A compendium of legislative changes in social security 1983–2000
Part 2 | 1994–2000

Bob Daprè
2004 Administrative Arrangements Changes

In October 2004 responsibility for some income support payments (including Newstart Allowance, Parenting Payment, Partner Allowance, Youth Allowance (Other) and Disability Support Pension) was transferred to the Australian Government Department of Employment and Workplace Relations and responsibility for Youth Allowance (Students) and Austudy Payment was transferred to the Australian Government Department of Education, Science and Training.

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Contents

Explanatory notes ........................................................................................................... xiii

Acronyms used ................................................................................................................. xxvi

Introduction ......................................................................................................................... xxvii

Legislation passed in 1994 .............................................................................................. 307

Social Security (Home Child Care And Partner Allowances) Legislation Amendment Act 1994, No. 55 .................................................................................. 307
  1 Introduction of Home Child Care Allowance ......................................................... 307
  2 Partner Allowance introduced .................................................................................. 309

Social Security Legislation Amendment Act 1994, No. 63 ........................................ 310
  3 Eligibility for Mobility Allowance extended .......................................................... 310
  4 Treatment of certain life interests in assets tests .................................................. 310
  5 Widow B Pension granted without need for a claim .............................................. 311
  6 Social Security Agreement with Italy ...................................................................... 311
  7 Restriction on eligibility for Additional Family Payment ...................................... 312
  8 Modifications to Mature Age Allowance conditions ............................................. 312

  9 Entitlement to social security and veterans’ payments ........................................... 313

Social Security Legislation Amendment Act (No. 2) 1994, No. 109 ....................... 314
  10 Disability Wage Supplement introduced ............................................................. 314
  11 Treatment of investments in income tests varied ................................................ 315
  12 Amendments related to residency conditions for payments ............................... 316
  13 Higher Age Pension age for women phased in ..................................................... 317
  14 Increase in rate of Additional Family Payment ................................................... 318
  15 Amendment to compensation recovery provisions ............................................. 318
  16 Penalties for breaches of rules for unemployment payments ............................. 319
  17 Variation in treatment of certain investments in means tests ............................. 319
  18 Tax deductions for net property losses included in income tests ...................... 320

  19 Social Security Agreement with New Zealand .................................................... 320

  20 Liquid assets test waiting period on benefits modified ....................................... 321
  21 Pension residency conditions relaxed for refugees ............................................. 322
  22 Additional Family Payment payable while parent(s) overseas ............................. 322
23 Scope of Job Search and Newstart Activity Agreements broadened ................................................................. 323
24 Restrictions on voluntary work in Job Search Activity Agreements removed ................................................................. 324
25 Advance payments of Job Search and Newstart Allowance........................................................................ 324
26 Job Search and Newstart Allowance activity tests and agreements .................................................... 325
27 Changes to activity tests for unemployment payment recipients............................................................... 326
28 Treatment of housing-related fringe benefits in income tests...................................................................... 327
29 Treatment of certain investments in income tests.......................................................................................... 328

Social Security (Parenting Allowance and Other Measures) Legislation Amendment Act 1994, No. 174................................. 329
30 Introduction of Parenting Allowance ................................................................. 329
31 Benefit income test restructured and liberalised .............................................................................................. 331
32 Changes to coverage of Partner Allowance ........................................................................................................ 332
33 Introduction of Widow Allowance ..................................................................................................................... 333
34 Widowed Person Allowance renamed Bereavement Allowance ........................................................................ 334
35 Coverage of Education Entry Payment extended .............................................................................................. 335
36 Wife Pension and Mature Age Partner Allowance phased out.............................................................................. 336
37 Advances of Pharmaceutical Allowance sunset clause repealed ........................................................................ 336

Employment Services (Consequential Amendments) Act 1994, No. 177 .............................................................. 337
38 Breach penalties and waiting periods for unemployment payments .............................................................. 337

39 Benefit changes following the introduction of Youth Training Allowance .......................................................... 338

Legislation passed in 1995 ........................................................................................................................................ 345

Social Security Legislation Amendment Act (No. 1) 1995, No. 104 ................................................................. 345
1 Social Security Agreement with Italy...................................................................................................................... 345
2 Payments of Student Financial Supplement not income-tested......................................................................... 346
3 Change to Bereavement Payments ...................................................................................................................... 346
4 Special arrangements for refugees modified ...................................................................................................... 347
5 Changes to pensions for people with disabilities .............................................................................................. 348
6 Clarification of Employment Secretary’s power to waive conditions ............................................................... 349
7 Concession for persons subject to education waiting period ............................................................................. 349
8 Concessions for persons enrolled in full-time education or training................................................................. 350
9 Time limit placed on Employment Entry Payment claims ................................................................................. 350
10 Coverage of Telephone Allowance extended .................................................................................................. 351
11 Coverage of Education Entry Payment extended ............................................................................................. 351
12 Concession for persons losing entitlement to Mobility Allowance ..................................................................... 352
13 Change to eligibility criteria for Seniors Health Card ....................................................................................... 352
14 New income test extended to young Sickness Allowance recipients .............................................................. 353
15 Treatment of non-resident superannuation funds in income tests........ 353
16 Native title rights and interests exempted from assets tests............ 354
17 Amendment to income test on employer-provided fringe benefits .... 354
18 Changes to compensation recovery provisions.......................... 355

Social Security (Non-Budget Measures) Legislation Amendment Act 1995,
No. 105 ................................................................. 357
19 Carer Pension payable overseas.............................................. 357
20 Employment Entry Payment extended to carer pensioners............ 357
21 Education Entry Payment extended to carer pensioners .............. 358
22 Concession to disability support pensioners............................ 358
23 Coverage of Mobility Allowance extended ................................358
24 Backdating provision for Partner Allowance............................. 359
25 Changes to qualifying conditions for Sole Parent Pension........... 359
26 Family Payment benchmarks increased................................... 360
27 Backdating of Family Payment for adopted child ...................... 360
28 Backdating of Family Payment............................................ 361
29 Income test on employer-provided fringe benefits .................... 361
30 Waiting period exemption extended to Sickness Allowance.......... 362
31 Secretary’s power not to pay an unemployment payment extended...362
32 Changes to Job Search and Newstart Training Supplements........ 363
33 Income tests and approved exchange trading systems............... 363
34 Amendment to Carer Pension............................................. 364

Social Security Legislation Amendment (Family Measures) Act 1995,
No. 106 ............................................................................. 365
35 Introduction of Maternity Allowance........................................ 365
36 Amalgamation of Basic and Additional Family Payment ............ 367
37 Determining which member of a couple to receive Family Payment...368
38 Alteration to Family Payment income test............................... 368
39 Conditions under which full-time student regarded as dependent child .......................................................... 369
40 Reduction in income test threshold for Family Payment............. 369
41 Parental assets test threshold for young Sickness Allowance recipients raised ................................................. 370

Family Law Reform (Consequential Amendments) Act 1995, No. 140..... 371
42 New definitions relating to children ........................................ 371

Social Security Legislation Amendment (Carer Pension and Other Measures)
Act 1995, No. 143 .................................................................. 372
43 Increases in Rent Assistance thresholds and rates ....................... 372
44 Rent Assistance savings provisions phased out sooner ............... 372
45 Residential Care Allowance introduced ................................... 373
46 Rent Assistance extended to certain carers ............................... 374
47 Rent Assistance extended to persons receiving care.......................... 374
48 Assets test concession for people in care situations.......................... 375
49 Assets test concession for carers .................................................... 375
50 Carer Pension payment period extended ........................................ 376
51 Coverage of Carer Pension extended ............................................. 376
52 Removal of restriction on Carer Pension ........................................... 377
53 Pensioners eligible for advance payments ..................................... 377
54 Guardian Allowance increased ....................................................... 378
55 Compensation recovery provisions amended ................................. 378
56 Transfer of waiting periods between benefits ................................... 379
57 Changes to Sickness Allowance ...................................................... 379
58 Change to Bereavement Payments ................................................ 380
59 Maintenance provision regarding Sole Parent Pension ..................... 381
60 Training and work experience payments exempted from income tests 381
61 References to benevolent homes removed from Act ....................... 382
62 Removal of Family Payment provision on mental hospitals ............. 382
63 Power to waive Sickness Allowance liquid assets test waiting period 382

Legislation passed in 1996 ........................................................................ 385

Social Security and Veterans’ Affairs Legislation Amendment Act 1995,
No. 1 (of 1996) ......................................................................................... 385
1 Extended deeming introduced ............................................................. 385
2 Sick people more likely to receive unemployment payments .......... 387
3 Persons seeking exemption from activity tests ................................. 388
4 Earnings credit for beneficiaries modified ........................................ 389
5 Prospective qualification for Newstart Allowance ............................... 390
6 Job Search Allowance abolished ....................................................... 391
7 Standard definition of ‘continuous period on income support’ .......... 392
8 Changes to Mature Age Allowance .................................................. 393
9 Standardised ‘continuous period on payment’ definitions .................. 394
10 Scope of Pension Loans Scheme broadened .................................... 395
11 Social Security Agreement with New Zealand .................................. 397

Social Security Legislation Amendment Act (No. 1) 1996, No. 57 ....... 398
12 Payments by Mark Fitzpatrick Trust exempted from assets tests .... 398
13 Transfer to Wife Pension without need for a claim ......................... 399

Family (Tax Initiative) Act 1996, No. 63 ................................................. 400
14 Introduction of Family Tax Payment ................................................ 400

Social Security Legislation Amendment (Further Budget and Other Measures) 
Act 1996, No. 83 .................................................................................. 403
15 Certain investments no longer exempted from means tests .......... 403
16 Reduction in Rent Assistance for persons sharing accommodation.... 404
Social Security Legislation Amendment (Budget and Other Measures) Act 1996, No. 84

17 Eligibility for Carer Payment liberalised ................................................. 405
18 Carer Pension renamed Carer Payment.................................................. 405
19 Minimum benefit payment under parental means test abolished .......... 406
20 Voluntary work provisions in activity tests consolidated ................. 406
21 ‘Unsuitable work’ in Newstart Allowance activity test redefined ....... 407
22 Penalties for breaches by Newstart Allowance recipients restructured 408
23 Newstart Allowance activity test rule made stricter ....................... 409
24 Rule on acceptance of suitable job offer tightened ......................... 409
25 Discretion to exempt person from Newstart Allowance non-payment period removed .......................................................... 410
26 Partner Allowance not payable in certain circumstances ................. 410
27 Scope of Newstart Allowance activity test widened ......................... 411
28 Increased penalty for reducing employment prospects .................... 411
29 Unemployment due to involvement in industrial action ................. 412
30 Treatment of lump sum leave payments in income tests ............... 413
31 Liquid assets test on workforce beneficiaries tightened ................. 414
32 Period of grace to renew medical certificate ................................... 414
33 Sickness Allowance loss of income provision abolished ................. 415
34 Treatment of sick leave in Sickness Allowance income test ............ 415
35 Changes to workforce benefits .......................................................... 416
36 Backdating of claims following telephone inquiry .......................... 417
37 Earnings credit arrangements abolished ............................................ 417
38 Coverage of Widow Allowance extended ....................................... 418
39 Changes to Partner Allowance.......................................................... 418
40 Coverage of Partner Allowance extended ....................................... 419
41 Changes to Widow B Pension ............................................................ 419
42 Age Pension qualification conditions eased ................................... 420
43 Claim for Age Pension not required by certain beneficiaries .......... 420
44 Compensation recovery provisions applied to age pensioners ....... 421
45 Changes to compensation recovery provisions ............................... 421
46 Extended deeming arrangements modified .................................... 422
47 Advance payment arrangements altered ....................................... 423

Legislation passed in 1997 .......................................................................... 425

Social Security Legislation Amendment (Newly Arrived Resident’s Waiting Periods and Other Measures) Act 1997, No. 5

1 Broad based newly arrived residents’ waiting period introduced ...... 425

Social Security Legislation Amendment (Activity Test Penalty Periods) Act 1997, No. 106

2 Newstart Allowance penalty breaches restructured .......................... 428
3 Changes to Partner Allowance and Special Benefit ........................................ 429
4 Exemptions to Newstart Allowance activity test extended ............................... 430

5 Work for the Dole Program introduced ....................................................... 431

Aged Care (Consequential Provisions) Act 1997, No. 114 ........................................ 433
6 Residential Care Allowance abolished and Rent Assistance changed ... 433
7 Accommodation bonds and bond balances not means-tested ...................... 434

Social Security and Veterans’ Affairs Legislation Amendment (Male Total Average Weekly Earnings Benchmark) Act 1997, No. 175 ........................................ 435
8 Pension rates set in relation to average weekly earnings .......................... 435

Social Security Legislation Amendment (Parenting and Other Measures) Act 1997, No. 197 ................................................................. 436
9 Introduction of Parenting Payment .............................................................. 436
10 Income maintenance period for leave payments modified ...................... 439
11 Guardian Allowance paid where partner in gaol ....................................... 440
12 Child Disability Allowance eligibility criteria altered ................................. 440
13 Coverage of Child Disability Allowance extended .................................. 441
14 Qualifying conditions for Child Disability Allowance eased .................. 442
15 Family Payment renamed Family Allowance ............................................ 442
16 Hardship provisions in waiting periods modified ....................................... 442
17 Hardship provisions for income maintenance period modified .................. 444

Social Security and Veterans’ Affairs Legislation Amendment (Family and Other Measures) Act 1997, No. 202 ................................................................. 445
18 Maternity Immunisation Allowance introduced ......................................... 445
19 Modifications to Maternity Allowance ...................................................... 446
20 Family Payment conditions liberalised ....................................................... 447
21 Eligibility for Guardian Allowance extended ............................................ 447
22 Modification to Family Payment assets test hardship provisions ............. 448
23 Family Payment and Maternity Allowance income tests tightened .......... 449
24 Bereavement Payments extended .............................................................. 450
25 Early lodgement provisions for certain payments tightened .................. 450
26 Higher rate payable to sole parents on Newstart Allowance .................... 451
27 Medical examination in respect of Disability Support Pension ................. 451
28 Disability Wage Supplement abolished ..................................................... 452
29 Revised qualifying conditions for Disability Support Pension .................. 453
30 Rent Assistance Condition Clarified .......................................................... 454
31 Restriction on payment of Rent Assistance .............................................. 454
32 Extension to backdating provision for various payments .......................... 455
33 Newstart Allowance payable to Disability Support Pension claimant .... 456
34 Power of Minister to disregard investments for assets test purposes ........ 457
Legislation passed in 1998 ........................................................................................................... 459

Social Security Legislation Amendment (Youth Allowance) Act 1998, No. 18 ................................................................. 459

1 Introduction of Youth Allowance .............................................................................................................. 462
2 Definition of ‘undertaking full-time study’ .................................................................................................. 478
3 Introduction of Austudy Payment .............................................................................................................. 479
4 Special definition of member of a couple in certain circumstances ......................................................... 484
5 Pensioner Education Supplement moved to Social Security portfolio ......................................................... 485
6 Student loan scheme moved to Social Security portfolio ........................................................................ 486
7 Fares Allowance moved to Social Security portfolio ............................................................................... 488
8 Extension of liquid assets test waiting period concession ........................................................................ 488
9 Changes to Sickness Allowance .............................................................................................................. 489
10 Changes to Family Allowance ............................................................................................................... 489
11 Coverage of Child Disability Allowance extended .................................................................................. 490
12 Changes to Family Tax Payment ............................................................................................................ 490
13 Abolition of education waiting period for workforce benefits .............................................................. 491
14 Change to Special Benefit ....................................................................................................................... 491

Social Security and Veterans’ Affairs Legislation Amendment (Pension Bonus Scheme) Act 1998, No. 67 ...................................... 492
15 Pension Bonus Scheme introduced ........................................................................................................ 492

Social Security and Veterans’ Affairs Legislation Amendment (Retirement Assistance for Farmers) Act 1998, No. 84 .................. 497
16 Retirement Assistance Scheme for Farmers introduced ........................................................................ 497

Social Security and Veterans’ Affairs Legislation Amendment (Budget and Other Measures) Act 1998, No. 93 .................................. 500
17 Concession for carers .............................................................................................................................. 500
18 Coverage of Carer Payment extended .................................................................................................... 501
19 Treatment of lump sums in benefit income test ..................................................................................... 502
20 Treatment of income streams in income and assets tests ....................................................................... 503
21 Seasonal work preclusion period introduced ......................................................................................... 510
22 Miscellaneous consequential amendments ............................................................................................. 513
23 Coverage of Mobility Allowance extended ........................................................................................... 514
24 Anomaly relating to Mobility Allowance removed ................................................................................ 514

25 Changes to income test for Seniors Health Card .................................................................................. 515
26 Rent Assistance concession ................................................................................................................... 516
27 Changes to Parenting Payment ............................................................................................................... 517
Child Support Legislation Amendment Act 1998, No. 120 ................................. 518
28 Change to Family Allowance income test .................................................. 518

Payment Processing Legislation Amendment (Social Security and Veterans’ Entitlements) Act 1998, No. 132 ................................................................. 519
29 Change in payment processing procedures ............................................. 519

Legislation passed in 1999 ............................................................................. 521

Assistance for Carers Legislation Amendment Act 1999, No. 13 ................. 521
1 New method of assessing adult disability ................................................. 521
2 Changes to Carer Payment .................................................................... 522
3 Defect in Carer Payment provision corrected ....................................... 523
4 Carer Payment provisions liberalised ......................................................... 524
5 Amendments to Bereavement Payments ............................................... 525
6 New Carer Allowance introduced ............................................................. 526

A New Tax System (Compensation Measures Legislation Amendment) Act 1999, No. 68 .................................................................................................. 529
7 Changes to compensate for introduction of the GST ............................. 529

A New Tax System (Family Assistance) (Consequential and Related Measures) Act (No. 1) 1999, No. 82 ................................................................. 532
8 Parenting Payment income test eased ..................................................... 532
9 Restructuring of family assistance ......................................................... 533
10 Change to parental income test on Youth Allowance ......................... 534

A New Tax System (Family Assistance) (Consequential and Related Measures) Act (No. 2) 1999, No. 83 ........................................................................ 535

Social Security (Family Allowance and Related Matters) Legislation Amendment Act 1999, No. 114 ................................................................. 536
11 Changes to Family Allowance ............................................................... 536

Aged Care Amendment (Omnibus) Act 1999, No. 132 ............................ 537
12 Changes related to restructuring of aged care services .................... 537

Further 1998 Budget Measures Legislation Amendment (Social Security) Act 1999, No. 152 ................................................................. 539
13 Concession in maintenance income test removed .............................. 539
14 Integration of social security payments and the CDEP scheme ............ 540
15 Introduction of special employment advance ..................................... 544
16 Crisis Payment introduced .................................................................. 547
17 Provisions for persons in or released from confinement .................... 549
18 Modifications to newly arrived residents’ waiting period .................. 550
19 Restriction on payment of certain pensions overseas ......................... 551
20 Amendment to proportional portability rules ..................................... 551
21 Further change to proportional portability rules ................................. 552
22 Automatic transfer to Age Pension while overseas.......................... 552
23 Age Pension qualifying conditions tightened ............................ 553
24 Ceiling on amount of pension payable under international agreement 553
25 Stricter activity test for Newstart and Youth Allowance ............... 554
26 Rule on reducing employment prospects amended .................... 555
27 Two-tiered rate structure for Pensioner Education Supplement........ 556
28 Provision for advance instalments of benefit............................ 556
29 Backdating of claim for person in gaol or confinement ................... 557
30 Granting of claim for person in gaol or confinement ..................... 557
31 Payments made before a person’s release from gaol or confinement ... 558
32 Advance payment for person who has been in gaol or confinement.... 559

Family and Community Services Legislation Amendment (1999 Budget and Other Measures) Act 1999, No. 172......................................................... 560
33 Eligibility for Parenting Payment retained where child leaves care .... 560

Social Security (Administration and International Agreements) (Consequential Amendments) Act 1999, No. 192........................................ 561
34 Consequential changes following enactment of new legislation ...... 561

Legislation passed in 2000 .................................................................. 563

A New Tax System (Family Assistance and Related Measures) Act 2000, No. 45 .......................................................... 563
1 Residency condition for Double Orphan Pension.......................... 563
2 Further rate increases to compensate for the GST ....................... 564

Family and Community Services Legislation Amendment Act 2000, No. 70 .......................................................... 565
3 Coverage of Double Orphan Pension extended.......................... 565
4 Amendment to rate of Double Orphan Pension.......................... 565
5 Change to Mobility Allowance .................................................... 566
6 Benefit deferment periods aligned .............................................. 566
7 Rehabilitation Allowance savings provision removed .................. 566

Compensation Measures Legislation Amendment (Rent Assistance Increase) Act 2000, No. 93.......................................................... 567
8 Higher increase in Rent Assistance to compensate for the GST ...... 567

Social Security and Veterans’ Entitlements Legislation Amendment (Miscellaneous Matters) Act 2000, No. 94.......................... 568
9 Portability provisions restructured .............................................. 568
10 Phasing out of special needs pensions ...................................... 571
11 Portability provisions applied to Double Orphan Pension .......... 571
12 Pension Bonus Scheme amended .............................................. 572
13 Amendment to Retirement Assistance for Farmers Scheme ........ 572
14 Residency rules modified................................................................. 573
15 Residency conditions for Bereavement Allowance eased............ 574
16 Qualifying conditions for Widow Allowance liberalised.......... 574

Youth Allowance Consolidation Act 2000, No. 106 ....................... 575
17 Fares Allowance fully incorporated into Social Security Act ........ 575
18 Student loan scheme fully incorporated into Social Security Act .... 578
19 Family actual means test fully incorporated into Social Security Act .. 585
20 Definition of ‘undertaking full-time study’ amended...................... 590
21 Change to Austudy Payment qualifying conditions ...................... 591
22 Rates for certain young pensioners aligned with Youth Allowance .... 591
23 Change to definition of ‘independent’ for Youth Allowance........... 592
24 New Youth Allowance and Austudy Payment rates ....................... 593
25 Restriction on payment of Guardian Allowance ......................... 594
26 Youth Allowance family assets test amended............................ 594
27 Concession for Youth Allowance claimants............................... 594
28 Clarification regarding eligibility for Youth Allowance ................. 595
29 Changes to activity tests ................................................................. 595
30 Eligibility for Special Benefit extended ........................................ 596
31 Restriction on eligibility for Youth Allowance and Austudy Payment... 596

Retirement Assistance for Farmers Scheme Extension Act 2000, No. 118..... 597
32 Retirement Assistance for Farmers Scheme extended.................. 597

Social Security and Veterans’ Entitlements Legislation Amendment
(Private Trusts and Private Companies—Integrity of Means Testing)
Act 2000, No. 132 ............................................................................... 597
33 Definition of assets for assets tests varied .................................... 597
34 Means testing of private companies and private trusts ............... 598

Family and Community Services (2000 Budget and Related Measures)
Act 2000, No. 138 ............................................................................. 606
35 Treatment of Abstudy payments altered ...................................... 606
36 Family assets test for Youth Allowance eased ............................... 607

Index.................................................................................................. Index 1


Explanatory notes

Abbreviations

The compendium contains a number of abbreviations for frequently used terms. Unless otherwise stated or the context clearly indicates to the contrary, the following terms have the meanings given below:

◗ ‘Minister’ means the Minister for Social Security up to September 1998 and the Minister for Family and Community Services thereafter;

◗ ‘Department’ means the Department of Social Security up to September 1998 and the Department of Family and Community Services thereafter;

◗ ‘Director-General’ means the Director-General of the Department of Social Security;

◗ ‘Secretary’ means the Secretary to the Department of Social Security up to September 1998 and the Secretary to the Department of Family and Community Services thereafter;

◗ ‘Employment Minister’, ‘Employment Department’ and ‘Employment Secretary’ mean the Minister, department and Secretary to the department respectively responsible for employment issues. The portfolio and department had a variety of titles over the 18-year period; and


Names of payments

In the earlier years of the 18-year period covered by the compendium, a number of social security payments had apostrophes in their names. These were removed over time, many of them when the 1991 Social Security Act replaced the 1947 Act. For example, Sole Parent’s Pension and Wife’s Pension were renamed Sole Parent Pension and Wife Pension in the 1991 Act. The terms used in the compendium are those that prevailed at the time.

Inappropriate terminology

Certain terminology used in the compendium may be considered inappropriate and/or offensive by readers. However, the language used is an accurate reflection of the terminology employed by the legislation upon which this document reports. Readers are asked to note that revising such language to suit current standards would compromise the historical accuracy of the document. In more general sections of the document, the currently more acceptable terminology has been used.

References to powers of the Director-General or Secretary

The legislation contains many provisions giving discretionary powers to the department’s Director-General/Secretary to make a variety of decisions—for example, on whether a person has complied with the qualifying conditions for a particular social security payment. The description of the legislation has retained this legal form of words. However, it should be noted that this does not represent the way the law is applied. In practice, these powers have always been delegated to departmental officers.
Disallowable instruments

The compendium makes numerous references to pieces of legislation being ‘disallowable instruments’. This means that the legislation has to be placed in the Commonwealth Gazette and laid before both Houses of the Parliament within a prescribed period. The Parliament has the opportunity to disallow the legislation in that period.

Financial year

Reference is made in certain records to the ‘financial year’. In Australia, this is the year ended 30 June. It is the year used for tax purposes.

Format of compendium

The legislative changes have been presented in the strict chronological order in which the amending Acts were passed and, within an amending Act, in the order in which the changes arose. The only exception to this has been to consolidate amendments (mainly in the 1947 Act) where identical changes affecting different payments were spread throughout the Act. In these instances, the changes are in order based on the first of the relevant amendments. It should be noted that the order in which changes are legislated is not related in any way to the date of their implementation.

The tables for each record contain in every case details of the location of changes in the amending Act, the date of commencement, the date of application and payments affected by any changes. A description of the changes then follows the table. On occasions, where background information is provided related to more than one record, it is located under the name of the amending Act or at the beginning of the year. Records have been located in numerical order within each year.

Location in Act

The section headed ‘Location in Act’ sets out precisely the sections and/or schedules (or items in schedules) in the amending Acts where a change or changes occurred. Generic standard sections at the front of amending Acts covering dates of commencement and application have not been recorded.

Commencement and application dates

The tables provide both a ‘date of commencement’ and ‘date of application’. The date of application represents the date on which the change took effect and, for policy and research purposes, in the vast majority of cases is the only date of any importance. The actual date has been included in each case even though it may not have been known at the time the legislation was passed. The date of commencement is frequently different from the application date and reflects various legislative requirements.

The information under dates of commencement and application has generally been reported as expressed in the legislation. The dates may be the Date of Royal Assent, a variable or unspecified date hinging on the date on which a certain other Act (or Acts) commence, or whether they commence, or can be a date to be proclaimed. (Proclaimed means the date on which the Governor-General proclaimed Royal Assent to the relevant part of the Act in the Commonwealth Gazette.) On occasions, there can be several provisos to these starting dates.
and, where these provisos have been very detailed, full information has not always been given. In most cases, this ancillary information was important only at the time the legislation was passed and is of no more than academic interest after the event. The Date of Royal Assent has been given at the beginning of each amending Act.

The date of application is not necessarily the same as the date on which new rates of payment are made. Social security payments have generally been made for instalment periods and the date of payment in these cases depends on when precisely the instalment period commenced.

**Listing of payments affected**

The tables contain the names of all the payments affected by a change.

**Categorisation of payments**

For some purposes, it is useful to identify social security payments by broad categories. The Australian system contains the following payments:

- ‘pensions’, which are generally intended to provide a basic level of long-term income support;
- ‘benefits’, which provide a basic level of short-term income support;
- ‘supplementary payments’ (‘add-ons’). These are additional entitlements paid almost exclusively to pensioners and beneficiaries. Entitlement to them is based on entitlement to the primary payment and they are not paid in their own right. They encompass payments such as Rent Assistance, Guardian Allowance and Pharmaceutical Allowance;
- ‘family payments’, which covered (before the new structure applying from July 2000) payments such as Family Allowance and Maternity Allowance in the Social Security Act; and
- ‘other payments’, which constitute all the other cash payments such as Mobility Allowance and Funeral Benefit.

The compendium also covers non-cash fringe benefits, as they are available to pensioners and beneficiaries on the basis of their social security status and aspects of them are dealt with in the Social Security Act. They have been regarded as a payment type for purposes of the compendium.

For each change described in records, the compendium lists all payments potentially affected under the Social Security Act. Sometimes in practice, a change will mainly impact on only certain of the designated payments and have minimal (if any) impact on others. This situation most frequently arises where a change would generally affect only older or younger people, while a listed payment exclusively or predominantly assists people at the opposite end of the age scale to those the change is targeted to. For example, changes related to the treatment of superannuation in means tests would have very limited, if any, application to Job Search Allowance recipients during the period before 1 July 1991, when the allowance was paid only to 16–17 year-olds. Readers should exercise their judgement in these cases and payments unlikely to be affected have been excluded from the index.
Pensions and benefits

Pensions and benefits have been clearly differentiated in the Social Security Act over the years as they generally have different rates and income tests. However, some confusion can arise because of the names of the payments.

While many pensions carry the name ‘pension’, a number do not. Supporting Parent’s Benefit (not now in existence) was a pension, notwithstanding that it had the term ‘benefit’ in its name. Other pensions have had the terms ‘allowance’ or ‘payment’ in their names. On the other hand Double Orphan Pension has the designation ‘pension’ but is not an income support payment and has not been included in the pension category.

For a number of years after 1982, all benefits had the name ‘benefits’. Now only one (Special Benefit) retains that name and most are currently called allowances.

Mature Age Allowance has been both a pension and a benefit. The allowance was paid under pension conditions from its inception in March 1994 and was regarded as a pension. Following changes applying from July 1996, it was paid under benefit conditions to new recipients and was classified as a benefit. However, persons to whom it had been granted before that date continued to receive it under pension conditions. Accordingly, changes can apply to it as a pension or benefit, or both. When separately identified as a payment type, the terms ‘Mature Age Allowance (pension)’ and ‘Mature Age Allowance (benefit)’ have been used.

Another complication relates to Parenting Allowance and Parenting Payment. Parenting Allowance had two components, Basic Parenting Allowance which was regarded as a family payment and Additional Parenting Allowance which was a benefit. The establishment of Parenting Payment involved a third component, Parenting Payment (single), which replaced Sole Parent Pension and was a pension. These components have been spelt out separately in recording payments affected.

In the tables, where several pensions or benefits are covered by a change, the terms ‘pensions’ and ‘benefits’ have been used to specify payments affected. A list of what constitutes a pension or benefit has been presented in the ‘Key to pensions and benefits at different dates’ section at the end of the Explanatory notes. The information has been provided for different time periods. Accordingly, to ascertain what ‘pension’ or ‘benefit’ means for a particular change, the reader should note the date on which the change was implemented and check what constituted a pension or benefit at that date. These will be the ones covered by the record unless the description indicates some variation from this. It should also be noted that where the terms pensions or benefits are used on their own in descriptions, they always mean a social security pension or benefit at a particular date as set out at the end of the Explanatory notes. The terms ‘pensioner’ and ‘beneficiary’ have an analogous meaning.

The only variation to this approach relates to Special Benefit. Records relating to rate or income test changes contain the words ‘Special Benefit (in effect)’ when identifying payments affected by a change. This reflects the fact that there has never been a specified maximum rate or a specific income test for Special Benefit. Instead the legislation has stated that the rate was to be at the discretion of the Director-General/Secretary with the qualification that it could not exceed that of certain other benefits if the person had been entitled to one of them. The assets test on the other hand applies to Special Benefit.
The term ‘in effect’ takes account of the fact that, notwithstanding the wording of the Act, the general practice since before 1983 has been to pay Special Benefit at the maximum relevant benefit rate and, up to September 1990, subject to the benefit income test. Since September 1990, a dollar for dollar withdrawal rate has been applied to recipients of Special Benefit with non-benefit income so that from that time income test changes have been of little practical relevance. However, as this was an administrative rather than a legislative change, the words ‘in effect’ have been retained. When the words ‘benefits, Special Benefit (in effect)’ are used, it means all benefits are included in the change but Special Benefit only in the sense outlined. Given the discretionary nature of Special Benefit, the term benefit when used in the general description could include or exclude it.

To avoid excessive repetition, the term ‘workforce benefits’ has been used at times in the general descriptions. This term includes Unemployment Benefit, Job Search Allowance, Sickness Benefit and Sickness Allowance according to which of them were in existence at the date of implementation of a change.

Another feature of the payment types is that, in the restructuring of unemployment payments from 1 July 1991, Job Search Allowance retained its name. However, the group of people covered by the allowance from that time differed greatly from those covered before the change.

**Supplementary payments**

Supplementary payments have been regarded as payments in their own right for purposes of recording changes specific to those payments. This approach makes recording much easier through avoiding endless repetition by, for example, having to record every pension and benefit whenever a change to Rent Assistance is made.

Changes to the primary pension or benefit to which supplementary payments relate are not covered in these changes except where the supplementary payment has been introduced or abolished in respect of a pension or benefit, or there has been a name change. Accordingly, when Rent Assistance was first extended to unemployment beneficiaries, this was recorded as a change to both Rent Assistance and Unemployment Benefit. Thereafter, any further changes are recorded only as changes to Rent Assistance. Researchers who wish to trace the history of Unemployment Benefit, and are interested in the conditions under which Rent Assistance is paid to unemployment beneficiaries, would need to check all references to Rent Assistance in the compendium following the extension of such assistance to those beneficiaries.

Likewise, when a new pension or benefit has been introduced, all the supplementary payments attached to that payment have not been recorded in the ‘payments affected’ row.

**Other payments and general provisions**

Payments other than pensions and benefits have been individually spelt out under ‘payments affected’ in each record. For some payments affected, the words ‘general provision’ have been used. This applies where, for example, there has been a change to a definition that applied throughout the Act, or the change amounted to the signing of a reciprocal Social Security Agreement with another country.
Payment names not covered by legislation

Certain records refer to changes to Additional Pension for Children, Additional Benefit for Children, Additional Allowance for Children (used for only a very short time), Mother’s/Guardian’s Allowance and Special Temporary Allowance (none of these payments exists currently). These terms were never used in the Social Security Act but were in common use and recorded as such in the department’s annual reports. Additional Pension, Benefit and Allowance were supplements to pensions and benefits for dependent children; Mother’s/Guardian’s Allowance (Guardian Allowance and in the Act since 1991) was a supplement for sole parent pensioners and beneficiaries; and Special Temporary Allowance was used to describe a provision under which, following the death of a member of a pensioner couple, the surviving pensioner continued to receive the combined married rate of pension for 12 weeks.

Payments not identified as categories in their own right

While the general approach has been to classify any payment, including supplementary payments, as payments in their own right, there are two exceptions to this. ‘Special needs’ pensions are treated simply as part of the category to which they belong—for example, a change to special needs Wife Pension is treated as a change to Wife Pension. The other is the addition to what (up to June 2000) was Family Allowance for families with triplets or higher multiples. This is not regarded as a separate payment in the Social Security Act but was commonly known as ‘Multiple Birth Payment’ and (between 1992 and mid-2000) as ‘Multiple Birth Allowance’.

Residual and consequential categories of payment

In recording changes, only the primary payment is mentioned under ‘payments affected’. For example, if a change stated that a particular family payment was not to be regarded as income in the income test for Newstart Allowance, the only payment type mentioned would be Newstart Allowance as, in this case, there has been no change in the conditions under which the family payment was made.

In addition, consequential effects on payments have not been counted as ‘payments affected’. For example, the introduction of Youth Allowance affected Newstart Allowance as Newstart Allowance was no longer paid to persons aged under 21 years and a change to Invalid Pension (before its abolition in 1991) would usually flow through to Sheltered Employment Allowance as a person could receive the allowance only if he/she otherwise qualified for the pension.

Non-social security payments

Payments not made under the Social Security Act are mentioned only to the extent that they impinge on social security payments. When they are mentioned, it is usually in the context that a person becomes eligible for, or is entitled to a higher rate of, pension or benefit only if he/she has been receiving a social security or other income support payment for a specified period. The most commonly mentioned such payments are those made under the Veterans’ Entitlements Act, Youth Training Allowance and certain labour force payments.

References to payments under the Veterans’ Entitlements Act have been referred to in descriptions as ‘specified veterans’ payment’. Exactly what the term means
for a particular record or at a particular time has not been spelt out. In recent years it has generally referred to Age Service Pension, Invalidity Service Pension, Partner Service Pension or Carer Service Pension. Occasionally, it has also included an Income Support Supplement paid to Armed Service widows and widowers.

**Interpretation of payments affected**

On occasions, the list of ‘payments affected’ may give a misleading impression. In the case, for example, of changes to the general categories of income which are exempt from income tests, Family Allowance and Family Allowance Supplement, and the successors to those payments, have not been included under that sub-heading. This reflects the fact that Family Allowance, since it became subject to an income test in late 1987, and Family Allowance Supplement and its successors since late 1988, have been income tested based on taxable income. The same categories of income exempted from other social security income tests would in most (probably all) cases also be exempt income for income tax purposes. In effect, therefore, the same exemptions would apply to these payments but would not be reflected under ‘payments affected’ in compendium tables.

**Description of changes**

The description of the changes has been recorded below the tables and provides the main information. Explanations of, and comments on, changes where they do not form part of the main description have been placed in square brackets.

The compendium seeks to provide plain English descriptions which keep fairly close to the meaning of the legislation. It does not purport, nor is it intended, to be a replica of the legislation. People who need for any purpose to know or interpret the precise meaning of sections of the Social Security Act should consult the Act itself.

**Guide to identifying developments from 1983 to 2000**

During the period covered by the 1983–2000 compendium, there was a substantial restructuring of most assistance for people affected by life’s major contingencies. While some payments which existed at the start of the period remained 18 years later, many new payments were introduced and others were either abolished in the period or absorbed into the new payments. In addition, a number of payments were renamed with little or no other change made to them.

This short guide seeks to assist readers wishing to identify developments in assistance during the period by highlighting, in respect of the various contingencies, the payment to which they should give attention. The guide makes reference to all payments contained in the ‘Payments affected’ row in the tables for each record. It initially deals with basic income support payments available in respect of the various contingencies, and then with other payments whether supplementing this income support or paid in their own right.

The most recent spelling only has been used when citing payments whose names contained an apostrophe ‘s’ which was later removed following a legislative amendment.
Basic income support

Assistance to the aged
Age Pension and Wife Pension provided income support to the aged throughout the period but a phasing out of Wife Pension commenced during it. Mature Age Allowance was introduced in the period as a bridge between work and retirement with Mature Age Partner Allowance available at one stage to an allowee’s spouse.

Assistance to people affected by long-term disabilities or sickness
Disability Support Pension replaced Invalid Pension, Sheltered Employment Allowance and Rehabilitation Allowance in the period and provided income support to this group. Disability Wage Supplement was introduced later and also abolished in the period. Details for Wife Pension are as for Age Pension.

Assistance to carers
There was no specific income support for carers at the commencement of the period—Wife Pension would have played a role in some instances for women who were eligible for it but many carers were dependent on Special Benefit. Spouse Carer’s Pension was introduced in the period and provided income support to certain men assuming a caring role. It was replaced by a Carer Pension available to men and women and which was later renamed Carer Payment.

Assistance to sole parents
Sole Parent Pension replaced Class A Widow’s Pension and Supporting Parent Benefit in the period and provided income support to sole parents. Sole Parent Pension was later abolished and replaced by Parenting Parent (single), a component of Parenting Payment.

Assistance to older single women without children
Class B Widow’s Pension, which provided this income support, began to be phased out during the period. It was also renamed Widow B Pension. Later a Widow Allowance was introduced and assisted certain older women without children under benefit conditions.

Assistance following a death
Income support for women in these circumstances was provided by Class C Widow’s Pension until it was replaced by Widowed Person Allowance, which was paid under different conditions and not restricted to women. Widowed Person Allowance was later renamed Bereavement Allowance. Related support was also provided by certain payments not regarded as basic income support – these are dealt with under ‘Other payments’.

Assistance to the unemployed
Unemployment Benefit provided this income support at the commencement of the period. Job Search Allowance for unemployed people under 18 years was introduced in the period. In a major restructuring, Unemployment Benefit was abolished and Newstart Allowance, along with a much different Job Search Allowance not restricted to young people, provided assistance to the
unemployed. For a time income support for persons aged under 18 years was provided outside the Social Security Act by Youth Training Allowance. Later Job Search Allowance was abolished. Additional Parenting Allowance, Partner Allowance and Parenting Payment (partnered) also had a role in unemployment assistance while Mature Age Allowance provided a bridge between work and retirement for older people. When Youth Allowance was introduced, it assisted younger unemployed people.

**Assistance to persons with temporary sickness or disability**

Sickness Benefit performed the income support function but was replaced during the period by Sickness Allowance, which was similar but had some different conditions. Conditions of payment of Sickness Allowance (as for Sickness Benefit) were aligned with unemployment payments rather than with payments for people with long-term medical conditions. Additional Parenting Allowance, Partner Allowance and Parenting Payment (partnered) are also relevant to this assistance. Later Youth Allowance provided income support for younger persons in this category.

**Assistance to students**

Income support for students was provided by education payments outside of the Social Security Act until Youth Allowance and Austudy Payment were introduced in social security legislation late in the period.

**Assistance of last resort**

Special Benefit continued as before the period to be a temporary last resort safety net for people not eligible for other income support payments.

**Other payments**

**Assistance to people paying rent**

Rental assistance had been provided by Supplementary Assistance or Supplementary Allowance but these two payments were replaced during the period by Rent Assistance. Incentive Allowance was retained but started to be phased out. Residential Care Allowance had a small role in rental assistance for a short period.

**Assistance to carers**

A Carer Allowance was introduced in the period. It assisted people caring for adults who were sick or had a disability but also replaced Child Disability Allowance (traditionally regarded as a family benefit) for persons caring for children in such circumstances.

**Assistance to families with children**

There were several major restructures in assistance to families with children within the period. Various payments were absorbed by other payments with new names and conditions, and some payments which had at one time been supplements to pensions and benefits in respect of children were absorbed into more general family assistance. Family Income Supplement was abolished and
Family Allowance Supplement introduced. Additional Pension/Benefit/Allowance for Children was abolished. Then Family Allowance and Family Allowance Supplement were replaced with Family Payment (which had ‘Basic’ and ‘Additional’ components). A further restructure created a new Family Payment with ‘minimum’ and ‘more than minimum’ components. A Family Tax Payment was introduced and the name ‘Family Allowance’ was restored. Near the end of the period all general assistance for families with children was abolished, or abolished in its prevailing form, and removed from the Social Security Act.

In assistance specific to sole parents, Mother’s/Guardian Allowance was renamed Guardian Allowance. The allowance was removed from the Social Security Act with a number of other family payments.

Home Child Care Allowance was introduced and shortly thereafter was subsumed by Basic Parenting Allowance which later became Basic Parenting Payment (partnered). The last mentioned payment was also absorbed into the new family payments provided outside the Social Security Act.

A Maternity Allowance and Maternity Immunisation Allowance were established within the period. They were removed from the Social Security Act with most other family payments but remained substantially unchanged in the new Act.

Double Orphan Pension was in place at the start of the period and remained in the Social Security Act at the end of it.

Handicapped Child’s Allowance was replaced by a Child Disability Allowance paid under different conditions. This family payment was absorbed into Carer Allowance as previously stated.

**Assistance following a death**

Funeral Benefit and Special Temporary Allowance were abolished and replaced by a much broader range of payments which went under the title of Bereavement Payments. There was also provision for certain family payments to continue to be paid for a period following the death of a child. This assistance in the event of a death should be examined in conjunction with income support following a death described above.

**Payments not elsewhere included**

Other payments (unless otherwise stated, all were introduced during the period 1983–2000) are listed below:

- Mobility Allowance provided assistance to people with disabilities throughout the period. Youth Disability Supplement was an additional payment made to young recipients of Disability Support Pension;
- Remote Area Allowance assisted pensioners and beneficiaries living in remote areas;
- Pharmaceutical Allowance (initially named Pharmaceutical Supplement) was paid as a supplement to pensions and benefits to cover the cost of pharmaceuticals;
- an Employment Entry Payment assisted a wide range of pensioners and beneficiaries who obtained employment;
an Education Entry Payment assisted a number of categories of pensioner and beneficiary attending education courses;

Young Homeless Allowance, before it was absorbed into the general benefit rates structure, provided additional income to homeless young beneficiaries;

Job Search Training Supplement, Newstart Training Supplement and Training Supplement for Widows provided assistance to recipients of Job Search Allowance, Newstart Allowance and Widow Allowance respectively while undertaking approved training;

Approved Program of Work Supplement was a supplement paid to the unemployed under the Work for the Dole Scheme;

Participant Supplement was a supplement provided to participants in the Community Development Employment Projects Scheme;

Pensioner Education Supplement assisted certain pensioners and beneficiaries undertaking qualifying study;

Fares Allowance mainly assisted Youth Allowance, Austudy Payment and Pensioner Education Supplement recipients with travel costs incurred while undertaking tertiary study;

Disaster Relief Payment provided short-term assistance to residents in the event of a major disaster;

Crisis Payment was available to persons qualified for a pension or benefit who were experiencing severe financial hardship in specified circumstances;

Pension Supplement enabled appropriate compensation to be paid to pensioners when the new Goods and Services Tax was introduced;

Telephone Allowance replaced a telephone rental concession voucher scheme and provided assistance to pensioners and beneficiaries;

non-cash Fringe Benefits continued to be available to pensioners throughout the period and were extended to certain beneficiaries; and

a Seniors Health Card extended a range of health care benefits to certain elderly people not entitled to a pension.

Note: In relation to educational assistance, there were also numerous changes in the period in the assistance provided to full-time students under the family payments system. Also, to a limited extent Family Allowance and Youth Allowance were alternative payments for full-time students (refer to Record 1 of 1998 and Record 11 of 1999).

Key to pensions and benefits at different dates
(This should be read in conjunction with the sections of the Explanatory notes titled ‘Names of payments’ and ‘Pensions and benefits’.)

Pensions
1 January 1983—30 November 1983
Age Pension; Invalid Pension; Rehabilitation Allowance; Sheltered Employment Allowance; Wife’s Pension; Class A Widow’s Pension; Class B Widow’s Pension; Class C Widow’s Pension; Supporting Parent’s Benefit
1 December 1983—31 October 1985
Age Pension; Invalid Pension; Rehabilitation Allowance; Sheltered Employment Allowance; Wife’s Pension; Class A Widow’s Pension; Class B Widow’s Pension; Class C Widow’s Pension; Supporting Parent’s Benefit; Spouse Carer’s Pension

1 November 1985—28 February 1989
Age Pension; Invalid Pension; Rehabilitation Allowance; Sheltered Employment Allowance; Wife’s Pension; Class A Widow’s Pension; Class B Widow’s Pension; Class C Widow’s Pension; Supporting Parent’s Benefit; Carer’s Pension

1 March 1989—30 June 1991
Age Pension; Invalid Pension; Rehabilitation Allowance; Sheltered Employment Allowance; Wife’s Pension; Sole Parent’s Pension; Class B Widow’s Pension; Widowed Person Allowance; Carer’s Pension

1 July 1991—11 November 1991
Age Pension; Invalid Pension; Rehabilitation Allowance; Sheltered Employment Allowance; Wife Pension; Sole Parent Pension; Widow B Pension; Widowed Person Allowance; Carer Pension

12 November 1991—19 March 1994
Age Pension; Disability Support Pension; Rehabilitation Allowance; Wife Pension; Sole Parent Pension; Widow B Pension; Widowed Person Allowance; Carer Pension

20 March 1994—30 June 1994
Age Pension; Disability Support Pension; Rehabilitation Allowance; Wife Pension; Sole Parent Pension; Widow B Pension; Widowed Person Allowance; Carer Pension; Mature Age Allowance; Mature Age Partner Allowance

1 July 1994—31 December 1994
Age Pension; Disability Support Pension; Rehabilitation Allowance; Wife Pension; Sole Parent Pension; Widow B Pension; Widowed Person Allowance; Carer Pension; Mature Age Allowance; Mature Age Partner Allowance; Disability Wage Supplement

1 January 1995—30 June 1997
Age Pension; Disability Support Pension; Rehabilitation Allowance; Wife Pension; Sole Parent Pension; Widow B Pension; Bereavement Allowance; Carer Pension; Mature Age Allowance; Mature Age Partner Allowance; Disability Wage Supplement

1 July 1997—31 December 1997
Age Pension; Disability Support Pension; Rehabilitation Allowance; Wife Pension; Sole Parent Pension; Widow B Pension; Bereavement Allowance; Carer Payment; Mature Age Allowance; Mature Age Partner Allowance; Disability Wage Supplement

1 January 1998—19 March 1998
Age Pension; Disability Support Pension; Rehabilitation Allowance; Wife Pension; Sole Parent Pension; Widow B Pension; Bereavement Allowance; Carer Payment; Mature Age Allowance; Mature Age Partner Allowance
20 March 1998—26 June 2000
Age Pension; Disability Support Pension; Rehabilitation Allowance; Wife Pension; Parenting Payment (single); Widow B Pension; Bereavement Allowance; Carer Payment; Mature Age Allowance; Mature Age Partner Allowance

27 June 2000—31 December 2000
Age Pension; Disability Support Pension; Wife Pension; Parenting Payment (single); Widow B Pension; Bereavement Allowance; Carer Payment; Mature Age Allowance; Mature Age Partner Allowance

Benefits
1 January 1983—31 December 1987
Unemployment Benefit; Sickness Benefit; Special Benefit

1 January 1988—30 June 1991
Unemployment Benefit; Job Search Allowance; Sickness Benefit; Special Benefit

1 July 1991—11 November 1991
Job Search Allowance; Newstart Allowance; Sickness Benefit; Special Benefit

12 November 1991—19 September 1994
Job Search Allowance; Newstart Allowance; Sickness Allowance; Special Benefit

20 September 1994—30 June 1995
Job Search Allowance; Newstart Allowance; Sickness Allowance; Special Benefit; Partner Allowance

1 July 1995—30 June 1996
Job Search Allowance; Newstart Allowance; Sickness Allowance; Special Benefit; Partner Allowance; Additional Parenting Allowance; Widow Allowance

1 July 1996—19 September 1996
Job Search Allowance; Newstart Allowance; Sickness Allowance; Special Benefit; Partner Allowance; Additional Parenting Allowance; Mature Age Allowance; Widow Allowance

20 September 1996—19 March 1998
Newstart Allowance; Sickness Allowance; Special Benefit; Partner Allowance; Additional Parenting Allowance; Mature Age Allowance; Widow Allowance

Newstart Allowance; Sickness Allowance; Special Benefit; Partner Allowance; Additional Parenting Payment (partnered); Mature Age Allowance; Widow Allowance

1 July 1998—31 December 2000
Newstart Allowance; Sickness Allowance; Special Benefit; Youth Allowance; Austudy Payment; Partner Allowance; Additional Parenting Payment (partnered); Mature Age Allowance; Widow Allowance

Note: Where the terms ‘Parenting Allowance’ or ‘Parenting Payment’ are used on their own, they incorporate a benefit component.
### Acronyms used

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
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<tbody>
<tr>
<td>ADAT</td>
<td>Adult Disability Assessment Tool</td>
</tr>
<tr>
<td>AICS</td>
<td>Assistance for Isolated Children Scheme</td>
</tr>
<tr>
<td>ATSIC</td>
<td>Aboriginal and Torres Strait Islander Commission</td>
</tr>
<tr>
<td>CDAT</td>
<td>Child Disability Assessment Tool</td>
</tr>
<tr>
<td>CDEP Scheme</td>
<td>Community Development Employment Projects Scheme</td>
</tr>
<tr>
<td>DHFS</td>
<td>Department of Health and Family Services</td>
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<td>FBT</td>
<td>Fringe Benefits Tax</td>
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<td>GAM</td>
<td>Gross Actual Means</td>
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<tr>
<td>GST</td>
<td>Goods and Services Tax</td>
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<tr>
<td>LEAP</td>
<td>Landcare and Environment Action Program</td>
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<td>NEIS</td>
<td>New Enterprise Incentive Scheme</td>
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<td>NPBL</td>
<td>Net passive business loss</td>
</tr>
<tr>
<td>RAS</td>
<td>Rural Adjustment Scheme</td>
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<tr>
<td>TNITML</td>
<td>Total notional income tax/Medicare levy</td>
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Introduction

The two compendiums
This compendium provides a detailed description of all policy changes in the Social Security Act enacted in the calendar years 1983 to 2000. An earlier publication of the (then) Department of Social Security, originally published in June 1983 and reprinted in 2006, entitled A Compendium of Legislative Changes in Social Security 1908–1982, covers all social security policy changes in the Social Security Act and its predecessors in the specified period. Together the two compendiums cover the legislative history of social security in Australia since its inception.

While the material covered by the two compendiums is essentially the same, there are a number of key differences in the way developments have been treated:

- greater detail has been added in the 1983–2000 compendium, in large part reflecting the growing size and complexity of legislation since 1983;
- the 1908–1982 compendium presents the changes in separate sections according to the main payment types. The 1983–2000 compendium lists the changes in strict amending Act order and in the order in which they appear in the amending Acts;
- the 1983–2000 compendium identifies the exact sections and/or schedules and items within schedules in the amending Acts where the changes are to be found;
- the 1908–1982 compendium provides details of some legislation other than that in the Social Security Act and its predecessors, in particular taxation changes relevant to social security. The 1983–2000 compendium is confined to the Social Security Act; and
- the 1908–1982 compendium contains certain information—such as historical tables of social security payment rates and income test parameters and a list of Second Reading Speeches—which are not contained in the 1983–2000 compendium.

The remainder of this Introduction deals only with the 1983–2000 compendium. (The 1908–1982 compendium contains the original Introduction written in 1983.)

Scope of legislation

Extent to which the Social Security Act covers full range of social security changes
This compendium (just as its predecessor) essentially deals with the history of social security cash payments and the term ‘social security’ as used is by and large restricted to them. Up to 30 June 2000, the Social Security Act covered the vast majority of legislation relevant to social security cash payments. The Department of Social Security’s business before October 1998 (when it became the Department of Family and Community Services and took on a much broader range of social welfare functions) was also predominantly concerned with cash payments.
At the same time, it should be noted that certain developments closely related to social security have never been covered in the Social Security Act. Also what has constituted social security and is covered by the Act has changed over time.

Income support for students was not in the Social Security Act up to mid-1998 and such payments (mainly under the Austudy umbrella) were not treated as social security payments. This changed from 1 July 1998, with the introduction of Youth Allowance. The allowance provides income support for young unemployed and sick people and also for students previously covered under Austudy. Furthermore, income support for full-time students aged 25 years and over became payable under a new Austudy Payment in the Social Security Act and certain other student assistance was transferred to the Act. Youth Training Allowance (which existed from 1 January 1995 to 30 June 1998) was an education payment paid under the Student Assistance Act, although the conditions under which it was paid were similar in many ways to those for social security benefits.

Issues such as Health Care cards, child support policy and changes to the personal income tax system affecting social security are, and always have been, covered in health, child support and taxation legislation respectively. Also cash child-care assistance (in family assistance legislation since mid-1998) was never previously in social security legislation.

Restructuring of social security legislation from 1 July 2000

In legislation passed in 1999, certain social security payments and other matters previously contained in the Social Security Act were moved into separate Acts with the new arrangements applying from 1 July 2000:

- most family assistance was moved from the Social Security Act to the A New Tax System (Family Assistance) Act 1999;
- all machinery and most administrative provisions of the Social Security Act were moved to the Social Security (Administration Act) 1999; and
- social security international agreements were transferred to the Social Security (International Agreements) Act 1999.

The second and third changes are not significant for purposes of the compendium. The administrative changes moved out of the Social Security Act were, with minor exceptions, those omitted from the present compendium while international social security agreements only receive a brief mention.

The removal of family payments is more important. While the compendium covers most social security payments to 31 December 2000, it covers the great majority of family payments only to 30 June 2000. From 1 July 2000, family payments were restructured and most of the existing such payments ceased to exist in their previous form and title. However, Maternity Allowance and Maternity Immunisation Allowance moved to the new Act in their existing form.

The new Social Security Act in 1991

From 1 July 1991, the 1947 Social Security Act was replaced by the 1991 Act. The 1991 Act had a totally different style and structure than the 1947 Act. A number of transitional Acts were required to give effect to the move from the old to the new Act. In the event, a number of minor changes occurred in the transition which may not have been picked up in the compendium and, given the differences
between the two Acts, a certain degree of discontinuity has resulted. More details of these issues have been provided in the preliminary note to the 1991 legislation.

Changes covered within the Social Security Act

Policy versus administrative changes

The compendium aims to cover policy changes which, in broad terms, are those that affect the rates and eligibility conditions for payments. Purely administrative changes have been omitted. However, there is some overlap between the two, as many administrative provisions have policy implications. Also it is sometimes important to include administrative details of a change to assist an understanding of the underlying policy. For these reasons, where there was doubt about whether a change should be incorporated, it has been included and background information sometimes covers administrative issues.

Certain broader administrative changes which are not strictly policy-related but which are of historical interest have been covered—these include events such as the abolition of the National Welfare Fund and the bringing of Christmas Island and the Cocos (Keeling) Islands within the ambit of the Australian social security system. Generic administrative provisions such as a requirement that an applicant for a social security payment must have, or seek to obtain, a tax file number have been omitted. Legislation dealing with appeals, incorrect payments and fraud, amnesties, enforcement of debts and prosecutions for offences have been omitted in every case.

Minor changes of a technical nature or removing unintended defects in the legislation have generally been omitted. On occasions, however, they have been referred to in the text of descriptions or in endnotes although not covered in a record of their own.

Changes in rates of payment and other variables

All ad hoc changes in rates of social security payments and in other parameters such as income and assets test thresholds have been covered in the compendium. Progressively over the 18-year period covered, the trend to adjust rates and other variables automatically (usually every six or 12 months) has increased so that, since long before the end of 2000, the vast majority have been adjusted in this way. Each adjustment does not require legislation and automatic indexation changes have not been included in the compendium. Historical rate changes are available on the Internet or from the Department on request. Changes to the enabling legislation for indexation have been included.

Number of changes

It should be noted that, while a record frequently contains only one change, this is not always the case. Many records contain multiple changes. Discrete changes have usually been identified either by separate dot points or, in the case of the more detailed changes, by separate sub-headings. However, even among the smaller records, there may be more than one change inherent in an altered provision. In the case of integrated packages of legislation such as the 1991 Disability Reform Package, a single record may contain a large number of
changes. Also, one change may affect more than one type of payment. Readers interested in identifying the number of changes in a period would have to exercise some judgment.

**Purpose, style and usefulness of compendium**

The main purpose of the compendium is to provide a detailed description of legislative changes as an information base for policy development and research. It should also be particularly useful for people interested in the history of the social security system, as it provides details of changes in the precise form they were introduced and the dates. Frequently, the final form of legislation is quite different from that foreshadowed when it was announced by the Government. Furthermore, legislation is sometimes amended after it has been enacted, with the amendment backdated or the date of application deferred. All such information is contained in the compendium and major future amendments overriding earlier legislation have been flagged on the earlier record. This information is not readily available in any other source apart from the legislation itself.

The descriptions are intended to be comprehensive with the aim of ensuring that, for policy and research purposes, in the great majority of cases the compendium will suffice as the sole source of information that needs to be consulted. These descriptions seek to adhere closely to the meaning of the legislation although some tension exists between this objective and that of another objective—to provide a plain English version of the legislation. In order to achieve the latter objective, it has been necessary to generalise to some extent. The compendium should nonetheless prove a useful reference source for lawyers and others wishing to examine and interpret the precise wording of legislation by enabling them to identify when the major changes occurred and their precise location in the amending Acts.

The Act contains many, sometimes lengthy, definitions. These have been included in full, summarised or omitted according to their importance to the operation of a provision. Transitional and savings provisions can also be very detailed and cover numerous situations. These have been included in descriptions where they were considered to have an ongoing importance but in other cases only a passing reference to them has been made.

The concepts behind, and structure of, the legislation have varied over time and have been adopted in the compendium only where they have been found to be useful. An example of a legislative concept not adopted is the distinction between 'qualification' and 'payability' of a social security payment—under this, a person may be qualified for a payment but it may not be payable to him/her because of, for example, an activity test or administrative breach. The compendium is concerned solely with whether a person is eligible or not for a payment and not with such technical distinctions.

This compendium, just as the earlier one, concentrates on providing only factual information. Accordingly, it has sought to avoid normative statements such as those relating to the government’s objectives in introducing the legislation or words such as ‘reform’. The best sources for this information are to be found in the government’s announcements of changes (usually in the context of the Federal Budget) and Ministers’ Second Reading Speeches in Parliament. To a limited extent, some objectives of legislation have been mentioned in order to
provide background information on changes which are not self-explanatory. Of course, in the small number of cases where objectives have been spelt out in the legislation, they have been included as part of the description of that legislation.

The principal (and frequently the only readily available) source for interpreting the legislation and understanding its background has been the explanatory memorandum(s) to the amending Bill. Other sources examined have been Budget documents (Budget kits put out by the Minister and the Portfolio Budget Statements), the Ministers' Second Reading Speeches and the department’s annual reports. On occasions, media releases, departmental or Centrelink information documents, National Instructions of the department or Centrelink and guides to the legislation have been consulted. Also the assistance of departmental officers has been sought from time to time.

**Tracking historical developments**

In tracking historical developments, care should be exercised when comparing changes dealt with up to and including amending Act No.6 of 1991 (which were in the 1947 Social Security Act) and those occurring thereafter (which, apart from some transitional ones in 1991, were in the 1991 Act). While (except for some minor ones identified in the main text) there were no policy changes when translating the provisions of the 1947 Act to the 1991 Act, the provisions and concepts in the later Act (which was much longer) were quite different from those in its predecessor. The Explanatory Memorandum to the 1991 Act did not indicate how provisions in the 1991 Act related to provisions in the 1947 Act. Also, certain provisions in the 1991 Act, which were found after the event not to have been accurately translated from the 1947 Act, were subsequently corrected.
Legislation passed in 1994

Social Security (Home Child Care And Partner Allowances)
Legislation Amendment Act 1994, No. 55

Date of Royal Assent: 7 April 1994

1

INTRODUCTION OF HOME CHILD CARE ALLOWANCE

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Sections 3 and 4 (section 4 refers to amendments set out in Schedule 1)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>29 September 1994 (main provision). Act commenced on 7 April 1994</td>
</tr>
<tr>
<td>Date of application</td>
<td>29 September 1994</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Home Child Care Allowance</td>
</tr>
</tbody>
</table>

A new payment, Home Child Care Allowance, was introduced. The maximum rate of payment was $30 a week and it was tax free.

To be eligible for the allowance, a person had to meet the following conditions:

- be a member of a couple;
- have a qualifying child (the qualifications such as the age of eligibility and residency conditions were as for Family Payment but the Family Payment income and assets tests did not apply);
- be an inhabitant of Australia;
- normally be in Australia on the date of claim; and
- satisfy an income test on his/her own income (the income of the partner was not taken into account and there was no assets test).

A person could be outside Australia for up to 13 weeks and still qualify for the allowance.

The permissible income limit (free area) in the income test was $282 a year ($10.85 a fortnight). Above that level the allowance was reduced by 25 per cent for income received.

The definition of income for purposes of the income test was somewhat broader than for most income tests and included all pensions and benefits, specified veterans’ payments, payments to persons participating in full-time labour force programs (to the extent that the rate was calculated by reference to Job Search Allowance or Newstart Allowance, or contained a training or living away from home component), and payments under the New Enterprise Incentive Scheme or Aboriginal Employment Incentive Scheme. Rent Assistance, Pharmaceutical Allowance and Remote Area Allowance were not assessed under the test.
The rate of allowance was automatically increased on 1 January each year in line with increases in the Consumer Price Index between the previous June quarters. The first indexation increase took effect from January 1995.

Home Child Care Allowance was similar to, and intended as a replacement for, the ‘with child’ dependent spouse rebate in the personal income tax system. The permissible income limits and taper in the income test were identical for each. The allowance was slightly higher than the rebate—the maximum rebate for 1994–95 (the income tax year in which the allowance was introduced) was $1452 a year ($55.85 a fortnight). The lower ‘without child’ rebate remained in the personal income tax system.

Amendments to taxation legislation to implement these changes were to be enacted at a later date. In the event, the Government decided to retain the ‘with child’ rebate for those who preferred to receive it instead of Home Child Care Allowance. However, it was effectively to be phased out by not indexing it so that in due course it would be no higher than the ‘without child’ rebate and there would be only one rebate.1

[ Apart from being paid at a slightly higher rate, the general replacement of the ‘with child’ dependent spouse rebate with Home Child Care Allowance had an impact on families in a number of ways:

- persons whose taxable incomes had previously been too low to receive any, or the full, rebate were eligible for the new allowance;
- the allowance was received (in conjunction with Family Payment) by the dependent partner and main child carer (usually the mother). The dependent spouse rebate on the other hand had been received by the main income earner (usually the father), notwithstanding that entitlement to it had been based on the nil or low income of the dependent partner; and
- the allowance was available for part-years so that, for example, a person who left the labour force at any time during the year could immediately claim it. Entitlement to the rebate had been assessed on an annual basis.

The introduction of Partner Allowance (refer to Record 2 of 1994) was related to the introduction of Home Child Care Allowance.]
A new payment, Partner Allowance, was introduced. To qualify for the allowance: the claimant had to be a member of a couple; both members of the couple had to be at least 21 years old or, if one was younger, they had to have a dependent child; and the claimant’s partner had to be receiving a benefit.

Partner Allowance (for persons meeting the age or ‘with child’ criteria) replaced the additional amount paid under the combined married rate to a beneficiary (usually the husband) in respect of a dependent spouse. The person had to put in a separate claim for the allowance and received a payment in his/her own right (in contrast to the previous add-on arrangement). Otherwise there was no change. The payment received by the couple and conditions (such as residency requirements) under which the payment was made were as previously.²

[Partner Allowance was introduced in order to avoid an otherwise undesirable consequence of the effective replacement of the ‘with child’ dependent spouse rebate with Home Child Care Allowance (refer to Record 1 of 1994). This was that benefit recipients who had a dependent child, and who were on the married rate of payment and had little or no private income, would have had to pay income tax for the first time. The reason for this was that, under the previous arrangements, such beneficiaries had been protected from paying income tax by the combined operation of the dependent spouse rebate, the low income rebate and the beneficiary rebate in the tax system, and the abolition of the ‘with child’ rebate would have removed a component of this protection.

The splitting of the married rate of benefit with the introduction of Partner Allowance (along with an amendment to tax legislation splitting and increasing the beneficiary tax rebate) ensured that a couple with a dependent child would not be adversely affected by the changes. As a result, maximum rate benefit recipients with a dependent child generally received the maximum rate of Partner Allowance rather than Home Child Care Allowance. It should be noted that, while Partner Allowance was introduced to circumvent a problem experienced by beneficiaries with children, it was not necessary to have a dependent child to qualify for the allowance.]
Social Security Legislation Amendment Act 1994, No. 63

Date of Royal Assent: 19 May 1994

3

**ELIGIBILITY FOR MOBILITY ALLOWANCE EXTENDED**

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 4</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>19 May 1994</td>
</tr>
<tr>
<td>Date of application</td>
<td>19 May 1994</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Mobility Allowance</td>
</tr>
</tbody>
</table>

Mobility Allowance was extended to persons meeting the disability conditions who were undertaking job search activities under the Competitive Employment Placement and Training Program.

4

**TREATMENT OF CERTAIN LIFE INTERESTS IN ASSETS TESTS**

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 27</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>19 May 1994</td>
</tr>
<tr>
<td>Date of application</td>
<td>19 May 1994</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Pensions and benefits; Family Payment (Basic Family Payment and Additional Family Payment)</td>
</tr>
</tbody>
</table>

An amendment provided that a life interest created on the death of a person’s partner was not to be an exempt asset under the assets test on pensions, benefits and Family Payment. The previous legislation had exempted a life interest from the assets test except where it had been in the family home of a person or his/her partner or where one or both partners had created it. [The amendment was intended to counter a decision of the Social Security Appeals Tribunal which found that a life interest created under the will of a deceased person who, immediately before his/her death was a partner of the life tenant, was an exempt asset.]

5

**WIDOW B PENSION GRANTED WITHOUT NEED FOR A CLAIM**

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Sections 29 and 30</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>19 May 1994</td>
</tr>
<tr>
<td>Date of application</td>
<td>19 May 1994</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Widow B Pension</td>
</tr>
</tbody>
</table>

Provision was made, following the death of a woman’s partner, for her to be granted a Widow B Pension without the need for a claim where, immediately before his death she had been receiving a Wife or Carer Pension, she remained eligible for one of these payments during the 14 weeks following the death (the period during which Bereavement Payments were made) and she met the qualifications for Widow B Pension at the end of that period. [This brought the conditions of payment for Widow B Pension into line with those for Sole Parent Pension and certain other payments.]

6

**SOCIAL SECURITY AGREEMENT WITH ITALY**

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 31 (as set out in Schedule 3)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>19 May 1994</td>
</tr>
<tr>
<td>Date of application</td>
<td>It was stated in the agreement that it was to be ratified by both parties in accordance with their respective procedures and would enter into force on the first day of the month following the month in which instruments of ratification were exchanged. Due to delays by the Italian Government, the revised agreement was not ratified until 1 October 2000. [For later developments, refer to Record 1 of 1995.]</td>
</tr>
<tr>
<td>Payments affected</td>
<td>General provision</td>
</tr>
</tbody>
</table>

A revised Social Security Agreement between Australia and Italy was inserted as a Schedule to the Act. The 1986 agreement was repealed as a scheduled international agreement under the Social Security Act.
7

RESTRICTION ON ELIGIBILITY FOR ADDITIONAL FAMILY PAYMENT

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 32 (as set out in item 137 of Schedule 4)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>1 January 1993</td>
</tr>
<tr>
<td>Date of application</td>
<td>1 January 1993</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Family Payment (Additional Family Payment only)</td>
</tr>
</tbody>
</table>

A person was precluded from qualifying for Additional Family Payment in respect of a child where he/she or his/her partner had in the Secretary’s view not taken reasonable action to claim maintenance to which he/she was entitled for the child. [This reinstated the equivalent of a provision that had applied before the integration of family payments on 1 January 1993 and was backdated to that date.]

8

MODIFICATIONS TO MATURE AGE ALLOWANCE CONDITIONS

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 34</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>Commenced, or was taken to have commenced, on 20 March 1994, immediately after the commencement of Division 2 of Part 2 of the Social Security (Budget and Other Measures) Legislation Amendment Act 1993</td>
</tr>
<tr>
<td>Date of application</td>
<td>As for date of commencement</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Mature Age Allowance (pension)</td>
</tr>
</tbody>
</table>

In modifications to the eligibility conditions for Mature Age Allowance, the requirements that a person had to have been registered with the Commonwealth Employment Service, and that he/she had to have been continuously receiving a specified payment or combination of payments, in each case for a continuous period of at least 12 months immediately before making a claim, were taken to be satisfied provided that the periods of non-registration or non-receipt respectively were less than 13 weeks. The change was backdated to the introduction of Mature Age Allowance.

Date of Royal Assent: 30 June 1994

<table>
<thead>
<tr>
<th>ENTITLEMENT TO SOCIAL SECURITY AND VETERANS’ PAYMENTS</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Location in Act</strong></td>
</tr>
<tr>
<td><strong>Date of commencement</strong></td>
</tr>
<tr>
<td><strong>Date of application</strong></td>
</tr>
<tr>
<td><strong>Payments affected</strong></td>
</tr>
</tbody>
</table>

It was provided that Age Pension, Disability Support Pension, Wife Pension, Carer Pension and Disability Wage Supplement were not payable to persons receiving an Armed Services Widow or Widower Pension and an Income Support Supplement (or where the supplement would be payable if claimed) under the Veterans’ Entitlements Act. [The introduction of Disability Wage Supplement is covered in Record 10 of 1994.]

[The Income Support Supplement was a new payment under the Veterans’ Entitlements Act for these widow/widower pensioners and was paid at the same rate as the relevant social security pension. It meant that eligible persons were required to deal with only one department. However, a savings provision enabled persons who were in receipt of, or had claimed, one of the social security pensions before 20 March 1995 to elect to receive it instead.]
A new payment, Disability Wage Supplement, was introduced. It was payable to people who met the qualifying conditions for Disability Support Pension and who were participating in the supported wage system administered by the Department of Human Services and Health.

The supported wage system provided the legal basis for the payment of an agreed pro-rata wage to a person with a disability based on a nationally consistent assessment of the person’s skills and productive capabilities relative to those of a person without a disability. The system also provided for initial assessment, on-the-job support and workplace modifications to enable people with disabilities to maximise their job performance.

Rates and conditions (such as income and assets tests and ancillary payments) of Disability Wage Supplement were as for Disability Support Pension and a partner was eligible for a Wife Pension on the same basis. Earnings under the supported wage system were treated no differently than other income in the income test. However, recipients of the supplement received some additional concessions compared with disability support pensioners. The main ones were:

- once the supplement had been granted, the person was no longer required, while participating in the supported wage system, to satisfy the ‘continuing inability to work’ condition applied to disability support pensioners;

- the $300 lump-sum Employment Entry Payment available once a year to disability support pensioners was paid to a recipient of the supplement immediately he/she commenced work in the supported wage system (including during any trial or training period). The person was not required to comply with the usual conditions for the payment related to the minimum number of hours to be worked and the minimum level of earnings;

- where a supplement recipient moved on to the full award wage applicable to his/her employment, he/she was allowed to remain on the supplement for up to 12 months and did not have to meet the ‘continuing inability to work’ criterion during this period. He/she had to continue to meet the other eligibility criteria for Disability Support Pension including compliance with the income and assets tests; and
a provision was added in Bereavement Payments to the effect that, where a person receiving the supplement died and that person had a period of unused annual leave or long service leave, his/her partner or, if he/she was not a member of a couple, any other person the Secretary considered appropriate, received a payment of supplement for a period equal to the period of unused leave.

Transition between Disability Wage Supplement and Disability Support Pension was facilitated. Thus persons qualifying for the pension could transfer from the supplement to the pension without having to make a new claim. If they ceased to receive the supplement, provided that they made a claim within 28 days, they were entitled to receive pension payments for the period immediately following the cessation date without having to undergo further medical or related assessment. Also, persons who ceased to receive the supplement could have a claim for pension backdated for up to three months to the day immediately following the cessation, provided that the Secretary was satisfied that their incapacity was the sole or dominant cause of the delayed claim.

Provision was made for a person claiming the supplement, but who was not qualified at the date of claim, to have his/her claim backdated to the earliest day after that date on which he/she qualified for the payment provided that it was within six months. [This concession ensured that the Department of Human Services and Health had adequate time to assess a person’s suitability to participate in the supported wage system. The equivalent period for Disability Support Pension was only three months.]

A further concession to Disability Wage Supplement recipients was that a medical review was not triggered when earnings reached $250 a week as was the case with disability support pensioners. This was an administrative, not a legal, provision.

### TREATMENT OF INVESTMENTS IN INCOME TESTS VARIED

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 20</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>Taken to have commenced on 20 September 1993, immediately after the commencement of Division 18 of Part 2 of the Social Security Legislation Amendment Act (No. 3) 1992</td>
</tr>
<tr>
<td>Date of application</td>
<td>As for date of commencement</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Pensions and benefits; Special Benefit (in effect)</td>
</tr>
</tbody>
</table>

The treatment of managed investments, and of shares and other listed securities, in pension and benefit income tests was eased by providing that no more than 50 per cent of the annualised rate of return on them was to be assessed under the test and, where such investments had been held for less than 12 months, the rate of return was to be assessed based on the performance of the product over that period (and not, as previously, by extrapolating the performance over 12 months).
AMENDMENTS RELATED TO RESIDENCY CONDITIONS FOR PAYMENTS

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Sections 21, 22, 23, 24, 25, 26, 27 and 28</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commenceinent</td>
<td>1 September 1994</td>
</tr>
<tr>
<td>Date of application</td>
<td>1 September 1994</td>
</tr>
<tr>
<td>Payments affected</td>
<td>This is mainly a general provision. In addition, the third change relates to Job Search Allowance, Newstart Allowance and Sickness Allowance, the fourth change relates to Special Benefit and the fifth change relates to Special Benefit and Disaster Relief Payment</td>
</tr>
</tbody>
</table>

A wide range of amendments was made to take account of, and to come into effect at the same time as, major amendments to legislation relating to migration. The amendments aimed to provide a more flexible way of responding to future changes in such legislation. In a general sense, they sought to ensure that relevant provisions in the Social Security Act would either refer to visas specified in the Migration Act or, if this was not practicable, would allow the Minister to amend references to the Migration regulations in the Social Security Act. The Minister could identify a visa only by reference to a class of visas prescribed by regulations made under the Migration Act and any declaration made under the power was a disallowable instrument. The new approach also allowed some simplifications.

The main changes involved:

- a simpler definition of ‘Australian resident’. The term was now defined as a person who resided in Australia and who was either an Australian citizen, the holder of a permanent visa, or the holder of a special category visa or special purpose visa who was likely to remain permanently in Australia;^

- a simpler definition of ‘inhabitant of Australia’. The term was now defined as an Australian resident, or the holder of a temporary visa declared in writing by the Minister to be an approved visa for the purposes of the definition;

- changes to the definitions of ‘designated temporary entry permit’ and ‘newly arrived resident’s waiting period’ in relation to eligibility for Job Search Allowance, Newstart Allowance or Sickness Allowance. [These definitions were very long and have not been included.];

- allowing a person to qualify for Special Benefit only if he/she was an Australian resident, or the holder of a visa declared by the Minister to be an approved visa for this purpose. [Previously, a non-resident had to hold one of a number of specified residency permits or, in some instances, to have been advised by the Department of Immigration and Ethnic Affairs that he/she had a substantial claim to one. The department had ceased to provide such advice.]; and

- removing the provision precluding a person from receiving Special Benefit or a Disaster Relief Payment if he/she was an illegal migrant within the meaning of the Migration Act. [In the case of Special Benefit, such a provision was no longer necessary as non-residents had to hold a visa approved by the Minister. In the case of Disaster Relief Payment, the preclusion was updated in line with changes to the Migration Act to cover an ‘unlawful non-citizen’.]

^

3
Legislation passed in 1994

[These changes avoided the need for a constant series of amendments to the Social Security Act so as to keep up to date with migrant legislation. In the past there had tended to be a lag before the Social Security Act caught up with migration law due in particular to the fact that, unlike social security, many migration-related changes were made to regulations rather than to the Migration Act. The changes did not involve social security policy but were essentially technical amendments to reflect changes in migration legislation. They did, however, have policy implications.]

### HIGHER AGE PENSION AGE FOR WOMEN PHASED IN

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Sections 29, 30, 31, 32, 33, 34 and 35</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>12 July 1994</td>
</tr>
<tr>
<td>Date of application</td>
<td>12 July 1994 (but effect of change was that the age of eligibility was to gradually increase over many years)</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Age Pension</td>
</tr>
</tbody>
</table>

The age at which women qualified for an Age Pension was to increase progressively from 60 to 65 years (as applied to men) over a period of 18 years. This was to be achieved by increasing the qualifying age by six months every two years as shown in the table:

<table>
<thead>
<tr>
<th>Birthdate</th>
<th>Pension age</th>
<th>Date pension age applies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Before 1 July 1935</td>
<td>60 years</td>
<td>Before 1 July 1995</td>
</tr>
<tr>
<td>1 July 1935 to 31 December 1936</td>
<td>60 years and six months</td>
<td>1 July 1995</td>
</tr>
<tr>
<td>1 January 1937 to 30 June 1938</td>
<td>61 years</td>
<td>1 July 1997</td>
</tr>
<tr>
<td>1 July 1938 to 31 December 1939</td>
<td>61 years and six months</td>
<td>1 July 1999</td>
</tr>
<tr>
<td>1 January 1940 to 30 June 1941</td>
<td>62 years</td>
<td>1 July 2001</td>
</tr>
<tr>
<td>1 January 1941 to 31 December 1942</td>
<td>62 years and six months</td>
<td>1 July 2003</td>
</tr>
<tr>
<td>1 January 1943 to 30 June 1944</td>
<td>63 years</td>
<td>1 July 2005</td>
</tr>
<tr>
<td>1 July 1944 to 31 December 1945</td>
<td>63 years and six months</td>
<td>1 July 2007</td>
</tr>
<tr>
<td>1 January 1946 to 30 June 1947</td>
<td>64 years</td>
<td>1 July 2009</td>
</tr>
<tr>
<td>1 July 1947 to 31 December 1948</td>
<td>64 years and six months</td>
<td>1 July 2011</td>
</tr>
<tr>
<td>On or after 1 January 1949</td>
<td>65 years</td>
<td>1 July 2013</td>
</tr>
</tbody>
</table>
### INCREASE IN RATE OF ADDITIONAL FAMILY PAYMENT

<table>
<thead>
<tr>
<th><strong>Location in Act</strong></th>
<th>Section 41</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Date of commencement</strong></td>
<td>12 July 1994</td>
</tr>
<tr>
<td><strong>Date of application</strong></td>
<td>1 January 1995</td>
</tr>
<tr>
<td><strong>Payments affected</strong></td>
<td>Family Payment (Additional Family Payment only)</td>
</tr>
</tbody>
</table>

An ad hoc increase of $2 a fortnight, in addition to the indexation increase at the same time, brought the maximum rate of Additional Family Payment to $67.20 in respect of children aged under 13 years and to $94.10 in respect of children aged 13 to 15 years. The rate applicable to full-time student children aged 16 years and over remained unchanged.

### AMENDMENT TO COMPENSATION RECOVERY PROVISIONS

<table>
<thead>
<tr>
<th><strong>Location in Act</strong></th>
<th>Section 42</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Date of commencement</strong></td>
<td>1 July 1994</td>
</tr>
<tr>
<td><strong>Date of application</strong></td>
<td>1 July 1994</td>
</tr>
<tr>
<td><strong>Payments affected</strong></td>
<td>Pensions except Age Pension, Widow B Pension and Widowed Person Allowance; benefits</td>
</tr>
</tbody>
</table>

The compensation recovery provisions in income tests were modified to retain the existing exemption of compensation payments to which a person had contributed (as in a personal insurance policy) from the definition of ‘compensation’ only where the agreement under which the contributions had been made did not have an offset clause under which compensation was not paid, or was paid at a reduced rate, where the person had an entitlement to a social security payment covered by the provisions. The exemption meant that such payments were subject only to the normal income test applying to the pension or benefit and not to direct deductions. The change was introduced to prevent cost shifting from state and territory compensation schemes to the social security system.
PENALTIES FOR BREACHES OF RULES FOR UNEMPLOYMENT PAYMENTS

Location in Act  Section 43 (as set out in Schedule 3)
Date of commencement  4 July 1994
Date of application  4 July 1994
Payments affected  Job Search Allowance; Newstart Allowance

New arrangements were introduced in relation to non-payment periods of Job Search Allowance and Newstart Allowance applying to persons who breached activity tests, Job Search Activity Agreements, Newstart Activity Agreements or certain administrative requirements. The main thrust of the changes was to treat breaches of the activity tests and agreements differently from administrative breaches.

