C Rate increase determination

(1) If the Commission is satisfied that the rate at which a service pension, income support supplement or a veteran payment is being, or has been, paid is less than the rate provided for by this Act, the Commission must, subject to section 56DA, determine that the rate is to be increased to the rate specified in the determination.

(2) If:
  (a) either:
    (i) a service pension, income support supplement or a veteran payment has not been, or is not being, paid to a person because the rate of the pension, supplement or payment was determined to be nil; or
    (ii) a service pension, income support supplement or a veteran payment has not been, or is not being, paid to a person because the rate of the pension, supplement or payment was reduced to nil under section 56 or 56A; and
  (b) the Commission is satisfied that the rate of the person's pension, supplement or payment as provided for by this Act is no longer nil;

the Commission must, subject to section 56DA, determine that the rate at which the pension, supplement or payment is payable to the person is the rate specified in the determination.

(3) A determination:
  (a) must be in writing; and
  (b) must specify a rate assessed as provided for by this Act; and
  (c) may be made by the Commission on its own initiative or following a request by the person for an increase in the rate of the pension, supplement or payment.

Note: For the date of effect of a determination under this section, see sections 56G and 56GA.

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(4) If the Commission makes a determination under this section in respect of a person's service pension, income support supplement or veteran payment, the service pension, income support supplement or veteran payment is payable to the person at the rate specified in the determination.

56D Rate reduction determination

(1) If the Commission is satisfied that the rate at which service pension, income support supplement or veteran payment is being, or has been, paid is more than the rate provided for by this Act, the Commission must, subject to section 56DA, determine that the rate is to be reduced to the rate specified in the determination.

Note 1: A determination under this section is not necessary in a case where an automatic rate reduction is produced by section 56B.

Note 2: For the date of effect of a determination under this section, see section 56H.

(2) A determination under subsection (1):
  (a) must be in writing; and
  (b) must specify a rate assessed as provided for by this Act; and
  (c) may be made by the Commission on its own initiative or following a request by the person for a decrease in the rate of the pension, supplement or payment.

(3) If the Commission makes a determination under this section in respect of a person's service pension, income support supplement or veteran payment, the service pension, income support supplement or veteran payment is payable to the person at the rate specified in the determination.

56DA No rate increase or reduction for small amounts

(1) The Commission must not make a determination under section 56C or 56D if the amount by which the rate of the service pension, income support supplement or veteran payment would be increased or reduced (as the case may be) under the determination would be less than $26 per annum.

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(2) Subsection (1) does not apply if the increase or reduction in the rate of the pension, supplement or payment is necessary as a result of a matter, or change in circumstances, affecting the payment of the pension, supplement or payment that the Commission has declared, by notice published in the *Gazette,* to be a matter, or change in circumstances, whose effects on the payment of a service pension, income support supplement or a veteran payment is to be disregarded for the purposes of this subsection.

56E Cancellation or suspension determination—general

(1) If the Commission is satisfied that a service pension, income support supplement or a veteran payment is being, or has been, paid to a person to whom it is not, or was not, payable under this Act, the Commission may determine that the pension, supplement or payment is to be cancelled or suspended.

Note 1: A determination under this section is not necessary in a case where an automatic termination is produced by section 56 or 56A.

Note 2: For the date of effect of a determination under this section, see section 56H.

Note 3: When a person's pension is suspended under section 56E, the provision of benefits under Division 12 to the person is generally suspended too. However, the Commission may decide that the person can continue to receive medical treatment under section 53D or Part V (see subsection 85(8)).

Note 4: When a person's pension is cancelled under section 56E, the person's benefits under Division 12 are also cancelled.

(2) A determination under subsection (1) must be in writing.

(3) This section does not apply to a person if section 56EA applies to the person.

56EA Cancellation or suspension determination for failure to comply with section 54A notice

(1) If:

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(a) a person who is receiving a service pension, income support supplement or a veteran payment is given a notice under section 54A or 54AA; and

(b) the person does not comply with the requirements set out in the notice;

the Commission may determine that the pension, income support supplement or veteran payment is to be cancelled or suspended.

(2) A determination under subsection (1) must be in writing.

Note 1: For the date of effect of a determination under this section see section 56H.

Note 2: When a person's pension is suspended under section 56EA, the provision of benefits under Division 12 to the person is generally suspended too. However, the Commission may decide that the person can continue to receive medical treatment under section 53D or Part V (see subsection 85(8)).

Note 3: When a person's pension is cancelled under section 56EA, the person's benefits under Division 12 are also cancelled.

56EB Cancellation or suspension for failure to take action to obtain a comparable foreign pension

(1) If:

(a) a person who is receiving a service pension, income support supplement or a veteran payment has been given a notice under subsection 54BA(1) or (1A); and

(b) the Commission is satisfied that the person, or the person's partner, has not taken reasonable action to obtain the comparable foreign pension within the period specified in the notice;

the Commission may determine in writing that the service pension, income support supplement or veteran payment is to be cancelled or suspended.

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(2) For the purposes of this section, a person takes reasonable action to obtain a comparable foreign pension only if the person takes reasonable action to obtain the pension at the highest rate applicable to the person.

Note: For the date of effect of a determination under this section see section 56H.

56EC Cancellation determination where service pension, income support supplement or veteran payment not payable

(1) If a service pension, income support supplement or a veteran payment is not payable to a person because the rate of the pension, supplement or payment:

(a) has been determined to be nil; or

(b) has been reduced to nil under section 56 or 56A;

the Commission may determine that the pension, supplement or payment is to be cancelled.

(2) The determination must be in writing.

Note: For the date of effect of a determination under this section, see section 56H.

56F Resumption of a payment after suspension

If the Commission:

(a) suspends a person's service pension, income support supplement or veteran payment under section 56E, 56EA or 56EB; and

(b) later becomes satisfied that the pension, supplement or payment is payable to the person;

the Commission may end the suspension, by determination in writing.

Note: For the date of effect of a determination under this section, see section 56G.

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56G Date of effect of favourable determination

(1) The day on which a determination under section 56C or 56F (in this section called the ***favourable determination***) takes effect is worked out in accordance with this section.

Notified change of circumstances

(2) If:
  (a) the favourable determination is made following a person having advised the Department of a change in circumstances; and
  (b) the change is not a decrease in the rate of the person's maintenance income;

the determination takes effect on the day on which the advice was received or on the day on which the change occurred, whichever is the later.

Other determinations

(3) In any other case, the favourable determination takes effect on the day on which the determination was made or on such later day or earlier day as is specified in the determination.

56GA Date of effect of determination under section 56C—dependent child

If a determination under section 56C is made after a person tells the Department that the person has a child, or an additional child, that is a dependent child, the determination takes effect on the day on which the child is taken to have become a dependent child.

Note: The day is determined by reference to the Social Security Act (see subsection 5F(2)).

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56H Date of effect of adverse determination

General

(1) The day on which a determination under section 56D, 56E, 56EA, 56EB or 56EC (in this section called the ***adverse determination***) takes effect is worked out in accordance with this section.

(2) The adverse determination takes effect on:
  (a) the day on which the determination is made; or
  (b) if another day is specified in the determination—on that day.

(3) Subject to subsections (4), (5), (6), (7), (8) or (9), the day specified under paragraph (2)(b) must be later than the day on which the determination is made.

Contravention of Act

(4) If the adverse determination is made because a person has contravened a provision of this Act (other than subsection 54(6), 54A(6), 54AA(7) or 128(4)) the day specified under paragraph (2)(b) may be earlier than the day on which the determination is made.

False statement or misrepresentation—suspension or cancellation

(5) If:
  (a) a person has made a false statement or misrepresentation; and
  (b) because of the false statement or misrepresentation, any amount of a service pension, income support supplement or a veteran payment has been paid to a person which should not have been paid;

the day specified under paragraph (2)(b) may be earlier than the day on which the determination is made.

False statement or misrepresentation—rate reduction

(6) If:
  (a) a person has made a false statement or misrepresentation; and

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(b) because of the false statement or misrepresentation, the rate at which a service pension, income support supplement or a veteran payment was paid to a person was more than it should have been;

the day specified under paragraph (2)(b) may be earlier than the day on which the determination is made.

Payment of arrears of periodic compensation payments—suspension or cancellation

(7) If:

(a) an adverse determination is made in relation to a person because of point SCH6-E4 (payment of arrears of periodic compensation payments); and

(b) a service pension, income support supplement or a veteran payment has been paid to the person or to the person's partner when, because of the payment of arrears of periodic compensation, the service pension, income support supplement or veteran payment should have been cancelled or suspended;

the day specified under paragraph (2)(b) may be earlier than the day on which the determination is made.

Payment of arrears of compensation payments—rate reduction

(8) If:

(a) an adverse determination is made in relation to a person because of point SCH6-E4 (payment of arrears of periodic compensation payments); and

(b) an amount of service pension, income support supplement or veteran payment was paid to the person or to the person's partner that, because of the payment of arrears of periodic compensation, was more than the amount that should have been paid;

the day specified under paragraph (2)(b) may be earlier than the day on which the determination is made.

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Duplicate payments of rent assistance

(9) If:

(a) a decision (the ***veterans' entitlements decision***) was made that rent assistance (the ***veterans' entitlements rent assistance***) was to be included when calculating a person's rate of service pension, income support supplement or veteran payment for each day in a period; and

(b) the condition in subsection (10) is met for each day in that period (which is about rent assistance also being included in family tax benefit); and

(c) because the inclusion of the veterans' entitlements rent assistance was contrary to Module C of the Rate Calculator, an adverse determination is made to reduce the rate of, or cancel, the person's service pension, income support supplement or veteran payment for each day in that period;

the day specified under paragraph (2)(b) must be the first day of that period and may be earlier than the day on which the determination is made.

(10) The condition in this subsection is met for each day in a period if:

(a) both of the following apply:

(i) the person was a member of a couple (other than an illness separated couple or a respite care couple) on each day in the period;

(ii) when the veterans' entitlements decision was made, a determination under the family assistance law was in force that included rent assistance when calculating the person's, or the person's partner's, Part A rate of family tax benefit for each day in that period; or

(b) both of the following apply:

(i) the person was not a member of a couple, or was a member of an illness separated couple, or a respite care couple, on each day in the period;

(ii) when the veterans' entitlements decision was made, a determination under the family assistance law was in force that included rent assistance when calculating the

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person's Part A rate of family tax benefit for each day in that period; or

(c) all of the following apply:

(i) when the veterans' entitlements decision was made, no determination of a kind mentioned in subparagraph (a)(ii) or (b)(ii) (as the case requires) was in force;

(ii) after the veterans' entitlements decision was made, such a determination was made;

(iii) each day in the period either is, or comes after, the day on which the determination was made.

56J Payment may be cancelled at recipient's request

(1) The Commission may cancel a person's age service pension, invalidity service pension, partner service pension, income support supplement or veteran payment if the person requests the Commission to do so.

(2) A request under subsection (1) must be in writing.

Note 1: If the Commission cancels a veteran's age service pension or invalidity service pension and the veteran's partner receives a partner service pension, the partner service pension will also be terminated (under section 56E).

Note 2: Cancellation of a veteran's service pension may result in the veteran being ineligible for treatment under Part V.

56K Payment may be suspended if instalments not drawn

If a person has not drawn instalments of his or her age service pension, invalidity service pension, partner service pension, income support supplement or veteran payment for a continuous period of 6 months, the Commission may cancel or suspend the pension, supplement or payment.

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Note 1: An example of a situation where this section is intended to apply is where a person has closed his or her bank account and cannot be contacted to make new banking or other arrangements for payment of the person's service pension. It is not intended to apply where a pensioner is accumulating pension instalments in a bank account.

Note 2: If the Commission cancels or suspends a veteran's age service pension or invalidity service pension and the veteran's partner receives a partner service pension, the partner service pension will also be terminated (under section 56E).

56L Commission may end suspension

(1) If the Commission suspends a pension, income support supplement or a veteran payment under section 56K, it may end the suspension at any time.

(2) The Commission may determine that the end of the suspension takes effect:
   (a) from the date the suspension occurred; or
   (b) such later date as the Commission thinks proper.

56M Effect of cancellation or suspension

(1) If the Commission determines under this Division that a service pension, income support supplement or a veteran payment payable to a person is to be cancelled, the pension, supplement or payment ceases to be payable to the person from and including the day on which the determination takes effect.

(2) If the Commission determines under this Division that a service pension, income support supplement or a veteran payment payable to a person is to be suspended, the pension, supplement or payment is not payable to the person during the period:
   (a) commencing on the day on which the determination takes effect; and
   (b) ending when the suspension ends under a determination of the Commission (under section 56F or 56L).

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56N Changes to payments by computer

If:

(a) payment to a person of a service pension, income support supplement or a veteran payment is based upon data in a computer; and

(b) the rate of the pension, supplement or payment is increased or reduced, or the pension, supplement or payment is cancelled or suspended, because of the operation of a computer program approved by the Commission; and

(c) the program causes the change for a reason for which the Commission could determine the change;

the change is taken to have been made because of a determination by the Commission for that reason.

Note: This section does not apply where:

(a) an automatic termination is produced by section 56 or 56A; or

(b) an automatic rate reduction is produced by section 56B.

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Division 16—Review of decisions

57 Persons who may seek review of certain decisions

(1) A claimant who is dissatisfied with a decision of the Commission:
  (a) in relation to a claim for a qualifying service determination under section 35B; or
  (b) in relation to a claim for a service pension or income support supplement; or
  (c) in relation to a request under section 52Y (financial hardship);

may request the Commission to review the decision.

(1A) A person who is dissatisfied with either of the following decisions of the Commission made under an instrument made under section 45SB may request the Commission to review the decision:
  (a) a decision that the person is not eligible for a veteran payment;
  (b) a decision determining the rate of the person's veteran payment.

(2) A person who is dissatisfied with a decision of the Commission:
  (a) cancelling or suspending a service pension, income support supplement or a veteran payment; or
  (b) terminating the suspension of a service pension, income support supplement or a veteran payment; or
  (c) reducing or increasing the rate of a service pension, income support supplement or a veteran payment; or
  (d) refusing a request for an increase in the rate of a service pension, income support supplement or a veteran payment; or
  (e) in relation to a request under section 52Y (financial hardship);

may request the Commission to review the decision.

(3) A person who is dissatisfied with a decision of the Commission under Part IIIAB (pension bonus and pension bonus bereavement

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payment) may request the Commission to review the decision. However, this rule does not apply to a decision of the Commission under:

(a) section 45TE (approval of form); or
(b) section 45TG (approval of places and persons); or
(c) section 45TO (declaration of non-accruing membership); or
(d) paragraph 45UK(1)(b) (approval of form).

57A Application for review

(1) A request for review of a decision under section 57 must:
(a) be made within 3 months after the person seeking review was notified of the decision; and
(b) set out the grounds on which the request is made; and
(c) be in writing; and
(d) be lodged at an office of the Department in Australia in accordance with section 5T.

(1A) A request lodged in accordance with section 5T is taken to have been made on a day determined under that section.

(2) If a request for review of a decision is made in accordance with subsection (1) the Commission must review the decision.

(3) If the Commission has delegated its powers under this section to the person who made the decision under review, that person must not review the decision.

57B Commission's powers where request for review

(1) If the Commission reviews a decision under this Division, the Commission must affirm the decision or set it aside.

(2) If the Commission sets the decision aside it must, subject to subsection (3), substitute a new decision in accordance with this Act.

(3) If the decision set aside is:

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(a) a decision to cancel, suspend or reduce the rate of a service pension, income support supplement or a veteran payment under section 56D or 56E; or

(b) a decision to increase the rate of a service pension, income support supplement or a veteran payment under section 56C;

the Commission need not substitute another decision.

Note: For the Commission's evidence-gathering powers see section 57F.

57C Date of effect of certain review decisions

(1) If the Commission sets aside a decision and substitutes for it a decision:

(a) granting a claim for service pension or income support supplement or granting a veteran payment; or

(b) increasing the rate of a service pension, income support supplement or a veteran payment;

the substituted decision takes effect from a date specified by the Commission.

(2) The date specified by the Commission under subsection (1) must not be earlier than the date from which the Commission could have granted the claim or the veteran payment, or increased the rate, when the original decision was made.

(3) If the Commission sets aside a decision to suspend a service pension, income support supplement or a veteran payment, the Commission may end the suspension from a date specified by the Commission, which may be a date earlier than the date of the Commission's decision to set aside the suspension.

57D Commission must make written record of review decision and reasons

(1) When the Commission reviews a decision under this Division it must make a written record of its decision upon review.

(2) The written record must include a statement that:

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(a) sets out the Commission's findings on material questions of fact; and
(b) refers to the evidence or other material on which those findings are based; and
(c) provides reasons for the Commission's decision.

57E Person who requested review to be notified of decision

(1) When the Commission affirms or sets aside a decision under this Division it must give the person who requested the review of the decision:
(a) a copy of the Commission's decision; and
(b) subject to subsection (2), a copy of the statement about the decision referred to in subsection 57D(2); and
(c) if the person has a right to apply to the Administrative Appeals Tribunal for a review of the Commission's decision—a statement giving the person particulars of that right.

(2) If the statement referred to in paragraph (1)(b) contains any matter that, in the opinion of the Commission:
(a) is of a confidential nature; or
(b) might, if communicated to the person who requested review, be prejudicial to his or her physical or mental health or well-being;
the copy given to the person is not to contain that matter.

57F Powers of Commission to gather evidence

(1) The Commission or the Commission's delegate may, in reviewing a decision under this Division:
(a) take evidence on oath or affirmation for the purposes of the review; and
(b) adjourn a hearing of the review from time to time.

(2) The presiding member of the Commission or the Commission's delegate may, for the purposes of the review:

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(a) summon a person to appear at a hearing of the review to give evidence and to produce such documents (if any) as are referred to in the summons; and
(b) require a person appearing at a hearing of the review for the purpose of giving evidence either to take an oath or to make an affirmation; and
(c) administer an oath or affirmation to a person so appearing.

(3) The person who applied for the review under this Division is a competent and compellable witness upon the hearing of the review.

(4) The oath or affirmation to be taken or made by a person for the purposes of this section is an oath or affirmation that the evidence that the person will give will be true.

(5) The Commission's power under paragraph (1)(a) to take evidence on oath or affirmation:
(a) may be exercised on behalf of the Commission by:
(i) the presiding member or the Commission's delegate; or
(ii) by another person (whether a member or not) authorised by the presiding member or the Commission's delegate; and
(b) may be exercised within or outside Australia; and
(c) must be exercised subject to any limitations specified by the Commission.

(6) Where a person is authorised under subparagraph (5)(a)(ii) to take evidence for the purposes of a review, the person has:
(a) all the powers of the Commission under subsection (1); and
(b) all the powers of the presiding member under subsection (2);
for the purposes of taking that evidence.

(7) In this section:

Commission's delegate means a person to whom the Commission has delegated its powers under section 57A and who is conducting the review in question.

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57G Withdrawal of request for review

(1) A person who requests a review under section 57 may withdraw the request at any time before it is determined by the Commission.

(2) To withdraw the request, the person must give written notice of withdrawal to the Secretary and the notice must be lodged at an office of the Department in Australia in accordance with section 5T.

(3) Subject to section 57A, a person who withdraws a request for review may subsequently make another request for review of the same decision.

Note: Section 57A provides that a person who wants to request a review of a decision must do so within 3 months after the person has received notice of the decision.

57H Commission may reimburse certain expenses

(1) When the Commission, upon review of a decision under this Division:

(a) grants a claim for a qualifying service determination, a service pension or income support supplement or grants a veteran payment; or

(b) sets aside a decision to cancel or suspend a service pension, income support supplement or a veteran payment;

the Commission may pay to the person who requested the review an amount in respect of expenses incurred by the person in providing for the production of certificates, reports or other documents from a medical practitioner, or from a hospital or similar institution in which he or she had received medical treatment.

(2) Subsection (1) applies only in relation to certificates, reports or documents reasonably used for the purposes of the review.

(3) The amount that may be paid under subsection (1) is to be calculated in accordance with the scale approved by the Commission for the purposes of subsection 19(8).

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Division 17—Administration of payments

Subdivision A—General administration of payments

58 Application of Subdivision

(1) This Subdivision applies to:
  (a) pensions payable under Part III (Service Pensions) or Part IIIA (Income Support Supplement); and
  (aa) veteran payments (see Part IIIAA); and
  (b) pension bonus and pension bonus bereavement payment payable under Part IIIAB.

(2) For the purposes of this Subdivision, ***pension*** includes veteran payment.

Note: The definition of ***pension*** in section 5Q also includes income support supplement.

58A Payment by instalments

Payment in arrears in relation to pension periods

(1) Pension is payable:
  (a) in arrears; and
  (b) by instalments relating to each pension period.

Total instalment relating to a pension period

(2) The amount payable to a person as an instalment of pension in relation to a pension period is the total amount of pension payable to the person for the days in that period on which pension was payable to the person.

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Pensions generally payable fortnightly

(3) Unless subsection (3A) applies to the person, an instalment of pension is payable to a person on the next payday after the end of the pension period to which the instalment relates.

Pensions may be payable weekly

(3A) The Commission may determine, in writing, that the total amount of an instalment of pension payable to a person in relation to a pension period is payable to the person in 2 payments (the ***part payments***) if the person is a member of a class specified under subsection (3C).

(3B) A determination made under subsection (3A) is not a legislative instrument.

(3C) The Commission may, by legislative instrument, specify a class of persons for the purposes of subsection (3A).

(3D) The first of the part payments:

(a) is not to exceed the total of the amount of pension (calculated in accordance with this section) payable to the person for days that:

(i) are days on which the pension was payable to the person; and

(ii) are included in the first 7 days of the pension period; and

(b) is payable at a time determined by the Commission that is after the first 7 days of the pension period.

(3E) The other of the part payments:

(a) is the excess of the amount that is payable to the person as the instalment of pension in relation to the pension period over the first of the part payments; and

(b) is payable at a time determined by the Commission that is after the end of the pension period.

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(3F) If the total amount of pension payable to a person in relation to a pension period is payable to the person in part payments, then it is taken for the purposes of this Act that:

(a) a single instalment of the pension is payable in relation to the period; and

(b) that instalment is payable when the last of the part payments is, or is to be, made; and

(c) that instalment is equal to the total of the part payments.

Note: The total of the part payments equals the amount worked out under subsection (2) (as affected by subsections (6) to (9), if relevant) as the amount payable to the person as the instalment of the pension in relation to the pension period.

(3G) However, sections 58J (about payments to Commissioner of Taxation or Child Support Registrar) and 122B (about deductions from instalments) apply as if each of the part payments were a separate instalment.

Calculation of rate of pension payable

(4) For the purpose of the calculation of the amount of an instalment of pension, the rate of pension payable to a person for a day is calculated by dividing the annual rate of pension by 364.

(5) The amount worked out under subsection (4) is to be rounded to the nearest cent (rounding half a cent upwards).

(6) If:

(a) either or both of the following amounts are added to a person's maximum basic rate for a particular day in working out the amount of an instalment of a service pension:

(i) a pension supplement amount more than the person's pension supplement basic amount;

(ii) energy supplement; and

(b) there is no election by the person under subsection 60A(1) in force on that day; and

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(c) apart from this subsection, the portion of the instalment corresponding to that day would be more than a nil amount but less than 1/364 of the total of:
  (i) the minimum pension supplement amount, if an amount described in subparagraph (a)(i) was added as described in paragraph (a); and
  (ii) the energy supplement (if any) added as described in paragraph (a);

the amount of that portion of the instalment is to be increased to 1/364 of that total.

(7) If:
  (a) an amount of an instalment of income support supplement is payable to a person in relation to a particular day; and
  (b) on that day, the person is residing in Australia and:
    (i) is in Australia; or
    (ii) is temporarily absent from Australia and has been so for a continuous period not exceeding 6 weeks; and
  (c) there is no election by the person under subsection 60A(1) in force on that day; and
  (d) apart from this subsection, the portion of the instalment corresponding to that day would be less than 1/364 of the person's minimum pension supplement amount, but more than a nil amount;

the amount of that portion of the instalment is to be increased to 1/364 of the person's minimum pension supplement amount.

(8) If:
  (a) an amount of an instalment of veteran payment is payable to a person in relation to a particular day; and
  (b) on that day, the person is residing in Australia and:
    (i) is in Australia; or
    (ii) is temporarily absent from Australia and has been so for a continuous period not exceeding 6 weeks; and
  (c) apart from this subsection, the portion of the instalment corresponding to that day would be less than 1/364 of the

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person's minimum pension supplement amount, but more than a nil amount;

the amount of that portion of the instalment is to be increased to $^{1}/_{364}$ of the person's minimum pension supplement amount.

(9) If, apart from this subsection, the amount of a fortnightly instalment of pension would be less than $1.00, the amount of the instalment is to be increased to $1.00.

58C Manner of payment

A person's pension is, subject to sections 58D and 58L and sections 202 to 202B, to be paid:

(a) to that person; and

(b) in the manner determined by the Commission.

Note: For the procedure to be followed if the Commission determines that a person's pension is to be paid into an account with a bank or foreign corporation that takes money on deposit see section 58F.

58D Agents

(1) The Commission may approve payment of a pension of a person (the ***primary person***) to another person if:

(a) the primary person, by document lodged at an office of the Department in Australia in accordance with section 5T, requests the Commission to pay the pension to the other person; and

(b) the Commission is satisfied that the other person has agreed to receive payment as agent of the primary person.

(1A) A request lodged in accordance with section 5T is taken to have been made on a day determined under that section.

(2) An approval under subsection (1):

(a) must be in writing; and

(b) must specify the person to whom the pension is to be paid; and

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(c) must specify the period for which the pension is to be paid to that person.

(3) If a payment of pension is made to another person in accordance with an approval under subsection (1):
(a) the payment is, for all purposes, to be taken to be a payment of the pension to the primary person; and
(b) neither the Commonwealth nor the Commission is bound to oversee the application of the payment by the other person; and
(c) the other person is to be taken to receive the payment as agent for the primary person.

58E Pension payday falling on public holiday etc.

If an amount of pension that would normally be paid on a particular day cannot reasonably be paid on that day (because, for example, it is a public holiday or a bank holiday), the amount may be paid on an earlier day.

58F Payment into bank account etc.

(1) The Commission may direct that the whole or a part of the amount of a person's pension is to be paid, at the intervals that the Commission specifies, to the credit of an account with:
(a) a bank; or
(b) if the person is physically outside Australia—a foreign corporation that takes money on deposit.

(2) The account must be an account nominated and maintained by the person to whom the pension is payable.

(3) The account may be an account that is maintained by a person to whom the pension is payable jointly or in common with another person.

(3A) If the person has not nominated an account for the purposes of subsection (2) the amount is not to be paid.

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(3B) If:

(a) an amount has not been paid because of subsection (3A); and

(b) the person nominates an account for the purposes of subsection (2);

the amount is to be paid under subsection (1).

(4) If the Commission gives a direction under subsection (1), the pension is to be payable in accordance with the direction.

58J Payments to Commissioner of Taxation or Child Support Registrar

(1) The Commission must, in accordance with Subdivision 260-A in Schedule 1 to the *Taxation Administration Act 1953*, for the purpose of enabling the collection of an amount that is, or may become, payable by a recipient of a pension:

(a) make deductions from instalments of the pension payable to the recipient; and

(b) pay the amount deducted to the Commissioner of Taxation.

(2) The Commission must, in accordance with Subdivision 260-A in Schedule 1 to the *Taxation Administration Act 1953*, for the purpose of enabling the collection of an amount that is, or may become, payable by a recipient of a pension bonus or pension bonus bereavement payment:

(a) make a deduction from the bonus or payment payable to the recipient; and

(b) pay the amount deducted to the Commissioner of Taxation.

(3) The Commission must, in accordance with a notice given under section 72AC of the *Child Support (Registration and Collection) Act 1988*, for the purpose of enabling the collection of an amount that is, or may become, payable by a recipient of a pension:

(a) make deductions from instalments of the pension payable to the recipient; and

(b) pay the amount deducted to the Child Support Registrar.

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Subdivision B—Payments outside Australia

58K Age, invalidity and partner service pensions, income support supplement and veteran payment generally portable

(1) A person's right to commence, or to continue, to be paid:
  (a) an age service pension; or
  (b) an invalidity service pension; or
  (c) a partner service pension; or
  (d) income support supplement; or
  (e) a veteran payment;

granted to the person is not affected by the fact that the person leaves Australia.

Note: Rent assistance is not payable to a person who is absent from Australia otherwise than temporarily. If a person is absent from Australia temporarily, rent assistance is not payable for any part of the absence in excess of 26 weeks.

(3) Subsection (1) has effect subject to section 58M (claim based on short-term residence).

58L Manner of payment outside Australia

If a pension or veteran payment is payable to a person who is physically outside Australia, the pension or veteran payment may be paid:
  (a) in the manner determined by the Commission; and
  (b) in the instalments determined by the Commission.

58M No portability if claim based on short-term residence

(1) If:
  (a) a person is an Australian resident; and
  (b) the person ceases to be an Australian resident; and
  (c) the person again becomes an Australian resident; and
  (d) the person makes a claim for:

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(i) an age service pension; or
(ii) an invalidity service pension; or
(iii) a partner service pension; or
(iv) income support supplement; and

(e) the claim is made within the period of 12 months after the person again became an Australian resident; and

(f) the person leaves Australia before the end of that period of 12 months; and

(g) there is no determination in respect of the person under subsection (2);

a pension granted on the basis of that claim is not payable to the person while the person is outside Australia.

(2) The Commission may determine that subsection (1) is not to apply to a person if the Commission considers that the person's reasons for leaving Australia before the end of the 12 month period arose from circumstances that could not be reasonably foreseen when the person returned to Australia.

(3) A determination under subsection (2) must be by instrument in writing.

58N *Transfer* to portable pension

If:

(a) a person who is outside Australia is receiving:
(i) an age service pension; or
(ii) an invalidity service pension; or
(iii) a partner service pension; or
(iiia) income support supplement; or
(iv) a social security pension; and

(b) the pension is cancelled or ceases to be payable automatically; and

(c) immediately after the cancellation or cessation, the person is eligible for:
(i) an age service pension; or

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(ii) an invalidity service pension; or
(iii) a partner service pension; or
(iv) income support supplement;

the pension referred to in paragraph (c) may be granted to the person as if the person were an Australian resident and in Australia.

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Division 18—Indexation

Subdivision A—Preliminary

59 Analysis of Division

This Division provides for:

(a) the indexation, in line with CPI (Consumer Price Index) increase, of the amounts in column 2 of the CPI Indexation Table at the end of section 59B; and

(aa) the indexation of the maximum basic rates for service pension and income support supplement using the Pensioner and Beneficiary Living Cost Index; and

(b) the adjustment of other amounts in line with the increase in the amounts indexed.

59A Indexed and adjusted amounts

The following Table sets out:

(a) each amount that is to be indexed or adjusted under this Division; and

(b) the abbreviation used in this Division for referring to that amount; and

(c) the provision or provisions in which that amount is to be found.

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Indexed and Adjusted Amounts Table

Column 1 Item	Column 2 Description of amount	Column 3 Abbreviation	Column 4 Provisions in which amount specified
	Maximum basic rates		
1.	Maximum basic rates for service pension or income support supplement for a person who is partnered	pension MBR	*Rate Calculator—point SCH6-B1—Table B-1—column 3—**item 2**
1A.	Maximum basic rates for service pension or income support supplement for a person who is not partnered	single pension rate MBR	*Rate Calculator—point SCH6-B1—Table B-1—column 3—**item 1**
1B	Maximum basic rates for veteran payment for a person who is partnered	partnered veteran payment MBR	Rate Calculator—point SCH6-B2—Table B-2—column 3—**item 2**
1C	Maximum basic rates for veteran payment for a person who is not partnered	single veteran payment MBR	Rate Calculator—point SCH6-B2—Table B-2—column 3—**item 1**
2	Combined couple rate of pension supplement	PS rate	subsection 5GA(1)
2A	Combined couple rate of minimum pension supplement	PS minimum rate	subsection 5GA(2)

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Section 59A

Indexed and Adjusted Amounts Table			
Column 1	**Column 2**	**Column 3**	**Column 4**
Item	**Description of amount**	**Abbreviation**	**Provisions in which amount specified**
2B	Pension supplement basic amount	PS basic rate	subsection 5GA(4)
	Ceiling Rate		
3.	Ceiling rate for war widow/war widower—pensioner	ceiling rate	*Rate Calculator—point SCH6-A4
	Rent assistance		
6.	Maximum rent assistance for service pension or income support supplement	pension MRA	*Rate Calculator—point SCH6-C8—Table C-2—column 4—**all amounts**
6A.	Rent threshold rate for service pension or income support supplement	pension rent threshold	*Rate Calculator—point SCH6-C6—Table C-1—column 3—**all amounts**
	Income free area		
7.	Ordinary/adjusted income free area	Pension free area	*Rate Calculator—point SCH6-E6—Table E-1—column 3—**all amounts**
7AA.	Rent assistance free area	rent free area	*Rate Calculator—point SCH6-C15—Table C-3—column 3—**all amounts**

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Indexed and Adjusted Amounts Table

Column 1 Item	Column 2 Description of amount	Column 3 Abbreviation	Column 4 Provisions in which amount specified
	Assets value limit		
9.	Assets value limit for service pension or income support supplement for property owner who is not a member of a couple	pension ***single*** property owner AVL	*Rate Calculator—point SCH6-F3—Table F-1—column 3A—**item 1**
10.	Assets value limit for service pension or income support supplement for non-property owner who is not a member of a couple	pension ***single*** non-property owner AVL	*Rate Calculator—point SCH6-F3—Table F-1—column 3B—**item 1**
11.	Assets value limit for service pension or income support supplement for property owner who is a member of a couple	pension ***partnered*** property owner AVL	*Rate Calculator—point SCH6-F3—Table F-1—column 3A—**item 2**
12.	Assets value limit for service pension or income support supplement for non-property owner who is a member of a couple	pension ***partnered*** non-property owner AVL	*Rate Calculator—point SCH6-F3—Table F-1—column 3B—**item 2**
13.	Assets value limit for some illness separated special residents	special illness separated special resident AVL	***paragraph 52S(5)(g), paragraph 52T(3)(e), paragraph 52U(2)(e)**

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Section 59A

Indexed and Adjusted Amounts Table			
Column 1	**Column 2**	**Column 3**	**Column 4**
Item	**Description of amount**	**Abbreviation**	**Provisions in which amount specified**
13A.	Assets value limit of special disability trust	special disability trust AVL	**subsection 52ZZZWK(3)**
13B.	Exempt funeral investment threshold	exempt funeral investment threshold	paragraph 5PC(1)(b)
	Income/assets reduction limit		
14.	Income/assets reduction limit applicable when determining the eligibility for treatment benefits for a veteran—basic reduction	IARL basic reduction	section 53E—Table 53E—column 3
15.	Income/assets reduction limit applicable when determining the eligibility for treatment benefits for a veteran—add-on for dependent child	IARL dependent child add-on	section 53E—Table 53E—column 5
	Deeming thresholds		
20.	Deeming threshold for a person who is not a member of a couple	Deeming threshold individual	Subsection 46H(1)

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Indexed and Adjusted Amounts Table

Column 1 Item	Column 2 Description of amount	Column 3 Abbreviation	Column 4 Provisions in which amount specified
21.	Deeming threshold for a couple	Deeming threshold couple	Subsection 46H(2)
	Attribution threshold		
22.	Primary production attribution threshold	Primary production attribution threshold	Section 52ZZZF
	Maximum transitional service pension rates		
23.	Maximum transitional service pension rates	Maximum transitional service pension rates	Subparagraph 30(4)(a)(i) of Schedule 5
	Maximum transitional income support supplement rates		
24.	Maximum transitional income support supplement rates	Maximum transitional income support supplement rates	Subparagraph 30(6)(a)(i) of Schedule 5

Note: Indexing the PS minimum rate will also result in the indexation of the rate of quarterly pension supplement (see section 60B).

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Subdivision B—CPI indexation

59B CPI Indexation Table

(1) Subject to subsection (1A), an amount referred to in the following CPI Indexation Table is to be indexed under this Division on each indexation day for the amount, using the reference quarter and base quarter for the amount and indexation day and rounding off to the nearest multiple of the rounding amount:

CPI Indexation Table

Column 1 Item	Column 2 Amount	Column 3 Indexation day(s)	Column 4 Reference quarter (most recent before indexation day)	Column 5 Base quarter	Column 6 Rounding base
	Maximum basic rates				
1.	pension MBR	(a) 20 March (b) 20 September	(a) December (b) June	highest June or December quarter before reference quarter (but not earlier than June quarter 1979)	$2.60

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CPI Indexation Table

Column 1 Item	Column 2 Amount	Column 3 Indexation day(s)	Column 4 Reference quarter (most recent before indexation day)	Column 5 Base quarter	Column 6 Rounding base
1A	PS rate	(a) 20 March (b) 20 September	(a) December (b) June	highest June or December quarter before reference quarter (but not earlier than June quarter 2009)	$5.20
1B	PS minimum rate	(a) 20 March (b) 20 September	(a) December (b) June	highest June or December quarter before reference quarter (but not earlier than June quarter 2009)	$5.20

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Section 59B

CPI Indexation Table

Column 1 Item	Column 2 Amount	Column 3 Indexation day(s)	Column 4 Reference quarter (most recent before indexation day)	Column 5 Base quarter	Column 6 Rounding base
1C	PS basic rate	(a) 20 March (b) 20 September	(a) December (b) June	highest June or December quarter before reference quarter (but not earlier than December quarter 2008)	$2.60
	Rent assistance				
3.	pension MRA	(a) 20 March (b) 20 September	(a) December (b) June	highest June or December quarter before reference quarter (but not earlier than June quarter 1979)	$5.20

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CPI Indexation Table

Column 1 Item	Column 2 Amount	Column 3 Indexation day(s)	Column 4 Reference quarter (most recent before indexation day)	Column 5 Base quarter	Column 6 Rounding base
3A.	pension rent threshold	(a) 20 March (b) 20 September	(a) December (b) June	highest June or December quarter before reference quarter (but not earlier than June quarter 1979)	$5.20
	Income free areas				
4.	pension free area	1 July	March	most recent March quarter before reference quarter	$52.00
	Assets value limits				
6.	pension ***single*** property owner AVL	1 July	December	most recent December quarter before reference quarter	$250.00

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Section 59B

CPI Indexation Table

Column 1 Item	Column 2 Amount	Column 3 Indexation day(s)	Column 4 Reference quarter (most recent before indexation day)	Column 5 Base quarter	Column 6 Rounding base
7.	pension ***partnered*** property owner AVL	1 July	December	most recent December quarter before reference quarter	$250.00
8.	pension ***partnered*** non-property owner AVL	1 July	December	most recent December quarter before reference quarter	$250.00
8A.	special disability trust AVL	1 July	December	most recent December quarter before reference quarter	$250.00
8B.	Exempt funeral investment threshold	1 July	December	most recent December quarter before reference quarter	$250.00

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CPI Indexation Table

Column 1 Item	Column 2 Amount	Column 3 Indexation day(s)	Column 4 Reference quarter (most recent before indexation day)	Column 5 Base quarter	Column 6 Rounding base
	Income/assets reduction limit				
9.	IARL basic reduction	(a) 20 March (b) 20 September	(a) December (b) June	highest June or December quarter before reference quarter (but not earlier than June quarter 1979)	$2.60
	Deeming thresholds				
11.	Deeming threshold individual	1 July	March	highest March quarter before reference quarter (but not earlier than March 1994 quarter)	$200.00

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Section 59B

CPI Indexation Table

Column 1 Item	Column 2 Amount	Column 3 Indexation day(s)	Column 4 Reference quarter (most recent before indexation day)	Column 5 Base quarter	Column 6 Rounding base
12.	Deeming threshold couple	1 July	March	highest March quarter before reference quarter (but not earlier than March 1994 quarter)	$200.00
	Primary production attribution threshold				
13.	Primary production attribution threshold	1 July	December	Most recent December quarter before reference quarter	$250.00

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CPI Indexation Table

Column 1 Item	Column 2 Amount	Column 3 Indexation day(s)	Column 4 Reference quarter (most recent before indexation day)	Column 5 Base quarter	Column 6 Rounding base
	Maximum transitional service pension rates				
14.	Maximum transitional service pension rates	(a) 20 March (b) 20 September	(a) December (b) June	highest June or December quarter before reference quarter (but not earlier than June quarter 2008)	$2.60
	Maximum transitional income support supplement rates				
15.	Maximum transitional income support supplement rates	(a) 20 March (b) 20 September	(a) December (b) June	highest June or December quarter before reference quarter (but not earlier than June quarter 2008)	$2.60

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(1A) The pension MBR amount (item 1 of table) is not to be indexed on 20 March 1993.

Highest quarter

(2) A reference in the CPI Indexation Table to the highest of a group of quarters is a reference to the quarter in that group that has the highest index number.

59C Indexation of amounts

(1) If an amount is to be indexed under this Subdivision on an indexation day, this Act has effect as if the indexed amount were substituted for that amount on that day.

(2) This is how to work out the indexed amount for an amount that is to be indexed under this Subdivision on an indexation day:

Method statement

Step 1. Use section 59D to work out the indexation factor for the amount on the indexation day.

Step 2. Work out the current figure for the amount immediately before the indexation day.

Step 3. Multiply the current figure by the indexation factor: the result is the ***provisional indexed amount***.

Step 5. Use section 59E to round off the provisional indexed amount: subject to section 59EAA, the result is the ***indexed amount***.

The indexed amount (including one replaced under section 59EAA) may be increased under section 59EA in certain cases.

Note 1: For ***current figure*** see subsection 5NA(1).

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Note 2: On the indexation days following 19 March 2001, the indexation of amounts that were increased by 4% or 10% on 1 July 2000 may be affected by section 198H.

(2AB) The first indexation of amounts under items 1A, 1B and 1C of the CPI Indexation Table in subsection 59B(1) is to take place on 20 March 2010.

(2A) For the purposes of working out the indexed amount for pension ***single*** property owner AVL on 1 July 2017, the current figure for pension ***single*** property owner AVL immediately before that day is taken to be $250,000.

(2B) For the purposes of working out the indexed amount for pension ***partnered*** property owner AVL on 1 July 2017, the current figure for pension ***partnered*** property owner AVL immediately before that day is taken to be $187,500.

(3) For the purposes of working out the indexed amount for pension ***partnered*** non-property owner AVL on 1 July 2017, the current figure for pension ***partnered*** non-property owner AVL immediately before that day is taken to be $287,500.

59D Indexation factor

(1) Subject to subsections (2) and (3) and section 198MA, the indexation factor for an amount that is to be indexed under this Subdivision on an indexation day is:

$$\frac{\text{Index number for most recent reference quarter}}{\text{Index number for base quarter}}$$

worked out to 3 decimal places.

Note: For ***reference quarter*** and ***base quarter*** see the CPI Indexation Table in section 59B.

(2) If an indexation factor worked out under subsection (1) would, if it were worked out to 4 decimal places, end in a number that is greater than 4, the indexation factor is to be increased by 0.001.

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(3) If an indexation factor worked out under subsections (1) and (2) would be less than 1, the indexation factor is to be increased to 1.

59E Rounding off indexed amounts

(1) If a provisional indexed amount is a multiple of the rounding base, the provisional indexed amount becomes the indexed amount.

Note 1: For provisional indexed amount see step 3 in subsection 59C(2).

Note 2: For rounding base see the CPI Indexation Table in section 59B.

(2) If a provisional indexed amount is not a multiple of the rounding base, the indexed amount is the provisional indexed amount rounded up or down to the nearest multiple of the rounding base.

(3) If a provisional indexed amount is not a multiple of the rounding base but is a multiple of half the rounding base, the indexed amount is the provisional indexed amount rounded up to the nearest multiple of the rounding base.

59EAA Indexation using Pensioner and Beneficiary Living Cost Index

(1) This section applies to the pension MBR amount (see item 1 of the table in section 59A).

(2) If the indexed amount for the pension MBR amount, worked out under section 59C on an indexation day and disregarding section 59EA and this section, is less than the living cost amount worked out on that indexation day using the following method statement, then that indexed amount is taken to be an amount equal to that living cost amount:

Method statement

Step 1. Use section 59EAB to work out the living cost indexation factor on that indexation day.

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Step 2.	Work out the current figure for the pension MBR amount immediately before that indexation day.
Note:	For ***current figure*** see subsection 5NA(1).
Step 3.	Multiply the current figure by the living cost indexation factor: the result is the ***provisional living cost amount***.
Step 4.	Use section 59EAC to round off the provisional living cost amount: the result is the ***living cost amount***.

Note: If the indexed amount for the pension MBR amount, worked out under section 59C, is taken to be an amount equal to that living cost amount, there may be a further increase of that replaced indexed amount under section 59EA.

59EAB Living cost indexation factor

(1) Subject to subsections (5) and (6) and section 198MB, the living cost indexation factor on an indexation day is:

$$\frac{\text{Living cost index number for reference quarter}}{\text{Living cost index number for base quarter}}$$

worked out to 3 decimal places.

Definitions

(2) For the purposes of this section, the ***living cost index number***, in relation to a quarter, is the All Groups Pensioner and Beneficiary Living Cost Index number that is the weighted average of the 8 capital cities and is published by the Australian Statistician in respect of that quarter.

(3) For the purposes of this section, the ***reference quarter*** is:
   (a) if the indexation day is a 20 March—the most recent December quarter before the indexation day; and
   (b) if the indexation day is a 20 September—the most recent June quarter before the indexation day.

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(4) For the purposes of this section, the ***base quarter*** is the June or December quarter that:
  (a) is a quarter before the reference quarter; and
  (b) has the highest living cost index number.

Rounding

(5) If a living cost indexation factor worked out under subsection (1) would, if it were worked out to 4 decimal places, end in a number that is greater than 4, that indexation factor is to be increased by 0.001.

(6) If a living cost indexation factor worked out under subsections (1) and (5) would be less than 1, that indexation factor is to be increased to 1.

Publication of substituted living cost index numbers

(7) Subject to subsection (8), if at any time (whether before or after the commencement of this section) the Australian Statistician publishes a living cost index number for a quarter in substitution for a living cost index number previously published by the Australian Statistician for that quarter, the publication of the later living cost index number is to be disregarded for the purposes of this section.

Change to index reference period

(8) If at any time (whether before or after the commencement of this section) the Australian Statistician changes the index reference period for the Pensioner and Beneficiary Living Cost Index, regard is to be had, for the purposes of applying this section after the change takes place, only to living cost index numbers published in terms of the new index reference period.

59EAC Rounding off amounts

(1) If a provisional living cost amount is a multiple of $2.60, the provisional living cost amount becomes the living cost amount.

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(2) Subject to subsection (3), if a provisional living cost amount is not a multiple of $2.60, the living cost amount is the provisional living cost amount rounded up or down to the nearest multiple of $2.60.

(3) If a provisional living cost amount is not a multiple of $2.60 but is a multiple of $1.30, the living cost amount is the provisional living cost amount rounded up to the nearest multiple of $2.60.

59EA Certain indexed amounts to be increased in line with increases in Male Total Average Weekly Earnings

(1) In this section:

category B amount means an amount set out in column 3 of item 2 of Table B in point SCH6-B1.

(2) If:

(a) a category B amount is to be indexed under this Subdivision on an indexation day; and

(b) 50% of the combined couple benchmark for that indexation day exceeds the indexed amount for the category B amount;

then:

(c) the indexed amount for the category B amount is to be increased by an amount equal to the excess; and

(d) if the indexed amount for the category B amount (as increased under paragraph (c)) is not a multiple of $2.60, the indexed amount (as increased under paragraph (c)) is to be further increased by rounding up to the next highest multiple of $2.60.

(2A) For the purposes of this section, the ***combined couple benchmark***, for an indexation day, is 41.76% of the annualised MTAWE figure for whichever of the following quarters is applicable:

(a) if the indexation day is a 20 March—the most recent December quarter;

(b) if the indexation day is a 20 September—the most recent June quarter.

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(3) For the purposes of this section, the ***annualised MTAWE figure*** for a quarter is 52 times the amount set out for the reference period in the quarter under the headings "Average Weekly Earnings of Employees, Australia—Males—All males—Total earnings—ORIGINAL" in a document published by the Australian Statistician entitled "Average Weekly Earnings, States and Australia".

(4) If at any time (whether before or after the commencement of this section), the Australian Statistician publishes the amount referred to in subsection (3):

(a) under differently described headings (the ***new headings***); or

(b) in a document entitled otherwise than as described in subsection (3) (the ***new document***);

then the ***annualised MTAWE figure*** is to be calculated in accordance with subsection (3) as if the references to:

(c) "Average Weekly Earnings of Employees, Australia—Males—All males—Total earnings—ORIGINAL"; or

(d) "Average Weekly Earnings, States and Australia";

were references to the new headings and/or the new document, as the case requires.

(5) For the purposes of this section, the ***reference period*** in a particular quarter is the period described by the Australian Statistician as the pay period ending on or before a specified day that is the third Friday of the middle month of that quarter.

(6) If at any time (whether before or after the commencement of this section), the Australian Statistician publishes an amount in substitution for a particular amount previously published by the Australian Statistician, the publication of the later amount is to be disregarded for the purposes of this section.

(7) In this section:

December quarter means a quarter ending on 31 December.

June quarter means a quarter ending on 30 June.

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Subdivision C—Adjustment of other rates

59G Adjustment of single pension rate MBR amount

(1) This Act has effect as if, on 20 March (an ***indexation day***) and 20 September (an ***indexation day***) each year, the adjusted single pension amount were substituted for the single pension rate MBR amount (see item 1A of the table in section 59A).

(2) For the purposes of this section, the adjusted single pension amount is worked out as follows:

Method statement

Step 1. Work out the amount substituted for the pension MBR amount (see item 1 of the table in section 59A) on that indexation day under section 59C.

Step 2. Multiply the amount worked out at step 1 by 2.

Step 3. Work out 66.33% of the amount worked out at step 2.

Step 4. Round the amount worked out at step 3 to the nearest multiple of $2.60 (rounding up if necessary): the result is the ***adjusted single pension amount***.

59GA Adjustment of rent free area

(1) This Act has effect as if, on 1 July each year, the rent free area applicable to a person who is not a member of a couple were replaced with the amount that is, on that day, the pension free area applicable to a person who is not a member of a couple.

(2) This Act has effect as if, on 1 July each year, the rent free area applicable to a person who is partnered were replaced with the amount that is, on that day, the pension free area applicable to a person who is partnered.

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59GB Adjustment of adjusted income free area

This Act has effect as if, on 1 July each year, the adjusted income free area applicable to a person were replaced with the amount that is, on that day, the ordinary income free area applicable to the person.

59H Adjustment of pension *single* non-property owner AVL

This Act has effect as if, on 1 July each year, the amount worked out in accordance with the following formula were substituted for the pension ***single*** non-property owner AVL:

$$\text{Pension } \textbf{\textit{single}} \text{ property owner AVL} + 2 \times \left[\text{Pension } \textbf{\textit{partnered}} \text{ non-property owner AVL} - \text{Pension } \textbf{\textit{partnered}} \text{ property owner AVL} \right]$$

where:

pension partnered non-property owner AVL is the current figure, as at that 1 July, for the pension ***partnered*** non-property owner AVL.

pension partnered property owner AVL is the current figure, as at that 1 July, for the pension ***partnered*** property owner AVL.

pension single property owner AVL is the current figure, as at that 1 July, for the pension ***single*** property owner AVL.

59J Adjustment of special illness separated special resident AVL

This Act has effect as if, on 1 July each year, the amount worked out in accordance with the following formula were substituted for each special illness separated special resident AVL:

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$$\frac{\text{Pension } \textbf{\textit{partnered}} \text{ non-property owner AVL} + \text{Pension } \textbf{\textit{partnered}} \text{ property owner AVL}}{2}$$

where:

pension partnered non-property owner AVL is the current figure, as at that 1 July, for the pension ***partnered*** non-property owner AVL.

pension partnered property owner AVL is the current figure, as at that 1 July, for the pension ***partnered*** property owner AVL.

59LA Adjustment of ceiling rate

(1) This Act has effect as if, on each adjustment day, the amount worked out in accordance with the following formula, and rounded up to the nearest multiple of $2.60, were substituted for the ceiling rate:

$$\text{Previous ceiling rate} \times \text{Pension MBR factor}$$

where:

pension MBR factor is:

$$\frac{\text{Current single pension rate MBR amount}}{\text{Previous single pension rate MBR amount}}$$

previous ceiling rate is the ceiling rate applicable on the day before the adjustment day.

(2) In subsection (1):

current single pension rate MBR amount means the single pension rate MBR amount (see item 1A of the table in section 59A) applicable on the adjustment day.

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previous single pension rate MBR amount means the single pension rate MBR amount (see item 1A of the table in section 59A) applicable on the day before the adjustment day.

(2A) A pension MBR factor worked out under subsection (1) is to be worked out to 3 decimal places. However:

(a) if a pension MBR factor worked out under subsection (1) would, if it were worked out to 4 decimal places, end in a number that is greater than 4, the pension MBR factor is to be increased by 0.001; and

(b) if a pension MBR factor worked out under subsection (1) or paragraph (a) of this subsection would be less than 1, the pension MBR factor is to be increased to 1.

(3) In this section:

adjustment day means the following:

(a) 20 March;

(b) 20 September.

59LB Adjustment of veteran payment maximum basic rates

Partnered veteran payment MBR

(1) This Act has effect as if, on each adjustment day, the amount worked out in accordance with the following formula, and rounded up to the nearest multiple of $5.20, were substituted for the partnered veteran payment MBR:

$$\text{Previous partnered veteran payment MBR} \times \text{Pension MBR factor}$$

where:

previous partnered veteran payment MBR is the partnered veteran payment MBR applicable on the day before the adjustment day.

Single veteran payment MBR

(2) This Act has effect as if, on each adjustment day, the amount worked out in accordance with the following formula, and rounded

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up to the nearest multiple of $2.60, were substituted for the single veteran payment MBR:

$$\text{Previous single veteran payment MBR} \times \text{Pension MBR factor}$$

where:

previous single veteran payment MBR is the single veteran payment MBR applicable on the day before the adjustment day.

Definitions

(3) In this section:

adjustment day means the following:
(a) 20 March;
(b) 20 September.

current single pension rate MBR means the single pension rate MBR (see item 1A of the table in section 59A) applicable on the adjustment day.

pension MBR factor means:

$$\frac{\text{Current single pension rate MBR}}{\text{Previous single pension rate MBR}}$$

previous single pension rate MBR means the single pension rate MBR (see item 1A of the table in section 59A) applicable on the day before the adjustment day.

(4) A pension MBR factor worked out under subsection (3) is to be worked out to 3 decimal places. However:
(a) if a pension MBR factor worked out under subsection (3) would, if it were worked out to 4 decimal places, end in a number that is greater than 4, the pension MBR factor is to be increased by 0.001; and
(b) if a pension MBR factor worked out under subsection (3) or paragraph (a) of this subsection would be less than 1, the pension MBR factor is to be increased to 1.

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Part IIIC—Compensation recovery

Division 1—General

59M General effect of Part

(1) If:

(a) a person is or may be entitled to, or receives, compensation; and

(b) the person has not reached pension age or qualifying age;

any of the following pensions, supplements and payments payable to the person or the person's partner might be affected under this Part:

(c) invalidity service pension;

(d) partner service pension;

(f) income support supplement;

(g) veteran payment;

(i) education entry payment.

Note 1: For ***pension age*** see sections 5QA and 5QB.

Note 1A: For ***qualifying age*** see section 5Q.

Note 2: These pensions, supplements, allowances and payments may be ***compensation affected pensions*** (see section 5NB).

(2) If the person is or may be entitled to compensation and does not take reasonable action to claim or obtain the compensation, the pension, supplement or payment may not be payable to the person.

(3) If the compensation is in the form of a lump sum, the pension, supplement or payment may cease to be payable for a period (based on the amount of the lump sum) and some or all of that part may be repayable.

Note 1: Under section 59N, certain lump sum payments may be treated as though they were received as periodic payments.

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Note 2: Under section 59O, a person may be treated as having received compensation that the person would have received but for the effect of a State or Territory law.

(4) If the compensation is in the form of periodic payments, the pension, supplement or payment may be reduced for the periodic payments period.

Note 1: Under section 59N, certain lump sum payments may be treated as though they were received as periodic payments.

Note 2: Under section 59O, a person may be treated as having received compensation that the person would have received but for the effect of a State or Territory law.

(5) An invalidity service pension or a partner service pension will only be affected under this Part if:

(a) the compensation is received on or after 1 January 1995; and

(b) the claim for the pension was made on or after 1 May 1987.

(6A) Income support supplement will only be affected under this Part if the compensation is received on or after 1 January 1995.

(7) This Part operates in certain specified circumstances to affect a person's compensation affected pension because of compensation received by the person or the person's partner. This Part is not intended to contain any implication that, in addition to those specified circumstances, there needs to be some connection between the circumstances that give rise to the person's eligibility for the pension and the circumstances that give rise to the person's or the partner's compensation.

59N Certain lump sums to be treated as though they were received as periodic payments

If:

(a) a person is entitled to periodic payments under a law of a State or Territory; and

(b) the person's entitlement to the periodic payments is converted under the law of the State or Territory into an entitlement to a lump sum; and

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(c) the lump sum is calculated by reference to a period;

this Part applies to the person as if:

(e) the person had not received:

(i) the lump sum; or

(ii) if the lump sum was to be paid in instalments—any of the instalments; and

(f) the person had received, in each fortnight during the period, a periodic compensation payment equal to:

$$\frac{\text{Lump sum amount}}{\text{Number of fortnights in the period}}$$

where:

lump sum amount is the amount of the lump sum referred to in paragraph (b).

number of fortnights in the period is the number of whole fortnights in the period referred to in paragraph (c).

59O Effect of certain State and Territory laws

If:

(a) a law of a State or Territory provides for the payment of compensation; and

(b) that law includes a provision to the effect that a person's compensation under the law is to be or may be reduced or cancelled if the person is eligible for or receives payments under this Act;

this Part applies as if the person had received under that law the compensation that the person would have received if the provision referred to in paragraph (b) had not been enacted.

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Division 2—Enforcement of compensation rights

59P Commission may require person to take action to obtain compensation

(1) If:
  (a) a person is receiving a compensation affected pension; and
  (b) the person or the person's partner is entitled or may, in the Commission's opinion, be entitled to compensation; and
  (c) the person or the partner has not taken:
    (i) any action to claim or obtain the compensation; or
    (ii) any action that the Commission considers reasonable to claim or obtain the compensation;

the Commission may require the person or the partner to take the action specified by the Commission.

(2) If:
  (a) a person is eligible for a compensation affected pension; and
  (b) the person or the person's partner is entitled or may, in the Commission's opinion, be entitled to compensation; and
  (c) the person or the partner has not taken:
    (i) any action to claim or obtain the compensation; or
    (ii) any action that the Commission considers reasonable to claim or obtain the compensation;

the Commission may require the person or the partner to take the action specified by the Commission.

(3) Even though a person has entered into an agreement to give up the person's right to compensation, the Commission may form the opinion that the person may be entitled to compensation if the Commission is satisfied that the agreement is void, ineffective or unenforceable.

(4) For the purposes of subsection (3), a person enters into an agreement to give up the person's right to compensation if the person:

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(a) enters into an agreement to waive the person's right to compensation; or

(b) enters into an agreement to withdraw the person's claim for compensation.

(5) The action specified by the Commission is to be the action that the Commission considers reasonable to enable the person to claim or obtain the compensation.

(6) If, under subsection (1), the Commission requires a person who has been granted a pension to take action to claim or obtain compensation, the pension is not payable to the person unless the person complies with the requirement.

(7) If, under subsection (1), the Commission requires the partner of a person who has been granted a pension to take action to obtain or claim compensation, the pension is not payable to the person unless the partner complies with the requirement.

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Division 3—Receipt of compensation

59Q Pension etc. not payable during lump sum preclusion period

Person not member of a couple

(1) If:
  (a) a person is eligible for a compensation affected pension; and
  (b) the person is not a member of a couple; and
  (c) the person receives compensation in the form of a lump sum (whether before or after the person became eligible for the pension);

the pension is not payable to the person for any day or days in the lump sum preclusion period.

Note 1: For ***compensation affected pension*** see subsection 5NB(1).

Note 2: For ***lump sum preclusion period*** see subsections (3) to (7).

Person member of a couple (lump sum received before 20 March 1997)

(2) If:
  (a) a person is eligible for a compensation affected pension; and
  (b) the person is a member of a couple; and
  (c) before 20 March 1997, the person, or the person's partner, receives compensation in the form of a lump sum (whether before or after the person became eligible for the pension);

the following provisions have effect:
  (d) the pension is not payable to the person for any day or days in the lump sum preclusion period;
  (e) if the person's partner is eligible for a compensation affected pension—that pension is not payable to the partner for any day or days in the lump sum preclusion period.

Note 1: For ***compensation affected pension*** see subsection 5NB(1).

Note 2: For ***lump sum preclusion period*** see subsections (3) to (7).

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Person member of a couple (lump sum received on or after 20 March 1997)

(2A) If:

(a) a person is eligible for a compensation affected pension; and

(b) the person is a member of a couple; and

(c) on or after 20 March 1997, the person receives compensation in the form of a lump sum (whether before or after the person became eligible for the pension);

the pension is not payable to the person for any day or days in the lump sum preclusion period.

Note 1: For ***compensation affected pension*** see subsection 5NB(1).

Note 2: For ***lump sum preclusion period*** see subsections (3) to (7).

Lump sum preclusion period

(3) If a person receives both periodic compensation payments and compensation in the form of a lump sum in respect of lost earnings or lost earning capacity, the ***lump sum preclusion period*** is the period that:

(a) begins on the day following the last day of the periodic payments period or, if there is more than one periodic payments period, the day after the last day of the last periodic payments period; and

(b) ends after the number of weeks specified in subsection (7).

Note: For ***periodic payments period*** see subsection 5NB(1).

(4) If a person chooses to receive part of an entitlement to periodic compensation payments in the form of a lump sum, the ***lump sum preclusion period*** is the period that:

(a) begins on the first day on which the person's periodic compensation payment is a reduced payment because of that choice; and

(b) ends after the number of weeks specified in subsection (7).

(6) If neither subsection (3) nor (4) applies, the ***lump sum preclusion period*** is the period that:

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(a) begins on the day on which the loss of earnings or loss of earning capacity began; and

(b) ends after the number of weeks specified in subsection (7).

(7) The number of weeks in the lump sum preclusion period in relation to a person is:

(a) if the person or the person's partner receives the lump sum compensation payment before 20 March 1997—the number worked out by using the formula:

$$\frac{\text{Compensation part of lump sum}}{\text{Average weekly earnings}}$$

or

(b) if the person receives the lump sum compensation payment on or after 20 March 1997—the number worked out by using the formula:

$$\frac{52 \times \text{Compensation part of lump sum}}{2 \times \left(\begin{array}{c}\text{Maximum}\\ \text{basic rate}\end{array} + \begin{array}{c}\text{Point}\\ \text{SCH6-BA3}\\ \text{amount}\end{array} + \begin{array}{c}\text{Point}\\ \text{SCH6-BB3}\\ \text{amount}\end{array}\right) + \begin{array}{c}\text{Ordinary}\\ \text{free area}\\ \text{limit}\end{array}}$$

where:

maximum basic rate means the amount specified in column 3 of item 1 in Table B-1 in point SCH6-B1 of Schedule 6.

ordinary free area limit means the amount specified in column 3 of item 1 in Table E-1 in point SCH6-E6 of Schedule 6.

point SCH6-BA3 amount means the pension supplement amount worked out under point SCH6-BA3 of Schedule 6 for a person who is not a member of a couple (whether or not the person for whom the lump sum preclusion period is being worked out is a member of a couple and whether or not that point applies to the person for whom the lump sum preclusion period is being worked out).

point SCH6-BB3 amount means the energy supplement worked out under point SCH6-BB3 of Schedule 6 for a

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person who is not a member of a couple (whether or not the person for whom the lump sum preclusion period is being worked out is a member of a couple and whether or not that point applies to the person for whom the lump sum preclusion period is being worked out).

Note: For ***compensation part*** of lump sum and ***average weekly earnings*** see section 5NB.

(8) If the number worked out under subsection (7) is not a whole number, the number is to be rounded down to the nearest whole number.

59QA Deemed lump sum payments arising from separate payments

(1) If:

(a) a person receives 2 or more lump sum payments in relation to the same event that gave rise to the entitlement of the person to compensation (the ***multiple payments***); and

(b) at least one of the multiple payments is made wholly or partly in respect of lost earnings or lost capacity to earn;

the following paragraphs have effect for the purposes of this Act:

(c) the person is taken to have received one lump sum compensation payment (the ***single payment***) of an amount equal to the sum of the multiple payments;

(d) the single payment is taken to have been received by the person:

(i) on the day on which he or she received the last of the multiple payments; or

(ii) if the multiple payments were all received on the same day—on that day.

(2) A payment is not a lump sum payment for the purposes of paragraph (1)(a) if it relates exclusively to arrears of periodic compensation.

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59R Person may have to repay amount where both lump sum and pension have been received

(1) If:

(a) a person receives compensation in the form of a lump sum; and

(b) the person receives payments of a compensation affected pension for any day or days in the lump sum preclusion period;

the Commission may, by written notice to the person, determine that the person is liable to pay to the Commonwealth the amount specified in the notice.

Note: For ***lump sum preclusion period*** see subsections 59Q(3) to (7).

(2) The amount specified in the notice is the ***recoverable amount*** and is worked out:

(a) if the person receives compensation in the form of a lump sum before 20 March 1997—under subsections (3) and (4); or

(b) if the person receives compensation in the form of a lump sum on or after 20 March 1997—under subsection (5).