Penalties for the activity test and agreement breaches varied according to the number of previous breaches (taken over a three-year period) and the duration of a person’s unemployment (this was defined as the length of time he/she had been continuously in receipt of an allowance but up to six weeks when the allowance was not received could be disregarded). Penalties for administrative breaches remained essentially as before.

The new non-payment periods for breaches of activity tests/agreements were as follows:

<table>
<thead>
<tr>
<th>Unemployment duration</th>
<th>First breach</th>
<th>Subsequent breaches</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 to less than 12 months</td>
<td>2 weeks</td>
<td>Previous breach plus 6 weeks</td>
</tr>
<tr>
<td>12 months to less than 18 months</td>
<td>4 weeks</td>
<td>Previous breach plus 6 weeks</td>
</tr>
<tr>
<td>18 months or more</td>
<td>6 weeks</td>
<td>Previous breach plus 6 weeks</td>
</tr>
</tbody>
</table>

VARIATION IN TREATMENT OF CERTAIN INVESTMENTS IN MEANS TESTS

Location in Act  Sections 47, 48, 49 and 50
Date of commencement  1 July 1994
Date of application  1 July 1994
Payments affected  Pensions and benefits; Special Benefit (in effect) in relation to income test; Family Payment (Basic Family Payment and Additional Family Payment). Family Payment applied only to the assets test change

Sections of the *Social Security Legislation Amendment Act (No. 3) 1992* (refer to Record 64 of 1992), which had provided that allocated pensions and allocated annuities be treated under the income test in the same way as managed investments and also be subject to the assets test, were repealed. The income test provision was not enacted. New legislation restored the provision that the asset test apply to allocated pensions and annuities but only where the pension or annuity was purchased on or after 1 July 1992.

[The Senate standing or select committee report foreshadowed in the previous legislation had never been completed.]
TAX DEDUCTIONS FOR NET PROPERTY LOSSES INCLUDED IN INCOME TESTS

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Sections 51, 52 and 53</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>1 January 1995</td>
</tr>
<tr>
<td>Date of application</td>
<td>Applied to all payments that fell due on or after 1 January 1995 and to all net rental property losses whether incurred before, on or after 1 January 1995</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Family Payment (Basic Family Payment and Additional Family Payment); Job Search Allowance; Sickness Allowance; Special Benefit (in effect)</td>
</tr>
</tbody>
</table>

The income tests on Family Payment (Basic Family Payment and Additional Family Payment), and the parental income test applying to Job Search Allowance and Sickness Allowance for single persons aged under 18 years without dependent children, were tightened by including tax deductions for net rental property losses (known as negative gearing) as income for purposes of the test.

Social Security (New Zealand Agreement) Amendment Act 1994, No. 157

Date of Royal Assent: 13 December 1994

SOCIAL SECURITY AGREEMENT WITH NEW ZEALAND

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Entire Act</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>13 December 1994 but it was specified that the Schedule containing the agreement should come into force as specified in the agreement. It was stated there that the agreement was to come into force on 1 January 1995 if, before that date, the parties had notified each other by exchange of notes through the diplomatic channel that all requirements necessary to give effect to the agreement in their respective laws had been met. Otherwise it was to come into force on the first day of the second month following the month in which the exchange of notes took place. (The agreement came into force from 1 January 1995.)</td>
</tr>
<tr>
<td>Date of application</td>
<td>As for date of commencement</td>
</tr>
<tr>
<td>Payments affected</td>
<td>General provision</td>
</tr>
</tbody>
</table>

This amendment Act provided for the incorporation of the new Social Security Agreement between Australia and New Zealand, signed by the two countries on 19 July 1994, into the Social Security Act. Schedule 4 to the principal Act was repealed and replaced by the Schedule to the present Act.
Legislation passed in 1994


Date of Royal Assent: 16 December 1994

LIQUID ASSETS TEST WAITING PERIOD ON BENEFITS MODIFIED

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in Schedule 1)</th>
</tr>
</thead>
<tbody>
<tr>
<td>First change: Part 1 of Schedule 1</td>
<td></td>
</tr>
<tr>
<td>Second change: Part 2 of Schedule 1</td>
<td></td>
</tr>
<tr>
<td>Third change: Part 3 of Schedule 1</td>
<td></td>
</tr>
<tr>
<td>Date of commencement</td>
<td>20 March 1995</td>
</tr>
<tr>
<td>Date of application</td>
<td>20 March 1995</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Job Search Allowance; Newstart Allowance; Sickness Allowance; Special Benefit (in effect)</td>
</tr>
</tbody>
</table>

Changes were made to the benefits liquid assets test waiting period:

- the waiting period no longer applied if a person or his/her partner had already served such a waiting period in the 12 months before he/she became unemployed or incapacitated for work, or before he/she claimed the allowance;

- there was to be deducted from a person’s liquid assets before applying the test:
  - so much of the proceeds of the sale of the person’s family home as were likely to be applied to acquiring a new family home within the next 12 months; and
  - the amount of a voluntary one off lump-sum payment of all or part of a debt made after the person became unemployed or incapacitated for work, provided that the debt was not related to the person’s family home or any other residential property in which he/she was holding, or had held, any sole or joint right or interest. In the latter case, the payment could be made at any time up to the end of what would have been the waiting period; and

- in the case of a member of a couple whose partner was unemployed or incapacitated for work on the date the person claimed a workforce benefit, the waiting period was to commence on the date the partner rather than the person became unemployed or incapacitated for work, where the partner’s unemployment or incapacity occurred later than that of the claimant. A savings provision ensured that persons subject to the liquid assets test before the date of the change were covered by the previous rules.

[The last mentioned measure was introduced to prevent a person who would have had to serve the waiting period if he/she had claimed the allowance from avoiding it by arranging for his/her partner to claim it instead.]
PENSION RESIDENCY CONDITIONS RELAXED FOR REFUGEES

Location in Act  
Section 4 (as set out in Schedule 2)

Date of commencement  
1 January 1995

Date of application  
1 January 1995

Payments affected  
Pensions (except Rehabilitation Allowance)

Pension residency conditions were relaxed for refugees. A pension could now be granted to a refugee without his/her having to have resided in Australia for a specified period provided that he/she was an 'Australian resident', was in Australia on the day on which the claim was lodged, met the other qualifying conditions for the payment (such as age, level of disability) and held a visa approved by the Minister entitling the person to the particular payment. [The rules defining the Minister’s power to approve a visa were as specified in Record 12 of 1994. Deficiencies in this legislation were corrected and backdated to 1 January 1995 (refer to Record 4 of 1995).]

An existing provision, which essentially prevented a person who was an Australian resident, who had returned to Australia but left again within 12 months, from qualifying for a pension based on that short period of residence, was extended to refugees.

ADDITIONAL FAMILY PAYMENT PAYABLE WHILE PARENT(S) OVERSEAS

Location in Act  
Section 5 (as set out in Schedule 3)

Date of commencement  
1 January 1995

Date of application  
1 January 1995

Payments affected  
Family Payment (Additional Family Payment only)

Provision was made for Additional Family Payment to continue to be paid in respect of a child/children for up to 13 weeks while one or both parents were overseas provided that the child/children remained in Australia. [Previously payment had been made only where at least one parent as well as the child remained in Australia. Sole parents in particular benefited from the change.]
SCOPE OF JOB SEARCH AND NEWSTART ACTIVITY AGREEMENTS BROADENED

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 6 (as set out in Schedule 4 other than item 2 of that schedule)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>20 March 1995</td>
</tr>
<tr>
<td>Date of application</td>
<td>20 March 1995</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Job Search Allowance; Newstart Allowance</td>
</tr>
</tbody>
</table>

For Job Search Allowance or Newstart Allowance recipients who met certain conditions, the range of activities which could be inserted into Job Search Agreements or Newstart Agreements was broadened to include the development of self-employment and the development of, or participation in, group or co-operative enterprises.

The development of self-employment could be inserted in an agreement only where a person had been continuously receiving Job Search Allowance, Newstart Allowance or Youth Training Allowance (or a combination of these) for the previous six months, and the Employment Secretary was satisfied that the activity would be commercially viable 12 months later, and that it was likely to provide the person with sustainable full-time employment that would give him/her a level of income at least equivalent to the person’s maximum basic rate of allowance. The activity could not be included in the agreement if it was to exceed 12 months, or if the same or similar activity had been in a previous agreement. However, the Secretary to the Department of Social Security had the discretion to override this restriction in special circumstances provided that self-employment had not been undertaken as part of an agreement in the previous six months. [For details of Youth Training Allowance (refer to Record 39 of 1994).]

The conditions for the development of, or participation in, group or co-operative enterprises to be inserted into an agreement were identical in most aspects to those related to self-employment. However, the activity had only to be ‘viable’ after 12 months (not ‘commercially viable’ as for self-employment), and the outcome requirement was that it would ‘provide the person with skills, training or work experience’ that would help him/her obtain paid employment at a level of income at least equivalent to the maximum basic rate of allowance.
### RESTRICTIONS ON VOLUNTARY WORK IN JOB SEARCH ACTIVITY AGREEMENTS REMOVED

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 6 (as set out in item 2 of Schedule 4)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>20 March 1995</td>
</tr>
<tr>
<td>Date of application</td>
<td>20 March 1995</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Job Search Allowance</td>
</tr>
</tbody>
</table>

All restrictions on the amount of voluntary work that could be included in a Job Search Activity Agreement entered into by a recipient of Job Search Allowance were removed. [No such restrictions had applied in Newstart Activity Agreements.]

### ADVANCE PAYMENTS OF JOB SEARCH AND NEWSTART ALLOWANCE

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 7 (as set out in Schedule 5)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>20 March 1995</td>
</tr>
<tr>
<td>Date of application</td>
<td>20 March 1995</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Job Search Allowance; Newstart Allowance</td>
</tr>
</tbody>
</table>

Provision was made for recipients of Job Search Allowance and Newstart Allowance who met specified conditions to opt to receive a part of their allowance in advance:

- a person who had been continuously receiving Job Search Allowance, Newstart Allowance or Youth Training Allowance (or a combination of these payments) for at least six months could receive an advance of up to 14 per cent of their annual entitlement subject to a maximum of $1000; and

- a person meeting the continuous receipt criterion for at least three months could receive an advance of up to 14 per cent of their six monthly entitlement subject to a maximum of $500.

Remote Area Allowance could not be paid as part of an advance.

The advance was normally paid in a single lump sum but the Secretary had a discretion to specify payment in instalments. A person could decide to receive an advance of less than their maximum entitlement but the minimum total advance under the arrangement was $250.

In addition to these conditions, an advance was payable to a person only where:

- in the case of a payment of more than $500, the Secretary was satisfied that the person would use the advance to help him/her comply with a Job Search Activity Agreement, a Newstart Activity Agreement or a Case Management Activity Agreement within the meaning of the Employment Services Act;

- in the case of a payment of less than $500, the Secretary was satisfied that the person would use the advance to help him/her search for work or participate in activities to assist him/her in finding paid employment.
the Secretary was satisfied that the person would not suffer financial hardship due to the reductions from the person’s regular payment when repaying the advance; and

the person did not owe a debt to the Commonwealth under the Social Security Act.

The advance was normally to be repaid in equal instalments over the loan period of six or 12 months, whichever applied. A person could seek to repay the advance at a faster rate but had to satisfy the Secretary that in so doing he/she would not suffer severe financial hardship. The Secretary could also reduce the rate of repayment, or require no repayment, where he/she was satisfied that unforeseen and exceptional circumstances had arisen and that the normal reductions would lead to severe financial hardship. Payments not made by the due date became a debt to the Commonwealth under the Act.

26

<table>
<thead>
<tr>
<th>JOB SEARCH AND NEWSTART ALLOWANCE ACTIVITY TESTS AND AGREEMENTS</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Location in Act</strong></td>
</tr>
<tr>
<td><strong>Date of commencement</strong></td>
</tr>
<tr>
<td><strong>Date of application</strong></td>
</tr>
<tr>
<td><strong>Payments affected</strong></td>
</tr>
</tbody>
</table>

A Job Search Allowance or Newstart Allowance recipient was regarded as having taken reasonable steps to comply with an activity test, or the terms of an activity agreement, where the main reason for his/her failure to comply involved a matter that was not within his/her control, or the circumstances that prevented the person complying had not been reasonably foreseeable. [This change sought to clarify administrative practice and ensure consistency in decisions.]
### CHANGES TO ACTIVITY TESTS FOR UNEMPLOYMENT PAYMENT RECIPIENTS

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 8 (as set out in Schedule 6). Relevant items in Schedule 6 are 5, 7, 9, 16, 18 and 20</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>28 days after Date of Royal Assent (13 January 1995)</td>
</tr>
<tr>
<td>Date of application</td>
<td>28 days after Date of Royal Assent (13 January 1995)</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Job Search Allowance; Newstart Allowance</td>
</tr>
</tbody>
</table>

The requirement in Job Search Allowance and Newstart Allowance activity tests that the Secretary had to be satisfied that a person was actively seeking and willing to undertake paid work that was ‘suitable’ was modified to require simply that the paid work not be ‘unsuitable’ (that is, there was now a presumption of suitability). In addition, a specific definition of ‘unsuitable paid work’ was inserted.

Work was taken to be ‘unsuitable’ for a person if, in the Secretary’s opinion:

- he/she lacked the particular skills, experience or qualifications needed to perform it;
- he/she had an illness, disability or injury that would be aggravated by the conditions in which the work would be performed;
- performing the work under the prevailing conditions would have constituted a risk to health or safety and would have contravened a Commonwealth, state or territory occupational health and safety law;
- the work would have involved the person being self-employed;
- the work would be covered by an industrial award but the employer would employ the person only if the person agreed to become a party to an agreement reducing or abolishing rights that the award conferred on employees;
- the work would not be covered by an industrial award and the payment for the work would be lower than the minimum applicable rate for comparable work covered by an industrial award;
- commuting between the person’s home and place of work would be unreasonably difficult; or
- for any other reason.

For purposes of the seventh criterion, commuting was not to be regarded as unreasonably difficult for a person if: the sole or principal reason for the difficulty was that it involved a journey from home to work, or work to home, that did not normally exceed 90 minutes; or, in the Secretary’s opinion, a substantial number of people living in the same area regularly commuted to their places of work in similar circumstances. However, this provision was not to be taken to limit the Secretary’s discretion to form an opinion that commuting was not unreasonably difficult.

[Interpretation of the term ‘suitable’ had led to administrative difficulties and the changes were intended to ensure consistency in the future.]
Legislation passed in 1994

TREATMENT OF HOUSING-RELATED FRINGE BENEFITS IN INCOME TESTS

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 9 (as set out in Schedule 7)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>16 December 1994. However, provision was made, the thrust of which was that, if Royal Assent was not received before 9 December 1994, the parts of the legislation according special treatment to the housing of defence personnel would be backdated to commence on that date. This was necessary as the Ministerial determination providing such concessional treatment lapsed on 8 December 1994</td>
</tr>
<tr>
<td>Date of application</td>
<td>Applied to all payments falling due on or after the date on which the amendment commenced (see date of commencement). It applied to all housing fringe benefits whether received before, on or after that date</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Family Payment (Basic Family Payment and Additional Family Payment); Job Search Allowance; Sickness Allowance; Special Benefit (in effect)</td>
</tr>
</tbody>
</table>

Provisions related to the treatment of certain housing-related fringe benefits provided by employers in the income tests for Family Payment (both Basic and Additional Family Payment), and the parental income tests applying to Job Search Allowance and Sickness Allowance for single persons aged under 18 years without dependent children, were extended:

- mortgage subsidy (housing loan) payments and rent paid by employers were assessed under the income test. The entire amount of any mortgage subsidy payment was taken into account, while the amount of rent assessed varied according to the number of bedrooms in the rented accommodation and whether the accommodation was in a metropolitan or non-metropolitan area. A house did not have to be a person’s principal or usual place of residence in order for a mortgage subsidy to be assessed. [This change removed an anomaly in that only housing directly provided by an employer had previously been taken into account while housing-related cash assistance had not.]; and

- legislative effect was given to an existing determination of the Minister whereby housing fringe benefits received by members of the Australian Defence Force were to be assessed using the more generous valuation method applying to accommodation in special housing locations. [This change was intended to recognise that the policy of the Australian Defence Force was to treat all personnel at the same rank on a similar basis with regard to housing and to provide subsidies that standardised housing costs for personnel, regardless of their location.]

The Minister’s power by way of disallowable instrument to specify alternative methods for valuing housing and other fringe benefits was extended to cover these new valuation arrangements. [For definitions and rules in relation to housing and other fringe benefits, refer to Record 16 of 1993.]
In relation to the treatment of annuities, allocated pensions and other superannuation products under pension and benefit income tests, it was specified that references to the Income Tax Assessment Act in the definitions of ‘deductible amount’, ‘non-assessable purchase price’ and ‘roll-over purchase price’ were to be taken as references to that Act as in force immediately before 1 July 1994. [The amendment retained the status quo for social security purposes. Without it, changes from 1 July 1994 in these definitions in the income tax legislation dealing with the calculation of the ‘undeducted purchase price’ in superannuation and related products would have led to an unintended tightening of pension and benefit income tests.]
**Social Security (Parenting Allowance and Other Measures)**

*Legislation Amendment Act 1994, No. 174*

Date of Royal Assent: 16 December 1994

<table>
<thead>
<tr>
<th>INTRODUCTION OF PARENTING ALLOWANCE</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Location in Act</strong></td>
</tr>
<tr>
<td><strong>Date of commencement</strong></td>
</tr>
<tr>
<td><strong>Date of application</strong></td>
</tr>
<tr>
<td><strong>Payments affected</strong></td>
</tr>
</tbody>
</table>

A new payment known as Parenting Allowance was introduced. It was a non-activity tested payment made to the partner of a couple with dependent children aged under 16 years who undertook the main care of the children and had little or no personal income.

Parenting Allowance had two components: a ‘basic’ component and an ‘additional’ component. These were named ‘Non-benefit Parenting Allowance’ and ‘Benefit Parenting Allowance’ in the Act. In general publicity they were called ‘Basic Parenting Allowance’ and ‘Additional Parenting Allowance’ respectively and these terms have been used in the compendium.

Basic Parenting Allowance replaced Home Child Care Allowance and was effectively the same payment but now incorporated as one component of Parenting Allowance. It was a tax-free payment of up to $30.50 a week—the rate was based on an estimate at the time of what the Home Child Care Allowance rate would be after indexation on 1 January 1995. It was subject to an income test solely on the personal income of the recipient. There was no assets test either on the person’s or his/her partner’s assets. Basic Parenting Allowance was not an income support payment.

Additional Parenting Allowance was a taxable payment made as a top-up to the basic allowance and brought the maximum total Parenting Allowance payment (two components combined) up to half the combined married rate of Job Search Allowance, Newstart Allowance or Sickness Allowance ($136 a week at the date of its introduction). It was regarded as a ‘benefit’ and was subject to the same general conditions (including the income and assets tests) as Job Search Allowance or Newstart Allowance. The new income test for Job Search Allowance and Newstart Allowance introduced on the same day as Parenting Allowance (refer to Record 31 of 1994) applied to it.

Where paid to partners of workforce benefit recipients, the total Parenting Allowance payment was reduced under the combined income and assets tests applying to the couple but only down to the $30.50 ‘Basic’ payment rate, after which only the income test applied, and only to the recipient’s personal income.

Parenting Allowance could be paid to the partner of a recipient of a pension, workforce benefit or other income support payment (including where the partner received Austudy at a rate that included a dependent spouse allowance) or of a low income person not on a social security payment.
Rates of both Basic Parenting Allowance and Additional Parenting Allowance were subject to automatic indexation twice yearly on 20 March and 20 September in the same way as benefits generally. This differed from Home Child Care Allowance, which had been indexed once yearly in January.

Where both members of a couple were receiving a pension, only Basic Parenting Allowance was payable to one of them as the pension (but not Rent Assistance, Remote Area Allowance or Pharmaceutical Allowance) was counted as income in assessing eligibility for Parenting Allowance. The partner of a pensioner not entitled to a pension could receive Additional Parenting Allowance instead of a workforce benefit subject to the income and assets tests. A person whose partner was not a pensioner or workforce beneficiary was eligible to receive Additional Parenting Allowance only where his/her own income was low enough to entitle him/her to the notional receipt of a benefit.

A number of complementary changes accompanied the introduction of Parenting Allowance. It replaced Partner Allowance for the spouses of Job Search Allowance and Newstart Allowance recipients with dependent children so that the eligibility conditions for Partner Allowance were changed (refer to Record 32 of 1994). It also replaced Wife Pension and Mature Age Partner Allowance for persons with children who would have been eligible for one of those payments if they had not started to be phased out from the date of the introduction of Parenting Allowance (refer to Record 36 of 1994).

[The key difference between the previous arrangements for workforce benefit recipients who were members of a couple was that the beneficiary’s partner now had a separate, non-activity tested income support payment provided to him/her in his/her own right in recognition of his/her child rearing responsibilities. Each partner could still apply separately for and receive Job Search Allowance or Newstart Allowance in his/her own right if so desired. Some would have done so to take advantage of the greater range of labour market programs available to recipients of those allowances. In these circumstances, no Parenting Allowance was payable and, while the maximum rate of payment would have been the same, they would have been subject to the more stringent Job Search Allowance or Newstart Allowance income tests across the whole of their joint income.]
The benefit income test (other than for Sickness Allowance for under 18 year-olds) was restructured and liberalised. The test now applied to the new payments—Partner Allowance, Parenting Allowance and Widow Allowance (refer to Records 2, 30 and 33 of 1994), as well as to workforce benefits. Following the changes:

- the combined income test for a couple was replaced by a separate income test on each partner. Where each partner was receiving a benefit, the non-benefit income of one partner did not affect the amount of benefit paid to the other until the first partner entirely lost entitlement to his/her benefit. Where only one member of the couple was receiving a benefit and his/her partner was not a pensioner, the partner’s income was assessed for purposes of reducing the amount of benefit only to the extent that it exceeded the notional benefit cut-out point which would have applied to the partner if he/she had claimed a benefit. The combined income test applying where a beneficiary had a pensioner partner remained unchanged; and

- the permissible income limit (free area) of $60 a fortnight applied to both single persons and to each partner of a couple, after which the benefit was reduced by 50 per cent for non-benefit income in excess of $60 up to $140 and by 70 per cent for income over $140. The additions to the standard permissible income limit for single persons and each partner of a couple in respect of income derived from personal exertion were abolished.

[The reason for the change not applying to recipients of Sickness Allowance aged under 18 years was one of timing and not a policy decision. The change had to be integrated with the introduction of Youth Training Allowance and, with delays in the Act’s passage through Parliament, there had been no time to apply the change to this group from 1 July 1995, as originally intended. It was extended to young sickness allowees from 29 September 1995 (refer to Record 14 of 1995). As the changes had adverse (as well as beneficial) consequences, application was not made retrospective. However, customers who would otherwise have been at a disadvantage due to the delay received the beneficial aspects on an ex-gratia basis. For details of the introduction of Youth Training Allowance and the associated changes to Sickness Allowance for under 18 year-olds, refer to Record 39 of 1994.]
Changes made to Partner Allowance meant that it now covered certain new groups while others ceased to be eligible for it. These were mainly complementary changes flowing from the introduction of Parenting Allowance, and the phasing out of Wife Pension and Mature Age Partner Allowance (refer to Record 36 of 1994).

Changes in coverage were as follows:

- partners of workforce benefit and Special Benefit recipients with a dependent child aged under 16 years were no longer eligible (they would now receive Parenting Allowance);

- the allowance was no longer paid to partners of workforce benefit or Special Benefit recipients without dependent children aged under 16 years unless they were born before 1 July 1955 (that is, they were at least 40 years of age at the date of the change), had not received a workforce benefit in the previous 13 weeks and did not have recent work experience (most of this group would have had to move to Job Search Allowance); and

- eligibility was extended to partners of pensioners without dependent children aged under 16 years who met the same criteria as workforce benefit and Special Benefit recipients. This group would have been entitled to a Wife Pension or Mature Age Partner Allowance before their phasing out.

‘Recent work experience’ for determining eligibility was defined as employment for 20 hours or more in the week immediately preceding a claim or in at least 13 weeks in the previous 12 months. This definition was similar but not identical to that for Widow Allowance (refer to Record 33 of 1994). The definitions were later fully aligned (refer to Record 39 of 1996).

A person aged 40 years or over at the date of the change whose partner was receiving Job Search Allowance or Newstart Allowance, and who was transferred to one of those allowances on losing Partner Allowance under the change, could be credited with the same length of unemployment registration as his/her partner where the Secretary to the Employment Department considered that he/she was at risk of being unemployed in the long term. This meant, for example, that he/she might qualify for Newstart Allowance immediately, or sooner than if the concession had not been provided, and be eligible for the same labour force assistance as his/her partner.

A new provision allowed a person to remain on Partner Allowance if his/her partner lost entitlement to a pension or benefit while he/she met the other eligibility criteria (including the income and assets tests). However, once entitlement was lost, it could be regained only by meeting all conditions including having a pensioner or beneficiary partner. A person also retained
eligibility for Partner Allowance where his/her partner was serving a Job Search Allowance or Newstart Allowance non-payment period (except for such a period imposed on seasonal workers).

A savings provision enabled a person who was 40 years of age or more, and who was receiving Partner Allowance immediately before the change, to retain eligibility, notwithstanding that he/she did not meet the ‘no or limited work experience’ criterion. This exemption did not apply if the person lost entitlement to the allowance but later became eligible again.

The legislation also extended Fringe Benefits (Concession Cards) to certain recipients of Partner Allowance on the same basis as to benefit recipients generally.

### INTRODUCTION OF WIDOW ALLOWANCE

**Location in Act**

Section 6 (as set out in Schedule 4); extension of Education Entry Payment covered under section 7 (as set out in Schedule 5)

**Date of commencement**

1 July 1995. However, certain other provisions in the amending Act were deemed to have commenced on 1 July 1994 to the extent that they applied to Widow Allowance. This was to facilitate the transition of some people from other social security payments to Widow Allowance

**Date of application**

As for date of commencement

**Payments affected**

Widow Allowance; Training Supplement for Widows

A new payment, Widow Allowance, was introduced. It was paid to a single woman who was at least 50 years old, had become widowed, divorced or separated from her husband/partner since she turned 50 years of age, satisfied the Secretary that she had no recent workforce experience on the day when she made her claim and met the residency conditions.

The woman met the residency conditions provided that she was in Australia and one of the following applied:

- she had been an Australian resident for a continuous period of at least 26 weeks immediately before lodging her claim;
- she had, at any time, been an Australian resident for at least 10 years;
- she held an approved visa (as declared by the Minister) for purposes of obtaining the allowance; or
- both she and her partner were Australian residents at the time the death, divorce or separation occurred.

‘Recent work experience’ for determining eligibility was defined as employment of 20 hours or more a week for a total of 13 weeks or more at any time during the 12 months immediately before the claim. This definition was similar but not identical to that for Partner Allowance (refer to Record 32 of 1994). The definitions were later fully aligned (refer to Record 39 of 1996).
Under transitional arrangements, a single woman receiving a pension or benefit at the date of the change could transfer to the new allowance without having to meet the ‘no recent work experience’ criterion provided that she was in Australia and: she had attained the age of 50 years after 1 July 1987 but before 1 January 1995; the death, separation or divorce had occurred since she turned 50 years but before 1 January 1995; she claimed the allowance before 1 January 1995; and she was an Australian resident or held an approved visa as declared by the Minister.

The rate and general conditions of payment (including income and assets tests) were as for Job Search Allowance and Newstart Allowance with the major difference being that Widow Allowance was not activity tested. Also, unlike those allowances, it could be paid for up to three months while the recipient was overseas. An Employment Entry Payment and Education Entry Payment were available on the same basis as for recipients of Job Search and Newstart Allowance. [Regarding access to Education Entry Payment, refer to Record 35 of 1994.]

A recipient of Widow Allowance undertaking an approved course of vocational training was entitled to a training supplement at a rate set by the Secretary to the Employment Department. The supplement (known as Training Supplement for Widows) was the same as the supplements for Job Search Allowance and Newstart Allowance (refer to Record 42 of 1991 and Record 8 of 1992).

The legislation provided that no new grants of Widow Allowance were to be made after 30 June 2005 except to women born before 1 July 1955. [This provision took account of the fact that many of the women who might otherwise have claimed the allowance would have either reached Age Pension age at that date or have had recent work experience.]

### WIDOWED PERSON ALLOWANCE RENAMED BEREAVEMENT ALLOWANCE

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 6 (as set out in items 2, 3, 4, 5, 6, and 7 of Part 2 of Schedule 4)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>1 January 1995</td>
</tr>
<tr>
<td>Date of application</td>
<td>1 January 1995</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Widowed Person Allowance; Bereavement Allowance</td>
</tr>
</tbody>
</table>

Widowed Person Allowance was renamed Bereavement Allowance. No changes were made to the conditions of payment. [The name change was made to avoid confusion between Widowed Person Allowance and the new Widow Allowance.]
The $200 lump-sum Education Entry Payment was extended to recipients of Wife Pension, Mature Age Partner Allowance, Widow Allowance, Parenting Allowance and Partner Allowance under the prevailing administrative conditions:

- the education course undertaken could be full-time of part-time, except that recipients of Partner Allowance had to study full-time;

- as with those pensioners eligible for an Education Entry Payment, a recipient of Wife Pension or Mature Age Partner Allowance had only to be in receipt of the pension or allowance immediately before commencing the course to qualify for the payment; and

- recipients of Parenting Allowance, Partner Allowance and Widow Allowance received the payment only if they had been continuously in receipt of a pension, benefit, Youth Training Allowance or specified veterans’ payment for at least 52 weeks, or had been in receipt of such a payment at the commencement of the 52 week period and had not lost entitlement for more than six weeks in the period.

Under a transitional provision, for nine months after the allowance’s introduction, Widow Allowance recipients were entitled to count periods in which they had been partners of persons on the specified payments for purposes of meeting the ‘52 weeks on a payment’ criterion. A similar provision allowed the concession to apply for three months to recipients of Parenting Allowance or Partner Allowance. [This reflected the fact that, before the introduction of Partner Allowance, many of these people would not have been receiving a social security payment in their own right. The nine months and three months represented the length of time from the introduction of the respective allowances to a date one year after the introduction of Partner Allowance.]

The ‘52 weeks on a payment’ condition for recipients of Parenting Allowance, Partner Allowance and Widow Allowance was broadly analogous to that for recipients of Job Search Allowance and Newstart Allowance. However, in the latter case, recipients had to be registered as unemployed for 52 weeks and received the Education Entry Payment only if they lost eligibility for the allowance due to their course. As Parenting Allowance, Partner Allowance and Widow Allowance recipients were not activity tested, the condition for them operated differently.
### 36

**WIFE PENSION AND MATURE AGE PARTNER ALLOWANCE PHASED OUT**

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 8 (as set out in Schedule 6)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>1 July 1995</td>
</tr>
<tr>
<td>Date of application</td>
<td>1 July 1995</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Wife Pension; Mature Age Partner Allowance</td>
</tr>
</tbody>
</table>

Wife Pension (including special needs Wife Pension) and Mature Age Partner Allowance were phased out, with no new grants made. Under savings provisions, people who were receiving, or had claimed and were eligible for, one of these payments before they were phased out continued to receive it.

[Following the change, some people previously qualified for one of these payments would have been eligible for Parenting Allowance if they had a dependent child aged under 16 years, or Partner Allowance if they met the age and ‘no recent work experience’ criteria. Most others, unless they were eligible for another payment such as Carer Pension, would have had to apply for Job Search Allowance or Newstart Allowance in their own right and comply with the allowance activity test requirements.]

### 37

**ADVANCES OF PHARMACEUTICAL ALLOWANCE SUNSET CLAUSE REPEALED**

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 9 (as set out in Schedule 7)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>1 December 1994</td>
</tr>
<tr>
<td>Date of application</td>
<td>1 December 1994 (although effect was to ensure that the advance Pharmaceutical Allowance arrangement did not cease from 1 January 1995)</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Pharmaceutical Allowance</td>
</tr>
</tbody>
</table>

The sunset clause under which no advance payments of Pharmaceutical Allowance were to be made after 31 December 1994 was repealed, enabling the arrangement to continue indefinitely. This involved an amendment to the *Social Security Legislation Amendment Act (No. 4) 1991* as the sunset clause had never been inserted into the principal Act.
Employment Services (Consequential Amendments) Act 1994, No. 177

Date of Royal Assent: 19 December 1994

38

BREACH PENALTIES AND WAITING PERIODS FOR UNEMPLOYMENT PAYMENTS

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>First change: section 39 (as set out in Schedule)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Other changes: sections 32, 33, 34, 35 and 36</td>
</tr>
<tr>
<td>Date of commencement</td>
<td>19 December 1994</td>
</tr>
<tr>
<td>Date of application</td>
<td>19 December 1994</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Job Search Allowance; Newstart Allowance</td>
</tr>
</tbody>
</table>

New rules were introduced to cover activity test breach and administrative breach non-payment periods, and waiting periods, which persons claiming or receiving Job Search Allowance or Newstart Allowance could be required to serve:

- it was provided that Job Search Allowance and Newstart Allowance were not payable for the duration of an activity test non-payment period if a person who was required to do so failed to satisfy the activity test, enter into a Job Search Activity Agreement or Newstart Activity Agreement or take reasonable steps to comply with the terms of the relevant agreement. This was less harsh than the previous provision under which, if a person lost entitlement to an allowance due to one of these breaches and later regained entitlement, he/she had to serve the non-payment period before receiving any allowance;

- where a person was liable to serve two or more automatic activity test or administrative breach non-payment periods, then each had to be served consecutively;

- if an allowance ceased to be payable for reasons other than the imposition of a non-payment period on or before the day on which an automatic activity test or administrative breach non-payment period was due to commence, the non-payment period was to apply from the date the allowance ceased to be payable;

- where at a time when a person was not qualified for an allowance, he/she through certain action(s) became liable to serve an automatic activity test non-payment period and subsequently claimed an allowance, any non-payment period was considered to have applied from the date of the action/actions; and

- a waiting period always overrode an activity test or administrative breach non-payment period. Accordingly, if the non-payment period had not begun, it was to be served only after all waiting periods had been served. If the waiting period commenced during an activity test non-payment period, the non-payment period was suspended until all waiting periods had been served.

Date of Royal Assent: 23 December 1994

BENEFIT CHANGES FOLLOWING THE INTRODUCTION OF YOUTH TRAINING ALLOWANCE

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Entire Act</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>1 January 1995, immediately after the commencement of the Student Assistance (Youth Training Allowance) Amendment Act 1994</td>
</tr>
<tr>
<td>Date of application</td>
<td>As for date of commencement</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Job Search Allowance; Sickness Allowance; Special Benefit</td>
</tr>
</tbody>
</table>

Following the introduction of a new Youth Training Allowance outside of the Social Security Act, no new grants of Job Search Allowance for under 18 year-olds were made and changes were made to Sickness Allowance for new recipients aged under 18 years.

The present amending Act contains transitional provisions concerning the relationship between Job Search Allowance and Youth Training Allowance and the resulting modifications to Sickness Allowance. The main thrust of the changes to the Social Security Act was that:

- newly unemployed persons aged under 18 years who previously would have received Job Search Allowance now received Youth Training Allowance;
- persons aged under 18 years in receipt of Job Search Allowance at the date of the change (or whose entitlement commenced before that date) continued to receive it under the Social Security Act;
- for people aged under 18 years granted Sickness Allowance on or after the date of the change, the conditions applying to Youth Training Allowance replaced the previous ones. Many of these modifications also applied to Special Benefit; and
- persons aged under 18 years receiving Sickness Allowance at the date of the change (or whose entitlement commenced before that date) continued to receive it under the prevailing conditions.

As Youth Training Allowance was not covered by the Social Security Act (and was not regarded as a social security payment), it does not fall within the scope of the compendium. While a short description of it is included here to provide a context for the changes to the Social Security Act, it should be noted that later changes to the allowance (which frequently mirrored the changes made to equivalent social security payments) have not been covered.

Background

The introduction of Youth Training Allowance was part of a broader Youth Training Initiative which sought to assist young people to obtain work, training or
Legislation passed in 1994

education opportunities and early access to a range of labour market programs. A particular feature of the initiative was the provision of one-to-one contact with a Commonwealth Employment Service case manager to facilitate this process. The introduction of the new allowance continued the policy of more closely aligning income support provisions for all under 18 year-olds, whether they be in education, undergoing training or unemployed.

Youth Training Allowance was inserted into the Student and Youth Assistance Act (previously called the Student Assistance Act). Under the new arrangements, overall policy responsibility for unemployed under 18 year-olds was transferred from the Department of Social Security to the Employment Department, with payment of Youth Training Allowance administered by the Department of Social Security on behalf of that Department.6

Youth Training Allowance was paid to persons aged 16 and 17 years (15 years in certain circumstances) who had completed minimum school leaving requirements (or had an exemption), who were unemployed, were registered with the Commonwealth Employment Service and were undertaking approved education, training or job search activities. Generally the rates, conditions of payment and administrative processes applying to Job Search Allowance for under 18 year-olds were adopted for Youth Training Allowance. The main differences were that some conditions mirrored those for Austudy.

Sickness Allowance for all age groups remained in the Social Security Act. To maintain the traditional alignment between the rates and conditions of payment of Job Search Allowance (as replaced by Youth Training Allowance) and Sickness Allowance, for under 18 year-olds the rates and conditions of Youth Training Allowance were incorporated into Sickness Allowance for persons receiving the allowance on or after the date of the change.

Entitlement to Job Search Allowance following introduction of Youth Training Allowance

In general, once Youth Training Allowance had been introduced, a person aged under 18 years who lost entitlement to Job Search Allowance could not receive it again. However, consistent with existing provisions, there were two exceptions to this:

- a person who lost entitlement to the allowance for up to six weeks could return to it; and
- a person who had to transfer from Job Search Allowance to Sickness Allowance because he/she was incapacitated for work for more than 13 weeks could return to Job Search Allowance on recovery provided that he/she still met the eligibility criteria.

Changes to Sickness Allowance based on Youth Training Allowance

The main aspects of Youth Training Allowance incorporated into Sickness Allowance for new Sickness Allowance recipients were as follows:

- based on the Austudy model, the establishment of three categories of payment—an 'at-home', an 'away-from-home' and an 'independent' category;
- a tightening of the eligibility criteria for the independent rate of payment on the basis of work history;
the introduction of a new ‘away-from-home’ rate of payment;

- the ‘homeless’ category now became a sub-category of the independent rate and, although not greatly different from before, was defined more in line with the Austudy criteria;

- the Austudy parental income and assets tests were applied; and

- the Austudy personal assets test applied.

The personal income test for Sickness Allowance was unchanged while the workforce benefits income test was incorporated into Youth Training Allowance. [For delay in incorporating the new income test for under 18 year-old sickness allowees, refer to Record 31 of 1994.]

New Payment Categories and Rates

The definition of ‘independent’ for young people on Sickness Allowance was spelt out in detail in the legislation while the other two categories of payment were defined in terms of people who were not independent.

Independence

Under the new structure, a person who was a member of a couple or had a dependent child was classified as independent. The circumstances in which orphans, refugees and persons in state care were independent were also defined. Otherwise, a person was held to be independent where:

- his/her parent(s) could not exercise his/her responsibilities. This applied in the event that one or both parents were serving a prison sentence of at least 10 years, were mentally incapacitated and likely to remain so for an indefinite period, were living in a nursing home indefinitely or were missing;

- he/she could not live at the home of either or both parents because of extreme family breakdown or other similar exceptional circumstances, or because it was unreasonable to expect him/her to do so as there would be a serious risk to his/her physical wellbeing due to violence, sex abuse or other similar unreasonable circumstances. This provision did not apply if the person was receiving continuous support of any kind from a parent or long-term guardian, or continuous income support payments (other than social security benefits or Youth Training Allowance) from the Commonwealth, state or territory governments;

- he/she did not live, and for a continuous period of at least 18 weeks had not lived, in the parental home and had, while away from home, been employed for at least 20 hours a week for a period or periods totalling at least 13 weeks. This applied only where he/she was not receiving support of any kind from his/her parent(s) or guardian and had not received such support while away from home; or

- in specified situations where he/she had previously received Job Search Allowance, Sickness Allowance or Special Benefit and been categorised as independent, and was not at the time living in the parental home or receiving regular support from a parent or parents.

Persons receiving the independent rate were eligible for Rent Assistance.
Away-from-home category
The ‘away-from-home’ category covered people who were living away from the parental home but did not meet the definition of ‘independent’. To be eligible for a payment under this category, the Secretary had to be satisfied that they needed to live away from home for the purpose of education, training, searching for employment or engaging in other employment-related activities and that their living away would significantly increase the likelihood of their gaining employment. In making a decision on this matter, the Secretary could take advice from the person’s case manager at the Commonwealth Employment Service, and was required to have regard to the overall employment prospects for young people in the area where the person’s home was situated vis-à-vis the area where the person was living, and other matters which would affect the person’s likelihood of obtaining employment in those areas. [It should be noted that, while this payment category was available to sickness allowees, their incapacity would normally have precluded them from taking advantage of it.]

Persons in the away-from-home category were not eligible for Rent Assistance.

At-home category
A person was held to be in the ‘at-home’ category if he/she did not meet the independence criteria and was not assessed as needing to live away from home as specified for the away-from-home category.

Basic rates of Sickness Allowance for new grants
The maximum weekly basic rates of Sickness Allowance paid to persons whose entitlement commenced after the introduction of Youth Training Allowance were as follows:

<table>
<thead>
<tr>
<th>Category</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not independent and living at home</td>
<td>67.25</td>
</tr>
<tr>
<td>Not independent and required to live away from home</td>
<td>111.05</td>
</tr>
<tr>
<td>Independent, single with no dependent child</td>
<td>111.05</td>
</tr>
<tr>
<td>Independent, member of a couple with no dependent child</td>
<td>111.05</td>
</tr>
<tr>
<td>Independent, single with dependent child</td>
<td>160.80</td>
</tr>
<tr>
<td>Independent, member of a couple with dependent child</td>
<td>134.60</td>
</tr>
</tbody>
</table>

Assets tests
The personal and parental assets tests were merged in the legislation. The provisions of each were identical with the only difference between them being whom they applied to. Under the personal test, any assets of the person or his/her spouse were assessed whereas, under the parental test, the assets of the person, his/her parents and other dependent children were assessed.

Many features of the assets tests were the same as for the previous test but overall it was somewhat more liberal. The main differences were that:

- the thresholds where the allowance cut out were changed—they were $111 870 for a single independent person, $159 470 for an independent person who was a member of a couple and $375 630 for a person who was not independent;
- the thresholds did not vary for home owners and non-home owners;
the parental assets test was applied to the assets of the entire family, including dependent children aged under 16 years and dependent full-time student children of any age;

- assets were assessed at current market value minus the outstanding amount of any debt incurred in gaining or improving them;

- only half of a farm or business was counted in any asset assessment;

- the assets of farm families receiving assistance for drought relief were exempted; and

- personal assets or modifications to such assets for use by people with disabilities were exempted from assessment.

**Parental income test**

The new parental income test was in many ways similar to the existing one but there were some differences. The threshold above which the allowance was withdrawn was $21,660. Parental income was reduced by $1,200 for the first dependent child aged under 16 years and by $2,500 for each additional child (the concessions for children were as previously). In addition, a reduction of $3,700 was available for each dependent full-time student child aged 16 to 22 years and children in respect of whom a boarding allowance or second home allowance was paid under the Assistance for Isolated Children Scheme. The concession was not granted in respect of full-time student children aged 16 to 22 years who were entitled to an independent living allowance under the Austudy regulations. The withdrawal rate of 25 per cent of income in excess of the threshold was the same as before.

**Adjustment of assets and parental income test thresholds**

The assets and parental income test thresholds and additions for dependent children in the parental income test were not subject to automatic indexation. However, it was provided that a higher amount could apply if prescribed by regulations. [In the event, no rates were ever increased in this way.]

**Other change**

**Loss of Austudy/Abstudy payments counted as loss of income for eligibility purposes**

The provision requiring a person to have lost salary/wages or income of a similar nature due to his/her incapacity as a condition for receipt of Sickness Allowance was extended to include loss of entitlement to Austudy or Abstudy payments due to an incapacity. [This change related only to Sickness Allowance and did not derive from Youth Training Allowance.]
Endnotes

1 The ‘with child’ dependent spouse rebate was abolished from 1 July 2000 (refer to Record 9 of 1999).

2 However, Fringe Benefits (Concession Cards) were not extended to partner allowees until 1 July 1995 (refer to Record 32 of 1994).

3 Special category and special purpose visas were now visas issued to classes of persons previously defined under migration law as exempt non-citizens. A special category visa was a temporary visa issued to a New Zealand citizen. A special purpose visa was a visa issued to other persons who had been previously classified as exempt non-citizens (for example, diplomats).

4 This measure was to have been introduced from the same date by an amendment made by section 70 of the Social Security (Budget and Other Measures) Legislation Amendment Act 1993. However, due to an error in the legislative process, the amendment had proved unworkable.

5 This amendment inadvertently disqualified a refugee who was permanently blind from receiving a Disability Support Pension merely because he/she did not have 10 years qualifying residence. The error was rectified by an amendment at section 3 (as set out in Schedule 12) to the Social Security and Veterans’ Affairs Legislation Amendment (Family and Other Measures) Act 1997 and backdated to 1 January 1995.

6 However, Administrative Arrangements Orders enacted on 11 March 1996 transferred policy and legislative responsibility for Youth Training Allowance to the Department of Social Security.
A compendium of legislative changes in social security 1983–2000
Legislation passed in 1995

_Social Security Legislation Amendment Act (No. 1) 1995, No. 104_

Date of Royal Assent: 29 September 1995

<table>
<thead>
<tr>
<th>SOCIAL SECURITY AGREEMENT WITH ITALY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Location in Act</td>
</tr>
<tr>
<td>Date of commencement</td>
</tr>
<tr>
<td>Date of application</td>
</tr>
<tr>
<td>Payments affected</td>
</tr>
</tbody>
</table>

Amendments provided that the 1986 Social Security Agreement with Italy, which had been repealed as a scheduled international agreement under the Act (refer to Record 6 of 1994), should continue in force. They also provided that the revised agreement enacted at that time was not to come into force until it ‘entered into force’ in accordance with Article 23 of the agreement. The amendment removed the right of the Commonwealth to recover any invalid social security payments made since the repeal of the 1986 agreement that would have been valid if the present provisions had been in force.

[This amendment was necessary due to delays by the Italian Government in ratifying the revised agreement. The repealed earlier agreement had remained in force but had ceased to be a scheduled international agreement under the Social Security Act. For this reason, and the fact that the revised agreement had not come into force, social security payments since the repeal had not been validly made.]
PAYMENTS OF STUDENT FINANCIAL SUPPLEMENT NOT INCOME-TESTED

Location in Act  
Section 4 (as set out in Schedule 1)

Date of commencement  
29 September 1995

Date of application  
29 September 1995. In relation to period-based payments, the amendment was to apply to income in respect of a fortnight commencing after that date

Payments affected  
Pensions and benefits; Special Benefit (in effect)

Payments of financial supplement made under the Student Financial Supplement Scheme were exempted from pension and benefit income tests. [These payments were loans made to Austudy and Abstudy recipients and were later transferred to the Social Security Act (refer to Record 6 of 1998 and Record 18 of 2000). The present change was required to ensure that students receiving the loans gained access to Health Care Cards, eligibility for which (under the Health Insurance Act) was tied to the definition of income in the Social Security Act. Their previous loss of entitlement to the card had been an unintended consequence when the Student Financial Supplement Scheme was introduced.]

CHANGE TO BEREAVEMENT PAYMENTS

Location in Act  
Section 4 (as set out in Schedule 2)

Date of commencement  
29 September 1995

Date of application  
29 September 1995. Applied to an allowance recipient who notified the department of the death of his/her partner on or after that day

Payments affected  
Bereavement Payments

The conditions under which Bereavement Payments were made to ‘long-term recipients’ of Job Search Allowance and Newstart Allowance were eased by allowing periods when they had been in receipt of Austudy or Abstudy to be included in determining their status as a long-term recipient. [The definition of ‘long-term recipient’ before this extension was set out in Record 75 of 1991.]
SPECIAL ARRANGEMENTS FOR REFUGEES MODIFIED

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 4 (as set out in Schedule 3)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>1 January 1995, immediately after the commencement of section 4 of, and Schedule 2 to, the Social Security (1994 Budget and White Paper) Amendment Act 1994</td>
</tr>
<tr>
<td>Date of application</td>
<td>As for date of commencement</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Pensions and benefits</td>
</tr>
</tbody>
</table>

Changes were made to the provisions which enabled pensions and benefits to be made to refugees without their having to satisfy the usual qualifying residency requirement. The main thrust of the changes was to ensure that otherwise eligible people did not lose their entitlement as refugees because they had ceased to hold, in the case of pensions and of benefits other than Special Benefit, a permanent visa/entry permit and, in the case of Special Benefit, a temporary visa/entry permit. The changes were backdated to 1 January 1995 and subsumed the earlier changes which commenced from that date (refer to Record 21 of 1994). [Record 12 of 1994 should also be examined for a full understanding of these changes.]

In the case of pensions and of benefits other than Special Benefit, a person was exempted from the usual residency qualifying conditions if he/she was residing in Australia and was a ‘refugee’ or ‘former refugee’. ‘Refugee’ was defined in detail by specifying that the term included holders (or persons taken to have been holders) of the full range of permanent visas and entry permits available under the Department of Immigration and Ethnic Affairs’ refugee and humanitarian program over the previous 10 years (each of these was now spelt out). The 10-year period reflected the waiting period for certain pensions. A ‘former refugee’ was defined as a person who was a refugee but did not include a person who ceased to be a refugee because his/her visa or entry permit had been cancelled.

As regards Special Benefit, a person was exempted from the usual residency requirement where he/she was residing in Australia and was either an ‘exempt resident’ or a ‘former exempt resident’. The definition of ‘exempt resident’ provided that a person was one if he/she was, or was taken to have been, the holder of one of a range of visas or entry permits specified in the definition. Those specified covered the temporary visas and entry permits that had allowed a relaxation of the Australian resident criteria for Special Benefit under the previous arrangements. A ‘former exempt resident’ was defined as a person who was an exempt resident but did not include a person who ceased to be an exempt resident because his/her visa or entry permit had been cancelled.

Although set out in a slightly different form, the visas and entry permits now spelt out in detail for Special Benefit purposes were the same as those specified in the Ministerial determination for the purpose under the previous arrangements. The law continued to allow the Minister to include new types of visa that became available after the changes to be included in the arrangements.

[The change removed a deficiency in the legislation as refugees frequently ceased to hold a visa or entry permit for legitimate reasons (such as their becoming citizens) and it was not intended that this should remove their entitlement to the residency concession.]
Amendments clarified and tightened the ‘continuing inability to work’ eligibility condition which had to be met before a person could be granted a Disability Support Pension or Disability Wage Supplement:

- it was clarified that the condition had to be due directly to a physical, intellectual or psychiatric impairment of at least 20 per cent; and
- the Secretary had to be satisfied that the physical, intellectual or psychiatric impairment from which the condition resulted was sufficient to prevent a person from doing any work within the following two years; and that either it was also sufficient to prevent him/her from undertaking educational, vocational or on-the-job training during the following two years or, if such training was possible, that it was unlikely to enable the person to do any work within that time.

The second provision was broadly similar to the one it replaced but ‘any work’ in the first instance replaced a reference to ‘the person’s usual work or work for which he/she was currently skilled’ and in the second instance replaced reference to ‘work for which the person was currently unskilled’. The reference to ‘on-the-job training’ in that change was an addition to that provision (which had previously referred only to educational or vocational training). It was also added as a third level of training in the existing provision stating that the Secretary was not to have regard to the availability of such training in deciding whether a person had a continuing inability to work. On-the-job training in these contexts was defined to exclude programs designed specifically for people with physical, intellectual or psychiatric impairments.

[The first change was introduced to counter decisions of appeals tribunals that had accepted indirect effects of an impairment such as a person’s attitude or lack of work motivation as meeting the ‘continuing inability to work’ criterion. The second change was made in response to a decision of the Administrative Appeals Tribunal that the previous wording implied that the work had to be skilled work.]
### CLARIFICATION OF EMPLOYMENT SECRETARY’S POWER TO WAIVE CONDITIONS

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 4 (as set out in Schedule 5). Of the 113 items in Schedule 5, all items except 20, 21, 74, 112 and 113 deal with this change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>29 September 1995</td>
</tr>
<tr>
<td>Date of application</td>
<td>29 September 1995</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Job Search Allowance; Newstart Allowance</td>
</tr>
</tbody>
</table>

It was clarified that the Employment Secretary’s power to waive the various waiting and non-payment periods imposed on claimants and recipients of Job Search Allowance and Newstart Allowance, where a person undertook approved vocational training or rehabilitation, could be used to waive only that part of a waiting/non-payment period which overlapped with the training course. [The change was made as the previous provision had been open to the interpretation that the Employment Secretary could waive only an entire waiting or non-payment period and did not cover a situation where a person was already serving a waiting or non-payment period when he/she commenced the training or rehabilitation.]

### CONCESSION FOR PERSONS SUBJECT TO EDUCATION WAITING PERIOD

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 4 (as set out in Schedule 5 at items 20, 21, 74, 112 and 113)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>29 September 1995</td>
</tr>
<tr>
<td>Date of application</td>
<td>29 September 1995</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Job Search Allowance; Newstart Allowance; Sickness Allowance</td>
</tr>
</tbody>
</table>

A person subject to the education waiting period for workforce benefits or Youth Training Allowance, who commenced a full-time education course during the waiting period and then reclaimed his/her benefit within 12 months of starting the course, had the waiting period reduced by the number of days of the previous waiting period that he/she had served immediately before starting the course. [The only change to the existing provision was to extend the previous four-week reclaim period to 12 months.]
CONCESSIONS FOR PERSONS ENROLLED IN FULL-TIME EDUCATION OR TRAINING

Location in Act  
Section 4 (as set out in Schedule 6). In the Schedule the following items apply:  
First change: items 3 and 6  
Second change: items 2 and 5  
Third change: items 7, 8 and 9  
Fourth change: items 1 and 4

Date of commencement  
29 September 1995

Date of application  
29 September 1995

Payments affected  
First, second and fourth changes: Job Search Allowance; Newstart Allowance  
Third change: Special Benefit

Several amendments were made to the concession enabling recipients of Job Search Allowance and Newstart Allowance who had enrolled in a course of full-time education or vocational training of six months or longer duration, and which had been approved for purposes of receiving payments under Austudy or Abstudy, to continue to receive their allowance for up to three weeks into the course/training pending determination of their entitlement to the education payment. Under the changes:

▫ the period for which the allowance could continue was altered from ‘up to three weeks’ to a standard ‘three weeks’;
▫ the concession was extended to persons undertaking courses of less than six months duration;
▫ the concession was extended to special beneficiaries; and
▫ activity test requirements were waived for Job Search Allowance and Newstart Allowance recipients during the three-week period.

TIME LIMIT PLACED ON EMPLOYMENT ENTRY PAYMENT CLAIMS

Location in Act  
Section 4 (as set out in item 1 of Schedule 8)

Date of commencement  
29 September 1995

Date of application  
29 September 1995

Payments affected  
Employment Entry Payment

An Employment Entry Payment was payable to a recipient of Disability Wage Supplement only if the person made a claim no more than 28 days after commencing employment in the supported wage system in respect of which the claim was based. [The 28-day condition already applied to Disability Support Pension and to other payments which could attract an Employment Entry Payment.]
10

**COVERAGE OF TELEPHONE ALLOWANCE EXTENDED**

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 4 (as set out in items 2 and 3 of Schedule 8)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>29 September 1995</td>
</tr>
<tr>
<td>Date of application</td>
<td>29 September 1995</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Telephone Allowance</td>
</tr>
</tbody>
</table>

Telephone Allowance was extended to recipients and ex-recipients of Disability Wage Supplement who retained eligibility for Fringe Benefits (Concession Cards) for up to 12 months under the special arrangements for those who under normal circumstances would have lost their entitlement. [This brought the treatment of Disability Wage Supplement recipients into line with that for disability support pensioners (refer to Record 58 of 1991).]

11

**COVERAGE OF EDUCATION ENTRY PAYMENT EXTENDED**

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 4 (as set out in Schedule 9)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>29 September 1995</td>
</tr>
<tr>
<td>Date of application</td>
<td>29 September 1995</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Education Entry Payment</td>
</tr>
</tbody>
</table>

The $200 Education Entry Payment was extended to ex-recipients of Job Search Allowance aged under 18 years, and of Newstart Allowance and Youth Training Allowance, who commenced a full-time training course of less than six months duration required as part of an activity test, a Job Search Activity Agreement, Newstart Activity Agreement, Youth Training Activity Agreement or case management activity agreement and as a result were not qualified for an Austudy or Abstudy payment.

[This amendment was required as a consequence of the last change at Record 25 of 1993. To accompany the Secretary’s discretion to continue to pay an allowance for up to three weeks into a short course pending determination of entitlement, a complementary change to student assistance regulations had precluded the allowance recipients from receiving education payments for that period. An unintended consequence of this was that the recipients also lost eligibility for the Education Entry Payment.]
CONCESSION FOR PERSONS LOSING ENTITLEMENT TO MOBILITY ALLOWANCE

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 4 (as set out in Schedule 10)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>29 September 1995</td>
</tr>
<tr>
<td>Date of application</td>
<td>29 September 1995</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Mobility Allowance</td>
</tr>
</tbody>
</table>

The six additional fortnightly payments (known as ‘period of grace’ payments) made where a recipient of Mobility Allowance lost entitlement because, in the opinion of the Secretary, he/she had ceased to be engaged in gainful employment or vocational training (or a combination of these) for at least eight hours a week on a continuing basis, was extended to provide such payments in most situations where entitlement ceased. The legislation specifically provided for the payments to be made where a person lost his/her entitlement because he/she ceased to:

- be engaged in voluntary work approved by the Secretary for charitable, welfare or community organisations for at least eight hours a week on a continuing basis;
- undertake job search activities as part of an activity plan developed by a Disability Panel established by the Secretary, or under the Competitive Employment Placement and Training Program administered by the Department of Human Services and Health;
- receive Job Search Allowance or Newstart Allowance for a reason other than for breaches involving moving to an area of lower employment, a failure to satisfy the activity test, a failure to enter an activity agreement or a failure to provide information; or
- receive Youth Training Allowance following similar breaches as for Job Search Allowance and Newstart Allowance under the Student and Youth Assistance Act.

CHANGE TO ELIGIBILITY CRITERIA FOR SENIORS HEALTH CARD

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 4 (as set out in Schedule 11)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>29 September 1995</td>
</tr>
<tr>
<td>Date of application</td>
<td>29 September 1995</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Seniors Health Card</td>
</tr>
</tbody>
</table>

The Seniors Health Card became available to men and women at Age Pension age rather than, as previously, when they turned 65 years in the case of men and 60 years in the case of women.

[The change took account of the progressive increase, from 1 July 1995, in the Age Pension qualifying age for women from 60 to 65 years. It had been intended that this change apply from 1 July 1995 (when the first reduction in the pensionable age was to commence) but delays in the legislation’s passage through Parliament meant that Royal Assent was not given until later. As it had adverse consequences for some people, its application was not made retrospective.]
14

NEW INCOME TEST EXTENDED TO YOUNG SICKNESS ALLOWANCE RECIPIENTS

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 4 (as set out in Schedule 12)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>29 September 1995</td>
</tr>
<tr>
<td>Date of application</td>
<td>29 September 1995</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Sickness Allowance</td>
</tr>
</tbody>
</table>

The restructured benefit income test was extended to recipients of Sickness Allowance aged under 18 years, the only group of beneficiaries to whom it did not already apply. The changes were as set out in Record 31 of 1994. [That record also explained the reason for not applying the changes to younger Sickness Allowance recipients at the same time as to other benefits.]

15

TREATMENT OF NON-RESIDENT SUPERANNUATION FUNDS IN INCOME TESTS

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 4 (as set out in Schedule 13)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>29 September 1995</td>
</tr>
<tr>
<td>Date of application</td>
<td>In relation to period-based payments, the amendments applied in respect of the fortnight that commenced following 29 September 1995</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Pensions and benefits; Special Benefit (in effect)</td>
</tr>
</tbody>
</table>

‘Non-resident’ rather than, as previously, ‘foreign’ superannuation funds were excluded from the definition of ‘superannuation fund’ in the Act. The amendment was essentially a technical one to take account of amendments made to the definition of superannuation funds in the Income Tax Assessment Act. [The change ensured that the intent of the Act, to treat a superannuation pension from a non-resident fund as assessable income under pension and benefit income tests while allowing no concessional deductions, was maintained.]
NATIVE TITLE RIGHTS AND INTERESTS EXEMPTED FROM ASSETS TESTS

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 4 (as set out in Schedule 14)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>29 September 1995</td>
</tr>
<tr>
<td>Date of application</td>
<td>29 September 1995</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Pensions and benefits; Family Payment (Basic Family Payment and Additional Family Payment)</td>
</tr>
</tbody>
</table>

The value of any native title rights and interests held by a person, or by a community group of which the person was a member, was exempted from the assets test on pensions, benefits and Family Payment. 'Native title rights and interests' were defined as such rights and interests within the meaning of section 223 of the Native Title Act, and 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 related to land or waters outside Australia. Any right or interest in a lease, a licence or in freehold estate was specifically excluded from the definition.

[This amendment was made in the light of the High Court’s decision in the ‘Mabo case’ that Australian common law recognised native title rights and interests conferred under Aboriginal customary law. The Native Title Act preserved and protected those rights and interests.]

AMENDMENT TO INCOME TEST ON EMPLOYER-PROVIDED FRINGE BENEFITS

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 4 (as set out in Schedule 15)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>29 September 1995</td>
</tr>
<tr>
<td>Date of application</td>
<td>29 September 1995</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Family Payment (Basic Family Payment and Additional Family Payment); Job Search Allowance; Sickness Allowance; Special Benefit (in effect)</td>
</tr>
</tbody>
</table>

An automatic mechanism was introduced for determining the notional rate of interest to apply to loans made by employers when assessing the value of employer-provided fringe benefits under the Family Payment (Basic and Additional Family Payment) income test, and the parental income test on Job Search Allowance and Sickness Allowance for single persons aged under 18 years without dependants. The prevailing rates of 6.95 per cent and 11.75 per cent for housing and non-housing loans respectively were retained for the financial year 1994–95 in the case of Family Payment and for the fringe benefits year (ended 31 March 1996) for the allowances. For future financial and fringe benefit years, the rate was to be the market rate as determined on 1 April in the preceding financial year or in the same fringe benefit year. The 'market rate' for housing loans was defined as the lowest variable rate of interest for such a loan that was available on that day from one of four banks specified in a written determination by the Minister. For other loans, the lowest variable rate for any non-housing loan at those banks was used. The Ministerial determination was a disallowable instrument.
Legislation passed in 1995

[The original legislation was described at Record 16 of 1993. The 6.95 and 11.75 per cent rates had been set for 1993–94 and subsequent years and, while there had been provision to vary them via Ministerial determination, this power had not been exercised. Thus the rates had fallen well below the prevailing market rate of interest at the time of the change.

Use of financial years rather than fringe benefit years for Family Payment reflected the fact that the Family Payment income test was based on taxable income in a financial year. However, the interest variation date of 1 April applicable to both payments was the first day of the fringe benefit year (1 April to 31 March) that applied for tax purposes.]

18

CHANGES TO COMPENSATION RECOVERY PROVISIONS

Location in Act
Section 4 (as set out in Schedule 16). In Schedule 16:
First change: items 6, 7, 8, 9, 10, 13, 21, 23, 25, 26, 27, 28, 29, 30, 35, 47, 52 and 69
Second change: items 16, 19, 20, 21, 24, 25, 31, 36, 38, 43, 58, 59, 68, 69, 73, 74, 75, 76, 77, 78, 79 and 80
Third change: items 35 and 46
In addition, item 67 and items 66 and 67, in relation to the first and second changes respectively, amended the Social Security (Parenting Allowance and Other Measures) Legislation Amendment Act 1994

Date of commencement
First and third changes: Date of Royal Assent if before 1 July 1995 or otherwise immediately before that date.
Effective date was 1 July 1995.
Second change: items 16, 19, 20, 21, 24, 25, 31, 36, 38, 43, 58 and 59 were as for first change. Items 68, 69, 73, 74, 75, 76, 77, 78, 79 and 80 commenced on 1 July 1995, immediately after the commencement of Schedules 1 and 2 to the Social Security (Parenting Allowance and Other Measures) Legislation Amendment Act 1994

Date of application
As for date of commencement

Payments affected
Pensions (except Age Pension; Widow B Pension; Bereavement Allowance) and benefits

The compensation recovery provisions were amended to the effect that:

➢ where two or more lump-sum compensation payments, whether received simultaneously or at different times, were made in respect of one or more injury, disease or condition arising from a single compensable event, and at least one of the payments was made wholly or partly in respect of lost earnings or lost capacity to earn, they were to be treated as only one compensation payment equivalent to the sum of the separate payments;

➢ they were taken to apply to a person even where he/she had only claimed, and not yet qualified for, a payment subject to the provisions; and
periodic and lump-sum compensation payments were to be included in all cases as income for purposes of the income test for determining eligibility for a Health Care Card under the ‘low income’ category in the Disadvantage Persons’ Health Scheme.

[The first amendment was made to overcome a trend for compensation settlements to be split so that only one, usually relatively small, payment was expressed to be wholly or partly in respect of lost earnings or lost earnings capacity. This had resulted in the intent of the compensation recovery provisions being thwarted as they technically (and as interpreted by the Administrative Appeals Tribunal) applied only to the small payment and not to the overall settlement.

The second amendment removed the need for the department and claimant to go through a lengthy qualification assessment exercise where it was obvious from a person’s circumstances that the compensation recovery provisions would preclude him/her from being eligible for a pension or benefit.

The third amendment removed an unintended anomaly related to the definitions of income in the Health Insurance Act and its link to the Social Security Act for determining eligibility for Health Care cards for low income people. It was essentially a technical amendment.]
Social Security (Non-Budget Measures) Legislation Amendment Act 1995, No. 105

Date of Royal Assent: 29 September 1995

19

<table>
<thead>
<tr>
<th>CARER PENSION PAYABLE OVERSEAS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Location in Act</td>
</tr>
<tr>
<td>Date of commencement</td>
</tr>
<tr>
<td>Date of application</td>
</tr>
<tr>
<td>Payments affected</td>
</tr>
</tbody>
</table>

A person receiving a Carer Pension could continue to receive it while accompanying the person receiving the care during a temporary absence overseas, provided that the period or periods did not exceed three months in a calendar year and he/she continued to meet the conditions concerning the level of care.

20

<table>
<thead>
<tr>
<th>EMPLOYMENT ENTRY PAYMENT EXTENDED TO CARER PENSIONERS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Location in Act</td>
</tr>
<tr>
<td>Date of commencement</td>
</tr>
<tr>
<td>Date of application</td>
</tr>
<tr>
<td>Payments affected</td>
</tr>
</tbody>
</table>

A $100 lump-sum Employment Entry Payment became payable to carer pensioners. It was available once a year to pensioners where they had an increase in income from commencing or while in employment, this income exceeded a ‘specified amount’ due to the increase and, in the opinion of the Secretary, it was likely to exceed that amount for more than four weeks. The specified amount was identical to that applying to Employment Entry Payment for sole parent pensioners (refer to Record 35 of 1992).

Provision was also made for a person who satisfied the Secretary that he/she had entered into an agreement to gain employment, or an increase in earnings from his/her current employment, to receive the payment up to 14 days in advance of these events provided that he/she met the other eligibility conditions.
21

EDUCATION ENTRY PAYMENT EXTENDED TO CARER PENSIONERS

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 7</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>29 September 1995</td>
</tr>
<tr>
<td>Date of application</td>
<td>29 September 1995</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Education Entry Payment; Carer Pension</td>
</tr>
</tbody>
</table>

A $200 lump-sum Education Entry Payment became available once in a calendar year to a carer pensioner who was qualified to receive a pensioner education supplement under Austudy, or would have been so qualified if he/she had not been receiving a financial supplement under the Student Financial Supplement Scheme, and who was enrolled in, or the Secretary was satisfied that he/she intended to enrol in, a full-time or part-time education course approved under Austudy.

22

CONCESSION TO DISABILITY SUPPORT PENSIONERS

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Sections 8 and 9</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>1 July 1995</td>
</tr>
<tr>
<td>Date of application</td>
<td>1 July 1995</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Disability Support Pension; Wife Pension; Carer Pension</td>
</tr>
</tbody>
</table>

All disability support pensioners who lost entitlement to the pension due to an increase in earnings from employment could have their pension suspended for up to two years rather than cancelled. Previously, this concession had been available only to persons who obtained work of at least 30 hours a week. The concession was also extended to partners of disability support pensioners receiving a Wife Pension or Carer Pension.

23

COVERAGE OF MOBILITY ALLOWANCE EXTENDED

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 11</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>29 September 1995</td>
</tr>
<tr>
<td>Date of application</td>
<td>29 September 1995</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Mobility Allowance</td>
</tr>
</tbody>
</table>

Mobility Allowance was extended to recipients of Job Search Allowance, Newstart Allowance and Youth Training Allowance who met the prescribed disability and other conditions and who were not receiving a ‘training component’ from the Employment Department. [The training component (refer to Record 8 of 1992) was made to assist a person with expenses incurred in undertaking job search activities.]
**24**

**BACKDATING PROVISION FOR PARTNER ALLOWANCE**

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 13</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>Taken to have commenced on 20 September 1994, immediately after Part 3 of the Social Security (Home Child Care and Partner Allowances) Legislation Amendment Act 1994</td>
</tr>
<tr>
<td>Date of application</td>
<td>As for date of commencement</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Partner Allowance</td>
</tr>
</tbody>
</table>

Partner Allowance could be backdated to the day on which a person’s partner claimed a workforce benefit or Special Benefit provided that it was claimed within 14 days of the partner’s claim. The change was backdated to the introduction of Partner Allowance.

[The previous rule that Partner Allowance could be paid only 14 days in arrears had served to disadvantage a person whose partner had been granted the primary benefit more than 14 days before he/she claimed Partner Allowance. This was possible under the various backdating provisions for the primary benefit. The problem had not existed before the introduction of Partner Allowance as the payment of a combined married rate of benefit had ensured that the full payment to a couple was made from the outset.]

**25**

**CHANGES TO QUALIFYING CONDITIONS FOR SOLE PARENT PENSION**

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Sections 14, 15 and 16</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>29 September 1995</td>
</tr>
<tr>
<td>Date of application</td>
<td>29 September 1995</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Sole Parent Pension</td>
</tr>
</tbody>
</table>

Amendments were made to clarify that Sole Parent Pension could not be paid in the event of only a temporary separation of two partners, and also to align more closely the conditions applying to couples irrespective of whether they were legally married or not. The main thrust of the changes involved:

- removing the provision enabling qualification on the basis that a member of a couple was living separately and apart from his/her partner. [Legal advice had indicated that the provision could be interpreted as allowing temporarily separated persons to qualify for the pension in certain circumstances.];

- specifying in relation to a legally married couple that, in order to qualify for the pension, any separation had to be permanent or indefinite. [For persons not legally married, the temporary/permanent separation issue was not directly alluded to—the determining factor was whether a marriage-like relationship existed.];

- in determining whether a member of a couple who was not legally married was eligible for the pension, replacing references to ‘living with a person of the opposite sex’ with ‘having a relationship with a person of the opposite sex’; and
specifying, in relation to both legally and non-legally married couples, that the Secretary must not form the opinion that the relationship between a person and his/her partner was a marriage-like relationship if the person was living separately and apart from his/her partner on a permanent and indefinite basis.

### 26

**FAMILY PAYMENT BENCHMARKS INCREASED**

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Sections 17 and 18</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>29 September 1995</td>
</tr>
<tr>
<td>Date of application</td>
<td>Formula change applied from 1 January 1996. Certain ancillary amendments applied from 29 September 1995</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Family Payment (Additional Family Payment only)</td>
</tr>
</tbody>
</table>

The 'Family Payment benchmarks' were increased from 16.2 to 16.6 per cent of the basic combined married rate of pension in respect of children aged under 13 years and from 21.2 to 21.6 per cent for children aged 13 to 15 years. [This was done in order to preserve the effect of the $2 a fortnight ad hoc increase to Additional Family Payment applicable from 1 January 1995. For details of the Family Payment benchmarks, refer to Record 7 of 1989.]

### 27

**BACKDATING OF FAMILY PAYMENT FOR ADOPTED CHILD**

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Sections 19 and 20</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>29 September 1995</td>
</tr>
<tr>
<td>Date of application</td>
<td>29 September 1995</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Family Payment (Basic Family Payment and Additional Family Payment)</td>
</tr>
</tbody>
</table>

It was provided that Family Payment could be backdated to the date from which an adopted child was placed in the adoptive person's care by an authorised party as part of the adoptive process provided that, where the child was the first child eligible for Family Payment, the claim was lodged within 13 weeks of that date and, in the case of a second or later such child, within 13 weeks of the date the person notified the department that the child was in his/her care.

[This change assisted persons adopting children other than those newly born who could not take advantage of the standard 13-week period allowed for paying Family Payment in arrears following the birth of a child. The new provision took account of the date a child was officially placed in an adoptive person’s care and not the date of adoption, which usually occurred after (and sometimes up to 12 months after) the child was placed in a person’s care.]
Instalments of Family Payment for second and subsequent children could be backdated to the date of a child’s birth provided that a person notified the department of the birth within 13 weeks of that date. [The change brought the law into line with departmental practice. Previously, on a strict interpretation of the legislation, the 13 weeks arrears provision could be taken to have applied only in respect of the first child.]

The treatment of employer-provided fringe benefits in the income test on Family Payment (Basic Family Payment and Additional Family Payment), and the parental income test on Job Search Allowance and Sickness Allowance for single persons aged under 18 years without dependants, was modified with changes in the way loans received from employers were treated. Following the changes:

- provisions exempting loans made by a person carrying on a business consisting of, or including, the making of loans to members of the public, where the rate of interest was no less than the normal rate provided to the public, were removed. [No policy change was involved here—it was considered that the more general provisions in the Act dealing with loan fringe benefits already dealt effectively with the issue.];

- the specified time limits in a provision exempting loans provided as advances by employers, where the sole purpose of the loan was to enable the employee to meet reasonable expenses incurred in the performance of his/her duties within six months of receiving the loan, and where the employee had to account for any expenses met from the loan within six months and repay amounts not accounted for, were removed; and

- the specified time limit in a provision exempting loans provided as advances in respect of accommodation, where the sole purpose of the loan was to enable an employee to pay a rental bond, security deposit for electricity, gas or telephone services or similar amounts which had to be repaid within 12 months, was removed.
[The main reason for these changes was that the provisions had proved difficult to administer.

The underlying provisions concerning income testing of employer-provided fringe benefits were inserted into the Act from 1 January 1994 (refer to Record 16 of 1993). They were very detailed with many taken from tax legislation and were not fully spelt out there.]

### 30

**WAITING PERIOD EXEMPTION EXTENDED TO SICKNESS ALLOWANCE**

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 22</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>29 September 1995</td>
</tr>
<tr>
<td>Date of application</td>
<td>29 September 1995</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Sickness Allowance</td>
</tr>
</tbody>
</table>

The provision exempting persons claiming Job Search Allowance or Newstart Allowance from serving the normal seven-day waiting period before payment, where the Secretary was satisfied that it would involve their suffering severe financial hardship, was extended to claimants of Sickness Allowance.

### 31

**SECRETARY’S POWER NOT TO PAY AN UNEMPLOYMENT PAYMENT EXTENDED**

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 23 (Job Search Allowance); section 24 (Newstart Allowance)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>29 September 1995</td>
</tr>
<tr>
<td>Date of application</td>
<td>29 September 1995</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Job Search Allowance; Newstart Allowance</td>
</tr>
</tbody>
</table>

A new provision gave the Secretary the general power not to pay an allowance where a claimant or recipient of Job Search Allowance or Newstart Allowance failed to meet a reasonable request that he/she attend a particular place for a particular purpose. [Previously the Secretary could require only that a claimant or recipient attend an office of, or contact, the Commonwealth Employment Service.]
32

CHANGES TO JOB SEARCH AND NEWSTART TRAINING SUPPLEMENTS

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 26 (Job Search Training Supplement); section 27 (Newstart Training Supplement); section 28 (Parliamentary appropriation)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>29 September 1995</td>
</tr>
<tr>
<td>Date of application</td>
<td>29 September 1995</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Job Search Training Supplement; Newstart Training Supplement</td>
</tr>
</tbody>
</table>

In amendments to Job Search Training Supplement and Newstart Training Supplement:

- the supplements were extended to persons undertaking labour market programs (previously they had been restricted to those undertaking vocational training courses);

- as a condition of their payment, the Employment Secretary was required to approve courses for purposes of the supplement. The Employment Minister was given the power to establish guidelines to be followed in determining the suitability of courses for this purpose; and

- it was clarified that the supplements were to be paid from specified Parliamentary appropriations to the Employment Department.

33

INCOME TESTS AND APPROVED EXCHANGE TRADING SYSTEMS

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 37</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>Taken to have commenced on 29 November 1993</td>
</tr>
<tr>
<td>Date of application</td>
<td>Taken to have commenced on 29 November 1993</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Pensions and benefits; Special Benefit (in effect)</td>
</tr>
</tbody>
</table>

Amounts credited to the accounts of members of an approved exchange trading system, in respect of goods or services provided by a person to another member as part of the system’s operation, were exempted from pension and benefit income tests.

An ‘exchange trading system’ was defined as an arrangement between a number of persons (members) under which each member could obtain goods or services from another member for consideration that was wholly or partly in kind rather than in cash. For purposes of the arrangement (as specified in the legislation), each member had an account:

- to which was credited the amount representing the value of any goods or services provided by him/her to another member or, if these were partly paid for in cash, their value less the amount of the cash payment; and

- to which was debited the amount representing the value of any goods or services supplied to him/her by another member or, if these were partly paid for in cash, their value less the amount of the cash payment.
To qualify as an ‘approved’ exchange trading system, the Secretary had to be satisfied that an arrangement was a local community-based one, that its primary purpose was to help people maintain their labour market skills and keep them in touch with the labour market, and that it was not run by a person or organisation for profit.

34

**AMENDMENT TO CARER PENSION**

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Sections 41, 42, 43, 44, 45, 46, 47 and 48</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>20 March 1995</td>
</tr>
<tr>
<td>Date of application</td>
<td>20 March 1995</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Carer Pension</td>
</tr>
</tbody>
</table>

Carer Pension became payable to a person providing the requisite level of care to a recipient of an Income Support Supplement. The Supplement was a new payment introduced under the Veterans’ Entitlements Act ([refer to Record 9 of 1994](#)), and the amendment took effect from the date of its introduction.
Social Security Legislation Amendment (Family Measures) Act
1995, No. 106

Date of Royal Assent: 29 September 1995

<table>
<thead>
<tr>
<th>INTRODUCTION OF MATERNITY ALLOWANCE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Location in Act</td>
</tr>
<tr>
<td>Date of commencement</td>
</tr>
<tr>
<td>Date of application</td>
</tr>
<tr>
<td>Payments affected</td>
</tr>
</tbody>
</table>

Maternity Allowance was introduced. It comprised a one-off, non-taxable lump sum paid to a mother on the birth of a child born on or after the date of its introduction. Australia previously had a Maternity Allowance from 1912 to 1978.

Features of the Maternity Allowance were that:

- it was paid to a person who qualified for Family Payment in respect of a child on any Family Payment payday within 13 weeks of the child’s birth (accordingly, the Family Payment residency conditions and income and assets test for Basic Family Payment applied);
- it was paid in respect of each child in a multiple birth;
- it was paid in respect of stillborn children and children who were born alive but died before the first Family Payment payday after the birth (the proviso here was that the person would have qualified for Family Payment in respect of the child on any Family Payment payday within 13 weeks of the child’s birth, if it had not been stillborn or died so soon after birth);
- it was paid in respect of newly born adopted children;
- approved care organisations were specifically precluded from eligibility;
- the rate of allowance was equivalent to three times the maximum fortnightly rate of Parenting Allowance ($840.60 at the date of its introduction). As the rate was linked to the rate of Parenting Allowance, it was in effect subject to automatic twice yearly indexation on the same basis as that allowance;
- it could be claimed with Family Payment and was usually paid with the first instalment of Family Payment made for the child;
- where a person claimed the allowance but was not qualified for it at the date of the claim, the claim was accepted provided that he/she qualified for it within 13 weeks; and
- a person had up to 26 weeks following the birth in which to make a claim. If a person with an entitlement to the allowance died before receiving it, another person had 26 weeks from the date of the death to make a claim but the Secretary could allow a longer period in special circumstances.
[It should be noted that Basic Family Payment was no longer known by that name by the time Maternity Allowance was introduced (refer to Record 36 of 1995).]

Maternity Allowance was payable to a person or his/her partner entrusted with the care of a child within 13 weeks of the child’s birth, provided that the child was likely to continue in that care for at least 13 weeks. This requirement ensured that the allowance was paid in respect of children formally adopted and permanently placed in the care of a person, but not for children (such as foster children) who were only in temporary care.

A ‘stillborn child’ was defined as a child who weighed at least 400 grams at delivery or whose period of gestation was at least 20 weeks, who had not breathed since delivery and whose heart had not beaten since delivery.

A concession allowed a person to retain the allowance where it had been paid but it was later found that he/she was ineligible for Family Payment for the period, due to an event or change in circumstances that occurred after the payment, or due to his/her income exceeding the Family Payment cut-off level because of an incorrect estimate made in good faith. [This concession was necessary due to the nature of the Family Payment income test, which was based on annual taxable income and involved some estimation.]
AMALGAMATION OF BASIC AND ADDITIONAL FAMILY PAYMENT

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in Schedules 2 and 3). Comprises entire Schedule 2 except for sections covered by Records 37 and 38</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>1 January 1996</td>
</tr>
<tr>
<td>Date of application</td>
<td>1 January 1996</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Family Payment (Basic Family Payment and Additional Family Payment). New Family Payment had ‘minimum’ and ‘more than minimum’ components (see below)</td>
</tr>
</tbody>
</table>

Basic Family Payment and Additional Family Payment were amalgamated into a single Family Payment.

The main feature of the change was the introduction of a single rate structure dependent on the age of the child. Maximum fortnightly rates (including 1 January 1996 indexation changes) were $93.10 for a child aged 0 to 12 years, $121.10 for a child aged 13 to 15 years and $58.20 for a dependent full-time student child aged 16 to 18 years.

In addition, a Large Family Supplement of $7.50 a fortnight was paid to families for each child after the third (this protected the higher rate previously payable to large families). The additional components of Multiple Birth Allowance, Guardian Allowance and Rent Assistance continued to be paid to eligible families.