(3) If the person receives compensation in the form of a lump sum before 20 March 1997 and:

(a) the person is not a member of a couple; or

(b) the person is a member of a couple and the person's partner:

(i) is not eligible for a compensation affected pension; or

(ii) is not qualified for a compensation affected payment under the Social Security Act;

the ***recoverable amount*** is equal to the smaller of:

(c) the compensation part of the lump sum; and

(d) the sum of the pension payments made to the person for the lump sum preclusion period.

(4) If:

(aa) the person receives compensation in the form of a lump sum before 20 March 1997; and

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(a) the person is a member of a couple; and
(b) the person's partner:
(i) is eligible for a compensation affected pension; or
(ii) is qualified for a compensation affected payment under the Social Security Act;

the ***recoverable amount*** is equal to the smaller of:
(c) the compensation part of the lump sum; and
(d) the amount obtained by adding the pension payments made to the person for the lump sum preclusion period to:
(i) the pension payments made to the person's partner for the lump sum preclusion period; or
(ii) the compensation affected payments made under the Social Security Act to the person's partner for the lump sum preclusion period.

(5) If the person receives compensation in the form of a lump sum on or after 20 March 1997, the ***recoverable amount*** is equal to the smaller of:
(a) the compensation part of the lump sum; and
(b) the sum of the payments of the compensation affected pension made to the person for a day or days in the lump sum preclusion period.

59S Lump sum compensation not counted as ordinary income

If an amount of compensation affected pension is not payable to a person under section 59Q because of compensation in the form of a lump sum, that lump sum is not to be regarded as ordinary income of either the person or the person's partner for the purposes of this Act.

59T Effect of periodic compensation payments on rate of person's compensation affected pension

(1) If:
(a) a person receives periodic compensation payments; and

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(b) the person was not, at the time of the event that gave rise to the entitlement of the person to the compensation, receiving a compensation affected pension; and

(c) the person is eligible for a compensation affected pension for a day or days in the periodic payments period;

the rate of the person's compensation affected pension for that day or those days is reduced in accordance with subsection (2).

Note: For ***periodic compensation payments***, ***compensation affected pension*** and ***periodic payments period***, see subsection 5NB(1).

(2) The person's daily rate of compensation affected pension is reduced by the amount of the person's daily rate of periodic compensation.

(3) The reference in subsection (2) to a daily rate of periodic compensation is a reference to the amount worked out by dividing the total amount of the periodic compensation payments referred to in paragraph (1)(a) by the number of days in the periodic payments period.

(4) If:

(a) a person receives periodic compensation payments; and

(b) at the time of the event that gave rise to the entitlement of the person to compensation, the person was receiving a compensation affected pension; and

(c) the person is eligible for a compensation affected pension for a day or days in the periodic payments period;

the periodic compensation payments are to be treated as ordinary income of the person for the purposes of this Act.

Note: For ***ordinary income***, see subsection 5H(1).

59TA Effect of periodic compensation payments on rate of partner's compensation affected pension

(1) If:

(a) a person receives periodic compensation payments; and

(b) the person is a member of a couple; and

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(c) the person was not, at the time of the event that gave rise to the entitlement of the person to the compensation, receiving a compensation affected pension; and

(d) the person is eligible for a compensation affected pension for a day or days in the periodic payments period but, solely because of the operation of this Part, does not, or would not, receive the pension; and

(e) the person's partner is eligible for a compensation affected pension, or is qualified for a compensation affected payment under the Social Security Act, for a day or days in the periodic payments period;

then, in working out the amount of the pension or payment referred to in paragraph (e), the amount (if any) by which the daily rate of periodic compensation payable to the person exceeds the daily rate of the compensation affected pension for which the person is eligible for a day or days in the periodic payments period is to be treated as ordinary income of the person's partner.

Note 1: See also point SCH6-E3A for the effect of that excess on the application of the ordinary/adjusted income test.

Note 2: For ***periodic compensation payments***, ***compensation affected pension*** and ***periodic payments period***, see subsection 5NB(1).

Note 3: For ***ordinary income***, see subsection 5H(1).

(2) The reference in subsection (1) to a daily rate of periodic compensation is a reference to the amount worked out by dividing the total amount of the periodic compensation payments referred to in paragraph (1)(a) by the number of days in the periodic payments period.

59U Claim for compensation affected pension granted to person qualified for compensation affected payment under Social Security Act

(1) If:

(a) a person's claim for a compensation affected pension is granted; and

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(b) immediately before the claim is granted, a compensation affected payment for which the person was qualified under the Social Security Act was not payable to the person under section 1165 of that Act because of a lump sum compensation payment made to the person or to the person's partner;

the person's pension is not payable to the person for the remainder of the period that was the person's lump sum preclusion period for the purposes of the Social Security Act.

(2) If:

(a) a person's claim for a compensation affected pension is granted; and

(b) immediately before the claim is granted, the person was receiving a compensation affected payment under the Social Security Act at a rate that was reduced under section 1173 of that Act because of periodic compensation payments made to the person or to the person's partner;

then, for the remainder of the period that was the person's periodic payments period for the purposes of the Social Security Act, the person's pension is to be reduced:

(c) by the amount (***reduction amount***) by which the person's compensation affected payment under the Social Security Act would be reduced under section 1173 of that Act if the person were still qualified for it; or

(d) if the reduction amount is greater than the amount of the person's pension—to nil.

(3) If:

(a) a person's claim for a compensation affected payment is granted; and

(b) immediately before the claim is granted, a compensation affected payment for which the person was qualified under the Social Security Act was not payable to the person because the rate of the person's pension was reduced to nil under section 1173 of that Act because of periodic

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compensation payments made to the person or to the person's partner;

then, for the purposes of subsection (2), the person is taken to have been receiving the compensation affected payment at a reduced rate immediately before the claim was granted.

59V Rate reduction under both income/assets test and this Part

If:

(a) the rate of a person's compensation affected pension is to be reduced under this Part; and

(b) the rate of the person's pension is reduced under the ordinary/adjusted income test Module or the assets test Module of the Rate Calculator;

the reduction under this Part is to apply to the person's pension as reduced under the ordinary/adjusted income test Module or the assets test Module of the Rate Calculator.

59W Person may have to repay amount where both periodic compensation payments and pension have been received

(1) If:

(a) a person receives periodic compensation payments; and

(b) the person receives payments of a compensation affected pension for the periodic payments period; and

(c) the person was not, at the time of the event that gave rise to the entitlement of the person to the compensation, receiving a compensation affected pension; and

(d) the payments referred to in paragraph (b) have not been reduced to nil as a result of the operation of section 59T;

the Commission may, by written notice to the person, determine that the person is liable to pay to the Commonwealth the amount specified in the notice.

Note: If a person was, at the time of the event that gave rise to the entitlement of the person to compensation, receiving a compensation affected pension, the compensation is treated as ordinary income. In

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cases where arrears of periodic compensation payments are treated as ordinary income, see point SCH6-E4.

(2) The amount specified in the notice is the ***recoverable amount*** and is worked out under subsections (3) and (4).

(3) If:
  (a) the person is not a member of a couple; or
  (b) the person is a member of a couple and the person's partner:
    (i) is not eligible for a compensation affected pension; or
    (ii) is not qualified for a compensation affected payment under the Social Security Act;

  the recoverable amount is equal to the smaller of:
  (c) the sum of the periodic compensation payments; and
  (d) the difference between:
    (i) the sum of the payments of compensation affected pension made to the person for a day or days in the periodic payments period; and
    (ii) the sum of the payments of compensation affected pension that would have been made to the person for any such day or days had those payments been made at the rate to which the payments were reduced as a result of the operation of section 59T.

(4) If:
  (a) the person is a member of a couple; and
  (b) the person's partner:
    (i) is eligible for a compensation affected pension; or
    (ii) is qualified for a compensation affected payment under the Social Security Act;

  the ***recoverable amount*** is equal to the smaller of:
  (c) the sum of the periodic compensation payments; and
  (d) the difference between:
    (i) the sum of the payments of compensation affected pension, and of compensation affected payments under the Social Security Act, made to the person and the

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person's partner for a day or days in the periodic payments period; and

(ii) the sum of the payments of compensation affected pension, and of compensation affected payments under the Social Security Act, that would have been made to the person and the person's partner for any such day or days had those payments been made at the rate to which the payments were reduced as a result of the operation of sections 59T and 59TA.

59X Periodic compensation payments not counted as ordinary income

If the rate of a person's compensation affected pension is reduced under section 59T because of the receipt of periodic compensation payments, those payments are not regarded as ordinary income of the person for the purposes of this Act.

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Division 4—Compensation payers

59Y Commission may send preliminary notice to potential compensation payer

(1) If:
  (a) a person seeks compensation in respect of the person's lost earnings or lost capacity to earn; and
  (b) the person receives or claims a compensation affected pension for a day or days in the period to which the compensation relates;

the Commission may give written notice to the person's potential compensation payer that the Commission may wish to recover an amount from the potential compensation payer.

Note: For ***potential compensation payer*** see section 5NB.

(2) The notice must contain:
  (a) a statement of the potential compensation payer's obligation under section 59Z; and
  (b) a statement of the effect of section 59ZD so far as it relates to a preliminary notice.

59Z Potential compensation payer must notify Department of liability

(1) If a potential compensation payer:
  (a) is given notice under section 59Y in relation to a person; and
  (b) either before or after receiving the notice, becomes liable to pay compensation to the person;

the potential compensation payer must give written notice of the liability to the Department within 7 days after:
  (c) becoming liable; or
  (d) receiving the notice;

whichever happens later.

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Penalty: Imprisonment for 12 months.

Note: Subsection 4B(2) of the *Crimes Act 1914* allows a court to impose an appropriate fine instead of, or in addition to, a term of imprisonment. If a body corporate is convicted of the offence, subsection 4B(3) of that Act allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by the court on an individual convicted of the same offence.

(2) The notice to the Department referred to in subsection (1) must be lodged at an office of the Department in Australia in accordance with section 5T and is taken to have been given on a day determined under that section.

59ZA Commission may send recovery notice to compensation payer

(1) If:

(a) a compensation payer:

(i) is liable to pay compensation to a person for a disease, injury or condition of the person; or

(ii) has determined that a payment by way of compensation is to be made to a person in respect of a disease, injury or condition of the person; and

(b) the person receives or claims a compensation affected pension for any day or days in the periodic payments period or the lump sum preclusion period;

the Commission may give written notice to the compensation payer that the Commission proposes to recover the amount specified in the notice from the compensation payer.

Note: For ***compensation payer*** see section 5NB.

(2) If a compensation payer is given notice under subsection (1), the compensation payer is liable to pay to the Commonwealth the amount specified in the notice.

(3) The amount specified in the notice is the ***recoverable amount*** and is worked out under subsections (4), (5) and (5AA), unless subsection (5A) applies in which case it is worked out under subsection (5A) instead.

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(4) If:

(a) the person claiming compensation is not a member of a couple; or

(b) the person claiming compensation is a member of a couple and the person's partner neither receives nor claims:

(i) a compensation affected pension; or

(ii) a compensation affected payment (under the Social Security Act);

for any day or days in the periodic payments period or the lump sum preclusion period;

the ***recoverable amount*** is equal to the smallest of the following amounts:

(c) the difference between:

(i) the sum of the payments of compensation affected pension made to the person for a day or days in the periodic payments period or the lump sum preclusion period; and

(ii) the sum of the payments of compensation affected pension that would have been made to the person for any such day or days had those payments been made at the rate to which the payments were reduced as a result of the operation of subsection 59T(1);

(d) the compensation part of the lump sum payment or the sum of the amounts of the periodic compensation payments;

(e) the maximum amount that the compensation payer is liable to pay to the person in relation to the matter at any time after receiving:

(i) a preliminary notice under section 59Y in relation to the matter; or

(ii) if the compensation payer has not received a preliminary notice—the recovery notice under this section in relation to the matter.

(5) If:

(a) the person claiming compensation is a member of a couple; and

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(b) the person's partner receives or is eligible for a compensation affected pension, or a compensation affected payment (under the Social Security Act), for a day or days in:

(i) unless subparagraph (ii) applies—the periodic payments period in respect of the compensation; or

(ii) if the compensation is lump sum compensation for which payment is received by the person or the person's partner before 20 March 1997—the lump sum preclusion period;

the ***recoverable amount*** is equal to the smallest of the following amounts:

(c) the difference between:

(i) the sum of the payments of compensation affected pension, and of compensation affected payments under the Social Security Act, made to the person and the person's partner for a day or days in the periodic payments period or the lump sum preclusion period; and

(ii) the sum of the payments of compensation affected pension, and of compensation affected payments under the Social Security Act, that would have been made to the person and the person's partner for any such day or days had those payments been made at the rate to which the payments were reduced as a result of the operation of subsection 59T(1) and section 59TA;

(d) the compensation part of the lump sum payment or the sum of the amount of the periodic compensation payments;

(e) the maximum amount that the compensation payer is liable to pay to the person in relation to the matter at any time after receiving:

(i) a preliminary notice under section 59Y in relation to the matter; or

(ii) if the compensation payer has not received a preliminary notice—the recovery notice under this section in relation to the matter.

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(5AA) If:

(a) the person claiming compensation is a member of a couple; and

(b) the person's partner receives or is eligible for a compensation affected pension, or a compensation affected payment (under the Social Security Act), for a day or days in the lump sum preclusion period in respect of lump sum compensation received by the person on or after 20 March 1997;

the ***recoverable amount*** is equal to the smallest of the following amounts:

(c) the sum of all the payments of compensation affected pension made to the person for the lump sum preclusion period;

(d) the compensation part of the lump sum payment;

(e) the maximum amount that the compensation payer is liable to pay to the person in relation to the matter at any time after receiving:

(i) a preliminary notice under section 59Y in relation to the matter; or

(ii) if the compensation payer has not received a preliminary notice—the recovery notice under this section in relation to the matter.

(5A) If:

(a) at the time of the event that gave rise to the entitlement of a person to compensation, the person was receiving a compensation affected pension; and

(b) the person or the person's partner is eligible for a compensation affected pension for a day or days in the periodic payments period;

the ***recoverable amount*** is the amount determined by the Commission to be the total amount by which the person's, or the person's partner's, compensation affected pension for a day or days in the periodic payments period would have been reduced, because of point SCH6-E4 (payment of arrears of periodic compensation payments), if a determination had been made under section 56D, 56E, 56EA or 56EB.

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(6) A notice under this section must contain a statement of the effect of section 59ZD so far as it relates to a recovery notice.

(7) This section applies to an amount payable by way of compensation in spite of any law of a State or Territory (however expressed) under which the compensation is inalienable.

59ZB Preliminary notice or recovery notice suspends liability to pay compensation

If a compensation payer has been given a preliminary notice under section 59Y or a recovery notice under section 59ZA in relation to the compensation payer's liability, or possible liability, to pay compensation, the compensation payer is not liable to pay that compensation while the notice has effect.

59ZC Compensation payer's payment to Commonwealth discharges liability to compensation recipient

If the Commonwealth is paid an amount that a compensation payer is liable to pay under section 59ZA in relation to a person, the compensation payer's liability to pay compensation to the person is discharged to the extent of that amount.

59ZD Offence to make compensation payment after receiving preliminary notice or recovery notice

(1) If a compensation payer has been given a preliminary notice under section 59Y or a recovery notice under section 59ZA in relation to the payment of compensation to a person, the compensation payer must not make the compensation payment to the person.

Penalty: Imprisonment for 12 months.

(1A) Subsection (1) does not apply if:

(a) in the case of a preliminary notice—the Commission has given the compensation payer written notice that the preliminary notice is revoked; or

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(b) in the case of a recovery notice—the compensation payer has paid to the Commonwealth the amount specified in the notice; or

(c) the Commission has given the compensation payer written permission to pay the compensation.

Note: The defendant bears an evidential burden in relation to the matters in subsection (1A). See subsection 13.3(3) of the *Criminal Code*.

(2) A compensation payer who contravenes subsection (1) is, in addition to being liable to prosecution for an offence under subsection (1), liable to pay to the Commonwealth:

(a) if the contravention relates to a preliminary notice—an amount determined by the Commission; and

(b) if the contravention relates to a recovery notice—the recoverable amount specified in the notice.

(3) The amount determined by the Commission under paragraph (2)(a) may not be more than the smallest of the amounts worked out under:

(a) if the person is not a member of a couple—subsection 59ZA(4); or

(b) if the person is a member of a couple—subsection 59ZA(5).

(4) This section applies in relation to a payment by way of compensation in spite of any law of a State or Territory (however expressed) under which the compensation is inalienable.

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Division 5—Insurers

59ZE Commission may send preliminary notice to insurer

(1) If:

(a) a person makes a claim against a potential compensation payer for compensation in respect of the person's lost earnings or lost capacity to earn; and

(b) the person receives or claims a compensation affected pension for a day or days to which the compensation relates; and

(c) the potential compensation payer's insurer, under a contract of insurance, may be liable to indemnify the potential compensation payer against any liability arising from the claim for compensation;

the Commission may give written notice to the insurer that the Commission may wish to recover an amount from the insurer.

(2) The notice must contain:

(a) a statement of the insurer's obligation under section 59ZF; and

(b) a statement of the effect of section 59ZJ so far as it relates to a preliminary notice.

59ZF Insurer must notify Department of liability

(1) If an insurer:

(a) is given notice under section 59ZE in relation to a claim; and

(b) either before or after receiving the notice, becomes liable to indemnify the compensation payer, either wholly or partly, in relation to the claim;

the insurer must give written notice of the liability to the Department within 7 days after:

(c) becoming liable; or

(d) receiving the notice;

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whichever happens later.

Penalty: Imprisonment for 12 months.

Note: Subsection 4B(2) of the *Crimes Act 1914* allows a court to impose an appropriate fine instead of, or in addition to, a term of imprisonment. If a body corporate is convicted of the offence, subsection 4B(3) of that Act allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by the court on an individual convicted of the same offence.

(2) The notice referred to in subsection (1) must be lodged at an office of the Department in Australia in accordance with section 5T and is taken to have been given on a day determined under that section.

59ZG Commission may send recovery notice to insurer

(1) If:

(a) an insurer is liable, under a contract of insurance, to indemnify a compensation payer against any liability arising from a person's claim for compensation in respect of the person's lost earnings or lost capacity to earn; and

(b) the person receives or claims a compensation affected pension for a day or days in the periodic payments period or the lump sum preclusion period; and

the Commission may give written notice to the insurer that the Commission proposes to recover the amount specified in the notice from the insurer.

(2) If an insurer is given notice under subsection (1), the insurer is liable to pay to the Commonwealth the amount specified in the notice.

(3) The amount specified in the notice is the ***recoverable amount*** and is worked out under subsections (4), (5) and (5AA), unless subsection (5A) applies in which case it is worked out under subsection (5A) instead.

(4) If:

(a) the person claiming compensation is not a member of a couple; or

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(b) the person claiming compensation is a member of a couple and the person's partner neither receives nor claims:
  (i) a compensation affected pension; or
  (ii) a compensation affected payment (under the Social Security Act);

for any day or days in the periodic payments period or the lump sum preclusion period;

the ***recoverable amount*** is equal to the smallest of the following amounts:

(c) the difference between:
  (i) the sum of the payments of compensation affected pension made to the person for a day or days in the periodic payments period or the lump sum preclusion period; and
  (ii) the sum of the payments of compensation affected pension that would have been made to the person for any such day or days had those payments been made at the rate to which the payments were reduced as a result of the operation of subsection 59T(1);

(d) the compensation part of the lump sum payment or the sum of the amounts of the periodic compensation payments;

(e) the maximum amount for which the insurer is liable to indemnify the compensation payer in relation to the matter at any time after receiving:
  (i) a preliminary notice under section 59ZE in relation to the matter; or
  (ii) if the insurer has not received a preliminary notice—the recovery notice under this section in relation to the matter.

(5) If:

(a) the person claiming compensation is a member of a couple; and

(b) the person's partner receives or is eligible for a compensation affected pension, or a compensation affected payment (under the Social Security Act), for a day or days in:

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(i) unless subparagraph (ii) applies—the periodic payments period in respect of the compensation; or

(ii) if the compensation is lump sum compensation for which payment is received by the person or the person's partner before 20 March 1997—the lump sum preclusion period;

the ***recoverable amount*** is equal to the smallest of the following amounts:

(c) the difference between:

(i) the sum of the payments of compensation affected pension, and of compensation affected payments under the Social Security Act, made to the person and the person's partner for a day or days in the periodic payments period or the lump sum preclusion period; and

(ii) the sum of the payments of compensation affected pension, and of compensation affected payments under the Social Security Act, that would have been made to the person and the person's partner for any such day or days had those payments been made at the rate to which the payments were reduced as a result of the operation of subsection 59T(1) and section 59TA;

(d) the compensation part of the lump sum payment or the sum of the amount of the periodic compensation payments;

(e) the maximum amount for which the insurer is liable to indemnify the compensation payer in relation to the matter at any time after receiving:

(i) a preliminary notice under section 59ZE in relation to the matter; or

(ii) if the insurer has not received a preliminary notice—the recovery notice under this section in relation to the matter.

(5AA) If:

(a) the person claiming compensation is a member of a couple; and

(b) the person's partner receives or is eligible for a compensation affected pension, or a compensation affected payment (under

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the Social Security Act), for a day or days in the lump sum preclusion period in respect of lump sum compensation received by the person on or after 20 March 1997;

the ***recoverable amount*** is equal to the smallest of the following amounts:

(c) the sum of all the payments of compensation affected pension made to the person for the lump sum preclusion period;

(d) the compensation part of the lump sum payment;

(e) the maximum amount for which the insurer is liable to indemnify the compensation payer in relation to the matter at any time after receiving:

(i) a preliminary notice under section 59ZE in relation to the matter; or

(ii) if the insurer has not received a preliminary notice—the recovery notice under this section in relation to the matter.

(5A) If:

(a) at the time of the event that gave rise to the entitlement of a person to compensation, the person was receiving a compensation affected pension; and

(b) the person or the person's partner is eligible for a compensation affected pension for a day or days in the periodic payments period;

the ***recoverable amount*** is the amount determined by the Commission to be the total amount by which the person's, or the person's partner's, compensation affected pension for a day or days in the periodic payments period would have been reduced, because of point SCH6-E4 (payment of arrears of periodic compensation payments), if a determination had been made under section 56D, 56E, 56EA or 56EB.

(6) A notice under this section must contain a statement of the effect of section 59ZJ so far as it relates to a recovery notice.

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59ZH Preliminary notice or recovery notice to insurer suspends both insurer's and compensation payer's liability

If an insurer has been given a preliminary notice under section 59ZE or a recovery notice under section 59ZG in relation to the insurer's liability, or possible liability, to indemnify a compensation payer against a liability arising from a claim for compensation:

(a) the insurer is not liable to indemnify the compensation payer against that liability; and

(b) the compensation payer is not liable to pay that compensation;

while the notice has effect.

59ZI Insurer's payment to Commonwealth discharges liability

Payment of an amount that an insurer is liable to pay to the Commonwealth under section 59ZG in relation to a person claiming compensation operates, to the extent of the payment, as a discharge of:

(a) the insurer's liability to the compensation payer; and

(b) the compensation payer's liability to pay compensation to the person.

59ZJ Offence to make compensation payment after receiving preliminary notice or recovery notice

(1) If an insurer has been given a preliminary notice under section 59ZE or a recovery notice under section 59ZG in relation to the insurer's liability to make a payment indemnifying a compensation payer, the insurer must not make the payment to the compensation payer.

Penalty: Imprisonment for 12 months.

(1A) Subsection (1) does not apply if:

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(a) in the case of a preliminary notice—the Commission has given the insurer written notice that the preliminary notice is revoked; or

(b) in the case of a recovery notice—the insurer has paid to the Commonwealth the amount specified in the notice; or

(c) the Commission has given the insurer written permission to make the payment to the compensation payer.

Note: The defendant bears an evidential burden in relation to the matters in subsection (1A). See subsection 13.3(3) of the *Criminal Code*.

(2) An insurer who contravenes subsection (1) is, in addition to being liable to prosecution for an offence under subsection (1), liable to pay to the Commonwealth:

(a) if the contravention relates to a preliminary notice—an amount determined by the Commission; and

(b) if the contravention relates to a recovery notice—the recoverable amount specified in the notice.

(3) The amount determined by the Commission under paragraph (2)(a) may not be more than the smallest of the amounts worked out under:

(a) if the person claiming compensation is not a member of a couple—subsection 59ZG(4); or

(b) if the person claiming compensation is a member of a couple—subsection 59ZG(5).

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Division 6—Miscellaneous

59ZK Commission may give recovery notice either to compensation payer or to insurer but not to both

(1) The Commission is not to give a recovery notice to an insurer (under section 59ZG) about a matter if there is a recovery notice to a compensation payer (under section 59ZA) in force in relation to the same matter.

(2) The Commission is not to give a recovery notice to a compensation payer (under section 59ZA) about a matter if there is a recovery notice to an insurer (under section 59ZG) in force in relation to the same matter.

59ZL Commission may disregard some payments

(1) For the purposes of this Part, the Commission may treat the whole or part of a compensation payment as:
   (a) not having been made; or
   (b) not liable to be made;

   if the Commission thinks it is appropriate to do so in the special circumstances of the case.

(2) If:
   (a) a person or a person's partner is eligible for a compensation affected pension; and
   (b) the person receives compensation; and
   (c) the set of circumstances that gave rise to the compensation is not related to the set of circumstances that give rise to the person's or the person's partner's eligibility for the compensation affected pension;

   the fact that those 2 sets of circumstances are unrelated does not alone constitute special circumstances for the purposes of subsection (1).

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59ZM Part to bind Crown

This Part binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory and of the Northern Territory.

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Part IIID—Quarterly pension supplement

60 When this Part applies

(1) This Part applies to a person if:
  (a) the person is receiving a service pension or income support supplement (the ***main payment***); and
  (b) the person is residing in Australia and:
    (i) is in Australia; or
    (ii) is temporarily absent from Australia and has been so for a continuous period not exceeding 6 weeks.

(2) For the purposes of subsection (1), it does not matter if the rate of the person's main payment would become nil were an election by the person under subsection 60A(1) to come into force.

60A Quarterly pension supplement

(1) The person may, in a manner or way approved by the Commission, make an election to receive the person's minimum pension supplement amount on a quarterly basis as a separate payment.

(2) An election comes into force as soon as practicable after it is made.

(3) An election ceases to be in force if the main payment ceases to be payable to the person.

(4) The person may, in a manner or way approved by the Commission, revoke an election. A revocation takes effect as soon as practicable after it happens.

(5) Quarterly pension supplement is payable to the person in relation to each day on which an election is in force.

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60B Rate of quarterly pension supplement

(1) The person's annual rate of quarterly pension supplement is the person's minimum pension supplement amount.

(2) The person's daily rate of quarterly pension supplement is worked out by dividing the person's annual rate by 364.

(3) This section has effect subject to subclause 4(4) of Schedule 6.

60C Payment of quarterly pension supplement

(1) Quarterly pension supplement is to be paid by instalments.

(2) An instalment of quarterly pension supplement is to be paid to a person as soon as is reasonably practicable after the end of an instalment period.

(3) The amount of the instalment is worked out by multiplying the person's daily rate of quarterly pension supplement by the number of days in the instalment period.

(4) If:

(a) an election by the person under subsection 60A(1) is in force on a particular day; and

(b) apart from this subsection, the portion of the instalment of the person's quarterly pension supplement that corresponds to that day would be reduced under subclause 4(4) of Schedule 6, but not reduced to a nil amount;

the amount of that portion of the instalment is not to be reduced under subclause 4(4) of Schedule 6.

(5) In this section:

instalment period means a period:

(a) in relation to each day of which quarterly pension supplement is payable to the person; and

Note: For when quarterly pension supplement is payable to the person, see section 60A.

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(b) that either begins on any 20 March, 20 June, 20 September or 20 December or does not include any such day; and

(c) that either ends on any 19 March, 19 June, 19 September or 19 December or does not include any such day; and

(d) that is not included in a longer instalment period.

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Part IIIE—Clean energy payments

Division 2—Energy supplements

Subdivision A—Energy supplements for pensions under Parts II and IV

62A Energy supplement for disability pension

(1) This section applies to a person for a day if:
  (a) the person receives for the day a pension under Part II or IV at a rate determined under or by reference to section 22, 23, 24 or 27; and
  (b) the person's rate of the pension is greater than nil; and
  (c) the person is residing in Australia on the day; and
  (d) on the day the person either:
    (i) is in Australia; or
    (ii) is temporarily absent from Australia and has been so for a continuous period not exceeding 6 weeks.

Note: Section 62C may affect whether a person meets the conditions in paragraphs (1)(a) and (b) of this section.

Energy supplement payable

(2) The Commonwealth is liable to pay the person for the day energy supplement for the person's pension.

Note 1: The supplement is a payment separate from the pension.

Note 2: Section 65A may affect the person's entitlement to the energy supplement.

Rate of energy supplement

(3) The fortnightly rate of energy supplement for the pension is the rate worked out using the table. For this purpose, ignore subsections 23(5) and (6), sections 25A and 26, Division 5A of

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Part II and section 74 in working out the rate of the person's pension under section 27 if that section is relevant.

Fortnightly rate of energy supplement		
Item	**If the rate of the person's pension:**	**the rate of energy supplement is:**
1	Is worked out under or by reference to subsection 22(3) but not section 27	$7.70
2	Is worked out under or by reference to subsection 22(4) but not section 27	$11.80
3	Is worked out under or by reference to subsection 23(4) but not section 27	$14.50
4	Is worked out under or by reference to subsection 24(4) but not section 27	$21.50
5	Is worked out under or by reference to section 27 and is not more than the rate specified in subsection 22(3)	$7.70
6	Is worked out under or by reference to section 27 and is: (a) more than the rate specified in subsection 22(3); and (b) not more than the rate specified in subsection 22(4)	$11.80
7	Is worked out under or by reference to section 27 and is: (a) more than the rate specified in subsection 22(4); and (b) not more than the rate specified in subsection 23(4)	$14.50
8	Is worked out under or by reference to section 27 and is more than the rate specified in subsection 23(4)	$21.50

62B Energy supplement for war widow/war widower pension

(1) This section applies to a person for a day if:

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(a) the person receives for the day a pension under Part II or IV at a rate determined under or by reference to subsection 30(1); and
(b) the person's rate of the pension is greater than nil; and
(c) the person is residing in Australia on the day; and
(d) on the day the person either:
  (i) is in Australia; or
  (ii) is temporarily absent from Australia and has been so for a continuous period not exceeding 6 weeks.

Note: Section 62C may affect whether a person meets the conditions in paragraphs (1)(a) and (b) of this section.

Energy supplement payable

(2) The Commonwealth is liable to pay the person for the day energy supplement for the person's pension.

Note 1: The supplement is a payment separate from the pension.

Note 2: Section 65A may affect the person's entitlement to the energy supplement.

Rate of energy supplement

(3) The fortnightly rate of energy supplement for the pension is $14.20.

62C Disregard nil rate in certain circumstances

For the purposes of sections 62A and 62B, a person is taken to receive a pension under Part II or IV at a rate greater than nil even if the person's rate would be nil, or pension would not be payable, merely because the rate is reduced, or pension is not payable, under Division 4, 5 or 5A of Part II or section 74.

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62D Electing for quarterly payment of energy supplement for pension under Part II or IV

Election

(1) A person may, in a manner or way approved by the Commission, make an election to be paid quarterly instalments of:
  (a) the person's energy supplement under section 62A; or
  (b) the person's energy supplement under section 62B.

Note 1: If the person is receiving both kinds of pension under Part II or IV, he or she may make an election relating to one kind but not the other or make separate elections for each kind.

Note 2: If a person does not make an election to be paid quarterly instalments of the energy supplement for one of those kinds of pensions, the supplement for that kind of pension will be paid in instalments under section 121.

(2) The election:
  (a) comes into force as soon as practicable after it is made; and
  (b) ceases to be in force if the pension ceases to be payable to the person; and
  (c) may be revoked by the person, in a manner or way approved by the Commission, with effect as soon as practicable after the revocation is made.

Quarterly payment

(3) An instalment of the energy supplement is to be paid to the person as soon as is reasonably practicable after the end of an instalment period.

(4) The amount of the instalment is the total amount of the energy supplement payable to the person for the days in the instalment period. For this purpose, the rate of the energy supplement payable for a day is $^{1}/_{14}$ of the fortnightly rate of the supplement that applied on that day.

(5) In this section:

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instalment period means a period:

(a) on each day of which the election is in force; and

(b) that either begins on any 20 March, 20 June, 20 September or 20 December or does not include any such day; and

(c) that either ends on any 19 March, 19 June, 19 September or 19 December or does not include any such day; and

(d) that is not included in a longer instalment period.

Subdivision B—Quarterly energy supplement for service pension

62E Quarterly energy supplement for service pension

(1) Quarterly energy supplement for service pension that a person is receiving is payable, as a separate payment, to the person for each day for which an election by the person is in force under subsection 60A(1).

Note: Section 65A may affect the person's entitlement to quarterly energy supplement.

(2) An instalment of quarterly energy supplement is to be paid to the person as soon as is reasonably practicable after the end of an instalment period.

(3) The amount of the instalment is the total amount of the quarterly energy supplement payable to the person for the days in the instalment period.

(4) For the purposes of subsection (3), the rate of quarterly energy supplement payable for a day is $^{1}/_{364}$ of what would be the person's energy supplement under the Rate Calculator for the day apart from this section.

(4A) In this section:

instalment period means a period:

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(a) for each day of which quarterly energy supplement for service pension that the person is receiving is payable to the person; and
(b) that either begins on any 20 March, 20 June, 20 September or 20 December or does not include any such day; and
(c) that either ends on any 19 March, 19 June, 19 September or 19 December or does not include any such day; and
(d) that is not included in a longer instalment period.

Reductions

(5) This section is subject to subclause 4(5) of Schedule 6.

(6) If:
(a) an election by the person under subsection 60A(1) is in force on a particular day; and
(b) apart from this subsection, the portion of the instalment of the person's quarterly energy supplement that corresponds to that day would be reduced under subclause 4(5) of Schedule 6; and
(c) the reduction of the main rate mentioned in paragraph 4(5)(a) would not be to a nil amount;

the amount of that portion of the instalment is not to be reduced under subclause 4(5) of Schedule 6.

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Division 3—Essential medical equipment payment

Subdivision A—Definitions

63A Definitions

In this Division:

EMEP residence has the meaning given by subsection 63C(1).

essential medical equipment payment:

(a) means an essential medical equipment payment under this Division (except in section 63F); and

(b) in section 63F—has the meaning given by that section.

medical equipment, in relation to a person who satisfies the medical needs requirement under paragraph 63C(1)(b), means the heating or cooling system (as the case requires) of the residence described in that paragraph.

person with medical needs has the meaning given by paragraph 63C(2)(b).

Subdivision B—Eligibility for essential medical equipment payment

63B Eligibility for essential medical equipment payment

(1) A person (the ***claimant***) is eligible for an essential medical equipment payment for an income year if:

(a) the Commission is satisfied that the claimant satisfies each of the following on the EMEP test day:

(i) the medical needs requirement in section 63C;

(ii) the concession requirement in section 63D;

(iii) the energy account requirement in section 63E; and

(b) a medical practitioner has (subject to subsection (2)) certified that:

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(i) the claimant meets the medical needs requirement under subsection 63C(1) on a day; or
(ii) another specified person meets the medical needs requirement under subsection 63C(1) on a day;

(as the case requires); and

(c) the claimant is not prevented from receiving an essential medical equipment payment by section 63F; and
(d) the claimant is not a dependent child of another person on the EMEP test day; and
(e) the claimant is in Australia on the EMEP test day.

(2) Paragraph (1)(b) does not apply if the Commission is otherwise satisfied that the claimant or another specified person meets the medical needs requirement in section 63C.

*Meaning of **EMEP test day***

(3) For the purposes of subsection (1), the ***EMEP test day*** is either:
(a) the day in the income year referred to in subsection (1) on which the claimant makes the claim for the payment; or
(b) an anniversary (in the income year referred to in subsection (1)) of the day on which the claimant made a claim for the payment if:
(i) the claimant made the claim in a previous income year; and
(ii) since the claimant made the claim, the Commission has not determined that the claimant has ceased to be eligible for the payment.

Note: For claims, see Subdivision C.

Determining eligibility for later income years

(4) In determining whether a person is eligible for an essential medical equipment payment for an income year after the income year in which the claim for the payment is made, the Commission:
(a) may act on the basis of the documents and information in its possession; and

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(b) is not required to conduct any inquiries or investigations into the matter or to require (whether under this Act or otherwise) the giving of any information or the production of any document.

(5) Despite subsection (4), the Commission may require a further certification for the purposes of paragraph (1)(b), or further information or a further document for the purposes of subsection (2), in an income year after the income year in which the claim is made.

63C The medical needs requirement

Person who has medical needs

(1) A person satisfies the medical needs requirement on a day if:
  (a) the person has a medical condition on that day, and as a result:
    (i) the person requires the use of specified essential medical equipment in a residence (the ***EMEP residence***) that is the person's home and is either a private residence or a specified residence; and
    (ii) the person uses that equipment in that residence; or
  (b) the person has a specified medical condition on that day, and as a result:
    (i) the person is unable to regulate his or her body temperature; and
    (ii) additional heating or cooling is required, in a residence (the ***EMEP residence***) that is the person's home and is either a private residence or a specified residence, to manage the person's condition; and
    (iii) the person uses additional heating or cooling in that residence.

Caring for a person who has medical needs

(2) A person (the ***carer***) also satisfies the medical needs requirement on a day if:

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(a) the carer provides care and attention on a regular and ongoing basis for a person; and
(b) the person (the ***person with medical needs***) satisfies the medical needs requirement under subsection (1) on the day; and
(c) the person with medical needs is specified in the certification under subparagraph 63B(1)(b)(ii) or is the person specified for the purposes of subsection 63B(2) (as the case requires); and
(d) the carer's home is the EMEP residence that is the home of the person with medical needs.

Meaning of ***specified essential medical equipment****,* ***specified medical condition*** *and* ***specified residence***

(3) In this section:

specified essential medical equipment means any medical equipment that is specified under subsection 917C(3) of the Social Security Act.

specified medical condition means any medical condition that is specified under subsection 917C(3) of the Social Security Act.

specified residence means any residence that is specified under subsection 917C(3) of the Social Security Act.

63D The concession requirement

(1) A person satisfies the concession requirement on a day if:
(a) the person is a holder of a concession card, or the person's name is included on a concession card, on that day; or
(b) both of the following apply:
(i) the person satisfies the medical needs requirement under subsection 63C(2) (caring for a person) on that day in relation to a person with medical needs;

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(ii) the person with medical needs is a holder of a concession card, or the name of the person with medical needs is included on a concession card, on that day; or

(c) under section 53A, the person is eligible for fringe benefits on that day.

(2) For the purposes of subsection (1), a ***concession card*** means any of the following cards:

(b) a seniors health card issued under Part VIIC;

(c) a card known as the Repatriation Health Card—For All Conditions, that evidences a person's eligibility, under this Act or the *Military Rehabilitation and Compensation Act 2004*, to be provided with treatment for all injuries or diseases;

(d) a card known as the Repatriation Health Card—For Specific Conditions, that evidences a person's eligibility, under this Act or the *Military Rehabilitation and Compensation Act 2004*, to be provided with treatment for specific injuries or diseases.

63E The energy account requirement

(1) A person satisfies the energy account requirement on a day if:

(a) on that day, the energy account for the relevant EMEP residence is in the name of that person; or

(b) on that day, the energy account for the relevant EMEP residence is in the name of that person's partner; or

(c) the person contributes (whether wholly or partly) to paying the energy account for the relevant EMEP residence; or

(d) if the person is not the person with medical needs—the person with medical needs contributes (whether wholly or partly) to paying the energy account for the relevant EMEP residence.

(2) For the purposes of subsection (1), an ***energy account*** for a residence means any account for:

(a) electricity; or

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(b) any other specified form of energy;

that is supplied to the residence.

(3) In this section:

specified form of energy means any form of energy that is specified under subsection 917E(3) of the Social Security Act.

63F Availability of payments

(1) No essential medical equipment payment may be made for an income year in relation to medical equipment that is used in an EMEP residence if an essential medical equipment payment has already been made for that income year in relation to the same equipment and the same residence.

(2) No more than 2 essential medical equipment payments may be made in relation to the same medical equipment for an income year (subject to subsection (1)).

(3) Essential medical equipment payments may not be made, in relation to a person with medical needs, in relation to more than 2 EMEP residences.

Meaning of ***essential medical equipment payment***

(4) In this section, an ***essential medical equipment payment*** means an essential medical equipment payment under this Division or Division 4 of Part 2.18A of the Social Security Act.

63G Amount of payment

The amount of an essential medical equipment payment for an income year is $140.

Note: The amount specified is indexed on each 1 July (see section 198E).

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63H Debts arising in respect of essential medical equipment payments

(1) If:

(a) an individual has been paid an essential medical equipment payment because of a determination made under this Division; and

(b) after the payment was made to the individual, the determination is or was (however described) changed, revoked, set aside, or superseded by another determination; and

(c) the decision to change, revoke, set aside or supersede the determination is or was made for the reason, or for reasons including the reason, that the individual knowingly made a false or misleading statement, or knowingly provided false information; and

(d) apart from that statement or information, the payment would not have been paid to the individual;

the amount of the payment is a debt due to the Commonwealth by the individual.

(2) The other provisions of this Act under which debts arise do not apply in relation to essential medical equipment payments.

Subdivision C—Claim for essential medical equipment payment

63J Need for a claim

A person who wants to be paid an essential medical equipment payment must make a proper claim.

Note: For ***proper claim*** see section 63M (form) and section 63N (residence in Australia).

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63K Special requirements regarding claims for essential medical equipment payment

(1) A claim for an essential medical equipment payment must include a statement by the person making the claim that the medical equipment to which the claim relates is used in the relevant EMEP residence.

(2) If:
  (a) a person who provides care and attention for a person with medical needs makes a claim for an essential medical equipment payment; and
  (b) the person with medical needs is not a dependent child of that or any other person;

the claim must be signed by the person with medical needs.

63L Who can claim?

(1) Subject to subsection (2), a claim must be made by:
  (a) the person who wants to be paid an essential medical equipment payment; or
  (b) with the approval of the person—another person on the person's behalf.

(2) If the person is unable, because of physical or mental incapacity, to approve another person to make the claim on his or her behalf, the Commission may approve another person to make the claim.

63M Making a claim

(1) To be a proper claim, the claim must be:
  (a) made in writing; and
  (b) in accordance with a form approved by the Commission; and
  (c) accompanied by any evidence available to the claimant that the claimant considers may be relevant to the claim; and
  (d) lodged at an office of the Department in Australia in accordance with section 5T.

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(2) A claim lodged in accordance with section 5T is taken to have been made on a day determined under that section.

63N Claimant must be an Australian resident

A claim is not a proper claim unless the person making the claim, or on whose behalf the claim is being made, is an Australian resident on the day on which the claim is lodged.

Note: For ***Australian resident*** see section 5G.

63P Claim may be withdrawn

(1) A claimant for an essential medical equipment payment or a person on behalf of a claimant may withdraw a claim that has not been determined.

(2) A claim that is withdrawn is taken to have not been made.

(3) A withdrawal may be made either orally or by document lodged at an office of the Department in Australia in accordance with section 5T.

Oral withdrawal of a claim

(4) An oral withdrawal of a claim must be made to a person in an office of the Department in Australia.

Acknowledgement of oral withdrawal of a claim

(5) As soon as practicable after receiving an oral withdrawal of a claim, the Secretary must give the claimant an acknowledgement notice in writing stating that:
   (a) an oral withdrawal of the claim was made; and
   (b) the claimant, or a person on behalf of the claimant, may, within 28 days from the day the acknowledgement notice is given, request the Secretary to treat the withdrawal as if it had not been made.

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Reactivating the withdrawn claim

(6) If, within 28 days from the day on which the Secretary gave the acknowledgement notice, a claimant, or a person on behalf of a claimant, requests the Secretary to treat the oral withdrawal of the claim as if it had not been made, the oral withdrawal is taken not to have been made.

Note: A request made under paragraph (5)(b) has the effect of reactivating the claim. In particular, the commencement day of the claim stays the same.

Subdivision D—Investigation of claim

63Q Secretary to investigate claim and submit it to Commission

(1) If a person makes a proper claim for an essential medical equipment payment, the Secretary must investigate the matters to which the claim relates.

(2) When the investigation is completed, the Secretary must submit the claim to the Commission for consideration and determination.

(3) When the claim is submitted to the Commission it must be accompanied by:
   (a) any evidence supplied by the claimant in support of the claim; and
   (b) any documents or other evidence obtained by the Department in the course of the investigation that are relevant to the claim; and
   (c) any other documents or other evidence under the control of the Department that are relevant to the claim.

Subdivision E—Consideration and determination of claim

63R Duties of Commission in relation to claim

(1) When the claim is submitted to the Commission, the Commission must consider all matters that are, in the Commission's opinion, relevant to the claim and must then determine the claim.

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(2) In considering the claim, the Commission must:
  (a) satisfy itself with respect to; or
  (b) determine;
(as the case requires) all matters relevant to the determination of the claim.

(3) Without limiting subsection (1), the Commission, in considering the claim, must consider:
  (a) the evidence submitted with the claim under section 63Q; and
  (b) any further evidence subsequently submitted to the Commission in relation to the claim.

Note: A claimant may apply to the Commission for review of a determination made under this section (see section 64A).

63S Entitlement determination

The Commission must determine that a person is entitled to an essential medical equipment payment if the Commission is satisfied that the person is eligible for the payment.

63T Date of effect of determination

A determination under section 63S takes effect, on the day that the determination is made or on such later day or earlier day as is specified in the determination.

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Division 4—Review of decisions

64A Review of certain decisions

A person who is dissatisfied with a decision of the Commission in relation to a clean energy payment, except quarterly energy supplement, may request the Commission to review the decision.

64B Application for review

(1) A request for review of a decision under section 64A must:
  (a) be made within 3 months after the person seeking review was notified of the decision; and
  (b) set out the grounds on which the request is made; and
  (c) be in writing; and
  (d) be lodged at an office of the Department in Australia in accordance with section 5T.

(2) A request lodged in accordance with section 5T is taken to have been made on a day determined under that section.

(3) If a request for review of a decision is made in accordance with subsection (1), the Commission must review the decision.

(4) If the Commission has delegated its powers under this section to the person who made the decision under review, that person must not review the decision.

64C Commission's powers where request for review

(1) If the Commission reviews a decision under this Part, the Commission must affirm the decision or set it aside.

(2) If the Commission sets the decision aside it must, subject to subsection (3), substitute a new decision in accordance with this Act.

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(3) If the decision set aside is a decision that a person ceases to be entitled to a clean energy payment (except quarterly energy supplement), the Commission need not substitute another decision.

Note: For the Commission's evidence gathering powers, see section 64G.

64D Date of effect of certain review decisions

(1) If the Commission sets aside a decision and substitutes for it a decision that a person is entitled to a clean energy payment (except quarterly energy supplement), the substituted decision takes effect from a date specified by the Commission.

(2) The date specified by the Commission must not be earlier than the date from which, had the Commission determined that the person is entitled to a clean energy payment (except quarterly energy supplement), such a determination could have taken effect.

64E Commission must make written record of review decision and reasons

(1) When the Commission reviews a decision under this Part it must make a written record of its decision upon review.

(2) The written record must include a statement that:
   (a) sets out the Commission's findings on material questions of fact; and
   (b) refers to the evidence or other material on which those findings are based; and
   (c) provides reasons for the Commission's decision.

64F Person who requested review to be notified of decision

(1) When the Commission affirms or sets aside a decision under this Part it must give the person who requested the review of the decision:
   (a) a copy of the Commission's decision; and
   (b) subject to subsection (2), a copy of the statement about the decision referred to in subsection 64E(2); and

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(c) if the person has a right to apply to the Administrative Appeals Tribunal for review of the Commission's decision—a statement giving the person particulars of that right.

(2) If the statement referred to in paragraph (1)(b) contains any matter that, in the opinion of the Commission:

(a) is of a confidential nature; or

(b) might, if communicated to the person who requested review, be prejudicial to his or her physical or mental health or well-being;

the copy given to the person is not to contain that matter.

64G Powers of Commission to gather evidence

(1) The Commission or the Commission's delegate may, in reviewing a decision under this Part:

(a) take evidence on oath or affirmation for the purposes of the review; and

(b) adjourn a hearing of the review from time to time.

(2) The presiding member of the Commission or the Commission's delegate may, for the purposes of the review:

(a) summon a person to appear at a hearing of the review to give evidence and to produce such documents (if any) as are referred to in the summons; and

(b) require a person appearing at a hearing of the review for the purpose of giving evidence either to take an oath or to make an affirmation; and

(c) administer an oath or affirmation to a person so appearing.

(3) The person who applied for the review under this Division is a competent and compellable witness upon the hearing of the review.

(4) The oath or affirmation to be taken or made by a person for the purposes of this section is an oath or affirmation that the evidence that the person will give will be true.

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(5) The Commission's power under paragraph (1)(a) to take evidence on oath or affirmation:
  (a) may be exercised on behalf of the Commission by:
    (i) the presiding member or the Commission's delegate; or
    (ii) another person (whether a member or not) authorised by the presiding member or the Commission's delegate; and
  (b) may be exercised within or outside Australia; and
  (c) must be exercised subject to any limitations specified by the Commission.

(6) Where a person is authorised under subparagraph (5)(a)(ii) to take evidence for the purposes of a review, the person has:
  (a) all the powers of the Commission under subsection (1); and
  (b) all the powers of the presiding member under subsection (2);
for the purposes of taking that evidence.

(7) In this section:

Commission's delegate means a person to whom the Commission has delegated its powers under section 64B and who is conducting the review in question.

64H Withdrawal of request for review

(1) A person who requests a review under section 64A may withdraw the request at any time before it is determined by the Commission.

(2) To withdraw the request, the person must give written notice of withdrawal to the Secretary and the notice must be lodged at an office of the Department in Australia in accordance with section 5T.

(3) Subject to section 64B, a person who withdraws a request for review may subsequently make another request for review of the same decision.

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Note: Section 64B provides that a person who wants to request a review of a decision must do so within 3 months after the person has received notice of the decision.

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Division 5—Multiple entitlement exclusions

65A Multiple entitlement exclusions

(1) The Commission may by legislative instrument determine that persons in circumstances specified in the instrument are not entitled to a clean energy bonus under this Act that is specified in the instrument.

Note: For ***clean energy bonus*** see subsection 5Q(1).

(2) Those circumstances must relate to persons' entitlement to or receipt of one or more of the following:

(a) another clean energy bonus under this Act;

(b) a clean energy bonus under the MRCA;

(c) a clean energy bonus under the Social Security Act;

(d) a clean energy bonus under a scheme (however described), whether or not the scheme is provided for by or under an Act.

(3) An instrument under subsection (1) has effect according to its terms, despite any other provision of this Act.

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Part IIIF—One-off energy assistance payment

66 One-off energy assistance payment—this Act

Service pension or income support supplement

(1) A person is eligible for a one-off energy assistance payment if:
  (a) service pension or income support supplement is payable to the person on 20 June 2017; and
  (b) service pension or income support supplement is so payable because of a claim the person made on or before 20 June 2017; and
  (c) the person is residing in Australia on 20 June 2017.

(2) The amount of a person's one-off energy assistance payment under subsection (1) is worked out using the following table, having regard to the person's situation on 20 June 2017:

Energy assistance payment		
Item	**Person's situation on 20 June 2017**	**Amount of one-off energy assistance payment**
1	Not a member of a couple	$75
2	Partnered	$62.50
3	Member of an illness separated couple	$75
4	Member of a respite care couple	$75

Note: For ***member of a couple***, ***partnered***, ***illness separated couple*** and ***respite care couple*** see subsections 5E(1) and (5) and 5R(5) and (6).

Pension under Part II or IV

(3) A person is eligible for a one-off energy assistance payment if:

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(a) the person receives for 20 June 2017 a pension under Part II or IV at a rate determined under or by reference to section 22, 23, 24 or 27; and
(b) the person's rate of the pension is greater than nil for 20 June 2017; and
(c) the person is residing in Australia on 20 June 2017.

(4) A person is eligible for a one-off energy assistance payment if:
(a) the person receives for 20 June 2017 a pension under Part II or IV at a rate determined under or by reference to subsection 30(1); and
(b) the person's rate of the pension is greater than nil for 20 June 2017; and
(c) the person is residing in Australia on 20 June 2017.

(5) For the purposes of subsections (3) and (4), a person is taken to receive a pension under Part II or IV at a rate greater than nil even if the person's rate would be nil, or pension would not be payable, merely because the rate is reduced, or pension is not payable, under Division 4, 5 or 5A of Part II or section 74.

(6) The amount of a person's one-off energy assistance payment under subsection (3) or (4) is $75.

67 One-off energy assistance payment—MRCA

Compensation for permanent impairment

(1) A person is eligible for a one-off energy assistance payment if:
(a) the condition in subsection (2) is met; and
(b) the person is residing in Australia on 20 June 2017.

(2) The condition is that either or both of the following apply:
(a) weekly compensation under Part 2 of Chapter 4 of the MRCA:
(i) is payable to the person for 20 June 2017; or

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(ii) would be payable to the person for 20 June 2017 apart from paragraph 398(3)(b) of the MRCA and offsetting described in subsection 13(4) of the *Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Act 2004*;

(b) before 20 June 2017 the person received lump sum compensation under Part 2 of Chapter 4 of the MRCA.

Special Rate Disability Pension

(3) A person is eligible for a one-off energy assistance payment if:

(a) Special Rate Disability Pension under the MRCA:

(i) is payable to the person for 20 June 2017; or

(ii) would be payable to the person for 20 June 2017 apart from section 204, and paragraph 398(3)(b), of the MRCA; and

(b) the person is residing in Australia on 20 June 2017.

Compensation for wholly dependent partners

(4) A person is eligible for a one-off energy assistance payment if:

(a) the condition in subsection (5) is met; and

(b) the person is residing in Australia on 20 June 2017.

(5) The condition is that either or both of the following apply:

(a) weekly compensation under Division 2 of Part 2 of Chapter 5 of the MRCA either:

(i) is payable to the person for 20 June 2017; or

(ii) would be payable to the person for 20 June 2017 apart from paragraph 398(3)(b) of the MRCA;

(b) before 20 June 2017 the person received lump sum compensation under Division 2 of Part 2 of Chapter 5 of the MRCA and subsection 388(6) of the MRCA has not applied to the person before 20 June 2017.

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Amount of one-off energy assistance payment

(6) The amount of a person's one-off energy assistance payment under this section is $75.

67A One-off energy assistance payment—*Safety, Rehabilitation and Compensation Act 1988*

(1) A person is eligible for a one-off energy assistance payment if:
   (a) at any time, the person has received a payment of compensation under section 24 of the *Safety, Rehabilitation and Compensation Act 1988*; and
   (b) the payment was made because of a defence-related claim (within the meaning of Part XI of that Act) the person made on or before 20 June 2017; and
   (c) the person is residing in Australia on 20 June 2017.

Amount of one-off energy assistance payment

(2) The amount of a person's one-off energy assistance payment under this section is $75.

67B More than one entitlement

More than one entitlement under this Part

(1) A person may receive one payment only under this Part, regardless of how many times the person becomes eligible under this Part.

More than one entitlement under this Part and the Social Security Act

(2) If a payment under Part 2.6 of the Social Security Act is paid to a person, no payment under this Part can be paid to the person.

67C Claim not required for one-off energy assistance payment

A claim is not required for a one-off energy assistance payment under this Part.

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67D Payment of one-off energy assistance payment

If a person is eligible for a one-off energy assistance payment under this Part, the Commission must pay the payment to the person in a single lump sum:

(a) on the date that the Commission considers to be the earliest date on which it is reasonably practicable for the payment to be made; and

(b) in such manner as the Commission considers appropriate.

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Part IIIG—2019 one-off energy assistance payment

67E One-off energy assistance payment—this Act

Service pension or income support supplement

(1) A person is eligible for a one-off energy assistance payment if:
  (a) service pension or income support supplement is payable to the person on 2 April 2019; and
  (b) service pension or income support supplement is so payable because of a claim the person made on or before 2 April 2019; and
  (c) the person is residing in Australia on 2 April 2019.

(2) The amount of a person's one-off energy assistance payment under subsection (1) is worked out using the following table, having regard to the person's situation on 2 April 2019.

Energy assistance payment		
Item	**Person's situation on 2 April 2019**	**Amount of one-off energy assistance payment**
1	Not a member of a couple	$75
2	Partnered	$62.50
3	Member of an illness separated couple	$75
4	Member of a respite care couple	$75

Note: For ***member of a couple***, ***partnered***, ***illness separated couple*** and ***respite care couple***, see subsections 5E(1) and (5) and 5R(5) and (6).

Pension under Part II or IV or veteran payment

(3) A person is eligible for a one-off energy assistance payment if:
  (a) the person receives for 2 April 2019 a pension under Part II or IV at a rate determined under or by reference to section 22, 23, 24 or 27; and

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(b) the person's rate of the pension is greater than nil for 2 April 2019; and

(c) the person is residing in Australia on 2 April 2019.

(4) A person is eligible for a one-off energy assistance payment if:

(a) the person receives for 2 April 2019 a pension under Part II or IV at a rate determined under or by reference to subsection 30(1); and

(b) the person's rate of the pension is greater than nil for 2 April 2019; and

(c) the person is residing in Australia on 2 April 2019.

(5) For the purposes of subsections (3) and (4), a person is taken to receive a pension under Part II or IV at a rate greater than nil even if the person's rate would be nil, or pension would not be payable, merely because the rate is reduced, or pension is not payable, under Division 4, 5 or 5A of Part II or section 74.

(6) A person is eligible for a one-off energy assistance payment if:

(a) veteran payment is payable to the person on 2 April 2019; and

(b) veteran payment is so payable because of a claim made on or before 2 April 2019; and

(c) the person is residing in Australia on 2 April 2019.

(7) The amount of a person's one-off energy assistance payment under subsection (3), (4) or (6) is $75.

67F One-off energy assistance payment—MRCA

Compensation for permanent impairment

(1) A person is eligible for a one-off energy assistance payment if:

(a) the condition in subsection (2) is met; and

(b) the person is residing in Australia on 2 April 2019.

(2) The condition is that either or both of the following apply:

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(a) weekly compensation under Part 2 of Chapter 4 of the MRCA:
  (i) is payable to the person for 2 April 2019; or
  (ii) would be payable to the person for 2 April 2019 apart from paragraph 398(3)(b) of the MRCA and offsetting described in subsection 13(4) of the *Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Act 2004*;
(b) before 2 April 2019 the person received lump sum compensation under Part 2 of Chapter 4 of the MRCA.

Special Rate Disability Pension

(3) A person is eligible for a one-off energy assistance payment if:
  (a) Special Rate Disability Pension under the MRCA:
    (i) is payable to the person for 2 April 2019; or
    (ii) would be payable to the person for 2 April 2019 apart from section 204, and paragraph 398(3)(b), of the MRCA; and
  (b) the person is residing in Australia on 2 April 2019.

Compensation for wholly dependent partners

(4) A person is eligible for a one-off energy assistance payment if:
  (a) the condition in subsection (5) is met; and
  (b) the person is residing in Australia on 2 April 2019.

(5) The condition is that either or both of the following apply:
  (a) weekly compensation under Division 2 of Part 2 of Chapter 5 of the MRCA either:
    (i) is payable to the person for 2 April 2019; or
    (ii) would be payable to the person for 2 April 2019 apart from paragraph 398(3)(b) of the MRCA;
  (b) before 2 April 2019 the person received lump sum compensation under Division 2 of Part 2 of Chapter 5 of the MRCA and subsection 388(6) of the MRCA has not applied to the person before 2 April 2019.

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Amount of one-off energy assistance payment

(6) The amount of a person's one-off energy assistance payment under this section is $75.

67G One-off energy assistance payment—*Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988*

(1) A person is eligible for a one-off energy assistance payment if:
  (a) at any time, the person has received a payment of compensation under section 24 of the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988*; and
  (b) the payment was made because of a claim the person made on or before 2 April 2019; and
  (c) the person is residing in Australia on 2 April 2019.

Amount of one-off energy assistance payment

(2) The amount of a person's one-off energy assistance payment under this section is $75.

67H More than one entitlement

More than one entitlement under this Part

(1) A person may receive one payment only under this Part, regardless of how many times the person becomes eligible under this Part.

More than one entitlement under this Part and the Social Security Act

(2) If a payment under Part 2.6A of the Social Security Act is paid to a person, no payment under this Part can be paid to the person.

67J Claim not required for one-off energy assistance payment

A claim is not required for a one-off energy assistance payment under this Part.

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67K Payment of one-off energy assistance payment

If a person is eligible for a one-off energy assistance payment under this Part, the Commission must pay the payment to the person in a single lump sum:

(a) on the date that the Commission considers to be the earliest date on which it is reasonably practicable for the payment to be made; and

(b) in such manner as the Commission considers appropriate.

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Part IIIH—2020 economic support payment

Division 1—First 2020 economic support payment

67L First 2020 economic support payment

(1) A person is eligible for a first 2020 economic support payment if Division 3 applies to the person on a day in the period:
  (a) starting on 12 March 2020; and
  (b) ending on 13 April 2020.

(2) The amount of a person's first 2020 economic support payment under this Division is $750.

67M More than one entitlement

(1) A person may receive one payment only under this Division, regardless of how many times the person becomes eligible under section 67L.

(2) If:
  (a) a first 2020 economic support payment under the ABSTUDY Scheme; or
  (b) a first 2020 economic support payment under Division 1 of Part 9 of the Family Assistance Act; or
  (c) a first 2020 economic support payment under Division 1 of Part 2.6B of the Social Security Act;

  is paid to a person, no payment under this Division can be paid to the person.

67N Claim not required for first 2020 economic support payment

A claim is not required for a first 2020 economic support payment under this Division.

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67P Payment of first 2020 economic support payment

(1) If a person is eligible for a first 2020 economic support payment under this Division, the Commission must, subject to subsection (2), pay the payment to the person in a single lump sum:
   (a) on the date that the Commission considers to be the earliest date on which it is reasonably practicable for the payment to be paid; and
   (b) in such manner as the Commission considers appropriate.

(2) The Commission must not pay the payment on or after 1 July 2022.

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Division 2—Second 2020 economic support payment

67Q Second 2020 economic support payment

(1) A person is eligible for a second 2020 economic support payment if:
  (a) Division 3 applies to the person on 10 July 2020; and
  (b) the person does not receive COVID-19 supplement under the Social Security Act in respect of 10 July 2020.

(2) The amount of a person's second 2020 economic support payment under this Division is $750.

67R More than one entitlement

(1) A person may receive one payment only under this Division, regardless of how many times the person becomes eligible under section 67Q.

(2) If:
  (a) a second 2020 economic support payment under the ABSTUDY Scheme; or
  (b) a second 2020 economic support payment under Division 2 of Part 9 of the Family Assistance Act; or
  (c) a second 2020 economic support payment under Division 2 of Part 2.6B of the Social Security Act;

  is paid to a person, no payment under this Division can be paid to the person.

67S Claim not required for second 2020 economic support payment

A claim is not required for a second 2020 economic support payment under this Division.

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67T Payment of second 2020 economic support payment

(1) If a person is eligible for a second 2020 economic support payment under this Division, the Commission must, subject to subsection (2), pay the payment to the person in a single lump sum:

(a) on the date, occurring on or after 10 July 2020, that the Commission considers to be the earliest date on which it is reasonably practicable for the payment to be paid; and

(b) in such manner as the Commission considers appropriate.

(2) The Commission must not pay the payment on or after 1 July 2023.

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Division 3—Eligibility

67U Purpose of this Division

This Division applies for the purposes of subsection 67L(1) and paragraph 67Q(1)(a).

Note: Sections 67V to 67ZA are subject to section 67ZB (residence requirement).

67V Payments under this Act

Service pension or income support supplement

(1) This Division applies to a person on a day if service pension or income support supplement is payable to the person on that day.

(2) For the purposes of subsection (1), and without limiting that subsection, service pension or income support supplement is taken to be payable to a person on a day (the ***test day***) if:

(a) service pension or income support supplement ceases to be payable to the person on a day (the ***cessation day***) occurring on or before the test day; and

(b) that cessation occurs because of employment income the person or the person's partner earns, derives or receives (either alone or in combination with any other ordinary income earned, derived or received by the person or the person's partner); and

(c) were it not for the employment income, or the combined income, referred to in paragraph (b), the pension or supplement would be payable to the person throughout the period:

(i) starting on the cessation day; and

(ii) ending on the test day; and

(d) the cessation day occurs no earlier than 12 weeks before the test day.

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Disability pension or war widow's/widower's pension under Part II or IV

(3) This Division applies to a person on a day if:
   (a) the person receives for that day a pension under Part II or IV at a rate determined under or by reference to section 22, 23, 24, 25 or 27; and
   (b) the person's rate of the pension is greater than nil for that day.

(4) This Division applies to a person on a day if:
   (a) the person receives for that day a pension under Part II or IV at a rate determined under or by reference to subsection 30(1); and
   (b) the person's rate of the pension is greater than nil for that day.

(5) For the purposes of subsections (3) and (4), a person is taken to receive a pension under Part II or IV at a rate greater than nil even if the person's rate would be nil, or pension would not be payable, merely because the rate is reduced, or pension is not payable, under Division 4, 5 or 5A of Part II or section 74.

Veteran payment

(6) This Division applies to a person on a day if:
   (a) veteran payment is payable to the person on that day; and
   (b) veteran payment is so payable because of a claim made on or before that day.

67W Veterans' Children Education Scheme

This Division applies to a person on a day if:
   (a) a payment under the Veterans' Children Education Scheme is payable to the person on that day; and
   (b) the payment is so payable because of a claim the person makes on or before that day; and
   (c) the person turns 16 on or before that day.

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67X Seniors health card, gold card etc.