For most families, a minimum Family Payment of $22.70 a fortnight for each child ($30.20 for fourth and subsequent children) applied, reflecting the previous Basic Family Payment component. Multiple Birth Allowance, where payable, was also part of the minimum payment. The components of the restructured Family Payment were known as ‘minimum’ and ‘more than minimum’ Family Payment but they were not regarded as separate payments. The rate paid to an approved care organisation was $30.20 a fortnight.

The previous income and assets tests for Basic Family Payment and Additional Family Payment were integrated into Family Payment although they were essentially as before. There was now one tapered income test for Family Payment as had applied to Additional Family Payment, but Family Payment could not be reduced below the minimum rate unless a family's income exceeded the threshold that had applied to Basic Family Payment. Similarly with the assets test, people whose assets exceeded the level that had applied to Additional Family Payment received the minimum Family Payment unless their assets also exceeded the old Basic Family Payment limit. The maintenance income test was unchanged—payment under it could not be reduced below the minimum rate.

The general conditions of payment, including the automatic indexation of rates and of income and assets test thresholds, remained as before for Basic Family Payment and Additional Family Payment.
DETERMINING WHICH MEMBER OF A COUPLE TO RECEIVE FAMILY PAYMENT

Location in Act  Section 3 (as set out in items 9, 10, 15, 17, 18 and 28 of Schedule 2)
Date of commencement  1 January 1996
Date of application  1 January 1996
Payments affected  Family Payment

It was specified that, when determining which partner of a couple should receive Family Payment where both of them were qualified for it and claimed it, the Secretary was required to have regard to whether one member was the primary carer of the child. [The previous rule required that payment be made to the female partner unless there was a reason for not doing so.]

ALTERATION TO FAMILY PAYMENT INCOME TEST

Location in Act  Section 3 (as set out in items 14, 16, 21, 30, 31, 32, 33, 34, 35, 36, 37, 38, 99, 139 and 140 of Schedule 2)
Date of commencement  1 January 1996
Date of application  1 January 1996
Payments affected  Family Payment

The Family Payment income test was made more responsive to both reductions and increases in a family's income:

- families whose income fell after their eligibility for, and rate of, Family Payment had been assessed could have it reassessed on the basis of an estimate of their income in the current financial year, regardless of how small the reduction was;

- where a family had a change in circumstances and the estimate of their current financial year income was more than 10 per cent higher than the income on which their Family Payment had been assessed, their Family Payment was reassessed on the basis of their current financial year income;

- where a family's Family Payment was based on an estimate of their income and their income for the financial year of the estimate turned out to be higher than the estimate by more than 10 per cent, their Family Payment was reassessed and any resultant overpayment recovered; and

- where a family failed to notify the department regarding a change in circumstances where notification was required (such as one partner commencing employment), and subsequently their taxable income for the financial year in which the notifiable event occurred exceeded their base tax year income and their prevailing income free limit by more than 10 per cent, their Family Payment was reassessed and any subsequent overpayment recovered.

[Previously, a reassessment had been made only when a reduction or increase amounted to 25 per cent or more.]
39

CONDITIONS UNDER WHICH FULL-TIME STUDENT REGARDED AS DEPENDENT CHILD

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in Schedule 4)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>1 January 1996</td>
</tr>
<tr>
<td>Date of application</td>
<td>1 January 1996</td>
</tr>
<tr>
<td>Payments affected</td>
<td>General provision (could potentially affect any payment)</td>
</tr>
</tbody>
</table>

It was provided that a full-time student aged 16 years and over could be treated as a dependent child for purposes of attracting a social security payment only where he/she was under 22 years of age and had income in the financial year not exceeding $6691. The income level was automatically increased on 1 January each year in line with movements in the Consumer Price Index between the previous June quarters. The level cited here includes the indexation increase applicable at the date of the change but after passage of the amendment.

[Previously, full-time students aged 16 years and over ceased to be regarded as dependants only when they turned 25 years, and the dependency criteria had contained no specific income limit. The new age limit was in line with the Austudy age of dependency and the level of income equivalent to the Austudy 18 year-old ‘away from home’ rate.]

40

REDUCTION IN INCOME TEST THRESHOLD FOR FAMILY PAYMENT

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out by point 1069–H28 in Schedule 3)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>1 January 1996</td>
</tr>
<tr>
<td>Date of application</td>
<td>1 January 1996</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Family Payment</td>
</tr>
</tbody>
</table>

The family income threshold, up to which the maximum rate of Family Payment was available for a person with one child, was reduced to $22 650. The level cited here includes the indexation increase applicable at the date of the change but after the passage of the amendment. [This change brought the threshold into line with the equivalent Austudy threshold. The reduction was only $40 as legislated and before the indexation increase took effect.]
PARENTAL ASSETS TEST THRESHOLD FOR YOUNG SICKNESS ALLOWANCE RECIPIENTS RAISED

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in Schedule 4)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>1 January 1996</td>
</tr>
<tr>
<td>Date of application</td>
<td>1 January 1996</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Sickness Allowance</td>
</tr>
</tbody>
</table>

The parental assets test threshold for a single Sickness Allowance recipient aged under 18 years without dependent children who was not independent was increased slightly to $393,750. The level cited here includes the indexation increase applicable at the date of the change but after the passage of the amendment. [This change brought the threshold into line with the lower Family Payment threshold. The increase was only $120 as legislated and before the indexation increase took effect.]
Family Law Reform (Consequential Amendments) Act 1995, No. 140

Date of Royal Assent: 12 December 1995

NEW DEFINITIONS RELATING TO CHILDREN

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in Part 10 of Schedule 1)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>The provisions were to commence on the commencement of section 31 of the Family Law Reform Act 1995 (section 31 was to commence on a day to be fixed by Proclamation but no later than 12 months after the Date of Royal Assent). In the event, the date of Proclamation, and therefore of commencement, was 11 June 1996</td>
</tr>
<tr>
<td>Date of application</td>
<td>As for date of commencement</td>
</tr>
</tbody>
</table>
| Payments affected | First change: general provision (in principle could affect any payment)  
Second change: Sole Parent Pension |

As a consequence of amendments to the Family Law Act, the following amendments were made to the Social Security Act:

- throughout the Act, the circumstances under which a person aged under 16 years was a dependent child of another person were redefined to state that the adult had to be legally responsible (whether alone or jointly with another person) for the day-to-day care, welfare and development of the young person and the young person was in the adult’s care; or the young person was not a dependent child of someone else on the above basis and was wholly or substantially in the person’s care. All references to the person having the right to control, or make decisions about the control of, the young person were removed; and

- in defining when a young person was a child of a person for purposes of eligibility for Sole Parent Pension, all references to the young person being under the control of the person were removed, and a category was added covering cases where a person had a specific issues order within the meaning of the Family Law Act in relation to the young person, providing responsibility for the young person’s day-to-day care, welfare and development.
Ad hoc $2.50 a week increases (in addition to indexation increases) were made in the level of all rent thresholds (above which eligibility for Rent Assistance became payable), and in all rates of such assistance for persons with children:

- the new weekly thresholds were:
  - single person with no children—$35.30;
  - single person with children—$46.40;
  - couple with no children—$57.50;
  - couple with children—$68.50; and

- the new weekly maximum rates were:
  - single person or couple with one or two children—$43;
  - single person or couple with three or more children—$48.70.

Savings provisions protecting the entitlements of Rent Assistance recipients from the adverse effects of changes made in 1989 and 1993 were to be more rapidly phased out. There were to be no reductions in payments but the entire social security entitlement of a person (not just the Rent Assistance component) was to be frozen, by not passing on automatic indexation increases until the frozen rates equated to the rates applying to other recipients. The changes were introduced immediately before the March indexation increase was due to ensure that they took effect with that increase.
RESIDENTIAL CARE ALLOWANCE INTRODUCED

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in Schedule 6)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>1 January 1997, except for various definitions related to the new allowance which applied from 20 March 1996 (this was to accommodate change dealt with in Records 48 and 49 of 1995)</td>
</tr>
<tr>
<td>Date of application</td>
<td>As for date of commencement</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Residential Care Allowance; Rent Assistance</td>
</tr>
</tbody>
</table>

A new payment, Residential Care Allowance, replaced Rent Assistance for residents of nursing homes and hostels. It was paid essentially at the same rate and under the same special arrangements as had applied when residents of these institutions had received Rent Assistance. The institutions whose residents could attract the allowance were most of those classified as nursing homes for purposes of the previous Rent Assistance provisions. The changes to Rent Assistance (including the phasing out of the savings provisions) commencing on 20 March 1996 (refer to Records 43 and 44 of 1995) also applied to Residential Care Allowance.

The rate of Residential Care Allowance was identical to the Rent Assistance rate, although the illness separated/unpartnered rate of Rent Assistance was the only relevant one. This rate was higher than that for couples generally and reflected the assumption, which had always been made in administering the Rent Assistance provisions, that members of couples receiving such assistance in circumstances covered by the new allowance were separated from their partners due to illness and accommodated in the manner of unpartnered people. The illness separated/unpartnered rent threshold was also the only threshold applicable.

People residing in premises at which accommodation was provided exclusively or principally for persons who had a mental disability, and nursing-home type patients within the meaning of the Health Insurance Act in hospitals, were not eligible for Residential Care Allowance. They continued to be regarded as nursing home patients for purposes of the Rent Assistance provisions and received that assistance rather than the new allowance.

Another difference from Rent Assistance was that Residential Care Allowance was payable only to people who had been residing, or in the Secretary’s opinion were likely to reside, in the prescribed premises for at least 14 consecutive days. Residents of these institutions for lesser periods continued to receive Rent Assistance under the special arrangements.

[The payment of Residential Care Allowance in the social security system was intended only as a short-term transitional arrangement pending its transfer to the Human Services and Health portfolio. In the longer term it was not seen as appropriate to align the payment to Rent Assistance conditions, as these had been established based on factors relevant to the private rental market but which had little relevance to the circumstances of nursing home and hostel residents. Following a restructure of funding arrangements for nursing home and hostel residents, the allowance was abolished from 1 October 1997 (refer to Record 6 of 1997).]
46

RENT ASSISTANCE EXTENDED TO CERTAIN CARERS

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in Schedule 7)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>20 March 1996</td>
</tr>
<tr>
<td>Date of application</td>
<td>20 March 1996</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Rent Assistance</td>
</tr>
</tbody>
</table>

Eligibility for Rent Assistance was extended to home owners who were not residing in their family home but were paying rent while personally providing a substantial level of care in a private residence to a person who required, or in the Secretary’s opinion was likely to require, such care for at least 14 consecutive days.

47

RENT ASSISTANCE EXTENDED TO PERSONS RECEIVING CARE

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in Schedule 7). (Amendments made to Schedule 8 in respect of the change at Record 48 of 1995 are also relevant to this change.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>20 March 1996</td>
</tr>
<tr>
<td>Date of application</td>
<td>20 March 1996</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Rent Assistance</td>
</tr>
</tbody>
</table>

Rent Assistance was extended immediately, on an indefinite basis to non-home owners and for up to two years to home owners, who required and had been receiving, or in the Secretary’s opinion required and were likely to receive, a substantial level of care in a private residence for at least 14 consecutive days. Where it was unclear what proportion of payments for accommodation and other services was made in respect of accommodation, two-thirds of the amount was taken to be rent for purposes of determining a person’s Rent Assistance entitlement.

[This change brought the treatment of persons receiving community care into line with that for those in nursing homes. Rent Assistance was now available immediately to a home owner. Previously, a home owner could at best receive Rent Assistance only after a minimum of one year’s temporary absence from the family home.]
ASSETS TEST CONCESSION FOR PEOPLE IN CARE SITUATIONS

Location in Act: Section 3 (as set out in Schedule 8)
Date of commencement: 20 March 1996
Date of application: 20 March 1996. The amendments extended to periods beginning before the commencement date. However, they did not affect a person’s entitlement (or lack of entitlement) to Rent Assistance before the commencement date.
Payments affected: Pensions and benefits; Family Payment

The family home of a person receiving a pension, benefit or Family Payment continued to be treated as the family home, and so was disregarded as an asset under all assets tests, where a person entered a care situation or residential care. This applied in exactly the same way as for nursing home residents (that is in most cases for up to two years). [For treatment of nursing home residents, refer to Record 6 of 1991.]

ASSETS TEST CONCESSION FOR CARERS

Location in Act: Section 3 (as set out in Schedule 8)
Date of commencement: 20 March 1996
Date of application: 20 March 1996. The amendments extended to periods that began when the person started to provide a substantial level of care before the date of commencement. However, the amendment did not affect a person’s entitlement (or lack of entitlement) to Rent Assistance before the commencement date.
Payments affected: Pensions and benefits; Family Payment

The family home of a person receiving a pension, benefit or Family Payment was disregarded as an asset for up to two years under the assets test, while the person was absent from the residence in the course of personally providing a substantial level of care in another private residence to a person requiring, or in the opinion of the Secretary requiring, that level of care in a private residence for at least 14 consecutive days.
CARER PENSION PAYMENT PERIOD EXTENDED

Location in Act: Section 3 (as set out in Schedule 9)
Date of commencement: 21 March 1996
Date of application: 21 March 1996
Payments affected: Carer Pension

Carer Pension continued to be paid for 14 weeks to a person who had ‘ordinarily been providing constant care for a severely handicapped person’, and who ceased to qualify for the pension on ceasing to provide that level of care, following that person being permanently admitted to an institution providing care. [This payment was identical to that provided as a Bereavement Payment when a person being cared for died.]

COVERAGE OF CARER PENSION EXTENDED

Location in Act: Section 3 (as set out in Schedule 10)
Date of commencement: 21 March 1996
Date of application: 21 March 1996
Payments affected: Carer Pension

Carer Pension became payable for the first time to a person caring for a severely handicapped person who was neither receiving a pension, benefit or specified veterans’ payment, nor potentially eligible for one of them but for insufficient residency (refer to Record 44 of 1992). The conditions to be met by the carer—for example, the nature, extent and location of the care given and features such as the income and assets tests—were as for the existing Carer Pension.

For the carer to attract the pension under the expanded conditions, the care recipient had to be at least 16 years of age, be an Australian resident, require constant care (the existing provision stated only that constant care be provided) and comply with income and assets tests. [The care receiver was required to accept an income and assets tests assessment although not a claimant or recipient of a social security payment.]

For the carer to receive the pension, the care receiver’s family taxable income had to be no higher than the level at which the minimum Family Payment cut out for a family with one child eligible for the payment—$63 766 at the date of the change. However, unlike with Family Payment, fringe benefits and tax deductions for net rental property losses (negative gearing) were not included in assessable income.

Under the assets test, the carer was eligible in the first instance for the pension if the value of the assets of the care receiver’s family did not exceed the level at which the full Family Payment was payable in a family with one eligible child—$393 750 at the date of the change. Where the family’s assets exceeded that level but the care receiver provided the Secretary with an estimate of family taxable income for the current financial year and this estimate was accepted, more liberal
Legislation passed in 1995

combined income and assets tests applied. Under these, the Secretary could
decide that Carer Pension was payable where:

- the value of the care receiver’s assets was more than $393 750 but less than
  $584 500 (the threshold at which minimum Family Payment cut out), and
  estimated taxable income for the current financial year was less than the basic
  married rate of Age Pension at the previous 1 January ($14 570.40 at the date of
  the change) plus $624 for each child eligible for Family Payment; or

- the value of the care receiver’s assets was greater than $584 500, the value
  of liquid assets was less than $6000 for a single person and $10 000 for a
couple, and estimated taxable income for the current financial year was less
  than the basic married rate of Age Pension at the previous 1 January.

The income and assets test thresholds for the care receiver’s family were indexed
in the same way as the Family Payment thresholds.

<table>
<thead>
<tr>
<th>52</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>REMOVAL OF RESTRICTION ON CARER PENSION</strong></td>
</tr>
<tr>
<td><strong>Location in Act</strong></td>
</tr>
<tr>
<td><strong>Date of commencement</strong></td>
</tr>
<tr>
<td><strong>Date of application</strong></td>
</tr>
<tr>
<td><strong>Payments affected</strong></td>
</tr>
</tbody>
</table>

The eligibility criteria for Carer Pension were eased by removing the requirement
that the carer had to be living in the same home as the care receiver or in an
adjacent home.

<table>
<thead>
<tr>
<th>53</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>PENSIONERS ELIGIBLE FOR ADVANCE PAYMENTS</strong></td>
</tr>
<tr>
<td><strong>Location in Act</strong></td>
</tr>
</tbody>
</table>
| **Date of commencement** | 1 July 1996, immediately after the commencement of
  Schedule 6 to the *Social Security and Veterans’
  Affairs Legislation Amendment Act 1995* (this Act
  made certain amendments in relation to Mature Age
  Allowance) |
| **Date of application** | As for date of commencement |
| **Payments affected** | Pensions (except Rehabilitation Allowance,
  Widow B Pension and Bereavement Allowance);
  Widow Allowance |

Pensioners (except recipients of Rehabilitation Allowance, Widow B Pension and
Bereavement Allowance) and Widow Allowance recipients could opt to receive up
to 6 per cent of their annual entitlement, subject to a maximum payment of $500,
in advance. The advance generally had to be repaid in equal instalments over a
six-month period.
To qualify for an advance, a person had to have been receiving a pension, benefit or specified veterans’ payment for at least three months before applying, and the Secretary had to be satisfied that the payment would be used to meet the living or capital expenses of the person or a member of his/her family.

The maximum level of advance, qualifying payment history and purpose of the advance were different from those applying to advances for Job Search Allowance and Newstart Allowance recipients but all the other conditions of payment were identical (refer to Record 25 of 1994).

54

**GUARDIAN ALLOWANCE INCREASED**

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in Schedule 13)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of Commencement</td>
<td>1 September 1996</td>
</tr>
<tr>
<td>Date of application</td>
<td>1 September 1996</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Guardian Allowance</td>
</tr>
</tbody>
</table>

An ad hoc increase of $2 (in addition to the indexation increase scheduled at the time for January 1996) was made to Guardian Allowance, bringing the rate at the time of the change to $17.75 a week.

55

**COMPENSATION RECOVERY PROVISIONS AMENDED**

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in Schedule 15). In Schedule 15:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>First change: items 1, 2, 3 and 4</td>
</tr>
<tr>
<td></td>
<td>Second change: items 5 to 20</td>
</tr>
<tr>
<td>Date of commencement</td>
<td>12 December 1995</td>
</tr>
<tr>
<td>Date of application</td>
<td>12 December 1995</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Pensions (except Age Pension, Widow B Pension and Bereavement Allowance); benefits</td>
</tr>
</tbody>
</table>

The compensation recovery provisions applying to certain pensions and to benefits were amended to the effect that:

- where, under a state or territory law, periodic payments of compensation to a person were converted to a single lump sum calculated by reference to a period, under the income tests the payment was to be treated as if it was a series of equal periodic payments derived by dividing the total lump sum by the number of fortnights in the period. The previous provision had required this treatment only where the lump was paid in two or more instalments. [The change removed an anomaly which had enabled a person who received only a single lump-sum payment related to a period from benefitting from the more lenient treatment of non-period related lump sums in income tests.]; and

- where a person receiving a pension or benefit subject to the compensation recovery provisions also received a compensation payment, and his/her partner qualified for a compensation affected payment under the Veterans’
Entitlements Act, the amount to be recovered was the smaller of the compensation part of the lump sum or of the amount obtained by adding the compensation affected payments made under the Social Security Act and similar payments made under the veterans’ legislation. [This was a consequential amendment flowing from amendments to the Veterans’ Entitlements Act.]

### TRANSFER OF WAITING PERIODS BETWEEN BENEFITS

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in Schedule 16)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>12 December 1995</td>
</tr>
<tr>
<td>Date of application</td>
<td>12 December 1995</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Job Search Allowance; Newstart Allowance; Sickness Allowance</td>
</tr>
</tbody>
</table>

Recipients of workforce benefits and Youth Training Allowance who transferred between the various payments while serving a normal seven-day, unused annual leave or education waiting period were able to transfer any part of the periods already served on one payment to the other.

### CHANGES TO SICKNESS ALLOWANCE

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in Schedule 17). In Schedule 17: First and second changes: items 1, 2 and 5 Third changes: items 3 and 4 Fourth change: items 6 and 7</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>First and second changes: 1 January 1996 Third and fourth changes: 12 December 1995</td>
</tr>
<tr>
<td>Date of application</td>
<td>First and second changes: 1 January 1996 Third and fourth changes: 12 December 1995</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Sickness Allowance</td>
</tr>
</tbody>
</table>

Several changes were made to Sickness Allowance:

- a 15 year-old who, during his/her period of incapacity, qualified as ‘independent’ other than solely on the basis that he/she was a member of a couple, was no longer required to have had a specified employment history or employment offer, or to have been registered with the Commonwealth Employment Service for at least 13 weeks, before being eligible for the allowance;

- a 15 year-old who, during the period of his/her incapacity, lived in the home of a parent receiving a pension, benefit, or specified veterans’ or education payment, was exempted from the requirement that he/she had to have been registered as unemployed with the Commonwealth Employment Service for at least 13 weeks before becoming entitled to the allowance. [Unlike independent 15 year-olds, he/she continued to have to meet the employment history/offer conditions.]
a person who ceased to qualify for the allowance after two years was exempted from the provision generally precluding a further claim within the subsequent two years, where arrangements had been made for him/her to undergo surgery for the relevant medical condition and, following the surgery, he/she was expected no longer to be incapacitated for work within two years of reclaiming the allowance. [This applied irrespective of whether the medical condition was the same as, or different from, that on which the earlier period on Sickness Allowance had been based.]; and

the requirement that a claim for the allowance be supported by a medical certificate stating whether a person’s condition was likely to improve if he/she received treatment or undertook a rehabilitation program was removed.

<table>
<thead>
<tr>
<th>Change to Bereavement Payments</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Location in Act</strong></td>
</tr>
<tr>
<td><strong>Date of commencement</strong></td>
</tr>
<tr>
<td><strong>Date of application</strong></td>
</tr>
<tr>
<td><strong>Payments affected</strong></td>
</tr>
</tbody>
</table>

It was provided that, where a person receiving a Carer Pension on the grounds that he/she ordinarily cared for a person who was not his/her partner, and the care receiver died while temporarily out of the care of the pension recipient, all Bereavement Payment entitlements would be paid to the recipient of the Carer Pension and not to the person temporarily caring for the person before his/her death.
The provision precluding a person from receiving a Sole Parent Pension where he/she was ‘entitled to maintenance’, but did not take action which the Secretary considered reasonable to obtain it, was clarified to ensure that it also applied where the person ‘was entitled to claim maintenance’. [This amendment was made in response to an interpretation by the Social Security Appeals Tribunal that an application of maintenance must be lodged and accepted by the Registrar of Child Support before a person could be entitled to maintenance. This would have enabled a sole parent pensioner to avoid the provision as previously enacted by refusing to apply for maintenance.]

Payments received by pensioners, beneficiaries and recipients of specified veterans’ payments undertaking part-time training, or engaged in part-time work experience under labour market programs, in respect of expenses associated with their participation in the training or work experience, were exempted from all income tests. This replaced a provision, applicable only to pensioners and recipients of specified veterans’ payments, which had exempted from the income test payments received by trainees in part-time training under labour force programs. [Accordingly, the main effect of the change was to extend the provision to beneficiaries. For pensioners, it expanded the scope of payments exempted from income tests. The original provision referred to ‘labour force programs’ and the new one to ‘labour market programs’.]
REFERENCES TO BENEVOLENT HOMES REMOVED FROM ACT

Location in Act: Section 3 (as set out at items 1, 3, 4, 5, 6, 8, 9, 10, 11 and 12 of Schedule 24)

Date of commencement: 12 December 1995
Date of application: 12 December 1995
Payments affected: Age Pension; Disability Support Pension; Wife Pension; Widow B Pension; Sole Parent Pension

All references to benevolent homes, and to the special payment provisions applying to inmates of these homes, as applicable to certain pensioners were removed from the Act. [Under these provisions, payments had been divided between the home (for board and lodging) and the recipient. The removal of the references reflected the fact that only two benevolent homes remained and, at the time of the change, neither satisfied the determinative provisions applying to benevolent homes in the legislation.]

REMOVAL OF FAMILY PAYMENT PROVISION ON MENTAL HOSPITALS

Location in Act: Section 3 (as set out in item 7 of Schedule 24)

Date of commencement: 12 December 1995
Date of application: 12 December 1995
Payments affected: Family Payment (Basic Family Payment and Additional Family Payment)

The provision precluding the Secretary from approving a mental hospital maintained by, or mainly dependent on financial assistance from, the Commonwealth or a state or territory, as an approved care organisation for purposes of attracting Family Payment in respect of a child who was an inmate, was removed.

POWER TO WAIVE SICKNESS ALLOWANCE LIQUID ASSETS TEST WAITING PERIOD

Location in Act: Section 3 (as set out in item 14 of Schedule 24)

Date of commencement: 12 December 1995
Date of application: 12 December 1995
Payments affected: Sickness Allowance

The Secretary was given the power to waive the liquid assets test waiting period for Sickness Allowance claimants where he/she was satisfied that it would cause undue long-term disadvantage or significant hardship to a person. [This change brought the rules for Sickness Allowance into line with those for Job Search Allowance and Newstart Allowance.]
Endnotes

1 **Record 21 of 1994** does not refer to changes to benefits. Changes to benefits were made at that time but were excluded from the summary as they did not involve any change in policy.

2 In complementary amendments to the Student and Youth Assistance Act, the method of indexing the Austudy and Youth Training Allowance income thresholds was brought into line with that for Family Payment.

3 In complementary amendments to the Student and Youth Assistance Act, the assets threshold for Youth Training Allowance and Austudy was brought into line with the Family Payment threshold and it was indexed on the same basis.
Legislation passed in 1996


Date of Royal Assent: 9 January 1996

EXTENDED DEEMING INTRODUCED

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in Schedule 1)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>Extended deeming arrangements: 1 July 1996</td>
</tr>
<tr>
<td></td>
<td>Transitional arrangements: 9 January 1996</td>
</tr>
<tr>
<td>Date of application</td>
<td>Extended deeming arrangements: 1 July 1996</td>
</tr>
<tr>
<td></td>
<td>Transitional arrangements: 9 January 1996</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Pensions and benefits; Special Benefit (in effect)</td>
</tr>
</tbody>
</table>

The treatment of financial investments (financial assets) in pension and benefit income tests was simplified with the introduction of ‘extended deeming’. Under the new arrangements, all financial investments were assessed under a single set of rules based on the principle in the existing deeming provision applying to cash and deposits in financial institutions.

Under the new set of rules, two deeming rates (initially set at 5 and 7 per cent) were established for assessing the return on almost all financial investments. The extended deeming arrangements worked as follows:

◗ a ‘deeming threshold’ on the total value of all financial assets of $30 000 for a single person and $50 000 for a married couple was established;

◗ within that threshold, the first $2000 (single person) and $4000 (couples) of interest on cash and financial institution deposits was (as previously) assessed only on the basis of the actual interest (if any) received up to a maximum of the lower deeming rate;

◗ the remainder of the threshold amount ($28 000 for single people and $46 000 for a couple) was deemed to be earning a return of 5 per cent (the lower deeming rate); and

◗ any amount above the threshold levels was deemed to be earning 7 per cent (the higher deeming rate).

The deemed amount was then assessed as income under the relevant income test. The legislation required that an initial full valuation of a person’s listed securities and managed investments was to be made when extended deeming commenced, or when a new claim was determined, in the manner set out in departmental guidelines. This valuation was to continue to be the basis for assessment until a revaluation was carried out. The legislation mandated a revaluation on 20 March and 20 September in each calendar year after 1996, and also whenever a person requested one, or following an event affecting the relevant investments about which a person was obliged to notify the department.
With the notional return on financial assets regularly assessed, actual returns on partially or fully realised investments (irrespective of how high) were disregarded for income test purposes. The range of previous rules for treating financial investments (which could vary among other things according to the date on which the investment was entered into) were abolished.

The Minister was given the power to vary the deeming rates with any decision being a disallowable instrument. [The lower rate was set at a level which was designed to ensure that a person would always have sufficient money on call, and the higher one at a level considered readily achievable in a safe investment. It was intended to vary the rates up or down in accordance with movements in financial markets.]

The deeming thresholds were subject to automatic increases on 1 July each year in line with movements in the Consumer Price Index between the previous March quarters, with the first indexation increase to take effect from 1 July 1997.

Financial investments covered for deeming purposes were broadly defined and included: deposits of any kind with banks, building societies and credit unions or other financial institutions; listed shares and securities; managed investments; shares in unlisted public companies; investments in superannuation funds, approved deposit funds and deferred annuities after Age Pension age; loans; debentures; and insurance, friendly society and other bonds.

Deeming was also applied to financial assets assessed under the deprivation provisions. The Minister was authorised to disregard specified financial investments or classes of such investments for purposes of the deeming rules (a similar provision had applied under the previous deeming rules).

Once they commenced, the new deeming arrangements applied to all financial investments, irrespective of when they were entered into. This necessitated transitional arrangements before extended deeming started. It was provided that the old rules governing the treatment of fully or partially realised investments were to cease to operate from the date the legislation received Royal Assent (in the event, 9 January 1996), to give people time to decide whether to keep their investments as they were or alter them to accommodate the pending introduction of extended deeming. This had the effect of not assessing as income any capital growth on investments realised between 9 January and 30 June 1996. Investments realised before 9 January 1996, and at the time undergoing assessment under the prevailing rules (which took account of their value for one year), continued to be so assessed under those rules but only up to 30 June 1996. From 1 July 1996, people’s investments (whether in the form that existed before 9 January or as varied) were assessed under the extended deeming arrangements.

Income stream products such as superannuation pensions, allocated pensions and immediate or allocated annuities were not subject to extended deeming and their treatment was unchanged.
SICK PEOPLE MORE LIKELY TO RECEIVE UNEMPLOYMENT PAYMENTS

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in Schedule 2). All items in the Schedule deal with the changes except items 75, 76, 77 and 78</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>Commenced, or were taken to have commenced, on 20 March 1996</td>
</tr>
<tr>
<td>Date of application</td>
<td>Applied to claims for Sickness Allowance lodged on or after 20 March 1996. Applied in respect of Job Search Allowance and Newstart Allowance for any fortnight starting on or after 20 March 1996</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Job Search Allowance; Newstart Allowance; Sickness Allowance</td>
</tr>
</tbody>
</table>

Following certain related changes, sick people were more likely to remain on, or commence receiving, Job Search Allowance, Newstart Allowance or Youth Training Allowance while restrictions were placed on eligibility for Sickness Allowance.

Sickness Allowance was restricted to a person who, in addition to complying with the usual criteria, met one of two conditions:

- he/she, immediately before his/her incapacity, had to be in employment (including self-employment) and the Secretary had to be satisfied that, irrespective of whether the same kind of work would be available, he/she would regain the employment when the incapacity ceased; or
- he/she could be in full-time education and receiving Austudy or Abstudy payments and satisfy the Secretary that he/she was committed on recovery to resuming full-time study under the particular scheme.

Recipients of Job Search Allowance, Newstart Allowance and Youth Training Allowance who became temporarily incapacitated for work were no longer transferred to Sickness Allowance. Instead, on providing the required medical evidence, they continued to receive their existing allowance but were exempted from having to comply with activity tests and agreements for the duration of their condition. New claimants who were temporarily incapacitated for work, and who became unemployed or suffered a potential loss of income on account of their condition and who did not meet the new, more restrictive conditions for Sickness Allowance, received Job Search Allowance, Newstart Allowance or Youth Training Allowance instead and the same exemptions.

Persons receiving one of the specified allowances in lieu of Sickness Allowance were extended conditions previously restricted to Sickness Allowance (this included such conditions as allowing recipients to travel temporarily overseas for up to three months in order to seek medical treatment of a kind not available in Australia). In addition (analogous to a Sickness Allowance condition), a person could receive Job Search Allowance or Newstart Allowance only where the Secretary was satisfied that his/her condition had not been brought about with a view to obtaining one of these payments. [Amendments to Disability Support Pension and Disability Wage Supplement flowing from this provision have been dealt with at Record 3 of 1996.]
Previously, people temporarily incapacitated for work had transferred from Job Search Allowance, Newstart Allowance or Youth Training Allowance to Sickness Allowance after 13 weeks of incapacity. They had usually transferred back to their previous allowance on recovery. The new rules gave people the opportunity to keep in touch with the labour market—they could undertake part-time or casual work, if able, and continued to be registered with the Commonwealth Employment Service. They also retained access to Education Entry Payments, Employment Entry Payments and labour market programs.

### PERSONS SEEKING EXEMPTION FROM ACTIVITY TESTS

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in items 75, 76, 77 and 78 of Schedule 2)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>Commenced, or was taken to have commenced, on 20 March 1996</td>
</tr>
<tr>
<td>Date of application</td>
<td>Commenced, or was taken to have commenced, on 20 March 1996</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Disability Support Pension; Disability Wage Supplement</td>
</tr>
</tbody>
</table>

The provision disqualifying a person from receiving a Disability Support Pension or Disability Wage Supplement on the basis of a continuing inability to work or blindness, where the person brought about the inability with a view to obtaining one of these payments or Sickness Allowance, was extended to cover persons whose purpose was to obtain an exemption on grounds of incapacity from the Job Search Allowance, Newstart Allowance or Youth Training Allowance activity tests. [The provision was introduced following the payment of Job Search Allowance, Newstart Allowance and Youth Training Allowance instead of Sickness Allowance in certain situations (refer to Record 2 of 1996).]
4

**EARNINGS CREDIT FOR BENEFICIARIES MODIFIED**

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in Schedule 3)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>20 March 1996</td>
</tr>
<tr>
<td>Date of application</td>
<td>For all benefits except Parenting Allowance, applied for any fortnight starting on or after 20 March 1996. For Parenting Allowance, applied for any fortnight starting on or after the first Parenting Allowance payday on or after 20 March 1996</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Benefits except Special Benefit</td>
</tr>
</tbody>
</table>

Modifications were made to the earnings credit for beneficiaries:

- the credit was to accrue each fortnight at a rate equal to the amount by which a person’s earnings were less than the permissible income limit (the unused free area). Previously, the entire amount of the permissible income limits had been credited provided that earnings were below the limits;

- the amount of credit a person could access in a fortnight was limited to $100—it now amounted to the lower of his/her earnings credit balance, his/her earnings in the fortnight and $100. Previously, a person with income below the permissible income limits who had sufficient credit built up could access an amount equal to his/her earnings in the fortnight, subject only to the maximum $500 accrual level;

- the rule that a person could not access his/her credit balance in a fortnight where his/her earnings were sufficient to reduce the payment to nil was removed. In effect, a person could now have income up to $100 above the normal benefit cut-out point before he/she lost entitlement to the benefit; and

- a person’s accrued credit could not be reduced in a fortnight where his/her income was such as to reduce his/her benefit entitlement to nil.

[The modifications were introduced partly to focus the credit more on beneficiaries with part-time or casual earnings and partly to remove perceived anomalies. In particular, the capacity to receive a credit equivalent to the entire free area (up to $500) was seen as excessively generous and anomalous, given that a person could accrue no credit if his/her earnings equalled or exceeded the free area.]
PROSPECTIVE QUALIFICATION FOR NEWSTART ALLOWANCE

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in Schedule 4)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>Commenced, or was taken to have commenced, on 20 September 1996</td>
</tr>
<tr>
<td>Date of application</td>
<td>Commenced, or was taken to have commenced, on 20 September 1996</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Newstart Allowance</td>
</tr>
</tbody>
</table>

Greater flexibility in reporting arrangements for Newstart Allowance recipients was facilitated by expanding the provision enabling certain recipients to qualify prospectively for the allowance.

All recipients had to meet certain basic conditions before being able to qualify for prospective payment. Firstly, they could qualify only where the Secretary considered that at the start of the period they might reasonably be expected to satisfy the qualification requirements for the allowance, it was reasonable to expect them to remain eligible for the allowance during the period and they would comply with the legislation during the period. In addition, they could not qualify if, at the start of the period, they were indebted to the Commonwealth under or as a result of the legislation.

Subject to these conditions, recipients could qualify for the allowance prospectively only where they:

- had a Case Management Activity Agreement with a case manager where the Secretary had decided (either on the recommendation of the case manager or on his/her own initiative) to accept less than fortnightly reporting arrangements. [Case Management Activity Agreements were covered under the Employment Services Act.];
- were not required to look for a job but satisfied the activity test on the grounds that they were taking reasonable steps to comply with other work-related activities required by the Secretary;
- satisfied the activity test either through their having taken reasonable steps to comply with a Newstart Activity Agreement requiring them to undertake approved full-time unpaid voluntary work, or through other provisions in the test for such work;
- were incapacitated for work and not required to satisfy the activity test due to the incapacity;
- were aged at least 50 years, had been receiving a pension or benefit continuously for at least 12 months and, in the view of the Secretary, were unlikely to increase their income from employment (whether as a result of their becoming employed or otherwise); or
- due to their geographic location or recent employment history, or due to the state of the labour market or for any other relevant reason should, in the view of the Secretary, receive the concession.

The amendments required that the Minister must determine guidelines for making decisions on all aspects of the prospective qualification provision and he/she would also have the power to revoke or vary a determination. However, if a determination was revoked, the Minister was required to determine guidelines.
to take effect immediately after revocation, with any determination being a
disable instrument.

[The expanded provision was integrated with the existing provision with minor
changes made in respect of existing recipients. The main thrust of the change
was to create four entirely new categories of recipient who were eligible
for prospective payments, namely the first three and the sixth of the listed
categories.

The prospective qualification provision was the one that underpinned flexible
reporting arrangements. A recipient of Newstart Allowance entitled to take
advantage of the provision could receive payment without first having to lodge a
special form each fortnight in order to establish his/her ongoing qualification. In
these circumstances, the Secretary could determine that the person need report
less frequently than every two weeks.]

### JOB SEARCH ALLOWANCE ABOLISHED

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in Schedule 5)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>20 September 1996</td>
</tr>
<tr>
<td>Date of application</td>
<td>Applied in respect of Newstart Allowance for any fortnight starting on or after 20 September 1996</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Job Search Allowance; Newstart Allowance; Employment Entry Payment; Education Entry Payment</td>
</tr>
</tbody>
</table>

Job Search Allowance was abolished and its provisions absorbed into Newstart
Allowance, which became the sole payment specifically designed to assist the
unemployed.

The expanded Newstart Allowance became available to unemployed persons
irrespective of the duration of their unemployment, and to persons aged under
18 years. It incorporated rates and conditions (such as the parental income and
assets test on younger people) which had been specific to Job Search Allowance.
Features of Job Search Allowance and Newstart Allowance which had previously
been the same continued to be so under the new Newstart Allowance.

Only one substantive change was made to conditions of payment with the move
to a single unemployment payment. This was to base a person’s entitlements on
his/her period in receipt of an income support payment instead of, as previously, on
the duration of his/her registration with the Commonwealth Employment Service.
Accordingly, eligibility for Employment Entry Payments and Education Entry Payments
was now based among other things on 12 months continuous receipt of a pension,
benefit, Youth Training Allowance or specified veterans’ payment and equivalent
changes applied to activity testing for the older unemployed, concessions for
voluntary work and the waiving of various education and other waiting periods where
a person had a short break in payments. [A standard definition of ‘continuous receipt
of a payment’ was introduced (refer to Record 7 of 1996).]

[The last mentioned change removed an anomaly whereby people transferring
from one form of income support to another had previously lost access to
payments such as Employment Entry Payment. It also allowed the extension of
such concessions to either member of a couple who moved between Newstart
Allowance and Parenting Allowance or Partner Allowance.]
STANDARD DEFINITION OF ‘CONTINUOUS PERIOD ON INCOME SUPPORT’

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in item 10 of Schedule 6)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>1 July 1996</td>
</tr>
<tr>
<td>Date of application</td>
<td>1 July 1996</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Job Search Allowance; Newstart Allowance</td>
</tr>
</tbody>
</table>

A standard provision defined the circumstances in which a Job Search Allowance or Newstart Allowance recipient was to be treated as having received specified payments for a continuous period, even though the person did not actually receive the payment during part or parts of the period. [Continuous receipt of a specified income support payment was the basis of eligibility for a number of concessions.] Under the new provision:

- any number of breaks in continuity of up to six weeks was allowed;
- where a period of 12 months or more had been accrued, any breaks of up to 13 weeks in that period would not affect continuity;
- consistent with the six-week rule, the 13-week break could commence up to six weeks before the date when a person would otherwise have been in receipt of income support for 12 months; and
- periods where a person could remain qualified for an allowance although receiving a nil payment due to the effect of income from employment, and non-payment periods imposed for breaches of rules (but not such periods imposed on the grounds that the person was a seasonal worker), were treated as not breaking continuity.

If an allowance recipient had breaks in receipt of income support in excess of those specified, he/she was not credited with a ‘continuous receipt’ period and had to accumulate the required period starting again from the beginning.

[Related to the new rule for basing various entitlements on previous receipt of a specified payment (refer to Record 6 of 1996), the six- and 13-week periods under this provision were similar to those that had applied to registration with the Commonwealth Employment Service before it was replaced by the ‘continuous receipt of a payment’ criterion.

This change was introduced with the changes to Mature Age Allowance (refer to Record 8 of 1996) and commenced before the restructure of payments to the unemployed in Record 6 of 1996. A similar rule was introduced to apply to the qualification period for Mature Age Allowance (refer to Record 8 of 1996).]
The sunset clause under which no new claims for Mature Age Allowance would be accepted after 30 June 1996 was removed and the legislation amended to continue the allowance but in a substantially modified form.

The general requirement for claimants to have been registered for at least 12 months with the Commonwealth Employment Service no longer applied. The registration provision (and requirement that a person satisfy the Secretary that he/she was unemployed) was replaced by a requirement that a claimant:

- be receiving Job Search Allowance or Newstart Allowance;
- had either been receiving a pension, benefit, or specified veterans’ payment for a continuous period of at least nine months immediately before the claim; or at any time during the 13 weeks immediately before the claim, had been receiving a pension, Widow Allowance, Partner Allowance, Sickness Allowance, Additional Parenting Allowance or a specified veterans’ payment; and
- had to satisfy the Secretary that he/she had no recent work experience. This was as defined for Widow Allowance (refer to Record 33 of 1994).

The allowance continued to be paid at pension rates and, from the day it was granted, attracted pension concessions (Pharmaceutical Allowance, Telephone Allowance and Fringe Benefits). However, while unlike workforce benefits, it was not activity tested, it was now regarded as a ‘benefit’ and subject to the benefit (rather than pension) income and assets tests, residency test and other conditions of payment. The age criterion was unchanged and, as previously, recipients could if they wished remain registered as unemployed with the Commonwealth Employment Service and so have access to employment related assistance.

Persons receiving Mature Age Allowance before the modifications were introduced, or who both made a claim and qualified for the allowance before that date, continued to receive it under the previous conditions. If they lost entitlement and later reclaimed it, the new conditions applied. In later records, under ‘Payments affected’ the term ‘Mature Age Allowance’ on its own, or with ‘pension’ or ‘benefit’ in brackets after it, indicates whether a change applies to all recipients of the allowance, or only to those regarded as ‘pensioners’, or as ‘beneficiaries’.

[The basing of eligibility on the duration of receipt of specified payments rather than on a period of registration with the Commonwealth Employment Service was consistent with the changes to apply to the restructured Newstart Allowance from 20 September 1996 (refer to Record 6 of 1996).]
### Standardised ‘Continuous Period on Payment’ Definitions

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in Schedule 6). In Schedule 6: First change: items 50, 51, 52 and 81 Second change: items 13, 16, 20, 32, 33, 34 and 35 Third change: items 38, 39 and 40 Fourth change: items 57, 60 and 81</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>1 July 1996</td>
</tr>
<tr>
<td>Date of application</td>
<td>1 July 1996</td>
</tr>
<tr>
<td>Payments affected</td>
<td>First change: Widow Allowance; Newstart Allowance; Sickness Allowance; Special Benefit (in effect) Second change: Fringe Benefits (Concession Cards) Third change: Telephone Allowance Fourth change: Pharmaceutical Allowance</td>
</tr>
</tbody>
</table>

Amendments were made to certain basic benefit rates and to Fringe Benefits (Concession Cards), Telephone Allowance and Pharmaceutical Allowance for persons aged 60 years and over in order to standardise eligibility based on a period of nine months in receipt of specified payments:

- single recipients of Widow Allowance, Newstart Allowance and Sickness Allowance aged 60 years and over without dependent children received the pension rate after nine months continuously in receipt of a pension, benefit or specified veterans’ payment. Previously, they had qualified after six months in receipt of a benefit. [The change was not relevant to those with dependent children who already received the pension rate and with no waiting period.];

- benefit recipients aged 60 years and over gained entitlement to a Pension Concession Card and associated Fringe Benefits after nine months continuously on a pension, benefit or specified veterans’ payment. The period had previously been 12 months;

- benefit recipients (other than those on Newstart Allowance) aged 60 years and over became entitled to Telephone Allowance after nine months continuously in receipt of a pension, benefit or specified veterans’ payment. The previous period had been 12 months. [The change did not apply to Newstart Allowance recipients as they were already entitled to the allowance at age 60 years without a qualifying period. This reflected the fact that before 20 September 1996 (refer to Record 6 of 1996), Newstart Allowance was payable only after a person had been in receipt of Job Search Allowance for one year.]; and

- recipients of Additional Parenting Allowance, workforce benefits and Special Benefit aged 60 years and over gained entitlement to Pharmaceutical Allowance after nine months in continuous receipt of a pension, benefit or specified veterans’ payment. The previous period had been six months.

Savings provisions ensured that the change from a six- to a nine-month qualifying period in relation to the pension rate (first change) and Pharmaceutical Allowance (fourth change) did not apply to those who at the date of the change had already gained eligibility after six months.
Legislation passed in 1996

[These provisions were consistent with the new arrangements for Mature Age Allowance (refer to Record 8 of 1996). Mature Age Allowance was now available to persons aged 60 years and over in receipt of Job Search or Newstart Allowance, who had been in receipt of specified payments for at least nine months. Since various concessions were available immediately to these persons on qualifying for Mature Age Allowance, they received them in effect after nine months in continuous receipt of a specified payment.]

10

**SCOPE OF PENSION LOANS SCHEME BROADENED**

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in Schedule 7)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>Was to commence on a day or days to be fixed by Proclamation or, if not within six months of the Date of Royal Assent, on the first day after the end of that period. Under the second specification, the change took effect from 10 July 1996</td>
</tr>
<tr>
<td>Date of application</td>
<td>As for date of commencement</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Pensions</td>
</tr>
</tbody>
</table>

Changes were made to broaden the scope of the Pension Loans Scheme. The intention was to encourage more pensioners to participate in it as only a very small proportion had done so to date.

Persons of Age Pension age who had no pension entitlement, or a reduced entitlement, due to the operation of the pension income test could for the first time participate in the scheme. Accordingly, it was now open to people who were affected by either the income or assets test provided that they had some pension entitlement under one or the other test. Previously, it had been open only to those who had a nil or reduced entitlement under the assets test—the assets of participants had not been assessed and they had received the rate to which they were entitled under the income test.

Other features of the new scheme were that:

- a person could nominate the amount he/she wished to receive as a loan each fortnight up to the maximum rate of pension to which he/she was entitled. This amount could be varied at any time;
- the maximum amount that could be paid as a loan under the revised scheme depended on a person’s age, the value of his/her real estate and the equity he/she wished to retain in the property. The amount was determined by a formula based on an age-specific table;
- only real estate could now be used as security for the loan and it had to be located in Australia. A requirement that the value of the person’s or couple’s real estate was sufficient to secure payment of any debt replaced the previous requirement that at least 70 per cent of the person’s assets must be in non-liquid assets;
- the Commonwealth no longer had to ensure that $100 000 remained in a person’s estate after the loan debt had been repaid. Under the revised arrangements, a person could select an amount (the ‘guaranteed amount’)
to be left as equity in the real estate offered as security for the loan. He/she was not required to have a guaranteed amount and could opt to select one or vary it at any time. However, any guaranteed amount was deducted from the amount of assets which could be used as security for the loan. Previously, a person whose assets had been less than, or at any stage had fallen below, $100,000 in value had not been able (or had ceased to be eligible) to participate in the scheme unless he/she had made an election in writing that the rule not apply;

interest on the outstanding loan was charged on a compound basis (previously only simple interest had been charged) and accrued fortnightly. The initial rate was set at 7.9 per cent (1 per cent below the lowest prevailing mortgage rate) and continued to accrue after the death of a pensioner until any outstanding debt was paid. As before, the rate could be varied by the Minister but any Ministerial determination now became a disallowable instrument. The Minister had regard to the long-term bond rate in deciding if, and by how much, to vary the interest rate although this was not a legislative provision; and

a participant in the scheme could qualify for a Pensioner Concession Card and associated Fringe Benefits only if he/she would have received a part-pension without participating—that is he/she could not qualify if a pension was payable solely due to his/her participation in the scheme. Under the previous provision, a person could attract Fringe Benefits solely by virtue of his/her participation in the scheme.

The maximum loan available to a person under the scheme was the ‘age component amount’ multiplied by the value of real estate (after deduction of any guaranteed amount) with the resultant figure divided by 10,000. Real estate included the family home. The ‘10,000’ number was there for rounding purposes, with the final amount rounded down to the nearest multiple of 10,000 (or to nil if the amount was less than 10,000). The age taken into account was that on the person’s last birthday or, in the case of a couple, that on the last birthday of the younger partner. Age component amounts commenced at $1,710 at 55 years or younger and increased slightly each year up to 90 years—for persons aged 90 years and over the amount was $6,750. These amounts were based on actuarial calculations which took into account the risk of debt exposure to the Commonwealth by reference to age and were designed to ensure that there would be sufficient assets to repay the loan when it came to be recovered. As the formula related to a person, the value of real estate had to be halved when a couple was seeking to secure the same property for a loan. The maximum loan available would vary every year as a person aged.

Other features of the scheme remained unchanged. Under savings provisions, participants in the scheme before the changes could continue to take part under the previous conditions if they wished. If they preferred to transfer to the new arrangements, they had to satisfy the Secretary that the amount of debt owed to the Commonwealth under these arrangements would be readily recoverable. For those who transferred to the new scheme, debts accrued under the old and new schemes were combined.
Legislative effect was given to two protocols signed by the Australian and New Zealand Governments to amend the Social Security Agreement between the two countries which came into effect on 1 January 1995:

- the first protocol rectified certain technical defects which had come to light, and amended the scope of the agreement to reflect legislative changes since it had been signed; and

- the second protocol enabled people being paid under the agreement to leave their country of residence for short periods without losing entitlement to their pension. It also provided for the reimbursement by the country of origin to continue during these absences.
**PAYMENTS BY MARK FITZPATRICK TRUST EXEMPTED FROM ASSETS TESTS**

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in Schedule 1)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>20 November 1996</td>
</tr>
<tr>
<td>Date of application</td>
<td>Had effect, or was taken to have had effect: for people receiving a pension immediately before 28 September 1995, on the first pension payday after the application day; for people receiving a benefit or Family Payment immediately before 28 September 1995, on the next day after the application day on which the person received an instalment of the payment; for a person who became a recipient of a pension, benefit or Family Payment on or after 28 September 1995, on the day on which the person received the first instalment of the payment. Application day for a recipient of a social security payment immediately before 28 September 1995 meant the day, on or after that date, on which the person applied for a review of the payment rate because of the expected enactment, or the operation, of this section</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Pensions and benefits; Family Payment</td>
</tr>
</tbody>
</table>

Payments made by the Mark Fitzpatrick Trust to assist with expenses incurred in relation to persons with a medically acquired HIV infection were exempted from the assets tests on pensions, benefits and Family Payment. They were not exempted from the assets test deprivation provisions. [The date from which the provision applied was related to 28 September 1995—that was the date on which the Minister in the previous Government had written to the chairman of the Trust advising that, subject to the amendment being passed into law, payments from the Trust would be exempted from assets tests.]
A woman was entitled to be transferred automatically (that is, without the need for a claim) to a Wife Pension where:

- she had commenced receiving Mature Age Partner Allowance before 1 July 1995;
- her partner had been receiving Mature Age Allowance under the pre-July 1996 (pension) conditions but had been automatically transferred to Age Pension on reaching Age Pension age; and
- she had been receiving Mature Age Partner Allowance continuously from the time she commenced on the allowance until her partner had been transferred to the Age Pension.

[This change rectified an unintended effect arising from the phasing out of Wife Pension and Mature Age Partner Allowance by precluding any new grants after 30 June 1995. While the entitlements of recipients of (or of people who had claimed and been found to be entitled to) these payments at the date of the change had been saved, a woman had automatically lost entitlement to Mature Age Partner Allowance when her partner ceased to receive Mature Age Allowance on transferring to Age Pension, but could not claim a Wife Pension because no new claims were being accepted. Women in these circumstances had been disadvantaged compared, for example, with wives of disability support pensioners transferring to Age Pension. Affected persons had been paid ex-gratia payments equivalent to Wife Pension pending the passing of this amendment.]
Family (Tax Initiative) Act 1996, No. 63

Date of Royal Assent: 27 November 1996

INTRODUCTION OF FAMILY TAX PAYMENT

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 4 (as set out in Schedule 2)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>1 January 1997</td>
</tr>
<tr>
<td>Date of application</td>
<td>1 January 1997</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Family Tax Payment. It had two components: Part A and Part B</td>
</tr>
</tbody>
</table>

A new payment, Family Tax Payment, was introduced. Along with Family Tax Assistance, it was one of two elements of a package of assistance to families with children under the Family Tax Initiative. Each element of the initiative provided the same assistance but, while Family Tax Assistance provided the assistance to ‘middle income’ families through the personal income tax system, Family Tax Payment provided it to low income families via the social security system. Under each element there were two components of assistance, one (Part A) targeting all low and middle income families and the other (Part B) targeting families with at least one very young child and only one main income earner. Family Tax Payment/Family Tax Assistance were not assets-tested or taxable.

While Family Tax Payment was in the Social Security Act and was a social security payment administered by the Department of Social Security, Family Tax Assistance was a tax concession provided in taxation legislation and administered by the Australian Taxation Office. The Income Tax Rates Amendment (Family Tax Initiative) Act 1996 introduced Family Tax Assistance into the Income Tax Rates Act at the same time as the Family Tax Payment was introduced. In addition, minor consequential amendments to the Income Tax Assessment Act were made.

[Family Tax Assistance is described here as an integral part of the Family Tax Initiative. However, as it is a tax concession in taxation legislation, the description is not based on an examination of the legislation and has been kept general.]

Family Tax Assistance

Part A assistance was available under the personal income tax system to all families with dependent children whose combined taxable income was less than $70,000 a year plus $3,000 for each additional child after the first. For eligible families, it provided an increase of $1,000 in the tax-free threshold of a parent (or one parent in the case of a couple) for each dependent child. As the tax rate above the threshold of $54,000 a year was 20 cents in the dollar, this amounted to an effective payment of $200 per year ($7.70 a fortnight) for each child.

Part B assistance was provided to a two-parent family where the income of the main income earner was less than $65,000 a year plus $3,000 for each additional child after the first, and the income of the other partner was less than the income ceiling for Basic Parenting Allowance ($175.43 a fortnight at the time). The higher
income limit alone applied to sole parent families. Part B assistance involved an increase of $2500 in the tax-free threshold of the main income earner or sole parent, irrespective of the number of children. On the basis of the 20 per cent tax rate above the tax free threshold, this represented an increase in disposable income of $500 per year ($19.24 a fortnight) per family.

Only one member of a couple could claim the assistance. The one who claimed needed to ensure that he/she had a tax liability sufficient to cover the benefit. A taxpayer could access the tax benefit by reducing PAYE tax instalment deductions and/or provisional tax, or by claiming at the end of the year when lodging his/her income tax return. For those taxpayers who did not have a tax free threshold applicable to them (for example, primary producers who used an averaging system when determining their tax liability), special adjustments were made.

As Family Tax Assistance was introduced in the middle of the 1997–98 financial year, only half the amount of $1000 and $2500 increase in the tax threshold was available in that year. Thus the value of assistance in that financial year was only $100 for Part A and $250 for Part B.

**Family Tax Payment**

The Family Tax Payment provided the same benefit, and was subject to the same income test, as Family Tax Assistance but as a fortnightly social security payment of $7.70 (Part A) or $19.24 (Part B) to ‘low income’ families. As with Family Tax Assistance, the Part A payment went to all such families with children on a per child basis and Part B to families with at least one child aged under five years. Payment was made available to low income families through the social security system in recognition of the fact that many such families would have no or little taxable income, and therefore would not be able to benefit, or benefit fully, from a concession available through the personal income tax system.

As regards the low income criterion, all families with children attracting the more than minimum rate of Family Payment automatically qualified for Family Tax Payment. Certain other families who were excluded from more than minimum Family Payment for reasons other than their not complying with the income test, or who would have met the income test conditions but for some special conditions in it, were also eligible for the Family Tax Payment. These were families who:

- had a dependent full-time student child aged 16 to 17 years qualified to receive payments under certain prescribed education schemes such as Austudy and Abstudy. [Their inclusion was the only difference in the definition of ‘dependent child’ for Family Payment and Family Tax Payment purposes. The treatment here was consistent with that generally applied to tax concessions.];
- had assets above the assets test limits for minimum Family Payment;
- were ineligible for minimum Family Payment due to provisions precluding payment in certain circumstances where a parent was temporarily absent from Australia for more than 13 weeks, or a child was temporarily overseas;
- failed to qualify for minimum Family Payment due to provisions in the Family Payment income test assessing the value of income and other benefits derived from overseas sources, employer fringe benefits or net rental property losses (negative gearing);
received periodic Commonwealth payments which were increased by reference to a child;

- had not complied with the requirement that ‘reasonable maintenance action’ be taken in respect of a child or children; or

- had received sufficient child maintenance to reduce their Family Payment to the minimum rate.

A family who had qualified for Family Tax Payment during a financial year, but then ceased to be eligible at some point in that year due to an increase in their income, could continue to receive the payment until the end of the financial year, provided that they had income within the parameters of the ‘family’ income test for Part A benefits or of the ‘main income earner’ and ‘partner’ income tests (the latter expressed in fortnightly terms) for Part B benefits, as described in relation to Family Tax Assistance, and continued to meet the other eligibility criteria. In applying the income test to a couple in respect of Part B benefits, the Secretary had the discretion to vary the person treated as the main income earner during the year to cover changed circumstances, where this would lead to a higher payment. These income tests applied only in the limited circumstances of a person losing eligibility under the normal low income criteria during the financial year. At the end of the financial year the family, if eligible, would have to apply for Family Tax Assistance through one of the partner’s tax returns instead of the Family Tax Payment.

People entitled to Family Tax Payment could, if they wished, opt to receive their benefit through the tax system as Family Tax Assistance. If so, they needed to ensure that they had sufficient taxable income to enable them to receive the full amount to which they were entitled. If the situation arose where a person received some benefit through the tax system and some through the social security system in a financial year (or one partner received their benefit through the tax system and the other under the social security system), the amounts were reconciled in the tax returns of one or both persons at the end of the financial year to ensure that the correct amount was paid. Where a family had received in excess of their correct entitlement and did not have any or sufficient offsetting deductions, an additional tax liability was incurred.

Family Tax Payment was paid with Family Payment. Unless otherwise specified, the conditions (such as those relating to residency, estimating income, years used to determine income and Bereavement Arrangements) were identical or very similar to those for Family Payment. The rules for payment of Family Tax Payment in arrears were also the same but, under a transitional provision to give people time to become aware of the payment, claims lodged on or before 30 June 1997 could be backdated six months to the payment’s inception.

There was no provision for periodic automatic adjustment (indexation) of the rates of Family Tax Payment. The partner income test limit for Part B benefits was the only income test limit indexed. This was automatically adjusted twice a year in line with the income ceiling for Basic Parenting Allowance with which it was aligned. The situation was the same in respect of the equivalent parameters for Family Tax Assistance.
CERTAIN INVESTMENTS NO LONGER EXEMPTED FROM MEANS TESTS

Location in Act: Section 3 as set out in Schedule 1. (A minor transitional provision not covered in the description is set out in Schedule 4.)

Date of commencement: 20 September 1997
Date of application: 20 September 1997
Payments affected: Pensions and benefits; Special Benefit (in effect) in relation to income test; Family Payment in relation to assets test

Pensioners and beneficiaries under Age Pension age with investments in superannuation, approved deposit funds, deferred annuities or ATO small superannuation accounts from which they were not yet receiving a pension or annuity no longer had these investments exempted from the income and assets tests once they turned 55 years and, since attaining that age, had been receiving a pension, benefit or specified veterans' payment (in any combination) for a continuous period of 39 weeks. [ATO small superannuation accounts were accounts kept in the name of an individual under the Small Superannuation Accounts Act. ATO stands for Australian Taxation Office.]

The 39-week period was cumulative, so that various periods in receipt of a specified payment amounting to less than 39 weeks were aggregated and all counted towards the total. Any periods in which a person received a specified payment before the change came into effect were also counted when implementing the provision. Once a person had accumulated a 39-week period on income support and lost the exemption, the exemption could never be regained.

Where particular superannuation guidelines genuinely prevented access to a person’s superannuation assets, the Minister could use the existing provision under the extended deeming rules (under which these investments would now be income-tested) that allowed him/her to exempt specified financial investments or specified classes of investment from their application (refer to Record 1 of 1996). However, in imposing the new rule, account was taken of the fact that 'preservation rules', which limited a person’s capacity to draw on money in superannuation and rollover funds, generally ceased to apply once a person turned 55 years of age.

[The change brought the treatment of the specified products into line with that for persons who had reached Age Pension age and with that for other financial assets received by those below Age Pension age.]
REDUCTION IN RENT ASSISTANCE FOR PERSONS SHARING ACCOMMODATION

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in Schedule 2)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>1 July 1997</td>
</tr>
<tr>
<td>Date of application</td>
<td>1 July 1997</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Rent Assistance</td>
</tr>
</tbody>
</table>

The maximum rate of Rent Assistance for single people without dependent children sharing accommodation was reduced to two-thirds of the maximum rate payable to single people living independently. Disability support and carer pensioners, persons paying (or liable to pay) board and lodging and residents of nursing homes were exempted from the change and continued to receive the same maximum rate as single persons living independently.

People were treated as sharing accommodation if they had, in common with one or more other people, the right to use at least one 'major area of accommodation'. A major area of accommodation was a bathroom, kitchen or bedroom, whether or not the room was identifiably separate from other areas of accommodation. However, the legislation specified that certain persons were not to be treated as single persons sharing accommodation for purposes of the new provision solely on the basis of their housing situation. People so classified were those:

- with the exclusive right to use a bathroom, a kitchen and a bedroom but who had a right, in common with one or more other people, to use other major areas of accommodation;

- sharing accommodation solely with their child/children where the child/children were receiving any social security payment (including family payments), Youth Training Allowance, Austudy or Abstudy or a specified veterans' payment that was not attracting Rent Assistance; and

- living alone in a caravan or mobile home or on board a vessel, or who shared accommodation in a caravan, mobile home or vessel solely with their child/children (as defined above), who had the right, in common with one or more other people, to use one or more major areas of accommodation in a caravan park or marina.
Social Security Legislation Amendment (Budget and Other Measures) Act 1996, No. 84

Date of Royal Assent: 23 December 1996

**ELIGIBILITY FOR CARER PAYMENT LIBERALISED**

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in Schedule 1)</th>
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<tbody>
<tr>
<td>Date of commencement</td>
<td>1 July 1997</td>
</tr>
<tr>
<td>Date of application</td>
<td>1 July 1997</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Carer Payment</td>
</tr>
</tbody>
</table>

The conditions under which Carer Payment (previously Carer Pension) was paid were liberalised by:

- increasing the period during which a carer could temporarily cease to provide constant care to a severely handicapped person without losing eligibility for the payment from 42 to 52 days in a calendar year;
- increasing the period during which a carer could cease to provide constant care in order to undertake training, education or paid employment without losing eligibility for the payment from 10 to 20 hours per week; and
- including unpaid voluntary work in the activities which could be undertaken in the 20 hours during which the constant care was not being provided.

[Carer Pension was renamed Carer Payment from 1 July 1997 (refer to Record 18 of 1996).]

**CARER PENSION RENAMED CARER PAYMENT**

<table>
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<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in items 1 to 10 of Schedule 2)</th>
</tr>
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<tr>
<td>Date of commencement</td>
<td>1 July 1997</td>
</tr>
<tr>
<td>Date of application</td>
<td>1 July 1997</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Carer Pension; Carer Payment</td>
</tr>
</tbody>
</table>

Carer Pension was renamed Carer Payment. [The new name was regarded as providing better recognition of the contribution and service that carers of frail aged people and of people with disabilities made to the community.]
### MINIMUM BENEFIT PAYMENT UNDER PARENTAL MEANS TEST ABOLISHED

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in Parts 1 and 2 of Schedule 3). Application provision is at item 1 of Part 1 of Schedule 21</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>1 January 1997</td>
</tr>
<tr>
<td>Date of application</td>
<td>Applied in respect of any payment fortnight starting on or after 1 January 1997</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Newstart Allowance; Sickness Allowance; Special Benefit (in effect)</td>
</tr>
</tbody>
</table>

The minimum rate of payment, payable under the parental income and assets tests applying to single recipients of Newstart Allowance and Sickness Allowance aged under 18 years without dependants ($65.75 a fortnight at the time), was abolished. Accordingly, a person could now fail to qualify for, or lose entitlement to, an allowance due to either the parental or personal income and assets tests. [This change brought the means test for these allowances into line with that applying to Austudy.]

### VOLUNTARY WORK PROVISIONS IN ACTIVITY TESTS CONSOLIDATED

<table>
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<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in item 1 of Schedule 4)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>20 September 1997</td>
</tr>
<tr>
<td>Date of application</td>
<td>20 September 1997</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Newstart Allowance</td>
</tr>
</tbody>
</table>

The provisions enabling Newstart Allowance recipients not subject to activity agreements to comply with the activity test through undertaking voluntary work were consolidated and simplified. Under the new arrangements:

- a person aged 50 years or more was taken to satisfy the test during a period in which he/she was engaged for at least 32 hours in approved full-time unpaid voluntary work for an approved organisation, or for at least 40 hours in a combination of such voluntary work and suitable paid work; and

- a person aged under 50 years, who had been receiving a pension, benefit, Youth Training Allowance or specified veterans’ payment (or a combination of these) for a continuous period of at least three months but less than 12 months, was taken to satisfy the test during a period if he/she was engaged in approved full-time unpaid voluntary work for an approved organisation for at least 32 hours, the period occurred during the 12 months after the person commenced receiving the specified payments, and the person had not already undertaken approved full-time unpaid voluntary work with one or more approved organisations in more than six periods during that 12 months.

As previously, the Secretary could decide that these provisions were not to apply for a particular period or periods after having regard to opportunities, or possible opportunities, for employment available to the person on or before the period.
The definition of ‘unsuitable work’ in the work test component of the Newstart Allowance activity test was both tightened and extended to the effect that:

- a person’s lack of particular skills, experience and qualifications needed to perform the work was only taken as unsuitable where no training was to be provided by the employer;

- work was to be regarded as unsuitable on the grounds that it would aggravate a person’s illness, disability or injury only where this was established by medical evidence; and

- work was to be deemed unsuitable if it required enlistment in the Defence Force or Reserve Forces or required a person to move to another residence.

[A decision on whether work was unsuitable depended on the Secretary’s opinion as to whether the above and other criteria applied.]
PENALTIES FOR BREACHES BY NEWSTART ALLOWANCE RECIPIENTS
RESTRUCTURED

Location in Act
Section 3 (as set out in items 17 to 76 of Part 3 of Schedule 5 except for items 41, 42, 65, 73 and 74—these have been covered in Records 23, 24, 25 and 26 of 1996. Application and transitional provisions are in item 1 of Part 1 of Schedule 21.

Date of commencement
20 March 1997

Date of application
In general, the changes applied to events occurring on or after 20 March 1997 but subject to the transitional provisions.

Payments affected
Newstart Allowance

Provisions dealing with penalties for activity test and administrative breaches of rules by Newstart Allowance recipients were restructured and simplified. Under the changes:

- the fact that a person had served a penalty for an administrative breach in the previous three years no longer resulted in an increase in the penalty imposed for certain activity test, or subsequent administrative, breaches;

- the previous non-payment periods for administrative breaches were replaced by a standard reduction of 16 per cent in the maximum basic rate of allowance for a period of 13 weeks. A person could opt to serve a non-payment period of two weeks instead of having his/her rate reduced for 13 weeks. [This was referred to as ‘self-serving the period’. The monetary effect of the two options was similar.]; and

- new rules were introduced to cover the interaction between administrative breach rate reduction periods and activity test non-payment periods.

The new rules in the third change specified that:

- where an administrative breach rate reduction period was due to commence at the same time as, or during, an activity test non-payment period, the reduction period was to apply immediately after the non-payment period (and any other non-payment periods to be served) was completed;

- where an activity test non-payment period commenced during an administrative breach rate reduction period, the reduction period was to be suspended and to be completed only after the non-payment period had been served; and

- if more than one activity test non-payment period had to be served, the periods were to run consecutively.

Transitional provisions covered situations where people were already serving breach penalties when the changes occurred.
NEWSTART ALLOWANCE ACTIVITY TEST RULE MADE STRICTER

The provision requiring a Newstart Allowance claimant or recipient to serve an activity test non-payment period where his/her unemployment was due, either directly or indirectly, to a voluntary act was made stricter by specifying that it applied ‘where the Secretary was not satisfied that the voluntary act was reasonable’. Previously, the provision applied if ‘the voluntary act was without sufficient reason’. [The revamped provision placed the onus on a person to demonstrate that his/her action was reasonable.]

RULE ON ACCEPTANCE OF SUITABLE JOB OFFER TIGHTENED

The provision applying an activity test non-payment period in respect of Newstart Allowance where a person had refused or failed, without sufficient reason, to accept a suitable offer of employment was tightened by specifying that the Secretary had to be satisfied that the person had refused or failed, without reasonable excuse, to accept the offer.
DISCRETION TO EXEMPT PERSON FROM NEWSTART ALLOWANCE NON-PAYMENT PERIOD REMOVED

Location in Act  Section 3 (as set out in item 65 of Part 3 of Schedule 5). Application and transitional provisions are at item 1 of Part 1 of Schedule 21

Date of commencement  20 March 1997

Date of application  As per Record 22 of 1996

Payments affected  Newstart Allowance

A person who was claiming or receiving Newstart Allowance, and who was undertaking formal vocational training in a labour market or rehabilitation program approved by the Employment Secretary, could no longer be exempted by that Secretary from serving an administrative breach non-payment period in respect of his/her non-compliance with a reasonable requirement by the Secretary to the Department of Social Security that he/she attend at or contact an office of the Department of Social Security, Commonwealth Employment Service or other nominated place, or provide information as requested.

PARTNER ALLOWANCE NOT PAYABLE IN CERTAIN CIRCUMSTANCES

Location in Act  Section 3 (as set out at items 73 and 74 in Part 3 of Schedule 5). Application and transitional provisions are at item 1 of Part 1 of Schedule 21

Date of commencement  20 March 1997

Date of application  As per Record 22 of 1996

Payments affected  Partner Allowance

A person receiving a reduced rate of Newstart Allowance because he/she had committed an administrative breach was precluded from receiving Partner Allowance. [The amendment prevented a person from avoiding the penalty of a reduced rate of Newstart Allowance through his/her partner applying for Newstart Allowance and he/she applying for Partner Allowance.]
The scope of the Newstart Allowance activity test was widened by treating three new offences as breaches of the test which could incur an activity test non-payment period. A person committed such a breach if he/she:

- refused or failed without reasonable excuse to attend a job interview;
- voluntarily ceased without reasonable excuse to take part in, or was dismissed for misconduct from, a labour market program; or
- refused or failed without reasonable excuse to provide information, or knowingly or recklessly provided false or misleading information, in relation to his/her income from paid work.

In relation to the third offence, a provision was inserted to the effect that if any action of this nature resulted in breaches attracting both an activity test deferment period and an administrative breach rate reduction period, only the activity test deferment period was to apply. (This provision was necessary as the offence could now result in both activity test and administrative breaches.)

A person not being paid Newstart Allowance for a period because he/she had breached the activity test by committing offences related to the provision of information was precluded from receiving Special Benefit.

The period for which Newstart Allowance was not payable where a person, in the opinion of the Secretary, had reduced his or her employment prospects by moving to a new place of residence without sufficient reason was increased from 12 to 26 weeks.
## UNEMPLOYMENT DUE TO INVOLVEMENT IN INDUSTRIAL ACTION

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in Schedule 6 and in application provision at item 1 in Part 1 of Schedule 21)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>1 January 1997</td>
</tr>
<tr>
<td>Date of application</td>
<td>Applied to all persons who ceased industrial action on or after 1 January 1997</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Mature Age Allowance (benefit); Newstart Allowance; Partner Allowance</td>
</tr>
</tbody>
</table>

An unemployed person whose unemployment was due to his/her being directly or indirectly engaged in industrial action, or in a series of industrial actions, was precluded from qualifying for Mature Age Allowance (benefit), Newstart Allowance or Partner Allowance for the six weeks following his/her ceasing to engage in the relevant industrial action or actions where the action/actions were in breach of an order, direction or injunction issued by a state industrial authority, the Australian Industrial Relations Commission or the Federal Court. Previously, the disqualification had applied only during the period of industrial action.
An 'income maintenance period' was introduced under which lump-sum leave payments were treated as income in the benefit income test. Features of the new arrangements were that:

- all types of leave payments were covered with annual (recreation), sick, long service and maternity leave specifically included;
- assessment under the income test commenced from the date the payment(s) was received and continued for a period equal to that covered by the accumulated leave payments;
- the income maintenance period replaced the annual leave waiting period;
- sick leave payments were assessed in determining a person’s entitlement to Sickness Allowance but only subject to the existing rules (sick leave payments were already assessed as income in the income test for Sickness Allowance);
- the income maintenance period did not apply to lump-sum payments received from employers and rolled over into approved deposit funds, superannuation funds or deferred annuities;
- the rules could be waived by the Secretary where he/she was satisfied that their application would cause a person severe financial hardship due to circumstances which were not reasonably foreseeable; and
- leave payments were treated as income notwithstanding that a customer or court had assigned them to some other person.

[New rules for treating sick leave in the income test for Sickness Allowance had commenced from 20 March 1997 (refer to Record 34 of 1996).]
**LIQUID ASSETS TEST ON WORKFORCE BENEFICIARIES TIGHTENED**

| Location in Act | Section 3 (as set out in items 65, 66, 67, 68, 69, 70, 71 and 72 of Part 2 of Schedule 7). Application provision is covered by item 5 in Part 3 of Schedule 21 |
| Date of commencement | 20 September 1997 |
| Date of application | Applied to all claims lodged on or after 20 September 1997 |
| Payments affected | First change: Newstart Allowance; Sickness Allowance; Special Benefit (in effect) Second change: Newstart Allowance; Special Benefit (in effect) |

The terms of the liquid assets test applying to Newstart Allowance and Sickness Allowance were made stricter by:

- in the case of both allowances, reducing the amount of liquid assets (available funds) required before a waiting period had to be served to $2500 for a single person without dependent children, and $5000 for a couple or single person with dependent children. Previously the amounts had been $5000 and $10 000 respectively; and
- for Newstart Allowance, no longer having a standard waiting period of four weeks for persons whose available funds exceeded the specified limits but varying it in accordance with the amount by which the funds exceeded the limits.

As regards the second change, the waiting periods to be served were calculated by taking the number of weeks (rounded to the nearest week) which resulted after subtracting the concessional amount of available funds from the person’s or couple’s total such funds, and dividing the result by $500 for a single person with no dependent children and $1000 for a couple or single person with a dependent child. The maximum waiting period that could be served was 13 weeks.

**PERIOD OF GRACE TO RENEW MEDICAL CERTIFICATE**

| Location in Act | Section 3 (as set out in items 1, 2, 3, 4, 5, 6, 7 and 8 of Part 1 of Schedule 8) |
| Date of commencement | 20 March 1997 |
| Date of application | 20 March 1997 |
| Payments affected | Sickness Allowance; Newstart Allowance |

Recipients of Sickness Allowance, or recipients of Newstart Allowance who had been exempted from the activity test due to their temporary incapacity for work, were granted a 14-day ‘grace period’ in which to renew an expired medical certificate, or provide fresh written evidence of their condition, before losing entitlement to the allowance or activity test exemption respectively.
### 33 SICKNESS ALLOWANCE LOSS OF INCOME PROVISION ABOLISHED

**Location in Act**  
Section 3 (as set out in Part 2 of Schedule 8)

**Date of commencement** 20 March 1997

**Date of application** 20 March 1997

**Payments affected**  
Sickness Allowance; Partner Allowance

The provision enabling a person to qualify for Sickness Allowance only if he/she satisfied the Secretary that he/she had suffered, or was likely to suffer, a loss of income in Australia in the form of salary, wages or similar income due to the incapacity, and limiting any payment to the extent of the loss, was abolished. The change also affected Partner Allowance, the rate of which had been subject to reduction due to the provision. Following the change, Sickness Allowance was generally subject to the income test in exactly the same way as Newstart Allowance.

### 34 TREATMENT OF SICK LEAVE IN SICKNESS ALLOWANCE INCOME TEST

**Location in Act**  
Section 3 (as set out in Part 2 of Schedule 8)

**Date of commencement** 20 March 1997

**Date of application** 20 March 1997

**Payments affected**  
Sickness Allowance

The treatment of sick leave in the income test was altered. Under the new arrangements:

- sick leave received was income tested in the normal way over the period covered by the leave entitlements but only after any other leave entitlements had been taken into account;
- sick leave entitlements which the person was entitled to access, and which the employer was able to pay, were assessed as income irrespective of whether the person drew on them or not;
- a sick leave entitlement not accessed was only assessed once during a continuous period on Sickness Allowance or within six weeks of a person losing entitlement. However, if a person had an allowance cancelled but applied for it again after more than six weeks, the same unused sick leave entitlement was assessed as income again; and
- leave payments were treated as income, notwithstanding that a person or court had assigned them to some other person.
35

CHANGES TO WORKFORCE BENEFITS

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in items 22, 23, 24, 25 and 26 of Part 3 of Schedule 8)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>20 March 1997</td>
</tr>
<tr>
<td>Date of application</td>
<td>20 March 1997</td>
</tr>
</tbody>
</table>
| Payments affected | First change: Sickness Allowance  
                   Second change: Newstart Allowance                                             |

In related changes to Sickness Allowance and Newstart Allowance:

- a Sickness Allowance recipient no longer automatically lost his/her entitlement to the allowance after receiving it for continuous periods of one and two years; and
- a Newstart Allowance recipient no longer lost exemption from the activity test on the basis that he/she was incapacitated for work due to a medical condition after continuous periods of one and two years since receiving such an exemption.

In both cases, allowance recipients had previously been exempted from the time limit in prescribed circumstances. Following these changes, the sole basis for determining continuing eligibility was whether or not a person had a continuing temporary incapacity for work.

A provision that a person could not qualify for Sickness Allowance within two years of losing entitlement under the one- or two-year rules unless the medical condition was more severe or different, or other circumstances applied, was also removed. [This was not a separate policy change but simply a consequence of the removal of the one- and two-year limits.]
### Backdating of Claims Following Telephone Inquiry

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in items 1, 2 and 3 of Schedule 9)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>20 March 1997</td>
</tr>
<tr>
<td>Date of application</td>
<td>20 March 1997</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Disability Support Pension; Sickness Allowance; Newstart Allowance</td>
</tr>
</tbody>
</table>

A person with a medical condition could have his/her claim for a Disability Support Pension, Sickness Allowance or Newstart Allowance backdated 21 days or more to the day on which he/she made a telephone inquiry about the payment, provided that he/she was qualified for the payment at the time. Under the provision:

- the telephone call had to be in respect of a claim for Disability Support Pension, Sickness Allowance, Newstart Allowance or Youth Training Allowance but the concession was not affected if the payment later granted was not the one claimed on the phone;
- when making a formal claim, a person was required to present a written notice from the department verifying the telephone claim, or the department had to have its own written record of the notice having been sent;
- the Secretary had to be satisfied that the person suffered a medical condition that significantly affected his/her ability to work at the time of the phone claim; and
- the claim was generally backdated up to 21 days but the Secretary could extend it up to three months.

### Earnings Credit Arrangements Abolished

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in items 1 to 35 of Schedule 10). Application provision is at item 3 of Part 2 of Schedule 21</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>20 March 1997</td>
</tr>
<tr>
<td>Date of application</td>
<td>For pensioners and Additional Parenting Allowance, applied from the first payday that occurred on or after 20 March 1997 and subsequent paydays. For benefits, applied for any fortnight starting after 20 March 1997</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Pensions; benefits except Special Benefit</td>
</tr>
</tbody>
</table>

The earnings credit arrangements available to all pensioners, and to all beneficiaries except special beneficiaries, were abolished.
38

COVERAGE OF WIDOW ALLOWANCE EXTENDED

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in Part 1 of Schedule 11)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>20 March 1997</td>
</tr>
<tr>
<td>Date of application</td>
<td>20 March 1997</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Widow Allowance</td>
</tr>
</tbody>
</table>

Eligibility for Widow Allowance was extended to a woman aged at least 50 years who had been widowed, divorced or separated since turning 40 years of age and met the other qualifying conditions. Previously a woman qualified only where she had been widowed, divorced or separated since turning 50 years of age.

39

CHANGES TO PARTNER ALLOWANCE

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in Part 2 of Schedule 11)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>20 March 1997</td>
</tr>
<tr>
<td>Date of application</td>
<td>20 March 1997</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Partner Allowance</td>
</tr>
</tbody>
</table>

The following changes were made to Partner Allowance:
- a person who had been receiving a workforce benefit or Youth Training Allowance at any time in the 13 weeks before making a claim was no longer precluded from receiving the allowance;
- the definition of ‘recent work experience’ for eligibility purposes was made identical to that for Widow Allowance and as later applied to Mature Age Allowance (benefit). The definitions had previously been similar but not identical (refer to Records 32 and 33 of 1994);
- where a person was not qualified for the allowance at the date of claim but became qualified within three months of that date, payment could be backdated to the date of qualification; and
- if eligible, recipients could receive Pharmaceutical Allowance in their own right rather than, as previously, indirectly through their partners receiving a higher rate.

[The changes were intended to align the payment conditions for Partner Allowance with those for Widow Allowance, as both payments were non-activity tested and made to older people who were, or had been, dependent partners and who had limited work experience. Several other minor technical amendments made at the same time also had the effect of more precisely aligning the two payments.]
Coverage of Partner Allowance Extended

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in Part 3 of Schedule 11)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>20 March 1997</td>
</tr>
<tr>
<td>Date of application</td>
<td>20 March 1997</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Partner Allowance</td>
</tr>
</tbody>
</table>

Eligibility for Partner Allowance was extended to the partners of persons receiving Austudy allowance, assistance under the Student Financial Supplement Scheme or an income-tested living allowance under an Aboriginal study assistance scheme. [A general dependent spouse allowance paid by the Employment Department under the Austudy/Abstudy schemes had been abolished from 1 January 1996.]