Seniors health card

(1) This Division applies to a person on a day if:
  (a) the person makes a claim for a seniors health card under Division 2 of Part VIIC on or before that day; and
  (b) the person does not withdraw that claim on or before that day; and
  (c) the person is eligible for the card on that day.

(2) This Division applies to a person on a day if:
  (a) the person is the holder of a seniors health card on that day because of subsection 118XA(3); and
  (b) the person is eligible for the card on that day.

Gold card

(3) This Division applies to a person on a day if:
  (a) the person is, on that day, the holder of a card, known as the Repatriation Health Card—For All Conditions, that evidences the person's eligibility under this Act or the MRCA to be provided with treatment for all injuries or diseases; and
  (b) the person is eligible for the card on that day.

(4) This Division applies to a person on a day if:
  (a) the person makes a claim, on or before that day, under:
    (i) section 8 of the *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) Act 2006*; or
    (ii) section 9 of the *Treatment Benefits (Special Access) Act 2019*;

    for a determination that he or she is an eligible person; and
  (b) the person does not withdraw that claim on or before that day; and

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(c) the person is an eligible person (within the meaning of that Act) on that day.

Fringe benefits

(5) This Division applies to a person on a day if the person is eligible for fringe benefits under subsection 53A(1A) of this Act on that day.

67Y MRCA

Compensation for permanent impairment

(1) This Division applies to a person on a day if either or both of the following apply:

(a) weekly compensation under Part 2 of Chapter 4 of the MRCA:

(i) is payable to the person for that day; or

(ii) would be payable to the person for that day apart from paragraph 398(3)(b) of the MRCA and offsetting described in subsection 13(4) of the *Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Act 2004*;

(b) the person receives lump sum compensation under Part 2 of Chapter 4 of the MRCA on or before that day.

Special Rate Disability Pension

(2) This Division applies to a person on a day if Special Rate Disability Pension under the MRCA:

(a) is payable to the person for that day; or

(b) would be payable to the person for that day apart from section 204, and paragraph 398(3)(b), of the MRCA.

Compensation for wholly dependent partners

(3) This Division applies to a person on a day if either or both of the following apply:

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(a) weekly compensation under Division 2 of Part 2 of Chapter 5 of the MRCA either:
  (i) is payable to the person for that day; or
  (ii) would be payable to the person for that day apart from paragraph 398(3)(b) of the MRCA;
(b) both:
  (i) the person receives lump sum compensation under Division 2 of Part 2 of Chapter 5 of the MRCA on or before that day; and
  (ii) subsection 388(6) of the MRCA does not apply to the person before that day.

67Z Education scheme under MRCA

This Division applies to a person on a day if:
(a) a payment under the scheme determined under section 258 of the MRCA is payable to the person on that day; and
(b) the payment is so payable because of a claim the person makes on or before that day; and
(c) the person turns 16 on or before that day.

67ZA *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988*

This Division applies to a person on a day if:
(a) at any time, the person receives a payment of compensation under section 24 of the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988*; and
(b) the payment is paid because of a claim the person makes on or before that day.

67ZB Residence requirement

Despite sections 67V to 67ZA, this Division does not apply to a person on a day if the person does not reside in Australia on that day.

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Part IV—Pensions for members of Defence Force or Peacekeeping Force and their dependants

Division 1—Interpretation

68 Interpretation

(1) In this Part, unless the contrary intention appears:

Australian contingent, in relation to a Peacekeeping Force, means a contingent of that Force that has been authorized or approved by the Australian Government.

Australian member, in relation to a Peacekeeping Force, means a member of that Force whose membership has been authorized or approved by the Australian Government.

authorized travel, in relation to a member of a Peacekeeping Force, means travel authorized by the appropriate authority, being an authority approved by the Minister for the purpose.

British nuclear test defence service has the meaning given by subsections 69B(2), (3), (4) and (5).

defence service means service, except peacekeeping service, of any of the following kinds:

(a) continuous full-time service rendered as a member of the Defence Force on or after 7 December 1972 and before the terminating date;

(b) continuous full-time service that was rendered by a person who:

(i) was rendering continuous full-time service as a member of the Defence Force immediately before the commencement of this Act; and

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(ii) continued to render continuous full-time service as such a member until and including the day immediately before the terminating date; and

(iii) was, immediately before the terminating date, bound to render continuous full-time service as such a member for a term expiring on or after the terminating date;

and that was rendered by the person as a member of the Defence Force on and after the terminating date and before the earlier of the following:

(iv) the expiration of that term or, if that term is deemed to have been extended by subsection (4), (5) or (6), the expiration of the extension of that term;

(v) the lawful termination of the person's service as a member of the Defence Force otherwise than by reason of the expiration of the term for which the person is bound to serve;

(c) hazardous service rendered before or after the terminating date;

(d) British nuclear test defence service.

effective full-time service, in relation to a member of the Defence Force, means any period of continuous full-time service of the member other than:

(a) a period exceeding 21 consecutive days during which the member was:

(i) on leave of absence without pay;

(ii) absent without leave;

(iii) awaiting or undergoing trial in respect of an offence of which the member was later convicted; or

(iv) undergoing detention or imprisonment; or

(b) in the case of an officer of the Defence Force who, on appointment, was a student enrolled in a degree or diploma course at a university or other tertiary educational institution and was required by the appropriate authority of the Defence Force to continue his or her studies after appointment—the period of the officer's service during which, by reason of the

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requirement to engage in those studies or in activities connected with those studies, the officer was not regarded by the appropriate authority of the Defence Force as rendering effective full-time service.

hazardous service has the same meaning as in subsection 120(7).

member of a Peacekeeping Force means a person who is serving, or has served, with a Peacekeeping Force outside Australia as an Australian member, or as a member of the Australian contingent, of that Peacekeeping Force.

member of the Forces means a person to whom this Part applies by virtue of section 69, 69A or 69B.

Peacekeeping Force means:

(a) a Peacekeeping Force described in an item of Schedule 3; or

(b) a force raised or organised for the purpose of:

(i) peacekeeping in an area outside Australia; or

(ii) observing or monitoring any activities of persons in an area outside Australia that may lead to an outbreak of hostilities;

being a force that is designated by the Minister, by notice published in the *Gazette*, as a Peacekeeping Force for the purposes of this Part.

peacekeeping service, in relation to a person, means service, whether before or after the commencement of this Act, with a Peacekeeping Force outside Australia, and includes:

(a) any period after the person's appointment or allocation to the Peacekeeping Force during which the person was travelling outside Australia for the purpose of joining the Peacekeeping Force; and

(b) any period (not exceeding 28 days) of authorized travel by the person outside Australia after the person has ceased to serve with the Peacekeeping Force.

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terminating date means the date on which the *Military Compensation Act 1994* commences.

Note: The *Military Compensation Act 1994* commenced on 7 April 1994.

(2) For the purposes of the definition of ***peacekeeping service*** in subsection (1):

(a) a person who has travelled from a place in Australia to a place outside Australia shall be deemed to have commenced to travel outside Australia when the person departed from the last port of call in Australia; and

(b) a person who has travelled to Australia from a place outside Australia shall be deemed to have been travelling outside Australia until the person arrived at the first port of call in Australia.

(3) The Peacekeeping Force described in an item of Schedule 3 is taken to have become a Peacekeeping Force for the purposes of this Part on the day specified in column 3 of that item.

(3A) A force designated by notice published in the *Gazette*, in accordance with paragraph (b) of the definition of ***Peacekeeping Force*** in subsection 68(1), as a Peacekeeping Force is taken to have become a Peacekeeping Force for the purposes of this Part on the date specified in the notice as the date on which it is to become, or is taken to have become, a Peacekeeping Force for the purposes of this Part.

(4) For the purposes of the definition of ***defence service*** in subsection (1), where:

(a) immediately before the terminating date, a person was bound to render continuous full-time service as a member of the Defence Force for a term (in this subsection referred to as the ***relevant term***) expiring on or after the terminating date; and

(b) on or before the expiration of the relevant term, or of an extension of the relevant term by virtue of a previous application of this subsection, the person becomes bound to serve as a member of the Defence Force for a further term commencing immediately after the expiration of the relevant

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term, or of the extension of the relevant term, as the case may be;

the relevant term shall be deemed to be extended, or further extended, as the case may be, until the expiration of that further term.

(5) Where a person who, immediately before the terminating date, was bound to render continuous full-time service as a member of the Defence Force for a term expiring on or after the terminating date is, before the expiration of that term or of an extension of that term by virtue of subsection (4), discharged from the Defence Force for the purpose of being appointed an officer:

(a) that discharge shall not be taken to be the lawful termination of the person's services as a member of the Defence Force for the purposes of the definition of ***defence service*** in subsection (1); and

(b) the relevant term, within the meaning of subsection (4), in respect of the person shall be deemed to be extended until the expiration of the period of continuous full-time service that the person is bound to render by reason of his or her appointment as an officer.

(6) Where:

(a) immediately before the terminating date, a person was bound to render continuous full-time service as a member of the Defence Force for a term (in this subsection referred to as the ***relevant term***) expiring on or after the terminating date; and

(b) on or before the expiration of the relevant term, or of an extension of the relevant term by virtue of a previous application of subsection (4) or (5), the person is discharged from the Army for the purpose of being appointed an officer of the Army, being an appointment that is not expressed to be for a specified period of service in a specified part of the Army or for such a period of service followed by a specified period of service in another part of the Army;

that discharge shall not be taken to be the lawful termination of the person's services as a member of the Defence Force for the

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purpose of the definition of ***defence service*** in subsection (1) and the relevant term in respect of the person shall be deemed to be extended or further extended, as the case requires, until the lawful termination of that person's service in pursuance of that appointment.

(7) Subsections (4), (5) and (6) do not apply to a person who was bound to render continuous full-time service as a member of the Defence Force immediately before the terminating date unless the person:

(a) was so rendering continuous full-time service immediately before the commencement of this Act; and

(b) continued so to render continuous full-time service until and including the day immediately before the terminating date.

69 Application of Part to members of the Forces

(1) Subject to this section, where a person:

(a) has served in the Defence Force for a continuous period that commenced on or after 7 December 1972 and before the terminating date; or

(b) is serving in the Defence Force on or after the terminating date and has so served continuously since a date before that date;

this Part applies to the person:

(c) if the person:

(i) has served on continuous full-time service as a member of the Defence Force after 6 December 1972; and

(ii) has, whether before or after that date, completed 3 years' effective full-time service as such a member; or

(d) if:

(i) the person has served as a member of the Defence Force under an engagement to serve for a period of continuous full-time service of not less than 3 years; and

(ii) the person's service as such a member was terminated before the person had completed 3 years' effective

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full-time service as a member of the Defence Force, but after 6 December 1972, by reason of the person's death or the person's discharge on the ground of invalidity or physical or mental incapacity to perform duties; or

(e) if:

(i) the person has served as an officer of the Defence Force otherwise than under an appointment to serve for a period of continuous full-time service of less than 3 years; and

(ii) the person's service as such an officer was terminated before the person had completed 3 years' effective full-time service as a member of the Defence Force, but after 6 December 1972, by reason of the person's death or the termination of the person's appointment on the ground of invalidity or physical or mental incapacity to perform duties; or

(f) if the person:

(i) was, immediately before 7 December 1972, a national serviceman or a national service officer, for the purposes of the *National Service Act 1951*, serving in the Regular Army Supplement; and

(ii) on or after that date:

(A) completed the period of service in the Regular Army Supplement for which the person was to be deemed to have been engaged to serve or for which the person was appointed, as the case may be; or

(B) the person's service in the Regular Army Supplement was terminated by reason of the person's death, or of the person's discharge or the termination of the person's appointment, on the ground of invalidity or physical or mental incapacity to perform duties.

(2) Where:

(a) a person has served in the Defence Force as set out in subsection (1); and

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(b) after, but not immediately after, the termination of the period of service referred to in that subsection, the person commenced or commences to render a further period of service in the Defence Force;

the person is not a person to whom this Part applies in respect of that further period of service unless, under subsection (1), this Part would apply to the person by reason only of his or her having rendered that further period of service.

(3) Where a person renders continuous full-time service as a member of the Defence Force at some time after the commencement of this Act and before the terminating date but has not so rendered continuous full-time service continuously from and including the day immediately before the date of commencement of this Act to that time, subsection (1) does not apply in respect of the person unless:

(a) the person completes 3 years' effective full-time service as such a member before the terminating date; or

(b) the person's service as a member or officer of the Defence Force is terminated as provided by paragraph (1)(d) or (e), whichever is applicable, before the terminating date.

(4) For the purposes of paragraph (1)(c):

(a) the service of a person as an officer of the Navy on the General List while the person was undertaking pre-employment training shall be disregarded unless the person has subsequently been promoted to the rank of sub-lieutenant or a higher rank;

(b) the service of a person:

(i) as an enlisted member of the Corps of Staff Cadets of the Army; or

(ii) as an officer cadet of the Army while undertaking a four-year course of training;

shall be disregarded unless the person has subsequently been appointed or promoted to the rank of second lieutenant or a higher rank; and

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(c) the service of a person as an Air Cadet, or as an Officer Cadet of the Air Force, shall be disregarded unless the person has subsequently been appointed or promoted to the rank of pilot officer or a higher rank.

(5) Paragraph (1)(d) or (e) does not apply in respect of a person if the person's service as a member of the Defence Force was terminated by reason of the person's discharge, or the termination of the person's appointment:

(a) before the person had completed 12 months' effective full-time service; and

(b) on the ground of invalidity or physical or mental incapacity to perform duties, being invalidity or incapacity caused, or substantially contributed to, by a physical or mental condition that:

(i) existed at the time the person commenced continuous full-time service as a member of the Defence Force; and

(ii) had not been aggravated, or materially aggravated, by that service.

(6) Paragraph (1)(e) does not apply in respect of a person if the person's service as a member of the Defence Force was terminated by reason of the person's death, or the termination of the person's appointment, during a period of service of the person of a kind referred to in paragraph (b) of the definition of ***effective full-time service*** in subsection 68(1).

(7) Where a member of the Defence Force who has rendered continuous full-time service in pursuance of a voluntary undertaking given by the member and accepted by the appropriate authority of the Defence Force was not serving on continuous full-time service immediately before the member commenced to render that service:

(a) if the member was an officer on the day on which the member so commenced—the member shall be deemed, for the purposes of paragraph (1)(e), to have been appointed as an officer of the Defence Force on that day for service for the

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period for which the member was bound to serve on continuous full-time service by virtue of that undertaking; or

(b) in any other case—the member shall be deemed, for the purpose of paragraph (1)(d), to have been engaged to serve as a member of the Defence Force on that day for service for the period for which the member was bound to serve on continuous full-time service by virtue of that undertaking.

69A Application of Part to members of the Forces who render hazardous service

(1) This Part applies to a person who has rendered or is rendering hazardous service as a member of the Defence Force.

(2) This Part so applies whether the hazardous service is rendered before or after the terminating date.

69B Application of Part to persons who rendered British nuclear test defence service

(1) This Part applies to a person who has rendered British nuclear test defence service.

(2) A person rendered ***British nuclear test defence service*** while the person was a member of the Defence Force and rendered service in an area described in the table at any time during a period described in the table for that area:

British nuclear test defence service in an area within a period

Item	Area	Period
1	The area within 10 kilometres of Main Beach on Trimouille Island in the Monte Bello Archipelago	The period: (a) starting at the start of 3 October 1952; and (b) ending at the end of 19 June 1958

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Section 69B

British nuclear test defence service in an area within a period		
Item	**Area**	**Period**
2	The area within 25 kilometres of the Totem test sites at Emu Field	The period: (a) starting at the start of 15 October 1953; and (b) ending at the end of 25 October 1955
3	The area within 40 kilometres of any of the Buffalo or Antler test sites near Maralinga	The period: (a) starting at the start of 27 September 1956; and (b) ending at the end of 30 April 1965

(3) A person rendered ***British nuclear test defence service*** while the person was a member of the Defence Force and was involved at any time during a period described in the table in the transport, recovery, maintenance or cleaning of a vessel, vehicle, aircraft or equipment that was contaminated as a result of its use in an area described in the table for that period:

British nuclear test defence service relating to work on contaminated things		
Item	**Period in which involvement occurred**	**Area where thing was contaminated**
1	The period: (a) starting at the start of 3 October 1952; and (b) ending at the end of 19 July 1956	The area within 10 kilometres of Main Beach on Trimouille Island in the Monte Bello Archipelago
2	The period: (a) starting at the start of 15 October 1953; and (b) ending at the end of 25 November 1953	The area within 25 kilometres of the Totem test sites at Emu Field
3	The period: (a) starting at the start of 27 September 1956; and (b) ending at the end of 30 May 1963	The area within 40 kilometres of any of the Buffalo or Antler test sites near Maralinga

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(4) A person rendered ***British nuclear test defence service*** while the person was a member of the Defence Force and, at a time between the start of 3 October 1952 and the end of 31 October 1957, flew in an aircraft of the Royal Australian Air Force or the Royal Air Force that was at that time:

(a) used in measuring fallout from nuclear tests conducted in an area described in the table in subsection (2); and

(b) contaminated by the fallout.

(5) A person rendered ***British nuclear test defence service*** while the person was a member of the Defence Force if the person satisfies the requirements specified in an instrument under subsection (6).

(6) The Commission may, by legislative instrument, specify requirements for the purposes of subsection (5).

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Division 2—Eligibility for pension

70 Eligibility for pension under this Part

(1) Where:
  (a) the death of a member of the Forces or member of a Peacekeeping Force was defence-caused; or
  (b) a member of the Forces or member of a Peacekeeping Force is incapacitated from a defence-caused injury or a defence-caused disease;

the Commonwealth is, subject to this Act, liable to pay:
  (c) in the case of the death of the member—pension by way of compensation to the dependants of the member; or
  (d) in the case of the incapacity of the member—pension by way of compensation to the member;

in accordance with this Act.

(2) Where:
  (a) a member of the Forces or a member of a Peacekeeping Force has died;
  (b) the death of the member was not defence-caused; and
  (c) the member was, immediately before the member's death:
    (i) a member to whom subsection 22(4) or section 23, 24 or 25 applied by virtue of section 73; or
    (ii) a member to whom section 22 so applied who was in receipt of a pension the rate of which had been increased by reason that the pension was in respect of an incapacity described in item 1, 2, 3, 4, 5, 6, 7 or 8 of the table in section 27;

the Commonwealth is, subject to this Act, liable to pay pensions by way of compensation to the dependants of the member.

(3) Where a pension in respect of the incapacity of a member of the Forces or of a member of a Peacekeeping Force from defence-caused injury or defence-caused disease, or both, is

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granted, after the death of the member, as from a date before the death of the member, subsection (2) applies as if the member had been in receipt of that pension immediately before the member died.

(4) For the purposes of this Act, the death of a member of a Peacekeeping Force shall be taken to have been defence-caused, an injury suffered by such a member shall be taken to be a defence-caused injury or a disease contracted by such a member shall be taken to be a defence-caused disease if the death, injury or disease, as the case may be, resulted from an occurrence that happened while the member was rendering peacekeeping service.

Note: After the MRCA commencement date, compensation is provided under the MRCA (instead of this Act) for some new defence-caused injuries, diseases and deaths: see section 70A.

(5) For the purposes of this Act, the death of a member of the Forces (other than a member to whom this Part applies solely because of section 69A) or member of a Peacekeeping Force shall be taken to have been defence-caused, an injury suffered by such a member shall be taken to be a defence-caused injury or a disease contracted by such a member shall be taken to be a defence-caused disease if:

(a) the death, injury or disease, as the case may be, arose out of, or was attributable to, any defence service, or peacekeeping service, as the case may be, of the member;

(b) subject to subsection (8), the death, injury or disease, as the case may be, resulted from an accident that occurred while the member was travelling, during any defence service or peacekeeping service of the member but otherwise than in the course of duty, on a journey to a place for the purpose of performing duty or away from a place upon having ceased to perform duty; or

(c) the death is to be deemed by subsection (6) to be defence-caused, the injury is to be deemed by subsection (7) to be a defence-caused injury or the disease is to be deemed by subsection (7) to be a defence-caused disease, as the case may be; or

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(d) the injury or disease from which the member died, or is incapacitated:

(i) was suffered or contracted during any defence service or peacekeeping service of the member, but did not arise out of that service; or

(ii) was suffered or contracted before the commencement of the period, or the last period, of defence service or peacekeeping service of the member, but not during such a period of service;

and, in the opinion of the Commission, the injury or disease was contributed to in a material degree by, or was aggravated by, any defence service or peacekeeping service rendered by the member, being service rendered after the member suffered that injury or contracted that disease; or

(e) the injury or disease from which the member died is an injury or disease that has been determined in accordance with this section other than this paragraph to have been a defence-caused injury or defence-caused disease, as the case may be;

Note: The effect of paragraph (e) is that, if the member has died from an injury or disease that has already been determined by the Commission to be defence-caused, the death is to be taken to have been defence-caused. Accordingly the Commission is not required to relate the death to defence service or peacekeeping service rendered by the member and sections 120A and 120B do not apply.

but not otherwise.

Note: After the MRCA commencement date, compensation is provided under the MRCA (instead of this Act) for some new defence-caused injuries, diseases and deaths: see section 70A.

(5A) If this Part applies to a member of the Forces solely because the member has rendered hazardous service as specified in section 69A, the death of the member is taken to be defence-caused, an injury suffered by such a member is taken to be a defence-caused injury or a disease contracted by such a member is taken to be a defence-caused disease if:

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(a) the death, injury or disease, as the case may be, arose out of, or was attributable to, the hazardous service of the member; or

(b) subject to subsection (8), the death, injury or disease, as the case may be, resulted from an accident that occurred while the member was travelling, during any hazardous service but otherwise than in the course of duty, on a journey to a place for the purpose of performing duty or away from a place upon having ceased to perform duty; or

(c) the death is to be deemed by subsection (6) to be defence-caused, the injury is to be deemed by subsection (7) to be a defence-caused injury or the disease is to be deemed by subsection (7) to be a defence-caused disease, as the case may be; or

(d) the injury or disease from which the member died or is incapacitated:

(i) was suffered or contracted during any hazardous service of the member but did not arise out of that service; or

(ii) was suffered or contracted before the commencement of the hazardous service of the member but not during such a period of service;

and, in the opinion of the Commission, the injury or disease was contributed to in a material degree by, or was aggravated by, the hazardous service rendered by the member, being service rendered after the member suffered that injury or contracted that disease; or

(e) the injury or disease from which the member died is an injury or disease that has been determined in accordance with this section other than this paragraph to have been a defence-caused injury or defence-caused disease, as the case may be;

Note: The effect of paragraph (e) is that, if the member has died from an injury or disease that has already been determined by the Commission to be defence-caused, the death is to be taken to have been defence-caused. Accordingly the Commission is not required to relate the death to hazardous service rendered by the member and section 120A does not apply.

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but not otherwise.

Note: After the MRCA commencement date, compensation is provided under the MRCA (instead of this Act) for some new defence-caused injuries, diseases and deaths: see section 70A.

(5B) If this Part applies to a member of the Forces solely because the member has rendered hazardous service as specified in section 69A, subsections (6) and (7) apply to the person as if references in those subsections to ***defence service or peacekeeping service, as the case may be*** were references to ***hazardous service***.

(6) Where, in the opinion of the Commission, the death of a member of the Forces or member of a Peacekeeping Force was due to an accident that would not have occurred, or to a disease that would not have been contracted, but for his or her having rendered defence service or peacekeeping service, as the case may be, or but for changes in the member's environment consequent upon his or her having rendered any such service:

(a) the death of the member shall be deemed to have resulted from that defence service or peacekeeping service, as the case may be; and

(b) the death of the member shall be deemed to be defence-caused, for the purposes of this Act.

(7) Where, in the opinion of the Commission, the incapacity of a member of the Forces or member of a Peacekeeping Force was due to an accident that would not have occurred, or to a disease that would not have been contracted, but for his or her having rendered defence service or peacekeeping service, as the case may be, or but for changes in the member's environment consequent upon his or her having rendered any such service:

(a) if the incapacity of the member was due to an accident—that incapacity shall be deemed to have arisen out of the injury suffered by the member as a result of the accident and the injury so suffered shall be deemed to be a defence-caused injury suffered by the member; or

(b) if the incapacity was due to a disease—the incapacity shall be deemed to have arisen out of that disease and that disease

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shall be deemed to be a defence-caused disease contracted by the member, for the purposes of this Act.

(8) Neither paragraph (5)(b) nor (5A)(b) applies:

(a) to an accident that occurred while the member of the Forces or member of a Peacekeeping Force was travelling on a journey from the member's place of duty in a case where the member had delayed commencing the journey for a substantial period after he or she ceased to perform duty at that place (otherwise than for a reason connected with the performance of the member's duties) unless, in the circumstances of the particular case, the nature of the risk of sustaining an injury, or contracting a disease, was not substantially changed, and the extent of that risk was not substantially increased, by that delay or by anything that happened during that delay;

(b) to an accident that occurred while the member of the Forces or member of a Peacekeeping Force was travelling on a journey, or a part of a journey, by a route that was not reasonably direct having regard to the means of transport used unless:

(i) the journey, or that part of the journey, was made by that route for a reason connected with the performance of the member's duty; or

(ii) in the circumstances of the particular case, the nature of the risk of sustaining injury, or contracting disease, was not substantially changed, and the extent of that risk was not substantially increased, by reason that the journey, or that part of the journey, was made by that route; or

(c) to an accident that occurred while the member of the Forces or member of a Peacekeeping Force was travelling on a part of a journey made after a substantial interruption of the journey, being an interruption made for a reason unconnected with the performance of the member's duties, unless, in the circumstances of the particular case, the nature of the risk referred to in subparagraph (b)(ii) was not substantially

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changed and the extent of that risk was not substantially increased, by reason of the interruption.

(9) The Commonwealth is not liable under this section in respect of the death of a member of the Forces or a member of a Peacekeeping Force, or the incapacity of such a member, from injury or disease:

(a) in a case where the death occurred, or the injury was suffered, or disease was contracted, by the member in circumstances described in subsection (4) or in paragraph (5)(a), (b) or (c) or in paragraph (5A)(a), (b) or (c)—if the death, or the injury or disease, as the case may be:

(i) resulted from the member's serious default or wilful act; or

(ii) arose from a serious breach of discipline committed by the member or from an occurrence that happened while the member was committing a serious breach of discipline; or

(b) in the case of an injury suffered, or disease contracted, by the member to which paragraph (5)(d) or (5A)(d) applies:

(i) if the aggravation of the injury or disease:

(A) resulted from the member's serious default or wilful act; or

(B) arose from a serious breach of discipline by the member; or

(ii) unless the member has rendered hazardous service or the period of defence service or peacekeeping service that contributed to the injury or disease in a material degree, or by which the injury or disease was aggravated, was 6 months or longer.

(9A) The Commonwealth is not liable under this section in respect of:

(a) the death; or

(b) the incapacity from injury or disease;

of a member of the Forces, or a member of a Peacekeeping Force, if the death, injury or disease is related to the relevant service of the member only because:

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(a) in the case of a member who had not used tobacco products before 1 January 1998—the member used tobacco products after 31 December 1997; or

(b) in the case of a member who had used tobacco products before 1 January 1998—the member increased his or her use of tobacco products after 31 December 1997.

(10) The Commonwealth is not liable under this section in respect of the death of a member of the Forces or a member of a Peacekeeping Force, or the incapacity of such a member, from injury or disease, if the death or incapacity resulted from the serious default or wilful act of the member that happened after the member ceased, or last ceased, to render defence service or peacekeeping service.

(10A) The Commonwealth is not liable to pay a pension to a dependant of a member of the Forces, or of a member of a Peacekeeping Force, being a child of the member, under subsection (1) or (2) if the dependant has attained the age of 16 years and payments, by way of a living allowance, are being made in respect of the child:

(a) by way of youth allowance; or

(b) under the scheme known as the Assistance for Isolated Children Scheme;

(c) under the scheme known as the Aboriginal Secondary Assistance Scheme or the scheme known as the Aboriginal Study Assistance Scheme;

(d) under the scheme known as the Post-Graduate Awards Scheme; or

(e) under the Veterans' Children Education Scheme.

(10AB) The Commonwealth is liable to pay a pension to a reinstated pensioner.

(11) Where a dependant of a deceased member of the Forces or of a deceased member of a Peacekeeping Force (not being a reinstated pensioner or a child of the member) re-marries, marries or enters into a de facto relationship after the death of the member:

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(a) the Commonwealth is not liable to pay a pension to the dependant under this section unless the decision by the Commission, the Board or the Administrative Appeals Tribunal, as the case may be, to grant the pension:

(i) was made before the commencement of this Act; or

(ii) was or is made after the commencement of this Act upon consideration or re-consideration of a claim for that pension that was duly made (whether before or after the commencement of this Act) before the re-marriage, marriage or entry into the de facto relationship occurred; and

(b) a decision granting a pension to the dependant under this section made by the Commission, the Board or the Administrative Appeals Tribunal after that re-marriage, marriage or entry into the de facto relationship occurred (including a decision granting such a pension as from a date before that re-marriage, marriage or entry into the de facto relationship occurred) is void and of no effect unless the decision was made upon consideration or re-consideration of a claim for that pension made as described in subparagraph (a)(ii).

Note: For the meaning of ***reinstated pensioner*** see section 11AA.

(11A) If:

(a) a male dependant of a deceased member of the Forces or of a deceased member of a Peacekeeping Force (not being a child of the member) has re-married or married after the death of the member; and

(b) the re-marriage or marriage occurred before 22 January 1991;

the Commonwealth is not liable to pay a pension to that dependant under this section.

(12) Where a person is in receipt of, or is eligible to receive, a pension under this Part as the widow or widower of a deceased member of the Forces or member of a Peacekeeping Force, the Commonwealth is not liable to pay another pension to the person under this Part as the widow or widower of another deceased

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member of the Forces or member of a Peacekeeping Force or under Part II as the widow or widower of a deceased veteran.

(13) Where a person who is in receipt of, or is eligible to receive, a pension under this Part as the child of a deceased person, being a member of the Forces or a member of a Peacekeeping Force, would, but for this subsection, become eligible to receive a pension under this Part or Part II as the child of another deceased person, being a member of the Forces, a member of a Peacekeeping Force or a veteran, the Commonwealth is liable to pay a pension to the person under this Part or Part II as the child of only one of those deceased persons, and, if the rate at which that pension would be payable as the child of one of those deceased persons (in this subsection referred to as the ***relevant deceased person***) is higher than the rate at which that pension would be payable as the child of the other of those deceased persons, then:

(a) if the relevant deceased person is a member of the Forces or a member of a Peacekeeping Force—the Commonwealth is liable to pay a pension to the person under this Part as the child of the relevant deceased person; or

(b) in any other case—the Commonwealth is not liable to pay a pension to the person under this Part.

70A Most defence-caused injuries, diseases and deaths of members of the Defence Force no longer covered by this Act

(1) An injury, disease or death of a member of the Forces, or any other member or former member of the Defence Force, is taken not to be defence-caused if:

(a) the injury is sustained, the disease is contracted, or the death occurs, on or after the MRCA commencement date; and

(b) the injury, disease or death either:

(i) relates to service rendered by the member on or after that date; or

(ii) relates to service rendered by the member before, and on or after, that date.

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Note 1: After the MRCA commencement date, compensation is provided under the MRCA (instead of this Act) for such injuries, diseases and deaths.

Note 2: The other members (or former members) of the Defence Force mentioned in subsection (1) are or were also members of a Peacekeeping Force.

(3) To avoid doubt, service is rendered before, and on or after, the MRCA commencement date whether the service spans the commencement date or is rendered during separate periods before and on or after that date.

71 Application of certain provisions of Part II

(1) Divisions 2A, 3, 6 and 7 of Part II apply to and in relation to pensions payable in accordance with this Part in like manner as they apply to and in relation to pensions payable in accordance with Part II.

(2) For the purposes of the application of Divisions 2A, 3, 6 and 7 of Part II as provided in subsection (1):
   (a) a reference in those divisions to a pension shall be read as a reference to a pension payable in accordance with this Part;
   (b) a reference in those divisions to the death of a veteran that was war-caused shall be read as a reference to the death of a member of the Forces or a member of a Peacekeeping Force that was defence-caused;
   (c) a reference in those divisions to a war-caused injury shall be read as a reference to a defence-caused injury;
   (d) a reference in those divisions to a war-caused disease shall be read as a reference to a defence-caused disease; and
   (e) a reference in those divisions to a veteran shall be read as a reference to a member of the Forces or a member of a Peacekeeping Force.

(3) In the application of Division 3 of Part II in accordance with subsections (1) and (2) of this section, section 19 shall be read as if

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the following subsection were substituted for subsection (7) of that section:

"(7) Where:

(a) the Commission, upon considering a claim for a pension in respect of the incapacity of a member of the Forces or a member of a Peacekeeping Force from injury or disease determines, or is satisfied, that the member suffered the injury or contracted the disease as claimed and that the injury is a defence-caused injury or the disease is a defence-caused disease, as the case may be; and

(b) the Commission is also satisfied that a determination under this Act is in force determining that the member has suffered an injury or contracted a disease (not being the injury or disease referred to in paragraph (a)) and that:

(i) that injury is a defence-caused injury, or is a war-caused injury for the purposes of Part II; or

(ii) that disease is a defence-caused disease, or is a war-caused disease for the purposes of Part II;

as the case may be, whether or not a pension under Part IV or Part II, as the case requires, has been granted in respect of that injury or disease;

the Commission shall not, in a case where the claimant is in receipt of a pension under Part IV or Part II in respect of incapacity resulting from the injury or disease referred to in paragraph (b), grant a separate and additional pension to the claimant in respect of incapacity resulting from the injury or disease referred to in paragraph (a), but the Commission shall, having regard to any incapacity resulting from the injury or disease referred to in paragraph (a) and any incapacity resulting from the injury or disease referred to in paragraph (b) and treating any such war-caused injury as defence-caused injury and any such war-caused disease as defence-caused disease:

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(c) if the claimant is not in receipt of a pension under Part IV or Part II—determine whether the claimant is entitled to be granted a pension under Part IV and, if it determines that the claimant is entitled to be granted a pension, assess the rate of the pension to be granted to the claimant; or

(d) if the claimant is in receipt of a pension under Part IV or Part II—re-assess the rate of that pension.”.

(4) Notwithstanding anything in Divisions 2A, 3, 6 and 7 of Part II in their application in accordance with this section, where:

(a) a member of the Forces, or a member of a Peacekeeping Force, has, or has had, both defence service and peacekeeping service; and

(b) the Commission has determined that the death or incapacity of the member had or has reference to the member’s defence service and also to the member’s peacekeeping service;

the Commission shall not grant a pension under this Part in respect of the death or incapacity in so far as it had or has reference to the member’s defence service and a separate pension under this Part in respect of the death or incapacity of the member in so far as it had or has reference to the member’s peacekeeping service, but shall:

(c) in the case of the death of the member—assess the rate of any pension granted under this Part in respect of the death as if the member’s peacekeeping service formed part of the member’s defence service; or

(d) in the case of the incapacity of the member—assess the degree of incapacity of the member and the rate of pension (if any) to be granted in respect of the incapacity of the member as if the member’s peacekeeping service formed part of the member’s defence service.

72 Dual entitlement to pension

(1) Where a member of the Forces or a member of a Peacekeeping Force is also a veteran, the member is not entitled to receive, at the same time:

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(a) a pension under this Part; and
(b) a pension under Part II of this Act;

in respect of his or her incapacity from the same injury or disease.

(2) Where a member of the Forces or a member of a Peacekeeping Force is also a veteran, a dependant of the member is not entitled to receive, at the same time:
(a) a pension under this Part; and
(b) a pension under Part II of this Act;

in respect of the death of the member.

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Division 3—Rates of pension

73 Application of Divisions 4 and 5 of Part II

(1) The provisions of Divisions 4 and 5 of Part II apply to and in relation to pensions payable in accordance with this Part in like manner as those provisions apply in relation to pensions payable in accordance with Part II.

(2) For the purposes of the application of the provisions of Divisions 4 and 5 of Part II as provided in subsection (1):
   (a) a reference in those provisions to a war-caused injury shall be read as a reference to a defence-caused injury;
   (b) a reference in those provisions to a war-caused disease shall be read as a reference to a defence-caused disease;
   (c) a reference in those provisions to a veteran shall be read as a reference to a member of the Forces or a member of a Peacekeeping Force; and
   (d) a reference in those provisions to Part II shall be read as a reference to Part IV.

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Division 4—Pension and other compensation

73A This Division does not apply to certain payments

This Division does not apply to:

(a) an additional death benefit, or a severe injury adjustment, paid on or after 10 June 1997 in relation to a member of the Forces, or a member of a Peacekeeping Force, under a determination made under section 58B of the *Defence Act 1903*; or

(b) an act of grace payment made on or after 10 June 1997 in respect of the death or injury of a member of the Forces, or a member of a Peacekeeping Force where:

(i) the death or injury occurred on or after 7 April 1994 and before 10 June 1997; and

(ii) an additional death benefit, or a severe injury adjustment, would have been payable in relation to the member under a determination referred to in paragraph (a) if the death or injury had occurred on or after 10 June 1997.

74 Payments by way of compensation or damages

(1) In this section, ***compensation*** includes:

(a) any payment in the nature of compensation; and

(b) any damages recoverable at law (including any amount paid under a compromise or settlement of a claim for damages at law), whether from the Commonwealth, a State, a Territory or any other person (whether within or outside Australia), in respect of injury to, or the death of, a person;

but does not include any amount that represents expenses incurred in medical or hospital treatment.

(2) This section applies in relation to a member of the Forces, or a member of a Peacekeeping Force, in respect of the death of the member, or the incapacity of the member if:

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(a) a person is entitled, or 2 or more persons are each entitled, to receive payments by way of compensation in respect of the death of the member or of the incapacity of the member from an injury or disease; and

(b) subject to this section, pension under this Part is being paid or is payable to a person, or to each of 2 or more persons, in respect of the death of the member or to the member in respect of the same incapacity of the member from that or any other injury or disease.

(3) For the purposes of this section, where:

(a) a lump sum payment by way of compensation (other than a lump sum payment mentioned in paragraph (3A)(a) or (3B)(a)) is made:

(i) to a person, being a member of the Forces or a member of a Peacekeeping Force, in respect of the incapacity of the member from injury or disease; or

(ii) to a person, being a dependant of a member of the Forces or of a member of a Peacekeeping Force, in respect of the death of the member; and

(b) that person is in receipt of, or is subsequently granted, a pension under this Part in respect of the same incapacity of the member from that or any other injury or disease or in respect of the death of that member, as the case may be;

that person shall be deemed, by reason of that payment by way of compensation, to have been, or to be, in receipt of payments, by way of compensation, on and after:

(c) the date of commencement of the period in respect of which his or her pension is, or becomes, payable; or

(d) the date on which the lump sum payment is made;

whichever is the earlier date, for the life of the person, at such rate per fortnight as is determined by, or in accordance with the instructions of, the Commonwealth Actuary, to be the equivalent of a lump sum equal to that lump sum payment and paid to the person on that earlier date.

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(3A) In this section, if:

(a) a lump sum payment is made under section 137 of the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* to a person who is:

(i) a member of the Forces or a member of a Peacekeeping Force, in respect of the incapacity of the member from injury or disease; or

(ii) a dependant of a member of the Forces or of a member of a Peacekeeping Force, in respect of the death of the member; and

(b) that person is in receipt of, or is subsequently granted, a pension under this Part in respect of the same incapacity of the member from that or any other injury or disease or in respect of the death of that member;

the person is taken to have been, or to be, in receipt of payments of compensation:

(c) that is determined by, or under the instructions of, the Commonwealth Actuary to be equivalent to the amount of that lump sum payment; and

(d) at the rate per fortnight for the person's life determined by, or under the instructions of, the Commonwealth Actuary; and

(e) beginning:

(i) on the day that lump sum payment is made to that person; or

(ii) on the day the pension becomes payable to the person;

whichever is the later day.

(3B) In this section, if:

(a) a lump sum payment is made under section 30 of the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* to a person who is:

(i) a member of the Forces or a member of a Peacekeeping Force, in respect of the incapacity of the member from injury or disease; or

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(ii) a dependant of a member of the Forces or of a member of a Peacekeeping Force, in respect of the death of the member; and

(b) that person is in receipt of, or is subsequently granted, a pension under this Part in respect of the same incapacity of the member from that or any other injury or disease or in respect of the death of that member;

the person is taken to have been, or to be, in receipt of payments of compensation:

(c) that is determined by, or under the instructions of, the Commonwealth Actuary to be equivalent to the amount of that lump sum payment; and

(d) at the rate per fortnight determined by, or under the instructions of, the Commonwealth Actuary for the period until the person reaches 65; and

(e) beginning:

(i) on the day that the lump sum payment is made to that person; or

(ii) on the day the pension becomes payable to the person;

whichever is the later day.

(4) For the purposes of this section, a payment by way of compensation made on behalf of, or for the benefit of, a person shall be deemed to have been made to that person.

(5) Where:

(a) an amount of damages payable to a member of the Forces or a member of a Peacekeeping Force, or to a dependant of such a member, is paid to the Commonwealth in pursuance of a notice under section 76; or

(b) the liability of the Commonwealth to pay damages to a member of the Forces or a member of a Peacekeeping Force or to a dependant of such a member, is, by virtue of section 77, to be deemed to have been discharged to the extent of a particular amount;

subsection (3) of this section applies to and in relation to the member or dependant as if pension commenced to be payable, or

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commences to be payable, only after the member or dependant has received payments by way of instalments of pension aggregating the amount referred to in paragraph (a) or (b), whichever is applicable, of this subsection.

(6) In the application of subsections (8) and (9) in respect of the death of a member of the Forces or a member of a Peacekeeping Force:

(a) if payments by way of compensation in respect of the death of the member are being made to 2 or more persons included in the relevant class of persons—a reference in those sections to the rate per fortnight at which compensation is payable in respect of the death of the member shall be read as a reference to the aggregate of the rates per fortnight at which those payments are being made; and

(b) if pensions under this Part in respect of the death of the member are being paid, or are payable, to 2 or more persons included in the relevant class of persons—a reference in those sections to the rate at which pension under this Part is payable in respect of the death of the member shall be read as a reference to the aggregate of the rates per fortnight at which those pensions are being paid or are payable.

(7) For the purposes of subsection (6), the dependants of a member of the Forces or a member of a Peacekeeping Force constitute the relevant class of persons.

(8) If, in a case where this section applies in respect of the death of a member of the Forces or a member of a Peacekeeping Force, or the incapacity of such a member, the rate per fortnight at which compensation is payable in respect of the death or incapacity equals or exceeds the rate per fortnight at which pension under this Part is payable in respect of the death or incapacity, then, pension is not payable under this Part to any person in respect of the death of the member, or the incapacity of the member, as the case may be.

(9) If, in a case where this section applies in respect of the death of a member of the Forces or a member of a Peacekeeping Force, or the incapacity of such a member, the rate per fortnight at which

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pension under this Part, or the aggregate of the rates per fortnight at which pensions under this Part would, but for this subsection, be payable in respect of the death or incapacity exceeds the rate per fortnight at which compensation is payable in respect of the death or incapacity, then:

(a) if a pension under this Part is being paid, or is payable, to one person only in respect of the death or incapacity of the member—the rate per fortnight at which that pension is payable; or

(b) if pensions under this Part are being paid, or are payable, to 2 or more persons in respect of the death of the member—the aggregate of the rates per fortnight at which those pensions are payable;

is an amount per fortnight equal to the amount of that excess.

(10) In giving effect to subsection (9) as between 2 pensions in a case where one is required by subsection (12) to be preferred to the other, the rate per fortnight of the pension that is to be so preferred shall not be reduced until the pension that is not to be so preferred has ceased to be payable by reason that its rate per fortnight has been reduced to nil.

(11) In giving effect to subsection (9) as between 2 or more pensions in a case where subsection (10) does not apply, the rate per fortnight of each of those pensions shall be reduced by an amount per fortnight that bears the same proportion to the amount per fortnight of the reduction required to be made to all those pensions as the rate per fortnight of that pension before the reduction bears to the aggregate rate per fortnight of all those pensions before the reduction.

(12) For the purposes of this section:

(a) a pension payable under this Part to the widow or widower of a member of the Forces or a member of a Peacekeeping Force who is deceased shall be preferred to such a pension payable to a child of the member; and

(b) a pension payable under this Part to a child of a member of the Forces or a member of a Peacekeeping Force shall be

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preferred to such a pension payable to a younger child of the member.

75 Proceedings against third party

(1) Where:

(a) pension is, or has been, payable in respect of the incapacity of a member of the Forces or a member of a Peacekeeping Force from a defence-caused injury or a defence-caused disease or in respect of the death of such a member that was defence-caused;

(b) a person other than the Commonwealth appears legally liable to pay damages in respect of the same incapacity of the member from that or any other injury or disease or in respect of that death; and

(c) proceedings against that person for the purpose of recovering damages in respect of the same incapacity of the member, or in respect of that death, have not been instituted by the member, or by or for the benefit of a dependant of the member, or have been so instituted but have been discontinued or have not been properly prosecuted;

the Commission may, by notice in writing to the member or dependant, request the member or dependant to institute proceedings or fresh proceedings against that person for that purpose, or properly to prosecute the proceedings, as the case may be.

(2) Where a member of the Forces or a member of a Peacekeeping Force or a dependant of such a member is requested, in accordance with subsection (1), to institute proceedings against a person:

(a) if the member or dependant refuses or fails within a reasonable time after the making of the request to institute the proceedings or, having instituted the proceedings, discontinues the proceedings—the Commonwealth may institute proceedings or fresh proceedings, as the case may be, against the person in the name of the member or

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dependant for the recovery of damages in respect of the incapacity or death; or

(b) if the member or dependant, having instituted proceedings, fails properly to prosecute the proceedings—the Commonwealth may take over the conduct of the proceedings.

(3) Where a member of the Forces or a member of a Peacekeeping Force, or a dependant of such a member, who is requested, in accordance with subsection (1), properly to prosecute proceedings instituted against a person refuses, or fails within a reasonable time after the making of the request, to do so, the Commonwealth may take over the conduct of the proceedings.

(4) The Commonwealth is liable to pay all the costs of or incidental to proceedings referred to in subsection (1), (2) or (3), being costs payable by the plaintiff in those proceedings, but not including costs unreasonably incurred by the plaintiff.

(5) Where, in accordance with this section, the Commonwealth institutes proceedings in the name of a member of the Forces or a member of a Peacekeeping Force or of a dependant of such a member, or takes over the conduct of proceedings that have been instituted in the name of such a member or of a dependant of such a member:

(a) the Commonwealth may:

(i) settle the proceedings either with or without obtaining judgment in the proceedings; and

(ii) if a judgment is obtained in the proceedings in favour of the plaintiff—take such steps as are necessary to enforce that judgment; and

(b) the member or dependant shall sign any document relevant to the proceedings, including the settlement of the proceedings, that a person acting in the proceedings on behalf of the Commonwealth requires that member or dependant to sign and, if he or she fails to sign any such document, the court or tribunal in which the proceedings are being taken may direct

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that the document be signed on his or her behalf by a person appointed by the court or tribunal for the purpose.

76 Payment of damages to Commonwealth

(1) Where:

(a) a person other than the Commonwealth appears to be liable:

(i) to pay damages to a member of the Forces or a member of a Peacekeeping Force in respect of the incapacity of the member from an injury or disease to the member; or

(ii) to pay damages to a dependant of a deceased member of the Forces or a deceased member of a Peacekeeping Force in respect of the death of the member; and

(b) pension under this Part is payable or has been paid to the member in respect of the same incapacity of the member from that or any other injury or disease or to the dependant in respect of the death of the member;

the Commission may, by notice in writing to the person, require the person, in the event of the person agreeing to pay damages to the member in respect of the incapacity of the member, or to pay damages to the dependant in respect of the death, or in the event of damages against the person being awarded to the member in proceedings instituted in respect of the incapacity of the member, or to the dependant in proceedings instituted in respect of the death, to pay to the Commonwealth so much of the amount of the damages as does not exceed the aggregate, at the time the payment is made to the Commonwealth, of the amounts of pension under this Part that have been paid to the member in respect of the incapacity of the member, or to the dependant in respect of the death of the member, and the person shall comply with the notice.

(2) Subject to subsection (3), where:

(a) a person other than the Commonwealth has agreed:

(i) to pay damages to a member of the Forces or a member of a Peacekeeping Force in respect of the incapacity of the member from an injury suffered by, or a disease contracted by, the member; or

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(ii) to pay damages to a dependant of a deceased member of the Forces or member of a Peacekeeping Force in respect of the death of the member;

and pension under this Part is payable, or has been paid, to the member in respect of the same incapacity of the member from that or any other injury or disease or to the dependant in respect of the death of the member; or

(b) damages against a person other than the Commonwealth have been awarded:

(i) to a member of the Forces or member of a Peacekeeping Force in respect of the incapacity of the member from an injury suffered by, or a disease contracted by, the member; or

(ii) to a dependant of a deceased member of the Forces or member of a Peacekeeping Force in respect of the death of the member;

and pension under this Part is payable, or has been paid, to the member in respect of the same incapacity of the member from that or any other injury or disease or to the dependant in respect of the death of the member;

the Commission may, by notice in writing to the person, require the person to pay to the Commonwealth so much of the amount of the damages as does not exceed the aggregate, at the time the payment is made to the Commonwealth, of the amounts of pension under this Part that have been paid to the member in respect of the incapacity of the member or to the dependant in respect of the death of the member, and the person shall comply with the notice.

(3) Where, before a notice under subsection (2) was received by a person, the person had paid to or in respect of the member or dependant the whole or any part of the damages to which the notice relates:

(a) if the whole of the damages had been paid—the notice has no force or effect; or

(b) if part only of the damages had been paid—the reference in that subsection to the amount of the damages shall be read as a reference to so much of that amount as has not been paid.

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(4) If a person fails to pay an amount to the Commonwealth in pursuance of a notice under this section, the Commonwealth may recover that amount from the person as a debt due to the Commonwealth by action in a court of competent jurisdiction.

(5) The payment of an amount to the Commonwealth in pursuance of a notice under this section is, to the extent of the amount paid, a discharge of the liability of that person to the member or dependant.

(6) In this section, ***damages*** does not include an amount that has been paid in pursuance of a notice under section 51 of the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988*.

77 Discharge of liability of Commonwealth to pay damages

Where:

(a) damages against the Commonwealth have been awarded:

(i) to a member of the Forces or a member of a Peacekeeping Force in proceedings instituted to recover damages in respect of the incapacity of the member from an injury suffered by, or a disease contracted by, the member; or

(ii) to a dependant of a deceased member of the Forces or a member of a Peacekeeping Force in proceedings instituted to recover damages in respect of the death of the member; and

(b) pension under this Part is payable, or has been paid, to the member in respect of the same incapacity of the member from that or any other injury or disease or to the dependant in respect of the death of the member;

the liability of the Commonwealth to pay those damages, or such part of them as does not represent expenses incurred in medical or hospital treatment, shall be deemed to have been discharged to the extent of the aggregate of the amounts of that pension that have been paid to the member or the dependant, as the case may be.

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78 Other payments of compensation

(1) If, after any pension under this Part has been paid:

(a) to a member of the Forces or a member of a Peacekeeping Force in respect of the incapacity of the member from a defence-caused injury or a defence-caused disease; or

(b) to a dependant of a deceased member of the Forces or member of a Peacekeeping Force in respect of the death of the member that was defence-caused;

any compensation is paid under the law of a country other than Australia, or by, or under a scheme arranged by, an international organization, to or in respect of the member in relation to the same incapacity of the member from that or any other injury or disease, or to or in respect of the dependant in relation to the death of the member, the Commonwealth may recover from the member or dependant, as the case may be, by action in a court of competent jurisdiction, an amount equal to so much of the amount of compensation so paid as does not exceed the aggregate of the amounts of pension under this Part that have been so paid to the member or dependant, as the case may be.

(2) The Commission may, by notice in writing to a person (being a claimant for pension under this Part, or a person in receipt of pension under this Part, in respect of the incapacity of a member of the Forces or a member of a Peacekeeping Force from a defence-caused injury or a defence-caused disease or the death of such a member), require the person to furnish to the Commission, within a reasonable period specified in the notice, a statutory declaration stating whether any compensation has been paid to or in respect of the person, or has been claimed by or in respect of the person, under a law of a country other than Australia, or under a scheme arranged by an international organization, in respect of the same incapacity of the member from that or any other injury or disease, or the death of the member, as the case may be.

(3) Where a person refuses or fails to comply with a notice under subsection (2), the right of the person to pension under this Part in respect of the injury, disease or death to which the notice relates,

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and the right of the person to institute or take any proceedings under this Act in relation to that pension or a claim for that pension, are suspended until the statutory declaration is furnished.

(4) Where a person's right to pension under this Part is suspended under subsection (3), the person is not entitled to be paid pension under this Part in respect of the period of the suspension.

(5) In this section:

compensation has the same meaning as it has in section 74.

international organization means:

(a) an organization:

(i) of which 2 or more countries, or the Governments of 2 or more countries, are members; or

(ii) that is constituted by persons representing 2 or more countries, or representing the Governments of 2 or more countries; or

(b) an organization that is:

(i) an organ of, or office within, an organization described in paragraph (a);

(ii) a commission, council or other body established by an organization so described or such an organ; or

(iii) a committee, or subcommittee of a committee, of an organization described in paragraph (a), or of such an organ, council or body.

79 Overpayments of pension

(1) Where:

(a) an amount has been paid:

(i) to a member of the Forces or a member of a Peacekeeping Force as pension under this Part in respect of the incapacity of the member from a defence-caused injury or defence-caused disease; or

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(ii) to a dependant of a deceased member of the Forces or member of a Peacekeeping Force as pension under this Part in respect of the death of the member that was defence-caused; and

(b) by reason of section 25A or 74, that amount was not payable to the member or dependant;

an amount equal to the amount so paid is recoverable from the member or dependant, and may be so recovered, either in whole or in part, by deduction from any amount of pension under this Part payable to the member or dependant.

(2) Subsection (1) does not prevent the recovery of an amount referred to in that subsection otherwise than as provided in that subsection, but an amount shall not be recovered as so provided and also otherwise than as so provided.

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Part IVA—Advance payments of pension and income support supplement

Division 1—General

79A Definition

In this Part:

pension means a pension payable under Part II, III or IV or an income support supplement.

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Division 2—Eligibility for advance payment

79B Eligibility for advance payment

(1) Subject to subsection (2), a person is eligible for an advance payment of an amount of pension only if:
  (a) the pension is payable to the person; and
  (b) throughout the 3 months immediately before the person's application for the advance payment is made, the person was receiving a pension, a social security pension or a social security benefit; and
  (c) the Commission is satisfied that the person will not suffer financial hardship from the reductions to be made in future instalments of the pension to recover the advance payment.

(2) A person is not eligible for an advance payment if:
  (a) the maximum amount of advance payment to which the person would be entitled under Division 5 is less than 1/52 of the person's advance payment eligible amount; or
  (b) the amount of an advance payment of:
    (i) pension; or
    (ii) a social security entitlement under Part 2.22 of the Social Security Act;

  that the person received in full (whether as a single lump sum or in instalments) more than 12 months ago has not been fully repaid; or
  (c) the person owes a debt to the Commonwealth under section 205 or 205A.

  The amount worked out under paragraph (a) must be rounded to the nearest cent (rounding 0.5 cents upwards).

  Note 1: Paragraph (a) does not prevent payment of an advance payment in instalments of less than the amount worked out under that paragraph.

  Note 2: For ***advance payment eligible amount***, see subsection 5Q(1).

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Division 3—Applying for advance payment

79C Application

A person who wants an advance payment of an amount of pension must make a proper application for the advance payment.

79D Who can apply

(1) Subject to subsection (2), the application must be made by:
  (a) the person who wants to receive the advance payment; or
  (b) with the approval of that person—another person on the person's behalf.

(2) If a person is unable, because of physical or mental incapacity, to approve another person to make the application on his or her behalf, the Commission may approve another person to make the application.

79E Making an application

(1) To be a proper application, the application must:
  (a) be made in writing; and
  (b) be in accordance with a form approved by the Commission; and
  (c) be lodged at an office of the Department in Australia in accordance with section 5T.

(2) An application lodged in accordance with section 5T is taken to have been made on a day determined under that section.

79G Applicant must be Australian resident and in Australia

An application is not a proper application unless the person who wants to receive the advance payment is:
  (a) an Australian resident; and
  (b) in Australia;

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on the day on which the application is lodged.

Note: For ***Australian resident*** see section 5G.

79H Application may be withdrawn

(1) An applicant, or a person approved by the applicant, may withdraw an application that has not been determined.

(2) An application that is withdrawn is taken to have not been made.

(3) A withdrawal may be made either orally or by document lodged at an office of the Department in Australia in accordance with section 5T.

(4) A withdrawal by document lodged in accordance with section 5T is taken to have been made on a day determined under that section.

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Division 4—Determination of application and payment of advance payment

79I Commission to determine application

Determination of application

(1) If an application for an advance payment of an amount of pension is made, the Commission must grant the application if it is satisfied that the person is eligible for the advance payment.

Record of determination and reasons

(2) When the Commission makes a determination with respect to an application under subsection (1), it must make a written record of its determination.

(3) The Commission must also make a statement in writing about the determination that:
   (a) sets out the Commission's findings on material questions of fact; and
   (b) refers to the evidence or other material on which those findings are based; and
   (c) provides reasons for the Commission's determination.

Notification of determination

(4) As soon as practicable after the Commission makes a determination with respect to an application under subsection (1), the Commission must give the person who made the application:
   (a) a copy of the record of the Commission's determination; and
   (b) subject to subsection (5), a copy of the statement about the determination referred to in subsection (3); and
   (c) particulars of the right of the person who made the claim to have the determination reviewed by the Commission.

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(5) If the statement referred to in paragraph (4)(b) contains any matter that, in the opinion of the Commission:
   (a) is of a confidential nature; or
   (b) might, if communicated to the person who made the application, be prejudicial to his or her physical or mental health or well-being;

   the copy given to the person is not to contain that matter.

79J Payment of advance payment

(1) Subject to subsection (3), if the application is granted, the advance payment of the pension is to be paid on the next day on which:
   (a) the person is paid an instalment of the pension; and
   (b) it is practicable to pay the advance payment.

(2) The advance payment is to be paid as a lump sum.

(3) The Commission may determine that an advance payment is to be paid on a day stated in the determination.

(4) An advance payment of a pension is not payable if the pension is cancelled or reduced to nil before the day on which the advance payment would be paid apart from this subsection.

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Division 5—Amount of advance payment

79K Amount of advance payment

(1) The amount of an advance payment of pension is the smaller of the following amounts:

(a) the amount of advance payment sought;

(b) the maximum amount of advance payment payable to the person as worked out as follows:

Method statement

Step 1. Work out 3/52 of the person's advance payment eligible amount.

Step 2. Work out the annual rate at which pension was payable to the person on the last payday before the application for the advance payment was made, disregarding:

(a) any amount payable by way of remote area allowance; and

(b) so much of the person's pension supplement amount (if any) as is equal to the person's minimum pension supplement amount.

Step 3. Work out the smaller of the result of step 1 and:

(a) if the pension is a service pension or income support supplement—7.5% of the result of step 2; and

(b) otherwise—13 times the fortnightly rate of pension payable to the person.

Step 4. Subtract the following from the result of step 3:

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	(a) each advance payment (if any) of pension paid to the person during any of the 13 fortnights immediately before the application for the current advance payment was made;
	(b) each other advance payment (if any) of pension paid to the person that has not been fully repaid.
Step 5.	The result of step 4 (rounded to the nearest cent (rounding 0.5 cents upwards)) is the maximum amount of advance payment payable to the person.

Note 1: The amount of the advance payment will be more than the minimum eligible amount for the person (see paragraph 79B(2)(a)).

Note 2: For ***advance payment eligible amount***, see subsection 5Q(1).

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Division 6—Advance payment deductions

79L Advance payment deduction

(1) Subject to subsection (2) and section 79O, an advance payment deduction is to be made from an instalment of pension that is payable to a person if:
   (a) the person has received an advance payment of that pension or of another pension that was previously payable to the person; and
   (b) the person has not yet fully repaid the advance payment; and
   (c) the amount of the advance payment that has not been repaid is not a debt under subsection 205(1AB).

(2) An advance payment deduction is not to be made from a person's instalment of pension on the payday on which the advance payment is paid.

79M Amount of advance payment deduction—basic calculation

Subject to sections 79N, 79O, 79P and 79Q, the advance payment deduction for an advance payment of a pension is the amount of the advance payment divided by 13.

79N Person may request larger advance payment deduction

(1) Subject to subsection (2) and sections 79O, 79P and 79Q, a person's advance payment deduction may be increased to a larger amount if the person asks the Commission in writing for the advance payment deduction to be the larger amount.

(2) Subsection (1) does not apply if the Commission is satisfied that the person would suffer severe financial hardship if the advance payment deduction were the larger amount.

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79O Reduction of advance payment deduction in cases of severe financial hardship

(1) Subject to subsection (2) and sections 79P and 79Q, if:

(a) a person applies in writing to the Commission for an advance payment deduction to be decreased, or to be stopped, because of severe financial hardship; and

(b) the Commission is satisfied that:

(i) the person's circumstances are exceptional and could not reasonably have been foreseen at the time of the person's application for the advance payment; and

(ii) the person would suffer severe financial hardship if the advance payment deduction that would otherwise apply were to continue;

the Commission may determine in writing that, for the period stated in the determination, the advance payment deduction is to be the lesser amount (which may be a nil amount) stated in the determination.

(2) At any time while the determination is in force, the Commission may:

(a) vary the determination so as to require to be deducted from the person's instalments of pension an advance payment deduction larger than the deduction (if any) previously applying under the determination, but smaller than the deduction applying immediately before the determination; or

(b) revoke the determination;

but only if the Commission is satisfied that the person would not suffer severe financial hardship because of the variation or revocation.

(3) A variation or revocation of a determination must be in writing.

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79P The final advance payment deduction

If an advance payment deduction that would otherwise be deducted from a person's instalment of pension exceeds the part of the advance payment that the person has not yet repaid (by previous deductions under this Division or otherwise), the amount of that advance payment deduction equals the part that the person has not yet repaid.

Example:

Facts: Anne has been paid an advance of $450. Anne's payment deduction is worked out under section 79M as follows:

$$\$450 \div 13 = \$34.62$$

(The amount is rounded to the nearest cent under section 79R.).

Anne has requested that the advance payment deduction be the larger amount of $55 (see section 79N), so that the advance will be repaid sooner.

Result: If $55 is deducted from Anne's fortnightly instalment of pension, $440 will have been repaid after 8 successive fortnights, leaving $10 unpaid. Under this section, the final advance payment deduction will be $10.

79Q Payment rate insufficient to cover advance payment deduction

If the instalment of pension (excluding remote area allowance in the case of a pension payable under Part III or income support supplement) is less than the amount that would be the advance payment deduction apart from this section, the advance payment deduction is taken to be equal to that instalment of pension.

79R Rounding of amounts

An amount worked out under this Division is to be rounded to the nearest cent (rounding half a cent upwards).

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79S Unrepaid advance payments to deceased partner to be disregarded

(1) In calculating, for the purposes of this Act, an amount of pension that would have been paid to a deceased person if the person had not died, any advance payment of pension that has been made to the person and has not been repaid is to be disregarded.

(2) Subsection (1) does not affect the liability of the estate of the deceased person to repay to the Commonwealth so much of the advance payment as has not been repaid.

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Division 7—Review by Commission

79T Request for review

(1) A pensioner who is dissatisfied with a decision of the Commission in relation to an advance payment of an amount of pension may request the Commission to review the decision.

(2) The request must:
  (a) be made within 3 months after the person seeking the review was notified of the decision; and
  (b) be in writing; and
  (c) set out the grounds on which the request is made; and
  (d) be lodged at an office of the Department in Australia in accordance with section 5T.

(2A) A request lodged in accordance with section 5T is taken to have been made on a day determined under that section.

(3) If a request for review is made in accordance with subsection (2), the Commission must review the decision.

(4) If the Commission has delegated its power under this section to the person who made the decision under review, that person must not review the decision.

79U Commission's powers

If the Commission reviews a decision under this Division, the Commission must:
  (a) affirm the decision; or
  (b) set it aside and substitute a new decision for it.

Note: For the Commission's evidence-gathering powers see section 79X.

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79V Commission must make written record of review decision and reasons

(1) When the Commission reviews a decision under this Division, it must make a written record of its decision upon review.

(2) The written record must include a statement that:
  (a) sets out the Commission's findings on material questions of fact; and
  (b) refers to the evidence or other material on which those findings are based; and
  (c) provides reasons for the Commission's decision.

79W Person who requested review to be notified of decision

(1) When the Commission affirms or sets aside a decision under this Division, it must give to the person who requested the review of the decision:
  (a) a copy of the Commission's decision; and
  (b) subject to subsection (2), a copy of the statement referred to in subsection 79V(2) relating to the decision; and
  (c) a statement giving particulars of the person's right to apply to the Administrative Appeals Tribunal for a review of the Commission's decision.

(2) If the statement referred to in paragraph (1)(b) contains any matter that, in the opinion of the Commission:
  (a) is of a confidential nature; or
  (b) may, if communicated to the person who requested review, be prejudicial to his or her physical or mental health or well-being;

  the copy given to the person is not to contain that matter.

79X Powers of Commission to gather evidence

(1) For the purposes of a review, the Commission may:

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(a) summon a person to appear at a hearing of the review to give evidence and to produce such documents (if any) as are referred to in the summons; and
(b) require a person appearing at a hearing of the review for the purpose of giving evidence either to take an oath or to make an affirmation; and
(c) administer an oath or affirmation to a person so appearing; and
(d) adjourn a hearing of the review from time to time.

(2) The person who applied for the review under this Division is a competent and compellable witness upon the hearing of the review.