Changes to Widow B Pension

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in Part 4 of Schedule 11)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>20 March 1997</td>
</tr>
<tr>
<td>Date of application</td>
<td>20 March 1997</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Widow B Pension</td>
</tr>
</tbody>
</table>

In changes to Widow B Pension:

- the pension was to be phased out more rapidly by allowing no new grants unless a woman both lodged a claim for, and was qualified to receive, the pension before 20 March 1997. [For earlier arrangements for phasing out the pension, refer to Record 18 of 1987.]; and

- a woman was specifically precluded from receiving a special needs Widow B Pension if she had reached Age Pension age.


42

AGE PENSION QUALIFICATION CONDITIONS EASED

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in items 21 and 22 of Part 5 of Schedule 11)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>20 March 1997</td>
</tr>
<tr>
<td>Date of application</td>
<td>20 March 1997</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Age Pension</td>
</tr>
</tbody>
</table>

Changes enabled certain people of qualifying age who did not meet, or were not exempt from, the residential qualifications to qualify for Age Pension. Eligibility was extended to a person where:

- he/she had been receiving a Widow B Pension, a Widow Allowance, a Mature Age Allowance or a Partner Allowance immediately before reaching pensionable age;
- in the case of a person who had attained pensionable age before 20 March 1997, he/she had been receiving a Widow B Pension, a Widow Allowance or a Partner Allowance immediately before 20 March 1997; and
- in the case of a woman, her partner had died, both she and her partner had been Australian residents when this occurred and she had been an Australian resident for a continuous period of at least two years immediately before lodging her claim.

43

CLAIM FOR AGE PENSION NOT REQUIRED BY CERTAIN BENEFICIARIES

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in items 23 and 24 of Part 5 of Schedule 11)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>20 March 1997</td>
</tr>
<tr>
<td>Date of application</td>
<td>20 March 1997</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Age Pension</td>
</tr>
</tbody>
</table>

Provision was made for recipients of Widow Allowance, Partner Allowance and Mature Age Allowance (benefit) to be transferred automatically (that is, without having to make a claim) to Age Pension on becoming qualified.
44

COMPENSATION RECOVERY PROVISIONS APPLIED TO AGE PENSIONERS

Location in Act  Schedule 3 (as set out in Part 1 of Schedule 12)
Date of commencement  20 March 1997
Date of application  Applied only in cases where the compensation was received on or after 20 March 1997 and the person’s ‘provisional commencement day’ for the pension was on or after that date. [The provisional commencement day was normally the day on which a pension was claimed.]
Payments affected  Age Pension

The compensation recovery provisions were extended to age pensioners under the same conditions as applied to recipients of other compensation affected payments. [The provisions now covered all pensions except Widow B Pension and Bereavement Allowance, and all benefits.]

45

CHANGES TO COMPENSATION RECOVERY PROVISIONS

Location in Act  Section 3 (as set out in items 7 to 39 of Part 2 of Schedule 12)
Date of commencement  20 March 1997
Date of application  Applied to lump sum compensation payments received on or after 20 March 1997. Payments received before that date were subject to the previous rules
Payments affected  All pensions except Widow B Pension and Bereavement Allowance; benefits

The compensation recovery provisions were modified by:

- replacing ‘average weekly earnings of all male employees’ by the ‘single pension cut-out point under the income test’ as the figure by which the compensation portion of a lump-sum payment was divided to determine the period during which social security payments were not payable; and
- applying the compensation preclusion period only to the compensation recipient and not also (as previously) to the person’s partner. A partner, if qualified, could now receive a pension or benefit at half the married rate.

[The first change resulted in longer compensation preclusion periods as the single pension income test cut-out point was lower than the relevant earnings figure—$402.20 as compared with $572.10 a week at the date of the change. The income test cut-out point was automatically increased twice yearly in March and September in line with the Consumer Price Index.]
### EXTENDED DEEMING ARRANGEMENTS MODIFIED

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in items 1, 2, 3, 4, 5, 6, 7 and 8 of Schedule 17). Application provision is at item 3 of Part 2 of Schedule 21</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>20 March 1997</td>
</tr>
<tr>
<td>Date of application</td>
<td>For pensions and Additional Parenting Allowance, applied from the first payday that occurred on or after 20 March 1997 and subsequent paydays. For benefits (except Additional Parenting Allowance), applied for any fortnight starting after 20 March 1997</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Pensions and benefits; Special Benefit (in effect)</td>
</tr>
</tbody>
</table>

The extended deeming arrangements were modified by removing the concession whereby the first $2000 (single person) and $4000 (married couple) of interest on cash and financial institution deposits was assessed only on the basis of the actual interest (if any) received up to a maximum of the ‘lower deeming rate’. Following the change, the lower deeming rate applied to all such income up to the ‘deeming threshold’, after which the ‘higher deeming rate’ applied. [For an explanation of the terms used here refer to Record 1 of 1996. The lower deeming rate at the date of the change was 4 per cent.]
ADVANCE PAYMENT ARRANGEMENTS ALTERED

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in Schedule 19). Application and savings provisions are at item 1 of Part 1 of Schedule 21</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>1 January 1997</td>
</tr>
<tr>
<td>Date of application</td>
<td>Subject to the savings provisions, the changes applied to all applications for an advance payment made on or after 1 January 1997, and to all advance payments made on or after that day</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Pensions (except Rehabilitation Allowance, Widow B Pension and Bereavement Allowance); Widow Allowance; Mature Age Allowance (benefit); Newstart Allowance</td>
</tr>
</tbody>
</table>

The provision enabling certain pensioners and beneficiaries to receive part of their entitlements in advance was modified:

- the requirement that the advance be used for a permitted purpose was removed;
- the maximum advance allowed to recipients of Newstart Allowance was reduced from $1000 to $500, the level applicable to other eligible recipients;
- the qualifying condition for receipt of an advance for Newstart Allowance recipients was brought into line with that for other recipients. Accordingly, a person had to have been continuously receiving for at least three months a pension, benefit, Youth Training Allowance or specified veterans’ payment instead of, as previously, a Job Search Allowance, Newstart Allowance or Youth Training Allowance;
- the number of advances was limited to one in any 12-month period;
- the provision preventing an advance being given to a person who owed a debt to the Commonwealth under the Social Security Act was broadened to cover debts to the Commonwealth recoverable under that Act, irrespective of what Act they had arisen under; and
- the Secretary’s discretion to pay an advance in instalments rather than in a single lump sum was altered to limit the number of instalments to two.

Savings provisions protected the entitlements under the previous rules of people who applied, and were qualified, for the advance before the date of the change even if the claim had not been determined before that date. It also exempted certain people who applied for a second or later advance before the date of the change from the new restriction preventing a person from receiving more than one advance in a 12-month period.

Details of previous legislation on advance payments is at Record 25 of 1994 and Record 53 of 1995.
Endnotes

1 The term ‘breadwinner’ is used for the main income earner throughout the legislation but has not been used in this description.

2 The annual rate for income tax purposes would not have been precisely $175.43 multiplied by 26, as the rate was subject to twice-yearly indexation and so would have varied during the financial year.

3 Logically from their names, this Act should have come after Act No. 84 below but they were in the present sequence. The Acts received Royal Assent on the same day.

4 Refer to previous endnote.

5 Schedule 21 to this amending Act erroneously gave the application and transitional provisions as commencing at 1 January 1997 rather than 20 March 1997. This error was rectified by Part 1 of Schedule 3 to the Social Security Legislation Amendment (Activity Test Penalty Periods) Act 1997.
Legislation passed in 1997

Social Security Legislation Amendment (Newly Arrived Resident’s Waiting Periods and Other Measures) Act 1997, No. 5

Date of Royal Assent: 4 March 1997

<table>
<thead>
<tr>
<th>BROAD BASED NEWLY ARRIVED RESIDENTS’ WAITING PERIOD INTRODUCED</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Location in Act</strong></td>
</tr>
<tr>
<td><strong>Date of commencement</strong></td>
</tr>
<tr>
<td><strong>Date of application</strong></td>
</tr>
<tr>
<td><strong>Payments affected</strong></td>
</tr>
</tbody>
</table>

A ‘newly arrived residents’ waiting period of two years was introduced and had to be served by most newly arrived migrants before they became eligible for various social security payments and concessions. The waiting period commenced from the date of a person’s arrival in Australia or the date on which he/she was granted permanent residence, whichever occurred later. The new waiting period replaced the 26-week waiting period which had to be served by a person arriving in Australia on or after 1 January 1993 before he/she could qualify for Newstart Allowance, Sickness Allowance or Parenting Allowance. Persons who arrived in Australia and were granted permanent residence before the date of the change continued to be subject to the shorter waiting period in respect of those payments.

The waiting period applied to Disability Wage Supplement, Carer Pension, all benefits, Mobility Allowance and the Seniors Health Card. For recipients of Widow Allowance, Mature Age Allowance (benefit), Parenting Allowance and Partner Allowance, the change applied to persons arriving in Australia on or after 1 April 1996 and for recipients of the other payments/concession to persons arriving on or after 4 March 1997. Apart from the application of the waiting period to Carer Pension and Disability Wage Supplement, the residency requirements for pensions remained unchanged.

There were various exemptions to the new provision. The amending Act’s application clause contained general exemptions which were to apply in every case, irrespective of the apparent wording in other parts of the legislation.
In addition, exemptions applied to specific groups and payments while the circumstances under which Special Benefit was paid reflected its ultimate ‘safety net’ role.

In a general statement, the legislation specified that a person was exempt from the waiting period in all circumstances where he/she:

- had arrived in Australia under a refugee or humanitarian program, or was a family member of such a person;
- was a family member of a former refugee or humanitarian migrant at the time that refugee/migrant arrived in Australia;
- was an Australian citizen or family member of an Australian citizen; or
- had at any time lawfully been, or been a family member of, a permanent resident of Australia for a continuous period of at least two years.

A ‘family member’ here and for the rest of this record was a person’s partner or dependent child or any other person who, in the opinion of the Secretary, should be treated as such. The legislation authorised the Minister to set, and to revoke or vary, guidelines for the Secretary’s power to determine who constituted a person’s partner or dependent child in this context, with any determination being a disallowable instrument.

Exemptions from the new provision in respect of all payments except Special Benefit applied to a person who:

- held a permanent visa and was the former holder of a subclass 820 visa (a provisional visa extending eligibility to a partner);
- was a family member of a refugee at the time the refugee arrived in Australia (family members of former refugees in these circumstances were covered by the more general provision);
- held, or was the former holder of, a subclass 826 visa (a temporary visa granted on the basis of interdependence);
- held, or was the former holder of, a subclass 832 or 833 visa. [These were people who had spent most of their lives in Australia and had become illegal immigrants or unlawful non-citizens innocently as a result of the actions of another person (usually a parent). They were granted permanent visas when they turned 18 years.]; and
- held, or was the former holder of, a temporary visa in a class of visas determined by the Minister (the Minister’s powers in this regard were described in Record 12 of 1994). 1

The main variations to the exemptions for specific payments (other than for Special Benefit) were that:

- the waiting period did not apply to a claimant of Carer Pension who had been granted permanent residence on the basis that he/she needed to provide care to a family member who was an Australian resident;
- for a woman arriving in Australia on or after 1 April 1996, the two-year waiting period replaced the 26 weeks continuous residence requirement for Widow Allowance. [A woman could still qualify for the allowance immediately on the basis of three other residential criteria (refer to Record 33 of 1994).];
the waiting period did not apply to a person claiming Disability Wage Supplement where he/she became permanently blind, or developed a continuing inability to work due to an impairment, only after his/her arrival in Australia; and

the waiting period did not apply in respect of Mobility Allowance where the claimant ‘became a handicapped person’ while in Australia.

Special Benefit could be paid during the waiting period only where, in the opinion of the Secretary, the newly arrived resident had suffered a substantial change in circumstances beyond his/her control since arriving in Australia. The Minister was required to set guidelines for the exercise of the Secretary’s power on this matter and could revoke or vary the guidelines. Any determination by the Minister was to be in the form of a disallowable instrument.

Other features of the new provision were that:

- a person never had to serve a waiting period more than once;
- a partner generally had to serve the waiting period in his/her own right. Previously, a person whose partner had been an Australian resident for at least 26 weeks had been exempted from the 26-week waiting period applying to Newstart Allowance, Sickness Allowance and Parenting Allowance but no general exemption from the two-year waiting period was given to partners;
- the waiting period did not have to be a continuous period but, except for a person claiming Carer Payment, Widow Allowance, Newstart Allowance or Sickness Allowance, the entire period had to be served in Australia with any time a person spent outside the country extending the waiting period by an equivalent amount;
- a person serving a waiting period in respect of one type of payment had any time served on that payment counted as part of the waiting period for another payment where his/her entitlement changed during the waiting period;
- the Assurance of Support provisions were unchanged; and

- some exemptions to the waiting period applied to people covered by Australia’s social security agreements with New Zealand and the United Kingdom.

The legislation specified that the provisions of the Racial Discrimination Act were intended to prevail over the provisions of the present amending Act and that this amending Act did not authorise conduct inconsistent with the provisions of that Act.
**Social Security Legislation Amendment (Activity Test Penalty Periods) Act 1997, No. 106**

**Date of Royal Assent:** 30 June 1997

### NEWSTART ALLOWANCE PENALTY BREACHES RESTRUCTURED

| Location in Act | Section 3 as set out in Schedules. Main changes are at items 1 to 36 and 40, 41, and 42 of Schedule 1. Correction of error in application and transitional provisions of the Social Security Legislation Amendment (Budget and Other Measures) Act 1996 is at Part 1 of Schedule 3. Minor technical amendments to the 1996 Act (not covered in the description) are at Part 3 of Schedule 3. |
| Date of commencement | Main changes were to commence on a day to be fixed by Proclamation, or if not within six months of the Date of Royal Assent, on the first day after the end of that period. The legislation was proclaimed on 10 July 1997. Corrections to errors in application and transitional provisions of the Social Security Legislation Amendment (Budget and Other Measures) Act 1996 were taken to have commenced on 20 March 1997, immediately after the commencement of Parts 3 and 4 of Schedule 5 to that Act. Minor technical amendments to the 1996 amending Act commenced variously on 1 January 1997, 20 March 1997, 1 July 1997 and 1 October 1997, in each case immediately after specified parts of that Act. |
| Date of application | As for date of commencement |
| Payments affected | Newstart Allowance |

Penalties for breaches of the legislation by Newstart Allowance claimants and recipients were restructured to simplify them and assist administration. The changes related mainly to activity test breaches as the penalties for administrative breaches had been restructured earlier (refer to Record 22 of 1996) but some also pertained to administrative breaches.

The following changes were enacted:

- the period during which previous activity test breaches were taken into account when setting the penalty period for second and subsequent activity test breaches was reduced from three to two years;

- penalties for breaching activity tests were restructured. The penalty for a first breach (within the two year period) was an 18 per cent reduction in the maximum basic rate of allowance for 26 weeks and for a second breach it was 24 per cent for 26 weeks. For third and subsequent breaches within the two year period, a non-payment period of eight weeks applied. Previously, penalties had involved only non-payment periods with the length of the first period affected by the length of time a person had been unemployed;
people with previous activity test breaches were given a ‘clean slate’ upon commencement of the new arrangements. This meant that any activity test breaches which the person had incurred before the date of the change were disregarded. Accordingly, the ‘two-year’ period effect would not fully apply until two years after the introduction of the changes;

waiting periods and penalties for all types of breach were to be served concurrently rather than consecutively. This also involved a change to the rules for administrative breaches, as multiple administrative breaches had previously been served consecutively. When periods being served overlapped, a waiting period overrode any breach penalty period, an activity test breach non-payment penalty period overrode an activity test rate reduction period and any activity test breach penalty period overrode an administrative breach penalty period. Generally, residual penalty periods had to be served where a lesser, or earlier same level, breach or waiting period was not fully overridden by a later such period because the latter was shorter. However, where an activity test non-payment period had to be served, any existing activity test rate reduction period outstanding, irrespective of its length, was waived; and

the ‘concurrency rule’ (as with multiple breaches) applied to periods during which a person’s allowance was cancelled so that the end date of an activity breach penalty period remained unchanged. If the allowance was regranted before that end date, the person served the remainder of the penalty period while, if granted after it, the penalty period was considered served. [This contrasted with the provision for administrative breaches where a person could ‘self-serve’ a breach rate reduction period with a shorter non-payment period (refer to Record 22 of 1996).]

Transitional provisions covered situations where people were already serving breach penalties at the time of the changes.³

### CHANGES TO PARTNER ALLOWANCE AND SPECIAL BENEFIT

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Items 37, 38 and 39 of Schedule 1</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>10 July 1997</td>
</tr>
<tr>
<td>Date of application</td>
<td>10 July 1997</td>
</tr>
</tbody>
</table>
| Payments affected | First change: Partner Allowance  
Second change: Special Benefit |

Following changes to Partner Allowance and Special Benefit to cover gaps in the legislation:

- a person could not qualify for a Partner Allowance for a period during which he/she was subject to an activity test breach rate reduction period in respect of Newstart Allowance or Youth Training Allowance; and
- a person could not qualify for Special Benefit where he/she (following a third or subsequent activity test breach) failed to enter into, or comply with, a Newstart Activity Agreement or Youth Training Activity Agreement (the latter was an equivalent agreement for Youth Training Allowance).
### EXEMPTIONS TO NEWSTART ALLOWANCE ACTIVITY TEST EXTENDED

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in items 1 and 2 of Schedule 2)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>Commenced, or was taken to have commenced, on 20 October 1997</td>
</tr>
<tr>
<td>Date of application</td>
<td>Commenced, or was taken to have commenced, on 20 October 1997</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Newstart Allowance</td>
</tr>
</tbody>
</table>

In an extension to the situations in which a person was not required to satisfy the Newstart Allowance activity test:

- the 13-week continuous period limitation on the Secretary’s discretion to exempt a person from the test, where he/she was satisfied that special circumstances beyond the person’s control made it unreasonable for the person to comply, was removed where the Secretary considered that those special circumstances continued or were likely to continue; and

- a pregnant woman was no longer required to satisfy the test during the period commencing six weeks before the expected date of her confinement and ending six weeks after the date her child was born. The exemption applied irrespective of whether the child was born alive. Previously, women incapable of complying with the activity test for this reason had been required to transfer to Special Benefit.

Date of Royal Assent: 7 July 1997

WORK FOR THE DOLE PROGRAM INTRODUCED

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in Schedule 1)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>7 July 1997</td>
</tr>
<tr>
<td>Date of application</td>
<td>7 July 1997</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Newstart Allowance; Approved Program of Work Supplement</td>
</tr>
</tbody>
</table>

A Work for the Dole program was introduced for Newstart Allowance recipients. Under the program, the activity test and Newstart Activity Agreement provisions were amended to enable a person to participate voluntarily in an approved program of work, or the Secretary to require participation as a condition of his/her retaining entitlement to Newstart Allowance.

The objective of the program, as specified in the legislation, was to reinforce the principle of mutual obligations applying to payments under the Act in respect of unemployment, by recognising that it was fair and reasonable that people in receipt of such payments participate in approved programs of work in return for such payments, and to set out the means by which they might be enabled, or required, to undertake such work.

The term ‘Work for the Dole’ was in the title of the amending Act but was not used in the legislative provisions. The Act referred to ‘an approved program of work for unemployment payment’. These programs, as approved by the ‘Employment Secretary’, were known as Work for the Dole.

Participants in approved programs of work were engaged in the main on community assistance and development projects sponsored by community organisations, local or state government organisations and firms. Projects typically included the maintenance and improvement of community facilities and infrastructure, the development of new facilities and infrastructure, and programs of community care and assistance (for example, home maintenance and care of the elderly). The overall program was primarily targeted at young unemployed people aged 18 to 24 years who had been on unemployment payments for more than six months. People were required to participate in the program for no more than six months.

Main features of program

The main features of the program were that:

- work programs to be undertaken were those approved by the Employment Secretary for purposes of the program. He/she could delegate this power not only to officers of his/her own department but also to officers of the Department of Social Security or Commonwealth Services Delivery Agency.
a person could be required to undertake a work project under the program
directly as part of an activity test or as a component of a Newstart Activity
Agreement. [The mechanism here was not important as a failure to comply with
a Newstart Activity Agreement was one of the ways of breaching the activity
test.];

the maximum period of work on the program could not exceed 24 hours a
fortnight for persons aged under 21 years and 30 hours for persons aged
21 years and over. [The age-based number of hours was related to National
Training Wage Award rates of pay.];

participants in the program received an addition to their Newstart Allowance
(known as the ‘Approved Program of Work Supplement’) of $20 a fortnight.
The supplement was not payable for any fortnight during which a person
subsequently ceased to participate in the program in circumstances which
amounted to a failure of the activity test, or a failure to comply with the terms
of a Newstart Activity Agreement. [The supplement was intended to recognise
the additional costs arising from a person’s participation in the scheme.];

a person could not be required to participate in a program, or his/her
participation could be revoked, where: he/she was receiving less than the
full rate of Newstart Allowance due to the operation of the income test; in
the opinion of the Secretary, it had been established that there was medical
evidence that the person had an illness, disability or injury that would be
aggravated by the conditions in which the work would be performed; or
performing the work would constitute a risk to health or safety, or would
contravene a law of the Commonwealth, or of a state or territory, relating to
occupational health and safety;

a person who failed, without reasonable excuse, to commence or complete a
work program he/she was required to complete, or who failed to comply with
the conditions of the program, was taken to have failed the activity test. [New
penalties for activity test breaches took effect three days after the Work for the
Dole program was introduced (refer to Record 2 of 1997).];

once a person began to participate in work under the program, any penalty
period or periods the person was serving, or was liable to serve in respect
of activity test or administrative breaches, were waived. [The person could
still incur such penalties for breaches occurring after he/she started the
program.]; and

the legislation specified that a person, solely by virtue of his/her participation
in the program, was not to be taken as an employee within the meaning of
section 9 of the Occupational Health and Safety (Commonwealth Employees)
Act, or section 5 of the Safety, Rehabilitation and Compensation Act, or
for purposes of the Superannuation Guarantee (Administration) Act or the
Workplace Relations Act.

As part of the legislation introducing the scheme, an existing provision stating
that the Secretary could not compel a person to work in return for payment of
Newstart Allowance as part of a Newstart Activity Agreement was removed.

The legislation did not exempt a person participating in the program from the
work test (which required him/her to be actively seeking and willing to undertake
suitable paid work) but administratively the requirement to seek work was
significantly reduced.
**RESIDENTIAL CARE ALLOWANCE ABOLISHED AND RENT ASSISTANCE CHANGED**

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 5 as set out in Schedule 3 (except for items 76, 77, 78 and 79 which are covered in Record 7 of 1997)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>Was to commence immediately after the commencement of the Aged Care Act (other than Division 1 of that Act). The Aged Care Act (other than Division 1) was to commence on a day or days to be fixed by Proclamation but was to apply in any case no later than six months after the Date of Royal Assent. In the event, the Act was proclaimed on 1 October 1997. (Some minor technicalities have been omitted here.)</td>
</tr>
<tr>
<td>Date of application</td>
<td>See date of commencement. Applied for pensions and related payments in respect of pension periods starting after 1 October 1997. Applied in respect of non-pension income support payments to instalments payable in respect of periods starting on or after 1 October 1997</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Residential Care Allowance; Rent Assistance</td>
</tr>
</tbody>
</table>

As part of a restructuring of funding arrangements for nursing home and hostel residents under the Aged Care Act for which the Department of Health and Family Services (DHFS) had responsibility, consequential amendments were made to social security payments under the Social Security Act:

- Residential Care Allowance was abolished; and
- Rent Assistance was no longer payable to an aged care resident except in two circumstances: for up to a continuous period of 52 days where he/she was in approved respite care and had been receiving Rent Assistance immediately before entering the care; and for up to 14 days after he/she became an aged care resident, and the Secretary was satisfied that he/she was liable to pay rent for the period. To qualify in these circumstances, the resident had to meet the normal eligibility criteria for Rent Assistance.

Most of the definitions used were as specified in the Aged Care Act. In line with structural changes in the aged care field, the term 'residential care' subsumed the term 'nursing home' throughout the Social Security Act.

[Under the restructuring, the nursing homes and hostels sectors receiving recurrent funding through programs administered by the DHFS were merged into a single residential aged care system with new funding regulatory requirements. Commonwealth-funded nursing homes and hostels were now known as residential aged care facilities. Rent Assistance and Residential Care Allowance...
for residents were replaced by a direct subsidy system delivered to residential establishments by the DHFS. Previously, most of a resident’s Rent Assistance had been passed to the residential care provider and, under the new policy, the formula used by the DHFS to set residential care fees was adjusted to ensure that residents were not disadvantaged. Special arrangements were made to compensate people who lost their pension following the changes.

7

**ACCOMMODATION BONDS AND BOND BALANCES NOT MEANS-TESTED**

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Items 76, 77, 78 and 79 of Schedule 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>As for Record 6 of 1997</td>
</tr>
<tr>
<td>Date of application</td>
<td>As for Record 6 of 1997</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Pensions and benefits; Special Benefit (in effect) in respect of income test; Family Payment in respect only of the assets test</td>
</tr>
</tbody>
</table>

It was clarified that accommodation bonds and accommodation bond balances were not to be treated as financial investments (which would have been subject to the extended deeming provisions in pension and benefit income tests) but that an accommodation bond balance in respect of an accommodation bond paid by a person was to be regarded as an asset for purposes of the assets test on pensions, benefits and Family Payment. Accommodation bonds and accommodation bond balance were defined by reference to their meaning in the Aged Care Act.
Social Security and Veterans’ Affairs Legislation Amendment (Male Total Average Weekly Earnings Benchmark) Act 1997, No. 175

Date of Royal Assent: 21 November 1997

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in items 1 and 2 of Schedule 1). While the Schedule is called Schedule 1, there was only one Schedule to the Act</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>20 September 1997</td>
</tr>
<tr>
<td>Date of application</td>
<td>20 September 1997</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Pensions</td>
</tr>
</tbody>
</table>

It was provided that the maximum basic single adult rate of pension could not fall below the equivalent of 25 per cent of total male average weekly earnings of employees. The increase flowed through to the married rate of payment, as that rate was maintained at 83 per cent of the single rate.

Specific features of the change were that:

- rates continued to be automatically increased on 20 March and 20 September each year in line with movements in the Consumer Price Index. The new provision applied only where the indexation increase left the single rate below 25 per cent of the average earnings figure;

- the earnings figure used was the annualised, original figure for the total earnings of all males in the official statistical series. It was converted to an annual basis so that it equated with the annual pension rate. ['Original’ meant not seasonally adjusted];

- the immediately preceding December quarter average weekly earnings figure was used for the March indexation increase, while the equivalent June quarter figure applied in relation to the September indexation increase; and

- rates were not to be adjusted to take account of revisions (if any) to published average weekly earnings figures.

The change did not apply to benefit rates previously set at the equivalent of pension rates.
INTRODUCTION OF PARENTING PAYMENT

| Location in Act | Section 3 (as set out in Part 1 of Schedule 1). It covers all of Part 1 except for items 40, 95, 133, 134, 135, 136, 137, 138, 139 and 141. Changes covered by these items are in Records 10 and 11 of 1997 |
| Date of commencement | 20 March 1998 |
| Date of application | 20 March 1998 |
| Payments affected | Sole Parent Pension; Parenting Allowance; Parenting Payment |

A new payment, Parenting Payment, was introduced, replacing Sole Parent Pension and Parenting Allowance. In broad terms, it was a payment to persons caring for children who met the residency conditions and whose income and assets were below prescribed levels. Its defining aspect was that it assisted people with children and there were no longer separate payments based on a person’s status as single or a member of a couple. It simplified arrangements, in particular for persons whose status changed between single and partnered—they no longer had to cease receiving one payment and make a new claim for another one.

Parenting Payment essentially involved an amalgamation of Sole Parent Pension and Parenting Allowance into a single social security payment. As structured, the separate provisions for sole parents and members of couples with children (the latter with its two components) were retained in their previous form within Parenting Payment. Accordingly, the new payment had two major income support components:

- Parenting Payment (single), which was taxable, and payable to sole parents on pension paydays and subject to pension conditions; and

- Parenting Payment (partnered), which was taxable, and payable to a partnered parent on benefit paydays and under benefit conditions. This partnered payment also incorporated the basic payment component of Parenting Allowance, which was neither taxable nor assets tested and was subject to an income test solely on a person’s personal income.

The two components of Parenting Payment (partnered) were known as ‘Non-Benefit Parenting Payment (partnered)’ and ‘Benefit Parenting Payment (partnered)’ in the legislation, mirroring the previous ‘Non-benefit Parenting Allowance’ and ‘Benefit Parenting Allowance’ respectively. These were known in popular usage as ‘Basic Parenting Payment (partnered)’ and ‘Additional Parenting Payment (partnered)’ respectively in lieu of the previous ‘Basic Parenting Allowance’ and ‘Additional Parenting Allowance’. For details of Parenting Allowance, refer to Record 30 of 1994.
Legislation passed in 1997

Core elements for single and partnered parents remained as they had been under Sole Parent Pension and Parenting Allowance—these included rates, income and assets tests, indexation provisions and entitlements to Fringe Benefits (Concession Cards). At the same time a number of changes were introduced to align non-core provisions or ancillary elements of core provisions applying to sole and partnered parents. This generally involved adopting either the previous Sole Parent Pension provision, the previous Parenting Allowance provision or a compromise between them.

The most significant changes imposing uniform conditions on all Parenting Payment claimants or recipients were as follows:

- the non-tapered (‘sudden death’) assets test which had applied to Parenting Allowance was extended to sole parents who had previously benefited from a tapered test;
- the income maintenance period (under which lump-sum leave payments were treated as income for a period equal to the period of leave to which the payment related), previously applicable to Parenting Allowance recipients, was extended for the first time to sole parents. At the same time the period was modified to clarify that it applied to people whose employment had not been terminated. [This change extended beyond Parenting Payment and has been fully described in Record 10 of 1997.];
- a person could remain qualified for Parenting Payment for up to 26 weeks while temporarily absent from Australia. This improved the position of partnered recipients who had previously remained qualified only if the temporary overseas absence did not exceed 13 weeks. It was more restrictive for sole parents, as they had previously retained entitlement for 12 months in respect of either a temporary or permanent overseas absence, and indefinitely where a woman had become a sole parent following the death of her husband while they were a couple and Australian residents. Complementary changes were made to portability provisions; and
- the residency qualification for sole parents was eased, by replacing the previous continuous period of five years residence condition with a requirement that a person had to have been in Australia only for a period or periods totalling two years during a continuous period throughout which the person was a resident. (This condition applied only to people who were sole parents on arrival in Australia—as previously with Sole Parent Pension, Parenting Payment was payable immediately to residents who became sole parents while in Australia.)

Other alignments were of a minor nature:

- the assets test financial hardship provisions which had previously applied to Parenting Allowance were adopted for all Parenting Payment claimants and recipients (the new provisions were somewhat stricter for sole parents);
- couples living separately due to illness or infirmity, or because one partner was in gaol, were paid under ex-Parenting Allowance conditions rather than under those which had applied to sole parent pensioners who had qualified for the pension on the basis of their separation. Accordingly, while all such separated persons, as previously, continued under Parenting Payment to receive payment at the single rate, persons equivalent to sole parent pensioners were no longer eligible for Pharmaceutical Allowance or pensioner Fringe Benefits—they
received a Health Care Card instead. These conditions also now applied where one member of a couple had entered approved respite care and had remained, or was likely to remain, there for at least 14 consecutive days;

- along the lines of the previous change, Bereavement Payments made on the death of a partner were paid under the conditions previously applicable to Parenting Allowance recipients, rather than under those which had applied to sole parents who had qualified for Sole Parent Pension due to their separation on the basis of illness or infirmity. This meant that those in the second category who had been recipients of specified social security and other payments for less than 52 weeks lost access to Bereavement Payments;

- a qualifying child had to be a ‘dependent child’ (as defined). The only change here was that a sole parent could not qualify for Parenting Payment (as previously for Sole Parent Pension) on the basis of having a ‘maintained child’—this had been a child who was not dependent but who was wholly or substantially maintained by the person and was not receiving a specified income support payment. [This change had no practical effect as, at the time of the change, there appeared to be no people receiving Sole Parent Pension on the basis that they had a maintained child.];

- a child ceased to be a qualifying child for Parenting Payment purposes if he/she was temporarily absent from Australia for more than 26 weeks. This rule was more generous for partnered recipients whose child previously ceased to be a qualifying child after more than 13 weeks. However, it applied a new restriction to sole parent recipients;

- it was provided that, in the case of shared care of a child, only one person could qualify for Parenting Payment on the basis of the child and that the Secretary had to make a determination as to which parent that was. The identical provision had applied to Sole Parent Pension but there had been no equivalent for Parenting Allowance;

- a person who did not comply with the ‘maintenance action test’ (requiring him/her to take reasonable action to obtain maintenance) lost entitlement only to the more than minimum rate of Family Payment but not to Parenting Payment. This provision benefited sole parents for whom compliance with the test had also been a prerequisite for their receipt of Sole Parent Pension;

- a person who became qualified for an Age Pension while receiving Parenting Payment was entitled to be transferred automatically to the pension without needing to make a claim. Automatic transfers to Age Pension had previously been available to Sole Parent Pension, but not to Parenting Allowance, recipients;

- payment of Parenting Payment could be backdated up to four weeks. This had previously been permitted for Parenting Allowance, but not for Sole Parent Pension, claimants; and

- Parenting Payment became subject to the provision requiring a person likely to be eligible to claim a comparable payment from an overseas country to take reasonable action to do so. (This provision had previously applied to Sole Parent Pension but not to Parenting Allowance.)
Legislation passed in 1997

What had been special needs Sole Parent Pension was abolished, with no special needs provision incorporated into Parenting Payment (single). [There had been no special needs sole parent pensioners at the time of the change.]

Parenting Payment (single) recipients were not given access to the Pension Loans Scheme which had been available to sole parent pensioners. [No sole parent pensioners had been participating in the scheme at the time of the change.]

Lengthy and complex savings and transitional provisions applied with the introduction of Parenting Payment, arising both from the parent’s status and that of the qualifying child/children. This reflected among other things the fact that both a pension and benefit type payment were being abolished and replaced by a single payment which was a combination of the two. So, for example, the different paydays for pensions and benefits added to the complexity. These provisions are not detailed here but can be found at item 286 of Part 1 of Schedule 1 of the amending Act.

10 INCOME MAINTENANCE PERIOD FOR LEAVE PAYMENTS MODIFIED

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in items 40, 95, 133, 134, 135, 136, 137, 138 and 139 of Part 1 of Schedule 1)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>20 March 1998</td>
</tr>
<tr>
<td>Date of application</td>
<td>20 March 1998</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Parenting Payment (this change was also referred to under Record 9 of 1997); benefits; Special Benefit (in effect)</td>
</tr>
</tbody>
</table>

The modification to the income maintenance period applied to Parenting Payment when it was introduced (refer to Record 9 of 1997) was extended to other benefits subject to the period. It provided that people whose employment had not been terminated, and who were on leave and entitled to a leave payment in respect of that leave, were subject to the income maintenance period which was to commence on the first day of the leave period.

[The modification was intended to clarify that the provision applied not only to people who received lump-sum leave entitlements on termination of their employment, but also to those continuing in employment, where the date on which the leave payment was made and the date that the leave commenced did not coincide. There had been some doubt as to whether the previous legislation had covered this group.]
### GUARDIAN ALLOWANCE PAID WHERE PARTNER IN GAOL

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in item 141 of Part 1 of Schedule 1)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>20 March 1998</td>
</tr>
<tr>
<td>Date of application</td>
<td>20 March 1998</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Guardian Allowance</td>
</tr>
</tbody>
</table>

Guardian Allowance was extended to a member of a couple whose partner was in gaol (irrespective of the period of confinement), or had entered respite care and had remained, or was likely to remain, there for at least 14 consecutive days. Guardian Allowance had previously been available to the partner of a person in gaol but only where the period of confinement had been for a continuous period of at least 14 days. [The change ensured consistency with the availability of the single rate of Parenting Payment to this group (refer to Record 9 of 1997).]

### CHILD DISABILITY ALLOWANCE ELIGIBILITY CRITERIA ALTERED

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in items 1, 2, 7, 8 and 40 of Schedule 2). Main change is at items 7 and 8</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>1 July 1998</td>
</tr>
<tr>
<td>Date of application</td>
<td>1 July 1998</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Child Disability Allowance</td>
</tr>
</tbody>
</table>

The eligibility criteria for Child Disability Allowance were altered to focus on the nature of the disability affecting the child attracting the claim rather than on the level of care and attention that he/she required. The amendment provided for the use of a new Child Disability Assessment Tool (CDAT), which had been developed to assist in assessing the impact of disabilities.

To qualify for an allowance under the new arrangements, the following conditions had to be met:

- the child was required to have a physical, intellectual or psychiatric disability (this condition was unchanged);
- it had to be likely that he/she would suffer from the disability permanently or for an extended period;
- the Secretary had to have made a specific determination relating to the assessment of the disability, and either the disability had to be found to be a ‘recognised disability’ for purposes of the legislation or the child had to have been assessed and rated under the CDAT and been given a positive score of not less than ‘1’; and
- the child had to be receiving care and attention on a daily basis in the family home from a parent and/or his/her partner on account of the disability.
The legislation enabled the Secretary to employ a CDAT to assess a child’s functional ability, emotional state, behaviour and special care needs and, on the basis of the assessment, to rate the child in accordance with a prescribed scale. The scale provided for a range of negative and positive scores, with a positive score indicating the presence of a significant physical, intellectual or psychiatric disability and a negative score the absence of such a significant disability. The Secretary was also given the power under the determination to declare that a particular disability was a ‘recognised disability’. Any determination was a disallowable instrument.

A savings provision allowed children in respect of whom the allowance was being paid at the date of the change, or was entitled to be paid as a result of a claim made before that date, to be assessed under the previous qualifying conditions until 30 June 2003 unless they lost entitlement before then.

In an amendment to health legislation, a Health Care Card was made available in respect of certain children with disabilities that were not severe enough to qualify them for Child Disability Allowance under the new rules.

[The new CDAT was intended to reduce previous assessment difficulties by providing a more objective method of assessment and less individual judgement. The tool had been designed to measure a child’s functional ability or level of disability at an age-appropriate standard in the areas of communication, feeding, self-care, social and community skills and mobility. In addition, it covered behaviour, emotional state and special care needs. It also contained a prescribed list of recognised disabilities and chronic medical conditions which would allow a child to qualify automatically for the allowance without requiring testing under the tool.]

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**COVERAGE OF CHILD DISABILITY ALLOWANCE EXTENDED**

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in items 3, 4, 5, 6, 9 and 11 to 39 of Schedule 2). Main change is at item 9</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>1 July 1998</td>
</tr>
<tr>
<td>Date of application</td>
<td>1 July 1998</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Child Disability Allowance</td>
</tr>
</tbody>
</table>

Child Disability Allowance, at the rate payable in respect of one dependent child, was extended to otherwise eligible families who had two dependent children with disabilities, where each child individually received a positive score under the Child Disability Assessment Tool (CDAT) of less than ‘1’ but whose combined score was at least ‘1’. [By being restricted to ‘dependent children’ (as defined), the provision was slightly more restrictive than that for Child Disability Allowance generally. The CDAT was covered in **Record 12 of 1997**.]
QUALIFYING CONDITIONS FOR CHILD DISABILITY ALLOWANCE EASED

Location in Act  
Section 3 (as set out in item 10 of Schedule 2)

Date of commencement  
1 July 1998

Date of application  
1 July 1998

Payments affected  
Child Disability Allowance

Child Disability Allowance could continue to be paid to a person for a period or periods totalling (or not likely to exceed) 63 days in a calendar year during which he/she was not providing the prescribed level of care and attention because his/her child was in respite care or in hospital. Previously, the period (or periods) could not exceed 42 days.

FAMILY PAYMENT RENAMED FAMILY ALLOWANCE

Location in Act  
Section 3 (as set out in Schedule 3)

Date of commencement  
1 April 1998

Date of application  
1 April 1998

Payments affected  
Family Payment; Family Allowance

Family Payment was renamed Family Allowance. [The change took account of the fact that the term Family Allowance had been used for many years in Australia and was familiar to, and still used by, many people.]

HARDSHIP PROVISIONS IN WAITING PERIODS MODIFIED

Location in Act  
Section 3 (as set out in Part 1 of Schedule 4)

Date of commencement  
Was to commence immediately after the Social Security Legislation Amendment (Youth Allowance) Act 1998 provided that Act commenced on 1 July 1998. Otherwise to commence on 1 July 1998. In the event, the former provision applied.

Date of application  
As for date of commencement

Payments affected  
Newstart Allowance; Sickness Allowance; Youth Allowance; Special Benefit (in effect)

Changes were made to simplify and make consistent the rules enabling the general and liquid assets test waiting periods applying to Newstart Allowance and Sickness Allowance (and the liquid assets test applying prospectively to Youth Allowance) to be waived on hardship grounds. [The equivalent rules for income maintenance periods applying to a wider range of payments were amended along the same lines but to take effect a year later. This change is dealt with in Record 17 of 1997.]
The changes were as follows:

- for the rules to be waived in respect of both waiting periods, the Secretary had to be satisfied that a person was in severe financial hardship;

- a consistent definition of ‘severe financial hardship’ was introduced to cover both waiting periods, and involved what was commonly known as a ‘short-term available funds test’. It was provided that a claimant was in severe financial hardship if, in the case of a single person, the value of his/her liquid assets was less than the fortnightly maximum rate of payment that would apply if the claim was granted. For couples, the value had to be less than twice the fortnightly equivalent maximum rate. The ‘maximum rate of payment’ was the basic rate plus any Rent Assistance and Pharmaceutical Allowance entitlement but did not include any entitlement to Remote Area Allowance; and

- it was provided that the liquid assets test waiting period could be waived in whole or in part, only if the Secretary was satisfied that the severe financial hardship was due to the person having incurred ‘unavoidable or reasonable expenditure’ while serving the period. Previously, if waived, the liquid assets test waiting period could be waived only in its entirety. [Allowing it to be waived in part made the provision consistent with the equivalent rule for the income maintenance period.]

For a person serving the liquid assets test waiting period, ‘unavoidable or reasonable expenditure’ was defined to include, but was not limited to, the following expenditure:

- the ‘reasonable costs of living’ the person was taken to have incurred in respect of so much of the waiting period as the person had already served;

- the costs of repairs to, or replacement of, essential whitegoods situated in the person’s home;

- essential expenses arising on the birth or adoption of a child;

- that required to replace essential household goods because of loss of those goods through theft or natural disaster where the cost of replacement was not covered by an insurance policy;

- the costs of essential repairs to a person’s car or home;

- vehicle or home insurance premiums;

- school, funeral, vehicle registration and essential medical expenses; and

- any other costs that the Secretary determined to be unavoidable or reasonable expenditure in the circumstances.

The ‘reasonable costs of living’ in the definition of ‘unavoidable or reasonable expenditure’ in relation to the liquid assets test waiting period was taken to include, but was not limited to: food costs; rent or mortgage payments; regular medical expenses; rates, water and sewerage payments; gas, electricity and telephone bills; costs of petrol for the person’s vehicle; public transport costs; and any other costs that the Secretary determined as such. These costs were not to exceed the amount of allowance (twice the allowance in respect of a member of a couple) that would have been payable during the part of the waiting period already served, if the waiting period had not applied.
HARDSHIP PROVISIONS FOR INCOME MAINTENANCE PERIOD MODIFIED

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in Part 2 of Schedule 4)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>1 July 1999</td>
</tr>
<tr>
<td>Date of application</td>
<td>1 July 1999</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Benefits; Special Benefit (in effect)</td>
</tr>
</tbody>
</table>

The rules enabling the benefits income maintenance period applying to various lump-sum leave payments to be waived on hardship grounds were altered to bring them into line with the rules applying to the liquid assets test waiting period. Accordingly, the rules required the Secretary to be satisfied that a person was in ‘severe financial hardship’ (as defined) and that the hardship was due to the person having incurred ‘unavoidable or reasonable expenditure’ while serving the income maintenance period. Full details of the liquid assets test waiting period change are in Record 16 of 1997. These changes, although legislated at the same time as those to the general and liquid assets test waiting periods, took effect a year later.5

This legislation was later repealed and recast to also provide for the application of the hardship provisions to a seasonal worker preclusion period being introduced (refer to Record 21 of 1998). This was merely a consequential change.
A new payment, Maternity Immunisation Allowance, was introduced. At the same time, complementary changes were made to Maternity Allowance (refer to Record 19 of 1997).

The new allowance was introduced as part of a package of measures aimed at boosting the immunisation rates of Australian children to an acceptable level. Similar legislation outside of the Social Security Act and applying from April 1998 required children to be immunised as a condition of their eligibility for Childcare Assistance and the Childcare Rebate.

Maternity Immunisation Allowance was a non-taxable, one-off lump-sum payment generally made to a person in respect of a child or children born on or after 1 January 1998 provided that:

- the child was at least 18 months old (so no allowances were granted until 1 July 1999);
- the child was a dependent child of the person;
- the person had received Maternity Allowance and/or was receiving Family Payment in respect of the child; and
- unless exempt, the Secretary was satisfied that the child had been immunised.

The allowance was also payable in respect of stillborn children (immediately after the stillbirth) and children who had died before turning 18 months (immediately after the death). In the latter case, it was payable irrespective of their immunisation status.

An exemption to the immunisation condition was provided only where a recognised immunisation provider had certified in writing: that he/she had discussed the benefits and risks of immunising the child with the relevant person and the person had a conscientious objection to the child being immunised; and/or that the specifications set out in the latest edition of the Australian Immunisation Procedures Handbook indicated that the immunisation would not be in the child’s medical interests. ‘Recognised immunisation provider’ was as defined in the Health Insurance Act. ‘Immunised’ was defined to mean that the child had received the vaccinations that an 18 month-old child ‘ought to have received’ under the National Health and Medical Research Council’s standard vaccination schedule. A ‘conscientious objection’ was recognised only where it was based on a belief involving a fundamental conviction that immunisation should not take place and the conviction was so compelling that the person had to refuse to allow the immunisation to proceed.
The new allowance was paid in a lump sum at a rate of $200 or 0.6 times the maximum fortnightly rate of Parenting Allowance, whichever was the greater. Thus, when first introduced, the $200 rate applied and was to continue to apply until the fortnightly rate of Parenting Allowance ($290.10 at the date of the change) exceeded $333.33. Parenting Allowance was subject to automatic indexation on 20 March and 20 September each year so that, once the Parenting Allowance rate exceeded $333.33, Maternity Immunisation Allowance would effectively be subject to automatic indexation on a similar basis. At the same time rates of Maternity Allowance were reduced (refer to Record 19 of 1997).

The link with Family Payment/Maternity Allowance meant that Maternity Immunisation Allowance was in effect income and assets tested. Payability rules (for example, regarding shared care of a child) were similar to those applying to Maternity Allowance but took account of the fact that family situations sometimes would have changed since Maternity Allowance had been received following the child/children’s birth. Generally, other conditions applying to Maternity Immunisation Allowance were the same as for Maternity Allowance (refer to Record 35 of 1995).

A person lodging a claim for Maternity Immunisation Allowance but not qualified at the date of the claim had the claim accepted as a valid one, provided that he/she qualified within 117 weeks or by the time the child turned two years, whichever came first. [The 117 weeks reflected the 13 weeks before qualification and 26 weeks following qualification in which claims for Maternity Allowance were accepted plus the 18 months minimum age of a living child for qualification purposes.]

MODIFICATIONS TO MATERNITY ALLOWANCE

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in items 1 to 40 of Schedule 1)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>1 January 1998</td>
</tr>
<tr>
<td>Date of application</td>
<td>1 January 1998</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Maternity Allowance</td>
</tr>
</tbody>
</table>

In conjunction with the introduction of Maternity Immunisation Allowance (refer to Record 18 of 1997), the rate of Maternity Allowance (paid on the birth of a child) was reduced from its prevailing level of $870.30 to either $750 or 2.4 times the maximum fortnightly rate of Parenting Allowance, whichever was the greater. The rate, therefore, would not exceed $750 until the $290.10 rate of Parenting Allowance exceeded $312.50, from which time it would be automatically indexed in the same way as Maternity Immunisation Allowance. Persons whose children had been born before 1 January 1998 continued to receive the $870.30 rate. Maternity Allowance had previously been payable at three times the fortnightly maximum rate of Parenting Allowance, so that the combined value of Maternity Allowance and Maternity Immunisation Allowance (2.4 plus 0.6 times the maximum fortnightly rate of Parenting Allowance) would, once indexation came into effect, have the same value as Maternity Allowance on its own before the introduction of Maternity Immunisation Allowance. Until indexation took effect, their combined value would be higher than Maternity Allowance on its own.
The eligibility conditions for Family Payment were liberalised:

- the more than minimum rate became payable in respect of a child or children during the first 13 weeks of their temporary absence overseas. It had previously not been available for any period of absence; and

- a child returning to Australia after a temporary absence overseas, and then leaving again within 13 weeks, became eligible for the more than minimum rate during the period in Australia provided that the first temporary absence did not exceed 13 weeks. Previously the rate had not been payable irrespective of how short the first temporary absence was.

Eligibility for Guardian Allowance was extended to a person for up to 13 weeks while his/her qualifying child/children were temporarily absent from Australia. Previously, eligibility had been lost in respect of any period that the child spent overseas.
### MODIFICATION TO FAMILY PAYMENT ASSETS TEST HARDSHIP PROVISIONS

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in Schedule 7)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>Immediately before 1 January 1998. This ensured that the income hardship limits would be increased through automatic indexation due from the same date as the change. (This reference excludes a minor technical amendment which was backdated.)</td>
</tr>
<tr>
<td>Date of application</td>
<td>As for date of commencement</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Family Payment (minimum rate only); Maternity Allowance</td>
</tr>
</tbody>
</table>

A new ‘income hardship limit’ of $27,207 plus $4,413 for each child after the first was introduced into the Family Payment assets test hardship provisions. This was the cut-out point for payment of the more than minimum rate of Family Payment for the relevant number of children based on the rate of payment for a child/children under 13 years of age. The effect of the amendment was that a person with general assets of more than $407,250 but less than $604,250, liquid assets above the specified limits ($6000 for a single person and $10,000 for a member of a couple) and/or estimated income equal to or greater than $15,086 (the basic combined married rate of Age Pension) plus $624 for each child was no longer eligible for minimum Family Payment under the provisions unless his/her income did not exceed the income hardship limit. The other aspects of the hardship provisions remained unchanged.

Provision was made for the income hardship limit to be increased automatically on 1 January each year in line with movements in the Consumer Price Index between the previous June quarters.

The various limits cited (other than the liquid assets limits) are as at the date of the change—thus they incorporate automatic indexation increases effective after the legislation was passed. The liquid assets limits were not indexed and remained unchanged.

This change flowed on to Maternity Allowance, eligibility for which was linked to that for Family Payment.
The income tests for minimum and more than minimum Family Payment (and Maternity Allowance through its link to Family Payment) were tightened by expanding the list of assessable fringe benefits in the tests to include ‘expense benefits’ and ‘financial investment benefits’ provided by employers to their employees.

An ‘expense benefit’ covered an amount paid to, or on behalf of, an employee or a person connected with an employee by an employer, an associate of the employer or a third party in connection with expenses of a private nature that had been incurred, or would or might be incurred, by the employee or a person connected with him/her. A person was regarded as ‘connected’ with the employee if he/she was a partner, a dependent child of the employee or partner, or a person who would be such a dependent child if he/she was not receiving Newstart Allowance or Sickness Allowance. There were no limits on the type of expense covered. The value of the expense benefit was the actual amount received by the employee. However, money received as a reimbursement of, or to cover, expenses incurred in connection with the person’s employment was specifically exempted from assessment under the income tests.

A person was taken to have received a ‘financial investment benefit’ when an employer, an associate of the employer or a third party paid for, or reimbursed the cost of, a financial investment acquired by the employee or a person connected with the employee. The definition of ‘connected with the employee’ was as for expense benefits. The existing definition of ‘financial investment’ in the Act was used—it was a broad one covering available money, deposit money, managed investments, listed securities, unlisted public securities, loans not fully repaid and gold, silver and platinum bullion. Contributions to a superannuation fund or an ATO small superannuation account were specifically excluded from the definition. The value of a financial investment was its value when received by the employee. [For details of ATO small superannuation accounts, refer to Record 15 of 1996.]
BEREAVEMENT PAYMENTS EXTENDED

Location in Act  
Section 3 (as set out in Schedule 10)

Date of commencement  
16 December 1997

Date of application  
Applied only in respect of children dying on or after 16 December 1997

Payments affected  
Bereavement Payments

In a change to Bereavement Payments, the provision under which a Parenting Allowance recipient continued to receive the allowance during the 14 weeks following the death of his/her last qualifying child/children, provided that the person had been receiving more than the minimum Family Payment for the child/children, was extended so that the payments were also made where the person’s partner had been receiving or sharing the more than minimum Family Payment for the child/children.

EARLY LODGEMENT PROVISIONS FOR CERTAIN PAYMENTS TIGHTENED

Location in Act  
Section 3 (as set out in Schedule 11)

Date of commencement  
1 January 1998, immediately after Schedule 1 (which dealt with the introduction of Maternity Immunisation Allowance)

Date of application  
Applied to claims lodged on or after 1 January 1998

Payments affected  
Family Payment; Maternity Allowance; Maternity Immunisation Allowance; Parenting Allowance

The early lodgement provisions for Family Payment, Maternity Allowance, Maternity Immunisation Allowance and Parenting Allowance were amended so as no longer to recognise claims made before the birth of a qualifying child where qualification was dependent on the child’s birth. [In practice, people had not tended to make early claims for Family Payment but the introduction of Maternity Allowance from 1 February 1996 had resulted in their becoming more frequent. The trend had caused administrative difficulties as there had been no satisfactory process for dealing with these claims.]"
26

**HIGHER RATE PAYABLE TO SOLE PARENTS ON NEWSTART ALLOWANCE**

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in Schedule 13)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>16 December 1997</td>
</tr>
<tr>
<td>Date of application</td>
<td>16 December 1997</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Newstart Allowance</td>
</tr>
</tbody>
</table>

A sole parent receiving Newstart Allowance became eligible for the ‘single person with dependent child’ rate of allowance if he/she had a child aged 16 to 17 years who was substantially dependent and who was receiving a Disability Support Pension. [This change corrected an anomaly as the higher ‘with child’ rate of payment was already available to sole parent Newstart Allowance recipients with a 16 to 17 year-old child receiving any benefit or Youth Training Allowance.]

27

**MEDICAL EXAMINATION IN RESPECT OF DISABILITY SUPPORT PENSION**

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in Schedule 14)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>16 December 1997</td>
</tr>
<tr>
<td>Date of application</td>
<td>16 December 1997</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Disability Support Pension</td>
</tr>
</tbody>
</table>

The provision requiring the Secretary, other than in prescribed circumstances, to direct a person claiming a Disability Support Pension to have a medical examination was removed. The Secretary retained the discretion under another provision to require a claimant to undergo a medical examination before granting a claim. [This change increased flexibility by, for example, allowing the Secretary to forgo a medical examination in the case of frivolous claims, or to use alternatives such as non-medical assessment.]
**DISABILITY WAGE SUPPLEMENT ABOLISHED**

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in Schedule 15)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>1 January 1998 (except for some unimportant technical amendments)</td>
</tr>
<tr>
<td>Date of application</td>
<td>1 January 1998 (except for some unimportant technical amendments)</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Disability Wage Supplement; Disability Support Pension</td>
</tr>
</tbody>
</table>

Disability Wage Supplement was abolished with its provisions being absorbed into Disability Support Pension. To accommodate this change, a person could now qualify for the pension without having a continuing inability to work (previously a requirement) provided that he/she was participating in the supported wage system.

In line with the previous provision for Disability Wage Supplement, a person in the supported wage system could continue in certain circumstances to receive the pension for 12 months despite moving on to the full award wage applicable to his/her employment. However, previous concessions in relation to the Employment Entry Payment and Bereavement Arrangements were removed, with those for other disability support pensioners applying.

[Many disability support pensioners had been reluctant to transfer from Disability Support Pension to Disability Wage Supplement so that take-up of the supplement had been low. As there had been little difference between the conditions under which the two payments had been made, it was no longer considered worthwhile to retain them both.]
Legislation passed in 1997

REVISED QUALIFYING CONDITIONS FOR DISABILITY SUPPORT PENSION

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in Schedule 16)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>Main changes were to commence on a day to be fixed by Proclamation or six months after the Date of Royal Assent, whichever occurred first. It was proclaimed and commenced from 1 April 1998. In addition, an error found in the legislation was amended and backdated</td>
</tr>
<tr>
<td>Date of application</td>
<td>Applied to claims lodged on or after the date of commencement (1 April 1998). It was also stated that, despite section 8 of the Acts Interpretation Act, the amendments applied in relation to all medical, psychiatric or psychological examinations attended, or reports required, under subsection 105(1) on or after the date of commencement; and to all legal proceeding, applications for review of decisions, or determinations, to the extent that they related to or involved those medical, psychiatric or psychological examinations</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Disability Support Pension</td>
</tr>
</tbody>
</table>

The requirement that, to qualify for a Disability Support Pension, a person had to have an impairment of 20 per cent or more as assessed under the impairment tables contained in a Schedule to the Act, was replaced with one that the impairment represent at least 20 points under the tables. This took account of a revised set of impairment tables introduced into the Act at the same time—the tables replaced a percentage impairment system with a points system, with a score of 20 points representing a significant effect on a person’s ability to work.

[The revised tables comprised 27 sub-tables aligned to the various body systems and assigned impairment ratings in proportion to the severity of the conditions and their impact on normal function, particularly as they affected work performance. The original tables had been placed in the Act when Disability Support Pension was introduced on 12 November 1991 (refer to Record 58 of 1991). The revised tables were intended to tighten the assessment process so as to ensure that people whose impairments had only a relatively small impact on their overall ability to work would not qualify for the pension.]
30

**RENT ASSISTANCE CONDITION CLARIFIED**

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in Schedule 18)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>16 December 1997</td>
</tr>
<tr>
<td>Date of application</td>
<td>16 December 1997</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Rent Assistance</td>
</tr>
</tbody>
</table>

An amendment clarified that any amount that could be regarded as an entry contribution, or part of an entry contribution, to a retirement village was not to be regarded as rent for purposes of eligibility for Rent Assistance. This was to be the case whether the amount had already been paid or was due for payment at a later date, whether it was payable in whole or in part in a lump sum, by instalments or by any other method, and despite the fact that some or all of the contribution may never be refunded to the person.

[The amendment was designed specifically to overturn the effect of a Federal Court decision recognising regular contributions of this kind for Rent Assistance eligibility purposes, and to avoid other possible interpretations which might circumvent the intention of the legislation.]

31

**RESTRICTION ON PAYMENT OF RENT ASSISTANCE**

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in items 1 and 2 of Schedule 19)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>1 January 1998</td>
</tr>
<tr>
<td>Date of application</td>
<td>1 January 1998</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Rent Assistance</td>
</tr>
</tbody>
</table>

Sub-tenants paying, or liable to pay, rent for living in premises for which another person paid rent to a public housing authority were no longer eligible for Rent Assistance unless the primary tenant was paying rent at the market rate, or the sub-tenant had his/her income taken into account in setting the amount of rent paid by the primary tenant. [This was an extension of the rule precluding public housing tenants from receiving Rent Assistance.]
EXTENSION TO BACKDATING PROVISION FOR VARIOUS PAYMENTS

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in Schedule 20)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>16 December 1997</td>
</tr>
<tr>
<td>Date of application</td>
<td>16 December 1997</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Disability Support Pension; Carer Payment; Partner Allowance; Parenting Allowance; Sickness Allowance; Newstart Allowance</td>
</tr>
</tbody>
</table>

The provision permitting a person with a medical condition to have his/her claim for Disability Support Pension, Sickness Allowance or Newstart Allowance significantly backdated where he/she made a telephone inquiry about the payment was expanded in the following ways:

- it was extended to persons claiming Carer Payment, Partner Allowance and Parenting Allowance;
- in addition to telephone claims, it covered claims transmitted using a facsimile or computer equipment, with the date the facsimile or computer message was received by the department taken as the date of claim;
- claims made on a person’s behalf by another person were accepted; and
- the Secretary did not need to receive a request from the person before extending the backdating beyond 21 days.

The other aspects of the provision as they applied to Disability Support Pension, Sickness Allowance and Newstart Allowance when it was originally introduced were unchanged (refer to Record 36 of 1996) and these now applied to Carer Pension. They also generally applied to Partner Allowance and Parenting Allowance but there were two differences—the amendments applied only to the partners of a person to whom the provision applied in respect of Disability Support Pension, Sickness Allowance, Newstart Allowance or Youth Training Allowance, and it had to have been made clear by the person contacting the department that the foreshadowed claim was for Partner Allowance or Parenting Allowance.
NEWSTART ALLOWANCE PAYABLE TO DISABILITY SUPPORT PENSION CLAIMANT

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in Schedule 21)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>The changes were taken to have commenced on 15 December 1997</td>
</tr>
<tr>
<td>Date of application</td>
<td>The changes were taken to have commenced on 15 December 1997</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Newstart Allowance</td>
</tr>
</tbody>
</table>

Newstart Allowance could, at the discretion of the Secretary, be paid to a person who had made a claim for Disability Support Pension during the period in which the pension claim was being determined. To qualify for the allowance in a particular period in these circumstances, a person was required, in addition to meeting the usual qualifying conditions for Newstart Allowance related to age, residency, unemployment and not receiving a Youth Allowance, to:

- have claimed Disability Support Pension but not had the claim determined;
- satisfy the Secretary that throughout the period he/she had suffered from a medical condition that had a significant adverse effect on his/her ability to work; and
- establish that he/she met the residential requirements for Disability Support Pension.

Persons receiving Newstart Allowance under the new provision were not required to register as unemployed with the Commonwealth Employment Service or satisfy the general Newstart Allowance activity test. In addition, the legislation specifically exempted them from having to enter into a Newstart Activity Agreement. Special provisions (consistent with the existing rules for Disability Support Pension and Newstart Allowance) were introduced to cover the person’s transition to the pension, or to Newstart Allowance paid under normal conditions if the pension claim was unsuccessful.

[The changes took account of the fact that claims for Disability Support Pension frequently took several weeks to determine.]
The Minister was given the power to determine that a specified investment or class of investments in a superannuation fund, an approved deposit fund, a deferred annuity or an ATO small superannuation account were to be disregarded when assessing the value of a person’s assets for purposes of the assets tests applying to most social security payments. A determination was to take effect from the day on which it was made unless an earlier or later date was specified. The only material exceptions to the power related to assessments of assets for purposes of the assets deprivation provisions and the Pension Loans Scheme. [For details of ATO small superannuation accounts, refer to Record 15 of 1996.]

The change was backdated to 20 September 1997, the date that a power to exempt such investments from assessment under the extended deeming rules in income tests was granted to the Minister (refer to Record 15 of 1996). [This ensured consistency between income and assets test rules.]
Endnotes

1 These categories were integrated with the existing legislation, which already exempted refugees or former refugees who were residing in Australia from the normal residency requirements for the payments (other than Special Benefit) covered by the present provision. As regards Special Benefit, the residency requirements were waived where the person was an exempt, or former exempt, resident and residing in Australia (‘exempt resident’ is broadly defined at Record 4 of 1995). The exemptions for Special Benefit were extended by the present amending Act to include a person residing in Australia who was a family member of an exempt, or former exempt, resident at a time the exempt or former exempt resident arrived in Australia.

2 In addition, amendments corrected errors in the application and transitional provisions of the Social Security Legislation Amendment (Budget and Other Measures) Act 1996 (refer to date of application under Record 22 of 1996). The amendments also applied to Records 23, 24, 25, 26 and 27 of 1996.

3 The Commonwealth Services Delivery Agency (later known as Centrelink) was established from 1 July 1997. It was given responsibility for delivery of social security payments and related services which had previously been administered by the Department of Social Security, and for a number of employment, student assistance and child care services formerly administered by other departments.

4 Legislation for the establishment of Youth Allowance had not been introduced into Parliament at the time of the present legislation. Accordingly, it was provided that the changes apply to Youth Allowance in the event that it had been introduced (as intended) or, if not, that they apply to Youth Training Allowance. Youth Allowance was introduced at the same date the present changes took effect (refer to Record 1 of 1998), so that the changes did in fact apply to it immediately.

5 Regarding Youth Allowance refer to previous endnote. However, unlike that record, no specific reference to Youth Allowance legislation being passed was made.

6 A later schedule to the present Act made further amendments to Maternity Immunisation Allowance (refer to Record 25 of 1997).

7 The previous endnote also applies here in relation to Maternity Allowance.

8 This amendment modified changes made in the present amending Act (refer to Records 18 and 19 of 1997).
Legislation passed in 1998

Social Security Legislation Amendment (Youth Allowance) Act 1998, No. 18

Date of Royal Assent: 17 April 1998

Social Security Legislation Amendment (Youth Allowance Consequential and Related Measures) Act 1998, No. 45

Date of Royal Assent: 17 June 1998

Introduction of Youth Allowance and related changes


The introduction of Youth Allowance involved a major restructuring of the social security system as it covered, in a single payment, young people who were studying, in training, looking for work or sick, contingencies previously covered by a number of separate payments. It replaced:

- Youth Training Allowance (which had been paid under the Student and Youth Assistance Act to certain people aged under 18 years (refer to Record 39 of 1994));
- Newstart Allowance and Sickness Allowance for people aged under 21 years;
- Austudy for students aged under 25 years, or 25 years and over in certain circumstances. (Austudy had been the main payment for students and had been paid under the Student and Youth Assistance Act); and
- more than minimum rate Family Allowance for certain secondary students aged 16 to 18 years.

Accompanying and consequential to the introduction of Youth Allowance, a major restructuring of education payments took place:

- a new payment, Austudy Payment, was established under the Social Security Act to provide income support to students aged 25 years and over. It replaced Austudy living allowance, which had been payable under the Student and Youth Assistance Act. (Students aged under 25 years received Youth Allowance.);
- three education payments/programs—the Pensioner Education Supplement, the Student Financial Supplement Scheme (except for Aboriginal students) and Fares Allowance—were transferred from the Student and Youth Assistance Act to the Social Security Act, although initially they were not fully incorporated into it; and
the Student and Youth Assistance Act was renamed the Student Assistance Act.

This meant that payments/programs previously administered by the Employment Department now fell within the ambit of the Department of Social Security's responsibilities and were delivered through Centrelink. Certain modifications were made with their transfer to the Social Security Act. Assistance to Aboriginal students under Abstudy remained in the education/employment portfolio. Further background information on the changes is provided under the records for the specific changes.

Structure of Legislation

Act No. 18 established Youth Allowance and contained all the main provisions of the payment (except for indexation). Act No. 45 dealt with the establishment of Austudy Payment and the transfer of the other education programs to the Social Security Act. It also contained the Youth Allowance indexation provisions, some new Youth Allowance provisions, and a number of amendments to Youth Allowance provisions contained in the first Act. The second Act had a large number of schedules, some of which contained amendments to earlier schedules, and there were hundreds of minor amendments, mainly consequential but some involving new policy, to social security payments affected by the introduction of Youth Allowance and the accompanying changes.

In view of the structure and content of the legislation, Acts No. 18 and No. 45 have been dealt with together. This has meant that, unlike other amending Acts dealt with in this compendium, only the final change has been included—that is, if the second Act made a change to a provision of Youth Allowance introduced in the first Act with the date of effect the same (so that the first change never took effect), the first change has not been covered. These amendments were not mainstream and the approach taken avoids unnecessary and confusing detail. Also, the multiple references to minor changes in the schedules to the second Act have not been identified under ‘Location in Act’ in the table for this record.

A small number of relatively minor changes in the two Acts affected a range of payments, other than Youth Allowance and the education payments/programs transferred to the Social Security Act, and were of more general application. These have been covered in separate records, along with a minor change to Special Benefit which had no direct connection with the Youth Allowance and accompanying changes.

In view of the above structural issues, readers should treat all the records covered under the two Acts as a group of changes rather than examining them separately. The mainstream aspects of the changes are in Records 1, 3, 5, 6 and 7 of 1998 covering Youth Allowance, Austudy Payment, Pensioner Education Supplement, the Student Financial Supplement Scheme and Fares Allowance respectively.

It should also be noted that a number of corrective amendments to the legislation were made by the Youth Allowance Consolidation Act 2000 (refer to records under that amending Act in 2000), some of which were backdated to 1998, when Youth Allowance and the related changes were introduced. Where they have related to mainstream changes, they have been incorporated in the 1998 descriptions with explanatory endnotes.
Transitional and savings provisions

A range of transitional and savings provisions was required to ensure that, following the restructure of payments, people already receiving a payment (whether under the Social Security Act or Student and Youth Assistance Act) were not disadvantaged when they transferred to one of the new payments, and to enable transfers to take effect without their having to make a new claim.

Savings provisions included:

- allowing Newstart Allowance and Sickness Allowance recipients aged under 21 years who had been continuously receiving one of these allowances since 17 June 1997 (that is, immediately before it was announced that Youth Allowance was to be introduced) the option of remaining on the particular allowance instead of transferring to Youth Allowance. They could retain this entitlement as long as they continued to meet the eligibility criteria for these allowances other than that of age. A person whose allowance was suspended or cancelled for more than six weeks could not return to Newstart Allowance or Sickness Allowance;

- enabling people (or approved care organisations) who had previously attracted Double Orphan Pension under Austudy to retain it while on Youth Allowance until they either turned 22 years of age or ceased full-time study. [Double Orphan Pension had been available under Austudy until a person turned 22 years whereas, under the new legislation, a person could not attract both Double Orphan Pension and Youth Allowance]; and

- providing a one-off top-up payment to persons who ceased to attract Family Allowance on transferring to Youth Allowance and would otherwise have lost money because of the different timing of payment instalments between the two allowances.
**INTRODUCTION OF YOUTH ALLOWANCE**

| Location in Act | Act No. 18 in its entirety covered all the main changes related to the introduction of Youth Allowance other than indexation changes. One of the changes has been placed in Record 2 of 1998. As specified in section 3, various schedules under Act No. 45 also made changes to Youth Allowance, some of which amended changes made in Act No. 18. These changes were in points of detail rather than inserting completely new provisions. In these cases only the final change has been included as it commenced on the same day as the change it overrode. In Act No. 45: Schedule 2 contains refinements to Youth Allowance; Schedule 3 among other things includes refinements to Youth Allowance mainly to ensure that amendments made in Act No. 93 of 1998 (dealt with in later records) flowed through to Youth Allowance; Schedule 7 contains all automatic indexation changes; Schedule 8 makes a number of policy and technical refinements to rate calculator provisions flowing from the Youth Allowance related changes; Schedule 9 makes extensive consequential amendments to a range of social security payments flowing from the Youth Allowance and related changes; and Schedule 10 deals with transitional and savings provisions flowing from the Youth Allowance and related changes (these were dealt with under the preliminary note to Acts No. 18 and No. 45). Two changes were made by the Youth Allowance Consolidation Act 2000. |
| Date of commencement | All the main changes to Youth Allowance commenced from 1 July 1998 except one regarding the minimum age, which commenced from 1 January 1999 (this has been highlighted in the description). Changes related to the Community Support Program applied from 15 July 1998. Certain minor changes commenced at different dates for various technical reasons but they were unimportant. There was a need to coordinate the changes with certain other amending legislation, but this resulted in no significant changes to dates. |
| Date of application | As for date of commencement |
| Payments affected | Youth Allowance |

A new payment, Youth Allowance, was introduced. It replaced Youth Training Allowance, Newstart Allowance and Sickness Allowance for people aged under 21 years, Austudy for students aged under 25 years (over 25 years in certain cases), and more than minimum Family Payment for certain secondary students.
Legislation passed in 1998

aged 16 to 18 years. This single payment covered young people who were studying, in training, looking for work or sick. While receiving the allowance, young people could move between these activities and states, including a combination of them such as part-time work and study, without having to transfer to a different payment each time. It was expected to make income support for young people simpler and more flexible and to reduce incentives to leave education early. Youth Allowance was taxable.

The introduction of Youth Allowance involved major consequential changes to Newstart Allowance and Sickness Allowance eligibility criteria. Most importantly, with one exception for Newstart Allowance, these allowances were now available only to people aged 21 years and over.

Many Youth Allowance provisions were taken from the income support payments it replaced. Accordingly, for persons aged under 21 years not in education or training, its provisions closely followed aspects of Newstart Allowance, Sickness Allowance and Youth Training Allowance, while for students aged 16 to 24 years they were drawn extensively from Austudy. The allowance also contained some totally new features. Some general comparisons follow.

Comparison between Youth Allowance and payments it replaced

Youth Allowance had a number of distinguishing features compared with the payments it replaced. These included:

- payment of a higher basic rate to persons required to live away from home;
- extension of Rent Assistance, Remote Area Allowance and Pharmaceutical Allowance to students. (Rent Assistance and Pharmaceutical Allowance had been available under Austudy only in limited circumstances.);
- no minimum entitlement requirement for students receiving Youth Allowance as there had been for Austudy;
- a more generous personal income test for full-time students than for the unemployed, reflecting the more generous income test that had applied under Austudy compared with that under Newstart Allowance and Sickness Allowance;
- the application of parental income and family assets tests to all claimants and recipients who were not independent. Previously, they had applied broadly to non-independent students under Austudy but only to non-independent Newstart Allowance and Sickness Allowance claimants/recipients if they were aged under 18 years (and to Youth Training Allowance recipients, all of whom were aged under 18 years). The Youth Allowance parental income test was more liberal than that which had applied to Austudy;
- the imposition of a family actual means test previously applicable under Austudy on persons who were not independent. It applied until the student turned 25 years of age. Under Austudy living allowance, it had applied only to the age of 22 years;
- more extensive, but also more lenient, criteria than had applied under Austudy for determining if a person was ‘independent’;
- an activity test applied to students for the first time;
- no standard one-week waiting period as had applied to Newstart Allowance and Sickness Allowance;
no education waiting period as had applied to Newstart Allowance, Sickness Allowance and Youth Training Allowance. [Its removal was consistent with Youth Allowance’s status as a flexible payment enabling people to move freely between education, training and job search. It was also removed for Newstart Allowance and Sickness Allowance (refer to Record 13 of 1998)];

- a student income bank under the personal income test—this was an entirely new provision;
- generally making payments for persons aged under 18 years who were dependent on their parent(s) to the parent(s) instead of the allowee; and
- no entitlement to an Employment Entry Payment or Education Entry Payment.

The description concentrates on the qualifying conditions, rates of payment and income and assets tests applying to Youth Allowance. Many of the other provisions were identical or very similar to those for benefits generally and in particular Newstart Allowance (or Youth Training Allowance before its abolition). The full details of many general provisions have not been fully spelt out, but any special features have been highlighted and comments have been made on their similarity to other payments.

**Importance of definitions**

In determining the qualifying conditions, rates of payment and application of means tests for Youth Allowance, a number of definitions are important. The operation of many provisions depends on whether a person is categorised as ‘independent’ and the definition here is particularly detailed. The other definitions all affect a person’s rate of payment and have been covered in a category for this. Definitions have been spelt out at the end of the description. One definition, that for ‘undertaking full-time study’, while introduced in the context of Youth Allowance, had general application throughout the Act and so has been dealt with in a separate record (refer to Record 2 of 1998).

**Qualifying conditions**

**General summary**

In general terms, a person was eligible to receive Youth Allowance if he/she was:

- an Australian resident;
- in Australia (subject to exceptions);
- aged 16 to 24 years and engaged in full-time study;
- aged 16 to 20 years (18 to 20 years before 1 January 1999) and looking for full-time work, combining part-time study and looking for work, participating in other approved activities (such as voluntary work), or sick;
- aged 25 years or over, engaged in full-time study, and had been receiving Youth Allowance before turning 25 years and was continuing in the same course;
- aged 15 years, had reached school leaving age and was able to establish his/her independence; and
Legislation passed in 1998

not excluded from eligibility on the basis of the personal income test, family assets test or, where applicable, the parental income or family actual means tests.

A person’s eligibility for the allowance on the basis that he/she met the educational, work testing, training or other behavioural requirements was assessed by means of an activity test. Conditions such as sickness enabled a person to qualify for the allowance through an exemption from the activity test.

Age

To qualify for Youth Allowance, a person generally had to be aged between 16 and 24 years, but could be younger or older in specific circumstances. A wide range of factors was taken into account in determining whether a person aged under 18 years was eligible for the allowance.

Minimum age

The minimum qualifying age for the allowance was 16 years except in the case of independent persons, who could qualify at age 15. However, a 15 year-old who otherwise met the independence criteria could qualify only if he/she had reached the minimum school leaving age for the state or territory in which he/she was living, or had been formally exempted from the requirement to attend school by a particular state or territory education authority.

In general, a person aged under 18 years could not qualify for the allowance unless he/she had completed the final year of secondary school or an equivalent level of education, was undertaking full-time study, had agreed to enter into a Youth Allowance Activity Agreement, or was exempted from these requirements following a determination by the Secretary. This provision did not apply to a person who last left school more than 12 months before the introduction of Youth Allowance.

From 1 January 1999 (six months after the introduction of Youth Allowance), a person aged under 18 years who was unable to undertake full-time study or training was in certain circumstances exempted from these general requirements and could receive the allowance for a limited period (an exemption from the Secretary was not necessary in these cases). The exemption applied where a person:

- was ill or had an accident and the incapacity was, or was likely to be, of a temporary nature;
- had a physical, psychiatric or intellectual disability, or a learning difficulty such as attention deficit disorder;
- was pregnant with the expected date of confinement within six weeks;
- had given birth within the previous six weeks;
- had been in full-time employment for six weeks or more within the last 13 weeks;
- had been refused enrolment, and no other education or training place was available within a reasonable distance;
- was required to provide full-time care for a family member who was incapacitated due to illness or accident and the incapacity was, or was likely to be, of a temporary nature;
had suffered a personal crisis such as the death of an immediate family member, a marriage break-up, family dislocation or physical, emotional or sexual abuse;

- was homeless and unable to obtain stable accommodation;

- had suffered a major disruption such as fire damage, flooding, earthquake damage, vandalism or burglary in his/her home;

- suffered from alcohol or drug abuse sufficient to cause intermittent or temporary absences from full-time study or training;

- was engaged in part-time work, education, training or a combination of these for at least 20 hours a week;

- was a refugee whose capacity to undertake full-time education had been reduced because he/she had suffered torture, imprisonment or other traumatic circumstances, lacked sufficient English skills, or had recently arrived in Australia and did not have stable accommodation;

- was the subject of a community service or juvenile justice order which had reduced his/her capacity to engage in full-time education;

- would be 18 years old within three months;

- was receiving Commonwealth funded intensive assistance for jobseekers or state, territory or community provided case management approved by the Secretary or, where neither of these was available, was suitable for and agreed to undertake one of them; or

- was experiencing other circumstances which, in the opinion of the Secretary, made it unreasonable for him/her to be in full-time education or training.

The time limit on the exemption was six weeks in the case of pregnancy or the recent birth of a child, two weeks in the case of a major crisis or disruption in the home and, in the case of a person engaged in part-time education or training, for as long as the education or training lasted. In all the other circumstances, the maximum time limit was 13 weeks unless the Secretary approved a longer period.

**Maximum age**

For a person not undertaking full-time study, the maximum age of eligibility was 21 years.

A person undertaking full-time study was generally entitled to receive the allowance until he/she turned 25 years of age. His/her entitlement continued beyond the age of 25 years only where he/she had commenced a full-time course of education and had been receiving Youth Allowance before turning 25 years. In this case, he/she was able to continue to receive the allowance for the duration of the course.

A person aged 21 years or more who was receiving Newstart Allowance immediately before commencing a full-time course of education of less than 12 months duration was not transferred to Youth Allowance but remained on Newstart Allowance for the period of the course.

**Residency**

The residency conditions had a number of the features of Newstart Allowance and the previous Youth Training Allowance but with variations.
To qualify for Youth Allowance, a person had to be an ‘Australian resident’ and normally had to be in Australia.

A person could qualify for the allowance while overseas in three circumstances:

- where he/she was undertaking full-time study (for any period required for the study) or for up to 26 weeks for any other purpose;
- for up to 13 weeks of a temporary absence in a period during which he/she was exempt from the activity test on the basis of his/her medical incapacity condition, and had gone overseas in order to seek medical treatment not available in Australia; and
- while attending a training camp outside Australia as a member of the Australian Defence Force Reserves.

A person who returned to Australia after more than 13 weeks overseas, and then left again within 13 weeks, was treated as ‘not in Australia’ during the period of his/her return.

**The activity test**

Subject to specified exemptions, a person could qualify for Youth Allowance only where he/she satisfied an activity test. The test required a person to undertake a wide range of possible activities such as seeking paid employment, undertaking education or training, or participating in unpaid voluntary work. It took up many of the existing rules in the activity tests for Newstart Allowance (with its employment focus), for Youth Training Allowance (with its educational emphasis) and in the general Austudy rules. Many of the requirements were spelt out in Youth Allowance Activity Agreements, which replaced the previous Newstart or Youth Training Activity Agreements.

With the abolition of Sickness Allowance for persons aged under 21 years, those unable to work or study due to sickness or an accident were accommodated by providing them with an exemption from the activity test.

**Rules for compliance with the activity test**

In order to satisfy the activity test, a person was required to do one or more of the following:

- satisfy the Secretary that he/she was undertaking full-time study;
- satisfy the Secretary that he/she was actively seeking, and willing to undertake, suitable paid work;
- take reasonable steps to comply with the terms of a Youth Allowance Activity Agreement;
- take reasonable steps to comply with a requirement that he/she undertake suitable paid work; participate in the Work for the Dole program; or participate in one or more of a vocational training course, a labour market program, a rehabilitation program, another course, or an activity included in the Community Support Program approved by the Secretary and considered by him/her as likely to improve the person’s prospects of obtaining suitable paid work or help him/her in seeking it; or
- if he/she lived in an area where there was no locally accessible labour market, vocational training course or labour market program, participate in an activity the person suggested and the Secretary approved.
A special provision was inserted to ensure that persons who were essentially in full-time employment, substantially involved in a family business or were full-time apprentices or trainees did not satisfy the activity test and so were precluded from receiving the allowance. However, in the first two situations, the provision did not apply where the person was undertaking full-time study (thus enabling a full-time student to work full-time during vacations).

Ways in which a person could fail to satisfy the activity test

The provisions setting out how a person could fail to satisfy the activity test were also modelled closely on those which applied, or had applied, to Newstart Allowance and Youth Training Allowance. A person did not satisfy the test where he/she:

- failed to take reasonable steps to comply with one of the Secretary’s requirements;
- failed to take reasonable steps to comply with the terms of a Youth Allowance Activity Agreement;
- refused or failed, without reasonable excuse, to attend a job interview;
- voluntarily ceased, without reasonable excuse, to take part in, or was dismissed for misconduct from, a labour market program;
- refused, or failed to commence, complete or comply with the conditions of an approved Work for the Dole program that he/she was required to undertake; or
- failed to comply with a requirement that he/she take reasonable steps to apply for a particular number of advertised job vacancies, or to provide evidence from employers that the requirement had been met.

Exemptions from activity test

The exemptions from the activity test were consistent with the exemptions which had been available under Newstart Allowance and Youth Training Allowance. These were granted where a person:

- was temporarily incapacitated due to sickness or accident and for this reason was unable to undertake full-time study or work;
- had a six-week pre- or post-natal exemption;
- lived in a remote area and, after consideration of a range of factors, the Secretary concluded that it would be unreasonable to expect him/her to satisfy the test;
- was engaged in specified unpaid voluntary work;
- was attending a training camp as a member of the Australian Defence Force Reserves; or
- satisfied the Secretary that special circumstances beyond his/her control existed due to which it would be unreasonable to expect the person to satisfy the test.

These exemptions were spelt out in detail in the legislation. The temporary incapacity exemption was similar in a number of aspects to the previous Sickness Allowance provisions.

Youth Allowance Activity Agreements

The nature of Youth Allowance Activity Agreements, the obligations to which they gave rise and the consequences of failing to comply with them were based on,
Legislation passed in 1998 and consistent with, the previous rules for Newstart and Youth Training Activity Agreements. They could potentially encompass job search; vocational training or training that would help in the search for work; paid work experience; measures designed to eliminate or reduce labour market disadvantage; Work for the Dole; development of self-employment; development of and/or participation in group or cooperative enterprises; and participation in a labour market or rehabilitation program, a course of education or an activity proposed by the person (such as unpaid voluntary work).

Rates of payment
There was a range of rates, with a person’s maximum basic rate depending on which of three categories he/she fitted into. A special rate applied to ‘long-term income support students’ with other persons classified by whether they were independent or not independent. Within the three broad categories, there were various sub-categories based on age, family circumstances and accommodation situation.

Maximum basic rates
The following tables cover all maximum basic rates.

Maximum fortnightly basic rates for persons who were not independent and not long-term income support students

<table>
<thead>
<tr>
<th>Person’s situation</th>
<th>$</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lived at home and aged under 18 years</td>
<td>145.40</td>
</tr>
<tr>
<td>Lived at home and aged 18 years or over</td>
<td>174.80</td>
</tr>
<tr>
<td>Required to live away from home</td>
<td>265.50</td>
</tr>
</tbody>
</table>

Maximum fortnightly basic rates for persons who were independent and not long-term income support students

<table>
<thead>
<tr>
<th>Person’s situation</th>
<th>$</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accommodated independent person aged under 18 years</td>
<td>145.40</td>
</tr>
<tr>
<td>Accommodated independent person aged 18 years or over</td>
<td>174.80</td>
</tr>
<tr>
<td>In supported state care and aged under 18 years</td>
<td>145.40</td>
</tr>
<tr>
<td>In supported state care and aged 18 years and over</td>
<td>174.80</td>
</tr>
<tr>
<td>In unsupported state care and aged 18 years or over</td>
<td>265.50</td>
</tr>
<tr>
<td>Not a member of a couple and had a dependent child</td>
<td>347.80</td>
</tr>
<tr>
<td>Member of a couple and had a dependent child</td>
<td>291.60</td>
</tr>
<tr>
<td>Not an accommodated independent person, not in supported or unsupported state care</td>
<td>265.50</td>
</tr>
<tr>
<td>and with no dependent child</td>
<td></td>
</tr>
</tbody>
</table>

Maximum fortnightly basic rates for long-term income support students

<table>
<thead>
<tr>
<th>Person’s situation</th>
<th>$</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not independent and lived at home</td>
<td>214.60</td>
</tr>
<tr>
<td>Not independent and required to live away from home</td>
<td>322.40</td>
</tr>
<tr>
<td>Accommodated independent person</td>
<td>214.60</td>
</tr>
<tr>
<td>Independent and not an accommodated independent person</td>
<td>322.40</td>
</tr>
</tbody>
</table>
While these rates were as enacted, a special rate for a long-term income support student who was a member of a couple was from the outset paid on an ex-gratia basis in line with previous rates under Austudy. The legislation for the special rate was not passed until 6 July 2000 (refer to Record 24 of 2000). The rates in that record are those that applied from 1 July 2000.

**Adjustment of maximum basic rates**

Maximum basic rates of Youth Allowance were increased automatically on 1 January each year in line with increases in the Consumer Price Index between the previous June quarters. [This was similar to the way in which Youth Training Allowance, and Newstart Allowance and Sickness Allowance for persons aged under 21 years, had previously been adjusted.]

**Supplementary payments**

Generally, Rent Assistance was payable on the same basis as for benefits but there were two differences peculiar to Youth Allowance. In the first place, Rent Assistance was not payable unless the person was either independent, but not an accommodated independent person, or a person who was not independent but was required to live away from home. Secondly, in the case of a person who was not independent and required to live away from home, and who was attending boarding school, for Rent Assistance purposes the boarding school was taken to be the person’s family home during that time, and any fees charged by the boarding school were taken to be payable by the person. [The effect of the latter provision was that such a person was now eligible for Rent Assistance. This provision preserved a Rent Assistance entitlement formerly available under Austudy.]

Remote Area Allowance was available on the same basis as for pensioners and beneficiaries generally.

Pharmaceutical Allowance was paid to persons exempted from the activity test on the grounds that they were temporarily incapacitated due to sickness or accident, and for this reason unable to undertake full-time study or work.

**Personal income test**

The personal income test for Youth Allowance was the same as the general benefit income test with its numerous special features (such as the treatment of different types of leave payments) but with two important exceptions:

- the permissible income limits (free area) at $230 a fortnight were substantially higher for persons undertaking full-time study (this feature was taken directly from Austudy). The general allowance/benefit free area of $60 applied to other recipients; and
- full-time students undertaking training could take advantage of a student income bank.

Subject to the income bank provisions, the general benefit income withdrawal rates of 50 and 70 per cent applied to Youth Allowance. The 50 per cent rate applied to the first $80 of income above the relevant free area and the 70 per cent rate thereafter. The partner income test for a person treated as a member of a couple was as for beneficiaries generally.
**Student income bank**
Youth Allowance recipients who were full-time students had access to an income bank in which they could accumulate unused portions of their free area up to a maximum of $6000. By using any balance to offset future income, the impact of the income test was reduced. [The income bank was established in recognition of the fact that students' earnings tended to be concentrated in vacation periods.]

Starting with a nil balance, a student could build up the balance through receiving a credit each fortnight of the amount by which his/her income was less than the $230 free area. Any income in excess of the free area in the fortnight reduced the balance, but it could not fall below zero. A person had access to the income bank arrangements in any fortnight in which he/she met the full-time study criteria, even if only for a day or less.

**Parental income test**
The parental income test adopted for Youth Allowance was essentially that which had applied under Austudy. However, for the sake of consistency with the Family Allowance parental income test, the general structure and certain features of that test, where they were not inconsistent with the Austudy test, were introduced into the test for Youth Allowance.

The parental income test did not apply to independent persons. It did not apply to a person who was not independent, where at least one of his/her parents: was receiving one of 25 specified Commonwealth income support payments; or a payment under Parts 5 or 6 of the Farm Household Support Act; or Abstudy while also receiving a dependent spouse allowance, or having a partner or being a single parent under the scheme; or was a ‘disadvantaged person’ for purposes of the Health Insurance Act.

The basic permissible income limit (free area) below or at which the parental income test did not apply was $23,400. The following additions applied in respect of children other than the Youth Allowance claimant/recipient (in the case of the first four categories, the child/children had to be wholly or substantially dependent on the parent):

- child aged at least 16 years and under 25 years but otherwise of Youth Allowance age (that is, aged under 21 years, or under 25 years if a full-time student), not independent and not receiving one of 25 specified Commonwealth income support payments—$3700;
- ‘dependent child’ (as defined) in respect of whom a boarding allowance or second home allowance was payable under the Assistance for Isolated Children Scheme (AICS child)—$3700;
- first ‘dependent child’ aged under 16 years other than an AICS child—$1200;
- second and subsequent ‘dependent children’ aged under 16 years other than AICS children—$2500; and
- student aged 16 to 24 years and undertaking full-time study in a course of study or instruction that the Employment Minister had determined to be a tertiary course, who was not independent and was required to live away from home, and whose parent(s) had one or more other children falling into one of the first four categories—$7400. This increase alone was available in respect of such a student, notwithstanding that he/she may also meet the criteria for another child addition.
For purposes of the parental income test free area, a child was not regarded as a dependent child of a parent who was paying maintenance for him/her.

Parental income was reduced by 25 per cent of income above the threshold level with the annual amounts applied fortnightly by dividing by 26.

Parental income was normally assessed as that received in the base financial year, which was the financial year ending on 30 June in the calendar year that came immediately before the calendar year in which the person’s payment period ended. However, certain variations applied. For payment periods ending after 30 September, the financial year following the base tax year was used if parental income in that financial year exceeded by more than 25 per cent parental income in the base tax year and the permissible income limits. Where parental income for the financial year following the base financial year was (or was estimated to be) substantially less than it was in the base financial year, and was likely to continue to be so for two years, and where this would have resulted in no, or a reduced, allowance being paid, the Secretary was required to accept a request from a person that the financial year following the base financial year be used. In these circumstances, the person had to agree to his/her rate being recalculated in the event that the actual parental income exceeded any estimate.

The parental income test was based on the combined taxable income of the parents (the latest formal assessment or an estimate accepted by the Secretary) in the relevant financial year adjusted, in the same way as for Family Allowance, for employer-provided fringe benefits and non-taxable foreign income. It was also adjusted for any ‘net passive business losses’. In addition, parental income was adjusted up or down to take account of any maintenance received or paid during the financial year in respect of a child outside the parental care, or any received from or paid to a former partner.

The adjustment for net passive business losses was similar in principle to the adding back to assessable income of net rental property losses (negative gearing) in the Family Allowance income test but was a broader concept. The ‘net passive business loss’ for a financial year was defined as the difference between the total loss or outgoings that were or would be tax deductible because they were necessarily incurred in relation to a ‘passive business’. A passive business was one with which the person was usually engaged for less than 17.5 hours in a week. It included the carrying on of primary production, the provision of professional services and the earning of income as a landlord, but excluded employment whether or not remunerated by salary or wages.

**Family assets test**

The family assets test was broadly the standard benefit assets test. It contained a series of ‘sudden-death’ cut-offs—a person either had a nil entitlement or his/her entitlement was unaffected according to whether his/her assets (or those of particular family members) were above or below/equal to the limits.

Only two classes of person were exempted from the family assets test: an independent person whose partner was receiving one of 25 specified Commonwealth income support payments or a payment under Parts 5 or 6 of the Farm Household Support Act; and a person who was not independent, but who was exempt from the parental income test because at least one of his/her parent(s) was receiving a payment from the Commonwealth or under the Farm Household Support Act as above, or was on Abstudy while receiving a dependent spouse allowance, or having a partner or being a single parent, under one of the schemes.
The assets test limits were as follows: single, independent home owner $125,750; single, independent non-home owner $215,750; independent home owner member of a couple $178,500; independent non-home owner member of a couple $268,500; and non-independent person $407,250.

The non-independent limit was to be increased on 1 January each year in accordance with movements in the Consumer Price Index, and the other limits on 1 July. To provide for the possible indexation of the four limits scheduled for 1 July 1998 (when Youth Allowance commenced), the Secretary was granted the power to increase them. This power was to apply only until 31 December 1998 and any determination was to be a disallowable instrument. In the event, no determination under the provision was made.

Assets included the assets of a partner in the case of an independent person. For persons who were not independent, the value of each family member’s assets was included—for this reason, the asset limit was considerably higher for non-independent persons.

The definition of ‘family member’ for assets test purposes was in line with that formerly applied to Austudy and was different from the general definition in the Act. A family member was either a parent of the person, or a child of the parent as defined in the first category of child additions in the parental income test, but not a partner (as regards partners, refer to Record 4 of 1998).

Family actual means test

A family actual means test applied to people who were not independent. A person assessed under both the parental income test and the family actual means test received the lower rate (if any) of Youth Allowance that resulted.

The details of the test were to be provided for in regulations. The legislation merely stated that the various parameters of the test as they applied to an individual were to be worked out as specified in the regulations. The test was very similar in form to the parental income test, the main difference being that it sought to measure actual means rather than conventional taxable income. Accordingly, it took account in some depth of the spending and savings of all assessable family members in the financial year. The definition of family member for this purpose was the same as under the family assets test. Aspects such as identifying the appropriate year, the free area, the 25 per cent taper above the free area, and conversion of an annual amount to a fortnightly one were all as for the parental income test.

The intention was that the regulations would in due course be replaced by substantive legislation. Such legislation was eventually enacted and came into force from 6 July 2000. The full details of the provisions as laid out in that legislation are specified in Record 19 of 2000. These were not identical to those which applied by regulation from the commencement of Youth Allowance.

[This means test had been used to assess eligibility for Austudy since 1996. It was designed to take account of the perception that taxable income (given the opportunities of some families to minimise it) was not always an accurate measure of a family’s ability to provide for their children.]
Other provisions

These provisions were the same or very similar to those applying to benefits generally and have not been spelt out in detail.

Bereavement Payments following the death of a partner were as those for other benefits.

The provision enabling a person to receive part of his/her entitlement in advance was extended to Youth Allowance. In addition, the Secretary was given discretion to exempt recipients from the condition (applying to other beneficiaries) that the person had to have been receiving a specified income support payment for a continuous period of three months immediately before his/her application for an advance. Any determination was a disallowable instrument. [This concession was particularly designed to assist students to cover the costs of their study.]

The liquid assets test waiting period was generally the same as for Newstart Allowance (and the now superseded Youth Training Allowance) but contained an exemption not applicable in their case. A Youth Allowance claimant who was undertaking a tertiary course of education had amounts necessary to cover his/her reasonable expenses incurred, or likely to be incurred, which were directly related to the course, exempted from the definition of ‘liquid assets’ for purposes of the waiting period. These expenses were spelt out but the Secretary could approve ones outside those specified. [The waiting period also incorporated the amendment regarding lump sums covered by Record 8 of 1998.]

The income maintenance period applied to Youth Allowance but had been enacted under previous legislation. The newly arrived residents’ waiting period applied as for Newstart Allowance and previously Youth Training Allowance. The exclusion period applying to people who moved to an area of lower employment prospects was the same as for Newstart Allowance and previously Youth Training Allowance. A seasonal work preclusion period being introduced (refer to Record 21 of 1998) also applied.

Penalties for activity test or administrative breaches were as for Newstart Allowance and previously Youth Training Allowance. In addition, the new legislation exempted a person from an activity test or administrative breach penalty where he/she participated in any of the activities (other than undertaking suitable paid work) which the Secretary could specify in a written notice as a requirement for satisfying the activity test.

Youth Allowance for people aged under 18 years and not independent was usually paid to the parent or parents rather than to the young person. However, the Secretary was authorised to pay it directly to the person or to another person on the parent’s behalf. [The arrangement was consistent with that which had applied to similar age Austudy recipients.]

Other claims and general administrative provisions were identical or very similar to the Newstart Allowance provisions. In the case of the more generic provisions, those for Youth Allowance mirrored similar provisions throughout the Act.

Implications of Youth Allowance changes for Family Allowance

The introduction of Youth Allowance had implications for the payment of Family Allowance. From the same date, parents of secondary students aged 16 to 18 years were limited to the minimum rate of Family Allowance (refer to Record 10 of 1998) and Youth Allowance replaced Family Allowance for some of these students. However, this did not happen in every case.
The general conditions under which a 16 to 18 year-old could receive Family Allowance were unchanged: he/she still had to be a full-time student with personal income less than $6919 (subject to indexation) for the financial year in which he/she was studying. Similarly, he/she could attract Family Allowance only until the end of the calendar year in which he/she turned 18 years of age, or when he/she ceased secondary study, whichever occurred first. Also a parental income test and family assets test applied.

Youth Allowance and Family Allowance could not be paid in respect of the same child. However, a child qualified for Youth Allowance was not precluded from instead attracting Family Allowance. While it was anticipated that most families would be better off if eligible students claimed Youth Allowance rather than their parents claiming Family Allowance, this was not invariably the case. For example, there was no family actual means test for Family Allowance and a student who was ineligible for Youth Allowance, or had his/her rate of Youth Allowance reduced below the minimum rate of Family Allowance following the application of that test, was better off if his/her parent(s) claimed Family Allowance.

Decisions on the appropriate payment were facilitated by provisions, under both the Youth Allowance and Family Allowance legislation, permitting a claim for one of the allowances to be treated as a claim for the other allowance where the Secretary considered that it was reasonable to do so. Also, as noted, Youth Allowance for non-independent persons aged under 18 years was usually paid to a parent rather than the student child.

Family Allowance had previously been payable to ex-students during the education waiting period for Newstart Allowance and Sickness Allowance. There was no such waiting period for Youth Allowance.

**Definitions**

**Independent**

A person was regarded as independent where: he/she was, or had been, a member of a couple; he/she had a natural or adoptive child who was wholly dependent on him/her or his/her partner or had previously had such a child; he/she was 25 years of age or more; both his/her parents were dead, irrespective of whether or not the person was dependent, or was last dependent, on someone other than his/her parents; his/her parent or parents could not exercise their responsibilities; he/she was a refugee; he/she was in state care; it was considered unreasonable for the person to live at home; he/she was self-supporting; or he/she was regarded as disadvantaged. The definition of a number of these sub-categories follows. Definitions of ‘refugee’ and ‘in state care’ have not been included.

**Parents unable to exercise responsibilities**

A parent (or parents) was regarded as unable to exercise his/her responsibilities where he/she was serving a prison sentence; was ‘mentally handicapped’ and likely to remain so for an indefinite period; was living in a nursing home and likely to remain there for an indefinite period; or was missing, irrespective of whether the person was dependent, or was last dependent, on someone other than the parent(s).
Unreasonable to live at home

It was taken as unreasonable for a person to live at home where he/she:

- could not live at the home of one or both parents because of extreme family breakdown or other similar exceptional circumstances; or it would be unreasonable to expect the person to live at home on the grounds that there would be a serious risk to his/her wellbeing due to violence, sexual abuse or other similar unreasonable circumstances; or the parents or parent were unable to provide him/her with a suitable home because they lacked stable accommodation;
- was not receiving continuous support, whether directly or indirectly and whether financial or otherwise, from a parent or long-term guardian; and
- was not receiving, on a continuing basis, any payment in the nature of income support (other than a social security benefit) from the Commonwealth, a state or territory.

Self-supporting person

A person was regarded as self-supporting if he/she had supported himself/herself through paid work consisting of: full-time employment of at least 30 hours a week for at least 18 months during the preceding two years; part-time employment of at least 15 hours a week for at least two years since he/she last left secondary school; or a period or periods of employment over 18 months since he/she had left secondary school, earning him/her at least the equivalent of 75 per cent of the maximum Commonwealth training award payment applicable when the employment commenced. Work performed outside Australia was not counted for this purpose.

Disadvantaged person

To qualify as independent on the grounds of disadvantage, a person had to be aged at least 18 years old; have been in full-time employment for at least 30 hours a week for a minimum of 12 months (or periods that totalled 12 months); not live in the parental home; in the opinion of the Secretary be specially disadvantaged in respect of education or employment; and not be receiving financial support, whether directly or indirectly, from a parent or long-term guardian.

Payment rates definitions

The following definitions were important for determining the rate of payment a person received.

Long-term income support student

A person was classified as a ‘long-term income support student’ if he/she was aged at least 21 years; was not a member of a couple; did not have a dependent child; was undertaking full-time study in a course of education that he/she had commenced after turning 21 years of age; and had, for at least 26 of the previous 39 weeks that ended when he/she commenced to undertake the full-time study, been receiving Newstart Allowance, Sickness Allowance or Youth Allowance (other than Youth Allowance while undertaking full-time study), Special Benefit, Disability Support Pension, Wife Pension, Carer Payment, Bereavement Allowance, Disability Wage Supplement, Parenting Payment or Sole Parent Pension. A person also qualified as a long-term income support student
where he/she was aged at least 21 years and not a member of a couple, and if English was not his/her first language and he/she was undertaking an approved course of English. A long-term income support student received a special higher basic rate of payment to ease the transition to the allowance.

Living at home
For rate calculation and other purposes, a person was treated as ‘living at home’ if he/she was not independent or required to live away from home. Such a person attracted a lower basic rate of payment, was not entitled to Rent Assistance, and generally if aged under 18 years had his/her payment directed to a parent.

Required to live away from home
A person was taken to be ‘required to live away from home’ where he/she was not independent and was not living in the parental home and the Secretary determined either: that he/she needed to live away from home for the purpose of education, training, job search or other activities with the aim of preparing him/her for employment; or that his/her likelihood of obtaining employment would be significantly increased if he/she were to live away from home. In making a determination, the Secretary could have regard to any advice provided by a case manager to whom the person had been referred under the Employment Services Act. Where the determination related to the increased likelihood of the person obtaining employment, the Secretary was required to have regard to the overall employment prospects for young people in the areas where the person’s home was situated and in the area where he/she was living, and to other matters which would affect the likelihood of the person obtaining employment in those areas. A person required to live away from home received a higher basic rate of payment and could attract Rent Assistance.

Accommodated independent person
A person was so classified if he/she was independent; lived in the parental home; was not, and had never been, a member of a couple; did not have, or had never had, a natural or adopted child who was wholly or substantially dependent on him/her or his/her partner; and had not, while under 25 years of age, qualified for the independent living allowance in specified circumstances under the previous Austudy scheme. An ‘accommodated independent person’, despite being classified as independent, was entitled only to the lower ‘at home’ rate of payment and was not eligible for Rent Assistance.
DEFINITION OF ‘UNDERTAKING FULL-TIME STUDY’

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>In Act No. 18, in section 3 (as set out in items 1, 3 and 6 of Schedule 1)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>1 July 1998</td>
</tr>
<tr>
<td>Date of application</td>
<td>1 July 1998</td>
</tr>
<tr>
<td>Payments affected</td>
<td>General definition but relevant mainly to Youth Allowance</td>
</tr>
</tbody>
</table>

A definition of ‘undertaking full-time study’ was inserted into, and applied throughout, the Act. It was based largely on the rules that had applied under the Austudy scheme and was mainly relevant to Youth Allowance. The definition was a long one to ensure that it was flexible enough to accommodate the full variety of education courses.

In summary, a person had to be enrolled, or intend to enrol, in an ‘approved course of education’ at an ‘educational institution’ and be undertaking, or intending to undertake, at least three-quarters of the ‘normal amount of full-time study’ required by the course in the particular study period in which he/she was enrolled or intended to enrol, and be making ‘satisfactory progress’ in the course. The term ‘study’ included vocational training.

The term ‘normal amount of full-time study’ was the amount determined by an institution for purposes of the Higher Education Contribution Scheme or, where this did not apply, the amount set out by the institution as the typical amount required for a particular course, or it could be an amount equivalent to the average amount required over the duration of the course in order to complete it in minimum time. Otherwise, it was taken to be an average of 20 contact hours.

In determining what was ‘satisfactory progress’, the legislation stated that the Secretary was to have regard to the guidelines. These were to be determined by the Minister, could be revoked or varied by him/her, and were a disallowable instrument.
INTRODUCTION OF AUSTUDY PAYMENT

Location in Act

As specified in section 3, changes are covered in schedules. All the main changes related to the introduction of Austudy Payment other than the automatic indexation provisions are covered in Schedule 1 of Act No. 45. Other schedules under Act No. 45 also made changes to Austudy Payment, some of which amended changes made in Schedule 1. These changes were in points of detail rather than inserting completely new provisions. In these cases only the final change has been included as it commenced on the same day as the change it overrode. In Act No. 45, Schedule 3 among other things includes refinements to Austudy Payment mainly to ensure that amendments made in Act No. 93 of 1998 (dealt with in later records) flowed through to Youth Allowance; Schedule 7 deals with automatic indexation changes; Schedule 9 contains consequential amendments to a range of social security payments, some of which were related to the establishment of Austudy Payment; Schedule 10 contains transitional and savings provisions related to the introduction of Youth Allowance and Austudy Payment, and related changes (these were dealt with under the introductory note to Acts No. 18 and No. 45).

Date of commencement
Apart from some minor technicalities, all changes commenced from 1 July 1998.

Date of application
As for date of commencement.

Payments affected
Austudy Payment

A new payment, Austudy Payment, was introduced replacing Austudy living allowance under the Student and Youth Assistance Act. It became the main provider of income support for full-time students (or students unable to study full-time for legitimate reasons) who were aged 25 years and over. Austudy Payment was taxable.

Income support for full-time students aged 25 years and over was transferred to the Social Security Act as a rationalisation measure—it was consistent with the provision of assistance to younger students through Youth Allowance and was also intended to reduce complexity and duplication. Generally, the new payment incorporated many of the rules which had applied to Austudy living allowance. However, in a number of cases the rules were simplified and modified to bring the new payment into line with the structure of benefits generally in the Social Security Act. Many features of Austudy Payment and Youth Allowance were similar. Some differences between Austudy Payment and the previous Austudy living allowance and between Austudy Payment and Youth Allowance are described below.
Differences between Austudy Payment and Austudy living allowance

Austudy Payment differed from Austudy living allowance in that:

- entitlement to the payment was on a daily basis and paid fortnightly;
- whether a person met the study requirements for eligibility was assessed in the form of an activity test;
- activity test and administrative breach penalties were as for Youth Allowance, Newstart Allowance and the previous Youth Training Allowance;
- certain entitlements which had not been available to Austudy living allowance recipients (for example, Remote Area Allowance, Bereavement Payments and advances of payment) were extended to Austudy Payment recipients; and
- the liquid assets test and newly arrived residents’ waiting periods applied.

Differences between Austudy Payment and Youth Allowance

Austudy Payment differed from Youth Allowance in a number of ways, many of the differences reflecting the fact that Austudy Payment was supporting students aged at least 25 years. Differences included that:

- Austudy Payment was always paid directly to the student, never to the parent(s);
- the concept of independence had no place in the Austudy Payment rules;
- payment of the away from home rate was not restricted to recipients of Austudy Payment required to live away from home;
- there was no parental income test or family actual means test and the assets test did not take account of family assets; and
- Rent Assistance was not payable to Austudy Payment recipients (this was consistent with the previous arrangements under Austudy living allowance for persons aged 25 years and over).

Naturally, since Austudy Payment was made solely to students, employment related exclusions (including the seasonal work preclusion period) were not relevant and did not apply.

Qualifying conditions

A person qualified for Austudy Payment if he/she: met the age requirements; met the residency conditions; was in Australia (subject to exceptions); satisfied the activity test by complying with the specified study requirements; and was not excluded from eligibility under the personal income and assets tests.

Age

A person had to be aged at least 25 years in order to qualify for Austudy Payment. Some full-time students in that age group, namely, those who had both commenced a full-time course of education and who were receiving Youth Allowance before they turned 25 years, continued to receive the allowance rather than transfer to Austudy Payment.

Residency conditions

Residency conditions for Austudy Payment were generally similar to those for Youth Allowance and consistent with those that had applied under Austudy living
allowance. To qualify, a person had to be an Australian resident and normally had to be in Australia. A person could qualify while overseas where he/she was ‘undertaking qualifying study’ (see under ‘activity test’) and was absent for any period required for the study, or for up to 26 weeks for any other purpose. A person who returned to Australia after more than 13 weeks overseas and then left again within 13 weeks was treated as not in Australia during the period of his/her return.

**Activity test**

In general, a person complied with the activity test if he/she satisfied the Secretary that he/she was ‘undertaking qualifying study’. The main qualifying conditions flowed from the definition of this term. [The definition and the associated sub-definitions were lengthy, reflecting the need for a flexible approach, given that a person could be required to enrol at an educational institution several times and that a variety of enrolment situations could arise.]

**Undertaking qualifying study**

A person was regarded as ‘undertaking qualifying study’ where: he/she was enrolled in a course of education at an education institution, or had been enrolled in the course and satisfied the Secretary that he/she intended, and had (since no longer being enrolled) always intended, to re-enrol in the course, or enrol in another course at the same or a different institution, when re-enrolments or enrolments were next accepted; the relevant course was an ‘approved course of education or study’; he/she was a ‘full-time student’ or a ‘concessional study-load student’ in respect of that course; and he/she satisfied the ‘progress rules’. Courses could be at the secondary or tertiary level. There was no provision as such for a person undertaking part-time study to qualify for Austudy Payment, but the concession study loads in practice permitted part-time study for persons who met the eligibility criteria.

**Full-time student**

A full-time student in respect of a course was a person enrolled, or who intended to enrol, in a course, and was undertaking, or intended to undertake, at least three-quarters of the ‘normal amount of full-time study’ required for the course or relevant period of the course.

**Concessional study-load student**

The legislation recognised two classes of ‘concessional study-load student’, namely those with a 25 per cent and those with a 66 per cent load. They represented students undertaking, or intending to undertake, respectively at least one-quarter but less than three-quarters of the normal amount of full-time study in the course, and at least two-thirds but less than three-quarters of the normal amount.

To qualify in the 25 per cent category, an officer of the Commonwealth Rehabilitation Service, a medical practitioner specialising in psychiatry, or a psychologist registered with the Australian Psychological Society had to state in writing respectively that the person had a substantial physical disability, or a substantial psychiatric disability, or was intellectually disabled and, in the case of each contingency, the relevant professional had to state that because of his/her disability the person could not successfully undertake the normal amount of full-time study required in the course.
A 66 per cent concessionary study-load student was a person who could not undertake the course as a full-time student because of an educational institution’s usual requirements or a specific direction from the academic registrar or equivalent officer; or because the academic registrar or equivalent officer recommended that the person undertake less than the normal amount of full-time study for specified academic or vocational reasons for a period not exceeding half an academic year.

The ‘progress rules’ to be satisfied were very extensively spelt out (over more than six pages of legislation) and varied for different types of student (including for concessional-load students) or course. Allowances were made in the rules for persons not making the required progress due to illness or circumstances beyond their control.

A person could not be taken to satisfy the activity test where he/she: was employed on a full-time basis as an apprentice or trainee under an industrial instrument and had a training agreement of any kind with a state or territory training authority; or had completed a course for a degree of Master or Doctor at an educational institution (including an equivalent overseas qualification). [The first preclusion was the same as for Youth Allowance. The second had previously applied under Austudy and reflected the fact that Austudy Payment was intended only to assist students to complete their secondary and initial tertiary education.]

**Basic rates of payment and supplements**

Maximum basic rates of Austudy Payment are set out in the following table. As for Youth Allowance, long-term income support students received a higher basic rate to ease the transition to the payment.

<table>
<thead>
<tr>
<th>Person’s situation</th>
<th>$</th>
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</thead>
<tbody>
<tr>
<td>Not long-term income support student:</td>
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<tr>
<td>no dependent child</td>
<td>265.50</td>
</tr>
<tr>
<td>has dependent child and not member of a couple</td>
<td>347.80</td>
</tr>
<tr>
<td>has dependent child and is member of a couple</td>
<td>291.60</td>
</tr>
<tr>
<td>Long-term income support student</td>
<td>322.40</td>
</tr>
</tbody>
</table>

It should be noted that, while these rates were enacted, from the outset special rates were paid for an Austudy Payment long-term income support recipient who was a member of a couple, and for a sole parent recipient with certain children receiving Youth Allowance along the lines of the equivalent rates under the previous Austudy provisions. Legislation introducing the special rates was not passed until 6 July 2000 (refer to Record 24 of 2000), with the special rates paid on an ex-gratia basis in the meantime. All rates shown in the year 2000 record are those applying from 1 July 2000.

The definition of ‘long-term income support student’ was similar but not identical to that for Youth Allowance. A person was so categorised where he/she was: not a member of a couple, did not have a dependent child, was undertaking full-time study or was a concessionary-load student in a course of education that he/she had commenced after turning 21 years of age, and had, for at least 26 of the previous 39 weeks, been receiving a specified payment; or was not a member of a couple, did not have a dependent child, English was not his/her first language
and he/she was undertaking an approved course of English. The specified payments were Newstart Allowance, Sickness Allowance, Special Benefit, Disability Support Pension, Wife Pension, Carer Payment, Bereavement Allowance, Disability Wage Supplement, Parenting Payment and Sole Parent Pension.

Maximum basic rates of Austudy Payment were indexed annually on the same basis as Youth Allowance (refer to Record 1 of 1998).

Pharmaceutical Allowance was available only to persons aged at least 60 years who had been receiving a pension, benefit or specified veterans’ payment continuously for at least nine months. Remote Area Allowance was paid as for pensions and benefits generally.

**Personal income test**

The personal income test was essentially the same as that for Youth Allowance. The sole difference was that the higher permissible income limit (free area) of $230 a fortnight, which applied to recipients of Youth Allowance undertaking full-time study, was the only one applicable to Austudy Payment. Austudy Payment recipients had access to a student income bank on exactly the same basis as Youth Allowance recipients.

**Personal assets test**

The assets test was broadly the general benefit assets test, including that for Youth Allowance, except that the assets of family members (other than partners) were not taken into account. The test did not apply to a person if his/her partner was receiving one of 17 specified Commonwealth income support payments or a payment under Parts 5 or 6 of the Farm Household Support Act. The assets test limits were identical to those applying to Youth Allowance for independent persons and in similar fashion were to be increased on 1 July each year in accordance with movements in the Consumer Price Index. The Secretary was given the same temporary powers under a disallowable instrument to increase them, if required, but no determination under the provision was made.

**Other provisions**

Bereavement Payments on the death of a partner were as for benefits generally. The provision for advance payments, including the special concession in it, was extended to Austudy Payment on exactly the same basis as for Youth Allowance (refer to Record 1 of 1998).

The liquid assets test waiting period applied to Austudy Payment in exactly the same way as to Youth Allowance (including the exemption for reasonable education expenses) but with one additional exemption. This was available to persons who, at any time in the 12 months before qualifying for or claiming the payment, had served a liquid assets test waiting period under the Social Security Act or Student Assistance Act. The newly arrived residents’ waiting period was as generally applied to benefits. No other waiting periods applied to Austudy Payment.

Penalties for activity test and administrative breaches were generally as for Youth Allowance. The general claiming and administrative provisions were as for Youth Allowance and Newstart Allowance.
SPECIAL DEFINITION OF MEMBER OF A COUPLE IN CERTAIN CIRCUMSTANCES

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>In Act No. 45, this was section 3 (as set out in item 2 of Schedule 2). This amendment superseded that in amending Act No. 18 at section 4 (as set out in item 3 of Schedule 2)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>Commenced on 1 July 1998, immediately after Act 18</td>
</tr>
<tr>
<td>Date of application</td>
<td>As for date of commencement</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Age Pension; Disability Support Pension; Wife Pension; Parenting Payment (single); Carer Payment; benefits except Parenting Payment (partnered). The compensation recovery provisions applied to pensions except Widow B Pension and Bereavement Allowance, and to benefits</td>
</tr>
</tbody>
</table>

The general definition of ‘member of a couple’ in the Act was modified to exclude, for purposes of the income and assets tests on most pensions and benefits, the liquid assets test on payments to which it applied and provisions related to these tests, a person who had claimed or was receiving Youth Allowance and was not independent, or had a partner receiving Youth Allowance who was not independent.

The provisions affected were: the income and assets tests on Age Pension, Disability Support Pension and Wife Pension, Parenting Payment (single), Carer Payment, and benefits except Parenting Payment (partnered); the Special Benefit assets test; the liquid assets tests on Newstart Allowance, Sickness Allowance, Youth Allowance and Austudy Payment; and the compensation recovery provisions which applied to most pensions and to benefits. The change applied only to the personal income and family assets tests for Youth Allowance.

[This was essentially a beneficial measure enacted with the introduction of Youth Allowance. The rationale was that a Youth Allowance recipient who was not independent was subject to the parental income and assets tests and therefore should not also be subject to his/her partner’s income and assets tests. As a matter of consistency, it was felt that, if the partner’s income and assets were not to be taken into account for the Youth Allowance recipient, nor should those of the Youth Allowance recipient be taken into account for the partner. For other provisions, such as maximum rates, and eligibility for Rent Assistance and Pharmaceutical Allowance, the usual definition of member of a couple applied.]
PENSIONER EDUCATION SUPPLEMENT MOVED TO SOCIAL SECURITY PORTFOLIO

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>In Act No. 45, section 3, with all main changes set out in Schedule 4. A minor amendment is contained in Schedule 9</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>1 July 1998</td>
</tr>
<tr>
<td>Date of application</td>
<td>1 July 1998</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Pensioner Education Supplement</td>
</tr>
</tbody>
</table>

Pensioner Education Supplement, previously available as part of the Austudy legislation, was transferred from the Student and Youth Assistance Act to the Social Security Act and became a new payment under that Act. It incorporated most of the previous Austudy rules but these were simplified and modified to bring the payment into line with social security payments generally.

To qualify for the supplement, a person had to: be aged at least 16 years, or independent and have reached the minimum school leaving age for the state or territory in which he/she lived; meet the residency conditions (these were identical to those for Austudy Payment (refer to Record 3 of 1998)); be undertaking ‘qualifying study’; and be receiving a specified income support payment. The supplement was not payable to a person who was in gaol or undergoing psychiatric confinement because he/she had been charged with committing an offence. [This continued a rule from the previous Austudy scheme.]

The rate of supplement was $60 a fortnight and was not taxable. There was no provision for automatic adjustment of the supplement.

To be eligible for the supplement, a person had to be in receipt of one of the following payments (these were unchanged from the previous scheme): Disability Support Pension, Wife Pension (where the recipient was a partner of a disability support pensioner), Carer Payment, Parenting Payment (single), Widow B Pension, Widow Allowance, Special Benefit (where paid to a sole parent), Rehabilitation Allowance or a specified veterans’ payment.

No income or assets test applied—in the vast majority of cases, a recipient would have been subject to an income and assets test on the income support payment which enabled him/her to attract the supplement. Pensioner Education Supplement was payable to recipients of these income support payments as they were not eligible for Austudy Payment.

Persons claiming the supplement were subject to the newly arrived residents’ waiting period. General administrative provisions were as for social security payments generally.

The criteria of independence were the same as for Pensioner Education Supplement under the previous Austudy scheme. They were identical to those for Youth Allowance (refer to Record 1 of 1998) except that: four Youth Allowance independence categories (those relating to whether a person ‘was or had been a member of a couple’, ‘was 25 years of age or more’, ‘was self-supporting’ or ‘was disadvantaged’) did not apply; and under the criterion of independence ‘parents cannot exercise responsibilities’, the Youth Allowance criterion relating to a
parent(s) ‘serving a prison sentence’ was replaced by one that the sentence had to be for at least 10 years.

The very lengthy definition of ‘undertaking qualifying study’ and all its component parts was virtually identical to that for Austudy Payment (refer to Record 3 of 1998). One difference was that compliance with this condition was not assessed as part of an activity test. Secondly, there were two additional circumstances in which a person could qualify as a ‘25 per cent concessional study-load student’, namely, where: he/she was receiving a Disability Support Pension, Carer Payment, Parenting Payment (single) or a specified veterans’ payment; or where he/she had a dependent child aged under 16 years and was receiving a Widow B Pension, a Widow Allowance, Special Benefit as a sole parent or a specified veterans’ payment. [These categories had no relevance to Austudy Payment as it was an income support payment.]

### STUDENT LOAN SCHEME MOVED TO SOCIAL SECURITY PORTFOLIO

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>In Act No. 45, in section 3 (as set out in Schedule 5)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>1 July 1998</td>
</tr>
<tr>
<td>Date of application</td>
<td>1 July 1998</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Youth Allowance; Austudy Payment; Pensioner Education Supplement. (The scheme was also available to people who would have been eligible for Youth Allowance except for the operation of the parental income test.)</td>
</tr>
</tbody>
</table>

Provision was made for the Student Financial Supplement Scheme to be established under the Social Security Act. It was a loan scheme and, for the vast majority of students, replaced the existing Student Financial Supplement Scheme operating under the Student and Youth Assistance Act. The main scheme was transferred to the Social Security portfolio because the student population using the scheme had by and large moved to that portfolio with the introduction of Youth Allowance, Austudy Payment and the accompanying changes. However, the original scheme was not abolished but continued to assist Abstudy recipients under the renamed Student Assistance Act.

The scheme gave tertiary students the option of borrowing money to help cover their living expenses while studying. The Social Security Act did not set out the conditions under which the scheme was to operate. Instead it authorised the Minister to provide for these conditions in a disallowable instrument. The scheme was fully incorporated into the Social Security Act from 6 July 2000 (refer to Record 18 of 2000).

The supplement was to be paid in instalments by a participating financial corporation (that is, one acting under an agreement with the Commonwealth). The recipient had to enter into a contract with the corporation, which would among other things cover the arrangements for repaying the loan. The supplement was to be available to persons to whom Youth Allowance, Austudy Payment or the Pensioner Education Supplement were payable, or to whom Youth Allowance would have been payable except for the operation of the parental income test.
The main elements of the new scheme were to be the same as for its predecessor and the rights and obligations of students were to be preserved in the transition. However, it was possible for a person’s entitlement to change between schemes as his/her payment of Youth Allowance or Austudy Payment could alter under the new payment structure for young people.

The legislation listed both what the scheme had to provide and other matters that could be included. The second list was not intended in any way to limit the arrangements that could be introduced under the instrument. The Minister was also empowered from time to time to vary aspects of, or revoke, the scheme.

The legislation specified that the scheme must:

- provide for the reduction of the rate of Youth Allowance, Austudy Payment or Pensioner Education Supplement payable to a student who received a financial supplement;
- contain provisions under which the amount of the supplement for which the student was eligible depended on the total social security payment that the student opted to receive;
- allow the student to choose to repay some or all of the social security payment received, or to receive a lower rate of payment, in order to receive a higher amount of supplement;
- provide that the student was not liable to pay interest to the financial corporation in respect of the loan, but must provide for payment by the Commonwealth, without cost to the student, of a subsidy to the financial corporation that included an amount in lieu of interest;
- provide for the amount of supplement that had to be repaid under a contract to be indexed on 1 June each year;
- provide that the amount by which the supplement was increased by indexation was to be a debt by the student to the Commonwealth and not to the financial corporation;
- entitle, but not require, a student to make early repayments of the loan during the period of the contract. A discount was to be provided for any repayments before the end of that period; and
- provide that if the supplement was paid to a student and not repaid in full before the end of the period of the contract, the obligation to pay the outstanding amount was to be assigned to the Commonwealth, and the indexed amount was to be repayable to the Commonwealth through the taxation system when the student’s income reached a specified level.

The legislation specified a number of matters which the disallowable instrument might cover. These included: the tertiary students who were to be eligible for the supplement; the circumstances in which the relevant social security payment was to be taken to be payable and the rate; the amount of supplement and its impact on the student’s rate of social security payment; the obligations of supplement recipients; the circumstances in which payments of supplement were to stop; the repayment of supplement during the contract period; the recovery of outstanding payments of supplement after the end of the contract period; transitional arrangements related to the transfer from the other scheme; and a range of administrative aspects.
7

FARES ALLOWANCE MOVED TO SOCIAL SECURITY PORTFOLIO

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>In Act No. 45, in section 3 (as set out in Schedule 6)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>1 July 1998</td>
</tr>
<tr>
<td>Date of application</td>
<td>1 July 1998</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Fares Allowance</td>
</tr>
</tbody>
</table>

Fares Allowance, previously covered under the Austudy regulations, was moved to the Social Security portfolio for all students except those receiving Abstudy. Under the amending legislation, the Social Security Act authorised the Minister to establish a disallowable instrument that would enable Fares Allowance to be paid to certain tertiary students. The Minister could vary or revoke the instrument from time to time. The allowance was fully incorporated into the Social Security Act from 6 July 2000 (refer to Record 17 of 2000).

Fares Allowance was a payment to assist with the travel costs incurred by certain tertiary students in undertaking their study. It was an occasional rather than a regular payment made up to a certain number of times during an academic year. It was moved to the social security portfolio as the majority of the student population at whom the allowance was targeted were covered by that portfolio following the introduction of Youth Allowance and Austudy Payment and the accompanying changes. The intention was that, while the structure of the allowance would be different following the move, students’ entitlements under the allowance would be essentially the same as under the Austudy regulations.

The legislation, without limiting the instrument in any way, set out the matters which the instrument could deal with. These included the tertiary students who were to be eligible for the allowance; the kinds of journeys for which, and the circumstances in which, the allowance could be paid; the amount of allowance or how the amount was to be calculated; the obligations of students receiving the allowance; and various administrative aspects.

8

EXTENSION OF LIQUID ASSETS TEST WAITING PERIOD CONCESSION

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>In Act No. 45, in section 3 (as set out in items 19 and 20 of Schedule 9)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>1 July 1998</td>
</tr>
<tr>
<td>Date of application</td>
<td>1 July 1998</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Newstart Allowance; Sickness Allowance; Youth Allowance; Austudy Payment</td>
</tr>
</tbody>
</table>

The provision allowing, for purposes of the liquid assets waiting period applying to certain benefits, a deduction from liquid assets of the amount of a voluntary one-off lump-sum payment of all or part of a debt made after a person became unemployed or incapacitated for work, provided that the debt was not related to the person’s family home or any other residential property in which the person was holding or had held any sole or joint right or interest, was extended to a person who became incapacitated for study.
### Changes to Sickness Allowance

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>In Act No. 45, in section 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>First change</td>
<td>items 80, 81, 82, 83, 88, 92, 93, 94 and 95 of Schedule 9</td>
</tr>
<tr>
<td>Second change</td>
<td>item 91 of Schedule 9</td>
</tr>
</tbody>
</table>

| Date of commencement     | First change: 1 July 1998    |
| Date of application       | Second change: 17 June 1998  |

Amendments to Sickness Allowance:

- clarified that all allowance provisions applied when the qualifying incapacity was in respect of full-time education as well as work. Previously, the basic qualifications had specified that the person must be incapacitated for work or full-time education but all other references in the provisions had referred only to incapacity for work; and

- changed the liquid assets test waiting period from a fixed four weeks to one which could vary between one and 13 weeks. [This brought the provision into line with that for Newstart Allowance, Youth Allowance and Austudy Payment. The formula for calculating the waiting period is given at Record 31 of 1996.]

### Changes to Family Allowance

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>First change: in Act No. 45, in section 3 as set at item 104 of Schedule 9</th>
</tr>
</thead>
<tbody>
<tr>
<td>Second change</td>
<td>in Act No. 45, in section 3 as set at item 105 of Schedule 9</td>
</tr>
</tbody>
</table>

| Date of commencement     | 1 July 1998 |
| Date of application       | 1 July 1998 |

In amendments to Family Allowance:

- children aged 16 to 18 years attracting the allowance were limited to the minimum rate of $23.50 a fortnight; and

- a recipient of Youth Allowance aged 16 to 17 years was counted as a child for purposes of determining the additions to the allowance permissible income limits (free area) for each child after the first in the parental income test. [Previously, a 16 to 17 year-old receiving a prescribed education payment had been counted in this way but Youth Allowance was the only income support payment to which the provision was applied.]
**11**

**COVERAGE OF CHILD DISABILITY ALLOWANCE EXTENDED**

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Act No. 45, in section 3 (as set out at item 107 of Schedule 9)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>1 July 1998</td>
</tr>
<tr>
<td>Date of application</td>
<td>1 July 1998</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Child Disability Allowance</td>
</tr>
</tbody>
</table>

A child in respect of whom Family Allowance was not payable solely because he/she was receiving Youth Allowance became eligible for Child Disability Allowance if otherwise qualified. [Eligibility for Child Disability Allowance was normally linked to eligibility for Family Allowance but there were a number of exceptions and this became an additional one.]

**12**

**CHANGES TO FAMILY TAX PAYMENT**

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Act No. 45, in section 3 (as set out at items 108, 109 and 110 of Schedule 9)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>1 July 1998</td>
</tr>
<tr>
<td>Date of application</td>
<td>1 July 1998</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Family Tax Payment</td>
</tr>
</tbody>
</table>

The conditions under which Family Tax Payment was payable were varied to enable a person to qualify where:

- his/her child (or children) was aged under 18 years, undertaking full-time study, receiving Youth Allowance, would have met the definition of ‘dependent child’ except for the fact that he/she was receiving a benefit, and was not independent; or

- his/her child (or children) was otherwise eligible, either met the criteria in the first amendment or was aged 16 or 17 years and undertaking full-time secondary studies, and the person would notionally, if the children had met the conditions for payment of Family Allowance and the rate of Family Allowance was $60.20, have been eligible for more than minimum Family Allowance. (The rate of Family Allowance was $60.20 when Youth Allowance was introduced.)

[Without these amendments, the introduction of Youth Allowance and associated changes would have had the unintended effect of causing some families with children to lose eligibility for Family Tax Payment.]
13

**ABOLITION OF EDUCATION WAITING PERIOD FOR WORKFORCE BENEFITS**

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Act No. 45, in section 3 (as set out in Part 7 of Schedule 9)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>1 July 1998</td>
</tr>
<tr>
<td>Date of application</td>
<td>1 July 1998</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Newstart Allowance; Sickness Allowance</td>
</tr>
</tbody>
</table>

The education waiting period applying to Newstart Allowance and Sickness Allowance claimants was abolished. [This change was consistent with the policy of not imposing an education waiting period on Youth Allowance claimants.]

14

**CHANGE TO SPECIAL BENEFIT**

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Act No. 45, in section 3 (as set out at items 194 and 195 of Schedule 9)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>1 July 1998</td>
</tr>
<tr>
<td>Date of application</td>
<td>1 July 1998</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Special Benefit</td>
</tr>
</tbody>
</table>

The Secretary’s discretion to grant Special Benefit to a person whose ineligibility for Newstart Allowance was not due ‘solely’ to a breach of the activity test was altered to require merely that it was not due to such a breach. [The inclusion of the word ‘solely’ in the previous provision had the unintended result that a person who was ineligible for Newstart Allowance because of such a breach and also for some other reason(s) could gain entitlement to the benefit.]
A compendium of legislative changes in social security 1983–2000

Social Security and Veterans’ Affairs Legislation Amendment (Pension Bonus Scheme) Act 1998, No. 67

Date of Royal Assent: 30 June 1998

PENSION BONUS SCHEME INTRODUCED

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in Schedule 1)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>30 June 1998</td>
</tr>
<tr>
<td>Date of application</td>
<td>30 June 1998</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Age Pension</td>
</tr>
</tbody>
</table>

A scheme, known as the Pension Bonus Scheme, was introduced. Under the scheme, a person qualified to receive an Age Pension could opt instead to accrue a pension bonus payment if he/she decided to defer claiming the pension while continuing to work. The bonus increased as the length of deferral increased and was paid in the form of a once only, tax free lump sum when the person eventually claimed and received the Age Pension. The bonus, when received, was not assessed as an asset for purposes of the pension assets test.

An identical bonus scheme was provided under the Veterans’ Entitlements Act to persons entitled to veterans’ payments equivalent to the Age Pension. A person could not receive a bonus under both schemes.

Summary of main features

The main features of the scheme were that:

- a person wishing to gain entitlement to a pension bonus was required to register as a member of the scheme;
- membership of the scheme was precluded, or could be cancelled, in certain situations;
- membership of the scheme could be ‘accruing’, ‘non-accruing’ or ‘post-75’ (member aged over 75 years);
- to earn a bonus a person had to accrue bonus periods. The minimum period to qualify was one full year, while the maximum bonus was paid after accruing five full-year periods;
- to accrue a bonus period (which generally ran for a year), a person had to have accruing membership of the scheme (accordingly, he/she had to be aged under 75 years) and pass a ‘work test’ requiring him/her to have undertaken sufficient gainful work in a period;
- a person’s partner could accrue bonus points on a person’s behalf;
- in certain situations (apart from not meeting the work test), a person could retain membership of the scheme but not accrue bonus periods;
the level of bonus was calculated via a formula based on the number of qualifying bonus periods a person had accrued, his/her marital status during the qualifying period and the amount of the person's basic pension entitlement; and

a person qualified for a bonus if he/she: started to receive an Age Pension at or after the time he/she claimed the bonus; was not receiving the Age Pension on the basis of a scheduled international agreement; had not previously received an Age Pension; was registered as a member of the scheme; had accrued at least one full-year bonus period while registered; and had not received a specified payment at any time after qualifying for Age Pension.

**Registration**

Unless specifically precluded from registration, a person qualified (or about to qualify) for an Age Pension was entitled to register as a scheme member. Such a person was precluded from registering only where he/she was not an ‘Australian resident’ or had received, at any time after qualifying for Age Pension, a pension (other than Age Pension or Carer Payment), benefit or specified veteran’s payment.

The condition that a person had to be an Australian resident was additional to the usual residency conditions for Age Pension (which required 10 years qualifying Australian residence unless an exemption had been granted). It was also provided that, once a person had qualified for the pension without meeting the requirement that he/she be an Australian resident, he/she could not join the bonus scheme if at a later date he/she became a resident. [This rule was intended to prevent a non-resident who qualified for an Age Pension under an international Social Security Agreement while overseas from being eligible to participate in the scheme if he/she later returned to Australia and qualified as a resident.]

If a person began to receive any of the specified payments, his/her registration was cancelled immediately and he/she ceased to be a member of the scheme. Otherwise, a person ceased to be a member of the scheme only when his/her claim for a bonus was determined, he/she did not make a proper claim for the bonus or he/she requested that the membership be cancelled.

People who qualified for an Age Pension on or after 1 July 1998 had their registration counted from the date they qualified, provided that they applied for it in the period of 26 weeks commencing 13 weeks before their qualification date and ending 13 weeks after it. People who qualified for an Age Pension before 1 July 1998 had their registration counted from that date, provided that they applied for registration during the period commencing on the date of the scheme’s inception and ending 13 weeks after 1 July 1998. [The commencement date of the scheme was the Date of Royal Assent which, of course, was not known at the time the legislation was being drafted or when it was passed.]

The Secretary could at his/her discretion extend the lodgement period and, if an extension was granted, allow registration to take effect on a date other than the lodgement date. However, the discretion was not to be exercised unless he/she could be certain that the person would have been qualified for registration and could ascertain what his/her registration status would have been in the relevant period.
Types of membership

While a member of the scheme, a person could be an ‘accruing member’, a ‘non-accruing member’ or a member aged 75 years and over. Only accruing members could accrue bonus points. Members aged 75 years and over could no longer accrue bonus points on their own behalf but could accrue them on behalf of their partner, provided that the partner was of Age Pension age but aged under 75 years and also a member of the scheme.

A member aged under 75 years was an accruing member except for periods where he/she: was precluded from receiving an Age Pension due to the operation of the assets test deprivation provisions; was precluded from receiving an Age Pension under the compensation recovery provisions; was receiving a Carer Payment or related veterans’ payment in his/her status as a carer of a veteran; or belonged to a category of member which the Secretary had declared, by notice in the Commonwealth Gazette, to be a non-accruing member.

Declared non-accruing members included, but were not limited to, members who were participating in the Community Development Employment Projects Scheme; in gaol (as defined); undergoing psychiatric confinement (as defined) after being charged with committing an offence; not participating in the workforce, but whose partners were in the workforce and were not currently, but were intending to become, registered members of the scheme or of the corresponding scheme under the Veterans’ Entitlements Act; or on sick leave for a continuous period of 4 to 26 weeks. [For details of the Community Development Employment Projects Scheme, refer to Record 14 of 1999.]

A person subject to the deprivation or compensation recovery provisions, or who received one of the carer payments, ceased to accrue bonus points irrespective of whether the disposal of assets, or the receipt of compensation or specified carer payment, occurred before or after the introduction of the scheme.

Accrual of bonus periods

A person accrued a bonus for each full year in which he/she was an accruing member of the scheme and passed the work test. A full year included any consecutive period of 365 days. However, a non-accruing period did not break this sequence, it merely extended the time period required to make up the 365 days. Accordingly, a member of the scheme had up to the age of 75 years in which to keep accruing a bonus in his/her own right.

A person had to accrue a minimum of one full-year bonus period in order to qualify for a bonus. The maximum number of bonus periods which could be accumulated was five. If a person accumulated more than five such periods, then only the most recent five were counted. A person could accrue a part-year bonus but this was taken into account only if he/she had accumulated the minimum one full-year bonus but had less than five full years credited.

The work test

A person passed the work test for a full-year period if he/she satisfied the Secretary that he/she had ‘gainfully worked’ at least 960 hours during the year and that no less than 640 of those hours had been worked in Australia. He/she also passed the test if he/she satisfied the Secretary that his/her partner (or partners) had met these same work hours criteria while being the person’s
partner(s) and provided that the partner(s) was an accruing or aged 70 years and over member of the scheme, or an accruing or aged 70 years and over member of the corresponding veterans’ scheme. The Secretary had the discretion in special circumstances to treat gainful work undertaken by a person or his/her partner or partners outside Australia as gainful work in Australia for purposes of bonus eligibility. (An additional requirement was that the person satisfy the Secretary that he/she had complied with the applicable record-keeping requirements unless the Secretary decided to waive them. These requirements have not been detailed here.)

A person passed the work test in respect of a part-year period using the same base of 960 work hours but with the figure reduced in proportion to the reduction in the number of days worked. In the part-year case, it was specified that at least two-thirds of the hours had to have been worked in Australia.

**Definition of gainful work**

‘Gainful work’ was defined as work for financial gain or reward, whether as an employee, a self-employed person or otherwise where the work involved a substantial degree of personal exertion and was carried out within or outside Australia. However, the Secretary had a discretion in special circumstances to determine that a person or his/her partner not engaged in an activity involving a substantial degree of personal exertion was in gainful work provided that the activity was not voluntary work for a charitable, welfare or community organisation. Absences from work which were irregular, infrequent and minor were disregarded in determining whether a person had been engaged in gainful work.

Certain activities were not to be taken as gainful work unless the Secretary determined otherwise. These were: the management or administration of one or more financial investments in which a member of the person’s family group, a family company or the trustee or trustees of a family trust had a legal or equitable interest (detailed definitions of ‘family company’, ‘family group’ and ‘family trust’ were provided in the legislation); and the carrying out of domestic, household maintenance, gardening or similar tasks in relation to the person's place or places of residence.

**Amount of bonus**

The amount of bonus a person received depended on the number of qualifying bonus periods the person had accrued, whether he/she was single or partnered during the qualifying period and the amount of basic Age Pension (that is excluding additions such as Rent Assistance and Remote Area Allowance) that he/she was entitled to at the time of the claim. A person’s bonus entitlement was calculated by the formula: ‘number of qualifying years squared x person’s annual basic pension entitlement x 0.094 for each qualifying year’.

Consistent with the rules for accruing bonus periods:

- the minimum bonus payable (accumulated over one full year) was 9.4 per cent of a person's basic pension entitlement;
- the maximum bonus payable (accumulated over five full years) was 235.0 per cent (0.094 x 5 x 5) of a person’s basic pension entitlement;
- a person with at least one year’s, but less than five years’, full entitlement could add any part-year entitlement, calculated on a pro-rata basis according to the number of days worked; and

Consistent with the rules for accruing bonus periods:
if a person was single for some of the qualifying years and partnered for the remainder, then the pension rate used reflected the period that the single or married rate would have applied.

The notional maximum pension bonus (applying the basic pension rate at the date of the scheme’s introduction and assuming that a person was entitled to the maximum rate and that the scheme had been in operation for five years) was respectively $21,666 for a person who had been a single pensioner, and $18,073 for a person who had been a member of a couple, throughout the accruing period.

**Claim for bonus**

The general requirement was that a person had to lodge his/her claim within 13 weeks of the last full-year or part-year bonus period. In the case of a part-year period, the Secretary had a discretion to extend the period of claim but, where this was done, the part-year period was not counted in calculating the bonus. The requirement differed somewhat where the claimant was a partner of a person who was a member of the bonus scheme or the corresponding veterans’ scheme, the person’s membership became non-accruing immediately after the end of his/her last bonus period, or the claim involved a person who was a member aged 75 years or more with a work period beyond that age.

**Payment of bonus after death**

Provision was made for any bonus entitlement to be paid to a person’s legal representative if a person died before receiving it.
A scheme known as the Retirement Assistance for Farmers Scheme was introduced. It was one element of a package of assistance to farmers and was regarded as a combined welfare and rural adjustment measure.

The scheme provided a three year ‘window of opportunity’ during which certain farmers and ‘eligible former partners’ of such farmers, once they attained Age Pension age, could retire from farming and legally transfer, by way of a gift to the ‘younger generation’, their ‘qualifying interest’ in the family farm(s) and farm assets without affecting their eligibility for the Age Pension. This involved exempting participants and/or their partners, to the extent allowed under the scheme, from the assets test deprivation provisions under which a person could lose entitlement to a payment, or have his/her payment rate reduced, where he/she disposed of assets without adequate financial return. The terms ‘eligible former partner’, ‘qualifying interest’ and ‘transfer’ were defined at length in the legislation.

The scheme was designed to assist persons transferring their farms between 15 September 1997 and 14 September 2000. [It was later extended by over nine months (refer to Record 32 of 2000).]

As an additional concession, farmers who had gifted their farms to their children in the five years preceding 15 September 1997, and who as a consequence were precluded from receiving, or were receiving a reduced rate of, Age Pension or other social security payment for five years under the deprivation provisions, could, subject to their meeting the other eligibility conditions, have their payments reinstated back to 15 September 1997.

Qualifying conditions

A farmer wishing to participate in the scheme had to meet qualifying conditions related to: his/her age or that of his/her partner; their period of previous ownership or involvement in farming; the previous involvement of the younger generation receiving the gift; the value of the farm and farm assets; and a special income test.

**Age**

The farmer and/or his or her partner had to be of Age Pension age or be due to attain that age by 14 September 2000. It was immaterial which partner had legal ownership of the land. Where they were both of pensionable age and qualified under the scheme, each could claim the Age Pension subject (apart from the scheme) to normal Age Pension conditions. Where only one partner was of Age
Pension age, the other partner could claim any other pension or benefit for which he/she met the eligibility criteria.

**Farming history**
A person had to have had continuously for at least 15 years a qualifying interest in a farm, and in that period he/she or his/her partner had to have contributed a significant part of his/her labour and capital to the development of the farm or farms. Alternatively, he/she could qualify where he/she had a qualifying interest in one or more farms acquired before 15 September 1997, and he/she or his/her partner or 'eligible former partner' had been involved in farming in Australia for a continuous period of 20 years, or for periods that added up to 20 years, by contributing a significant part of his/her labour to farm enterprises and deriving a significant part of his/her income from them.

**Previous involvement of younger generation**
The person (or persons) of the ‘younger generation’ (called ‘eligible descendant’ in the legislation) to whom the farm (or farms) was being gifted had to have been actively involved in the farm over the three years preceding the transfer or, in the opinion of the Secretary, would have been so involved but for exceptional circumstances beyond his/her control. A person was taken to have been actively involved with the farm during a particular period where he/she had contributed a significant part of his/her labour to the development of the farm or had undertaken educational studies or training in a field that, in the opinion of the Secretary, was relevant to the development or management of the farm enterprise.

A person was not eligible to participate in the scheme if, immediately before the transfer, an eligible descendant had a qualifying interest in the farm(s) or any relevant farm asset, and he/she had acquired the qualifying interest after 14 September 1997 and the consideration, or part of the consideration, for the interest was the wages forgone by the eligible descendant while he/she was working as an employee on the farm(s). [Separate policy provisions existed for dealing with forgone wages issues.]

An ‘eligible descendant’ was a child, step-child or adopted child of the person or his/her partner, a descendant in direct line of such a child or any other person who, in the opinion of the Secretary, should be regarded as fitting into those categories. Under the rules of the scheme, the transfer could be solely to the eligible descendant or jointly to him/her and his/her partner.

**Value of farm and farm assets**
The net value of the farm and any ‘relevant farm assets’ (that is, after deduction of farm debts) was not to exceed $500 000. However, where the retiring farmer currently ran the farm in partnership with an eligible descendant and wished to transfer his/her share to that person, only that share was to be included when valuing the farm. ‘Relevant farm assets’ were defined as any livestock, crop, plant or equipment which was a produce of, or used for the purposes of, the farm enterprise.

As a deprivation provision, if at any time before the transfer but after 14 September 1997 the person making the transfer entered into a transaction or transactions which reduced the value of his/her farm(s) or relevant farm assets, any such reduction was disregarded when valuing them. Otherwise valuations were carried out as for valuing farm assets under the general assets test.
**Income test**

To qualify for assistance, a farmer’s income could not exceed the prevailing maximum basic rate of Age Pension in the three years before the transfer. If the person had been a member of a couple at any time during the three years before the transfer was completed (or on 15 September 1997, where the transfer had been completed before that date), the rate for a couple was used in the calculation. Otherwise the single rate was used.

Income under the special income test included both income from the farm and other income. Thus farm income was calculated after allowing for changes in stock values at the beginning and end of a financial year, losses and deductions allowed for tax purposes and depreciation. If the farm had made losses, these could be subtracted from any personal income to obtain a total income figure. Pensions and benefits, Austudy payments, veterans’ payments and payments under the Farm Household Support Act were not included as income for purposes of the new provision. The special income test also differed from the general pension income test in that returns on financial investments were treated as any other income rather than being subject to the extended deeming arrangements.

**Treatment of retained interests**

Where a farmer decided to retain a freehold estate, a leasehold interest or a life interest in his/her home on the farm, or excise his/her home from the remainder of the farm, the value of the home and of any adjacent private land was also deducted from the value of the farm being gifted. Otherwise, a participant in the scheme had to transfer the entire farm and relevant farm assets to the eligible descendant(s). Definitions used (such as for private land and the area counted as a home) were the same as in the general assets test provisions.

**Timing of assistance**

Where a transfer was completed after 14 September 1997 but before 15 September 1998, a person was entitled to receive a payment from the transfer date provided that he/she had made a claim before 15 September 1998. Where a transfer was completed after 14 September 1998 but before 15 September 2000, a person was entitled to receive a payment from the date of the transfer provided that he/she made a claim within three months. Where a transfer was completed before 15 September 1997 and the person made a claim before 15 September 1998, the payment was made from 15 September 1997. In any other case, it was made from the date of claim. In no circumstances could a person receive any payments under the scheme before 15 September 1997, before the claimant (or at least one partner of a couple) had attained Age Pension age or before the transfer had taken place.
Social Security and Veterans’ Affairs Legislation Amendment (Budget and Other Measures) Act 1998, No. 93

Date of Royal Assent: 15 July 1998

**CONCESSION FOR CARERS**

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in item 15 of Schedule 1)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>1 July 1998</td>
</tr>
<tr>
<td>Date of application</td>
<td>1 July 1998</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Carer Payment</td>
</tr>
</tbody>
</table>

The period, or total periods, during which a recipient of Carer Payment could temporarily cease to provide the required level of care to the care recipient without losing eligibility for the payment was increased from 52 to 63 days in a calendar year. The Secretary’s discretion to vary that period in a particular case remained unchanged. [This brought the provision into line with that for Child Disability Allowance, and for Domiciliary Nursing Care Benefit and the Commonwealth’s residential respite care programs covered by other legislation.]
Eligibility for Carer Payment was extended to persons caring for a profoundly disabled child aged under 16 years, and for two or more children with disabilities aged under 16 years if, in the opinion of the Secretary, the children required a level of care that was at least equivalent to that required by a profoundly disabled child.\(^8\)

A child qualified as ‘profoundly disabled’ where: he/she had a severe multiple disability or a severe medical condition; because of the disability or condition, he/she required continuous personal care for at least six months or, in the case of a terminal condition where life expectancy was less than six months, until death; and at least three of the following applied in respect of the child’s disability/condition:

- he/she received all food and fluids by nasogastric or percutaneous enterogastric tube;
- he/she had a tracheostomy;
- he/she used a ventilator for at least eight hours a day;
- he/she had faecal incontinence by day and night and, if aged under three years, was expected to experience this at three years of age;
- he/she could not stand without support and, if aged under two years, was expected to be unable to stand without support at that age;
- a medical practitioner had certified that the child had a terminal condition for which palliative care had replaced active treatment; or
- he/she required personal care on two or more occasions between 10pm and 6am each day and, if aged under six months, was expected to require such care when attaining that age.

The other conditions of payment were in the main as for Carer Payment when paid to a person aged 16 years and over where the care recipient was not receiving an income support payment. The only minor difference was that, in the case of a profoundly disabled child, the income test took account of the taxable income of any parent(s) or guardian(s) or children eligible for Family Allowance. The care recipient assets test also differed with the inclusion of parental income in respect of profoundly disabled children. [On the other hand, the assets of any children eligible for Family Allowance were taken into account in the assets tests both where the care recipient was aged under or over 16 years.]
TREATMENT OF LUMP SUMS IN BENEFIT INCOME TEST

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in Schedule 2)</th>
</tr>
</thead>
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<td>1 July 1998</td>
</tr>
<tr>
<td>Date of application</td>
<td>Applied to lump-sum payments that a person became entitled to receive after 1 July 1998</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Benefits except Additional Parenting Payment (partnered); Special Benefit (in effect)</td>
</tr>
</tbody>
</table>

The treatment of lump-sum payments in the income test for benefits other than Parenting Payment (partnered) was brought into line with that for pensions, by treating them in one of two ways according to the nature of the lump sum.

One-off, irregular lump sums were not assessed if they were spent immediately. Once they had been invested, they were exempted from the general income test and instead treated as financial assets and made subject to the extended deeming rules. A lump sum was treated in this way only where it was an amount, or class of amounts, that the Secretary determined should be exempted from the general income test but could not be ‘a periodic amount’ (as already defined in the Act), a leave payment or income from paid work. A ‘Note’ in the legislation gave a lottery win or other windfall, a legacy, a bequest or a gift, provided that it was a one-off gift, as examples of lump sums that the Secretary might determine should be exempt.

Other lump sums such as commissions and royalties (any received after a claim for an allowance had been made) were evenly apportioned over a 52-week period and income-tested on that basis. To be subject to this treatment, they had to have been received in respect of paid work and had to fall outside the ambit of the existing provision dealing with income received at intervals longer than a fortnight (this provision required that income be assessed fortnightly if its timing and regularity was reasonably predictable and regular and the amount was reasonably predictable). The 52-week allocation was to apply irrespective of any general or liquid assets test waiting period, income maintenance period (in respect of leave) or seasonal work preclusion period to be served in the relevant 12 months. [For details of the seasonal work preclusion period, refer to Record 21 of 1998.]
Major changes were made to the treatment of income streams, such as superannuation pensions and annuities, in the income and assets tests for all social security payments subject to such tests but predominantly affecting age pensioners. The main thrust of the changes was to classify and means test income stream products on the basis of their characteristics rather than on essentially arbitrary factors such as where the income stream was paid from.

**Background**

The treatment of income streams in means tests had created difficulties for some time. There were many forms of income stream, the main ones being superannuation pensions, roll-over annuities, ordinary annuities, allocated pensions and allocated annuities. Historically, the various types of income stream had been treated differently and this had produced a number of different income and assets tests. The problem had increased in recent years due to the proliferation of different types of income stream product on the market. Many of them did not resemble traditional retirement products—they provided full access to capital over the term of the income stream and often had a substantial residual capital value (or lump sum) available at the end of their term.

It had also become increasingly difficult to determine whether, for pension and benefit means test purposes, an income stream should be treated primarily as income, or as an asset that was gradually being depleted over a number of years. A further complication was that some of the new products on the market had been specifically designed to take advantage of loopholes in the current means tests. In particular, financial arrangements were being established with the appearance of income streams but which were not providing a flow of income through an orderly drawdown of capital. The purpose of such arrangements was usually to avoid the pension assets test.

The main problem was seen to be the focus on where the income stream was paid from (for example, whether it was a superannuation pension or annuity) rather than on its attributes. The solution adopted was to categorise products according to their characteristics, and give more generous treatment to income stream products which ensured an orderly withdrawal of capital and income over the entire retirement period compared with those offering access to capital and generally shorter terms. This made the social security legislation more consistent with tax legislation, which in the main had adopted such an approach.
Summary of main features of the new arrangements

Income streams were divided into three categories:

- ‘asset-test exempt income streams’. These were further split into two sub-categories: ‘lifetime asset-exempt income streams’ and ‘life expectancy or 15-year minimum income asset-exempt income streams’. These schemes represented a series of payments designed to last for a person’s life or, where purchased when a person was at least Age Pension age, designed to cover the period of the person’s life expectancy or, where this was greater than 15 years, a period of not less than 15 years and not more than the person’s life expectancy. The qualifying conditions were set out at great length and, as well as the payment period conditions, a scheme had to meet other criteria such as being non-commutable and having no residual capital value before it could comply with these conditions;

- ‘long-term asset-tested income streams’. These were schemes which were not in the first category and had a minimum term of five years or, in the event that a person’s life expectancy was less than five years, a term equal to or greater than his/her life expectancy; and

- ‘short-term asset-tested income streams’. All income streams not falling into the other two categories were classified as short-term. These generally had a term of five years or less.

The treatment of each of the three categories of income stream was different. Under the asset-test exempt category, there was no difference in the treatment of lifetime income stream and life expectancy/15-year minimum stream sub-categories.

In broad terms:

- asset-test exempt income streams were allowed a deduction under the income test, based on the purchase price in the case of non-defined benefit schemes and the tax deductible amount in the case of defined benefit schemes, and were not subject to the assets test;

- long-term asset-tested income streams were income tested in the same way as asset-test exempt income streams in the case of defined benefits. For non-defined benefits, the income test treatment was similar but the residual capital value of the income stream was subtracted from the purchase price in calculating the deduction. They were assets-tested with the asset value calculated as either an account balance, the original purchase price depleted periodically or, in the case of a defined benefit scheme, according to pension valuation factors; and

- short-term asset-tested income streams were, for income test purposes, subject to the extended deeming rules in the same way as financial assets generally, and asset-tested on the same basis as long-term asset-tested income streams.

The full details of the new arrangements follow. It should be noted that definitions of terms used in particular parts of the description apply throughout the record. Many definitions (not detailed here) were the same as those in taxation, superannuation and other relevant legislation.
Definition of income stream

The new arrangements covered income streams arising under arrangements regulated under superannuation legislation, a public sector scheme or a retirement savings account, provided by a life insurance business or friendly society as defined under the relevant legislation, or as designated by the Secretary having regard to any guidelines the present legislation authorised him/her to determine on the matter. Any such determination was a disallowable instrument. The legislation specified that the term ‘income stream’ did not include available money, deposit money, a managed investment, a listed security, a loan that had not been repaid in full, an unlisted public security or gold, silver or platinum bullion.

Definitions and conditions applying to asset-test exempt income streams

There were two types of asset-test exempt income stream: ‘lifetime income streams’ and ‘life expectancy or minimum 15-year term income streams’. In the case of the life expectancy/minimum 15-year stream, the income stream could not qualify as an asset-test exempt income stream unless a person had attained Age Pension age on or before he/she purchased or acquired it. In the case of both types of asset-exempt income stream, to qualify as such an income stream, the income stream had to, subject to the Secretary’s discretionary powers (defined below), have arisen under a contract, or governing rules, which met prescribed conditions.

The conditions that a contract or governing rules had to meet were extremely detailed. Most of them were the same for lifetime and life expectancy/minimum 15-year income streams. Accordingly, the conditions for each income stream have been combined with a note indicating where the conditions for the two types vary.

A person's income stream qualified as an asset-test exempt income stream where the contract or governing rules of the income stream specified:

- in the case of a lifetime income stream—that the payments were to be made at least annually throughout the person's life and, if there was a reversionary beneficiary, throughout the beneficiary's life or, if the reversionary beneficiary was a child of the person or of a former reversionary beneficiary under the income stream, at least until the child turned 16 years of age or, if he/she was a full-time student of at least 16 years of age, until he/she ceased his/her full-time studies but no later than when he/she turned 25 years of age; and in the case of a life expectancy/minimum 15-year income stream—that the payments were to be made at least annually and, where the person's life expectancy was less than 15 years, throughout a period equal to the person's life expectancy and, where the life expectancy was 15 years or more, throughout a period that was not less than 15 years and not greater than the person's life expectancy. In each case the person had the option of rounding up part-years to the next whole number of years;

- the total amount of payments to be made in the first year (not taking commuted amounts into account);

- that total payments in any other year (not taking commuted amounts into account) must not fall below the previous year's total, and must not exceed it by more than the annual movement in the Consumer Price Index plus 1 per cent where this annual movement exceeded 4 per cent, or in other cases by more than 5 per cent;

Definitions and conditions applying to asset-test exempt income streams
that, if the income stream was not purchased, the first payment related to the period commencing on the day on which the income stream was acquired. [This was intended to ensure that the income stream was not deferred.];

that, if the income stream was not a defined benefit, the amount for which it was purchased was wholly converted to income;

that the income stream had no residual capital value;

that the income stream could not be commuted except where: the commutation was made within six months following the commencement of the income stream; in the case of a lifetime income stream, the commutation was, on the death of the person during the period within 10 years after the commencement day, made to the benefit of a reversionary beneficiary or the person’s estate or, in the case of a life expectancy/minimum 15-year income stream, the legal or equitable interest in the payment resulting from the commutation was, on the death of the person, transferred to a reversionary beneficiary or (if there was no reversionary beneficiary) to the person’s estate; the payment resulting from the commutation was transferred directly to the purchase of another income stream arising under a contract, or governing rules, that met the present requirements; or the commutation was used to the extent necessary to cover any superannuation surcharge for which the person was liable in respect of that income stream;

that the income stream could be transferred only on the death of a person, and then only to a reversionary beneficiary and also, in the case of a life expectancy/minimum 15-year income stream, to the person’s estate;

that neither the capital value of the income stream nor the income derived from it could be used as security for borrowing;

that, if the income reverted, it was not to have a reversionary component greater than the benefit that was payable immediately before the reversion; and

that, if the income stream was commuted, the commuted amount must be no greater than the benefit that was payable immediately before commutation.

The legislation also set out, in the case of a lifetime income stream but not of a life expectancy/minimum 15-year income stream, a number of matters which were not to be taken into account in determining whether an income stream qualified as an asset-exempt lifetime income stream. It was to be immaterial, in the event of the person’s death within the first 10 years of the income stream, that:

a surviving reversionary beneficiary could receive an amount equal to that which the person would have received in the period if he/she had not died;

where there was no surviving reversionary beneficiary, the person’s estate could receive a sum not exceeding the amount which the person would have received in the first 10 years minus any amount that he/she had actually received; or

where the surviving reversionary beneficiary also died within the 10-year period, the reversionary beneficiary’s estate could receive a sum equivalent to that applicable in the case where there was no surviving reversionary beneficiary.
The Secretary had a general discretion to determine in individual cases that an income stream that met all the specified requirements of an asset-test exempt income stream did not qualify as such, where he/she was satisfied that the purchaser of the income stream had commuted an asset-test exempt income stream within six months of its commencement on at least three occasions since he/she had first received a social security payment.

The Secretary could also determine in individual cases that an income stream did qualify as an asset-test exempt income stream, notwithstanding that it did not meet all the specified requirements. In using this discretion, the Secretary was authorised to establish guidelines for the purpose and was to have regard to them when making a decision. Any determination was a disallowable instrument.

[The purpose of these discretionary provisions was to prevent avoidance of the income and assets tests through the development of contrived income streams, which technically met the prescribed criteria but were not genuine long-term retirement schemes, while ensuring that genuine schemes which failed the criteria for merely technical reasons were not adversely treated.]

**Treatment of various categories of income stream under the income and assets tests**

**Asset-test exempt income streams—treatment under income test**

While they were separately defined in the legislation, there was no difference in the treatment of lifetime and life expectancy/minimum 15-year asset-test exempt income streams under the income test. However, the treatment was different for defined and non-defined benefit income streams.

An income stream was a ‘defined benefit stream’ where the amounts paid under it were not fully determined by the purchase price but by reference to the purchaser’s salary before retirement, the purchaser’s years of service or the governing rules. [Typical public sector superannuation schemes are defined benefit schemes. Defined benefit streams were treated differently from other income streams because the purchase price concept applied in the income test assessment of these other streams could not readily be used. This reflected the fact that benefits paid under defined benefit income streams are not fully determined by the purchase price.]

In the case of income streams which were not defined benefits, the amount taken into account for income test purposes was the sum received each year minus the figure obtained after the purchase price had been divided by the ‘relevant number’. ‘Purchase price’ was defined as the sum of payments made to purchase the income stream (including employer and employee contributions) less any commuted amounts. The ‘relevant number’ was: the number of years for which the income was payable, if this number was fixed; or where the income stream was payable only during a person’s lifetime, the number of years of his/her life expectancy; or where the income stream was jointly owned by a person and his/her partner and was payable for the lifetime of one or other of them, or was payable during the lifetime of a person and then for the lifetime of the reversionary beneficiary, the number of years of the longer of the relevant life expectancies; or in any other case, the number considered appropriate by the Secretary having regard to the number of years in the total period during which the income stream would be, or might reasonably be expected to be, payable.
Where the income stream was a defined benefit income stream, the annual income of a person was taken to be the annual payment minus the deductible amount. The ‘deductible amount’ was the amount that would be deductible under subsection 27H(2) of the Income Tax Assessment Act, if the references in that subsection to an annuity had been references to an income stream.

**Asset-test exempt income streams—treatment under assets test**

Asset-test exempt income streams (as their name implied) were not subject to the assets test.

**Long-term asset-tested income streams—treatment under income test**

Where a long-term asset-tested income stream was not a defined benefit, the amount taken into account for income test purposes was the sum received each year by the person, minus the figure arising after the residual capital value had been subtracted from the purchase price and the result divided by the relevant number.

The income test treatment of long-term asset-tested ‘defined benefit income streams’ was identical to that for asset-test exempt income streams.

**Long-term asset-tested income streams—treatment under assets test**

In the case of an income stream that was not a defined benefit, the value of the income stream for purposes of the assets test was worked out in relation to each 12-month period of the term of the income stream where a person received a payment from it only once a year, or otherwise in relation to each six-month period. Where the income stream had an account balance, its value was the value of the account balance at the beginning of the six-month or 12-month period, whichever applied. Where the income stream had no account balance, its value was worked out by subtracting the residual capital value from the purchase price, dividing that result by the relevant number, multiplying that further result by the ‘term elapsed’ and then subtracting the amount obtained from the purchase price. ‘Term elapsed’ was defined as the number of years of the term of the income stream that had elapsed since it commenced, rounded down to the nearest year or half year according to whether the assessment was a 12-month one or more frequent.

In the case of a defined benefit, the value of the income stream was the annual payment multiplied by the ‘pension valuation factor’. The valuation factor was to be the one determined by the Minister and this determination was to be a disallowable instrument. [This was made a Ministerial determination and a disallowable instrument as it would require changing from time to time in accordance with movements in interest rates.]

**Short-term asset-tested income streams—treatment under income test**

The extended deeming provisions applied to short-term asset-tested income streams under the income test as for financial investments generally.