(3) The Commission's power under subsection (1) to take evidence on oath or affirmation:
(a) may be exercised on behalf of the Commission by:
(i) the presiding member; or
(ii) by another person (whether a member or not) authorised by the presiding member; and
(b) may be exercised within or outside Australia; and
(c) must be exercised subject to any limitations specified by the Commission.

(4) If a person is authorised under subparagraph (3)(a)(ii) to take evidence for the purposes of a review, the person has all the powers of the Commission under subsection (1) for the purposes of taking that evidence.

79Y Withdrawal of request for review

(1) A person who requests a review under section 79T may withdraw the request at any time before it is determined by the Commission.

(2) To withdraw the request, the person must give written notice of withdrawal to the Secretary and the notice must be lodged at an office of the Department in Australia in accordance with section 5T.

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Section 79Y

(3) Subject to subsection 79T(2), a person who withdraws a request for review may subsequently make another request for review of the same decision.

Note: Subsection 79T(2) provides that a person who wants to request a review of a decision must do so within 3 months after the person has received notice of the decision.

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Part V—Medical and other treatment

80 Interpretation

(1) In this Part, unless the contrary intention appears, ***treatment*** means treatment provided, or action taken, with a view to:

(a) restoring a person to, or maintaining a person in, physical or mental health;

(b) alleviating a person's suffering; or

(c) ensuring a person's social well-being;

and, without limiting the generality of the foregoing, includes:

(d) the provision of accommodation, medical procedures, nursing care, social or domestic assistance or transport;

(e) the supply, renewal, maintenance and repair of artificial replacements, and surgical and other aids and appliances; and

(f) the provision of diagnostic and counselling services;

for the purposes of, or in connection with, any such treatment or action.

(2) In this Part:

(b) a reference to a country area of a State shall be read as a reference to a part of that State, outside the metropolitan area of the capital city of that State, determined by the Commission, by instrument in writing, to be a country area of that State for the purposes of this Part; and

(c) a reference to a veteran shall be read as a reference to a person who is a veteran as defined by paragraph (a) of the definition of ***veteran*** in subsection 5C(1) other than a person who:

(i) is a veteran as so defined by reason only that the person has rendered service as described in item 3 of the table in subsection 6A(1) or as described in subsection 6C(2); and

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(ii) has not satisfied the Commission, whether before or after the commencement of this paragraph, that the person was domiciled in Australia or an external Territory immediately before the person's appointment or enlistment for that service.

Note: Section 11B may affect a person's domicile immediately before appointment or enlistment.

81 Application of Part V

(1) Without prejudice to its effect apart from this subsection, this Part has effect in relation to a person who is, or has been:

(a) a member of the Forces as defined by subsection 68(1); or

(b) a member of a Peacekeeping Force as defined by subsection 68(1);

and in relation to a dependant of such a person who has died, in like manner as it has effect in relation to a veteran and a dependant of a deceased veteran, respectively.

(2) For the purpose of the application of this Part in accordance with subsection (1):

(a) a reference in this Part to a veteran shall be read as a reference to a member of the Forces, or a member of a Peacekeeping Force, as defined by subsection 68(1);

(b) a reference in this Part to a pension (other than a service pension), or to a pension under Part II shall be read as a reference to a pension under Part IV;

(c) a reference in this Part to a war-caused injury shall be read as a reference to a defence-caused injury;

(d) a reference in this Part to a war-caused disease shall be read as a reference to a defence-caused disease; and

(e) a reference in this Part to the death of a veteran that was war-caused shall be read as a reference to the death of a member of the Forces, or member of a Peacekeeping Force, as defined by subsection 68(1), that was defence-caused.

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84 Provision of treatment

(1A) If treatment could be provided for a person consistently with this Part, the Commission must take reasonable steps to ensure that the treatment is provided for the person consistently with this Part.

(1B) In subsection (1A), a reference to this Part includes a reference to the instruments made, and arrangements entered into, by the Commission under this Part.

(1) The Commission may arrange for the provision of treatment for veterans and other persons eligible to be provided with treatment under this Part:

(b) at a hospital or other institution in accordance with arrangements referred to in paragraph 89(1)(b) or (c); or

(c) otherwise.

(2) Subject to subsection (3), the Commission is not taken to have arranged for the provision of treatment for a person unless:

(a) the treatment was provided in accordance with arrangements made by the Commission under this Part; or

(b) the treatment was provided in the circumstances in which, and in accordance with the conditions subject to which, the treatment may be provided under this Part; or

(c) the Commission approved the provision of the treatment before the treatment was given, or began to be given, as the case may be.

(3) Where the Commission is satisfied that treatment was provided, or commenced to be provided, without the prior approval of the Commission, for an injury suffered, or disease contracted by a person:

(a) at any time during the period from and including the date as from which the person has become eligible to be provided with treatment for that injury or disease to and including the date on which the determination was made by virtue of which the person has become eligible to be provided with treatment under this Part for that injury or disease; or

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(b) in circumstances in which it would be proper for the Commission to approve provision of the treatment after it had been given or had commenced to be given;

the Commission may, in its absolute discretion, approve the provision of that treatment and, if it does so, the Commission shall be deemed to have arranged for the provision of that treatment.

(3A) If:

(a) the Commission is satisfied that an entity, other than the Commission, has arranged for the provision of treatment for a person eligible to be provided with treatment under this Part; and

(b) the treatment is of a kind mentioned in paragraph 90(1B)(a) and specified in the Treatment Principles;

then the Commission may, in accordance with the Treatment Principles as they relate to paragraph 90(1B)(b), accept financial responsibility for particular costs in relation to that treatment (including amounts of subsidy payable under Chapter 3 of the *Aged Care Act 1997* or of the *Aged Care (Transitional Provisions) Act 1997*).

(4) Nothing in this Part shall be taken to:

(a) impose a duty on the Commission to arrange for the provision of; or

(b) confer a right on a person to be provided, under arrangements made by the Commission, with;

treatment for a particular injury or disease, treatment of a particular kind for an injury or disease or treatment for an injury or disease outside Australia.

(5) Subject to subsection (1A), nothing in this Part shall be taken to confer on a person a right to be provided with treatment for an injury or disease:

(a) by the Commonwealth; or

(b) by the Commission otherwise than to the extent that, and in a manner that, it may be provided under arrangements made by, or with the approval of, the Commission.

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85 Veterans eligible to be provided with treatment

(1) Where a determination under this Act is in force determining that an injury suffered by a veteran is a war-caused injury or that a disease contracted by a veteran is a war-caused disease, the veteran is eligible to be provided with treatment under this Part for that injury or disease from and including:

(a) the date as from which a pension, or increased pension, is granted to the veteran under Part II in respect of his or her incapacity from that injury or disease; or

(b) the date as from which such a pension or increased pension would have been granted to the veteran if the extent of the incapacity of the veteran from the injury or disease had not been insufficient to justify the grant of, or increase of, a pension under Part II.

Note: A veteran might stop being eligible to be provided with treatment under this Part for an injury or disease if the veteran is entitled to treatment under the MRCA for the injury or disease (see sections 85A and 85B of this Act).

(2) A veteran is eligible to be provided with treatment under this Part for malignant neoplasia or pulmonary tuberculosis from and including the date that is 3 months before the date on which the application to be provided with that treatment is lodged at an office of the Department in Australia in accordance with section 5T.

Note 1: A veteran or other person may be eligible to be provided with treatment under this Part for mental health conditions (such as post-traumatic stress disorder, alcohol use disorder or substance use disorder) and other conditions under a determination made under section 88A.

Note 1A: A veteran or other person may be eligible to be provided with treatment, being treatment that is the provision of services under the program established by the Commonwealth and known as the Veteran Suicide Prevention pilot, in accordance with section 88B.

Note 2: A veteran might stop being eligible to be provided with treatment under this Part for an injury or disease if the veteran is entitled to treatment under the MRCA for the injury or disease (see sections 85A and 85B of this Act).

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(2A) A person is eligible to be provided with treatment under this Part for an injury (within the meaning of the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988*) if, as a result of table item 3 of the table in subsection 144B(3) of that Act, this subsection applies to the person and the injury.

(3) Where a veteran:

(a) is in receipt of a pension under Part II at the general rate or at a higher rate; or

(b) is in receipt of a pension under Part II in respect of incapacity from a war-caused injury or a war-caused disease of a kind described in column 1 of the table in subsection 27(1);

the veteran is eligible to be provided, from and including the date as from which a pension is so payable to the veteran, with treatment under this Part for any injury suffered, or disease contracted, by the veteran, whether before or after the commencement of this Act.

(4) Where:

(a) a veteran rendered, while a member of the Defence Force, continuous full-time service during World War 1;

(aa) a female veteran rendered, while a member of the Defence Force, service of the kind referred to in subparagraph 7A(1)(a)(i) during the period referred to in paragraph (b) of the definition of ***period of hostilities*** in subsection 5B(1);

(b) before the MRCA commencement date a veteran was, while a member of the Defence Force, a prisoner of war during a war to which this Act applies or while serving on operational service; or

(c) the veteran is a person who was an eligible civilian within the meaning of subsection 5C(1) and was, while he or she was such a civilian, detained by the enemy during World War 2;

the veteran is eligible to be provided, from and including the date on which the veteran's application to be provided with treatment is lodged at an office of the Department in Australia in accordance with section 5T, with treatment under this Part for any injury

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suffered, or disease contracted, by the veteran, whether before or after the commencement of this Act.

(4A) A veteran is eligible to be provided with treatment under this Part for any injury suffered, or disease contracted, by the veteran, whether before or after the commencement of this Act, if:

(a) the veteran is 70 or over; and

(b) the veteran has rendered qualifying service during the period covered by paragraph (b) of the definition of ***period of hostilities*** in subsection 5B(1); and

(c) either:

(i) the Department has notified the veteran in writing that he or she is or will be eligible for such treatment; or

(ii) the veteran has, by written document lodged at an office of the Department in Australia in accordance with section 5T, notified the Department that he or she seeks eligibility for such treatment.

(4B) A veteran is eligible to be provided with treatment under this Part for any injury suffered, or disease contracted, by the veteran, whether before or after the commencement of this Act, if:

(a) the veteran is 70 or over; and

(b) the veteran has rendered qualifying service within the meaning of subparagraph 7A(1)(a)(ii), (iii), (iv), (v) or (vi) or paragraph 7A(1)(b), (c) or (f); and

(c) either:

(i) the Department has notified the veteran in writing that he or she is or will be eligible for such treatment; or

(ii) the veteran has, by written document lodged at an office of the Department in Australia in accordance with section 5T, notified the Department that he or she seeks eligibility for such treatment.

(4C) A notification by the veteran under subparagraph (4A)(c)(ii) or (4B)(c)(ii) that is lodged in accordance with section 5T is taken to have been made on a day determined under that section.

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(5) A veteran referred to in section 53D is eligible to be provided with treatment under this Part for any injury suffered, or disease contracted, by the veteran, whether before or after the commencement of this Act.

(7) Where a veteran:

(a) is in receipt of a pension under Part II at a rate not less than 50 per centum of the general rate; and

(b) is also in receipt of a service pension under Part III;

the veteran is, from and including:

(c) the date as from which that pension under Part II became so payable to the veteran; or

(d) the date as from which that service pension became payable to the veteran;

whichever is the later date, eligible to be provided with treatment under this Part for any injury suffered, or disease contracted, by the veteran, whether before or after the commencement of this Act.

(7A) A veteran is eligible to be provided with treatment under this Part for any injury or disease if:

(a) the veteran is receiving a service pension under Part III; and

(b) an impairment suffered by the veteran from one or more service injuries or diseases constitutes at least 30 impairment points (within the meaning of the MRCA); and

(c) the treatment is provided after both paragraphs (a) and (b) begin to apply to the veteran; and

(d) the veteran is not already being provided with treatment for any injury or disease under Chapter 6 of the MRCA.

(8) Where a service pension is suspended, the Commission may, by instrument in writing, determine, for the purposes of the application of the provisions of this section to and in relation to the person to whom the pension was granted, that that person shall be treated as if he or she were continuing to receive that pension during the period, or a specified part of the period, of the suspension.

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(9) Where:

(a) a veteran, while a member of the Defence Force, rendered continuous full-time service outside Australia in the area described in item 4 or 8 of Schedule 2 (in column 1) while that area was an operational area, whether or not the veteran rendered that service:

(i) as a member of a unit of the Defence Force that was allotted for duty; or

(ii) as a person who was allotted for duty;

in that area; and

(b) the Commission is satisfied that the veteran requires urgent treatment for an injury suffered, or disease contracted, by the veteran, whether before or after the commencement of this Act;

the veteran is eligible to be provided with treatment under this Part for that injury or disease:

(c) at a hospital formerly operated and maintained by the Commission, if the Commission is satisfied that provision of that treatment will not adversely affect the capacity of the person operating the hospital to provide treatment at that hospital for veterans eligible to be provided with treatment by virtue of a preceding subsection or dependants of veterans eligible to be provided with treatment by virtue of subsection 86(1), (2), (3) or (4);

(d) at a hospital in a country area of a State operated by that State, being a hospital in respect of which the Commission has entered into arrangements of a kind referred to in paragraph 89(1)(b); or

(e) at a hospital in a Territory, being a hospital operated by the Commonwealth or the Government of that Territory in respect of which the Commission has entered into arrangements of a kind referred to in paragraph 89(1)(b).

(10) Where a veteran has been provided with treatment at a hospital under subsection (9) for an injury or disease, the Commission may provide further treatment for that injury or disease otherwise than

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at a hospital of a kind referred to in that subsection if it is of the opinion that that further treatment is desirable.

(11) Where a veteran would, but for the operation of section 26, 30C, 30D or 74, be in receipt of a pension under Part II:

(a) at a rate referred to in paragraph (3)(a) or (7)(a) of this section; or

(b) in respect of incapacity of a kind referred to in paragraph (3)(b) of this section;

subsection (3) or (7), as the case requires, of this section applies to the veteran as if the veteran were in receipt of that pension.

(12) Where a veteran is, under a preceding subsection of this section, eligible to be provided with treatment under this Part for an injury suffered, or disease contracted, by the veteran from and including a particular date and is also, under another preceding subsection of this section, eligible to be provided with treatment under this Part for that injury or disease from and including an earlier date, the Commission may arrange for the veteran to be provided with treatment for that injury or disease from and including that earlier date.

(13) If:

(a) immediately before 1 January 2017, a veteran was receiving a service pension under Part III; and

(b) the Commission is satisfied that the rate of that pension is nil on 1 January 2017 because of the operation of the amendments made by Part 1 of Schedule 3 to the *Social Services Legislation Amendment (Fair and Sustainable Pensions) Act 2015*;

then, for the purposes of paragraph (7)(b) or (7A)(a), on and after 1 January 2017 the veteran is taken to be receiving a service pension under Part III.

(14) If:

(a) a veteran begins to receive a veteran payment on a day; and

(b) on the day before that day the veteran was receiving a service pension under Part III;

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then, for the purposes of paragraph (7)(b) or (7A)(a), the veteran is taken to be receiving a service pension under Part III while the veteran is receiving that veteran payment.

85A Treatment under section 279 or 280 of the MRCA for aggravated injuries or diseases

(1) This section applies if:

(a) a person is entitled to treatment for an aggravated injury or disease (within the meaning of the MRCA) under section 279 or 280 of the MRCA; and

(b) apart from this section, the person would also be eligible to be provided with treatment for the original injury or disease under subsection 85(1) or (2) of this Act.

Note: A person who is eligible to be provided with treatment under this Act for any injury or disease would continue to be provided with that treatment.

(2) The person is entitled to treatment only under section 279 or 280 of the MRCA, and not under subsection 85(1) or (2) of this Act, for the original injury or disease during the period in which the person is provided with treatment for the aggravated injury or disease.

(3) During this period, the treatment for the original injury or disease is taken to be treatment to which a person is entitled under Part 3 of Chapter 6 of the MRCA for the purposes of section 289 of that Act (***compensable treatment***) but not for the purposes of section 288A of that Act (compensation for those entitled to treatment).

85B Treatment under section 279 or 280 of the MRCA if a person is entitled to treatment under the VEA for a separate injury or disease

(1) This section applies if:

(a) a person is entitled to treatment for a service injury or disease (within the meaning of the MRCA) under section 279 or 280 of the MRCA; and

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(b) apart from this section, the person would also be eligible to be provided with treatment for a separate war-caused or defence-caused injury or disease under subsection 85(1) or (2) of this Act.

Note: A person who is eligible to be provided with treatment under this Act for any injury or disease would continue to be provided with that treatment.

(2) The person is entitled to treatment only under section 279 or 280 of the MRCA, and not under subsection 85(1) or (2) of this Act, for the war-caused or defence-caused injury or disease during the period in which the person is provided with treatment for the service injury or disease.

(3) During this period, the treatment for the war-caused or defence-caused injury or disease is taken to be treatment to which a person is entitled under Part 3 of Chapter 6 of the MRCA for the purposes of section 289 of that Act (***compensable treatment***) but not for the purposes of section 288A of that Act (compensation for those entitled to treatment).

86 Dependants eligible to be provided with treatment

(1) Where a determination under this Act is in force determining that the death of a veteran is war-caused, a dependant of the deceased veteran is eligible to be provided with treatment under this Part for any injury suffered, or disease contracted, by the dependant, whether before or after the commencement of this Act, from and including the date as from which a pension under Part II became payable to the dependant or would have become payable to the dependant but for the operation of subsection 13(7), 30(3), 30C(2) or (4) or 30D(1) or (3) of this Act or the dependant being in receipt of a pension under the Social Security Act.

(2) Where:

(a) a deceased veteran was, immediately before the veteran's death, in receipt of a pension under Part II at the rate specified in subsection 22(4) or 24(4) or (6) or at a rate that had been increased under section 27 by reason that the

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veteran's pension was in respect of incapacity of a kind described in item 1, 2, 3, 4, 5, 6, 7 or 8 in the table in subsection 27(1); or

(b) a pension has been granted under Part II, after the death of a veteran, in respect of the veteran at the rate specified in subsection 22(4) or 24(4) or (6) or at a rate that had been increased under section 27 by reason that the veteran's pension was in respect of incapacity of a kind described in item 1, 2, 3, 4, 5, 6, 7 or 8 of the table in subsection 27(1); or

(c) a deceased veteran was, before the MRCA commencement date, a prisoner of war at a time when the veteran was on operational service;

a dependant of the deceased veteran is eligible to be provided with treatment under this Part for any injury suffered, or disease contracted, by the dependant, whether before or after the commencement of this subsection, from and including the day immediately following the day on which the veteran died.

(2A) A reinstated pensioner is eligible to be provided with treatment under this Part for any injury suffered or disease contracted by the pensioner whether before or after the commencement of this Act. The pensioner is eligible from and including the date as from which a pension under Part II:

(a) became payable to the pensioner; or

(b) would have become payable except for:

(i) the operation of subsection 30(3); or

(ii) the pensioner being in receipt of a pension under the Social Security Act.

(3) A child of a deceased veteran who is in receipt of, is eligible to receive or would, but for subsection 13(7), be eligible to receive a pension under Part II by virtue of subsection 13(4) is eligible to be provided with treatment under this Part for any injury suffered, or disease contracted, by the child, whether before or after the commencement of this Act.

(4) A child of a deceased veteran is eligible to be provided with treatment under subsection (3) from and including:

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(a) subject to paragraph (b)—the day (in this subsection referred to as the ***relevant day***) immediately following the day on which the veteran died; or

(b) if the Commission is satisfied that the child was then being maintained by a parent, adoptive parent or step-parent, the earliest day after the relevant day as from which the Commission is satisfied that the child was not being so maintained.

(5) Where the Commission is satisfied that a dependant of a veteran referred to in paragraph 85(9)(a) requires urgent treatment for an injury suffered, or disease contracted, by the dependant, whether before or after the commencement of this Act, the dependant is eligible to be provided with treatment under this Part for that injury or disease:

(a) at a hospital formerly operated and maintained by the Commission, if the Commission is satisfied that provision of the treatment will not affect the capacity of the person operating the hospital to provide treatment at that hospital for veterans eligible to be provided with treatment by virtue of subsection 85(1), (2), (3), (4), (5), (7) or (8) or dependants of veterans eligible to be provided with treatment by virtue of a preceding subsection of this section; or

(b) at a hospital in a country area of a State operated by that State, being a hospital in respect of which the Commission has entered into arrangements of a kind referred to in paragraph 89(1)(b); or

(c) at a hospital in a Territory, being a hospital operated by the Commonwealth or the Government of that Territory in respect of which the Commission has entered into arrangements of a kind referred to in paragraph 89(1)(b).

(6) Where a dependant of a veteran has been provided with treatment at a hospital under subsection (5) for an injury or disease, the Commission may provide further treatment for the dependant for that injury or disease otherwise than at a hospital of a kind referred to in that subsection if it is of the opinion that that further treatment is desirable.

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88A Commission may determine specified veterans and others are eligible to be provided with specified treatment

(1) The Commission may, by written determination, state the following:

(a) that a veteran included in a specified class is eligible to be provided with treatment of a specified kind under this Part;

(b) that a person who is the dependant of a veteran and who is in a specified class is eligible to be provided with treatment of a specified kind under this Part;

(c) that a person who was the dependant of a veteran and who is in a specified class is eligible to be provided with treatment of a specified kind under this Part;

(d) that a person who is not covered by paragraph (a), (b) or (c) and who is in a specified class is eligible to be provided with treatment of a specified kind under this Part.

Variation or revocation

(2) The Commission may, by written determination, vary or revoke a determination under subsection (1).

Legislative instrument

(3) A determination under this section is a legislative instrument.

88B Provision of services under the Veteran Suicide Prevention pilot

(1) A person is eligible to be provided with treatment under this Part, being treatment that is the provision of services under the program established by the Commonwealth and known as the Veteran Suicide Prevention pilot, if the person is included in a class of persons determined in an instrument under subsection (2).

(2) The Commission may, by legislative instrument, determine a class of persons for the purposes of subsection (1).

(3) Despite subsection 14(2) of the *Legislation Act 2003*, an instrument under subsection (2) of this section may make provision in relation

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to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time.

89 Treatment at hospitals and other institutions

(1) For the purposes of this Part, the Commission may:

(a) establish, operate and maintain hospitals or other institutions for the care and welfare of persons eligible to be provided with treatment under this Part;

(b) enter into arrangements with the appropriate authority of the Commonwealth, a State or a Territory for the provision, at a hospital or other institution operated by the Commonwealth, the State or the Government of the Territory, as the case may be, of care and welfare for persons eligible to be provided with treatment under this Part; and

(c) enter into arrangements with the body (other than an authority referred to in paragraph (b)) operating a hospital or other institution for the provision, at that hospital or institution, of care and welfare for persons eligible to be provided with treatment under this Part.

(2) In subsection (1), a reference to a hospital or other institution is to be read as including a reference to a home, a hostel, a medical centre, an out-patient clinic and a rehabilitation or training establishment.

90 Treatment Principles

(1) The Commission may, in writing, determine principles setting out circumstances in which, and conditions subject to which, treatment of a particular kind, or included in a particular class of treatment, may be provided under this Part for, or in respect of, eligible persons:

(b) at a hospital or other institution in respect of which the Commission has entered into arrangements under paragraph 89(1)(b) or (c); or

(c) otherwise under this Part.

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Note: For ***eligible person***, see subsection (8).

(1A) A determination under subsection (1) may also include provisions dealing with the following matters in relation to treatment to be provided to an eligible person:

(a) whether approval by the Commission of the treatment is required;

(b) if approval by the Commission of the treatment is required—the exercise of the Commission's power to approve the treatment, whether before or after the treatment is given or begins to be given;

(c) where the treatment may be provided.

(1B) A determination under subsection (1) may also include provisions:

(a) specifying kinds of treatment for the purposes of paragraph 84(3A)(b); and

(b) specifying the circumstances in which, and the extent to which, the Commission may accept financial responsibility for particular costs relating to that treatment (including amounts of subsidy payable under Chapter 3 of the *Aged Care Act 1997* or of the *Aged Care (Transitional Provisions) Act 1997*).

(2) Without limiting the generality of subsection (1), a determination under that subsection may specify kinds or classes of treatment that will not be provided for, or in respect of, eligible persons under this Part, or will not be so provided at places, or in circumstances, specified or described in the determination.

Determination must be approved by the Minister

(3) A determination under subsection (1) has no effect unless the Minister has approved it in writing.

(4) A determination under subsection (1) approved by the Minister and as in force from time to time is the ***Treatment Principles***.

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Variation or revocation of Treatment Principles

(5) The Commission may, by written determination, vary or revoke the Treatment Principles.

(6) A determination under subsection (5) has no effect unless the Minister has approved it in writing.

Legislative instruments

(7) A determination under subsection (1) or (5) made by the Commission and approved by the Minister is a legislative instrument made by the Minister on the day on which the determination is approved.

Incorporation of other instruments

(7A) Despite subsection 14(2) of the *Legislation Act 2003*:

(a) a determination under subsection (1); or

(b) a determination under subsection (5) varying the Treatment Principles;

may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time.

Treatment Principles are binding on the Commission

(7B) The Treatment Principles are binding on the Commission in the exercise of its powers and discretions under this Part.

Eligible person

(8) In this section ***eligible person*** means a person eligible under section 85, 86, 88A or 88B to be provided with treatment.

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90AA Provision of services under the Coordinated Veterans' Care mental health pilot

(1) Despite section 90, a person is entitled to services under the program established by the Commonwealth and known as the Coordinated Veterans' Care mental health pilot only if:

(a) the person is included in a class of persons determined in an instrument under subsection (2); and

(b) the Commission has determined, in writing, that this section applies to the person.

(2) The Commission may, by legislative instrument, determine a class of persons for the purposes of paragraph (1)(a).

(3) Despite subsection 14(2) of the *Legislation Act 2003*, an instrument under subsection (2) of this section may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time.

(4) A determination under paragraph (1)(b) is not a legislative instrument.

90A Repatriation Private Patient Principles

(1) The Commission may, in writing, determine principles setting out the circumstances in which treatment provided by the Commission to eligible persons is to be provided to them as private patients.

Note: For ***eligible person***, see subsection (9).

(2) A determination under subsection (1) may also include provisions dealing with the following matters in relation to treatment to be provided to an eligible person as a private patient:

(a) whether approval by the Commission of the treatment is required;

(b) if approval by the Commission of the treatment is required—the exercise of the Commission's power to approve the

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treatment, whether before or after the treatment has been given or begun;

(c) where the treatment may be provided.

Determination must be approved by the Minister

(3) A determination under subsection (1) has no effect unless the Minister has approved it in writing.

(4) A determination under subsection (1) approved by the Minister and as in force from time to time is the ***Repatriation Private Patient Principles***.

Variation or revocation of Repatriation Private Patient Principles

(5) The Commission may, by written determination, vary or revoke the Repatriation Private Patient Principles.

(5A) A determination under subsection (5) has no effect unless the Minister has approved it in writing.

Legislative instruments

(5B) A determination under subsection (1) or (5) made by the Commission and approved by the Minister is a legislative instrument made by the Minister on the day on which the determination is approved.

Incorporation of other instruments

(5C) Despite subsection 14(2) of the *Legislation Act 2003*:

(a) a determination under subsection (1); or

(b) a determination under subsection (5) varying the Repatriation Private Patient Principles;

may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time.

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(6) Section 12 of the *Legislation Act 2003* has effect in relation to a determination referred to in subsection (5B) as if a reference in that section to the day when the instrument is registered were a reference to the day on which the Minister approved the determination.

When treatment is provided as a private patient

(8) For the purposes of this section, treatment is taken to be provided to a person as a private patient if:
   (a) the treatment is provided to the person as a person who is, for the purposes of the *Health Insurance Act 1973*, a private patient of a hospital; or
   (b) the treatment is provided to the person by a medical specialist to whom the person has been referred but is not provided at a hospital.

Eligible person

(9) In this section:

eligible person means a person eligible under section 85 or 86 to be provided with treatment.

90B Application of Repatriation Private Patient Principles

(1) The Commission may, by notice published in the *Gazette*, declare that the Repatriation Private Patient Principles are to apply in relation to a specified State or Territory from a specified day.

(2) If the Commission publishes a notice under subsection (1) declaring that the Repatriation Private Patient Principles are to apply in relation to a specified State or Territory from a specified day, then, on and after the specified day, for so long as the notice remains in force, the Repatriation Private Patient Principles are binding on the Commission in the exercise of its powers and discretions under this Part in relation to the provision of treatment in the State or Territory.

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91 Repatriation Pharmaceutical Benefits Scheme

(1) The Commission may, in writing, determine a scheme for the provision of pharmaceutical benefits to persons eligible to be provided with treatment under this Part.

Note: For ***pharmaceutical benefits***, see subsection (9).

(1A) Without limiting the generality of subsection (1), a determination under that subsection may specify classes of persons eligible to be provided with treatment under this Part for whom pharmaceutical benefits, or pharmaceutical benefits of a kind specified in the determination or included in a class of pharmaceutical benefits so specified, will not be so provided or will not be so provided in circumstances specified or described in the determination.

Determination must be approved by the Minister

(2) A determination under subsection (1) has no effect unless the Minister has approved it in writing.

(3) A determination under subsection (1) approved by the Minister and as in force from time to time is the ***Repatriation Pharmaceutical Benefits Scheme***.

Variation or revocation of Repatriation Pharmaceutical Benefits Scheme

(4) The Commission may, by written determination, vary or revoke the Repatriation Pharmaceutical Benefits Scheme.

(5) A determination under subsection (4) has no effect unless the Minister has approved it in writing.

Legislative instruments

(5A) A determination under subsection (1) or (4) made by the Commission and approved by the Minister is a legislative instrument made by the Minister on the day on which the determination is approved.

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Incorporation of other instruments

(5B) Despite subsection 14(2) of the *Legislation Act 2003*:

(a) a determination under subsection (1); or

(b) a determination under subsection (4) varying the Repatriation Pharmaceutical Benefits Scheme;

may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time.

Inquiry by Pharmaceutical Benefits Remuneration Tribunal

(6) Where the Pharmaceutical Benefits Remuneration Tribunal established under the *National Health Act 1953* is holding, or proposes to hold, an inquiry under that Act to ascertain whether the Commonwealth price of all or any pharmaceutical benefits under that Act should be varied, the Minister may request that Tribunal to extend its inquiry to include the question whether the prices payable to pharmaceutical chemists in respect of the supply by them, in accordance with the Repatriation Pharmaceutical Benefits Scheme under this section or a pharmaceutical benefits determination under section 286 of the MRCA, of pharmaceutical benefits of the kinds specified by the Minister in his or her request should be varied and, where such a request is made, the Tribunal shall comply with the request.

(7) After completion of an inquiry referred to in subsection (6), the Pharmaceutical Benefits Remuneration Tribunal shall submit to the Minister:

(a) the recommendations of the Tribunal on the question the subject of the request made by the Minister under subsection (6); and

(b) where the Tribunal has submitted to the Minister administering Part VII of the *National Health Act 1953* a report in connection with that inquiry—a copy of that report.

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(8) If the Pharmaceutical Benefits Remuneration Tribunal submits the recommendations and a copy of the report to the Minister:
   (a) the Commission may, under subsection (4), vary the Repatriation Pharmaceutical Benefits Scheme; or
   (b) the Military Rehabilitation and Compensation Commission may, under subsection 286(5) of the MRCA, vary the pharmaceutical benefits determination under section 286 of the MRCA;

   in any manner the relevant Commission considers desirable as a result of its consideration of the recommendations and the report.

Pharmaceutical benefits

(9) In this section:

pharmaceutical benefits means drugs, medicinal preparations and other pharmaceutical items (including aids to treatment and dressings) for the treatment of sicknesses or injuries suffered by human beings.

92 Counselling services and psychiatric assessment

(1) The Commission may, with the approval of the Minister, arrange for the provision of:
   (a) counselling services for:
      (i) veterans and dependants of veterans; and
      (ii) a person in a class in respect of which a determination under paragraph 88A(1)(c) has been made; and
      (iii) a person included in a class of persons specified in an instrument under subsection (2); and
   (b) psychiatric assessment of a person in a class in respect of which a determination under paragraph 88A(1)(b) or (c) has been made.

(2) The Commission may, by legislative instrument, specify a class of persons for the purposes of subparagraph (1)(a)(iii).

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93 Recovery of cost of treatment

(1) In this section, ***compensation***, in relation to a person who is being, or has been, provided with treatment by the Commission under this Part, means an amount that is by way of compensation or damages, or is, in the opinion of the Commission, in the nature of compensation or damages, in respect of the disease, disability or condition by reason of which that treatment is being, or has been, provided.