**Short-term asset-tested income streams—treatment under assets test**

Short-term asset-tested income streams were treated under the assets test in the same way as long-term asset-tested income streams.
Savings clause
A savings clause enabled a person receiving a defined benefit income stream and a social security payment before the date of the change to be exempted from the income test changes in relation to asset-test exempt income streams and long-term asset-tested income streams.

Ministerial power to exempt individuals from the new arrangements
The Minister had the power in individual cases to exempt a person receiving a social security payment at the time of the change from the new rules, where he/she had entered into a binding arrangement in relation to an income stream and the Minister was satisfied that it would cause him/her a significant disadvantage. If the person ceased to receive the social security payment, the exemption ceased unless the person immediately transferred to another such payment or specified veterans' payment. There was no provision for general exemptions of particular classes of product from the new rules.

Removal of particular types of income stream product from Act
With the new focus on treating income stream products in means tests according to their characteristics, the legislation no longer needed to distinguish between the various types of income stream product. Accordingly, terms removed from the Act included: ‘allocated annuity’; ‘allocated pension’; ‘immediate annuity’; ‘rolled-over amount’; ‘roll-over immediate annuity’; and ‘superannuation pension’. 
A seasonal work preclusion period was introduced and applied to all benefits except Sickness Allowance. Under the new provision, a person could be precluded from accessing these benefits for a specified period following the cessation of his/her employment, where he/she, his/her partner, or both of them, had been engaged in relatively highly paid seasonal, intermittent or contract work during the six months preceding his/her claim.

In general terms, a preclusion period applied if a person or couple’s earnings from seasonal work in a period exceeded that which they would have received if they had earned the equivalent of average weekly earnings in the official statistical series over the same period. [This in effect ensured that the provision applied only to those with relatively high incomes.]

**Calculation of preclusion period—single person**

In the case of a single person, the amount of the person’s income from seasonal work in the six months preceding his/her claim was calculated, and divided by the relevant average weekly earnings figure in the calendar year in which the claim was lodged, in order to determine a number of ‘average weekly earnings’ equivalent weeks or part-weeks. The preclusion period was then determined by subtracting the period of seasonal work the person had done from the number of equivalent ‘average weekly earnings weeks’. If a positive figure resulted, that represented the preclusion period. If the figure was zero or negative, no preclusion period applied.
In calculating the preclusion period, the following adjustments were made:

- where a person had undertaken two or more separate seasonal work periods, any periods less than two weeks apart were treated as continuous;
- any periods of seasonal work and earnings from it already taken into account, when calculating a seasonal work preclusion period in respect of any earlier claim by the person for any of the specified payments, were disregarded;
- any income in lump-sum form earned during the six-month period but not received before the lodgement of the claim was disregarded. [Lump sums were to be treated in line with the new arrangements to be introduced from 1 July 1998 (refer to Record 19 of 1998).]; and
- the impact of the provision was reduced by discounting the equivalent ‘average weekly earnings’ period calculated by any periods in the six months preceding the claim during which the person had not worked. [This took account of the fact that the claimant had been self-supporting during these periods.]

[The description of the calculation is a general one and has ignored certain rounding.]

**Calculation of preclusion period—member of couple (other than Parenting Payment)**

The general parameters of the calculation for couples (other than Parenting Payment claimants) were the same as for single persons but account had to be taken of the income of both partners:

- where only the claimant had performed seasonal work, the preclusion period was calculated by adding any income of the partner derived from personal exertion during the period in which that seasonal work had been performed to the claimant’s seasonal work income, and dividing the total by twice the ‘average weekly earnings’ figure;
- where only the partner had performed seasonal work, the preclusion period was calculated by adding any income of the claimant derived from personal exertion during the seasonal work period to the partner’s seasonal work income, and dividing the total by twice average weekly earnings; and
- where both partners had performed seasonal work, two seasonal work preclusion periods were calculated but only the longer of the two applied.

**Calculation of preclusion period—member of couple and claim for Parenting Payment**

The application of the provision was modified in the case of a claim for Parenting Payment to reflect the fact that the Basic Parenting Payment (partnered) rate was not affected by the income of a person’s partner. This worked as follows. If a preclusion period would have applied because of seasonal work undertaken by a person’s partner, then Additional Parenting Payment (partnered) was not payable but the payment of the basic component was not affected. If a preclusion period would have applied because of seasonal work undertaken by the person himself/herself, no Parenting Payment was payable.
Hardship provision

The Secretary could waive a seasonal work preclusion period in cases of severe financial hardship. The rules in this case were identical to those for the liquid assets test waiting period—these were due to commence from the same date as the present change (refer to Record 16 of 1997).\(^a\)

Definitions

‘Seasonal work’ was defined as work that, because of its nature or of factors peculiar to the industry in which it was performed, was available, at approximately the same time or times every year, for part or parts of the year, or work that was intermittent and was of a specified kind determined by the Secretary to be seasonal work for the purpose of the provision. Any determination by the Secretary to this effect was a disallowable instrument. The legislation cited examples of seasonal work as fishing, fruit picking, shearing and work in an industry that was subject to Christmas shutdowns. Relief teaching and work as a locum were cited as examples of intermittent work.

The income received from seasonal work taken into account under the preclusion provision was gross income less any amounts necessarily expended in relation to the work which a person could demonstrate were allowable tax deductions.

The average weekly earnings figure used in the calculation of preclusion periods was that for ‘full-time adult ordinary earnings for Australia’.

[Previously, there had been provisions under the Social Security Act and Student and Youth Assistance Act designed to prevent Newstart Allowance and Youth Training Allowance from being payable to seasonal and intermittent workers for a period following their cessation of employment. Also non-payment periods applied to certain other allowances affected by the present change. However, unlike with the new preclusion period, no method had been available for assessing whether a person’s income was sufficient to maintain him/her and any dependants. Nor had the legislation provided a method for calculating the period over which an allowance would not be payable, or spelt out the classes of people to which preclusion periods should apply. Furthermore, the new arrangements for the first time provided for preclusion periods to be imposed on the partner of a seasonal worker.]
MISCELLANEOUS CONSEQUENTIAL AMENDMENTS

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out at Items 1 to 110 of Schedule 6)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>Most amendments commenced on 15 July 1998. Selected amendments for technical reasons were to commence immediately before the commencement of Schedule 20 to the Social Security and Veterans’ Affairs Legislation Amendment (Family and Other Measures) Act 1997. (Schedule 20 commenced on 16 December 1997.)</td>
</tr>
<tr>
<td>Date of application</td>
<td>As for date of commencement</td>
</tr>
<tr>
<td>Payments affected</td>
<td>General provision. It predominantly affected Newstart Allowance. Youth Allowance is not covered—this is because either the changes were inserted directly in the legislation introducing the allowance or, in terms of redundant provisions, were not inserted in the first place</td>
</tr>
</tbody>
</table>

Consequential amendments were made to take account of the establishment of the Commonwealth Service Delivery Agency from 1 July 1997. The major changes were made to reflect the fact that the Agency now had responsibility for a number of functions and services (such as those of the former Commonwealth Employment Service) which had previously belonged to the Employment Department. The major changes involved:

- providing that persons previously required to attend an office of the Commonwealth Employment Service attend an office of the Agency;
- removing all reference to requirements that a person register with the Commonwealth Employment Service as a pre-condition of receiving Newstart Allowance. Since the new agency now performed the registration function, a separate process was no longer required;
- inserting provisions to allow various claimants and recipients of benefits to participate in the Community Support Program. [This was a new program for assisting disadvantaged work seekers.] By participating in the program, a person could satisfy the Newstart Allowance activity test and was exempted from various waiting and non-payment periods.;

- incorporating several amendments to clarify that policy responsibility for most employment-related matters such as imposing penalties when unemployed persons moved to areas of low employment, and waiving Newstart Allowance waiting periods and activity test penalty provisions, now rested with the Secretary to the Department of Social Security and not the Secretary to the Employment Department. The Social Security Secretary was also given primary responsibility for Newstart Allowance Activity Agreements but the form of agreements was to be approved jointly by him/her and the Employment Secretary, with officers of the Employment Department able to exercise some powers in relation to these agreements.
[This change has been included as it has implications for policy provisions in the legislation. However, as it is essentially administrative, it has not been described in detail. For information on the establishment of the Commonwealth Services Delivery Agency (later known as Centrelink), refer to endnote 3 for 1997.]

### 23

**COVERAGE OF MOBILITY ALLOWANCE EXTENDED**

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out at item 1 of Schedule 9)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>Was taken to have commenced on 17 December 1997</td>
</tr>
<tr>
<td>Date of application</td>
<td>Was taken to have commenced on 17 December 1997</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Mobility Allowance</td>
</tr>
</tbody>
</table>

An amendment clarified that a person undertaking training known as ‘independent living skills’ or ‘life skills training’, and who met the other eligibility criteria, could qualify for Mobility Allowance on the basis that he/she was undertaking vocational training.

### 24

**ANOMALY RELATING TO MOBILITY ALLOWANCE REMOVED**

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in items 2, 3 and 4 of Schedule 9)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>15 July 1998</td>
</tr>
<tr>
<td>Date of application</td>
<td>15 July 1998</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Mobility Allowance</td>
</tr>
</tbody>
</table>

To qualify for Mobility Allowance, a person was required to travel to and from his/her home for the purpose of undertaking gainful employment, vocational training, job-search activities or voluntary work approved by the Secretary for charitable, welfare or community organisations. [This removed an anomaly in that the legislation had restricted Mobility Allowance only to people who were unable to use public transport without substantial assistance either permanently or for an extended period because of their disability, but had not actually required them to travel.]

Date of Royal Assent: 11 December 1998

### CHANGES TO INCOME TEST FOR SENIORS HEALTH CARD

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in Part 1 of Schedule 1)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>1 January 1999</td>
</tr>
<tr>
<td>Date of application</td>
<td>1 January 1999</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Seniors Health Card</td>
</tr>
</tbody>
</table>

The income test for the Seniors Health Card was altered by:

- increasing substantially the income limits at or above which a person ceased to be eligible for the card; and
- changing the test from one based on current income to one based on taxable income but with some adjustments.

The income limits under the income test (incorporating the revised income base) were increased by $18,680 to $40,000 for a single person (or member of a couple where one partner was in respite care or in gaol) and by $31,380 to $67,000 for a couple. The level for a member of a couple separated due to illness was increased by $15,378 to $36,698. There was no increase in the addition of $624 for each dependent child.

Taxable income for income test purposes was adjusted (in the same way as for Family Allowance) to take account of the value of certain employer-provided fringe benefits worth more than $1000, non-taxable foreign income or benefits, and deductions for net rental property losses (negative gearing).

Generally, a person’s income was assessed based on his/her tax assessment notice (or the latest assessment notice if there had been more than one) for the financial year preceding that in which the income test was being applied. If the latest tax assessment notice was not yet available, the assessment for the financial year before the previous one was used. However, a person could choose to have his/her assessment based on his/her income in the financial year in which the assessment was made. In this case (or in any other case where a tax assessment for the relevant financial year was unavailable), a person was required to make an estimate of his/her taxable income, this had to be accepted by the Secretary and the person had to forward a copy of his assessment notice for that financial year within 12 months of the end of that year.

[A major reason for the change was to simplify the income test and make it less intrusive, with the objective of improving the low take-up of the card. Persons claiming the card no longer had to provide extensive details of their investments but had only to supply a copy of their latest tax assessment notice.]
**RENT ASSISTANCE CONCESSION**

<table>
<thead>
<tr>
<th><strong>Location in Act</strong></th>
<th>Section 3 (as set out in Schedule 2)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Date of commencement</strong></td>
<td>1 January 1999</td>
</tr>
<tr>
<td><strong>Date of application</strong></td>
<td>Applied to instalments of social security payments falling due on or after the first payday after 31 December 1998</td>
</tr>
<tr>
<td><strong>Payments affected</strong></td>
<td>Rent Assistance</td>
</tr>
</tbody>
</table>

Persons living in commercial board and lodging style accommodation were exempted from the provision generally restricting single persons without children sharing accommodation to no more than two-thirds of the maximum rate of Rent Assistance payable to single persons living independently. [This exemption was consistent with that already applying to persons paying, or liable to pay, board and lodging.]

A single person without children could now be paid the maximum rate of Rent Assistance if, in the opinion of the Secretary, he/she was living in a boarding house, guest house, hostel, hotel (including a private hotel), rooming house, lodging house or similar premises. In forming an opinion as to whether this was so, the Secretary was to have regard to the characteristics of the accommodation. Each of the following characteristics, to the extent that it applied, was to be taken as indicative that the accommodation qualified a person for an exemption from the ‘sharing’ rule:

- the premises was known by one of the specified names or a similar one;
- a manager or administrator (other than a real estate agent) had been retained to manage the premises, or administer the accommodation, on a daily or other frequent and regular basis;
- staff had been retained by the proprietor or manager to work in the premises on a daily or other frequent and regular basis;
- the residents lacked control over the day-to-day management of the premises;
- there were house rules, imposed by the proprietor or manager, that resulted in residents having rights that were more limited than those normally enjoyed by a lessee of private residential accommodation (such as rules limiting the hours of access to the accommodation or cooking facilities);
- the resident was not obliged to pay for the cost of gas, water or electricity separately from the cost of the accommodation;
- the accommodation was not private residential accommodation having regard to the number and nature of the bedrooms and bathrooms, and the number of people not related to one another who were living there;
- the accommodation had not been offered to the person on a leasehold basis;
- there was no requirement that a person pay a bond as security for either the payment of rent or the cost of any damage for which he/she might be responsible, or both; and
- the accommodation was available on a daily or other short-term basis.
Legislation passed in 1998

A single person who met the other eligibility conditions for Parenting Payment (single) could now qualify for the payment provided only that his/her child was a "dependent child", and was either aged under 16 years or qualified for Child Disability Allowance. This change involved removal of a number of specific conditions that had to be met in addition to this provision—most were found to be unnecessary as the definition of 'dependent child' was broad enough to encompass their intended effect.

The only substantive amendment was to remove the requirement that a child had to be wholly or substantially in a person’s care for at least 12 months before the person claimed Parenting Payment and, in the opinion of the Secretary, was likely to remain so permanently or indefinitely. This provision had meant that foster parents could not qualify for Parenting Payment (single) during the first year in which they provided care. This provision had not applied to couples when one claimed Parenting Payment.

[The apparent effect of the change at the time of its enactment was that there remained only one difference in the 'qualifying child' criterion for single and partnered Parenting Payment, namely that a single parent, unlike a partnered parent, could gain entitlement to the payment if he/she had a child aged 16 years and over who qualified for Child Disability Allowance. However, Child Disability Allowance was abolished from 1 July 1999 (refer to Record 6 of 1999) before the present amendment was scheduled to take effect. This meant that, from 1 September 1999, the criterion for single and partnered Parenting Payment recipients was identical—in both cases the child had only to be aged under 16 years and dependent.]
**Child Support Legislation Amendment Act 1998, No. 120**

Date of Royal Assent: 15 December 1998

### CHANGE TO FAMILY ALLOWANCE INCOME TEST

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in Schedule 20)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>Was to commence on a day to be fixed by Proclamation, or 12 months after the Date of Royal Assent if not proclaimed by then. In the event, the legislation was proclaimed on 1 January 1999</td>
</tr>
<tr>
<td>Date of application</td>
<td>As for date of commencement</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Family Allowance (both minimum and more then minimum rates)</td>
</tr>
</tbody>
</table>

It was provided that 50 per cent of any child maintenance paid by a non-custodial parent was to be deducted from his/her income when calculating his/her entitlement to Family Allowance under the income test. [The change went part of the way towards rectifying what was perceived as an inconsistency, namely that child maintenance received by a custodial parent was counted as income in the maintenance income test applied to more than minimum Family Allowance while the non-custodial parent had received no deduction when he/she paid the maintenance.]
Major changes were made in payment processing procedures, with all periodic payments made under pension conditions and those aligned with the Family Allowance system no longer made on a ‘payday’ basis (fortnightly on alternate Thursdays) but on a ‘period’ basis instead. This brought the arrangements for pensions, and for family and certain other payments, into line with those that had already applied to benefits. No change was made in the way lump sums such as Maternity Allowance were paid.

Under the new arrangements, all periodic social security payments were paid by instalments in arrears. The instalment period was generally 14 days but the Secretary could determine longer or shorter periods—for example, longer periods for Australian pensioners residing overseas. A daily rate was to be calculated for each payment based on a 14-day fortnight, so that a person was paid in any particular instalment for the number of days for which he had qualified in the previous fortnight. People whose payment days were varied following the change received one-off transitional payments to establish them on the new payment cycle.

The move to calculating payments on a 14-day fortnight also involved a change for benefits, as these had previously been based on a 10-day fortnight. Following the changes, if a person gained or lost entitlement to a day’s payment, he gained or lost one-fourteenth rather than one-tenth of the applicable fortnightly rate.

[Recipients of payments could now choose their payment day to suit their expenditure patterns and could have, for example, their Family Allowance and income support payment made on the same day, on different days in the same week, or in different weeks. Also payments were now spread evenly across financial years in every case. Previously, while most financial years had contained 26 payment periods, some had 27 and this had ‘artificially’ resulted in higher expenditure in that year.]
Endnotes

1  See reference to Community Support Program under Record 22 of 1998.

2  In relation to the liquid assets waiting period and income maintenance period, refer to Records 16 and 17 of 1997 respectively and to the endnotes to those records.

3  For purposes only of the definitions of ‘independent’ and ‘accommodated independent person’ in relation to Youth Allowance, the legislation inserted long and complex special definitions of ‘member of a couple’ and ‘former member of a couple’. Except in the case of these definitions, the general definition of married couple as applied throughout the Act also applied to Youth Allowance. However, for income and assets tests purposes, this general definition was amended in the present legislation as a beneficial measure for Youth Allowance claimants or recipients and is covered in Record 4 of 1998.

4  The definition in this amending Act was modified slightly by the Youth Allowance Consolidation Act 2000, with the amendment backdated to 1 July 1998. The provision here is as amended by that Act.

5  Endnote 4 also applies here.

6  Refer to endnote 3 of 1998.

7  Certain veterans could accrue bonus under the corresponding scheme under the Veterans’ Entitlements Act only up to the age of 70 years. This reflected the fact that the eligibility age for certain veterans’ age-related payments was five years below that for the Age Pension.

8  Due to an oversight, a number of the standard Carer Payment conditions were not applied to this change. This oversight was later rectified (refer to Record 3 of 1999).

9  The existing provision was intended to cover, and had previously covered, not only income but also amounts other than income such as capital. Through an erroneous earlier amendment, the provision had been restricted to income. The error was corrected in the present legislation.

10 At the same time, the legislation on the hardship provisions bringing the income maintenance period into line with the liquid assets test waiting period, to apply from 1 July 1999 and covered in Record 17 of 1997, was amended to include the seasonal work preclusion period. This involved the repeal of Part 2 of Schedule 4 to the Social Security Legislation Amendment (Parenting and Other Measures) Act 1997 as well as an amendment to the Social Security Act. This was purely a consequential change.

11 An activity approved by the Secretary under the Community Support Program also applied to Youth Allowance in a broadly similar way as to Newstart Allowance and was inserted in the legislation introducing that payment (refer to Record 1 of 1998).

12 The legislation did not mention Youth Allowance (it mentions Youth Training Allowance at times), but those changes coming into effect after 30 June 1998 applied to Youth Allowance.

13 Consequential technical changes to Bereavement Payments arising from the changed payment processing arrangements were made in Schedule 2 of this Act.

14 In an oversight, Austudy Payment was omitted in the legislation. The amendment for that payment was introduced in Schedule 4 to the Youth Allowance Consolidation Act 2000 to apply from 1 July 1999.
### Legislation passed in 1999

**Assistance for Carers Legislation Amendment Act 1999, No. 13**

Date of Royal Assent: 9 April 1999

<table>
<thead>
<tr>
<th>NEW METHOD OF ASSESSING ADULT DISABILITY</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Location in Act</strong></td>
</tr>
<tr>
<td><strong>Date of commencement</strong></td>
</tr>
<tr>
<td><strong>Date of application</strong></td>
</tr>
<tr>
<td><strong>Payments affected</strong></td>
</tr>
</tbody>
</table>

A new method of assessing the disability of an adult was introduced through a provision empowering the Secretary to devise a test for assessing the disability, emotional state, behaviour and special care needs of a person aged 16 years and over. The Secretary could also provide a method of rating the person by giving him/her, on the basis of the results of the test, a score in accordance with a scale indicating different levels of physical, intellectual or psychiatric disability. Any determination was to be referred to as the ‘Adult Disability Assessment Tool’ (ADAT) and was to be a disallowable instrument.

[The power to make a determination was a general one but, following the Secretary’s making of a determination, the tool was used to assess eligibility for Carer Payment, and the new Carer Allowance. The tool was intended to provide a fairer and more objective assessment of a care receiver’s condition than had previously been available for Carer Payment and Domiciliary Nursing Home Benefit. For further details, refer to Records 2 and 6 of 1999.]
2

CHANGES TO CARER PAYMENT

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in item 7 of Part 1 of Schedule 1). Also consequential amendments were made where required throughout Schedule 1. Transitional provisions are contained in Part 1 of Schedule 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>Immediately after the commencement of Schedule 1 to the <em>Payment Processing Legislation Amendment (Social Security and Veterans’ Entitlements) Act 1998</em> (1 July 1999)</td>
</tr>
<tr>
<td>Date of application</td>
<td>As for date of commencement</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Carer Payment</td>
</tr>
</tbody>
</table>

Following the Secretary’s exercise of his power to devise a new ADAT (refer to Record 1 of 1999), two changes were made to Carer Payment based on the application of the new tool. They involved:

- altering the main qualifying condition, namely that of providing the appropriate care to a ‘severely handicapped person’; and
- extending the coverage of the payment to persons caring for a broader range of care receivers.

The main basis for qualifying for Carer Payment following the change was that a person was personally providing constant care for a ‘disabled adult’ in the person’s home and, where the person was the only one providing the constant care, the care receiver had recorded a score of at least 25 on the ADAT and, in any other case, where the care receiver had recorded a score of at least 80. (These care receivers were categorised as ‘higher ADAT score adults’.)

The new condition replaced that whereby a person qualified for Carer Payment on the basis that he/she was providing constant care for a ‘severely handicapped person’ in the person’s home. This criterion had proved hard to assess. The term ‘disabled adult’ was new and was defined as ‘a person aged 16 years or more who had a physical, intellectual or psychiatric disability, and who was likely to suffer from that disability permanently or for an extended period’. A disabled adult with a ‘higher ADAT score’ effectively replaced the ‘severely handicapped person’ category. The ‘aged 16 years and over’ condition was new as it had not explicitly applied in respect of severely handicapped people in receipt of a social security payment. However, in practice all care receivers in the severely handicapped person category would have been at least 16 years of age.

The second change involved extending Carer Payment to someone personally providing constant care to a ‘disabled adult’ and a dependent child of that adult in their home, where the adult had been assigned a score of at least 20 under the ADAT and the child was aged under 16 years and, if aged six years or more, was attracting Carer Allowance. (For details of Carer Allowance, refer to Record 6 of 1999). A carer who was supervising the disabled adult’s care of the child was qualified under this provision. (Adult care recipients under this category were categorised as ‘lower ADAT score adults’.)
Legislation passed in 1999

[The other situations under which a person could also qualify for Carer Payment, namely that he/she was providing constant care for a ‘profoundly disabled child’ or for ‘two or more disabled children’ requiring at least the equivalent amount of care, were unchanged.]

A number of consequential amendments were made to income and assets tests to take account of these changes. In particular, these clarified whose income and assets were to be taken into account under the second change, where there were adult and child care receivers, and there could also be a partner of the disabled adult (who may or may not have been the carer) and other children in the family not receiving care.

### DEFECT IN CARER PAYMENT PROVISION CORRECTED

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 as set out throughout Schedule 1 (the Carer Payment provisions were restructured and the amendment was made wherever required within Schedule 1)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>Immediately after the commencement of Schedule 1 to the Payment Processing Legislation Amendment (Social Security and Veterans’ Entitlements) Act 1998 (1 July 1999)</td>
</tr>
<tr>
<td>Date of application</td>
<td>As for date of commencement</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Carer Payment</td>
</tr>
</tbody>
</table>

A defect in the legislation was corrected by ensuring that, where a recipient of Carer Payment qualified for the payment on the basis that he/she had two or more disabled children requiring, in the Secretary’s opinion, a level of care at least equivalent to that required by a profoundly disabled child, the child/children had to be aged under 16 years and the recipient was subject to the general conditions for Carer Payment (such as the residency requirements, income test and assets test).
CARER PAYMENT PROVISIONS LIBERALISED

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in item 7 of Part 1 of Schedule 1)</th>
</tr>
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<tbody>
<tr>
<td>Date of commencement</td>
<td>Immediately after the commencement of Schedule 1 to the Payment Processing Legislation Amendment (Social Security and Veterans’ Entitlements) Act 1998 (1 July 1999)</td>
</tr>
<tr>
<td>Date of application</td>
<td>As for date of commencement</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Carer Payment</td>
</tr>
</tbody>
</table>

The eligibility criteria for Carer Payment were liberalised by enabling a person to qualify for a period or periods totalling up to 63 days in a calendar year, where he/she was participating in the care of a disabled adult, the dependent child of a disabled adult, or a profoundly disabled, or disabled, child while the recipient of the care was in hospital. The carer qualified for the payment only where it was reasonable to assume that, if the care recipient had not been in hospital, he/she would have qualified for a Carer Payment while caring for that person, or that and another person, and the hospitalised person was either terminally ill or could reasonably be expected to live at home upon leaving hospital. The Secretary had the discretion to further extend the period(s) beyond 63 days ‘for any special reason in a particular case’.

[This concession enabled a person to claim Carer Payment on the basis of the care receiver’s hospitalisation. A carer who had qualified for Carer Payment before the care receiver had entered hospital had been entitled, under the previous legislation, to use the general 63 days ‘cessation of care’ period already provided in the legislation. A person was allowed only 63 days in total in the calendar year, that is the general and hospitalisation concessions could not be aggregated.]
AMENDMENTS TO BEREAVEMENT PAYMENTS

Location in Act  | Section 3 (as set out in items 88 to 104 of Part 1 of Schedule 1)
Date of commencement  | Immediately after the commencement of Schedule 1 to the Payment Processing Legislation Amendment (Social Security and Veterans’ Entitlements) Act 1998 (1 July 1999)
Date of application  | As for date of commencement
Payments affected  | Bereavement Payments

Bereavement Payments as they applied to Carer Payment were amended:

- they were extended to a recipient of Carer Payment on the death of his/her partner where the partner was a ‘long-term social security recipient’; and

- it was provided that where a person receiving Carer Payment on the basis that he/she was caring for a lower ADAT adult partner and a child, two payments were not made where both care receivers died at the same time. [For details of the ADAT, refer to Records 1 and 2 of 1999.]

[As regards the first change, previously a Carer Payment recipient had qualified for Bereavement Payments only where his/her partner had, before his/her death, been receiving a pension or specified veterans’ payment. Following the change, Bereavement Payments were also payable where the partner had been receiving any of a range of benefits when he/she died, provided that he/she had been in receipt of one, or a combination, of a pension, benefit, Youth Training Allowance or specified veterans’ payment 52 weeks before his/her death and for at least 46 of the following 52 weeks. This brought the conditions for Carer Payment into line with those for pensions and benefits generally.]
NEW CARER ALLOWANCE INTRODUCED

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 specifies the Schedules. Most of the changes are in Part 1 of Schedule 2. Part 2 of Schedule 2 contains essentially consequential changes. Transitional provisions are contained in Part 1 of Schedule 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>Immediately after the commencement of Schedule 1 to the Payment Processing Legislation Amendment (Social Security and Veterans’ Entitlements) Act 1998. That date was 1 July 1999. Some minor technical differences are unimportant and have not been recorded</td>
</tr>
<tr>
<td>Date of application</td>
<td>As for date of commencement</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Carer Allowance; Child Disability Allowance</td>
</tr>
</tbody>
</table>

A new payment, Carer Allowance, was introduced to provide assistance to people providing care in the family home for children and adults with disabilities. The rate of payment was $75.60 a fortnight. The allowance was not income or assets tested and was not taxable. Carer Allowance replaced Child Disability Allowance and Domiciliary Nursing Care Benefit.

[Domiciliary Nursing Care Benefit had been paid under the National Health Act, had been administered by the Department of Health and Aged Care and had not been regarded as a social security payment. The Department of Family and Community Services and Centrelink had responsibility for policy and administration respectively of Carer Allowance.]

Qualifying conditions

General

To qualify for the allowance, the carer and care recipient(s) had to be Australian residents and the carer had to be in Australia. Separate conditions then applied according to whether the care receiver was a child (aged under 16 years) or an adult (aged 16 years and over). The conditions in the case of a child were generally the same as had applied to Child Disability Allowance. Those for adults enabled them to qualify for the allowance somewhat more easily than had previously been the case for Domiciliary Nursing Care Benefit.

Person caring for disabled child or children

A person caring for only one disabled child or children qualified for Carer Allowance where:

- the child qualified as a ‘dependent child’ but without the income condition in the ‘dependent child’ definition applying;
- either the disability from which the child was suffering had been declared to be a ‘recognised disability’ for purposes of the legislation, or the child had been assessed and rated under the CDAT and been given a positive score of not less than ‘1’. (For details of the CDAT, refer to Record 12 of 1997); and
- because of his/her disability, the child was receiving care and attention on a daily basis from the person, the person’s partner or the person together with some other person in a private home in which both the person and child lived.
A person with two disabled children, neither of whom in his/her own right received a positive score of at least ‘1’ on the CDAT, could qualify for the allowance provided that the sum of the scores for the children was at least ‘1’ and the ‘dependent child’ and nature of care criteria specified in the case of a single disabled child were met.

The definition of ‘disabled child’ for qualification purposes was identical to that which had applied for many years to Child Disability Allowance.

**Person caring for disabled adult**

In order to qualify for Carer Allowance on the basis of caring for a disabled adult, it was necessary that:

- the adult receiving care be a family member of the carer unless the Secretary specifically approved another care receiver;
- the adult receiving care had been assessed and rated, and given a score of not less than 30, under the ADAT (for details of the ADAT refer to Records 1 and 2 of 1999); and
- because of his/her disability, the care receiver was receiving care and attention on a daily basis from the person, or that person and another person, in a private home in which both the carer and the care receiver lived. [This criterion was identical to that for carers of disabled children except that no specific mention was made of a partner's involvement in the care.]

The definition of ‘disabled adult’ was as for Carer Payment (refer to Record 2 of 1999). In the case of an adult care receiver, two provisions were carried over from Domiciliary Nursing Care Benefit. These specified that: if a person qualified for Carer Allowance on the basis that he/she was caring for a disabled adult, then that disabled adult could not qualify for an allowance on the basis that he/she was caring for another disabled adult; and that a person could qualify for the allowance on the basis that he/she was caring for one or two, but no more than two, disabled adults.

**Other provisions**

Conditions related to caring were generally as for Carer Payment. These included the general 63 days when care did not have to be provided and its extension to periods when a care receiver was in hospital (refer to Record 4 of 1999). The allowance recipient could travel overseas during any such period.

A person did not lose entitlement to the allowance where he/she ceased to provide the required care because a care receiver(s) was, or was likely to, receive education, training or treatment (other than in a hospital) for a period. However, the carer was not paid the allowance for the period.

The period during which a person could travel overseas with the care receiver and (provided that he/she continued to provide the appropriate care) continue to receive Carer Allowance was 26 weeks. It had been three years for Child Disability Allowance, while no period overseas had been allowed for Domiciliary Nursing Care Benefit. [The period for Carer Payment was three months.]

Claims could be backdated for up to 12 months for a person caring for a disabled child, and for six months where the care receiver was a disabled adult. This also reflected the more generous conditions which had applied in the case of Child Disability Allowance.
Other conditions, including the availability of Bereavement Payments, were essentially as for social security payments generally.

The rate of Carer Allowance was increased automatically in January each year in line with increases in the Consumer Price Index in the same way as Child Disability Allowance had previously been indexed.

**Transitional provisions**
A provision enabled persons receiving Domiciliary Nursing Care Benefit immediately before the change was introduced to transfer to Carer Allowance even though they, or the care receivers, were not Australian residents. This provision was necessary as the eligibility conditions for Domiciliary Nursing Care Benefit had not imposed an Australian residency requirement on either the carer or care receiver.

Other transitional provisions ensured that people who had been receiving Domiciliary Nursing Care Benefit, or Child Disability Allowance in respect of a child, could, where eligible, transfer to Carer Allowance and that claims for one of those payments were recognised as a claim for Carer Allowance.
Legislation passed in 1999

A New Tax System (Compensation Measures Legislation Amendment) Act 1999, No. 68

Date of Royal Assent: 8 July 1999

CHANGES TO COMPENSATE FOR INTRODUCTION OF THE GST

| Location in Act | Section 3 (as set out in Schedule 1). Part 1 of the Schedule deals with the vast majority of changes. Part 2 covers changes in the threshold and taper for the Family Allowance income test and tax threshold levels applicable to Family Tax Payment. Part 3 covers the reduction in the withdrawal rate (taper) in the pension income test. |
| Date of commencement | The changes were to commence only after each of five specified tax Acts related to the Goods and Services Tax (GST) had commenced. They commenced on 1 July 2000. |
| Date of application | As for date of commencement |
| Payments affected | All social security payments including a new Pension Supplement |

Rate increases and other changes were made to all social security payments to compensate recipients for increases in prices flowing from the new Goods and Services Tax (GST), which was to be introduced from 1 July 2000. Based on the estimated impact of the GST, the compensation was to be greater than the impact on prices.

The changes involved:

- an initial increase of 7 per cent in the maximum rate of Rent Assistance and of 4 per cent in the maximum rate of all other social security payments. In the case of pensions, these increases were effected by means of a Pension Supplement. [Two percentage points of the increases were regarded as advances against future GST-induced price increases. This amending Act was later amended to increase the rate of Rent Assistance by 10 per cent instead of 7 per cent (refer to Record 8 of 2000).];
- a mechanism for clawing back some of the increases in maximum rates of indexed payments over time, so that the final increases would be 5 per cent for Rent Assistance (before the change in Record 8 of 2000), and 2 per cent for other social security payments;
- a doubling of the increase in the tax thresholds for Family Tax Payment from $1000 to $2000 a child for Part A and from $2500 to $5000 per family for Part B;
- an increase of $4650 (19.7 per cent) in the Family Allowance income test free area to $28,200. Along with this change, the Secretary’s discretion to make a determination for a higher free area (the determination had been a disallowable instrument) was removed;
a 2.5 per cent increase in all other income and assets test thresholds (free areas); and

- a reduction from 50 to 40 per cent in the income withdrawal (taper) rates under the income test on pensions, and from 50 to 30 per cent in the case of the income test on Family Allowance.

Specific increases in rates and income/assets test parameters not subject to automatic indexation were made in the legislation, to come into effect when the GST was introduced. Where an income threshold had a non-indexed component (such as the dependent child addition in the pension income test), the increase for that component was specified.

In the case of indexed rates and thresholds, increases could not be specified as future indexation increases were unknown but a mechanism for the increases was provided. For rates other than pension rates, the increase was to be added to the rates and income/assets test thresholds as they would be on 1 July 2000 after all indexation increases (including any due on 1 July 2000) had been taken into account.

In the case of pensions, a separate Pension Supplement was introduced. The rate of the supplement was initially to be set at 4 per cent of the maximum basic rate of pension as it would be on 1 July 2000, after including all indexation increases scheduled between the date of the legislation and that date. The pension rate would continue after that to be subject to twice yearly automatic indexation and the supplement would be indexed in the same way. The initial rate of the Pension Supplement was $14.90 a fortnight for a single person and $12.40 for each member of a couple. The supplement was subject to the same conditions as the pension it was paid with.

Pension Supplement was introduced to ensure that pensioners continued to receive the benefit of the guarantee that the maximum basic rate of pension for single persons would not fall below 25 per cent of the prescribed ‘average weekly earnings’ figure (refer to Record 8 of 1997). Without the supplement, some or all of the compensation increase could have been absorbed within the guaranteed rate.

With a view to clawing back the 2 per cent advance payment, the legislation provided that the January or March 2001 indexation increase in the basic rate of the particular social security payment (plus Pension Supplement) would be reduced by 2 percentage points. If the Consumer Price Index increased by less than 2 per cent, then the mechanism provided that it be reduced in the subsequent indexation period or periods. However, the adjustment could not at any stage reduce the basic pension rate to below 25 per cent of the specified average weekly earnings figure. No provision was made to clawback the additional 2 per cent increase in non-indexed payments. [Their real value would, of course, fall over time to the extent that no indexation or ad hoc increases were made.]

The following table provides details of increases in all non-indexed rates. Consistent with the practice throughout the compendium, indexed rates have not been included. In addition, the wide range of changes to income and assets tests parameters (both indexed and non-indexed) have not been included.
Legislated increases in rates of non-indexed social security payments to apply from 1 July 2000

<table>
<thead>
<tr>
<th>Payment type</th>
<th>4% Increase</th>
<th>Rate from 1 July 2000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Remote Area Allowance</td>
<td></td>
<td></td>
</tr>
<tr>
<td>– Single</td>
<td>0.70</td>
<td>18.20</td>
</tr>
<tr>
<td>– Partnered (each)</td>
<td>0.60</td>
<td>15.60</td>
</tr>
<tr>
<td>– For each child</td>
<td>0.30</td>
<td>7.30</td>
</tr>
<tr>
<td>Maternity Allowance</td>
<td>30.00</td>
<td>780.00</td>
</tr>
<tr>
<td>Maternity Immunisation Allowance</td>
<td>8.00</td>
<td>208.00</td>
</tr>
<tr>
<td>Employment Entry Payment</td>
<td></td>
<td></td>
</tr>
<tr>
<td>– Higher rate</td>
<td>12.00</td>
<td>312.00</td>
</tr>
<tr>
<td>– Lower rate</td>
<td>4.00</td>
<td>104.00</td>
</tr>
<tr>
<td>Education Entry Payment</td>
<td>8.00</td>
<td>208.00</td>
</tr>
<tr>
<td>Pensioner Education Supplement</td>
<td>2.40</td>
<td>62.40</td>
</tr>
<tr>
<td>Approved Program of Work Supplement</td>
<td>0.80</td>
<td>20.80</td>
</tr>
<tr>
<td>Limit on rate of various pensions payable to certain armed service widows</td>
<td>4.80</td>
<td>124.90</td>
</tr>
</tbody>
</table>

Note: Rates are fortnightly for periodic payments. The limit in the last row is the maximum rate of applicable pension payable to certain armed service widows receiving a pension under the Veterans' Entitlements Act.
A New Tax System (Family Assistance) (Consequential and Related Measures) Act (No. 1) 1999, No. 82

Date of Royal Assent: 8 July 1999

### PARENTING PAYMENT INCOME TEST EASED

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in Schedule 1)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>Was to commence, or be taken to have commenced, immediately after the commencement of certain other tax legislation related to the GST. It commenced on 1 July 2000</td>
</tr>
<tr>
<td>Date of application</td>
<td>As for date of commencement</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Parenting Payment (partnered)</td>
</tr>
</tbody>
</table>

The income test for Parenting Payment (partnered) was substantially eased by extending the range of income above the permissible income limit (free area) over which the 50 per cent withdrawal rate applied from $80 to $183 per fortnight. The free area was increased from $60 to $62 from the same date under the GST compensation provisions covered in Record 7 of 1999. The 70 per cent taper now applied in respect of income above $245 a fortnight. [This amendment ensured that two-income families at the higher end of the income range benefited to the extent originally foreshadowed when the decision to introduce a GST was announced.]
Amendments were made to the Social Security Act to accommodate major changes to family assistance designed to simplify the structure and administration of the system. Twelve forms of family assistance under various Acts were reduced to three forms of assistance following the passage of the *A New Tax System (Family Assistance) Act 1999*. The new family assistance measures applied from 1 July 2000 and were part of a package of measures underpinning the new tax arrangements with the introduction of the GST.

The 12 forms of family assistance abolished (or abolished in their present form) were:

- under the Social Security Act, Family Allowance, Guardian Allowance, Family Tax Payment (both Parts A and B), and Basic Parenting Payment (partnered);
- under tax legislation, Family Tax Assistance (both Parts A and B), the dependent spouse rebate in families with children, and the sole parent rebate. (The dependent spouse rebate was retained for couples without children.); and
- under child care legislation, the Childcare Cash Rebate and Child Care Assistance.

In addition, Maternity Allowance and Maternity Immunisation Allowance were removed from the Social Security Act and incorporated, substantially in their existing form, in the new legislation introducing the three new family payments. As a result, all family-related payments were essentially contained in the one Act. Double Orphan Pension was retained in the Social Security Act.

The three new family payments which replaced/absorbed the previous 12 benefits were Family Tax Benefit Part A, Family Tax Benefit Part B and Child Care Benefit. As these are not contained in the Social Security Act, details of them have not been provided in this compendium. Also, following their removal from the Social Security Act, changes to Maternity Allowance and Maternity Immunisation Allowance after 30 June 2000 fall outside the ambit of the compendium.
### CHANGE TO PARENTAL INCOME TEST ON YOUTH ALLOWANCE

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in Schedule 9)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>1 January 2001</td>
</tr>
<tr>
<td>Date of application</td>
<td>Applied for the purposes of working out the rate of Youth Allowance for a Youth Allowance payment period ending after 1 January 2001</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Youth Allowance</td>
</tr>
</tbody>
</table>

The ‘non-grossed up’ value of fringe benefits was used when assessing the value of fringe benefits for purposes of the parental income test applying to Youth Allowance in respect of non-independent persons. This figure was calculated by the formula ‘reportable fringe benefits total x (1 minus FBT rate)’. It enabled the ‘non-grossed up’ figure to be calculated from the ‘grossed-up’ figure that an employer was required to report on a person’s group certificate.

In the formula, ‘reportable fringe benefits total’ was defined as ‘the amount that the Secretary was satisfied was the parent’s reportable fringe benefits total (as defined in the Fringe Benefits Tax Assessment Act) for the year of income that was the tax year’. The Fringe Benefits Tax Rate, or FBT rate, was defined as the rate of tax set by the Fringe Benefits Tax Act for the FBT year (as defined in the Fringe Benefits Tax Assessment Act) beginning on 1 April just before the start of the tax year.

[The change was made in order to bring the social security provision into line with changes made in reforms to the fringe benefits tax provisions in taxation legislation. The new definition was also to apply to the parental income test in the restructured family payments no longer in the Social Security Act (refer to Record 9 of 1999).]
A New Tax System (Family Assistance) (Consequential and Related Measures) Act (No. 2) 1999, No. 83

Date of Royal Assent: 8 July 1999

This amending Act made a large number of what were no more than consequential amendments resulting from the new structure of family assistance (no longer in the Social Security Act) and the repeal of assistance to families in the Social Security Act (refer to Record 9 of 1999). These have not been included here.

Also, although it is a 1999 amendment Act, Part 7 of Schedule 1 amended changes made by the Youth Allowance Consolidation Act 2000. This occurred because the Youth Allowance Consolidation Act was expected to be passed earlier than it in fact was and the order in which the Acts were passed in Parliament changed. These amendments have been incorporated directly into the changes made under the Youth Allowance Consolidation Act.

No changes have been recorded under this amendment Act.
Social Security (Family Allowance and Related Matters) Legislation Amendment Act 1999, No. 114

Date of Royal Assent: 22 September 1999

<table>
<thead>
<tr>
<th>CHANGES TO FAMILY ALLOWANCE</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Location in Act</strong></td>
</tr>
<tr>
<td><strong>Date of commencement</strong></td>
</tr>
<tr>
<td><strong>Date of application</strong></td>
</tr>
<tr>
<td><strong>Payments affected</strong></td>
</tr>
</tbody>
</table>

In changes to Family Allowance:

- the allowance became payable in respect of dependent full-time student children aged 16 to 24 years and other dependent children aged 16 to 20 years; and
- a new $50 a fortnight flat rate of payment was made in respect of dependent children aged 18 to 24 years. The $23.70 minimum rate previously paid in respect of dependent children aged 16 to 18 years was now paid for those aged 16 or 17 years.

Previously, payment of Family Allowance in respect of ‘children’ aged 16 years and over had been limited to full-time students aged 16 or 17 years, and to secondary students aged 18 years until they ceased study, or in any event no later than the end of the calendar year in which they turned 18 years of age. Other conditions of payment pertaining to the ‘child’ (or ‘children’) remained unchanged.

[In some circumstances, depending on the ages of the ‘child/children’ and the operation of the various means tests, a family could receive more money if the parent claimed Family Allowance instead of the child claiming Youth Allowance. The family was entitled to claim whichever benefit was higher. In addition, some families where there was previously no entitlement to Youth Allowance or Family Allowance gained an entitlement to Family Allowance under the changes.]

These changes were enacted after the major structural changes to family payments to apply from 1 July 2000 (refer to Record 9 of 1999), but took effect at an earlier date. Complementary changes were made to the legislation introducing the new arrangements to ensure that the thrust of the present changes continued in them.]
Aged Care Amendment (Omnibus) Act 1999, No. 132

Date of Royal Assent: 13 October 1999

<table>
<thead>
<tr>
<th>CHANGES RELATED TO RESTRUCTURING OF AGED CARE SERVICES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Location in Act</td>
</tr>
<tr>
<td>Date of commencement</td>
</tr>
<tr>
<td>Date of application</td>
</tr>
<tr>
<td>Payments affected</td>
</tr>
</tbody>
</table>

A number of amendments were made to the Social Security Act to complement structural changes in the arrangements for residential care services for elderly people under the Aged Care Act. These changes included the replacement of accommodation bonds by accommodation charges in certain circumstances. The changes were consequential, did not involve changes in social security policy, and can be fully understood only in the context of the aged care policy changes in the Health and Ageing portfolio made since 1997.

Rent exempted from income test

Rent from a person’s family home that he/she or his/her partner derived was excluded from pension and benefit income tests while the person was accruing a liability to pay an accommodation charge. An accommodation charge was an amount of money that accrued daily, paid or payable to an approved provider to cover a person’s entry to a residential care service or flexible care service through which care was, or was to be, provided.

Family home not assessed as an asset while person absent from it

The existing provision enabling a person to have his/her family home exempted from the various assets tests in certain circumstances, notwithstanding that he/she was not living in it, was extended. It now applied where the Secretary was satisfied that the person left the home to enter into a care situation during any period in which the person was accruing a liability to pay an accommodation charge (or would have been accruing such a liability except that sanctions were currently being imposed on the care provider under the Aged Care Act); and the person, or the person’s partner, was deriving rent from the residence from another person. It also applied where the residence was the person’s partner’s family home. ‘Care situation’ was as already defined in the Act.
Income test concessions for aged care bond transactions

Certain transactions on aged care bonds that occurred before 6 November 1997 received concessional treatment under pension and benefit income tests. The changes took account of the abolition of the accommodation bond scheme from 6 November and its replacement with an accommodation charge scheme. The broad thrust of the concessions, which were also granted to the person’s partner even if the person had died, involved:

- an exemption from the income test on bond payments refunded where a person who had paid, or been liable to pay, an accommodation bond for entry to residential care between 1 October 1997 and 5 November 1997 became liable for an accommodation charge instead; and

- a concession to a person where the Secretary was satisfied that he/she had sold the family home on or before 5 November 1997 for the sole or principal purpose of raising money to pay an accommodation bond for entry to a residential care service, and was now liable for an accommodation charge instead. In this case, a person’s and a person’s partner’s income was reduced by an amount equal to the income that would be calculated if the social security deeming rules were applied to a capital amount equal to the amount of the refunded bond or the proceeds of the sale of the home, if relevant. The mechanics of this were to treat the person’s refund/proceeds as a financial asset, and to assume that the person’s financial assets exceeded the deeming threshold under the extended deeming rules.

Refunds to residents exempt from charges

It was provided that refunds to residents exempt from accommodation charges paid to a care service were concessionally treated under income and assets tests. The concessions applied to a person who was a resident exempt from charges before or after the present changes but did not apply to refunds made to the person’s estate or to another person.

The refunded amount was not counted as income for purposes of any income test in the Act. Instead, it was made subject to the extended deeming rules with the same assumptions as for bond transactions.

Exempt bond amounts and refunds were not subject to assessment under the assets test. However, the deprivation provisions of the assets test, where relevant, applied in the event of their being disposed of.
Concession in Maintenance Income Test Removed

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in Schedule 1)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>1 April 2000</td>
</tr>
<tr>
<td>Date of application</td>
<td>1 April 2000</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Family Allowance</td>
</tr>
</tbody>
</table>

The concession in the maintenance income test on Family Allowance, under which certain types of maintenance (such as housing or mortgage payments) defined as ‘special maintenance’ were more generously treated than other maintenance, was removed. Following the change, all maintenance was treated in the same way in the test.
INTEGRATION OF SOCIAL SECURITY PAYMENTS AND THE CDEP SCHEME

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in Schedule 2)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>Main changes related to income test on Community Development Employment Projects (CDEP) Scheme earnings and Participant Supplement commenced from 11 November 1999. Extension of additional payments to CDEP Scheme participants applied from 20 March 2000</td>
</tr>
<tr>
<td>Date of application</td>
<td>The Participant Supplement was paid from 20 March 1999 but full means test on supplement applied only from 20 March 2000. Extension of additional payments to CDEP Scheme recipients and new treatment of CDEP Scheme earnings under the means test applied from 20 March 2000. Sections dealing with identifying who is a CDEP Scheme participant applied from 20 March 2000. See other references to application dates under body of description</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Pensions and benefits; Rent Assistance; Bereavement Payments; Telephone Allowance; Pharmaceutical Allowance; Fringe Benefits (Concession Cards); Participant Supplement</td>
</tr>
</tbody>
</table>

Major changes were made in order to integrate the Community Development Employment Projects (CDEP) Scheme with the social security system and to provide participants in the scheme with access to payments and concessions to which they would have been entitled if they had been receiving social security benefits.

**Background**

The CDEP Scheme was designed as an employment initiative for Indigenous communities. Aboriginals and Torres Strait Islanders who participated in the scheme worked for a wage equivalent to the rate of Newstart Allowance or Youth Allowance to which they would otherwise have been entitled. The scheme was administered by the then Aboriginal and Torres Strait Islander Commission (ATSIC). CDEP Scheme wages are not social security payments and the scheme is not covered under the Social Security Act.

Features of the scheme before the changes were that:

- in order to participate in it, a person was required to forgo his/her entitlement to benefits;
- under ATSIC guidelines pensioners except sole parents could not participate in it;
- sole parents on Parenting Payment (single) were allowed to participate and their earnings were assessed under the general income test; and
- funding for the scheme took account of the fact that participants were not generally entitled to pensions and benefits.
A review of the scheme had pointed to certain inequities in the treatment of CDEP Scheme participants compared with benefit recipients:

- despite the low level of CDEP Scheme payments, unlike benefit recipients, participants did not have access to Rent Assistance and other additional payments or concessions;
- the treatment of Parenting Payment (single) recipients was more generous than that of other pensioners and of non-pensioners; and
- while the nature of their employment, particularly for single adults, was largely akin to that under the Work for the Dole program, and they had to incur work-related costs, participants were not entitled to a payment equivalent to the Approved Program of Work Supplement payable under that program.

The changes were intended to remedy these deficiencies and make the scheme more attractive to prospective participants.

**Summary of main changes**

The main changes involved:

- providing CDEP Scheme participants access to the additional payments and concessions available to pensioners and beneficiaries;
- allowing all pensioners access to the scheme but excluding Sickness Allowance recipients;
- providing a more consistent treatment of CDEP earnings in pension and benefit income tests with Parenting Payment (single) recipients no longer treated more favourably than others; and
- the payment of a Participant Supplement to people participating in the scheme.

**Identifying CDEP Scheme participants**

The legislation defined a CDEP participant for purposes of applying the new conditions. Essentially, a person was a participant if his/her name appeared on the latest scheme schedule or he/she had been certified by an authorised officer as having commenced participation. However, a person was not treated as a participant if the Secretary believed, on reasonable grounds, that he/she was no longer participating in the scheme, or was sick or incapacitated and not receiving sickness benefits under the scheme. The definition took account of the fact that people usually entered the scheme for a period of three months but were also frequently permitted to enrol during the course of a quarter.

**Access to additional payments and concessions**

The legislation excluded CDEP Scheme participants from receiving the maximum basic benefit rate or Remote Area Allowance but extended them access to additional payments such as Rent Assistance, Bereavement Payments, Telephone Allowance, Pharmaceutical Allowance and Concession Cards carrying entitlement to Fringe Benefits. Remote Area Allowance was not paid as the funding for the CDEP Scheme already comprised a component for remoteness. The legislation made provision for participants to elect to accumulate any additional payments and receive them in a lump sum at the end of a quarter.
Various provisions and definitions in the Act were amended to enable access to these additions. Bereavement Payments were based on the maximum basic rate of an allowance/benefit, notwithstanding that scheme participants were not eligible for that rate. At the start of the scheme, qualifying periods for Bereavement Payments and Concession Cards (including a Health Care Card under the National Health Act) that were based on continuous receipt of specified payments over a set period were assumed to have been met, after which CDEP participants accumulated these periods on the same basis as beneficiaries. Also participants were regarded as social security recipients as required for purposes of gaining access to payments and concessions which depended on a person having social security recipient status.

**Treatment of CDEP Scheme earnings under income tests**

From 20 March 2000, earnings under the CDEP Scheme were directly deducted (that is, withdrawn on a dollar-for-dollar basis) under the pension or benefit income tests up to the equivalent of the relevant maximum basic rate of benefit that would have been applicable to a person. Maximum benefit rates applied to pensioners, so that pensioners whose thresholds would have been higher than the relevant beneficiary threshold maintained their advantage. Above this threshold, any additional earnings were subject to the general income test withdrawal rate. In the case of a couple, a dollar-for-dollar deduction from the person’s benefit applied for any CDEP Scheme earnings received by the person’s partner up to the amount of the partner’s threshold, with any earnings in excess of that threshold being subject to the general income test.

**Treatment of pensioners under the income test**

Pensioners other than Parenting Payment (single) recipients were no longer precluded under ATSIC guidelines from participating in the CDEP Scheme.

All pensioners, including Parenting Payment (single) recipients, were now subject to the same income test. This meant that Parenting Payment (single) recipients no longer had the advantage of only having the general income test applied to their CDEP Scheme earnings. However, a savings clause allowed persons who were both Parenting Payment (single) recipients and CDEP Scheme participants immediately before the day on which the legislation received Royal Assent (11 November 1999) to continue to have any earnings assessed under the general income test, but only for as long as they remained scheme participants. The savings clause did not apply to persons who left and then returned to the scheme.

**Exclusion of CDEP Scheme participants from Sickness Allowance**

The legislation precluded a CDEP Scheme participant from receiving Sickness Allowance. It was expected that scheme participants would have access to sickness payments from the scheme or their employer as for workers generally. However, those who had exhausted any such sick leave entitlement could apply for Sickness Allowance in the normal way.
Payment of Participant Supplement

A Participant Supplement of $20 a fortnight was payable to a person who was a CDEP Scheme participant in the relevant payment period or on the relevant pension payday. A break in CDEP Scheme participation of up to two payment periods or two pension paydays was permitted before qualification for the supplement was affected. [The supplement was identical to the Approved Program of Work Supplement payable under the Work for the Dole program—refer to Record 5 of 1997.]

To be eligible to receive the supplement, a CDEP Scheme participant had to be receiving a pension or be qualified for, but not receiving, a pension or benefit but meeting the specified conditions.

The full conditions for non-pensioners applied only to payment periods beginning on or after 20 March 2000. From that date, a person had to pass a specific income test and also not be precluded from payment on the basis of the liquid assets or other waiting period, a lump-sum or compensation preclusion period, a provision covering seasonal or intermittent workers or the benefit assets test. For income test purposes, it was assumed in every case that a person’s entitlement was the maximum benefit rate plus Rent Assistance. Accordingly, a person was eligible for a supplement as long as his/her earnings were not at a level that would have notionally precluded him/her from receiving some benefit entitlement under the test. In the case of a couple, any CDEP Scheme earnings of the partner were also taken into account.

A CDEP Scheme participant was required to make a ‘proper’ claim for the supplement. However, the legislation did not lay down strict conditions for the claim. A claim simply had to be made in such a manner and within such a period as the Secretary determined.

For the first year of the supplement, 20 March 1999 to 19 March 2000, a CDEP Scheme participant had only to comply with the income test. There was no requirement that he/she qualify for a pension or benefit, or meet any of the other conditions that applied from 20 March 2000. [The relaxed qualification criteria in that period avoided the need to place an undue burden on scheme participants by requiring them to establish their notional qualification for a benefit.]
INTRODUCTION OF SPECIAL EMPLOYMENT ADVANCE

Location in Act  
Section 3 (as set out in Schedule 3)

Date of commencement  
11 November 1999

Date of application  
11 November 1999

Payments affected  
Pensions (except Age Pension, Rehabilitation Allowance and Bereavement Allowance); Widow Allowance; Newstart Allowance; Youth Allowance; Austudy Payment

A special employment advance was introduced. It involved an extension of the advance payment arrangements, and assisted certain pension or benefit claimants who needed the money because they had casual earnings which they had not yet received, or had start-up costs in relation to a job offer, and were ineligible for a pension or benefit under those arrangements. The advance (from $50 to $500) was available to persons qualified for a pension (except Age Pension, Rehabilitation Allowance and Bereavement Allowance), Widow Allowance, Newstart Allowance, Youth Allowance or Austudy Payment. These were the same payments to which the general advance payment provisions applied except that Age Pension was not included.

The provision of a special employment advance took account of the fact that a person’s pension or benefit was reduced under the income test for earned income, even where the income had not been received, and that this could place him/her in financial hardship. It also had regard to the fact that some people could not accept an employment offer because they had insufficient resources, for example, to purchase tools or protective clothing required in the employment.

Qualifying conditions

A special employment advance was available in two situations: where a person, or his/her partner, had earnings from casual work which had not yet been received and he/she was in severe financial hardship; or where the Secretary was satisfied that a person had received a definite offer of at least six weeks’ employment in Australia and needed the money to enable him/her to take up the position.

A person who met one of the two conditions could access an advance provided that he/she was qualified to receive a pension or benefit covered by the advance; had been receiving a pension, benefit, Youth Training Allowance or specified veterans’ payment for a continuous period of at least three months immediately before his/her claim; satisfied the Secretary that he/she would not suffer financial hardship when repaying the advance to the Commonwealth; and met specified conditions related to the circumstances giving rise to his/her eligibility.

The legislation contained general provisions precluding a person from receiving a special employment advance where he/she qualified for an Employment Entry Payment and had claimed the payment in respect of a job offer; or where he/she owed a debt to the Commonwealth under any Act and the debt was recoverable through deductions from his/her social security payment.
Claim based on non-receipt of casual earnings

In the case of an application based on the ‘non-receipt of casual earnings’, these earnings had to be such as to reduce the maximum basic rate of the relevant pension or benefit entitlement on the first payment day, or on average on all payment days of entitlement, by at least half. This condition did not apply to participants in the CDEP Scheme.

A person was regarded as being in ‘severe financial hardship’ for claim purposes where his/her liquid assets were less than the fortnightly amount (double the amount in the case of a couple) of the maximum rate of the relevant pension or benefit. For CDEP Scheme participants, the scheme’s special rules on maximum rates (refer to Record 14 of 1999) did not apply in relation to the advance. The standard definition of ‘liquid assets’ in the Act applied.

Claim based on definite job offer

Where the application was based on a ‘definite job offer’, either the prospective earnings had to reduce the maximum basic rate of the relevant pension or benefit entitlement by at least half (or, in the case of Youth Allowance or Austudy Payment, would have done so but for the operation of the Student Income Bank) over the minimum six-week period for which the employment was required to last; or the person had to cease to qualify for the advance upon his/her taking up employment.

A person was precluded from receiving an advance where he/she was participating in an employment placement program which the Secretary had declared to be one under which a person should not be entitled to an advance. Any declaration was a disallowable instrument. [This restriction was inserted as it was considered that any such assistance in a program funded by the Commonwealth should come from the program provider.]

Claims for an advance

The claiming provisions in the legislation were as for pensions and benefits generally but a person was required to specify the amount of advance sought. A person had to be in Australia when the claim was lodged. If the Secretary was satisfied that earnings due to the person would be received within two days, he/she was not to accept a claim based on this circumstance unless he/she regarded it as essential on the basis of the person’s financial needs. When making a claim based on the need for an advance in order to take up an offer of employment, a person was required to set out details of the employment (including its duration), and the way in which the financial assistance was to be spent to assist his/her taking up the offer.

Amount of advance

The minimum amount of advance was $50 and the maximum $500 but could not exceed the amount claimed. The sum was reduced by the amount of any Employment Entry Payment which had been paid to the person or to which he/she was entitled in respect of the yet to be received earnings or job offer. Subject to these conditions, the amount could vary based on the reason for the claim. The advance was to be made in a lump sum unless the Secretary considered instalments more appropriate. In the latter case, the timing and amounts in the instalments were to be at the Secretary’s discretion.
Claim based on earnings yet to be received
Where the claim was based on earnings yet to be received, the amount of the advance could not exceed the amount by which the applicant’s social security entitlement was to be reduced by the prospective earnings, or the difference between the $500 maximum rate and any special employment advance previously received by the claimant which had not been repaid to, or recovered by, the Commonwealth.

Claim based on need for assistance to take up job offer
For claims based on the need for assistance to take up a job offer, the amount payable was usually that required to take up the job offer. Where a debt remained payable to the Commonwealth in respect of a previous special employment advance, provided that the debt was less than $500, the amount was the difference between the debt and $500 but was payable only where the Secretary was satisfied that the claimant’s financial resources were sufficient, with the receipt of that amount, to take up the job offer. Where a debt was $500 or more, no advance was payable.

In the ‘job offer’ case, the claimant also had to comply with a liquid assets test before he/she became eligible for an advance. Where the person’s liquid assets exceeded his/her fortnightly maximum advance entitlement (or twice the fortnightly entitlement in the case of a couple), the amount of advance payable was reduced by the excess. For CDEP Scheme participants, the scheme’s special rules on maximum rates were disregarded when applying the liquid assets test.

Repayment of the advance
The legislation provided that the advance could be repaid through deductions from the person’s ongoing pension or benefit, a method provided under the overpayments and debt recovery sections of the Act (this method was used only where the advance had not been repaid, and became a debt to the Commonwealth), or some other method which both the person and the Secretary found acceptable. The repayment provision in no way affected the Secretary’s powers and duties to deal with non-recovery of debts in cases where a person’s failure to repay an advance became a debt due to the Commonwealth.

The Secretary could determine the amount of advance deductions from a person’s ongoing pension or benefit entitlement. A person could opt to have a larger amount deducted than that determined by the Secretary, provided that the Secretary was satisfied that he/she would not suffer severe financial hardship. The Secretary could also reduce or stop reductions for a period if a person requested it on the basis of financial hardship, provided that he/she was satisfied that the circumstances were exceptional and could not reasonably have been foreseen when the person claimed the advance, and that they would cause financial hardship. The Secretary could increase the deduction to an amount still lower than the original determination, or restore the full deduction at any time, but only if he/she was satisfied that it would not result in the person suffering severe financial hardship.
A new payment, known as Crisis Payment, was introduced. It was a one-off, non-refundable payment to assist certain persons qualified for a pension or benefit who were in severe financial hardship after their release from gaol or psychiatric confinement, or after being forced to leave their home due to extreme circumstances.

The new payment replaced the prevailing special arrangements for assisting certain people released from gaol or psychiatric confinement. [This change has been covered separately under Record 17 of 1999. The Crisis Payment provided broader coverage but was less generous, in that the person had to have been in gaol or otherwise confined for 14 days compared with seven days in the former provision.]

A person was qualified for the new payment under the first criterion where he/she:

- had been released from gaol, or from psychiatric confinement resulting from a charge related to the committing of an offence, after spending at least 14 days in gaol or such confinement;
- had claimed the payment while in gaol or psychiatric confinement, or within seven days of being released; and
- was qualified for a pension or benefit on the day the claim was made, and was in severe financial hardship.

On the second criterion, a person could qualify for up to a maximum of four payments in a year where he/she:

- had left, or could not return to, his/her home because of an extreme circumstance;
- could not be reasonably expected to remain in, or return to, his/her home because of the extreme circumstance;
- had established, or intended to establish, a new home;
- was in Australia at the time of the extreme circumstance;
- had claimed the payment within seven days of the extreme circumstance occurring; and
at the time of making the claim was in severe financial hardship and had made a claim at the same time or earlier, and was qualified, for a pension or benefit.

‘Severe financial hardship’ was defined essentially as for Special Employment Advance—refer to Record 15 of 1999. For CDEP participants, the maximum rate of pension and benefit in the definition was that which would have applied if the claimant had not been participating in the scheme.

The normal pension and benefit rules precluding payment where an assurance of support was in force also applied to Crisis Payment. In relation to the extreme circumstance criterion, a Crisis Payment was not payable where a person was qualified for a Disaster Relief Payment (whether under the Social Security Act or otherwise) in respect of the same extreme circumstance, or where the Secretary was satisfied that the extreme circumstance had been brought about with a view to obtaining the payment.

There were no residency conditions or income and assets tests specific to Crisis Payment, as it was available only to persons qualified for a pension or benefit.

The amount of the Crisis Payment was half the maximum fortnightly basic rate of the pension or benefit to which a person was entitled. In the case of a CDEP Scheme participant, it was the pension or benefit he/she was taken to be receiving, or the payment with the higher rate where the person was taken to be receiving more than one such payment.

General claiming provisions were similar to those for pensions and benefits. A person had to be in Australia on the day the claim was lodged. Persons could have a claim backdated up to two weeks where they had contacted the department in relation to a claim for a social security payment before actually making a claim for Crisis Payment. [Certain special claiming concessions applicable to Crisis Payment in respect of persons in gaol, or undergoing psychiatric confinement based on a charge related to the committing of an offence, were also extended to pensioners and beneficiaries generally from the same date. These have been dealt with under Records 28, 29 and 30 of 1999.]

[The introduction of a Crisis Payment was a response to a request for a non-refundable payment in crisis situations. Provision already existed for advances of payment entitlements in times of crisis but these had to be repaid.]
### PROVISIONS FOR PERSONS IN OR RELEASED FROM CONFINEMENT

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in items 4 to 12 and items 14, 15 and 16 of Schedule 4). Special application clause for first change is at item 6 of Schedule 11</th>
</tr>
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<tbody>
<tr>
<td>Date of commencement</td>
<td>Was to commence on Date of Royal Assent or 1 October 1999, whichever was later. In the event, commencement date was 11 November 1999</td>
</tr>
<tr>
<td>Date of application</td>
<td>First change: as for date of commencement, except that persons released from gaol/psychiatric confinement before the change commenced continued to be paid a double payment under the old rules, even where the claim was made and granted after the commencement date of the present change. Second change: as for date of commencement</td>
</tr>
</tbody>
</table>
| Payments affected | First change: benefits  
Second change: pensions (except Bereavement Allowance) and benefits (except Special Benefit); Pensioner Education Supplement. Only part of change applied to pensions |

Consequential to the introduction of a Crisis Payment (refer to Record 16 of 1999) the following changes were made:

- a double payment provision applying to benefits was abolished. This had provided that, where a person was released from gaol, or from psychiatric confinement resulting from a charge related to the committing of an offence, after spending at least seven days in gaol or confinement, and he/she claimed a benefit within a week of the release, he/she received the first week’s entitlement at twice the normal rate; and

- it was provided that an instalment of a pension (other than Bereavement Allowance), benefit or Pensioner Education Supplement was not payable in respect of a day on which a person was in gaol or undergoing psychiatric confinement after being charged with an offence. This modified an existing provision by extending it beyond pensions and no longer—as had previously applied to pensions—providing for payment in respect of the person’s first and last days in gaol or psychiatric confinement.
MODIFICATIONS TO NEWLY ARRIVED RESIDENTS’ WAITING PERIOD

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in Schedule 5)</th>
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<tbody>
<tr>
<td>Date of commencement</td>
<td>Date to be fixed by Proclamation but no later than six months after the legislation received Royal Assent. The changes were proclaimed on 1 February 2000</td>
</tr>
<tr>
<td>Date of application</td>
<td>As for date of commencement</td>
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</tbody>
</table>
| Payments affected        | First change: Newstart Allowance; Sickness Allowance; Mature Age Allowance (benefit); Partner Allowance; Mobility Allowance; Seniors Health Card  
                           | Second change: Carer Payment; Widow Allowance; Newstart Allowance; Sickness Allowance |

The two-year newly arrived residents’ waiting period applying to a number of social security payments was modified so that the rules applied were consistent across all payments covered by the provision, and across all countries from which those claiming social security payments came. The changes involved:

- in respect of certain payments and concessions, applying the full waiting period to New Zealand citizens settling in Australia on the same basis as to persons arriving from other countries. These payments and concessions were Newstart Allowance, Sickness Allowance, Mature Age Allowance (benefit), Partner Allowance, Mobility Allowance and the Seniors Health Card. [New Zealand citizens were already subject to these conditions in respect of other payments covered by the waiting period.]; and

- requiring that persons claiming Carer Payment, Widow Allowance, Newstart Allowance or Sickness Allowance serve the entire waiting period in Australia. [This requirement already existed for the other payments subject to the waiting period.]

A savings provision ensured that persons subject to the newly arrived residents’ waiting period before the changes came into effect continued to be treated under the previous rules. Separate savings provisions within individual payments also protected certain New Zealand citizens who were Australian residents from the first change.
### RESTRICTION ON PAYMENT OF CERTAIN PENSIONS OVERSEAS

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in items 1 and 2 of Schedule 6)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>11 November 1999</td>
</tr>
<tr>
<td>Date of application</td>
<td>11 November 1999</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Age Pension; Disability Support Pension; Bereavement Allowance</td>
</tr>
</tbody>
</table>

It was provided that an Age Pension, Disability Support Pension or Bereavement Allowance were not payable overseas to a person who, after ceasing to be an Australian resident and then becoming one again, was granted, or transferred to, one of these payments, and then left the country within 12 months of regaining his/her residency status, unless the Secretary had made a specific determination to the contrary. The provision also applied to persons arriving in Australia from an external territory.

This varied the existing rules, which had provided that the specified pensions had not been payable overseas where the person had lodged a claim for one of them and then left Australia within 12 months of regaining residency status, but did not preclude payment once the payment had been granted. [Before the amendment, persons not required to make a claim (recipients of payments enabling them to transfer to Age Pension automatically on attaining Age Pension age and who were otherwise qualified) had been able to bypass the intent of the legislation.]

### AMENDMENT TO PROPORTIONAL PORTABILITY RULES

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in item 3 of Schedule 6)</th>
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<tbody>
<tr>
<td>Date of commencement</td>
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<tr>
<td>Date of application</td>
<td>11 November 1999</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Age Pension; Disability Support Pension; Wife Pension; Widow B Pension; Bereavement Allowance</td>
</tr>
</tbody>
</table>

An amendment provided that the proportional portability rules pertaining to Age Pension, Disability Support Pension, Wife Pension, Widow B Pension and Bereavement Allowance applied not only when these payments were granted in Australia but also where a person transferred to one of them while overseas.

[This amendment removed an anomaly whereby persons transferring directly to one of these payments while overseas, where the rules allowed it, were not subject to the proportional portability rules. For details of the portability arrangements, refer to Record 1 of 1986.]
21

**FURTHER CHANGE TO PROPORTIONAL PORTABILITY RULES**

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in item 4 of Schedule 6)</th>
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<tbody>
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<td>11 November 1999</td>
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<tr>
<td>Date of application</td>
<td>11 November 1999</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Age Pension; Disability Support Pension; Wife Pension; Widow B Pension; Bereavement Allowance</td>
</tr>
</tbody>
</table>

It was provided that, where a person receiving any social security payment became qualified for another social security payment, any concession under the existing proportional portability rules allowing him/her to use his/her ex-partner’s period of Australian working life residence instead of his/her own, where the ex-partner’s period of such residence was longer, was retained in respect of the new payment for which the person was qualified. The provision benefited people receiving an Age Pension, Disability Support Pension, Wife Pension, Widow B Pension or Bereavement Allowance as the existing concession applied to these payments.

22

**AUTOMATIC TRANSFER TO AGE PENSION WHILE OVERSEAS**

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in items 5, 6, 7 and 8 of Schedule 6)</th>
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</thead>
<tbody>
<tr>
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<td>11 November 1999</td>
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<tr>
<td>Date of application</td>
<td>11 November 1999</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Age Pension</td>
</tr>
</tbody>
</table>

A person who became qualified for an Age Pension, and who was receiving another pension (other than Carer Pension) while overseas, could now transfer automatically to that pension. Previously, it had been necessary to claim the Age Pension within three months of ceasing to receive one of these other pensions. [This brought the rules for pensioners overseas into line with those applying to pensioners in Australia.]
AGE PENSION QUALIFYING CONDITIONS TIGHTENED

Location in Act  
Section 3 (as set out in items 9 and 10 of Schedule 6)

Date of commencement  
11 November 1999

Date of application  
11 November 1999

Payments affected  
Age Pension

The qualifying conditions for Age Pension were tightened by requiring that if, immediately before attaining Age Pension age, a person was receiving a social security payment solely because of a scheduled international social security agreement and, on attaining Age Pension age, he/she qualified for an Age Pension solely on the basis that he/she had been receiving a Widow B Pension, Widow Allowance, Mature Age Allowance or Partner Allowance at the time, the Age Pension was to be payable under the terms of the scheduled international agreement until the general qualifying conditions for Age Pension were met.

[A 1997 change had allowed persons receiving Widow B Pension, Widow Allowance, Mature Age Allowance and Partner Allowance to qualify for an Age Pension on reaching Age Pension age without having to meet the usual residential qualifications. This had meant that they had obtained certain unintended advantages on reaching Age Pension age. For example, they had no longer needed to comply with the portability restrictions applying under international agreements.]

CEILING ON AMOUNT OF PENSION PAYABLE UNDER INTERNATIONAL AGREEMENT

Location in Act  
Section 3 (as set out in items 12 and 13 of Schedule 6)

Date of commencement  
11 November 1999

Date of application  
11 November 1999

Payments affected  
Age Pension; Disability Support Pension; Wife Pension; Widow B Pension; Parenting Payment (single); Carer Payment; Bereavement Allowance

A ceiling was imposed on the amount of pension a non-resident could receive under an international social security agreement, so as to ensure that the amount could not exceed that which he/she would have received if he/she had been in Australia and met the residency conditions for that pension. [It had previously been possible, under international agreements where an income test concession was available, for a person with considerable foreign pension income to receive a higher pension than if he/she had qualified fully for the pension in Australia and had not come within the ambit of such an agreement. This had not applied in respect of the agreements with the United Kingdom and New Zealand.]
The activity tests for Newstart Allowance and Youth Allowance were made stricter by extending the circumstances under which ‘paid work’ was not regarded as ‘unsuitable’, even though it was located outside the area in which a person lived. This extension meant that a person was less likely to be exempted from an activity test on the basis that work was unsuitable and so was more likely to incur a breach penalty if he/she failed to accept the work.

The new rule provided that, where a person who was seeking work in an area outside the area in which he/she lived was offered permanent full-time work in that area (irrespective of whether it was the type of work sought), certain existing provisions of the legislation treating such work as unsuitable were not to apply except in defined circumstances.

The provisions which were generally to be overridden in the situation outlined were those treating work as unsuitable if, in the Secretary’s opinion: commuting between the person’s home and place of work would be unreasonably difficult; the work required the person to move to a new home; or the place of work was inaccessible by public transport, and the person did not have access to alternative transport facilities and could not reasonably be expected to travel there. In relation to the first provision, commuting was treated as ‘not unreasonably difficult’ if it normally involved no more than 90 minutes travelling time, or the Secretary was of the view that a substantial number of people regularly made an equivalent journey to work.

The new rule was not to apply (and therefore the existing exemptions continued) where:

- the person was aged under 18 years;
- the person or, in the case of a man, his partner was pregnant;
- the person or his/her partner had a severe medical condition which made it unreasonable for him/her to accept the offer;
- acceptance of the offer would jeopardise the current employment or the employment prospects of the person’s partner;
- the person or his/her partner had a child aged under 16 years who was living with them or in the area where they lived;
- the person or his/her partner had significant caring responsibilities in the area in which they lived;
- the person’s educational, cultural or religious background made it unreasonable for him/her to accept the offer;
- it was more appropriate for the person to participate in education or training than to accept the offer; or
acceptance of the offer would cause the person to suffer severe financial hardship.

The legislation also specified that, where a person, when seeking employment through an employment service provider, indicated to the provider that he/she was willing to work outside the area in which he/she lived, the person was taken for the purposes of the new provision to have sought work outside the area at the time.

**RULE ON REDUCING EMPLOYMENT PROSPECTS AMENDED**

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in Schedule 8)</th>
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<tbody>
<tr>
<td>Date of commencement</td>
<td>11 November 1999</td>
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<tr>
<td>Date of application</td>
<td>11 November 1999</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Newstart Allowance; Youth Allowance</td>
</tr>
</tbody>
</table>

Amendments were made to the provision under which a Newstart Allowance or Youth Allowance recipient was subject to a 26-week non-payment period where, in the opinion of the Secretary, he/she had reduced his/her employment prospects by moving to a new place of residence without sufficient reason. There were three amendments, the first tightening the provision and the other two reducing its severity in certain circumstances. The changes involved:

- extending the provision beyond recipients to a person claiming one of the allowances on or after the day on which he/she moved and before the end of the 26-week period. [This removed a loophole whereby a person who moved to a new area before claiming an allowance, or who cancelled his/her allowance before moving and reclaimed it after the move, was able to avoid the penalty non-payment period.];

- specifying that a non-payment period imposed for such a move would end immediately where the person returned to his/her previous place of residence, or moved to another place or residence which would not in the Secretary's opinion have lowered his/her employment prospects in comparison with his/her original place of residence; and

- adding to exemptions, by providing that a person had ‘sufficient reason’ for moving if he/she satisfied the Secretary that the move had been reasonable due to an extreme circumstance, such as domestic or family violence.
TWO-TIERED RATE STRUCTURE FOR PENSIONER EDUCATION SUPPLEMENT

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in Schedule 9)</th>
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<tbody>
<tr>
<td>Date of commencement</td>
<td>1 March 2000</td>
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<tr>
<td>Date of application</td>
<td>1 March 2000</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Pensioner Education Supplement</td>
</tr>
</tbody>
</table>

The one standard rate of Pensioner Education Supplement was replaced with a two-rate structure following the introduction of a $30 a fortnight rate, which was equivalent to half the standard rate. It was payable to a person who was undertaking at least 25 per cent, but less than 50 per cent, of the normal amount of full-time study in a course and was not receiving a Disability Support Pension or certain related veterans’ payments (persons on the specified payments continued to receive the $60 rate).

A student was in the ‘25 to under 50 per cent category’ if he/she was a ‘25 per cent concessional study-load student’ who was undertaking, or intending to undertake, less than half of the ‘normal amount of full-time study’ in a course. [The term ‘25 per cent concessional study-load student’ was fully defined under Record 3 of 1998 with variations in respect of Pensioner Education Supplement defined in Record 5 of 1998. ‘Normal amount of full-time study’ was as defined in Record 2 of 1998.]

PROVISION FOR ADVANCE INSTALMENTS OF BENEFIT

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in item 1 of Schedule 11)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>Was to commence on Date of Royal Assent or 1 October 1999, whichever the later. In the event, it commenced on 11 November 1999</td>
</tr>
<tr>
<td>Date of application</td>
<td>Applied to determinations made on or after the date of commencement (11 November 1999)</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Benefits</td>
</tr>
</tbody>
</table>

The Secretary was given the discretion to pay some or all of a person’s first benefit instalment in advance, where he/she determined that the person’s claim was to be granted, or his/her payment resumed, after cancellation or suspension, and was satisfied that, if the person was required to wait until the end of the instalment period (when payments were normally made), he/she would suffer severe financial hardship. [The hardship condition was not defined.]
BACKDATING OF CLAIM FOR PERSON IN GAOL OR CONFINEMENT

Location in Act  Section 3 (except for Crisis Payment, as set out at item 2 of Schedule 11). Change to Crisis Payment was at item 13 of Schedule 4. Application clause was at item 5 of Schedule 11.

Date of commencement  Was to commence on Date of Royal Assent or 1 October 1999, whichever was later. In the event, it commenced on 11 November 1999.

Date of application  Applied only to claims made on or after the commencement day (11 November 1999).

Payments affected  Pensions and benefits; Crisis Payment.

Where a person, who was in gaol or psychiatric confinement and was not, at the time he/she made his/her claim, qualified for a pension or benefit but qualified within 21 days of making the claim, the claim was backdated to the date the person qualified.

GRANTING OF CLAIM FOR PERSON IN GAOL OR CONFINEMENT

Location in Act  Section 3 (as set out at item 2 of Schedule 11). Application clause is at item 5 of Schedule 11.

Date of commencement  Was to commence on Date of Royal Assent or 1 October 1999, whichever was later. In the event, it commenced on 11 November 1999.

Date of application  Applied from the commencement day (11 November 1999), irrespective of whether the claim was made before or after that date.

Payments affected  Pensions and benefits; Crisis Payment.

The Secretary was required to grant a claim for a pension, benefit or Crisis Payment where he/she was satisfied that the claimant was:

- in gaol or undergoing psychiatric confinement because he/she had been charged with committing an offence;
- expected to remain in gaol or the specified confinement for at least 14 days and to be released within 21 days of the date of the claim; and
- expected to be eligible to receive one of the specified payments immediately on release (irrespective of whether or not he/she was qualified for it at the time of the claim).
PAYMENTS MADE BEFORE A PERSON'S RELEASE FROM GAOL OR CONFINEMENT

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out at item 2 of Schedule 11). The provisions in the last paragraph of the description were at items 3 and 4 of Schedule 11</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>Was to commence on Date of Royal Assent or 1 October 1999, whichever was later. In the event, it commenced on 11 November 1999</td>
</tr>
<tr>
<td>Date of application</td>
<td>As for date of commencement</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Pensions and benefits; Crisis Payment</td>
</tr>
</tbody>
</table>

The Secretary could determine that some or all of the payment granted to a person who was in gaol or undergoing psychiatric confinement on the basis of the new provision allowing this (refer to Record 30 of 1999) was to be made before the person’s release from gaol, where he/she considered this necessary in order to ensure that the claimant did not suffer severe financial hardship on his/her release. [The hardship condition was not defined.]

The amount received by the person was not to exceed that to which, in the opinion of the Secretary, the person would be entitled in the first seven days for which the entitlement was payable following his/her release. Any payment so made represented the first full or partial instalment of the person’s normal entitlement on release, or was to be the full Crisis Payment.

This new provision overrode the general provision in the Act under which a social security payment was not to be made to a person who was not qualified for it, or where a non-payment period applied.