(2) Where a person (in this section referred to as the ***patient***) who is being, or has been, provided with treatment under this Part:

(a) has made a claim against another person for compensation, or may be, or may become, entitled to be paid compensation by another person, in relation to the disease, disability or condition by reason of which that treatment is being so provided, or has been so provided;

(b) is entitled, whether by virtue of an order of a court, a settlement of a claim for compensation or otherwise, to be so paid compensation by another person; or

(c) has been so paid compensation by another person, whether by virtue of an order of a court, a settlement of a claim for compensation or otherwise;

the Commission may cause to be served on the patient a notice in writing requiring the patient to pay for the treatment that has been provided for the patient under this Part before the date of service of the notice, and for any treatment that is provided for the patient under this Part at any time on or after that date, for or in relation to that disease, disability or condition and, upon service of the notice, the patient becomes, by force of this section, liable to pay to the Commonwealth an amount equal to the cost, or amounts aggregating the sum of the costs, as determined by the Commission, of and incidental to:

(d) the treatment that has been so provided for the patient before the date of service of the notice; and

(e) any treatment that is so provided for the patient on or after that date.

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(3) Where the patient is, in pursuance of subsection (2), liable to make payment to the Commonwealth for treatment provided by the Commission, the Commission may, by notice in writing served on a person (in this section referred to as the ***relevant person***) who:

(a) may be, or may become, liable; or

(b) is liable;

to pay compensation to, or for the benefit of, the patient in respect of the disease, disability or condition by reason of which that treatment is being, or has been, provided, inform the relevant person that the patient is liable to make payment to the Commonwealth for treatment provided under this Part, whether before or after the service of the notice, for or in relation to that disease, disability or condition.

(4) Where the relevant person on whom a notice has been served under subsection (3):

(a) is, when the notice is served on him or her, liable to pay compensation to or for the benefit of the patient to whom the notice relates in respect of the disease, disability or condition to which the notice relates; or

(b) becomes, after service of the notice, so liable to pay compensation;

the relevant person becomes liable, by virtue of this subsection, to pay to the Commonwealth:

(c) an amount equal to the cost of the treatment provided for the patient in respect of that disease, disability or condition under this Part that the patient is liable, or may become liable, under subsection (2) of this section to pay; or

(d) an amount equal to the amount of the compensation that the relevant person is liable, or becomes liable, so to pay;

whichever is the less.

(5) Where, before a notice is served on the relevant person under subsection (3), the relevant person has paid to, or for the benefit of, the patient the whole of the compensation that the relevant person is liable to pay in respect of the disease, disability or condition to which the notice relates, the notice has no force or effect.

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(6) Where the relevant person is liable, or becomes liable, to pay an amount to the Commonwealth under subsection (4), the person shall not, without the permission of the Commission, pay the compensation, or any part of the compensation, to, or for the benefit of, the patient.

(7) Payment to the Commonwealth of an amount that the relevant person is liable to pay to the Commonwealth under subsection (4) operates, to the extent of the payment, as a discharge to the relevant person of his or her liability to pay compensation to the person entitled to receive the compensation and as a discharge to that last-mentioned person of his or her liability under subsection (2).

(8) The Commonwealth may recover in a court of competent jurisdiction an amount that a person is liable to pay to the Commonwealth under subsection (2) or (4).

(9) Where the Commission determines, in writing, the amount of the cost of, and incidental to, treatment provided under this Part for the patient during a specified period in respect of a disease, disability or condition in relation to which a notice has been served on the patient under subsection (2), the Commission may serve a notice on the patient containing a copy of that determination, or notices on the patient and the relevant person containing copies of that determination, and, if it does so, a copy so served is, for all purposes, prima facie evidence:

(a) that the copy of that determination set out in the notice is a true copy of the determination of which it purports to be a copy;

(b) that that determination was duly made by the Commission; and

(c) that the amount specified in the determination is the amount that the patient is liable, by force of subsection (2), to pay to the Commonwealth as the cost of and incidental to the treatment provided for the patient under this Part during the period so specified for and in relation to that disease, disability or condition.

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(10) Service of a notice, or notices, under subsection (9) on a patient, or on a patient and the relevant person, in relation to the cost of the treatment provided by the Commission under this Part does not prevent the making of a further determination, and the service by the Commission of a further notice, or of further notices, under that subsection on the patient, or on the patient and the relevant person, in relation to the cost of other treatment provided by the Commission for the patient under this Part.

(11) The reference in subsection (2) to another person shall be read as including a reference to the Commonwealth, a State, a Territory or an authority of the Commonwealth, a State or a Territory.

(12) The reference in subsection (3) to a person (not being the patient) shall be read as including a reference to an insurer who, under a contract of insurance, is liable to indemnify the person liable to pay compensation to, or for the benefit of, the patient against that liability.

93A Charges payable to Commonwealth

(1) In this section:

contributor, in relation to a private health insurer, means a person who is a holder (within the meaning of the *Private Health Insurance Act 2007*) of a complying health insurance policy (within the meaning of section 63-10 of that Act) entered into with the insurer.

private health insurer has the same meaning as in the *Private Health Insurance Act 2007*.

(2) Where:

(a) a person is provided with treatment under section 85 or 86;

(b) the person is a contributor to a fund conducted by a private health insurer; and

(c) the person will, in the opinion of the Commission, if the person pays or becomes liable to pay to the Commonwealth an amount in respect of the treatment, be entitled to receive

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an amount by way of benefit as such a contributor in respect of that treatment;

the Commission may, by notice in writing given to the person, request the person to pay to the Commonwealth in respect of the treatment an amount specified in the notice, being an amount ascertained in accordance with a scale of charges determined by the Commission by instrument in writing, and where the Commission gives such a notice to the person, the person is liable to pay to the Commonwealth the amount specified in the notice.

(3) Where:

(a) a person is liable to pay an amount to the Commonwealth under subsection (2) in respect of treatment; and

(b) a private health insurer becomes liable to pay an amount by way of benefit to that person as a contributor in respect of that treatment;

the insurer is liable to pay the amount referred to in paragraph (b) to the Commonwealth, and payment of that amount to the Commonwealth operates as a discharge of that person's liability under subsection (2) in respect of the treatment and as a discharge of the liability of the insurer to pay that amount to that person.

(4) The Commonwealth may recover in a court of competent jurisdiction an amount that a private health insurer is liable to pay to the Commonwealth under subsection (3).

93B False statements relating to treatment

(1) A person shall not make, or authorise the making of, a statement (whether oral or in writing) that is:

(a) false or misleading in a material particular; and

(b) capable of being used in connection with a claim for payment for treatment provided under this Part.

Penalty: 20 penalty units.

(2) Where:

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(a) a person (in this subsection referred to as the ***principal***) makes a statement (in this subsection referred to as the ***principal's statement***), whether oral or in writing, that is false or misleading in a material particular;

(b) the principal's statement is capable of being used in connection with a claim for payment for treatment provided under this Part;

(c) the material particular in respect of which the principal's statement is false or misleading is substantially based upon a statement (in this subsection referred to as the ***associate's statement***) made, either orally or in writing, to the principal or to the agent of the principal, by another person (in this subsection referred to as the ***associate***) who is an employee or agent of the principal; and

(d) the associate's statement is false or misleading in a material particular;

the associate commits an offence punishable on conviction by a fine not exceeding 20 penalty units.

(3) In subsection (2), a reference to an employee of a person shall, in a case where the person is a corporation, be read as a reference to:

(a) a director, secretary, manager or employee of the corporation;

(b) a receiver and manager of any part of the undertaking of the corporation appointed under a power contained in any instrument; or

(c) a liquidator of the corporation appointed in a voluntary winding up.

(4) Notwithstanding section 15B of the *Crimes Act 1914*, a prosecution for an offence under this section may be commenced at any time within 3 years after the commission of the offence.

(4A) An offence under subsection (1) or (2) is an offence of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

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(5) It is a defence if a person charged with an offence under this section in relation to a statement made by the person did not know, and could not reasonably be expected to have known, that the statement was:

(a) false or misleading in a material particular; or

(b) capable of being used in connection with a claim for payment for treatment provided under this Part.

Note: The defendant bears an evidential burden in relation to the matter in subsection (5). See subsection 13.3(3) of the *Criminal Code*.

(6) In this section, a reference to making a statement includes a reference to issuing or presenting a document, and a reference to a statement shall be construed accordingly.

93C Knowingly making false statements relating to treatment

(1) A person shall not make, or authorise the making of, a statement, whether oral or in writing, if the person knows that the statement is:

(a) false or misleading in a material particular; and

(b) capable of being used in connection with a claim for payment for treatment provided under this Part.

Penalty: Imprisonment for 5 years or 100 penalty units, or both.

(2) Where:

(a) a person (in this subsection referred to as the ***principal***) makes a statement (in this subsection referred to as the ***principal's statement***), whether oral or in writing, that is false or misleading in a material particular;

(b) the principal's statement is capable of being used in connection with a claim for payment for treatment provided under this Part;

(c) the material particular in respect of which the principal's statement is false or misleading is substantially based upon a statement (in this subsection referred to as the ***associate's statement***) made, either orally or in writing, to the principal or to an agent of the principal by another person (in this

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subsection referred to as the ***associate***) who is an employee or agent of the principal;

(d) the associate knew that the associate's statement was false or misleading in a material particular; and

(e) the associate knew, or had reasonable grounds to suspect, that the associate's statement would be used in the preparation of a statement of the kind referred to in paragraph (b);

the associate commits an offence punishable on conviction by imprisonment for a period not exceeding 5 years or a fine not exceeding 100 penalty units, or both.

(3) In subsection (2), a reference to an employee of a person shall, in a case where that person is a corporation, be read as a reference to:

(a) a director, secretary, manager or employee of the corporation;

(b) a receiver and manager of any part of the undertaking of the corporation appointed under a power contained in any instrument; or

(c) a liquidator of the corporation appointed in a voluntary winding up.

(5) In this section, a reference to making a statement includes a reference to issuing or presenting a document, and a reference to a statement shall be construed accordingly.

93D Bribery etc.

(1) In this section:

dental practitioner means a person registered or licensed as a dental practitioner or dentist under a law of a State or Territory that provides for the registration or licensing of dental practitioners or dentists.

eligible person means a person eligible under section 85 or 86 to be provided with treatment under this Part.

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in-patient, in relation to a private hospital, means a person who occupies a bed in the hospital.

medical practitioner means a person registered or licensed as a medical practitioner under a law of a State or Territory that provides for the registration or licensing of medical practitioners.

officer, in relation to a corporation, includes:

(a) a director, secretary, manager or employee of the corporation;

(b) a receiver and manager of any part of the undertaking of the corporation appointed under a power contained in any instrument; or

(c) a liquidator of the corporation appointed in a voluntary winding up.

pathology service means a procedure of a kind described in an item in the table of pathology services prescribed by regulations made for the purposes of subsection 4A(1) of the *Health Insurance Act 1973*.

patient means an eligible person who is provided with treatment under this Part.

practitioner means:

(a) a medical practitioner; or

(b) a dental practitioner.

private hospital means premises that are a private hospital for the purposes of section 3 of the *Health Insurance Act 1973*.

proprietor means:

(a) in relation to premises—the person, authority or body of persons having effective control of the premises, whether or not that person, authority or body is the holder of an estate or interest in the premises; and

(b) in relation to a private hospital—the proprietor (within the meaning of paragraph (a)) of the premises occupied by the hospital.

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(2) A person who:

(a) being a person who renders pathology services, carries on the business of rendering pathology services or is a proprietor of premises at which pathology services are rendered, directly or indirectly offers any inducement (whether by way of money, property or other benefit or advantage), or threatens any detriment or disadvantage:

(i) to a practitioner as defined in subsection (1) in order to encourage the practitioner to request the rendering of a pathology service or of pathology services; or

(ii) to a person (other than a practitioner as defined in subsection (1)) in order to encourage such a practitioner to request the rendering of a pathology service or of pathology services;

(b) being a person who renders pathology services, carries on the business of rendering pathology services or is a proprietor of premises at which pathology services are rendered:

(i) directly or indirectly invites a practitioner as defined in subsection (1) to request the rendering of a pathology service or of pathology services; or

(ii) does any act or thing that the person knows, or ought reasonably to know, is likely to have the effect of directly or indirectly encouraging a practitioner as defined in subsection (1) to request the rendering of a pathology service or of pathology services; or

(c) being a practitioner as defined in subsection (1) who provides treatment for eligible persons under this Part, asks, receives or obtains, or agrees to receive or obtain, any property, benefit or advantage of any kind for himself or herself, or for any other person, from a person carrying on the business of rendering pathology services or from a person acting on behalf of a person carrying on such a business;

commits an offence against this section.

(3) In subsection (2):

(a) a reference to requesting the rendering of a pathology service shall be read as a reference to requesting the rendering of a

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pathology service or of pathology services for a person who is eligible to be provided with that service or those services under this Part;

(b) a reference to requesting the rendering of pathology services shall be read as a reference to requesting the rendering of pathology services for persons who are eligible to be provided with those services under this Part; and

(c) a reference to a person carrying on the business of rendering pathology services shall be read as a reference to a person who carries on a business in the course of which any pathology services are rendered.

(4) A person who, being a practitioner as defined in subsection (1), asks, receives or obtains, or agrees to receive or obtain, any property, benefit or advantage of any kind for himself or herself or for any other person from a proprietor of a private hospital or from a person acting on behalf of such a proprietor on the understanding that the first-mentioned person will, in any manner, do any act or thing the purpose of which is, or the effect of which will be, to enable an eligible person to be admitted as an in-patient in the hospital for treatment that the person is eligible to be provided with under this Part, commits an offence against this section.

(5) A person who, being a proprietor or one of the proprietors of a private hospital or a person acting on behalf of such a proprietor, in order to influence or affect a practitioner as defined in subsection (1) in the doing of any act or thing the purpose of which is, or the effect of which will be, to enable an eligible person to be admitted as an in-patient in the hospital for treatment that the person is eligible to be provided with under this Part, gives or confers, or agrees to give or confer, to or on the practitioner or any other person any property, benefit or advantage of any kind, commits an offence against this section.

(6) Where an offence against this section is committed by a corporation, an officer of the corporation who intentionally authorised or permitted the commission of the offence commits an offence against this section.

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(8) A person who is convicted of an offence against this section is punishable by imprisonment for a period not exceeding 5 years or a fine not exceeding 100 penalty units.

(9) In a prosecution of a person for an offence against this section, it is a defence if the person proves that the conduct in question was in accordance with the standards of professional conduct generally accepted by medical practitioners.

(9A) Paragraph (2)(c), and subsections (4) and (5), do not apply if the person concerned has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (9A). See subsection 13.3(3) of the *Criminal Code*.

(10) Where a person is convicted of an offence against this section by virtue of subsection (4) or (5) in relation to the admission of a person as an in-patient in a hospital, the court may, in addition to imposing a penalty in respect of the offence, order the person to pay to the Commonwealth an amount equal to the sum of any amounts paid by the Commonwealth in respect of treatment provided under this Part for the in-patient of the private hospital concerned.

93E Prohibited practices in relation to the rendering of pathology services

(1) An approved pathology practitioner who accedes to a request from a practitioner as defined in subsection 93D(1) (in this subsection referred to as ***the requesting practitioner***) to provide pathology services to an eligible person, being services that the person is eligible to be provided with under this Part, shall not make a payment, directly or indirectly, to the requesting practitioner for the services provided by the requesting practitioner to that eligible person in connection with the making of that request and, in particular, shall not make a payment, directly or indirectly, to the requesting practitioner in respect of any use of the staff of the requesting practitioner to achieve the result of taking pathology specimens from that eligible person.

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(2) Where an approved pathology practitioner has entered into an arrangement with a practitioner as defined in subsection 93D(1) under which there are shared between the 2 practitioners the cost to them of employing staff or of buying, renting or maintaining items of equipment, whether or not the arrangement involves the payment of money or the provision of other consideration, the approved pathology practitioner shall not, during the period when that arrangement is in force, accede to a request from that other practitioner to provide pathology services to an eligible person, being services that the eligible person is eligible to be provided with under this Part.

(3) An approved pathology practitioner shall not provide, at the premises of a practitioner as defined in subsection 93D(1), nursing or other staff to take pathology specimens for use in rendering pathology services from eligible persons who are eligible to be provided with those services under this Part, whether the staff is stationed on those premises full-time or part-time or visits those premises from time to time.

(4) Where:

(a) there is in force between an approved pathology practitioner and another practitioner, being a practitioner as defined in subsection 93D(1), an arrangement under which:

(i) the 2 practitioners share a particular space in a building; or

(ii) one practitioner provides space in a building for the use or occupation of the other practitioner or permits the other practitioner to use or occupy space in a building; and

(b) the charges payable under the arrangement are not charges fixed at normal commercial rates;

the approved pathology practitioner shall not, during the period when that arrangement is in force, accede to a request from the other practitioner to provide pathology services to an eligible person who is eligible to be provided with those services under this Part.

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(5) A person who contravenes subsection (1), (2), (3) or (4) commits an offence against this section.

(6) Where an offence against this section is committed by a corporation, an officer of the corporation who intentionally authorised or permitted the commission of the offence commits an offence against this section.

(8) A person who is convicted of an offence against this section is punishable by imprisonment for a period not exceeding 5 years or a fine not exceeding 100 penalty units.

(9) In this section:

approved pathology practitioner means:

(a) an approved pathology practitioner (within the meaning of the *Health Insurance Act 1973*); or

(b) an approved pathology authority (within the meaning of that Act) (other than a State, the Northern Territory or a public authority within the meaning of section 23DF of that Act).

eligible person, ***officer*** and ***pathology service*** have the same respective meanings as they have in section 93D.

93F Offences against 2 or more provisions

(1) Where the act or omission of a person is an offence against a provision of this Act and is also an offence against another provision of this Act, the person may be prosecuted and convicted for either of those offences, but the person is not liable to be punished more than once in respect of the same act or omission.

(2) A reference in subsection (1) to an offence against a provision of this Act includes a reference to an offence against:

(a) section 6 of the *Crimes Act 1914*; or

(b) section 11.1, 11.4 or 11.5 of the *Criminal Code*;

that relates to an offence against a provision of this Act.

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93G Statements inadmissible in evidence

(1) Where a person who has provided treatment for an eligible person under this Part (in this subsection referred to as the ***provider of the treatment***) has been counselled by an officer of the Department with respect to the provision of treatment to eligible persons under this Part, a statement made by the provider of the treatment in the course of the counselling is inadmissible as evidence against the provider of the treatment in proceedings for the prosecution of the provider of the treatment for a relevant offence unless:

(a) the provider of the treatment has consented to the admission of the statement as evidence in the proceedings; or

(b) evidence of the statement is adduced to refute evidence of another statement made by the provider of the treatment in the course of being so counselled, where evidence of that other statement has been admitted in the proceedings on behalf of the provider of the treatment.

(2) In subsection (1), ***relevant offence*** means:

(a) an offence against section 93B, 93C, 93D or 93E of this Act; or

(b) an offence against:

(i) section 6 of the *Crimes Act 1914*; or

(ii) section 11.1, 11.4 or 11.5 of the *Criminal Code*;

that relates to an offence referred to in paragraph (a) of this subsection.

93H Recovery of amounts paid because of false statements

(1) Where, as a result of the making of a false or misleading statement, an amount paid, purportedly by way of payment for treatment provided under this Part for an eligible person, exceeds the amount (if any) that should have been paid, the amount of the excess is recoverable as a debt due to the Commonwealth from the person by or on behalf of whom the statement was made, or from the estate of that person, whether or not the amount was paid to that person and whether or not any person has been convicted of an offence in relation to the making of the statement.

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(2) Where:

(a) an amount (in this subsection referred to as the ***principal sum***) is recoverable as a debt due to the Commonwealth from a person, or from an estate, under subsection (1);

(b) the Commission has served a notice on the person, or on the estate, as the case may be, claiming the amount as a debt due to the Commonwealth; and

(c) either of the following conditions is satisfied:

(i) an arrangement has been entered into between the Commission and the person or the estate, as the case may be, within a period of 3 months following the service of the notice or such longer period as the Commission allows (which period or longer period is in this section referred to as the ***relevant period***), being an arrangement for the repayment of the principal sum, and default has been made (whether before or after the end of the relevant period) in the payment of an amount as required by the arrangement; or

(ii) at the end of the relevant period, such an arrangement has not been entered into and all or part of the principal sum remains unpaid;

then, from the day after the end of the relevant period, interest, at the rate prescribed from time to time for the purposes of subsection 129AC(2) of the *Health Insurance Act 1973*, becomes payable on so much of the principal sum as from time to time remains unpaid, and the interest so payable is recoverable as a debt due to the Commonwealth from the person, or from the estate, as the case may be.

(3) Notwithstanding subsection (2), in any proceedings instituted by the Commonwealth for the recovery of an amount due under subsection (2), the court may order that the interest payable under that subsection shall be, and shall be deemed to have been, so payable from a day later than the day referred to in that subsection.

(4) Notwithstanding any other provision of this Act, where an amount paid to a person, purportedly by way of payment for treatment provided for an eligible person under this Part, exceeds the amount

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(if any) that should have been paid to that person (which excess is referred to in this subsection as the ***excess amount***), the Commission may, if the person so agrees, reduce the amount of any payment that subsequently becomes payable to that person under this Act by an amount not exceeding the amount by which the sum of the excess amount and any excess amounts previously paid to that person is greater than the sum of any amounts recovered by the Commission by one or more previous applications of this subsection or under subsection (1).

93J Prosecution of offences

(1) Subject to subsection (2), an offence against section 93C, 93D or 93E is an indictable offence.

(2) A court of summary jurisdiction may hear and determine proceedings in respect of an offence referred to in subsection (1) if the court is satisfied that it is proper to do so and the defendant and the prosecutor consent.

(3) Where, in accordance with subsection (2), a court of summary jurisdiction convicts a person of an offence referred to in that subsection, the penalty that the court may impose is imprisonment for a period not exceeding 6 months or a fine not exceeding 10 penalty units.

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Part VA—Extension of Repatriation Pharmaceutical Benefits Scheme

Division 1—Definitions

93K Definitions

(1) In this Part:

pharmaceutical benefits has the same meaning as in subsection 91(9).

(2) In this Part, a person is the ***holder of a pharmaceutical benefits card under this Part*** while there is in force under section 93X a determination that the person is entitled to a pharmaceutical benefits card under this Part.

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Division 2—Pharmaceutical benefits may be obtained

93L Certain veterans and mariners may obtain pharmaceutical benefits

(1) If a Commonwealth veteran, allied veteran or allied mariner is the holder of a pharmaceutical benefits card under this Part, then the veteran or mariner may obtain pharmaceutical benefits under the Repatriation Pharmaceutical Benefits Scheme as if the veteran or mariner were a person who is eligible to be provided with treatment under Part V.

Note 1: For the meanings of ***Commonwealth veteran***, ***allied veteran*** and ***allied mariner***, see subsection 5C(1).

Note 2: Apart from enabling the obtaining of pharmaceutical benefits, subsection 93L(1) has the effect of applying provisions of Part V such as section 93 (Recovery of costs of treatment), section 93B (False statements relating to treatment) and section 93C (Knowingly making false statements relating to treatment) to the veteran or mariner in respect of pharmaceutical benefits provided to the veteran or mariner.

(2) Nothing in this section entitles a Commonwealth veteran, allied veteran or allied mariner to be provided with a form of treatment, other than pharmaceutical benefits, under Part V.

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Division 3—Eligibility for, and entitlement to, pharmaceutical benefits card

Subdivision A—Eligibility

93M Who is eligible?

(1) A Commonwealth veteran, an allied veteran or an allied mariner is eligible for a pharmaceutical benefits card under this Part if the veteran or mariner:

(a) is 70 years of age or older; and

(b) has rendered qualifying service during a period covered by paragraph (a) or (b) of the definition of ***period of hostilities*** in subsection 5B(1); and

(c) has been an Australian resident for a continuous period of at least 10 years.

Note 1: For ***qualifying service*** see section 7A and Division II of Part III.

Note 2: For ***Australian resident*** see section 5G.

(2) If:

(a) a Commonwealth veteran, allied veteran or allied mariner has been an Australian resident during more than one period; and

(b) the longer or longest of those periods is less than 10 years but is not less than 5 years; and

(c) the aggregate of those periods is more than 10 years;

then, in the application of paragraph (1)(c) to the veteran or mariner, the period of 10 years specified in that paragraph is to be reduced by a period equal to the period by which the aggregate is more than 10 years.

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Subdivision B—Entitlement

93N Entitlement to a pharmaceutical benefits card under this Part

Even though a person is eligible for a pharmaceutical benefits card under this Part, it is only if the person is the holder of a pharmaceutical benefits card under this Part that pharmaceutical benefits under the Repatriation Pharmaceutical Benefits Scheme may be provided to the person by the Commonwealth.

Note: For ***holder of a pharmaceutical benefits card under this Part*** see subsection 93K(2).

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Division 4—Claim for pharmaceutical benefits card under this Part

93P Need for a claim

A person who wants to be granted a pharmaceutical benefits card under this Part must make a proper claim.

Note: For ***proper claim*** see section 93R (form), section 93S (manner of lodgment) and section 93T (residence/presence in Australia).

93Q Who can claim?

(1) Subject to subsection (2), a claim must be made by:
  (a) the person who wants to be granted a pharmaceutical benefits card under this Part; or
  (b) with the approval of the person—another person on the person's behalf.

(2) If the person is unable, because of physical or mental incapacity, to approve another person to make the claim on his or her behalf, the Commission may approve another person to make the claim.

93R Making a claim

(1) To be a proper claim, the claim must be:
  (a) made in writing; and
  (b) in accordance with a form approved by the Commission; and
  (c) accompanied by any evidence available to the claimant that the claimant considers may be relevant to the claim; and
  (d) lodged at an office of the Department in Australia in accordance with section 5T.

(2) A claim lodged in accordance with section 5T is taken to have been made on a day determined under that section.

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93T Claimant must be an Australian resident and in Australia

A claim is not a proper claim unless the person making the claim, or on whose behalf the claim is being made, is:

(a) an Australian resident; and

(b) in Australia;

on the day on which the claim is lodged.

Note: For ***Australian resident*** see section 5G.

93U Claim may be withdrawn

(1) A claimant for a pharmaceutical benefits card under this Part or a person on behalf of a claimant may withdraw a claim that has not been determined.

(2) A claim that is withdrawn is taken to have not been made.

(3) A withdrawal may be made either orally or by document lodged at an office of the Department in Australia in accordance with section 5T.

Oral withdrawal of a claim

(5) An oral withdrawal of a claim must be made to a person in an office of the Department in Australia.

Acknowledgment of oral withdrawal of a claim

(6) As soon as practicable after receiving an oral withdrawal of a claim, the Secretary must give the claimant an acknowledgment notice in writing stating that:

(a) an oral withdrawal of the claim was made; and

(b) the claimant, or a person on behalf of the claimant, may, within 28 days from the day the acknowledgment notice is given, request the Secretary to treat the withdrawal as if it had not been made.

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Reactivating the withdrawn claim

(7) If, within 28 days from the day on which the Secretary gave the acknowledgment notice, a claimant, or a person on behalf of a claimant, requests the Secretary to treat the oral withdrawal of the claim as if it had not been made, the oral withdrawal is taken not to have been made.

Note: A request made under paragraph (6)(b) has the effect of reactivating the claim. In particular, the commencement day of the claim stays the same.

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Division 5—Investigation of claim

93V Secretary to investigate claim and submit it to Commission

(1) If a person makes a proper claim for a pharmaceutical benefits card under this Part, the Secretary must investigate the matters to which the claim relates.

(2) When the investigation is completed, the Secretary must submit the claim to the Commission for consideration and determination.

(3) When the claim is submitted to the Commission it must be accompanied by:
  (a) any evidence supplied by the claimant in support of the claim; and
  (b) any documents or other evidence obtained by the Department in the course of the investigation that are relevant to the claim; and
  (c) any other documents or other evidence under the control of the Department that are relevant to the claim.

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Division 6—Consideration and determination of claim

93W Duties of Commission in relation to claim

(1) When the claim is submitted to the Commission, the Commission must consider all matters that are, in the Commission's opinion, relevant to the claim and must then determine the claim.

(2) In considering the claim, the Commission must:
   (a) satisfy itself with respect to; or
   (b) determine;
   (as the case requires) all matters relevant to the determination of the claim.

(3) Without limiting subsection (1), the Commission, in considering the claim, must consider:
   (a) the evidence submitted with the claim under section 93V; and
   (b) any further evidence subsequently submitted to the Commission in relation to the claim.

Note: A claimant may apply to the Commission for review of a determination made under this section (see section 93Z).

93X Entitlement determination

The Commission must determine that a person is entitled to a pharmaceutical benefits card under this Part if the Commission is satisfied that the person is eligible for the card.

93Y Date of effect of determination

(1) A determination under section 93X takes effect:
   (a) if the determination is made before 1 January 2002—on 1 January 2002 or on such later day as is specified in the determination; or

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(b) if the determination is made after 1 January 2002—on the day that the determination is made or on such later day or earlier day as is specified in the determination.

(2) For the purposes of paragraph (1)(b), a day before 1 January 2002 may not be specified as an earlier day.

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Division 7—Review of decisions

93Z Review of certain decisions

A claimant who is dissatisfied with a decision of the Commission in relation to a claim for a pharmaceutical benefits card under this Part may request the Commission to review the decision.

93ZA Application for review

(1) A request for review of a decision under section 93Z must:
  (a) be made within 3 months after the person seeking review was notified of the decision; and
  (b) set out the grounds on which the request is made; and
  (c) be in writing; and
  (d) be lodged at an office of the Department in Australia in accordance with section 5T.

(1A) A request lodged in accordance with section 5T is taken to have been made on a day determined under that section.

(2) If a request for review of a decision is made in accordance with subsection (1), the Commission must review the decision.

93ZB Commission's powers where request for review

(1) If the Commission reviews a decision under this Division, the Commission must affirm the decision or set it aside.

(2) If the Commission sets the decision aside it must substitute a new decision in accordance with this Act.

Note: For the Commission's evidence gathering powers see section 93ZF.

93ZC Date of effect of certain review decisions

(1) If the Commission sets aside a decision and substitutes for it a decision that a person is entitled to a pharmaceutical benefits card

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under this Part, the substituted decision takes effect from a date specified by the Commission.

(2) The date specified by the Commission must not be earlier than the date from which, had the Commission determined that the person is entitled to a pharmaceutical benefits card under this Part, such a determination could have taken effect.

93ZD Commission must make written record of review decision and reasons

(1) When the Commission reviews a decision under this Division it must make a written record of its decision upon review.

(2) The written record must include a statement that:
   (a) sets out the Commission's findings on material questions of fact; and
   (b) refers to the evidence or other material on which those findings are based; and
   (c) provides reasons for the Commission's decision.

93ZE Person who requested review to be notified of decision

(1) If the Commission affirms or sets aside a decision under this Division, it must give the person who requested the review of the decision:
   (a) a copy of the Commission's decision; and
   (b) subject to subsection (2), a copy of the statement about the decision referred to in subsection 93ZD(2); and
   (c) if the person has a right to apply to the Administrative Appeals Tribunal for a review of the Commission's decision—a statement giving the person particulars of that right.

(2) If the statement referred to in paragraph (1)(b) contains any matter that, in the opinion of the Commission:

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(a) is of a confidential nature; or
(b) might, if communicated to the person who requested review, be prejudicial to his or her physical or mental health or well-being;

then the copy given to the person must not contain that matter.

93ZF Powers of Commission to gather evidence

(1) The Commission or the Commission's delegate may, in reviewing a decision under this Division:
  (a) take evidence on oath or affirmation for the purposes of the review; and
  (b) adjourn a hearing of the review from time to time.

(2) The presiding member of the Commission or the Commission's delegate may, for the purposes of the review:
  (a) summon a person to appear at a hearing of the review to give evidence and to produce such documents (if any) as are referred to in the summons; and
  (b) require a person appearing at a hearing of the review for the purpose of giving evidence either to take an oath or to make an affirmation; and
  (c) administer an oath or affirmation to a person so appearing.

(3) The person who applied for the review under this Division is a competent and compellable witness upon the hearing of the review.

(4) The oath or affirmation to be taken or made by a person for the purposes of this section is an oath or affirmation that the evidence that the person will give will be true.

(5) The Commission's power under paragraph (1)(a) to take evidence on oath or affirmation:
  (a) may be exercised on behalf of the Commission by:
    (i) the presiding member or the Commission's delegate; or
    (ii) by another person (whether a member or not) authorised by the presiding member or the Commission's delegate; and

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(b) may be exercised within or outside Australia; and
(c) must be exercised subject to any limitations specified by the Commission.

(6) Where a person is authorised under subparagraph (5)(a)(ii) to take evidence for the purposes of a review, the person has:
(a) all the powers of the Commission under subsection (1); and
(b) all the powers of the presiding member under subsection (2);
for the purposes of taking that evidence.

(7) In this section:

Commission's delegate means a person to whom the Commission has delegated its powers under section 93ZA and who is conducting the review in question.

93ZG Withdrawal of request for review

(1) A person who requests a review under section 93Z may withdraw the request at any time before it is determined by the Commission.

(2) To withdraw the request, the person must give written notice of withdrawal to the Secretary and the notice must be lodged at an office of the Department in Australia.

(3) Subject to section 93ZA, a person who withdraws a request for review may subsequently make another request for review of the same decision.

Note: Section 93ZA provides that a person who wants to request a review of a decision must do so within 3 months after the person has received notice of the decision.

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