A person benefiting from this provision was exempted from the general rule that payments received by those who were not qualified for them, or to whom for some other reason they were not payable, became a debt to the Commonwealth provided that he/she was released from gaol/psychiatric confinement on the ‘expected release day’ (defined as the day on which there were reasonable grounds for believing that he/she would be released). However, if on release it turned out that the person was not qualified for the payment, or it was not payable for some other reason, it then became a debt to the Commonwealth.
ADVANCE PAYMENT FOR PERSON WHO HAS BEEN IN GAOL OR CONFINEMENT

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out at item 2 of Schedule 11)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>Was to commence on Date of Royal Assent or 1 October 1999, whichever was later. In the event, it commenced on 11 November 1999</td>
</tr>
<tr>
<td>Date of application</td>
<td>As for date of commencement</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Pensions and benefits</td>
</tr>
</tbody>
</table>

Where a person who had been in gaol, or undergoing psychiatric confinement because he/she had been charged with committing an offence, claimed a pension or benefit while in gaol or within seven days of his/her release, and the Secretary granted the claim or determined that his/her payment was to resume after cancellation or suspension, he/she was given the discretion to pay some or all of the entitlement in advance if he/she was satisfied that the person would suffer severe financial hardship if he/she was required (as normally applied) to wait until the end of the first instalment period to receive it. The amount paid was not to exceed that to which, in the opinion of the Secretary, the person would be entitled in the first seven days for which the entitlement was payable. Any payment so made represented the first full or partial instalment of the person’s normal entitlement. [The hardship condition was not defined.]
Family and Community Services Legislation Amendment (1999 Budget and Other Measures) Act 1999, No. 172

Date of Royal Assent: 10 December 1999

This Act contains the following amendments, which have not been included here:

- two changes to the family actual means test for Youth Allowance in section 3 (as set out in Schedule 1)—the first amendment was at items 1 and 6 and the second at items 4, 5 and 7; and
- a change to the Student Financial Supplement Scheme in section 3 (as set out in item 3 of Schedule 1).

These provisions amended the Youth Allowance Consolidation Act 2000, which provided for the family actual means test and Student Financial Supplement Scheme to be fully incorporated into the Social Security Act (refer to Records 19 and 18 of 2000 respectively). This meant that an amendment Act passed in 1999 amended a provision in an Act passed in 2000. This occurred because the Youth Allowance Consolidation Act was originally expected to be passed before the present amending Act but the timing of the Acts through Parliament was subsequently altered. Accordingly, if these changes had been included here, they would be recording changes to aspects of programs which had not yet been introduced. To avoid this difficulty, the amendments have not been recorded separately but have been directly built into the changes in the Youth Allowance Consolidation Act.

33

ELIGIBILITY FOR PARENTING PAYMENT RETAINED WHERE CHILD LEAVES CARE

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in item 2 of Schedule 1)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>10 December 1999</td>
</tr>
<tr>
<td>Date of application</td>
<td>10 December 1999</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Parenting Payment (single); Parenting Payment (partnered)</td>
</tr>
</tbody>
</table>

It was provided that a person could continue to be eligible for Parenting Payment where the qualifying child left his/her care for up to eight weeks to be with another person as his/her dependent child, and the child returned (or the Secretary was satisfied that the child would return) to the person’s care at the end of the period. The legislation specified that the provision was not to have any relevance in determining whether a child was to be regarded as in the care of a person in other circumstances. [The provision gave legislative effect to what had been the general administrative practice. It was intended to cover cases such as separated parents where the non-custodial parent took care of the child for a short period.]
Social Security (Administration and International Agreements) (Consequential Amendments) Act 1999, No. 192

Date of Royal Assent: 23 December 1999

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in Schedules 1 and 2). Schedule 1 deals with amendments consequent upon the enactment of the Social Security (Administration) Act 1999. Schedule 2 is concerned with amendments consequent upon the enactment of the Social Security (International Agreements) Act 1999</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>20 March 2000</td>
</tr>
<tr>
<td>Date of application</td>
<td>20 March 2000</td>
</tr>
<tr>
<td>Payments affected</td>
<td>General provision</td>
</tr>
</tbody>
</table>

This Act amended and repealed provisions of the Social Security Act consequential upon the enactment of the Social Security (Administration) Act 1999 and the Social Security (International Agreements) Act 1999. It contained no policy changes but has been included to provide information on provisions removed from the Social Security Act.

The Social Security (Administration) Act consolidated all the machinery and most of the administrative provisions of the Social Security Act in a separate Act. This resulted in a major reduction in the length and complexity of social security legislation—for example, it contained only one section dealing with claims rather than separate claims’ sections for each social security payment or concession.

In general terms, provisions removed from the Social Security Act were those not covered in this compendium. However, some provisions included in the compendium, such as those related to certain residency requirements and the timing of claims, have been moved to the Social Security (Administration) Act. The main residency requirements, namely those related to qualification for a payment or concession, were retained in the Social Security Act.

The Social Security (International Agreements) Act provided for the consolidation of existing international social security agreements into a separate Act. It also provided for new international social security agreements to be added to the Act, and for existing international social security agreements to be varied, by way of regulation. The present document has covered the establishment and variation of international agreements but has not dealt with them in depth.
Endnotes

1 The third and fourth changes were subsumed in the major restructuring of family payments and their removal from the Social Security Act, which took place from 1 July 2000 (refer to Record 9 of 1999).

2 Further GST compensation-related increases were made later (refer to Records 2, 12, and 13 of 2000).
Legislation passed in 2000

A New Tax System (Family Assistance and Related Measures) Act 2000, No. 45

Date of Royal Assent: 3 May 2000

1

<table>
<thead>
<tr>
<th>RESIDENCY CONDITION FOR DOUBLE ORPHAN PENSION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Location in Act</td>
</tr>
<tr>
<td>Date of commencement</td>
</tr>
<tr>
<td>Date of application</td>
</tr>
<tr>
<td>Payments affected</td>
</tr>
</tbody>
</table>

A specific residency condition was inserted to cover Double Orphan Pension. It required that the person claiming the payment on behalf of a child be an Australian resident, have a qualifying residency exemption for Special Benefit, hold a subclass 820 visa (a provisional visa extending eligibility to a partner), a subclass 826 visa (a temporary visa granted on the basis of interdependence), or become the holder of a visa that was in a class of visas which the Minister had determined qualified a person for Special Benefit.

[A specific residency condition for Double Orphan Pension was required with the absorption of Family Allowance into Family Tax Benefit in families legislation following the restructuring of family assistance (refer to Record 9 of 1999). The residency condition for Double Orphan Pension had previously been an indirect one, arising from the payment's link to Family Allowance, a link that no longer existed. The amendment was backdated to the date the new families legislation took effect.]
FURTHER RATE INCREASES TO COMPENSATE FOR THE GST

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in items 7, 11, 12, 13 and 14 of Schedule 3)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>Immediately after the commencement of Schedule 1 to the <em>A New Tax System (Compensation Measures Legislation Amendment) Act 1999</em>. The commencement date was 1 July 2000</td>
</tr>
<tr>
<td>Date of application</td>
<td>As for date of commencement</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Pensioner Education Supplement; Participant Supplement; Carer Allowance</td>
</tr>
</tbody>
</table>

In rate rises to compensate for GST induced price increases:

- the lower rate of Pensioner Education Supplement was increased by 4 per cent ($1.20) to $31.20;
- the rate of the Participant Supplement (in the CDEP Scheme) was increased by 4 per cent ($0.80) to $20.80; and
- provision was made for the rate of Carer Allowance, as it would be at 1 July 2000, after any automatic indexation increases had been made, to be increased by 4 per cent.

These increases were in line with the minimum 4 per cent GST compensation increase made to social security payments (*refer to Record 7 of 1999*), and were now applied to payments for which legislation had only recently been passed. Consistent with the earlier legislation, which had been passed before indexation increases had been known, the new rate of Carer Allowance was not specified.
**Family and Community Services Legislation Amendment Act 2000, No. 70**

Date of Royal Assent: 27 June 2000

### Coverage of Double Orphan Pension Extended

**Location in Act**  
Section 3 (as set out in Part 1 of Schedule 1)

**Date of commencement**  
27 June 2000

**Date of application**  
27 June 2000

**Payments affected**  
Double Orphan Pension

The qualifying condition, under which Double Orphan Pension was payable in respect of a child where one of his/her parents was dead and the other was a prisoner serving from 10 years to life after conviction for an offence, was extended also to include a parent in custody and charged with an offence punishable by a sentence of 10 years to life but at this stage not convicted.

### Amendment to Rate of Double Orphan Pension

**Location in Act**  
Section 3 as set out in Part 2 (Family Allowance change) and Part 3 (Family Tax Benefit change) of Schedule 1

**Date of commencement**  
Family Allowance change was taken to have commenced on 1 July 1998. Family Tax Benefit change commenced from 1 July 2000

**Date of application**  
Applied only in relation to a child who became a double orphan on or after 1 July 1998

**Payments affected**  
Double Orphan Pension

An amendment provided that the rate of Double Orphan Pension paid in respect of a child was to be increased by the amount (if any) by which a person’s prevailing Family Allowance entitlement in respect of the same child was less than the amount of Family Allowance payable for the child immediately before he/she became a double orphan. A complementary amendment provided for the change to apply when the new Family Tax Benefit Part A absorbed Family Allowance from 1 July 2000 (**refer to Record 9 of 1999**).

[This change guaranteed the original rate of Family Allowance in cases where a double orphan’s new family was entitled to no, or a reduced level, of Family Allowance due to the operation of the Family Allowance income and/or assets tests. The change was made retrospective to the date on which the anomaly it was designed to correct was first identified.]
5

CHANGE TO MOBILITY ALLOWANCE

Location in Act  Section 3 (as set out in item 15 of Schedule 3)
Date of commencement  27 June 2000
Date of application  27 June 2000
Payments affected  Mobility Allowance

The provision enabling a person who met the general eligibility criteria for Mobility Allowance to qualify for the allowance, where he/she was undertaking job search activities as part of an activity plan developed by a Disability Panel established by the Secretary, was altered to require that he/she be undertaking job search activities under an agreement between the Secretary and a service provider nominated by the Employment Department. [This change was made because Disability Panels had ceased to operate.]

6

BENEFIT DEFERMENT PERIODS ALIGNED

Location in Act  Section 3 (as set out in Items 19, 20, 21, 22, 23 and 24 of Schedule 3)
Date of commencement  27 June 2000
Date of application  27 June 2000
Payments affected  Newstart Allowance; Sickness Allowance; Youth Allowance; Austudy Payment

It was provided that, where a person claiming Newstart Allowance, Sickness Allowance, Youth Allowance or Austudy Payment was subject to both an income maintenance period and a liquid assets test waiting period, the income maintenance period was taken to have commenced on the same day as the liquid assets test waiting period. [This change was made to avoid disadvantaging claimants in the minority of cases where the income maintenance period and the liquid assets test waiting period did not commence at the same time.]

7

REHABILITATION ALLOWANCE SAVINGS PROVISION REMOVED

Location in Act  Section 3 (as set out in item 8 of Schedule 5)
Date of commencement  27 June 2000
Date of application  27 June 2000
Payments affected  Rehabilitation Allowance

The savings provision, under which Rehabilitation Allowance continued to be paid from 12 November 1991 (the date from which new grants ceased to be made) to persons to whom it had already been granted, for the period of their involvement with a rehabilitation program, was removed. [Rehabilitation Allowance had been phased out as part of the Disability Reform Package (refer to Record 58 of 1991).]
**Compensation Measures Legislation Amendment (Rent Assistance Increase) Act 2000, No. 93**

Date of Royal Assent: 30 June 2000

<table>
<thead>
<tr>
<th><strong>HIGHER INCREASE IN RENT ASSISTANCE TO COMPENSATE FOR THE GST</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Location in Act</strong></td>
</tr>
<tr>
<td><strong>Date of commencement</strong></td>
</tr>
<tr>
<td><strong>Date of application</strong></td>
</tr>
<tr>
<td><strong>Payments affected</strong></td>
</tr>
</tbody>
</table>

The increase in the maximum rate of Rent Assistance to compensate recipients for increases in prices due to the introduction of the GST was altered from 7 per cent to 10 per cent.

[The 7 per cent increase was enacted under the *A New Tax System (Compensation Measures Legislation Amendment) Act 1999* (refer to Record 7 of 1999). The present change involved an amendment directly to that amendment Act and not to the Social Security Act. This meant in effect that the legislation implementing the 7 per cent increase never took effect.]
Portability provisions (covering payment of social security entitlements overseas) were restructured, consolidated and simplified. A number of rules which had varied between payments were standardised, the conceptual basis of portability arrangements was altered and some other substantive amendments were made. While many existing rules were retained, a number of complex rules and savings provisions were removed. As previously, an international social security agreement between Australia and another country could override the provisions in certain cases.

In summary, the changes involved:

- the introduction of a standard maximum portability period along with standard general rules for its extension in certain circumstances;
- stricter proportionality rules for certain pensions;
- payment of supplements to pensions and benefits while the recipient was overseas;
- removing ‘presence in Australia’ as of itself a qualifying condition for a payment; and
- a stricter ‘short residency’ rule.
Introduction of standard maximum portability period and rules for its extension

A standard maximum portability period of 26 weeks was introduced for certain pensions (see ‘Payments affected’) and for benefits and replaced the previous periods, which had varied between payments. This period could be extended in exceptional circumstances. The standard period also applied to Mobility Allowance and Telephone Allowance. A person had to remain qualified for a payment to receive it during the portability period.

The Secretary was granted the discretion to extend the 26-week portability period for a payment where he/she was satisfied that a person was unable to return to Australia because of one of the following events:

- a serious accident, illness incurred by, or the hospitalisation of, the person or a family member (the general definition of family member in the Act applied);
- the death of a family member;
- a person’s involvement in custody proceedings in the country in which he/she was located;
- a legal requirement for the person to remain outside Australia in connection with criminal proceedings (other than criminal proceedings in respect of a crime alleged to have been committed by the person);
- a robbery or serious crime committed against the person or a family member; or
- a natural disaster, political or social unrest, industrial action or a war in the country in which the person was located.

The Secretary could not extend the portability period in these situations unless the event occurred or began during the period of absence and, in the case of political/social unrest, industrial action or war, the person was not involved or participating in it willingly.

Stricter proportionality rule for certain pensions

As previously, Age Pension, Disability Support Pension (in the case of the severely disabled), Wife Pension, Widow B Pension and Bereavement Allowance remained payable overseas indefinitely while a person continued to meet the qualifying criteria. However, the principle of 26 weeks portability was introduced by providing that the existing proportionality rule was to apply after 26 weeks instead of 52 weeks overseas. [Under the rule, a person’s payment was based on the proportion of his/her working life spent in Australia and resulted in a lower payment for persons with less than 25 years such residence.]

Payment of supplements to pensions and benefits overseas

Supplements to pensions and benefits—Rent Assistance, Incentive Allowance, Pharmaceutical Allowance and Remote Area Allowance—became portable for the first time. In the case of Rent Assistance, the legislation specified that the rent paid had to be in respect of premises in Australia.

The new standard maximum portability period of 26 weeks applied to a supplement provided that a person remained qualified for it, and the time limit applied in respect of all pensions and benefits, including those pensions where the basic rate was payable overseas indefinitely. Remote Area Allowance was not payable for up to 26 weeks but was covered by a separate continuing qualification rule (see below).
Qualification no longer related to presence in Australia

In a conceptual change, it was no longer a qualifying condition of itself for any payment that a person had to be present in Australia. However, a person could receive a particular payment overseas only if he/she remained qualified for it and, subject to specified exceptions, he/she could only meet the qualifying conditions for some payments (particularly benefits) while remaining in Australia. The ‘continuing qualification’ requirement overrode the general 26-week portability provision.

The new arrangements worked as follows in the case of Newstart Allowance. Normally, in order to qualify for an allowance, a person had to satisfy the activity test and this could be satisfied only in Australia. However, an exemption was provided where the person had to travel overseas to seek medical treatment not available in Australia, attend an acute family crisis or for a humanitarian purpose and then the maximum 26-week portability rule applied. These exemptions also applied in respect of Youth Allowance, Sickness Allowance and Special Benefit. Exemptions allowing portability continued to apply to full-time students on Youth Allowance or Austudy Payment studying overseas in specified circumstances and to recipients of Parenting Payment, Mature Age Allowance, Mature Age Partner Allowance, Newstart Allowance, Youth Allowance or Austudy Payment, attending training camps overseas as members of the Defence Force Reserves.

In terms of the exemptions specified, an ‘acute family crisis’ occurred where the Secretary was satisfied that an absence was for the purpose of visiting a family member who was critically ill or hospitalised with a serious illness, or was related to the death of a family member, or to some other life-threatening situation which was facing a family member and was beyond his/her control. A person’s absence was considered to be for a ‘humanitarian purpose’, where the Secretary was satisfied that it was for the purpose of involvement in custody proceedings, criminal proceedings (other than in respect of a crime alleged to have been committed by the person) or other legal proceedings, was related to the adoption of a child, or was for a purpose which could be specified in regulations specific to this matter.

In the case of Remote Area Allowance, the general condition applying in Australia allowing a person to remain qualified while outside the remote area for up to eight weeks now also applied when a person travelled overseas. This qualifying provision overrode the general 26-week portability provision so that the allowance was paid only for the first eight weeks of a person’s overseas visit.

[Payments other than specified pensions remained, as previously, payable only to those who met the definition of ‘Australian resident’. This ensured that they were available only during temporary absences overseas.]

‘Short residency’ rule made stricter

The ‘short residency’ rule was made stricter. It was now provided that an Age Pension, Disability Support Pension or Bereavement Allowance were not payable overseas to a person who, after ceasing to be an Australian resident and then becoming one again, was granted, or transferred to, one of these payments and then left the country within two years of regaining his/her residency status, unless the Secretary had made a specific determination to the contrary. [The change here was to increase the period to be spent in Australia after re-grant of residency status from one to two years. The underlying rule was introduced in November 1999 (refer to Record 19 of 1999).]
Savings provisions

The change to the ‘short residency’ rule applied only to payments granted on or after the date of the change. As regards the other changes, broadly the previous portability rules applied to people who were overseas immediately before 20 September 2000 until they returned to Australia. Those paid Age Pension, Disability Support Pension, Wife Pension, Widow B Pension or Bereavement Allowance were assessed under the previous rules unless they returned to Australia for more than 26 weeks.

PHASING OUT OF SPECIAL NEEDS PENSIONS

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in item 57 of Schedule 1)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>Taken to have commenced on 20 September 2000</td>
</tr>
<tr>
<td>Date of application</td>
<td>Taken to have commenced on 20 September 2000</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Age Pension; Disability Support Pension; Widow B Pension</td>
</tr>
</tbody>
</table>

All special needs pensions still being granted (they comprised Age Pension, Disability Support Pension and Widow B Pension) were phased out, with no new grants made unless the claim was lodged, or taken as lodged, on or before 20 September 2000 and the person was qualified at the time of the claim. [Special needs Wife Pension, as with Wife Pension generally, was already being phased out (refer to Record 36 of 1994).]

PORTABILITY PROVISIONS APPLIED TO DOUBLE ORPHAN PENSION

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in item 72 of Schedule 1)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>To commence on 20 September 2000, or immediately after the commencement of Schedule 1 to the <em>A New Tax System (Family Assistance and Related Measures) Act 2000</em>, whichever came later. Commenced on 20 September 2000</td>
</tr>
<tr>
<td>Date of application</td>
<td>As for date of commencement</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Double Orphan Pension</td>
</tr>
</tbody>
</table>

Double Orphan Pension was brought within the ambit of the new standardised portability provisions. Under the amendment, a person could qualify for Double Orphan Pension in respect of a child if he/she was the holder of a visa determined by the Minister as entitling him/her to Special Benefit, and either the person was in Australia or was temporarily absent from the country for no more than 26 weeks, and met the same conditions under which a recipient of Special Benefit could retain his/her entitlement while overseas. [In the latter case, the purpose of the travel had to be to seek medical treatment, attend a family crisis or for a humanitarian purpose.]
### PENSION BONUS SCHEME AMENDED

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in Part 2 of Schedule 1)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>After the commencement of Schedule 1 to the A New Tax System (Compensation Measures Legislation Amendment) Act 1999. Commenced on 1 July 2000</td>
</tr>
<tr>
<td>Date of application</td>
<td>As for date of commencement</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Age Pension</td>
</tr>
</tbody>
</table>

An amendment to the Pension Bonus Scheme took account of the introduction of the Pension Supplement, so as to ensure that the 4 per cent increase in pension rates to compensate for the price effects of introducing a GST was taken into account in the calculation of a person’s pension bonus. [For details of GST compensation and the Pension Supplement, refer to Record 7 of 1999.]

### AMENDMENT TO RETIREMENT ASSISTANCE FOR FARMERS SCHEME

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in Part 3 of Schedule 1)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>After the commencement of Schedule 1 to the A New Tax System (Compensation Measures Legislation Amendment) Act 1999. Commenced on 1 July 2000</td>
</tr>
<tr>
<td>Date of application</td>
<td>As for date of commencement</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Age Pension</td>
</tr>
</tbody>
</table>

The Retirement Assistance for Farmers Scheme was amended to take account of the introduction of the Pension Supplement, and thereby ensure that the 4 per cent increase in pension rates to compensate for the price effects of introducing a GST was taken into account in the income test which a farmer had to meet before being eligible for an Age Pension under the scheme. [For details of GST compensation and the Pension Supplement, refer to Record 7 of 1999.]
RESIDENCY RULES MODIFIED

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in Part 5 of Schedule 1)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>First change: items 134, 135, 136, 142, 143, 144 and 147</td>
</tr>
<tr>
<td></td>
<td>Second change: items 137, 138 and 139</td>
</tr>
<tr>
<td></td>
<td>Third change: items 141, 156, 157, 158, 159, 160, 161 and 162</td>
</tr>
<tr>
<td></td>
<td>Fourth change: items 146 and 148</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Date of commencement</th>
<th>20 September 2000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of application</td>
<td>20 September 2000</td>
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<table>
<thead>
<tr>
<th>Payments affected</th>
<th>First change: Special Benefit</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Second change: general provision but in the main affected Special Benefit</td>
</tr>
<tr>
<td></td>
<td>Third change: Carer Payment; Benefits; Mobility Allowance; Seniors Health Card</td>
</tr>
<tr>
<td></td>
<td>Fourth change: general provision</td>
</tr>
</tbody>
</table>

The rules dealing with the residency requirements concerning qualification for social security payments were simplified. As well as policy changes, a number of redundant provisions were removed from the Act to take account of changes in immigration policy and other matters. Following the changes:

- all references in the legislation to ‘exempt resident’ and ‘former exempt resident’ were removed. Exempt residents had been holders of a range of visas or entry permits which provided access to Special Benefit (refer to Record 4 of 1995 and endnote 1 of 1997). [The change was made as most categories of visa listed under exempt resident were no longer issued, while none of those which had been granted remained valid.];

- a person could no longer qualify as an ‘Australian resident’ (a general prerequisite to eligibility for social security payments), if he/she was the holder of a special purpose visa and likely to remain in Australia. [The change was made following advice that the provision was inconsistent with the Migration Act and regulations, given the limited duration and very special reasons for which these visas were issued. This was a general change but would have been relevant in the main to Special Benefit.];

- for purposes of the application of the newly arrived residents’ waiting period to the specified payments, general Ministerial determinations in every case replaced the listing in the Act of classes of visa; and

- all references to ‘inhabitant of Australia’ were removed from the Act as, following a number of other changes, no qualifying conditions were now related to this criterion.

As regards the third change, the previous legislation provided that holders of certain specified visas were exempted from the newly arrived residents’ waiting period. In the case of Special Benefit, it specified both when these visa holders were subject to, and when exempt from, it. It had also contained provision for the Minister to make a determination adding further classes of visa to the list, with the determination being a disallowable instrument. The new policy embodied in the change removed references to specific visas in the legislation, so that in
future they were to be contained solely in the Ministerial determinations. For the avoidance of doubt, it was intended that the first determination would cover all visas currently mentioned in the legislation unless they became defunct before the determination was made. In respect of payments generally, these were visa subclasses 820, 826, 832 and 833 and, for Special Benefit, subclasses 820 and 826. [For details of these classes of visa, refer to Record 1 of 1997.]

[The new arrangements were considered to be more efficient, as the former policy of listing specific visas required people to consult both the legislation and any published determination to ascertain which ones applied. It had also required the legislation to be regularly updated.]

15

**RESIDENCY CONDITIONS FOR BEREAVEMENT ALLOWANCE EASED**

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in items 150 and 151 of Schedule 1)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>20 September 2000</td>
</tr>
<tr>
<td>Date of application</td>
<td>20 September 2000</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Bereavement Allowance</td>
</tr>
</tbody>
</table>

The residency conditions for Bereavement Allowance were eased, by enabling a person to qualify for the allowance if he/she had been an Australian resident, and in Australia, for a period, or periods totalling, two years. The new condition replaced the provisions enabling qualification on the basis of either continuous five years residency immediately before a claim or 10 years continuous residency at any time. Other potential ways of qualifying on residential grounds remained unchanged. [Following the change, the residency conditions for Bereavement Allowance were consistent with those for Parenting Payment (single).]

16

**QUALIFYING CONDITIONS FOR WIDOW ALLOWANCE LIBERALISED**

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in item 152 of Schedule 1)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>20 September 2000</td>
</tr>
<tr>
<td>Date of application</td>
<td>20 September 2000</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Widow Allowance</td>
</tr>
</tbody>
</table>

The ‘continuous period of at least 10 years’ residency eligibility requirement for Widow Allowance was liberalised, by providing that a woman not complying with this condition could qualify for the allowance where she had been an Australian resident during more than one period, provided that one of the periods had been at least five years and the total of the periods exceeded 10 years. [This brought the allowance conditions into line with those for Age Pension. The other ways in which a woman could qualify on residency grounds (refer to Record 33 of 1994) remained unchanged.]
Youth Allowance Consolidation Act 2000, No. 106

Date of Royal Assent: 6 July 2000

This legislation provided for Fares Allowance, the Student Financial Supplement Scheme and the Youth Allowance family actual means test to be fully incorporated into the Social Security Act. It also made a number of refinements and technical amendments to the large package of Youth Allowance and related measures introduced in 1998. A number of minor amendments were made to reflect the intention of the original legislation—these were backdated to 1 July 1998, when Youth Allowance was introduced.

FARES ALLOWANCE FULLY INCORPORATED INTO SOCIAL SECURITY ACT

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in Schedule 1)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>6 July 2000</td>
</tr>
<tr>
<td>Date of application</td>
<td>6 July 2000</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Fares Allowance</td>
</tr>
</tbody>
</table>

Fares Allowance was fully incorporated into the Social Security Act. Previously, following its transfer from the Austudy regulations to the Social Security Act, the Act had authorised the Minister to establish a disallowable instrument for the payment of the allowance. The main details of the payment had been contained in the Social Security (Fares Allowance) Rules 1998 but these were now replaced by the full legislation. The Act up to this point (refer to Record 7 of 1998) had done no more than set out in general terms some of the matters which the instrument could deal with.

As when they were moved from the Austudy regulations, the general intention when incorporating Fares Allowance fully into the Act was that no policy or other material changes would be made. However, the provisions were restructured on the basis of the student’s qualification for each journey for which he/she was eligible for a payment, rather than as a blanket qualification for a range of journeys made within a qualifying period. This was in line with the pre-existing Austudy provisions. Certain minor beneficial changes were also made. In addition, the style and structure of the legislation were varied to be more in keeping with the rest of the Act, particularly its standard provisions such as those related to claims. The intention of some aspects of the rules for the payment were clarified and a number of other refinements made.

Summary of provisions

Fares Allowance was a payment to assist with the travel costs incurred by certain tertiary students in undertaking their study. It was an occasional rather than a regular payment made up to a certain number of times during an academic year. It was available mainly to a person who was either a full-time or concessional study-load tertiary student receiving Youth Allowance, Austudy Payment or the Pensioner Education Supplement. It comprised an amount to cover the cost of travel between a person’s ‘permanent home’ and his/her educational institution...
at the beginning and end of a course, and for certain journeys during the course of a study year.

**Qualifying conditions**

To qualify for Fares Allowance for a journey, a person had to: be undertaking an approved tertiary course at an educational institution in Australia during the whole or part of a study year; be receiving Youth Allowance, Austudy Payment or Pensioner Education Supplement; have his/her permanent home in Australia; have made the journey or, if not yet made, satisfy the Secretary that he/she intended to make it, and that the travel would be provided by a commercial operator; comply with one of several conditions; and meet certain conditions specific to the journey.

The person had to meet one of the following conditions:

- have a partner or dependent child living in his/her permanent home and have to live away from that home in order to undertake the course;
- be enrolled in a course as an external student;
- in relation to the specific journey, be receiving a Youth Allowance and be ‘required to live away from home’ and not be classified as independent when the journey was made; or
- in relation to the specific journey, be receiving a Youth Allowance and be ‘required to live away from home’ and have become independent on turning 25 years of age or through becoming self-supporting and, if the journey had been made in the study year before he/she became independent, would have been receiving Youth Allowance, been required to live away from home and not been independent when the journey was made.

As regards the specific conditions related to the journey:

- an external student was entitled to the allowance only in respect of one return journey during the study year, between his/her permanent home and the educational institution, in order to attend a compulsory component of the course; and
- for a non-external student, the journey had to be: from his/her permanent home to the educational institution in order to commence the course; made in the study year, or on or before 1 April in the following year, from the educational institution to his/her permanent home after he/she had completed or discontinued the course; or a return journey during the study year between the educational institution and his/her permanent home where, during the study year and before the journey was made, he/she received Youth Allowance, Austudy Payment or Pensioner Education Supplement for a total period of six months (the period did not have to be continuous) and was receiving one of those payments when the journey was made.

In the case of a person receiving Youth Allowance, he/she had to be satisfying the activity test through undertaking full-time study, or his/her participation in an approved course of education or study had to be the sole term of an activity agreement.

The term ‘permanent home’ was defined in detail. A person for study purposes was taken to be ‘required to live away from his/her permanent home’ if he/she
was not independent, was not living at the home and the Secretary determined that he/she needed to live away from the home in order to undertake the course. The definitions of ‘self-supporting’ for satisfying the ‘independence’ criterion and of ‘required to live away from home’ were as spelt out in Record 1 of 1998 dealing with Youth Allowance.

**Amount of allowance**

The amount of allowance depended on whether public or only private transport was available. If the Secretary was satisfied that it was practicable for a person to make the entire journey, or part of the journey, by public transport, then the amount was worked out on that basis, irrespective of whether the person chose to travel in that way. Otherwise, it was to be calculated on the basis that he/she had to use private transport. A taxi was regarded as private transport.

In the case of public transport, the amount paid was the cost of making a journey or part journey using a reasonable route and the least expensive reasonable form of public transport, after allowing for any concessional fare available. The cost of a sleeping berth was to be included only if it was reasonable for the person to travel by rail and have a berth.

For private transport, the allowance was 63 cents per kilometre travelled by taxi. Where a vehicle other than a taxi was used, the allowances were paid on the basis of an amount per kilometre travelled and which varied according to the type and size of a vehicle’s engine. If the Secretary was satisfied that it was unreasonable for a person to make a journey or part of a journey by taxi or other vehicle due to abnormal travel hazards (for example, bushfires or flood), and the person travelled by some other means that was considered reasonable given the distance and cost, then he/she could be reimbursed the actual cost of the journey. The Minister was empowered to vary the rate of Fares Allowance paid for taxis or private vehicle usage with any determination being a disallowable instrument.

In the case of both public and private transport, it was required that the time the journey would take and any illness or incapacity of the person had to be taken into account in determining what was practicable and reasonable.

Fares Allowance was normally paid by reimbursement after the journey but could be paid in advance to a commercial operator where that mode of transport was to be used. In the case of Youth Allowance, it was paid to the allowee or parent in accordance with the administrative rules for Youth Allowance. The legislation provided for the allowance to be paid to a person on the death of a student, even if the student had not claimed it before dying.
STUDENT LOAN SCHEME FULLY INCORPORATED INTO SOCIAL SECURITY ACT¹

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in Schedule 2)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>6 July 2000. In addition, minor amendments were made in Part 2 of the Schedule to commence on 1 July 1999, to reflect changes made by the Social Security and Veterans’ Affairs Legislation Amendment (Payment Processing) Act 1998. These were inserted because the present Youth Allowance Consolidation Act was expected to be passed before the abovementioned Act. In the event, due to alterations in the timing of the Acts’ passage through Parliament, these amendments had no effect</td>
</tr>
<tr>
<td>Date of application</td>
<td>As for date of commencement</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Youth Allowance; Austudy Payment; Pensioner Education Supplement. (The scheme was also available to certain students who were not eligible for any social security payment.)</td>
</tr>
</tbody>
</table>

The Student Financial Supplement Scheme, which provided to certain tertiary students the opportunity to borrow money to help cover their living expenses while studying, was fully incorporated into the Social Security Act. Since 1 July 1998, it had operated through an enabling provision under the Act (refer to Record 6 of 1998), which did not set out the details of the scheme. It had previously operated as the Social Security Student Financial Supplement Scheme 1998 and that scheme lapsed following its full incorporation.

The general policy in principle was to transfer the supplement provisions to the Social Security Act without making any change in their effect. This approach was consistent with the policy in the earlier move of the scheme from Austudy of avoiding a situation where students had their payments disrupted in mid-year. That policy notwithstanding, the new provisions were drafted to be more in keeping with the style and structure of the rest of the Social Security Act. Certain provisions were modified to clarify their purpose, while other technical and minor changes were made to ensure that the original Austudy provisions were correctly reflected in the Act and to refine aspects of them.

The legislation dealt at length with the contractual arrangements between the Commonwealth and corporations for the operation of the scheme. A number of the technical details were essentially administrative and have not been covered in detail in this description.

**Summary of Scheme**

The main features of the scheme were as follows:

- an interest-free loan was available to full-time tertiary students who were entitled to Youth Allowance or Austudy Payment, and to certain persons who missed out on these payments due to the various means tests. It was also payable to persons entitled to a Pensioner Education Supplement;
payments to the student were made by a financial institution which participated in the scheme through an agreement with the Commonwealth. This was managed through a formal contract between the student and the corporation with no repayments required for five years;

- a minimum payment of $500 and a maximum of $7000 ($2000 for certain students) applied. A student could vary the amount of payment at any time within the limits prescribed;

- most students were required to ‘trade in’ their social security payment in return for supplement;

- most students could ‘trade back’ some social security payment received in return for a higher rate of supplement;

- the Commonwealth provided a subsidy in lieu of interest to a corporation for its participation in the scheme;

- a student could repay all or part of the supplement to the corporation at any time. The amount repayable was increased annually in line with movements in the Consumer Price Index but a discount was available for early repayments; and

- at the end of the contract, any outstanding debt was transferred from the corporation to the Commonwealth with repayments made through the personal income tax system. The amount (if any) to be repaid in any financial year depended on the person’s taxable income, with the outstanding debt increased in line with movements in average weekly earnings.

**Qualifying conditions**

To qualify for the supplement, which could be paid for a full year or part of a year, a person had to be undertaking, or intending to undertake, a tertiary course at an educational institution, not undertaking a primary or secondary education course at any time during the period, and be a ‘Category 1 student’ or ‘Category 2 student’. A person had to be a full-time student in every case. This qualification was spelt out for Category 2 students and for the Category 1 Youth Allowance based qualification. In respect of Austudy Payment and Pensioner Education Supplement based Category 1 qualifiers, it was built into the qualifying condition for those payments. However, the definition of full-time study for Austudy Payment and Pensioner Education Supplement allowed for concessional study loads in certain circumstances (refer to Records 3 and 5 of 1998).

**Category 1 student**

A person was classified as a ‘Category 1 student’ if, throughout the relevant period, he/she was entitled to a ‘notional rate of Youth Allowance’ payable on the basis of his/her full-time study, a notional rate of Austudy Payment, or Pensioner Education Supplement—these payments are referred to in this record as ‘social security payments’.

The notional rate of Youth Allowance or Austudy Payment was the amount of these payments a person would have received if no additions to basic rates to which the person was entitled were taken into account. These additions were Rent Assistance, Pharmaceutical Allowance and Remote Area Allowance in the case of Youth Allowance, and Pharmaceutical Allowance and Remote Area Allowance in the case of Austudy Payment.
Allowance in the case of Austudy Payment. In other words, a person’s total entitlement had to exceed the value of any additions to which he/she was entitled before he/she could qualify for the supplement. This notional rate was used to maintain comparability with the previous arrangements under Austudy living allowance.

**Category 2 student**

A person who did not qualify for the supplement as a Category 1 student could qualify as a ‘Category 2 student’ if, throughout the relevant period, he/she was undertaking full-time study, was ineligible for the ‘notional’ rate of Youth Allowance solely due to the parental income test, family actual means test or family assets test, and certain other conditions applied. In the case of the parental income test and family actual means test, the combined parental income or actual means of the family respectively had, throughout the period, to be less than the person’s ‘modified parental income free area’. In the case of the family assets test, the allowance would have had to be payable if the disregard for business assets had been 75 instead of 50 per cent. [In a later amendment (refer to Record 36 of 2000), the percentage in the general provision for Youth Allowance was changed to 75 per cent from 1 January 2001.]

For purposes of the parental income test and family actual means test conditions, the person’s ‘modified parental income free area’ was the amount derived by assuming that the prevailing free area in the parental income test was $59,949 instead of $23,400, with the level increased by any additions for children (and subject to automatic indexation) in the same way as the prevailing free area.

**Identifying eligible persons**

There was no claiming procedure for the supplement. Instead, the Secretary was required to make a decision regarding a person’s eligibility at the time the claim for the relevant social security payment was made. In addition, where a person who was eligible for the supplement in a previous year was likely to continue in the same, or undertake a new, tertiary course in the following year, the Secretary was required to make a decision, as soon as practicable in the new year, as to whether the person continued to be eligible. In each case, if the person was eligible for the supplement, the Secretary was required to notify him/her to that effect.

**How an eligible person gained access to the supplement**

The loan was not paid to an eligible person through a department of government but could be accessed only through a financial corporation participating in the scheme. Once a person’s eligibility had been established, he/she had to submit an application to the corporation. The legislation provided for a contract to be made between a corporation and a person for the payment of the supplement. It also provided for agreements to be made between the Commonwealth and financial corporations to that end.

**Amount of supplement**

The amount of supplement was that agreed in the contract between a person and a financial corporation but was subject to specified minimum and maximum amounts. A minimum payment of $500 applied in every case. Otherwise, the
amount of supplement payable (including the maximum entitlement) varied according to whether a person was a Category 1 or Category 2 student; the period for which the supplement was payable; and in the case of Category 1 students, the projected payment of Youth Allowance, Austudy Payment or Pensioner Education Supplement which could be ‘traded in’ for supplement. A person could vary the amount of payment he/she received at any time as long it fell within the applicable limits. The maximum entitlement was the same irrespective of how many tertiary courses a student was undertaking.

**Entitlement of a Category 1 student**
The maximum entitlement of a Category 1 student eligible for a full-year’s payment was, subject to an upper limit of $7000, twice the amount derived by taking his/her ‘notional’ rate of Youth Allowance/Austudy Payment, or actual entitlement to Pensioner Education Supplement, as it would have been if he/she did not apply for the financial supplement, and subtracting any payment already made, any overpayments, any deductions due for tax debts and any deductions for advance payments. (Advance payments were not available in respect of Pensioner Education Supplement.) The maximum entitlement for a person eligible for less than a full-year’s payment was the full-year entitlement reduced on a pro-rata basis.

**Entitlement of a Category 2 student**
The maximum entitlement of a Category 2 student was $2000 and was payable only if a person was eligible for the supplement for a full year and was neither undertaking, nor intending to undertake, a ‘short course’. For such students with less than full-year periods and/or undertaking or intending to undertake a short course, the maximum entitlement was reduced on a pro-rata basis. A ‘short course’ was one designed for completion in no more than 30 weeks (including vacations).

The amount of supplement payable to Category 2 students could be reduced for late applications, with the rules varying according to whether the person was undertaking, or intending to undertake, a short course. This was effected by pushing forward the start of the eligibility period (the end date did not change) and reducing the person’s entitlement on a pro-rata basis in line with the shorter period. On the other hand, the Secretary could decide that the eligibility period was not be reduced for a late claim, where he/she was satisfied that a person had taken reasonable steps to apply within four weeks of receiving a notice that he/she was eligible to participate in the scheme but had been prevented from doing so due to circumstances beyond his/her control, and that he/she had applied as soon as practicable once this situation ceased.

**Trading in social security payment for supplement**
The supplement was made available to Category 1 students in exchange for a reduction in the rate of their social security payment. This was called a ‘trade in’ in the legislation. The amount of payment was reduced by one half of the supplement to be paid under the supplement contract. The legislation did not explicitly exclude Category 2 students from the trading in provision. In practice, however, it did not apply to them as they were not receiving a substantive rate of social security payment.
Trading back social security payment for supplement

A Category 1 student could seek to obtain, or obtain a higher rate of, supplement by repaying some or all of the social security payment already received. This was called a ‘trade back’ in the legislation. These students were entitled to both trade in and trade back social security payments. As with trade ins, trade backs in practice applied only to Category 1 students.

A person trading back a payment was required to make the repayment while still eligible for the supplement. A person seeking to obtain supplement generally had to make the repayment over one of the periods 1 January to 31 May, or 1 July to 30 September. The Secretary had the discretion to allow a later date if he/she was satisfied that the person had taken reasonable steps to meet the specified deadline, but was prevented from doing so solely due to circumstances beyond his/her control, provided that he/she repaid it as soon as practicable after the end of the period, and during the year in which the payment period fell. In the case of a person seeking to obtain an increase in supplement, the repayment had to be made during the year in which the social security payment had been made. Once repaid, the amount was taken as never having been paid to the person (this meant that the amount of supplement available was not limited by the original payment).

Payment arrangements

Payment arrangements for supplement essentially mirrored those for Youth Allowance. Payments were to be made by instalments at times and for periods determined by the Secretary—in practice they were usually fortnightly. For Category 1 students, the payment was made to the person receiving the social security payment—generally the student except for non-independent persons aged under 18 years, where the payment was usually made to a parent. In the case of Category 2 students, the supplement was paid to the person who would have received the social security payment if Youth Allowance had been payable to him/her. Notwithstanding who received the payment, the student was liable to repay it.

Agreements between the Commonwealth and financial corporations

The legislation empowered the Minister to enter into, and to vary or terminate, an agreement with a financial corporation for the corporation to pay the supplement to eligible persons, and for the Commonwealth to pay the corporation a subsidy in respect of any supplement it had paid out and which had not been repaid, or in respect of which the rights of the corporation had been transferred to the Commonwealth. The subsidy included an amount in lieu of interest. The amount of the subsidy and the period or periods for which it was to be paid were to be as stated in the agreement. The legislation provided that agreements were not subject to stamp duty or any other state or territory tax. [Since the scheme’s inception, the Commonwealth Bank has been the sole participating corporation.]

Contracts between a person and a corporation

A participating corporation was required, as soon as practicable, to accept an application for supplement from an eligible person by written notice. This notice established the contract. The contract was required to provide for an interest free loan to a person of the amount requested (subject to the minimum and maximum
entitlement rules) and to allow, but not require, repayments. It was to continue for five years terminating on 31 May in the fifth year following its inception.

The legislation stated that a participating corporation could rely on the advice provided by the Commonwealth in deciding whether, and how much, supplement to pay. Provided that an amount paid was based on advice from the Commonwealth, it was taken to be financial supplement under the contract irrespective of whether or not the person was eligible for it.

A person could cancel the contract by giving the corporation a written notice within 14 days, or could waive the right to cancel it. The legislation provided that, if a payment was made within that cooling off period, or after that date where the person had exercised the right to cancel it, the payment was not regarded as a payment of supplement provided that it was repaid within seven days.

It was provided that: the validity of a contract was not affected merely because a person was not eligible for the supplement when the contract was made, or later ceased to be eligible; the contract was not invalid or voidable under any other law (written or unwritten) in force in a state or territory; the contract was not invalid merely because a person was an undischarged bankrupt when it was made; and bankruptcy did not release a person from his/her obligations under the contract. The legislation also dealt with the relationship between the scheme and the Bankruptcy Act.

State or territory laws concerning the giving of credit or other financial assistance were not to apply to a contract for supplement, and all aspects of the scheme and contracts under the scheme were exempted from state and territory taxes. Payments or other benefits provided under the scheme were not subject to Commonwealth tax unless a provision in a law expressly provided to the contrary. However, a corporation could be liable for tax on any subsidy or other payment received.

**Accumulation of debt and provision for early repayment**

The amount of supplement owed accumulated over the five-year period of the contract and became a debt to the participating financial corporation. On 1 June each year, commencing in the calendar year following the year in which the supplement was first paid, the outstanding debt was increased by the annual increase in the Consumer Price Index.

A person was under no obligation to repay any supplement during the five-year period of the contract but could make voluntary repayments of the whole or part of the debt to the corporation during that time. If he/she took up this option, a discount was available. In the case of a partial repayment, the formula for determining the level of the discount was \[\text{[amount repaid} \times 100 \div 85\] minus amount repaid. Where a full repayment was made, the formula was \[\text{[amount repaid} \times 115 \div 100\] minus amount repaid.

**Rights and liabilities of participating corporation if repayment made**

Following a full repayment of any outstanding debt by the person, the corporation’s rights under the contract were immediately transferred to the Commonwealth. Otherwise the standard end of contract arrangements applied. Accordingly, at the end of the contract period, the Commonwealth assumed the corporation's rights under the contract and paid to the corporation any
outstanding amount of the principal sum. The Commonwealth then proceeded with the recovery process directly with the person.

**Repayment of supplement through the tax system**

The repayment provisions at the end of the contract were similar to those applying under the Higher Education Contribution Scheme, with repayments made to the Australian Taxation Office rather than to the participating corporation. At the end of a contract, the Secretary was required as soon as practicable to give to the tax office details of, among other things, the amount of money owed. The person could repay some or all of the debt to the tax office at any time but the arrangements provided for compulsory repayments in the event of there not being an immediate voluntary repayment.

Commencing with the tax return for the financial year in which the supplement agreement period ended, a person was required to commence repaying the supplement debt through the personal income tax system in any financial year in which he/she had an outstanding debt on 1 June and his/her taxable income exceeded a prescribed limit. Payments required for the financial year ending on 30 June 1998 (income means taxable income of the person in each case) were the following percentages: nil where income did not exceed $29,307, 2 per cent where income did not exceed $33,305, 3 per cent where income exceeded $33,305 but was less than $46,629, and 4 per cent where income exceeded $46,629.

In each financial year the amount of any outstanding debt was increased by a factor related to movements in ‘average weekly earnings’. The minimum limit ($29,307 in 1998) was in later years to be the amount derived when the relevant average weekly earnings figure in the official statistical series was multiplied by 52 and divided by five. The two higher limits were calculated by multiplying the minimum limit so derived by the ratio of the higher limits to the minimum limit, based on the 1998 figures.

The Commissioner of Taxation was authorised to make an assessment of the amount of debt to be repaid in any financial year. He/she could, on request, delay or amend an assessment where it was considered that payment of the assessed amount would cause serious hardship, or there were other special reasons due to which it was fair and reasonable to take such action. Where a person owing a debt died, the debt was treated as having been discharged except where a tax assessment notice which included the debt had been issued.

**Transitional arrangements**

Throughout the legislation provision was made for an easy transition from the old to the new scheme. Contracts made under the earlier scheme remained valid.
The family actual means test applying to Youth Allowance was fully incorporated into the Social Security Act. Previously, the Act had provided only for the test to be set out in regulations and they had been contained in the Family Actual Means Test Regulations 1998. These regulations lapsed following the repeal of the enabling provision.

Details of the introduction of the family actual means test were dealt with in Record 1 of 1998. As noted there, it was designed to take account of the perception that taxable income was not always an accurate measure of a family’s ability to provide for its children. Accordingly, it sought to measure a family’s actual means by taking account of the spending and savings of all assessable family members. Otherwise it was very similar in form to the parental income test.

As with Fares Allowance and the Student Financial Supplement Scheme, the intention in principle was to transfer the family actual means test from the regulations to the Act without making any substantive changes. However, in the drafting of the legislation, its style and structure were brought into line with that in the rest of the Act (including its standard provisions), modifications were made to certain provisions to clarify their intent and certain technical and minor changes were made to ensure that the original Austudy provisions were correctly reflected and to make refinements.

In describing the main features of the test, a number of lengthy definitions have been inserted later in this record. Otherwise, definitions (such as that of ‘family member’) are as in the Youth Allowance record cited.

**Persons subject to the family actual means test**

Subject to specified exceptions, the family actual means test applied to a person claiming or receiving Youth Allowance who was not independent, and whose parent (or parents) met the definition of ‘designated parent’. Such parents had certain essentially business interests which could indicate financial means that should be assessed.

The test did not apply to a person during a period in which a member of his/her family was receiving an exceptional circumstances relief payment, or for the remainder of the calendar year after he/she stopped receiving it. The exemption applied in respect of such a relief payment made under the Farm Household Support Act, or a drought relief payment under that Act as in force immediately before the commencement of the Farm Household Support Amendment (Restart and Exceptional Circumstances) Act.
A parent (or parents) was classified as a ‘designated parent’ where:

- within the 10 year period before the beginning of the calendar year in which the allowance payment period ended, he/she had first entered Australia under a permanent visa or entry permit, a criterion or requirement for the grant of which was that he/she demonstrate business skills;
- he/she had an interest valued at $2,500 or more in assets outside Australia and its external territories;
- in the base tax year, he/she had an interest in a proprietary company, an unlisted public company or a trust;
- in the base tax year, he/she had derived income of $2,500 or more from a source outside Australia and its external territories (other than Norfolk Island), which was not solely derived from a pension or similar payment, and which was included as income for purposes of the general personal, or parental, income test;
- he/she had received salary or wages in the base tax year and had claimed, or would be claiming, a tax deduction for a business loss for that or a previous year that was not a ‘net passive business loss’ (a concept applied in the parental income test);
- he/she was a member of a partnership in the base tax year; or
- in the base tax year, he/she had worked for gain or reward other than under an employment or apprenticeship contract (irrespective of whether he/she had employees), or in his/her own primary production business in which he/she was wholly or mainly engaged.

**Assessment period**

The family’s actual means were generally assessed for the ‘base tax year’ which, as in the parental income test, was the financial year ending on 30 June in the calendar year immediately before the calendar year in which the allowance claimant’s or recipient’s instalment period ended. However, there was provision for the Secretary, following a request, in certain circumstances to allow the financial year immediately following the base tax year to be used.

A Youth Allowance claimant or recipient could request that the year following the base year be used for the assessment only where:

- its use, in contrast with the use of the normal base year, would result in some allowance being paid instead of none, or in a higher payment;
- he/she provided written evidence, or an estimate which the Secretary was satisfied was current and reasonable, that the amount of the family’s actual means for the alternative year was, or would be, substantially less than in the base tax year due to: a circumstance or event beyond his/her control or that of the family members; he/she or a family member undertaking full-time study in that year; or a parent ceasing to be a ‘designated parent’ under the criteria (other than the first two) defining one; and
- the family actual means were unlikely to exceed the amount in the person’s evidence or estimate for the two years beginning on 1 January in the following tax year, or on the day on which the family’s actual means was reduced, whichever came later.
Legislation passed in 2000

If a request was based on a circumstance or event beyond a person’s control, he/she was required to provide evidence to that effect. An expected decrease in the profitability of a business was not ordinarily to be accepted as such a circumstance or event.

**Composition of actual means**

The actual means assessed was the total spending and savings of the claimant/recipient and of each family member for the relevant financial year. The Secretary was granted the discretion to determine what these amounts were but the legislation specified certain spending or savings which were not to be included in any assessment.

The following spending and/or savings, in respect of the claimant/recipient or any family member, were exempt from assessment:

- spending or savings from any ‘income assistance’ received;
- spending on the maintenance of a person’s child where he/she did not have legal responsibility for its day-to-day care, welfare and development, or on a person’s former partner;
- spending incurred in order to acquire or modify a property to assist a person with a disability to cope with the condition;
- spending or savings from any ‘arm’s length’ loan received in the relevant financial year;
- spending incurred in repaying, or paying interest on, a loan received in the relevant financial year which was not at arm’s length;
- spending or savings from the proceeds of the liquidation of assets held at the beginning of the year;
- spending or savings resulting from a windfall gain, provided that it was not a gift;
- spending or savings of up to $6000 from income that was exempt under item 1.4 of the table in section 51–5 of the Income Tax Assessment Act; and
- spending or savings from any part of a lump-sum compensation payment made to the person on which tax was not payable.

Also exempt from the test, but only in respect of the claimant/recipient, were:

- an amount equivalent to the income or resources of a business that were tax deductible on the basis that it had been, or would be, necessarily incurred in carrying on the business. However, losses from a business carried forward from a financial year earlier than the assessable one, and any contribution to a superannuation fund in relation to the business in excess of, in the case of an employee, the minimum contribution required under the relevant superannuation legislation or, for persons other than employees, the lesser of $3000 and the total amount contributed for the person or each family member for the relevant financial year, were not exempt;
- an amount equivalent to the reduction in a person’s liquid assets held at the beginning of the relevant financial year, and not accounted for by spending of a kind referred to in the spending exemptions cited; and
$5274 for each family member where the claimant/recipient incurred expenditure in the relevant financial year in paying board away from home for one or more family members who, at any time during that year, qualified for a boarding allowance under the Assistance for Isolated Children Scheme, or was a secondary student who was not independent nor required to live away from home.

In a further concession, applying only to children falling under the definition of ‘family member’, the first $6000 of spending or savings derived from employment income was also exempted from the test.

If the Secretary considered that certain spending that would otherwise be included in the actual means of a person did not represent the fair market value of the matter or thing on which the money was spent, he/she could determine the fair market value and treat the equivalent amount as spending. Furthermore, if the Secretary considered that spending by a person other than a family member was spending to the benefit of the claimant/recipient or his/her family member, he/she was required to determine the fair market value of the matter or thing to which the spending related and treat such an amount as spending.

**Calculation of actual means**

The actual means of the family of a claimant/recipient for the relevant financial year were calculated using the following formula: \(2 \left( \frac{\text{GAM}}{2} + \text{TNITML} \right) + \text{NPBL} \) with the terms used having the following meanings:

- GAM stood for the ‘gross actual means’ of the claimant/recipient and his/her family for the relevant financial year;
- TNITML meant the ‘total notional income tax/medicare levy’ for the parent/parents of the claimant or recipient in the relevant year. The figure comprised: the sum of the amount of income tax, before any rebates, that would be notionally payable by the parent for that year; and the amount of medicare levy that would be notionally payable by the person for that year, if none of the children (that is, children included in the definition of family member) of the parent/parents had a separate net income within the meaning of section 159J of the Income Tax Assessment Act in that year that would result in the after-tax income of the parent being an amount equal to half of the gross annual means of the family for that year; and
- NPBL meant ‘net passive business loss’ and represented the sum of the net passive business losses (if any) of each parent in the relevant year.

**Operation of the test**

The threshold of actual means allowed (free area) before the rate of Youth Allowance was reduced was identical to the threshold in the parental income test for the allowance. The withdrawal rate of allowance for actual means above the threshold was 25 cents in the dollar, with the test operated on a fortnightly basis.
Definitions

Savings
The legislation did not define savings but specified certain items that were to be included in it. These were:

- a person’s share in any profit retained by a company of which he/she was a director or shareholder, where he/she had a substantial influence over whether the company profit was distributed to himself/herself, to a family member, or to another company, partnership or trust in which he/she or a family member had an interest;

- a person’s share in any profit retained by a partnership of which he/she was a member, where he/she had a substantial influence over whether the partnership profit was distributed to himself/herself, to a family member, or to another company, partnership or trust in which he/she or a family member had an interest;

- any undistributed profit of a trust that was attributable to the person; and

- the total undistributed profit of a trust where the person was a trustee or beneficiary of the trust, no part of the undistributed profit was attributable to the person and the person controlled the trust.

In the last mentioned case, a person was regarded as controlling a trust where he/she had a power of appointment over the trust, a power to rescind or vary a provision of, or to rescind or vary the effect of the exercise of a power under, the trust, or a substantial influence over whether the profit of the trust was distributed to the person or his/her family member, or to another trust, company or partnership in which the person or family member had an interest.

Income assistance
‘Income assistance’ comprised: Youth Allowance when received by a person undertaking full-time study; Austudy Payment; all social security payments and payments made under the Family Assistance or Veterans’ Entitlements Acts that were exempt from income tax under specified parts of taxation legislation; payments under the Student Financial Supplement Scheme, Abstudy or the Assistance for Isolated Children Scheme; Austudy Allowance; and payments under a scholarship or payments by a state or territory, or state or territory authority, to assist the primary, secondary or tertiary education of a student.

Trust
A trust did not include a trust in relation to an account held in a bank only for the benefit of a dependent child of the trustee; a trust under which property of the estate of a deceased person, or a person who was insolvent under administration, was distributed; a trust in relation to a superannuation fund within the meaning of the relevant superannuation legislation that was not an excluded fund within the meaning of the legislation; a public unit trust in which units were held by 50 or more persons who were not family members of the trustee, or were offered for subscription or purchase by the public; the trust constituted by a trust account that the trustee was required by law to establish; a charitable trust; or a trust created by operation of law.
**Interest in a trust**

This included: the interest of a settler in property subject to the trust, a power of appointment under the trust, a power to rescind or vary a provision of, or to rescind or vary the effect of the exercise of a power under, the trust; and an interest that was conditional, contingent or deferred. It did not include the interest of a person as an agent or creditor of the trustee or as a person employed by the trustee.

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**DEFINITION OF ‘UNDERTAKING FULL-TIME STUDY’ AMENDED**

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in items 1A and 1B of Schedule 4)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>6 July 2000</td>
</tr>
<tr>
<td>Date of application</td>
<td>6 July 2000</td>
</tr>
<tr>
<td>Payments affected</td>
<td>General provision (mainly affected Youth Allowance)</td>
</tr>
</tbody>
</table>

The definition of ‘undertaking full-time study’ (it was inserted into the Act in connection with the introduction of Youth Allowance (refer to Record 2 of 1998)) was altered. Following the change, in certain circumstances a person needed only to be undertaking, or intend to undertake, at least two-thirds (instead of three-quarters as previously) of the normal amount of full-time study required by a course in the particular study period in which he/she was enrolled.

The concession was granted where the person could not undertake the normal amount of full-time study because the lower amount was a usual requirement of the educational institution the person was attending, or where the academic registrar or an equivalent officer gave the student a direction to undertake the lower load, or recommended it for specified academic or vocational reasons. In the last mentioned case, the period of the lower level of study was not to exceed half of the academic year.
CHANGE TO AUSTUDY PAYMENT QUALIFYING CONDITIONS

Location in Act  Section 3 (as set out in items 7 and 41 of Schedule 4)
Date of commencement  First change concerning physical disability commenced on 6 July 2000
                        Second change concerning intellectual disability was taken to have commenced on 1 July 1998,
                        immediately after the commencement of Schedule 1 to the Social Security Legislation Amendment
                        (Youth Allowance Consequential and Related Measures) Act 1998
Date of application  As for date of commencement
Payments affected  Austudy Payment

The qualifying conditions for Austudy Payment were changed by making it easier to qualify for the payment as a ‘25 per cent concessionary load student’. A person could now qualify if an ‘appropriate medical practitioner’ certified that he/she had a substantial physical disability, or a psychologist registered with the relevant state or territory registration board stated that he/she was intellectually disabled, and in each case could not successfully undertake the normal amount of full-time study required in a course due to the disability. Previously, the physical disability had to be certified by an officer of the Commonwealth Rehabilitation Service or a medical practitioner specialising in psychiatry, and the intellectual disability by a psychologist registered with the Australian Psychological Society. [Details of the full provision were covered in Record 3 of 1998.]

RATES FOR CERTAIN YOUNG PENSIONERS ALIGNED WITH YOUTH ALLOWANCE

Location in Act  Section 3 (as set out in items 9A, 10A, 27 and 28 of Schedule 4)
Date of commencement  6 July 2000
Date of application  6 July 2000
Payments affected  Disability Support Pension

Maximum basic rates of Disability Support Pension for persons aged under 21 years were aligned with Youth Allowance rates instead of (as previously) with those for Newstart Allowance.
CHANGE TO DEFINITION OF ‘INDEPENDENT’ FOR YOUTH ALLOWANCE

Location in Act          | Section 3 (as set out in items 11 and 12 of Schedule 4)
Date of commencement    | 6 July 2000
Date of application     | 6 July 2000
Payments affected       | Youth Allowance

The conditions to be met by a Youth Allowance claimant or recipient in order for him/her to be treated as ‘independent’ on the basis that he/she was ‘self-supporting’ were eased, by allowing the full-time employment condition (at least 30 hours a week for at least 18 months) to be met over any two-year period (previously it had to be in the two years preceding the claim) and, unlike previously, counting employment engaged in outside Australia for purposes of meeting the alternative ‘previous employment’ requirements. [Full details of the ‘self-supporting criterion’ were set out in Record 1 of 1998.]
Special new maximum basic rates were introduced for Youth Allowance and Austudy Payment recipients who were members of a couple, and for sole parent Austudy Payment recipients with children receiving Youth Allowance. The sole parent Austudy Payment recipient qualified for the special rate where his/her child was receiving Youth Allowance, was aged under 18 years and would have met the definition of 'dependent child' except for the fact that he/she was receiving the allowance.

These rates were in line with the relevant Austudy rates applying before Youth Allowance and Austudy Payment were introduced from 1 July 1998 and should have been enacted at the time. Instead, they were paid from 1 July 1998 on an ex-gratia basis pending the current legislation. The legislated rates, as shown in the following tables, are those applying following automatic indexation from 1 July 2000.

### Youth Allowance: Maximum fortnightly basic rates for long-term income support students

<table>
<thead>
<tr>
<th>Person's situation</th>
<th>$</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not independent, lives at home, and not member of a couple</td>
<td>227.20</td>
</tr>
<tr>
<td>Not independent, required to live away from home, and not member of a couple</td>
<td>341.40</td>
</tr>
<tr>
<td>Accommodated independent person, and not member of a couple</td>
<td>227.20</td>
</tr>
<tr>
<td>Independent, not an accommodated independent person, and not member of a couple</td>
<td>341.40</td>
</tr>
<tr>
<td>Member of a couple</td>
<td>308.70</td>
</tr>
</tbody>
</table>

### Austudy Payment: Maximum fortnightly basic rates for persons who are not long-term income support students

<table>
<thead>
<tr>
<th>Person's situation</th>
<th>$</th>
</tr>
</thead>
<tbody>
<tr>
<td>No dependent child, or child on Youth Allowance</td>
<td>281.10</td>
</tr>
<tr>
<td>Member of a couple, and has dependent child</td>
<td>308.70</td>
</tr>
<tr>
<td>Not member of a couple with dependent child, or child on Youth Allowance</td>
<td>363.80</td>
</tr>
</tbody>
</table>

### Austudy Payment: Maximum fortnightly basic rates for persons who are long-term income support students

<table>
<thead>
<tr>
<th>Person's situation</th>
<th>$</th>
</tr>
</thead>
<tbody>
<tr>
<td>Member of a couple</td>
<td>308.70</td>
</tr>
<tr>
<td>Not member of a couple</td>
<td>341.40</td>
</tr>
</tbody>
</table>
**RESTRICTION ON PAYMENT OF GUARDIAN ALLOWANCE**

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in items 20 and 21 of Schedule 4)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>6 July 2000</td>
</tr>
<tr>
<td>Date of application</td>
<td>6 July 2000 (but did not take effect due to the restructuring of family assistance—refer to Record 9 of 1999)</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Guardian Allowance</td>
</tr>
</tbody>
</table>

It was provided that Guardian Allowance was not payable to a person unless he/she was receiving more than the minimum rate of Family Allowance.

**YOUTH ALLOWANCE FAMILY ASSETS TEST AMENDED**

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in items 23 and 25 of Schedule 4)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>6 July 2000</td>
</tr>
<tr>
<td>Date of application</td>
<td>6 July 2000</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Youth Allowance</td>
</tr>
</tbody>
</table>

For purposes of the Youth Allowance family assets test, the general deprivation provisions relating to the disposal of assets without adequate financial return were extended to take account of the disposal of such assets by the family member of a non-independent Youth Allowance claimant or recipient. If a person ceased to be a family member (including if he/she died), the provisions ceased to apply. The definition of ‘family member’ for this purpose was given in Record 1 of 1998.

**CONCESSION FOR YOUTH ALLOWANCE CLAIMANTS**

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in item 36 of Schedule 4)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>Taken to have commenced on 1 July 1998, immediately after the commencement of section 540A, which was inserted by the Social Security Legislation Amendment (Youth Allowance) Act 1998</td>
</tr>
<tr>
<td>Date of application</td>
<td>As for date of commencement</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Youth Allowance</td>
</tr>
</tbody>
</table>

A person who had claimed Disability Support Pension was no longer required to satisfy the activity test, or be exempted from it, before being able to qualify for Youth Allowance while his/her pension claim was being determined. [This change was backdated to the introduction of Youth Allowance and aligned the conditions with those for Newstart Allowance.]
28

CLARIFICATION REGARDING ELIGIBILITY FOR YOUTH ALLOWANCE

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in item 37)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>Taken to have commenced on 1 July 1998, immediately after the commencement of subsection 543A(2), which was inserted by the Social Security Legislation Amendment (Youth Allowance) Act 1998</td>
</tr>
<tr>
<td>Date of application</td>
<td>As for date of commencement</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Youth Allowance</td>
</tr>
</tbody>
</table>

An amendment clarified that under no circumstances could Youth Allowance be paid to a person aged under 16 years if not independent, or aged under 15 years if independent. [This had been the intention of the legislation but its wording had not been totally clear. The amendment was backdated to the introduction of Youth Allowance.]

29

CHANGES TO ACTIVITY TESTS

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in items 38 and 42 of Schedule 4)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>Taken to have commenced on 1 July 1998, immediately after the commencement of subsection 550A, which was inserted by the Social Security Legislation Amendment (Youth Allowance) Act 1998</td>
</tr>
<tr>
<td>Date of application</td>
<td>As for date of commencement</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Youth Allowance; Austudy Payment</td>
</tr>
</tbody>
</table>

The Youth Allowance and Austudy Payment activity tests were relaxed by providing that a person breached them only if he/she failed to satisfy them ‘without reasonable excuse’. [The change was made to reflect the intention of the original legislation and was backdated to the date the payments were introduced.]
30

ELIGIBILITY FOR SPECIAL BENEFIT EXTENDED

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in items 47 and 48 of Schedule 4)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>Taken to have commenced on 1 July 1998, immediately after the commencement of item 199 of Schedule 9 to the Social Security Legislation Amendment (Youth Allowance Consequential and Related Measures) Act 1998</td>
</tr>
<tr>
<td>Date of application</td>
<td>As for date of commencement</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Special Benefit</td>
</tr>
</tbody>
</table>

Special Benefit became payable to a 16 or 17 year-old who was not homeless and who was enrolled in a full-time course of education or vocational training, or to whom a payment had been, or was to be, made under certain educational schemes or a scheme providing a maintenance allowance for refugees. [As previously, the benefit was not payable in these circumstances to persons aged 18 years and over, and was payable to 15 year-olds only if they were homeless. The change brought the legislation into line with the original policy intention when Youth Allowance was introduced and was backdated to that date.]

31

RESTRICTION ON ELIGIBILITY FOR YOUTH ALLOWANCE AND AUSTUDY PAYMENT

<table>
<thead>
<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in items 88 and 89 of Schedule 4)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of commencement</td>
<td>6 July 2000</td>
</tr>
<tr>
<td>Date of application</td>
<td>6 July 2000</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Youth Allowance; Austudy Payment</td>
</tr>
</tbody>
</table>

It was provided that a person was not entitled to receive Youth Allowance or Austudy Payment while in receipt of a payment under the Ready Reserve Education Assistance Scheme.
Retirement Assistance for Farmers Scheme Extension Act 2000, No. 118

Date of Royal Assent: 7 September 2000

<table>
<thead>
<tr>
<th>RETIREMENT ASSISTANCE FOR FARMERS SCHEME EXTENDED</th>
</tr>
</thead>
<tbody>
<tr>
<td>Location in Act</td>
</tr>
<tr>
<td>Section 3 (as set out in Schedule 1)</td>
</tr>
<tr>
<td>Date of commencement</td>
</tr>
<tr>
<td>7 September 2000</td>
</tr>
<tr>
<td>Date of application</td>
</tr>
<tr>
<td>1 July 2001</td>
</tr>
<tr>
<td>Payments affected</td>
</tr>
<tr>
<td>Age Pension</td>
</tr>
</tbody>
</table>

The Retirement Assistance for Farmers Scheme was extended from 14 September 2000 to 30 June 2001. [All references to 14 September 2000 and 15 September 2000 in Record 16 of 1998 became 30 June 2001 and 1 July 2001 respectively following this amendment.]


Date of Royal Assent: 13 November 2000

<table>
<thead>
<tr>
<th>DEFINITION OF ASSETS FOR ASSETS TESTS VARIED</th>
</tr>
</thead>
<tbody>
<tr>
<td>Location in Act</td>
</tr>
<tr>
<td>Section 3 (as set out in items 1 and 26 of Schedule 1)</td>
</tr>
<tr>
<td>Date of commencement</td>
</tr>
<tr>
<td>13 November 2000</td>
</tr>
<tr>
<td>Date of application</td>
</tr>
<tr>
<td>13 November 2000</td>
</tr>
<tr>
<td>Payments affected</td>
</tr>
<tr>
<td>Pensions and benefits</td>
</tr>
</tbody>
</table>

For purposes of the pension and benefit assets tests, it was clarified that the term ‘asset’ included money. It was specified that the insertion of this amendment did not imply that money had not been considered an asset for this purpose at any time before the amendment took effect.
### MEANS TESTING OF PRIVATE COMPANIES AND PRIVATE TRUSTS

<table>
<thead>
<tr>
<th>Description</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Location in Act</td>
<td>Section 3 (as set out in Schedule 1, except for items 1 and 26, which were dealt with in Record 33 of 2000)</td>
</tr>
<tr>
<td>Date of commencement</td>
<td>13 November 2000</td>
</tr>
<tr>
<td>Date of application</td>
<td>Applied to income and assets from a specified private company or private trust attributed to a person on or after 1 January 2002. One aspect of the deprivation provisions related to disposals on or after 1 July 2000</td>
</tr>
<tr>
<td>Payments affected</td>
<td>Pensions and benefits; Special Benefit (in effect)</td>
</tr>
</tbody>
</table>

Major changes were introduced to provide for the means testing of private companies and private trusts. Under the measures, a person who held income and/or assets in a private company or private trust could have them ‘attributed’ to him/her for purposes of the pension and benefit income and assets tests.

Under the previous legislation, income and assets had been assessed in respect of a person under income and assets tests only where legal ownership or a fixed right to income had been established. This meant that many people who owned private companies or private trusts, and who may have had control over and access to significant income and assets, were not subject to the tests. This contrasted with the treatment of individuals, sole traders, partnerships, public listed companies and unit trusts whose income and assets were so assessed. The different treatment of income and assets held directly and of those held indirectly was considered inequitable and the new legislation sought to ensure comparable treatment in future.

The main thrust of the new legislation was to employ specially designed tests to closely scrutinise what were sometimes quite complex interposed structures, in order to identify who controlled a particular structure and who was the source of the structure’s assets. These tests enabled the ownership of income and/or assets of a private company or private trust to be attributed entirely, or in part, to individuals for income and assets test purposes.

The rationale for a test to ascertain the control element depended on the assumption that the controller of a structure was the de facto owner of the assets where he/she could use them for his/her own purpose or benefit. Accordingly, it sought to identify where the actual and ultimate control (rather than the apparent control) of the structure resided, irrespective of the number of interposed structures.

A test designed to identify the source of a structure’s assets was relevant since a person transferring assets to an interposed structure generally did so because they would continue to be used for the benefit of him/her and/or his/her family. Under the test, where a person claimed that he/she had transferred assets to a private company or private trust as a gift, it would be difficult for him/her to prove this if he/she had retained an involvement in the relevant structure.

The legislation provided for certain farmers and related groups to receive specific exemptions from the new means tests. These recognised the importance of traditional family inheritance arrangements among these groups. They allowed farmers passing on the farm within the family in certain circumstances to retain some limited powers in relation to the trust deed.
Reflecting the complexity of the issues, the legislation provided for a large degree of discretion by the Secretary. He/she was empowered to formulate decision making principles, which took the form of a disallowable instrument. This discretion enabled the Secretary both to act quickly to address avoidance mechanisms designed to circumvent the intent of the legislation, and to exempt persons from the new rules in particular circumstances where they would have unintended adverse effects. In making determinations, he/she was required to follow the principles laid down in the disallowable instrument (these were passed by Parliament after the legislation had been enacted). (To avoid repetition, references to determinations in this record have not mentioned in each case that they were disallowable instruments.)

While the main thrust of the legislation was simple enough, it was very long as it was designed to cover a whole range of complex situations and close off potential legal ‘loopholes’. Most of the legislation was taken up with extremely detailed definitions and technical provisions—for example, to qualify as a ‘concessionary primary production trust’, a trust had to meet 14 conditions and some of these conditions contained sub-categories. Accordingly, in order to keep the description to a manageable length, only the more important technical provisions and definitions have been spelt out in depth. A number of definitions were in line with the taxation laws or accounting/business rules.

Throughout the legislation, the question of a private company or private trust is dealt with as it relates to a person and in relation to a particular time period. To avoid repetition, this should be assumed, where relevant, to apply in the description. The legislation also refers to ‘individuals’ rather than ‘persons’ as legally ‘persons’ can include body corporates as well as natural persons. The word ‘person’ has been used here but the term is confined to natural persons.

**Main thrust of legislation**

The legislation identified in what circumstances the income or assets of a particular structure were to be attributed to a person. If it was so attributed, in part or in whole, its income and assets were, to the extent of attribution, assessed under the income and assets tests applying to the person. The treatment of the income and assets of private companies and private trusts under income and assets tests was little different from the treatment of income and assets generally. The complexity arose from defining the income and assets to be assessed.

For the income and/or assets test to apply to a person:

- a company or trust in which a person had an interest had to be a ‘designated private company’ or a ‘designated private trust’;
- it had to be demonstrated that the person controlled the particular company or trust. Specific criteria were set out to establish this; and
- if the first two conditions were met, it had to be determined whether the income or assets of the company or trust were to be attributed to the person.

In the event that the income and assets test applied to the person, the deprivation rules in the two tests were modified to take into account attributions of assets and income from a company or trust.
Designated private company defined

A company was classified as a ‘designated private company’ where:

- at least two of the following three conditions were met—the consolidated gross operating revenue for its last financial year was less than $10 million; or at the end of that financial year, the value of its consolidated gross assets was less than $5 million; or it had fewer than 50 employees; or
- it had come into existence after the end of the previous financial year. [Such a company was included as it would have been too new for its gross operating revenue, gross assets and number of employees to be known.]

The Secretary was empowered to make a determination that each company included in a specified class of companies was, or was not, a designated private company.

Designated private trust defined

A trust was regarded as a ‘designated private trust’ unless it was: a fixed trust with the units in it held by 50 or more persons (a person and his associates were taken to be one person here), and it had not been created, continued in existence or operated under a scheme that was entered into, or carried out, for the sole or dominant purpose of enabling a person or persons to avoid the application of the present legislation, or similar legislation applying to veterans’ payments; or a complying superannuation fund. The Secretary was empowered to exclude a private trust from the definition on exactly the same basis as for private companies.

Definition of associates

The following persons or entities were covered by the term ‘associates’:

- a relative;
- an entity who, in matters relating to a trust or company, acted, or was accustomed to act or, under a contract, arrangement or understanding (whether formal or informal), was intended or expected to act, in accordance with the directions, instructions or wishes of a person, or the person and another entity who was an associate of the person;
- an entity that was a ‘declared associate’ of the person;
- a business partner of the person, or a business partnership in which the person was a business partner;
- the partner or child of a business partner;
- a trustee of a trust, where the person or another entity that was his/her associate benefited or was capable (whether by an exercise of a power of appointment or otherwise) of benefiting under the trust either directly or through any interposed companies, business partnerships or trusts;
- a company where the company was ‘sufficiently influenced’ by the person or an associated entity, an associated company due to the application of this paragraph, or two or more entities covered by this paragraph; or
- a company where the majority of voting interest was held by the person, entities associated with the person or both.
The Secretary was empowered to determine that each entity included in a specified class of entities was taken to be a ‘declared associate’ of a person. (The term ‘associate’ (or ‘associated’) when used in the sub-categories meant any person or entity who fell within any of the sub-categories which define the term.)

**Other definitions**

The following persons were regarded as relatives: a person’s partner; a parent, grandparent, brother, sister, uncle, aunt, nephew, niece, first cousin, second cousin or lineal descendant of the person or of his/her partner; a partner of one of the specified relatives of the person or of his/her partner; or a child of the person, his/her partner or of any one of the specified relatives. Relationships between an adoptive parent and an adopted child, and between step or foster parents and their step/foster children, were counted for purposes of the definition.

‘Entity’ here and elsewhere meant an individual (person as used here), a company, a trust, a business partnership, a ‘corporation sole’ or a body politic.

A company was taken to be ‘sufficiently influenced’ by an entity or entities if it, or its directors, were accustomed, or under an obligation (whether formal of informal), or might reasonably be expected, to act in accordance with the directions, instructions or wishes of the entity or entities.

**Criteria for establishing whether a person controlled a private company or private trust**

There were two criteria for assessing whether a person had control over a private company or private trust: one examined his/her control and influence directly, and the other the source of the particular structure’s assets. A person only needed to meet one of the criteria to be regarded as having control.

The criteria for direct control were very broad so as to remove the potential for a person to avoid their main objective. They embodied the concept of an ‘associate’ so as to cover relationships which were much broader than those of a person’s family and embraced close business ties. And they sought, for example, to prevent a person circumventing the intent of the legislation through diluting his/her interest in a private company with the issue of non-voting shares.

The criteria designed to ascertain the source of a private company or private trust’s assets were also broad. They made it difficult, for example, for someone to avoid the assets test by claiming that a transfer of an asset to a company or trust was a gift if he/she continued to have some involvement with the entity.

**Criteria for determining control of a private company**

A person was considered to have control of a private company where:

- his/her direct voting interests in the company and those of any associates were 50 per cent or more;
- his/her direct control interests and those of his/her associates were 15 per cent or more;
- the company was ‘sufficiently influenced’ by the person, an associate or two or more entities covered by these; or
- he/she, either alone or together with any associates, was in a position to exercise control over the company.
The legislation included provisions to ensure that there was no double counting of a person’s and associates’ interests in the company.

An entity’s ‘direct voting interest’ was equal to the percentage of voting power that it could control. ‘Voting power’ was broadly defined while ‘control of voting power’ encompassed direct or indirect control, including control that was exercisable as a result of, or by means of, arrangements or practices, irrespective of whether they had legal or equitable force and were based on legal or equitable rights. Provision was made to assess the degree of control where an entity held a direct voting interest in a number of related companies.

‘Direct control interest’ was also widely defined, and rules applied to cater for a situation where an entity had a direct control interest in a number of related companies.

Criteria for determining source of assets of a private company
A person met the criteria regarding the source of assets where he/she had transferred property or services to the private company after 7.30 pm (by standard time in the Australian Capital Territory) on 9 May 2000, and the underlying transfer had been made for no consideration, or for a consideration less than an arm’s length amount in relation to the underlying transfer. (The intention to introduce the legislation had been announced in the Budget on 9 May 2000.)

Criteria for determining control of a private trust
A person was regarded as having control of a private trust where:

- he/she, or an associate (other than a trustee of the trust as in the definition of ‘associate’), was the trustee, or one of the trustees, of the trust;
- a group was able to remove or appoint the trustee or trustees;
- a group was able to vary the trust deed or veto a decision of the trustee;
- the total of the beneficial interests in the corpus or income of the trust held by the person or his/her associates (whether directly or indirectly) was 50 per cent or more;
- a group had the power (by means of its exercise 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;
- a group was able in any manner whatsoever, whether directly or indirectly, to control the application of the corpus or income of the trust;
- a group was capable under a scheme of gaining the enjoyment or the control referred to in the previous two paragraphs; or
- a trustee of the trust was accustomed 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.

A ‘group’ was defined here as the person acting alone, his/her associate acting alone, the person and one or more of his/her associates acting together, or two or more associates acting together.
**Criterion for determining source of assets of a private trust**
The source of the assets of a private trust was assessed in exactly the same way as for private companies.

**Basis for attributing income or assets of a private company or private trust to a person**
The general rule was that, once it was established that a person controlled a private company or private trust, the assets of the company or trust were to be attributed to him/her unless the Secretary determined otherwise. Furthermore, all the income and assets of the company or trust were to be attributed to the person unless the Secretary determined that an attribution of less than 100 per cent was warranted.

As a special concession to farmers and similar groups holding their family property in a private trust, in certain circumstances the income and assets of the trust were not attributed to them. For a person to gain the concession, it was necessary to establish that a private trust was a ‘concessionary primary production trust’. The criteria for determining this were very detailed. Essentially, they allowed a farmer or related group who controlled a trust, and who met these criteria, to surrender the main control to the ‘next generation’ while retaining a very limited amount of control in specified circumstances.

**Criteria for establishing a private trust as a concessionary primary production trust**
To be treated as a concessionary primary production trust, a trust had to be a private trust over which the person exercised control. It had to be carrying on a primary production enterprise directly or indirectly, with more than 70 per cent of its net assets used in the enterprise. The net family assets had to be less than $750 000, while the combined income of the person and his/her partner (where feasible, as averaged over three years) was to be less than the Family Tax Benefit Part A threshold (this was $29 857 when the legislation commenced). Both the assets and income thresholds were increased each year in accordance with movements in the Consumer Price Index.

The person could not be actively involved in the main primary production enterprise but an ‘eligible descendant’ had to be so involved (‘eligible descendant’ was as defined in Record 16 of 1998). There were several conditions designed to establish that a person had only very limited control over the trust (such as to prevent the sale of a farm or to appoint a new trustee in the event that a trustee was unable to fulfil his/her duties). Finally, neither the person nor his/her partner were to be receiving a benefit directly or indirectly from the trust (some basic items such as food for personal consumption were exempted from this last condition).

**Operation of income and assets tests**
This explains how the income and assets tests operated where all or some income and assets of a private company or private trust were attributed to a person.

**Attribution of income**
Income derived from the company or trust on or after 1 January 2002, to the extent of the percentage attributed to the person, was assessed in the same way as income received by a person under the general pension and benefit income
tests. Income accounted for on an accrual basis (it was treated as cash or accrued in accordance with its tax treatment) was assessed in the same way as cash for income test purposes. The amount received during a particular derivation period from the company or trust was converted to an annual basis for purposes of the income test.

The Secretary was given the discretion to determine that a specified amount of income from a particular company or trust was not to be assessed under the income test. He/she could also determine that the distribution of capital or profits from a company, or distributions (whether in money or property) from a trust, were not to be income tested. This was to avoid double counting by assessing income both when it was attributed to, and also when distributed to, a person.

Most exemptions from the pension and benefit income tests in the existing legislation did not apply because they pertained to people and were not relevant to private companies and private trusts. However, where such a company or trust carried on a business or held an investment, the usual business deductions as in the general income test were allowed. The Secretary could determine that certain deductions were not to be allowed.

The legislation set out rules for determining when income was derived and when it was to be attributed. Usually, the derivation period for a company or trust was the tax year, or part tax year, as applicable but the Secretary could determine an alternative period. The derivation period could begin or end before the new means testing rules were introduced. To cover the variable situations, the Secretary had a discretion in determining the period for which income should be attributed to a person but, among other things, the period did not have to overlap in whole or in part with a derivation period, and did not have to be the same length as the derivation period to which it related.

**Attribution of assets**

The attribution of assets was similar to that for income, with assets of the private company or private trust attributed to a person on or after 1 January 2002 (whether alone or jointly in common with another entity or entities), up to the percentage attributed, assessed on the same basis as if they had been owned by the person. As for the income test, the Secretary could determine that a particular asset was to be excluded from assessment.

In general terms, the rules exempting unrealisable assets of persons from assessment under the assets test applied to the assets of persons with interests in the specified companies and trusts. However, in applying the concession, it was required that an asset of a company or trust could not be regarded as unrealisable in respect of a person unless it was an unrealisable asset of the company or trust. In determining the latter, the legislation specified that any limitation or restriction in the constituent document of the company or the trust deed, or under a scheme that was entered into or carried out for the sole or dominant purpose of enabling a person or persons to avoid the present rule or a similar rule applying to veterans’ payments, was to be ignored.

The legislation also provided for the value of an asset of a company or trust to be reduced by the extent of any charge or encumbrance related exclusively to it. The rules were similar in a number of aspects to those in the general assets test provisions.
Modification of asset and income deprivation rules

The deprivation rules were extended to disposals by a private company or private trust. The deprivation was assessed by the percentage amount that the income or assets of the trust were attributed to the person. The power to determine whether the new deprivation provisions applied, and to what percentage, was at the discretion of the Secretary.

While the new provisions incorporated certain modifications peculiar to private companies and private trusts, the main features of the deprivation rules (for example, the actions which were taken to constitute deprivation) were very similar to the existing provisions applying to persons.

In general, the deprivation provisions took account of disposals that took place on or after 1 January 2002. However, disposals involving the distribution of capital or profits by a private company to a shareholder, or as a distribution in money or other form to the beneficiary of a private trust, became subject to the deprivation provisions if they occurred on or after 1 July 2000. [This date was selected as it represented the beginning of the 2001–2002 financial year following the announcement of the foreshadowed new measure, and as most decisions on distributions for that financial year would not be made until some time in 2002.]

The legislation avoided double counting by ensuring that a person was not assessed under both the deprivation provisions applying to persons and attributions applying to private companies and private trusts. Where a person was subject to the new provisions on 1 January 2002 because he/she or his/her partner had income or assets in a private company or private trust, and the person was already serving a five-year assessment period under the existing deprivation provisions following the transfer of income or assets to a private company/trust before 1 January 2002, the earlier deprivation period no longer applied.

Where a person subject to the means test on the basis of his/her interest in a private company or private trust ceased to have such an interest and, immediately before this the company or trust owned, or jointly owned, an asset, the person was taken to have disposed of the asset and became subject to the deprivation rules. [This provision sought to prevent a person from avoiding the assets test by resigning from a company or trust.]

In a further concession to farmers and related groups, where the aforementioned resignation provision, and thus the five-year deprivation period, applied to a person who had ceased to have control over a concessionary primary production trust on or after 1 January 2002, he/she or his/her partner were entitled to receive limited benefits for up to five years provided that the trust continued to be a concessionary primary production trust and the benefits (excluding certain items such as food derived from the primary production enterprise) did not exceed a specified (indexed) amount. That is, the person and/or the person’s partner were exempted from the condition (as outlined in relation to concessionary primary production trusts) regarding the non-receipt of benefits.

General anti-avoidance provision

The legislation contained a broader ‘anti-avoidance’ provision to prevent a person gaining a social security payment by contrived means.
A compendium of legislative changes in social security 1983–2000


Date of Royal Assent: 24 November 2000

TREATMENT OF ABSTUDY PAYMENTS ALTERED

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<tr>
<th>Location in Act</th>
<th>Section 3 (as set out in Schedule 1)</th>
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<tr>
<td>Date of commencement</td>
<td>1 January 2001</td>
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<td>Date of application</td>
<td>1 January 2001</td>
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</tbody>
</table>
| Payments affected | First change: pensions and benefits  
Second change: pensions (Widow B Pension and Mature Age Allowance (pension) are not specifically mentioned but they were being phased out)  
Third change: Parenting Payment; Mature Age Allowance (pension); benefits |

Amendments to the treatment of Abstudy payments in the legislation were made. In part they were to take account of changes being made to the Abstudy Scheme from the same date, but also ensured that some rules pertaining to Abstudy payments were consistent with those applying to pensions and benefits.

Treatment of Abstudy payments under income tests

A payment under the Abstudy Scheme was generally no longer treated as income under any pension or benefit income test. The sole exception was that it continued to be treated as income for purposes of determining whether a recipient of a payment under the scheme was a ‘student child’ or ‘dependent child’ for purposes of a parent’s eligibility for various social security payments.

[Previously only Pensioner Education Supplement when paid under the Abstudy Scheme had been exempted from income tests. The treatment of Abstudy payments generally as income had disadvantaged couples where one partner was receiving a pension or benefit and the other Abstudy, as the partner on the pension or benefit had his/her payment reduced under the income test.]

Bringing Abstudy payments within the multiple entitlement preclusion provisions for pensions

An Abstudy payment, when equivalent to an income support payment, was brought within the ambit of the multiple entitlement preclusion provisions applying to pensions. It was provided that, where a person was receiving a payment under the Abstudy Scheme based on his/her status as a full-time student, and the payment included an amount identified as ‘living allowance’, then he/she could not also receive a pension. The restriction applied equally to persons qualified for such an Abstudy payment, except that in that case the Secretary was given the discretion to pay the relevant pension before the commencement of the student’s course. [A similar preclusion condition already applied to benefits.]
A savings provision protected the entitlement of people receiving both an Abstudy payment and one of the specified pensions at the date of the change. In these cases, Abstudy payments continued to be subject to the income test (that is, the exemption from the income test in the first mentioned change did not apply).

Reducing the impact of the multiple entitlement provisions in relation to Abstudy payments for certain pensions and benefits

People who received any payment under the Abstudy Scheme to the extent that it applied to part-time students were exempted from the multiple entitlement preclusion provisions preventing a person receiving an Abstudy payment at the same time as a Parenting Payment, Mature Age Allowance (pension or benefit) and any other benefit. This liberalised the exemption, as it had previously applied only to payments under the Abstudy Tertiary Scheme in respect of part-time students. [This change took account of the fact that an Abstudy payment could be made to persons aged 18 years and over who were in part-time studies at a secondary school, and it was not the policy intention that this group of students be excluded from the exemption.]

36

FAMILY ASSETS TEST FOR YOUTH ALLOWANCE EASED

<table>
<thead>
<tr>
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<tr>
<td>Payments affected</td>
<td>Youth Allowance</td>
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The Youth Allowance family assets test was eased by increasing, from 50 to 75 per cent, the proportion of the value of a person’s/family member’s interest in the assets of a business to be disregarded where a person, or his/her partner, were wholly or mainly engaged in the business.
Endnotes

1 An amendment in the *Family and Community Services Legislation Amendment (1999 Budget and Other Measures) Act 1999* further amended the amendments made to the eligibility criteria for the Student Financial Supplement Scheme in the present amending Act, although the present Act was passed in 2000. This occurred because the present amending Act was originally expected to be passed before the 1999 Act but the timing of the passage through Parliament of the Acts was altered. Accordingly, the change in the 1999 Act was not incorporated under the 1999 legislation but has been directly built in to the present description, overriding the amendments in the present amending Act (which were never enacted).

2 Certain amendments in the *Family and Community Services Legislation Amendment (1999 Budget and Other Measures) Act 1999* and the *A New Tax System (Family Assistance) (Consequential and Related Measures) Act (No. 2) 1999* further amended the amendments made to the family actual means test in the present amending Act, although the present Act was passed in 2000. This happened as the present amending Act was originally expected to be passed before the 1999 Acts but the timing of the passage through Parliament of the Acts was altered. Accordingly, the changes made to the 1999 Acts were not incorporated under the 1999 legislation but have been directly built in to the present description, overriding the amendments in the present amending Act (which were never enacted).
Index

The differences between this and the 1908–1982 compendium outlined in the introduction, and particularly the greater detail and arrangement by amending Act order, have resulted in differences between the two indexes.

Some of these are merely changes in terminology as a result of usage—‘Aboriginal and Torres Strait Islander Australians’, for example, is preferred in this index instead of ‘Aboriginal Australians’. See references lead you from terms used in the earlier index to the forms preferred below when they are separated alphabetically—from ‘married persons’ to ‘couples’, for example.

In order to capture the detail, the analysis required increasing the number of subheading levels. In the interests of readability, subheadings which have lower level heading structures attached are generally recast as main headings. In the interests of clarity, en rules (–) are used to separate the main and qualifying words/phrases in these headings:

   Age Pension – assets tests – deprivation provisions

The decision to create such main headings is the result of the complexity of the index entry—a single sub-subheading, for example, is run-on after the subheading. When the decision has been made, see references lead you from the subheading position to the recreated main entries when they are not in close proximity.

   Age Pension – assets tests
   deprivation provisions, see Age Pension – assets tests – deprivation provisions

Cross-references are used extensively in the index. See references, like the page references they replace, are made directly from headings regardless of their level (as the example above shows). On the other hand, see also references generally file as the last subheading of an entry—the exception is when they are used to indicate aspects of a subject dealt with under another main entry—in this case, they file directly after the subheading. For complex entries comprising a series of main headings describing different aspects of the subject, they file as the last subheading of the first (unqualified) entry when the entry being referred to is common to all entries:

   couples
   see also separated persons

but they file as the last heading of a later (qualified) entry if a more specific reference is made:

   couples – pensioners
   see also Wife Pension
Notes are used to define the scope of some entries. They are also used to record the names of all abolished/replaced payments in the case of new payments and when the change(s) occurred. The notes replace see also references to payments named. They appear in brackets and in italics directly after the main heading.

The index records extensions of payments to new recipients:

Special Benefit
Rent Assistance eligibility, 41, 111

but generally does not record subsequent changes affecting those payments (the discussion of supplementary payments in this compendium’s explanatory notes refers). In such cases, the index entry as it stands substitutes for a see also reference to the named payment.

Pensions and benefits being phased out—where no new grants are made from a certain date—are treated like current payments until savings provisions are removed. The exception is that conditions applying to new claimants are not indexed—in ambiguous cases, the condition is indexed.

Different payments with the same name—pre and post-July 1991 Job Search Allowance, for example—are indexed as one payment. Renamed payments—payments where this is the sole change and qualifying conditions and so on are identical—are indexed as follows:

- as main headings—under the latest name. A note after the name provides details of name changes; see references lead you from earlier names to the preferred entry.
- as subheadings—under the name at the time of the change. If the same event is recorded for variant names, under the latest name with variant(s) indicated after.
- as referral locations in cross-references—under the latest name. The note after the name as main heading provides details of name changes.

The dropping of the apostrophe in the names of payments (see introduction) is not recorded in notes.

The latest names of both renamed and abolished payments are generally used as the cross-reference referral locations. (Notes at these index entries will lead you to the earlier payments.) The names of abolished payments are used instead if the replacing payment does not fit the scope of the reference.

Where ‘payments affected’ are of ‘general provision’, they are indexed under the name of a particular payment only when the payment is mentioned elsewhere in the entry. (Many changes of ‘general provision’ are definitional changes and are indexed under ‘definitions’; all are indexed under the subject of the change.)
A New Tax System Acts, see under New Tax System
Aboriginal and Torres Strait Islander Australians
native title rights and interests, 354
see also Community Development Employment Projects (CDEP) Scheme
Aboriginal Employment Incentive Scheme, 236, 289
Aboriginal Overseas Study Scheme, 192
Aboriginal Study Assistance Scheme, see Abstudy
absence from Australia, see overseas payments; residency requirements
absence from family home, 25, 59, 189, 375, 537
carers, 374, 375
children with disabilities, 40, 50, 94, 284
Parenting Payment qualifying children, 560
when Remote Area Allowance payable, 2
see also living away from home; hospital patients; residential care
‘absent resident’, 11
Abstudy (Aboriginal Study Assistance Scheme), 472, 606–7
Additional Pension/Benefit for children payable, 109
Family Allowance Supplement entitlement, 111
Partner Allowance eligibility, 419
sharing accommodation with child/children receiving, 404
Sickness Allowance eligibility, 342, 387
Student Financial Supplement Scheme, 346, 486
unemployment beneficiaries/ex-beneficiaries receiving, 299, 346, 351
Abstudy (Aboriginal Study Assistance Scheme) – income test treatments, 606, 607
beneficiary partner, 235
child concession/reduction allowed under pension test, 192
education supplement exemption, 108
Family Allowance Supplement, 110
Student Financial Supplement Scheme, 346
accommodated independent person rate, 469, 477, 593
accommodation, see home; housing and accommodation; residential care
accommodation bonds and charges, 434, 537–8
accruing return investments, 87, 274
realisation, 191, 210, 236
see also managed investments; market-linked investments
acquisition of investments, see investment income
Activity Agreements
Case Management (Employment Services Act), 324, 390
Job Search, 298, 299, 323–4, 325
Newstart, see Newstart Activity Agreements
Youth Allowance, 468–9
Youth Training, 429
activity plans, 265, 566
‘period of grace’ payments, 352
activity (work) tests, 271, 298–9, 325–6, 406–12, 428–30, 554–5
Austudy Payment, 481–2
Defence Force reservists, 125, 468
disability support pensioners, 217–18, 348, 388, 594
Disability Wage Supplement recipients, 314, 348, 388
education starters, 350
Job Search Allowance on introduction, 95, 206–7
Mature Age Allowance, 296
Newstart Allowance on introduction, 206–7
Pension Bonus Scheme, 494–5
pregnant women, 430, 468
reporting requirements, 65, 77, 271, 391: in remote areas, 126
Sickness Allowance recipients, 489: 15 year-olds, 224, 262, 379
unemployment status of persons complying with, 254
Youth Allowance, 467–9, 554–5, 594
see also breach penalty rules; employment – activity test requirements; rehabilitation
– activity test requirements; vocational training – activity test requirements; voluntary work
– activity test requirements
ADAT, 521–2, 527
Additional Allowance for Children, 240, 241
Additional Benefit for Children (introduced 1956 [see 1908–1982 compendium]; replaced
1 January 1993 by Family Payment [which was renamed Family Allowance in 1998]), 43, 241–2
maintenance action requirements, 171
overseas payments, 85
qualifying children, 127, 154: students, 62, 73, 90, 154, 155
residency requirements, 109
Additional Benefit/Pension for Children – rates
1983, 3
1984, 21
1985, 37
1986, 62
1987, 90
1988, 109, 116
1989, 141–2
1992, 240
adequacy benchmark, 142
Disaster Relief Payment, 199
student children, 37, 90, 109
Additional Pension for Children (introduced 1945 [see 1908–1982 compendium]; replaced
1 January 1993 by Family Payment [which was renamed Family Allowance in 1998]), 43, 241–2
maintenance action requirements, 171
overseas payments, 85
payees, 5, 90
qualifying children, 154: students, 62, 73, 90, 154, 155
residency requirements, 109
adopted children, 6, 12
Family Payment backdating rules, 360
newly born, 365
from overseas, 570
Adult Disability Assessment Tool (ADAT), 521–2, 527
Adult Migration Education Program, 34
advance payments (advances), 324–5, 377–8, 423
Austudy Payment, 483
employer loans provided as, 361–2
Family Payment, 252
Fares Allowance, 577
first instalment, 556: prisoners and confined persons, 558–9
Mobility Allowance, 265
Pharmaceutical Allowance/Supplement, 179, 233, 292, 336
Special Benefit, 84
special employment advance, 544–6
Youth Allowance, 474
see also backdating rules
age of consent, couples living together under, 76, 257
Age Pension, 14, 29, 519
  advance payments, 377–8, 423, 558–9
  assets tests, see Age Pension – assets tests
  backdating rules, 557
  benevolent home references in Act, 14, 25, 382
  Bereavement Payments, 160, 244
  Community Development Employment Projects (CDEP) Scheme participation, 540, 542:
    Participant Supplement, 519, 543, 564
  Disaster Relief Payment, 199
  family relationships, 13, 146–7, 484: ex-spouse co-residents, 79, 86, 116
  income tests, see Age Pension – income tests
  multiple entitlement preclusion provisions, 313
  overseas payments (portability provisions), 47, 115, 141, 259, 551–3, 568–71: comparable claim
    requirement, 300
  Partner Allowance eligibility, 332–3
  Pension Bonus Scheme, 492–6, 572
  Pension Supplement, 529, 530
  prisoners and confined persons, 20, 35, 68–9, 549, 557–9: spouses of, 20, 283
  rates, see Age Pension – rates
  residency requirements, see Age Pension – residency requirements
  Retirement Assistance Scheme for Farmers, 497–9, 572, 597
  special needs, 571
  Telephone Allowance, 243–4, 270, 519: portability provisions, 568, 569
  transfers to, 250, 420, 438, 552–3
  see also Additional Pension for Children; definitions; Pharmaceutical Allowance; Remote Area
    Allowance; Rent Assistance
Age Pension – assets tests, 24–7, 43, 56–61, 484, 530
  deprivation provisions, see Age Pension – assets test – deprivation provisions
  encumbrances and charges, 24, 58, 230: residential care accommodation bonds/charges, 434,
    537, 538
  family home, see Age Pension – assets test – family home
  farmers and families, 230, 497–9, 572, 603
  financial hardship provisions, 26–7, 88, 223
  Fringe Benefits (Concession Cards), 27, 60–1, 75, 243: abolished, 269
  Funeral Benefit, 27, 60, 61, 75
  funeral expenses and cemetery plots, prepaid, 24, 57
  funeral investments, 209
  indexation, 25, 60–1, 210
  insurance and compensation payments, 188
  life interests, 24, 57, 310
  loans, 59
  medically acquired HIV payments, 398
  money, 597
  native title rights and interests, 354
  pension bonus payment, 492
  Pension Loans Scheme, 26, 58, 59–60, 395–6
  pension reduction amount, 25, 281
  private companies and private trusts, 598–605
  superannuation, see Age Pension – assets test – superannuation and annuities
Age Pension – assets tests – deprivation provisions, 25–6, 181, 190
  applied to disposal of exempt assets, 56, 538
  on ceasing employment, business or profession, 88
period applying, 26, 181, 256
private company and private trust disposals, 605
Retirement Assistance for Farmers Scheme, 497, 498
Age Pension – assets tests – family home, 24, 25, 27
absent when caring, 375
absent when in care situations/residential care, 25, 59, 189, 375, 537
life interests, 24, 182, 310: farmers, 499
mortgages, 151, 230
retirement village residents, 134, 182
sale, 24, 58: to pay accommodation bonds, 538
sale/leaseback arrangements, 248
unrealisable asset, 223
Age Pension – assets tests – superannuation and annuities, 24, 57, 275, 403, 457
allocated, 276, 319
income streams, 503–9
Age Pension – income tests, 2–3, 43–4, 484, 530
Aboriginal Employment Incentive Scheme payments, 289
blind war service pensioners, 55
board and lodgings, value of, 152
business income, 188, 208–9
child concession, see Age Pension – income tests – child concession/disregard
Community Development Employment Projects (CDEP) Scheme earnings, 540, 542
compensation recovery provisions, 177, 421, 448: Fringe Benefits (Concession Cards), 204
deprivation provisions, 88, 181, 190: private company and private trust disposals, 605
domestic payments, 55
exchange trading system arrangements, 363–4
Fringe Benefits, see Fringe Benefits (Concession Cards) – income tests
Funeral Benefit, 4, 22, 61
investment income, see investment income
legal and official proceedings, jurors and witnesses before, 186
loans, 151, 186: provided by pensioners, 180
maintenance income, 105–6, 149, 213
medically acquired HIV payments, 247, 284
National Socialist compensation (restitution) payments, 108, 171
New Enterprise Incentive Scheme (NEIS) payments, 289
overseas payments, 115
Pension Loans Scheme, 395–6
permissible income limits, see Age Pension – permissible income limits
personal care support service payments, 186
persons aged 70 years and over, 1, 2
private companies and private trusts, 598–605
residential care accommodation bonds and charges, 434, 537, 538
Retirement Assistance for Farmers Scheme, 499, 572
scholarships awarded outside Australia, 210
superannuation, see Age Pension – income tests – superannuation and annuities
training and work experience payments, 152, 186, 381
Age Pension – income tests – child concession/disregard, 44, 201, 530
Family Allowance recipients, 49
pensioners aged 70 years and over, 1
student payments, 107, 158, 192
Age Pension – income tests – superannuation and annuities, 153, 275, 287, 328, 403
allocated, 276, 319
deeming provisions, 386
immediate, 156
income streams, 503–9
overseas derived, 208, 353
Age Pension – permissible income limits (free area), 43, 201, 530
deeded interest rate (deeming rule) exemption, 189, 248, 385–6, 422
earnings credit, 89, 155, 190, 231, 417
indexation, 158
see also Age Pension – income tests – child concession
Age Pension – rates, 21, 158, 269
Goods and Services Tax (GST) compensation provisions, 529, 530
indexation, see indexation – rates – pensions
male total average weekly earnings benchmark, 435
partner in confinement, 283
partner in respite care, 157
partner not receiving pension, benefit etc., 232
Secretary’s discretion to pay reduced, 37
war widow’s pensioners, 63
Age Pension – residency requirements, 11, 13, 33, 420
dependent children, 33, 87
portability provisions, 47, 259, 551, 552, 553
refugees, 322, 347
Age Pension age, 156, 207, 420
transfers to Age Pension on, 250, 420, 438, 552–3
women, 317, 352, 419–20
age qualifications
Age Pension, 317: income test, 1
Austudy Payment, 480
Carer Payment (Pension) care recipients, 263, 376, 522
Commonwealth Rehabilitation Service access, 54
Disability Support Pension, 217
Fringe Benefits (Concession Cards) beneficiary recipients, 269
homeless rate, 164
independent rate, 164, 224, 246
Invalid Pension, 156
Job Search Allowance, see Job Search Allowance – age qualifications
Mature Age Allowance, 295, 393
Newstart Allowance, 205, 207, 234, 243, 390, 459
Partner Allowance, 309, 332, 333
Pension Bonus Scheme, 494
Pensioner Education Supplement, 485
Pensioner Loans Scheme maximum loan amount, 395, 396
Retirement Assistance for Farmers Scheme, 497–8
Seniors Health Card, 291, 352
Sickness Allowance, 224, 258, 262, 338, 379, 459
special assistance measures for farmers, 234
Special Benefit, 76, 338, 596
Telephone Allowance beneficiary recipients, 243, 270
Unemployment Benefit activity (work) tests, 162–3
Widow Allowance, 333, 334, 418
Wife Pension, 221
Work for the Dole maximum periods of work, 432
Young Homeless Allowance, 51
Youth Allowance, 465–6, 595
Youth Training Allowance, 339
see also mature age beneficiaries; mature age pensioners; young beneficiaries; young pensioners

age qualifications for children
Carer Allowance, 526
Carer Payment care recipients, 501
of Carer Payment care recipients, 522
Family Allowance income test, 81
Family Allowance/Payment, 241, 242, 536
Home Child Care Allowance, 307
Maternity Immunisation Allowance, 445
Parenting Allowance, 329

age qualifications for student children, 155, 369
Family Allowance income test, 81
Mother’s/Guardian’s Allowance, 155, 157, 165
pensioner income test concession, 158

age rate for family payments
1987, 90
1988, 116
1989, 141–2
1992, 240
1994, 318
1995, 360
1996, 367
1998, 489
1999, 536

age rate for young disability support pensioners, 217, 591
Aged Care Amendment (Omnibus) Act 1999, 537–8
Aged Care (Consequential Provisions) Act 1997, 433–4
aged homes, see residential care
agricultural producers, see farmers and families
AICS, 107, 187, 342, 471, 588
aids and appliances, 24
hearing aids, 291
AIDS/HIV, medically acquired, 247, 284, 398
Air Force, see Defence Force personnel
alcohol abuse counselling, treatment or therapy, 220
aliens, see residency requirements
allocated pensions and annuities, 276, 319
animals (livestock), 234
annual adjustments, see indexation
annual leave waiting period, 145
see also income maintenance period
annuities, see superannuation and annuities
appliances, see aids and appliances
applications for jobs, 298
approved care organisations (institutions) receiving family assistance payments, 39, 123, 382
backdating rules, 81, 93
children on leave, 235
one-off lump-sum ‘bonus’ payment, 239
rates, 367
student children aged 18 to 24 years, 288, 367
‘approved course of education’, 478
Approved Program of Work Supplement (Work for the Dole), 431–2, 467, 519, 531
Armed Services Widow/Widower Pension, 63, 74, 313, 531
see also Veterans' Entitlements Act payments
Army, see Defence Force personnel
arrears payments, see backdating rules
artificial replacements, see aids and appliances
assessable income, see income tests
asset threshold amounts (free area), 25, 60–1, 210, 530
Austudy Payment, 483
beneficiaries' parents, 175, 342, 370
Carer Pension care recipient, 376–7
deprivation provision annual limits, 25–6, 181
Family Allowance, 227, 255
Family Allowance Supplement, 120
Family Payment, 255, 294, 448
Fringe Benefits (Concession Cards), 27, 60–1, 75
Funeral Benefit, 27, 60, 61, 75
liquid assets test, 196, 414
Maternity Allowance, 448
Sickness Allowance changes based on Youth Training Allowance, 341, 342
Youth Allowance, 473
see also indexation – asset threshold amounts
assets tests, 530
benefits, see assets tests – benefits
Family Allowance, 227, 248, 255: farmers and families, 230; see also Family Allowance/Payment – assets tests
Family Allowance Supplement, see Family Allowance Supplement – assets tests
Family Tax Payment, 401
Fringe Benefits (Concession Card), 27, 60–1, 75: abolished, 269
Funeral Benefit, 27, 60–1, 75
Maternity Allowance, 365, 448
pensions, see assets tests – pensions
Pharmaceutical Allowance, 179
Telephone Allowance, 243
see also exempt assets; family assets tests; income tests; liquid assets tests
assets tests – benefits (includes references applying to all (or all but one) benefits; references applying to only one or a selection of benefits are indexed under 'assets tests' under the name of the benefit(s)), 100, 484, 530
beneficiaries aged under 25 years, 176
care recipients, 375, 537
carers, 375
couples where one not receiving payment, 113
deprivation provisions, 181, 190, 256, 538, 605
eccumbrances and charges, 230: residential care accommodation bonds/charges, 434, 537, 538
farmers and families, 230, 603
financial hardship provisions, 100, 223
funeral investments, 209
indexation, 61, 210
insurance and compensation payments, 188
life interests, 182, 310
loans, 100, 151, 230
medically acquired HIV payments, 398
money, 597
native title rights and interests, 354
nursing home residents, 189
private companies and private trusts, 598–605
A compendium of legislative changes in social security 1983–2000

retirement village residents, 134, 182
sale/leaseback arrangements, 248
superannuation and annuities, 151, 275, 276, 319, 403, 457: income streams, 503–9
see also liquid assets tests waiting period; parental assets tests
assets tests – pensions (includes references applying to all (or all but one) pensions; references applying to only one or a selection of pensions are indexed under ‘income tests’ under the name of the pension[s]), 24–7, 43, 56–61, 530
in care situations/residential care, 25, 59, 189, 375, 537
carers, 375
deprivation provisions, see assets tests – pensions – deprivation provisions
encumbrances and charges, 24, 58, 230: residential care accommodation bonds/charges, 434, 537, 538
farmers and families, 230, 603
financial hardship provisions, 26–7, 88, 223
funeral investments, 209
indexation, 25, 60–1, 210
insurance and compensation payments, 188
life interests, 24, 57, 182, 310, 499
loans, 59, 151, 230
medically acquired HIV payments, 398
money, 597
native title rights and interests, 354
nursing home residents, 25, 59, 189
Pension Loans Scheme, 26, 58, 59–60, 395–6
pension reduction amount, 25, 281
private companies and private trusts, 598–605
retirement village residents, 134, 182
sale/leaseback arrangements, 248
superannuation, see assets tests – pensions – superannuation and annuities
assets tests – pensions – deprivation provisions, 25–6, 181, 190
applied to disposal of exempt assets, 56, 538
on ceasing employment, business or profession, 88
period applying, 26, 181, 256
private company and private trust disposals, 605
Retirement Assistance for Farmers Scheme, 497, 498
assets tests – pensions – superannuation and annuities (income streams), 24, 57, 275, 403
allocated, 276, 319
compulsorily preserved benefits, 151
income streams, 503–9
Assistance for Carers Legislation Amendment Act 1999, 521–8
Assistance for Isolated Children Scheme, 107, 187, 342, 471, 588
assurance of support, 187, 245
‘at-home’ young beneficiary rate, 341
Australian Defence Force, see Defence Force personnel
‘Australian inhabitant’, 194, 316, 573
Australian residents, see residency requirements
Austria, 250
National Socialist persecution restitution payments, 171
Austudy, see also Youth Allowance and Austudy Payment, 462–83
couples, one receiving benefit, 173
Family Allowance Supplement, 110, 111
Family Payment, 288, 293
Partner Allowance, 419
pension entitlement, 69
pension income test, additional income disregarded for children, 107
sharing accommodation with child/children receiving, 404
Sickness Allowance, 342, 387
Student Financial Supplement Scheme, 346, 419
unemployment beneficiaries/ex-beneficiaries receiving, 299, 346, 351
see also Abstudy; Pensioner Education Supplement

**Austudy Payment (introduced 1 July 1998, replacing Austudy), 479–83, 519**
Abstudy payment recipients, 606, 607
activity tests, 481–2, 483, 595
advance payments, 483: first instalment, 556, 558–9
assets tests – see Austudy Payment – assets tests
backdating rules, 557
Community Development Employment Projects (CDEP) Scheme participation, 540–3: Participant Supplement, 519, 543, 564
concessional study-load students, 481–2, 591
Fares Allowance, 488, 575–7
Goods and Services Tax (GST) compensation provisions, 529, 530
income tests, see Austudy Payment – income tests
overseas payments (portability provisions), 481, 568–70
prisoners and confined persons, 549, 557–9
rates, 482–3, 593
Ready Reserve Education Assistance Scheme payment recipients, 596
special employment advance, 544–6
Student Financial Supplement Scheme, 486–7, 560, 578–84
waiting periods, see Austudy Payment – waiting periods
see also Remote Area Allowance; Rent Assistance

**Austudy Payment – assets tests, 483, 484, 530**
income streams, 503–9
liquid assets waiting period, 483, 484, 566: deductions before applying, 488
money, 597
private companies and private trusts, 598–605
residential care accommodation bonds and charges, 537, 538
special employment advance, 546

**Austudy Payment – income tests, 483, 484**
Abstudy payments, 606
Community Development Employment Projects (CDEP) Scheme: earnings, 540, 542; Participant Supplement, 543
income streams, 503–9
lump-sum payments, treatment of, 502: income maintenance period applying to leave payments, 444, 566
permissible income limits (free area), 530
private companies and private trusts, 598–605
residential care accommodation bonds and charges, 537, 538
special employment advance, 546

**Austudy Payment – waiting periods**
income maintenance period applying to leave payments, 444, 566
liquid assets test, 483, 484, 566: deductions before applying, 488
newly arrived residents waiting period, 483, 573–4
after seasonal work, 510–12

**Austudy regulations, 488, 575**
average weekly earnings
in compensation recovery preclusion period calculations, 301, 421
pension rate benchmark, 435
in seasonal work preclusion period calculations, 512
awards for valour, 24
away from home, see living away from home

backdating rules
  Carer Allowance, 527
  Carer Payment, 455
  Child Disability Allowance, 94, 283
  Crisis Payment, 548, 557
  Disability Support Pension, 417, 455
  Disability Wage Supplement, 315
  Disaster Relief Payment, 199
  Double Orphan Pension, 228
  Family Allowance, 81, 93, 172, 199, 228
  Family Allowance Supplement, 93, 111, 145, 172, 199, 228
  Family Payment, 242, 360–1: student parents, 288, 293
  Family Tax Payment, 402
  Maternity Allowance, 365
  Newstart Allowance, 417, 455
  Parenting Allowance, 455
  Parenting Payment, 438
  Partner Allowance, 359, 418, 455
  prisoners and confined persons, 548, 557
  Sickness Allowance, 258, 417, 455
  Sickness Benefit, 82, 113, 202
  Special Benefit, 84
  Supporting Parent’s Benefit, 6
  Widows’ Class A, B and C Pensions, 84

  see also advance payments

bank deposit deeming provisions, 189, 248, 385–6, 422
‘benchmarks of adequacy’, 142, 242, 360

benefits, see Austudy Payment; Mature Age Allowance; Newstart Allowance; Parenting Allowance;
Partner Allowance; Sickness Allowance; Special Benefit; Widow Allowance

benevolent homes, 14, 25, 382

  see also residential care

Bereavement (Widowed Person) Allowance (introduced 1 March 1989 as Widow’s Class C Pension; renamed Bereavement Allowance on 1 January 1995), 117, 519
Abstudy payment recipients, 606–7
Additional Pension for Children, 141–2, 154–5, 171, 199, 240–2: see also Family Allowance/Payment
assets tests, see Bereavement Allowance – assets tests
backdating rules, 557
Bereavement Payments, 160, 244
Community Development Employment Projects (CDEP) Scheme participation, 540, 542:
  Participant Supplement, 519, 543, 564
compensation claim action, 177
Disaster Relief Payment, 199
family relationships, 146–7, 484
income tests, see Bereavement Allowance – income tests
name changed, 334
overseas payments (portability provisions), 141, 259, 551–2, 553, 568–71: comparable claim requirement, 300
payment period, 117, 229
Pension Supplement, 529, 530
prisoners and confined persons, 557–9: spouses of, 283
rates, see Bereavement Allowance – rates
residency requirements, 259, 551, 552, 553, 574: refugees, 322, 347
Telephone Allowance, 243–4, 270, 519: portability provisions, 568, 569
see also definitions; Guardian Allowance; Pharmaceutical Allowance; Remote Area Allowance; Rent Assistance

Bereavement (Widowed Person) Allowance – assets tests, 530
deprivation provisions, 181, 190, 256, 538, 605
cencumbrances and charges, 230: residential care accommodation bonds and charges, 434, 537, 538
family home, see Bereavement Allowance – assets tests – family home
farmers and families, 230, 603
financial hardship provisions, 223
Fringe Benefits (Concession Cards), 243, 269
funeral investments, 209
indexation, 210
insurance and compensation payments, 188
life interests, 310
medically acquired HIV payments, 398
money, 597
native title rights and interests, 354
Pension Loans Scheme, 395–6
pension reduction amount, 281
private companies and private trusts, 598–605
superannuation and annuities, 151, 275, 276, 319, 403, 457: income streams, 503–9

Bereavement (Widowed Person) Allowance – assets tests – family home, 223
absent when caring, 375
absent when in care situations/residential care, 189, 375, 537
life interests, 182, 310
mortgages, 151, 230
retirement village residents, 134, 182
sale/leaseback arrangements, 248

Bereavement (Widowed Person) Allowance – income tests, 530
Aboriginal Employment Incentive Scheme payments, 236
Abstudy payments, 606, 607
board and lodgings, value of, 152
business income, 188, 208–9
Community Development Employment Projects (CDEP) Scheme earnings, 540, 542
deprivation provisions, 181, 190: private company and private trust disposals, 605
exchange trading system arrangements, 363–4
Fringe Benefits (Concession Cards), 189, 243: abolished, 269
investment income, see investment income
legal and official proceedings, jurors and witnesses before, 186
loans, 151, 186: provided by pensioners, 180; see also investment income
maintenance income, 149, 213
medically acquired HIV payments, 247, 284
National Socialist compensation (restitution) payments, 171
Pension Loans Scheme, 395–6
permissible income limits, see Bereavement Allowance – permissible income limits
personal care support service payments, 186
private companies and private trusts, 598–605
residential care accommodation bonds and charges, 434, 537, 538
scholarships awarded outside Australia, 210
Student Financial Supplement Scheme payments, 346
superannuation, see superannuation and annuities – income test treatments
training and work experience payments, 186, 381
Bereavement (Widowed Person) Allowance – permissible income limits (free area), 158, 192, 201, 530
deeled interest rate (deeming rule) exemption, 189, 248, 385–6, 422
earnings credit, 155, 190, 231, 417
Bereavement (Widowed Person) Allowance – rates, 117, 140, 158, 269
Goods and Services Tax (GST) compensation provisions, 529, 530
male total average weekly earnings benchmark, 435
partner in confinement, 283
partner not receiving pension, benefit etc., 232
Bereavement Payments (Introduced 1 January 1990, replacing Funeral Benefit and Special Temporary Allowance), 160, 217, 244, 296, 528
beneficiaries, 229, 244, 346, 474, 483: on death of dependent child, 160, 203, 207
Carer Payment (Pension) recipients, 160, 525: after care recipient’s death, 160, 263, 380
Community Development Employment Projects (CDEP) Scheme participants, 540, 541–2
Disability Wage Supplement recipients, 315, 452
Parenting Allowance recipients, 450
Parenting Payment recipients, 438
births, see children; Maternity Allowance; multiple births; pregnant women
blind persons, 55, 61, 217
aged 70 years and over, 1
disability brought about to obtain payment, 388
residency requirements, 33, 89
Telephone Allowance, 243
board and lodgings, 152, 167
when Rent Assistance payable, 132, 133, 516
school students, 470: with disabilities, 284
boat residents, 12, 132, 404
bonds, see investment income
bravery awards, 24
breach penalty rules (cancellation, suspension etc.), 101, 103, 206, 337, 408–12, 428–9
Approved Program of Work Supplement (Work for the Dole), 432
attendance or contact requirement, see breach penalty rules – attendance or contact requirement
Austudy Payment, 483, 595
continuous period on income support, 392
disability support pensioners, 218
employment/employment offers, refusal/failure to accept, 67, 78, 101, 409
information, failure to provide, see information – failure to provide
job interviews, refusal/failure to attend, 411, 468
job search requirements, 67, 352, 432, 468
medical/psychological/psychiatric requirements, 78, 202, 218, 265
misconduct, 67, 83, 411, 468
Mobility Allowance recipients, 265; ‘period of grace’ payments, 352
non-payment periods, duration of, see breach penalty rules – non-payment periods, duration of reduction in rates, 408, 410, 428, 429
registration requirement, 67
rehabilitation requirements, 78, 218
Secretary’s discretion/power, 78, 103, 202, 254, 362, 410: Employment Secretary’s exemption, 254
unemployment due to voluntary act, 67, 409, 468
vocational training requirements, 78, 101, 103, 254, 410: labour market programs, ceasing/dismissal from, 411
voluntary work requirements, 352
Youth Allowance, 461, 468, 595
breach penalty rules – attendance or contact requirement, 103, 206, 362
disability support pensioners, 218
Employment Secretary’s exemption, 254
Mobility Allowance, 265
Secretary’s exemption, 410
Sickness Allowance, 221
Youth Allowance, 468
breach penalty rules – non-payment (postponement) periods, duration of
1984, 19
1986, 67
1987, 83
1989, 149
1990, 177
1994, 319
1997, 408, 411–12, 428
after engaging in industrial actions, 412
after moving to areas with lower employment prospects, 149, 173, 411, 474, 555
Britain, see United Kingdom
broken families, see separated persons
building insurance or compensation payments, 3
building society deposit deeming provisions, 189, 248, 385–6, 422
business assets, 342, 586, 587, 589–90, 607
disposal on ceasing, 88
business income, 188, 208–9, 586, 587, 589–90
see also investment income
Canada, 130, 211
cancellation of payments
compensation not claimed, 177, 303
overseas payments not claimed, 300
persons leaving Australia, 118, 121
see also breach penalty rules
capacity for work, see continuing inability to work; temporary incapacity for work
capital returns from investments, see returns from investments
capitalisation period, maintenance income test, 106
caravan residents, 12, 132, 404
care support services, payments for, 186
Carer Allowance (introduced 1 July 1999, replacing Child Disability Allowance and Domiciliary Nursing Home Benefit), 521, 526–8, 564
Carer Payment/Pension (introduced 1 November 1985 as Carer’s Pension, replacing Spouse Carer’s Pension; renamed Carer Payment on 1 July 1997), 38, 519, 521–5
advance payments, 377–8, 423, 558–9: special employment advance, 544–6
assets tests, see Carer Payment – assets tests
backdating rules, 455, 557
Bereavement Payments, 160, 244, 525: after care recipient’s death, 160, 263, 380
care recipients, see Carer Payment – care recipients
carer’s home, 38, 193, 260, 377
Commonwealth Rehabilitation Service access age, 54
Community Development Employment Projects (CDEP) Scheme participation, 540, 542:
Participant Supplement, 519, 543, 564
Disaster Relief Payment, 199
Education Entry Payment, 358, 531
Employment Entry Payment, 357, 531
family relationships, see Carer Payment – family relationships
income tests, see Carer Payment – income tests
name changed, 405
multiple entitlement preclusion provisions, 313, 606–7
overseas payments, see Carer Payment – overseas payments
Partner Allowance eligibility, 332–3
Pension Supplement, 529, 530
Pensioner Education Supplement eligibility, 485–6
prisoners and confined persons, 68–9, 549, 557–9: spouses, 283
rates, see Carer Payment – rates
residency requirements, see Carer Payment – residency requirements
student eligibility, 69, 606–7
Telephone Allowance, 243–4, 270, 519: portability provisions, 568, 569
temporary cessation of care periods, 38, 48, 263, 405, 500
see also Additional Pension for Children; definitions; Pharmaceutical Allowance; Remote Area Allowance; Rent Assistance
Carer Payment/Pension – assets tests, 43, 56–61, 484, 523, 530
care recipients, 375, 376–7, 501
deprivation provisions, see Carer Payment – assets tests – deprivation provisions
encumbrances and charges, 58, 230: residential care accommodation bonds/charges, 434, 537, 538
family home, see Carer Payment – assets tests – family home
farmers and families, 230, 603
financial hardship provisions, 88, 223
Fringe Benefits (Concession Cards), 60–1, 75, 243: abolished, 269
Funeral Benefit, 27, 60, 61, 75
funeral expenses and cemetery plots, prepaid, 57
funeral investments, 209
indexation, 60–1, 210
insurance and compensation payments, 188
life interests, 57, 310
loans, 59
medically acquired HIV payments, 398
money, 597
native title rights and interests, 354
Pension Loans Scheme, 58, 59–60, 395–6
pension reduction amount, 281
private companies and private trusts, 598–605
special employment advance, 546
superannuation, see Care Payment – assets tests – superannuation and annuities
Carer Payment/Pension – assets tests – deprivation provisions, 181, 190
applied to disposal of exempt assets, 56, 538
on ceasing employment, business or profession, 88
period applying, 181, 256
private company and private trust disposals, 605
Carer Payment/Pension – assets tests – family home, 223
absent when caring, 375
absent when in care situations/residential care, 59, 189, 375, 537
life interests, 182, 310
mortgages, 151, 230
retirement village residents, 134, 182
sale, 58: to pay accommodation bonds, 538
sale/leaseback arrangements, 248
Carer Payment/Pension – assets tests – superannuation and annuities, 57, 275, 403, 457
  allocated, 276, 319
  compulsorily preserved benefits, 151
  income streams, 503–9
Carer Payment/Pension – care recipients, 38, 48, 522–4, 530
  children, 38, 501, 523–4
  children of, 522, 524, 525
  death, 160, 263, 380
  disability, 38, 91, 501: assessment, 521–2
  in hospital, 524
  in institutional care permanently, 376
  Income Support Supplement recipients, 364
  non relatives, 91
  payments received, 38, 193: not receiving/eligible for but for insufficient residency, 263, 376–7
Carer Payment/Pension – compensation recovery provisions, 68, 114–15, 211, 301–3, 484
  action to claim, 177, 303
  application to compensation recipients, 204
  Fringe Benefits (Concession Cards), 204
  periodic payments, 232, 249, 253, 302, 356: lump-sum payments treated as, 303, 378
  personal contributions, 318
Carer Payment/Pension – compensation recovery provisions – lump-sum payments, 228
  Low Income Health Care Card income test, 356
  partner qualified for Veterans’ Entitlements Act payment, 378–9
  as periodic payments, 303, 378
  personal injury compensation settlements, 114, 249, 355
  preclusion period, 249, 301, 421
Carer Payment/Pension – family relationships, 146–7, 484
  couples living together under age of consent, 76
  ex-spouse co-residents, 79, 86, 116
Carer Payment/Pension – income tests, 43–4, 484, 523
  Aboriginal Employment Incentive Scheme payments, 236
  Abstudy payments, 606, 607
  board and lodgings, value of, 152
  business income, 188, 208–9
  care recipients, 376, 377, 501
  Community Development Employment Projects (CDEP) Scheme earnings, 540, 542
  compensation recovery provisions, see Carer Payment – compensation recovery provisions
  deprivation provisions, 88, 181, 190: private company and private trust disposals, 605
  domestic payments, 55
  earnings, pensioners losing entitlement due to increase in, 358
  exchange trading system arrangements, 363–4
  Fringe Benefits (Concession Cards), 61, 91, 243, 189: abolished, 269
  Funeral Benefit, 61
  investment income, see investment income
  legal and official proceedings, jurors and witnesses before, 186
  loans, 151, 186: provided by pensioners, 180
  maintenance income, 105–6, 149, 213
  medically acquired HIV payments, 247, 284
  National Socialist compensation (restitution) payments, 108, 171
  overseas payments, 115
  Pension Loans Scheme, 395–6
  permissible income limits (free area), see Carer Payment – permissible income limits
  personal care support service payments, 186
  private companies and private trusts, 598–605
residential care accommodation bonds and charges, 434, 537, 538
scholarships awarded outside Australia, 210
special employment advance, 546
Student Financial Supplement Scheme payments, 346
superannuation, see superannuation and annuities – income test treatments
training and work experience payments, 152, 186, 381
Carer Payment/Pension – overseas payments (portability provisions), 85, 263, 357, 527
  comparable claim requirement, 300
  income test exemption, 115
  international agreement payments ceiling, 553
  proportional portability rules, 47, 141, 568, 569
Carer Payment/Pension – permissible income limits (free area), 43, 201, 530
  care recipient, 376
  child concession/disregard, 44, 49, 201, 530: student payments, 107, 158, 192
  deemed interest rate (deeming rule) exemption, 189, 248, 385–6, 422
  earnings credit, 264, 417
  indexation, 158
Carer Payment/Pension – rates, 38, 158, 269
  Goods and Services Tax (GST) compensation provisions, 529, 530
  indexation, 61, 140, 158, 269, 435, 530
  male total average weekly earnings benchmark, 435
  partner in confinement, 283
  partner not receiving pension, benefit etc., 232
  war widow’s pensioners, 63
Carer Payment/Pension – residency requirements, 47
  care recipients, 263, 376
  dependent children, 87
  newly arrived residents waiting period, 425–7, 550, 573–4
  refugees, 322, 347
  carers, 223
  employer-provided housing fringe benefits, 290
  reducing employment prospects by moving to become, 173
  Rent Assistance, 374
  Youth Allowance recipients, 465, 466
cars, see motor vehicles
Case Management Activity Agreements, 324, 390
CDAT, 440–1, 526
CDEP, see Community Development Employment Projects (CDEP) Scheme
cemetery plots, 24, 57
Centrelink (Commonwealth Service Delivery Agency), 513–14, 526
CES, see Commonwealth Employment Service
charges, see encumbrances and charges
child concession/disregard (amount of income disregarded under test for each dependent child),
  44, 201, 530
  age pensioners aged 70 years and over, 1
  beneficiaries’ parental income tests, 99, 342
  Family Allowance, 49, 81
  Family Allowance/Payment, 294, 489
  Family Allowance Supplement, 92, 119
  Family Tax Assistance, 400–1
  maintenance income, 106, 262
  sole parent pensioner Employment Entry Payment, 200, 285
  student payments, 107, 158, 192, 342
  Youth Allowance parental income test, 471–2
Child Disability Allowance (introduced 15 November 1987, replacing Handicapped Child’s Allowance; replaced by Carer Allowance on 1 July 1999), 94, 155, 440-2, 490
backdating rules, 94, 283
children absent from home during normal school days, 94, 124, 284
children in institutions/hospital or respite care, 94, 123, 125, 284, 442: on leave, 235
Family Allowance/Family Payment eligibility, 255
Health Care Card, 216, 221
payees, 94, 143, 235: ex-spouse co-residents, 116
payment days, 120, 519
rates, 94, 124–5, 140, 228: on death of qualifying child, 222
replaced, 526–8
temporary cessation of care, 264, 284
two children in one family, 441
Child Disability Assessment Tool (CDAT), 440–1, 526
child maintenance (child support), see maintenance income
Child Support (Assessment) Act, 149
childcare, 445, 533
children, 32, 154, 371
age qualifications, see age qualifications for children
assets, see family assets tests
of Carer Payment care recipients, 522, 524, 525
custody, see children – custody, care and control
death, payments after, 222, 365, 366, 445: see also Bereavement Payments
disregarded in determining another person’s social security entitlement, 29
income disregarded in tests for, see child concession/disregard
with income tax liability, 119
more than one, see children – more than one
of Newstart Allowance sole parent recipients, 451
Rehabilitation Allowance recipients, 35
residency requirements, see children – residency requirements
shared care arrangements and Parenting Payment, 438
sharing accommodation solely with, 404
see also adopted children; children with disabilities; family payments; relatives and family members; student children; young beneficiaries; young pensioners
children – custody, care and control, 13–14, 32, 371
Maternity Allowance recipients, 366
parents unable to exercise responsibilities, 475
sole parent pensioners, 117, 371
supporting parent beneficiaries, 6, 15
see also maintenance income
children – more than one
Carer Allowance care recipients, 527
Carer Payment care recipients, 501, 523
Child Disability Allowance care recipients, 441
Family Allowance payments, 39, 122, 143, 161, 222
Incentive Allowance rates, 135, 159
Large Family Supplement, 367
Remote Area Allowance payments, 2, 531
Rent Assistance rates, 135, 159, 268, 372
Seniors Health Card payments, 291
see also child concession/disregard; multiple births
children – residency requirements, 33, 87, 267
Additional Pension/Benefit, 109
Family Payment, 241
Guardian Allowance, 447
Home Child Care Allowance, 307
Invalid Pension qualifying condition, 89
Remote Area Allowance additional amount, 2, 12
special beneficiaries, 76
‘with child’ dependent spouse, 308, 309
children with disabilities
Carer Payment for persons caring for, 501, 523
when in hospital, 524
special maintenance income paid in respect of, 106, 149, 262
see also Carer Allowance
Chinese temporary entry permit holders, 194, 197, 273
Christmas Island, 28
Christmas Island Administration (Miscellaneous Amendments) Act 1984, 28
citizenship, see residency requirements
Class A Widow’s Pension, see Widow’s Class A Pension
Class B Widow’s Pension, see Widow B Pension
Class C Widow’s Pension, see Widow’s Class C Pension
clothing allowance, United Kingdom, 115
Cocos (Keeling) Islands, 11, 28
Cocos (Keeling) Islands Self-determination (Consequential Amendments) Act 1984, 11
college students, see students
commission proceedings, witnesses before, 186
Commonwealth Employment Service, 95, 206, 207, 218, 339, 513
attend or contact requirement, 103, 206
Youth Training Allowance administration, 339
Commonwealth Employment Service – registration requirement, 65, 67, 82, 95, 207, 391
education leavers, 83, 102, 150
farmers, 234
15 year-old beneficiaries, 262, 379
independent rate, 224
legislative requirements removed, 513
Mature Age Allowance, 295, 296, 312, 393
Youth Training Allowance, 339
Commonwealth funded employment programs, 225
see also Community Development Employment Projects Scheme
Commonwealth Government reimbursement, see reimbursement of payments
Commonwealth housing assistance payments, 3
Commonwealth Rehabilitation Service, 218, 481
access age, 54
see also rehabilitation
Commonwealth Service Delivery Agency (Centrelink), 513–14, 526
Community Development Employment Projects (CDEP) Scheme, 225, 494, 540–3
Participant Supplement, 519, 543, 564
special employment advance, 544–6
Community Support Program, 467, 513
company employee fringe benefits, see fringe benefits (employer-provided)
company interests, 586, 589, 598–605
Compensation Measures Legislation Amendment (Rent Assistance Increase) Act 2000, 567
compensation (insurance) payments, 3, 186
assets test treatment, 188
National Socialist restitution payments, 108, 171
compensation recovery provisions, 68, 114–15, 211, 301–3, 484
action to claim, 61, 177, 303
Index

age pensioners, 421

carer pensioners, 204
couples, 68, 75, 301, 421
Fringe Benefits (Concession Cards), 204
lump sums, see compensation recovery provisions – lump-sum payments
periodic payments, 204, 232, 249, 253, 302, 356: lump-sum payments treated as, 53, 303, 378
personal contributions, 318
sickness beneficiaries, 18, 53
sole parent pensioners, 231
compensation recovery provisions – lump-sum payments, 228
Fringe Benefits (Concession Cards), 204
Low Income Health Care Card income test, 356
partner qualified for Veterans’ Entitlements Act payments, 378–9
as periodic payments, 53, 303, 378
personal injury compensation settlements, 114, 249, 355
preclusion periods, 249, 301, 421
Competitive Employment Placement and Training Program, 310, 352
computer inquiries by persons with medical conditions, 455
concessional study-load students, 481–2, 591
Pensioner Education Supplement, 486: rates, 556, 564
concessionary primary production trusts, 603, 605
concessions, see Fringe Benefits (Concession Cards); Pharmaceutical Allowance; Telephone Allowance
confined persons, see prisoners; psychiatric hospital patients – confined
Consolidated Revenue Fund, 31
constant attendance allowance, United Kingdom, 115
Consumer Price Index, see indexation
contingent interests, 24, 57
continuing inability to work, 217–18, 348, 388
Invalid Pension (incapacity for work), 80, 217
supported wage system participants, 314, 452
see also temporary incapacity for work
continuous period on income support/payment, 391–5
continuous residence, see residency requirements
contract (seasonal) work, preclusion period following, 510–12, 543
contracts with financial corporations, 486, 487, 582–3
co-operative enterprises, participation in, 323
cost of living adjustments, see indexation – rates
couples
Family Allowance payments for married children, 49
Seniors Health Card income test threshold, 291, 515
see also children; death of partner; family relationships; payees; separated persons; single persons
couples – beneficiaries
assets tests, see couples – beneficiaries – assets tests
Bereavement Payments, 229
Employment Entry Payment eligibility, 144, 168
ex-spouse co-residents, 79, 86, 116
income tests, see couples – beneficiaries – income tests
Parenting Allowance, 329–30
rates, see couples – beneficiaries – rates
Rent Assistance, 136: waiting period, 225, 239
residency requirements, 111, 212: newly arrived residents waiting period, 273, 426, 427
seasonal work preclusion period, 511
see also Partner Allowance; single persons – beneficiaries
couples – beneficiaries – assets tests, 100, 113, 484
depression provision annual limits, 181
funeral investments, 209
liquid, 196, 321, 414, 484
Parenting Allowance, 329
separated due to illness or infirmity, 189
Youth Allowances, 473
couples – beneficiaries – income tests, 17–18, 252, 329, 331
Abstudy recipient partner, 235
Austudy recipient partner, 173
compensation recovery provisions, 68, 75, 421, 484
deeming provisions, 189, 248, 385, 422
funeral investments, 209
permissible income limits (free area), 166, 175, 281, 331: maintenance income, 106, 202
Youth Allowance, 470
couples – beneficiaries – rates, 16, 207
1984, 23
1990, 166, 174
1993, 269
1995, 341
1998, 469, 482
2000, 593
aged under 21 years, 174
Austudy Payment recipients, 482, 593
Landcare and Environment Action Program (LEAP) participants, 288
partner not receiving pension, benefit etc., 232
partner overseas, 111
partner receiving Austudy, 173
Pharmaceutical Allowance/Supplement, 179, 232
Remote Area Allowance, 2, 232, 278, 531
Rent Assistance ‘halving rule’, 53
separated persons, 50: by illness, 97, 173
Sickness Allowance changes based on Youth Training Allowance, 341
Telephone Allowance, 244
Youth Allowance, 469, 593
couples – pensioners
assets tests, see couples – pensioners – assets tests
Bereavement Payments, 160, 244
ex-spouse co-residents, 79, 86, 116
income tests, see couples – pensioners – income tests
overseas payments (proportional portability provisions), 47, 552
Parenting Allowance, 330
pension bonus payment amount, 496
rates, see couples – pensioners – rates
Rent Assistance waiting period, 225, 239
sole parents, 257, 359–60
see also Mature Age Partner Allowance; Spouse Carer’s Pension; Wife Pension
couples – pensioners – assets tests, 25, 484
depression provision annual limits, 25–6, 181
Fringe Benefits (Concession Cards), 27, 75
Funeral Benefit, 27, 75
funeral investments, 209
separated due to illness or infirmity, 189
couples – pensioners – income tests, 484
child concession/disregard, 44, 201, 530
compensation recovery provisions, 68, 301, 421
deeming provisions, 189, 248, 385, 422
Fringe Benefits (Concession Cards), 22
Funeral Benefit, 22
funeral investments, 209
maintenance income test thresholds, 106
New Enterprise Incentive Scheme (NEIS) payments, 289
partner in respite care, 157
permissible limits (free area), 43: earnings credit, 89, 190, 231
persons aged 70 years and over, 1
separated due to illness or infirmity, 7
couples – pensioners – rates, 21, 158, 232, 269
partner in confinement, 283
partner in respite care, 157
Pharmaceutical Allowance/Supplement, 179, 232
Remote Area Allowance, 2, 232, 278, 531
Rent Assistance ‘halving rule’, 53
Telephone Allowance, 244
court proceedings, see legal proceedings
credit union deposit deeming provisions, 189, 248, 385–6, 422
criminal offences, 569
see also custody, persons in; legal proceedings; prisoners
Crisis Payment, 547–8, 557–8
see also emergency relief/crisis payments
CRS, see Commonwealth Rehabilitation Service
curtilage, 25, 56, 499
custody, persons in, 68
children of, 565
spouses of, 74
see also prisoners
custody proceedings overseas, persons involved in, 569, 570
custody of children, see children – custody, care and control
Cyprus, 261
damages, see compensation payments
de facto spouses, 6, 13, 146–7
maintenance payments from, 36
sole parent pensioners, 257, 359–60
under age of consent, 76, 257
death
asset-test exempt income stream beneficiaries, 506
cemetery plots and funeral expenses, prepaid, 24, 57
children, where family not eligible for Bereavement Payments, 222
Fares Allowance payable on, 577
Funeral Benefit, 4, 22, 27, 60–1, 75
inheritances not received, 24
Maternity Allowance payable on, 365, 366
Maternity Immunisation Allowance payable on, 445
overseas payments after, 569
pension bonus payment after, 496
Pension Loans Scheme debt repayments after, 26, 60, 395–6
Student Financial Supplement Scheme debt after, 584
see also Bereavement Payments; Double Orphan Pension

departure of partner (widowed persons)
   Age Pension qualification, 420
   benefit payment period exemption, 282
   life interest created on, 310
   overseas payments after, 47, 118, 211
   Special Temporary Allowance, 9
   when Widow B Person granted without claim, 311

debt, see also
   Bereavement Allowance; sole parents; Widow Allowance; Widow B Pension

deceased estates, inheritances not received, 24

decoration allowance, United Kingdom, 115
‘deedible amount’, 328, 508

deeming provisions, 180, 189, 248, 385–6, 422

Defence Force personnel, 407
   housing-related fringe benefits, 327
   see also Veterans' Entitlements Act payments

Defence Force Reserve members, 125, 468
   overseas training camps, 257, 467
   Ready Reserve Education Assistance Scheme, 596

deferral of benefit, see breach penalty rules

defined benefit streams, 507–9

definitions
   absent resident, 11
   accommodation bonds/bond balances, 434
   assets, 597: see also exempt assets
   Australian resident, 84, 86, 139, 316, 573
   children, 32–3, 87, 154, 371: adopted, 6, 12
   continuous period on income support/payment, 392, 394–5
   designated parents, 586
   disabled adult, 522, 527
   disabled child, 527
   employer-provided fringe benefits, 290
   exchange trading systems, 363–4
   exempt resident, 347, 573
   family member, 473
   family relationships, 6, 13, 146–7
   fringe benefits, 534
   gainful work, 495
   homeless person, 162
   income, see exempt income
   income streams, 504–8
   independent young person, 164, 224, 475–6, 592
   inhabitant of Australia, 194, 316, 573
   liquid assets, 196
   long-term income support student rate, 476–7, 482–3
   long-term recipient, 229, 346
   major disasters, 176, 199
   member of couple, 484
   permanent home, 576–7
person under age 18 without dependants, 16
private companies and private trusts, 600–1
profoundly disabled, 501
realisation, 191, 210, 236
recent work experience, 332, 333, 393, 418
refugees, 347
relatives, 38
rent, 132
seasonal work, 512
severe financial hardship, 443
severely handicapped person, 91
substitute care, 224
superannuation products, 328
Supporting Parent’s Benefit, 6
undertaking full-time study, 478, 590
unsuitable work, 326, 407
work, 218, 220
Youth Allowance, 475–8
dental health, 291
Department of Health and Aged Care, 526
Department of Health and Family Services, 433–4
Department of Human Services and Health, 314
Department of Immigration and Ethnic Affairs, 316
Department of Primary Industries and Energy, 233
‘dependent child’, 32–3, 87, 354, 371
see also children; student children
‘dependent female’, 13
dependent spouse rebate, 308, 309, 533
deposit deeming provisions, 189, 248, 385–6, 422
deprivation of assets provisions, 25–6, 181, 256
applied to disposal of exempt assets, 56, 538
beneficiaries’ liquid assets test, 196
on ceasing employment, business or profession, 88
Family Allowance Supplement, 120
private company and private trust disposals, 605
Retirement Assistance for Farmers Scheme, 497, 498
Youth Allowance, 594
deprivation of income provisions, 88, 181, 190
private company and private trust disposals, 605
deserted persons, see separated persons; sole parents
designated parents, see family actual means test
detention, see prisoners
disabilities, assessment of, 217–218, 453, 521–2, 527
children, 440–1, 526
disabilities, persons with, 3
aids and appliances, 24: hearing aids, 291
concessional study-load students, 481–2, 591: Pensioner Education Supplement, 486, 556, 564
overseas payments, 115
‘severely handicapped person’, 91
Youth Allowance recipients, 465, 466
see also blind persons; carers; children with disabilities; continuing inability to work;
Disability Support Pension; rehabilitation
disability homes, see residential care
Disability Panels, 218, 265, 352, 566
A compendium of legislative changes in social security 1983–2000

Disability Reform Package, 216, 221
Disability Services Act supported employment services, 114
Disability Support Pension (introduced 12 November 1991, replacing Invalid Pension and Sheltered Employment Allowance; absorbed provisions of Disability Wage Supplement when that independent payment was abolished on 1 January 1998), 216–20, 314–15, 348, 519
activity (work) tests, 217–18, 348, 388, 594
advance payments, 377–8, 423, 558–9: special employment advance, 544–6
assets tests, see Disability Support Pension – assets tests
backdating rules, 417, 455, 557
benevolent home references in Act, 382
Bereavement Payments, 217, 244
changes made on abolition of Disability Wage Supplement, 452
Community Development Employment Projects (CDEP) Scheme participation, 540, 542: Participant Supplement, 519, 543, 564
Education Entry Payment, 267, 531
Employment Entry Payment, 219–20, 266, 531
impairment tables, 218, 453
income tests, see Disability Support Pension – income tests
medical examinations, 218, 451, 453
multiple entitlement preclusion provisions, 313, 606–7
Newstart Allowance sole parent recipients’ children receiving, 451
overseas payments (portability provisions), 218, 259, 551–2, 553, 568–71: comparable claim requirement, 300
Partner Allowance eligibility, 332–3
Pension Supplement, 529, 530
Pensioner Education Supplement eligibility, 485–6
prisoners and confined persons, 549, 557–9: spouses, 283
rates, see Disability Support Pension – rates
residency requirements, see Disability Support Pension – residency requirements
special needs, 571
Telephone Allowance, 243–4, 270, 519: portability provisions, 568, 569
see also definitions; Mobility Allowance; Pharmaceutical Allowance; Remote Area Allowance; Rent Assistance
Disability Support Pension – assets tests, 217, 484, 530
deprivation provisions, 256, 538, 605
collections, charges, 230: residential aged care accommodation bonds/charges, 434, 537, 538
family home, see Disability Support Pension – assets tests – family home
farmers and families, 230, 603
financial hardship provisions, 223
Fringe Benefits (Concession Cards), 243, 269
life interests, 310
medically acquired HIV payments, 398
money, 597
native title rights and interests, 354
Pension Loans Scheme, 395–6
pension reduction amounts, 281
private companies and private trusts, 598–605
special employment advance, 546
superannuation and annuities, 275, 276, 319, 403, 457: income streams, 503–9
Disability Support Pension – assets tests – family home, 223
absent when caring, 375
absent when in care situations/residential care, 375, 537
life interests, 310
mortgages, 230
sale/leaseback arrangements, 248
sale to pay accommodation bonds, 538
Disability Support Pension – compensation recovery provisions, 301–3, 421, 484
action to claim, 303
periodic payments, 232, 249, 253, 302, 356: lump-sum payments treated as, 303, 378
personal contributions, 318
Disability Support Pension – compensation recovery provisions – lump-sum payments, 228
Low Income Health Care Card income test, 356
partner qualified for Veterans’ Entitlements Act payment, 378–9
as periodic payments, 303, 378
personal injury compensation settlements, 249, 355
preclusion period, 249, 301, 421
Disability Support Pension – income tests, 484, 530
Aboriginal Employment Incentive Scheme payments, 236
Abstudy payments, 606, 607
Community Development Employment Projects (CDEP) Scheme earnings, 540, 542
compensation recovery provisions, see Disability Support Pension – compensation recovery provisions
earnings, pensioners losing entitlement due to increase in, 358
exchange trading system arrangements, 363–4
Fringe Benefits (Concession Card), 243, 269
investment income, see Disability Support Pension – income tests – investment income medically acquired HIV payments, 247, 284
Pension Loans Scheme, 395–6
permissible income limits, see Disability Support Pension – permissible income limits
private companies and private trusts, 598–605
residential care accommodation bonds and charges, 434, 537, 538
special employment advance, 546
Student Financial Supplement Scheme payments, 346
superannuation and annuities, see Disability Support Pension – income tests – superannuation and annuities
training and work experience payments, 381
Disability Support Pension – income tests – investment income, 236, 274, 287, 315
financial assets deeming provisions, 248, 385–6, 422
listed shares and securities, 275, 287, 315
residential care accommodation bonds/bond balances not treated as, 434
superannuation, see Disability Support Pension – income tests – superannuation and annuities
unlisted property trusts, 247
Disability Support Pension – income tests – superannuation and annuities, 274, 287, 328, 403
access before Age Pension age, 275
allocated, 276, 319
deeming provisions, 386
income streams, 503–9
overseas (foreign, non-resident) funds, 353
Disability Support Pension – permissible income limits (free area), 530
deemed interest rate (deeming rule) exemption, 248, 385–6, 422
earnings credit, 231, 417
Disability Support Pension – rates, 217, 269
Goods and Services Tax (GST) compensation provisions, 529, 530
male total average weekly earnings benchmark, 435
partner in confinement, 283
partner not receiving pension, benefit etc., 232
persons aged under 21 years, 217, 591
Disability Support Pension – residency requirements, 217
  portability provisions, 259, 551, 552, 553
  refugees, 322, 347
  10 year continuous residence criterion, 260
Disability Wage Supplement (introduced 1 July 1994; abolished 1 January 1998, its provisions being absorbed into Disability Support Pension), 313–15, 452
  activity (work) tests, 314, 348, 388
  advance payments, 377–8, 423
  assets tests, see Disability Wage Supplement – assets tests
  Employment Entry Payment, 314, 350, 452
  income tests, see Disability Wage Supplement – income tests
  Partner Allowance eligibility, 332–3
  rates, 314, 435
  residence requirements, 322, 347, 425–7
Disability Wage Supplement – assets test, 314
  care recipients, 375
  carers, 375
  medically acquired HIV payments, 398
  native title rights and interests, 354
  Pension Loans Scheme, 395–6
  residential care accommodation bonds/bond balances, 434
  superannuation and annuities, 319, 403, 457
Disability Wage Supplement – income tests, 314
  compensation recovery provisions, 355–6, 378–9, 421: personal contributions, 318
  earnings credit, 417
  exchange trading system arrangements, 363–4
  financial investments (assets) deeming provisions, 385–6, 422
  management income, 315, 319
  residential accommodation bonds/bond balances, 434
  Student Financial Supplement Scheme payments, 346
  superannuation and annuities, 319, 328, 403: overseas (foreign, non-resident) funds, 353
  training and work experience payments, 381
‘disabled adult’, 522, 527
‘disabled child’, 527
disadvantaged persons, 476
Disadvantaged Persons’ Health Scheme, 356
disasters and disaster relief, 176, 199, 316
  exceptional circumstances relief payments, 585
  overseas, 569
Disaster Relief Payment, 199, 316
disposal of assets, 55
  see also deprivation of assets provisions; gifts; sale of home dividends, see investment income
divorced people, see family relationships; sole parents; Widow Allowance
domestic payments, 55
domestic protection (temporary) entry permit holders, 273
Domiciliary Nursing Care Benefit, 3, 526–8
Double Orphan (Orphan’s) Pension, 29, 533
  backdating rules, 228
  Family Allowance/Family Payment and, 255, 565
  overseas payments (portability provisions), 571
  payment days, 120, 519
  qualifying children, 93, 154, 155, 222, 565
  rates, 64, 123, 140, 565: on death of qualifying child, 222
Index

residency requirements, 11, 563
retention under Youth Allowance, 461
drug abuse counselling, treatment or therapy, 220
duration of payment, see payment periods

earnings, see income from employment
earthquake, Newcastle, 176
education and education courses
Austudy Payment qualifying conditions, 481–2, 591
Carer Payment/Pension recipients undertaking, 263, 405
children with disabilities absent from home because of, 94, 125, 284
Family Allowance can be applied to, 196
Pensioner Education Supplement qualifying conditions, 486
Youth Allowance qualifying conditions, 465–6, 467, 478, 590
school fees, 290
see also students; vocational training
Education Entry Payment, 267, 296, 335
carer pensioners, 358
rates, 267, 531
sole parents, 222, 255, 267
unemployment beneficiaries/ex-beneficiaries, 299, 351, 391
see also Pensioner Education Supplement
education leavers, 73
benefit waiting period, 83, 102, 150, 177, 251, 349: abolished, 491
Youth Allowance qualification condition for 15 year-olds, 465
education starters, 299, 349–350
see also Education Entry Payment
education supplement, see Pensioner Education Supplement
emergency relief/crisis payments, 3, 547–8, 557–8
overseas, 569, 570
see also disasters and disaster relief
employment (paid work)
Carer Payment/Pension recipients, 263, 405
children aged under 16 years, 154, 224
disability support pensioners, 217–18, 219
disposal of assets on ceasing, 88
independent young persons, 164, 224, 476, 592
when Mobility Allowance payable, 54, 514
Pension Bonus Scheme gainful work, 494–5
special employment advance, 544–6
termination payments, 16, 78, 110
Youth Allowance recipients, 465, 466, 476, 592
see also continuing inability to work; fringe benefits (employer-provided); income from employment; income maintenance period; vocational training
employment (paid work) – activity (work) test requirements, 206, 326, 407
job applications, 298
moving to area with lower employment prospects, 149, 173, 411, 474, 555
outside area persons live, 554–5
persons aged 50 to 54 years, 271
persons aged 55 years and over, 163
refusal to accept, 67, 78, 101, 409
unemployment due to voluntary act, 67, 409
Work for the Dole (Approved Program of Work Supplement), 431–2, 467, 519, 531
Youth Allowance, 467, 468
see also job search activities; temporary incapacity for work
Employment Department, 35, 206, 363
see also Youth Training Allowance
Employment Entry Payment, 130, 207, 391
carer pensioners, 357
couples, 144, 168
disability support pensioners, 219–20, 266
Disability Wage Supplement recipients, 314, 350, 452
earnings threshold, 200, 259, 266, 285, 357
Mature Age Allowance recipients, 296
Mature Age Partner Allowance recipients, 296
sole parent pensioners, 200, 211, 259, 285
sole parent special beneficiaries, 266
rates, see Employment Entry Payment – rates
Widow Allowance recipients, 334
widow B pensioners, 266
Employment Entry Payment – rates, 130, 144, 168
carer pensioners, 357
disabilities, pensioners with, 219, 266, 314
Goods and Services Tax (GST) compensation provisions, 531
sole parents/widows, 200, 266
Employment Services Act, 324, 390
Employment Services (Consequential Amendments) Act 1994, 337
encumbrances and charges, treatment in assets tests, 24, 58, 230
residential care accommodation bonds/charges, 434, 537, 538
entry permits, see visas
ex-prisoners, see prisoners – newly released
exceptional circumstances relief payments, 585
exchange trading systems, 363–4
exempt assets, 24–5, 56–9
disposal, 56, 58
Family Allowance, 227
Family Allowance Supplement hardship test, 226
family home, see home
farmers, 234
funeral investments, 209
life interests, 24, 57, 310
medically acquired HIV payments, 398
native title rights and interests, 354
pension bonus payment, 492
residential care accommodation bonds and charges, 434, 537, 538
exempt assets – superannuation and annuities (income streams), 275, 505–7
compulsorily preserved benefits, 151
Mature Age Allowance recipients, 296
Minister’s power, 403, 457
Secretary’s discretion, 24, 57
exempt income, 2–3, 18, 55
Abstudy payments, 606, 607
board and lodgings, value of, 152, 167
domestic payments, 55
education supplement, 56, 108
exchange trading system arrangements, 363–4
from investments, 209, 247
legal and official proceedings, payments to jurors and witnesses before, 186
loans (mortgages), 151, 186
medically acquired HIV payments, 247, 284
National Socialist compensation (restitution) payments, 108, 171
New Enterprise Incentive Scheme (NEIS) payments, 35
one-off, irregular lump-sum payments, 502
overseas payments, 115
parental income tests, 290
personal care support service payments, 186
rent from family home, 537
residential care accommodation bonds/bond balances, 434
scholarships awarded outside Australia, 210
Student Financial Supplement Scheme payments, 346
superannuation benefits, 275, 296, 403, compulsorily preserved, 151, 156
training and work experience payments, 152, 186, 381
see also permissible income limit

‘exempt resident’, 347, 573
exempt spending and savings, family actual means test, 587–8
expense fringe benefits, 449
extended deeming, 385–6, 422
external territories, 11, 28
eye (optometry) services, 291

facsimile inquiries by persons with medical conditions, 455
family actual means test, 473, 560, 585–90
Student Financial Supplement Scheme Category 2 students, 580
Family Actual Means Test Regulations 1998, 585

Family Allowance (introduced 1941 as Child Endowment and renamed in 1982 [see 1908–1982 compendium]; replaced 1 January 1993 by Family Payment [which was renamed Family Allowance in 1998]), 29, 241–2
application of payment provision, 196
approved care organisations (institutions) receiving, 39, 81, 93, 123, 239: children on leave, 235
assets tests, 227, 248, 255: farmers and families, 230
backdating rules, 81, 93, 199, 228: for multiple births, 172, 228
families not living together, 49
income tests, see Family Allowance – income tests
one-off lump-sum ‘bonus’ payment, 239
overseas payments, 85, 121, 194
paydays, 120
qualifying children, 154, 222: students, 31, 38, 154, 155, 187, 195
rates, see Family Allowance – rates
residency requirements, 7, 11, 34, 121, 194
Family Allowance – income tests, 81, 142, 148, 161, 195
children aged under 16 years in employment, 154
student children, 39, 64, 81
Family Allowance – rates, 122, 140, 143, 161
on death of qualifying child, 222
for multiple births, 39, 122

Family Allowance/Payment (introduced 1 January 1993 as Family Payment, replacing Family Allowance, Family Allowance Supplement and Additional Pension/Allowance/Benefit for Children, plus Rent Assistance [when paid to families with children], and Guardian Allowance [for sole parents]; renamed Family Allowance on 1 April 1998; replaced 1 July 2000 by Family Tax Benefit), 241–2, 367–9, 533
age qualifications, 241, 242, 536
approved care organisations receiving, 288, 367: mental hospitals, 382
assets tests, see Family Allowance/Payment – assets tests
backdating rules, 242, 360–1: student parents, 288, 293
early lodgement provisions, 450
income tests, see Family Allowance/Payment – income tests
lump-sum advances, 252
maintenance action requirements, 312
overseas payments (portability provisions), 241, 322, 447
payees, 241, 242, 368
payment days, 242, 519
rates, 242, 318, 367, 489, 536: adequacy benchmark, 242, 360
renamed, 442
see also Maternity Allowance; Maternity Immunisation Allowance
Family Allowance/Payment – assets tests, 241, 367
family home, 310, 375, 537, 538
income hardship limit, 448
life interests, 310
native title rights and interests, 354
residential care accommodation bonds and charges, 434, 537, 538
student parents, 293
superannuation and annuities (income streams), 275, 276, 319, 403, 457, 503–9
threshold amounts, 255, 294
Family Allowance/Payment – income tests, 241, 367, 368
foreign income, 292
fringe benefits, 290, 327, 354–5, 361–2, 449
Goods and Services Tax (GST) compensation provisions, 529, 530
maintenance income, 242, 518: special, 262, 539
permissible income limits (threshold/free area), 255, 272, 369: child concession/disregard, 294, 489
student children, 475
student parents, 293
tax deductions for rental property losses (negative gearing), 320
Family Allowance Supplement [introduced 17 December 1987, replacing Family Income Supplement; replaced 1 January 1993 by Family Payment [which was renamed Family Allowance in 1998]], 92–3, 241–2
assets tests, 120, 188–9, 190, 226, 230, 248
backdating rules, 93, 111, 145, 172, 199, 228
Bereavement Payments, 160
income tests, see Family Allowance Supplement – income tests
qualifying children, 92, 119, 154, 160: students, 154, 155
rates, 92, 116, 141–2, 240: death of qualifying child, 160
Rent Assistance, 98, 135
Family Allowance Supplement – income tests, 92, 119, 147–8, 227
children, 119, 154; students, 110, 148
lump-sum payments, 110
Family and Community Services Legislation Amendment Act 2000, 565–6
Family and Community Services Legislation Amendment (1999 Budget and Other Measures) Act 1999, 560
family assets tests
Family Allowance, 227, 248, 255: farmers and families, 230
Family Allowance Supplement, 226, 230, 248
Student Financial Supplement Scheme Category 2 students, 580
see also family actual means test; Youth Allowance – family assets test
family businesses, involvement in, 468
family home, see home

Family Income Supplement (introduced in 1983 [see 1908–1982 compendium]; replaced 17 December 1987 by Family Allowance Supplement), 29, 34, 64

payees, 7

rates, 3, 21, 37, 62

replaced, 92

student children, 37: income test, 64

Family Law Reform (Consequential Amendments) Act 1995, 371

Family Payment, see Family Allowance/Payment

family payments (family assistance), 533

childcare, 307–8, 329, 445, 533

Family Tax Payment, 400, 401–2, 490, 519, 529, 533

Maternity Allowance, 365–6, 446, 448–9, 450, 531, 533

Maternity Immunisation Allowance, 445–6, 531, 533

see also Child Disability Allowance; Double Orphan Pension; Family Allowance/Payment; Guardian Allowance; Parenting Payment

family relationships, 6, 13, 16, 146–7

ex-spouse co-residents, 79, 86, 116

invalid marriages, 14

‘member of couple’, 484

shared care arrangements and Parenting Payment, 438

sole parent pensioners, 257, 359–60

see also couples; de facto spouses; homeless persons; independent young persons; relatives and family members; separated persons

Family Tax Assistance (introduced 1 January 1997; replaced 1 July 2000 by Family Tax Benefit), 400–1, 402, 533

Family Tax Benefit, 533

Family (Tax Initiative) Act 1996, 400–2

Family Tax Payment (introduced 1 January 1997; replaced 1 July 2000 by Family Tax Benefit), 400, 401–2, 490, 519, 529, 533

Fares Allowance, 488, 575–7

Farm Household Support Act payments, 472, 483, 499, 585

farmers and families, 230, 233–4

Austudy Payment assets test exemption, 483

concessionary primary production trusts, 603, 605

Retirement Assistance for Farmers Scheme, 497–9, 572, 597

Sickness Allowance assets test concession, 342

Youth Allowance assets test concession, 472

Youth Allowance family actual means test, 585, 586

Youth Allowance parental income/family assets test concessions, 472

FBT rate, 534

Federal Republic of Germany compensation (restitution) payments, 108

financial assets, see investment income; liquid assets tests

financial corporations – student loan contracts, 486, 487, 582–4

financial hardship provisions

advancement payment of first benefit instalment, 556

assets tests, see financial hardship provisions – assets tests

benefit waiting periods, 197, 362, 382, 442–3, 512

Crisis Payment, 547–8, 557–8

farmers special assistance measures, 233–4

Pharmaceutical Allowance advance payments, 179, 233, 292, 336

prisoners and confined persons, 559

special employment advance, 544–6

financial hardship provisions – assets tests, 26–7, 88, 223

beneficiaries, 100, 223, 234; liquid assets waiting period, 382, 442–3

Family Allowance, 227
A compendium of legislative changes in social security 1983–2000

Family Allowance Supplement hardship test, 226
Family Payment, 448
Parenting Payment, 437
financial investments, see investment income
flexible care services, 537
    see also residential care
foreign assets, 586
foreign emergencies, 569, 570
foreign income, 208, 292, 353, 586
foreign military training camps, 257, 467
foreign payments, see overseas payments
foreign residents, see residency requirements
foreign scholarships, 210
foreign superannuation, 208, 353
Formal Training Allowance, 206
‘former exempt resident’, 347, 573
‘former refugee’, 347
foster parents, 128
‘four-year’ rule, 33, 34
free areas, see permissible income limits
friendly society benefits, 2, 18
friendly society investments, see investment income
friendly society retirement savings accounts (income streams), 503–9
Fringe Benefits (Concession Cards), 179, 243–4, 296
    assets test, 27, 60–1, 75, 243: abolished, 269
    beneficiaries aged 60 years and over, 269, 393, 394: Partner Allowance recipients, 332, 333
    Community Development Employment Projects (CDEP) Scheme participants, 541–2
    disability support pensioners, 217, 219
    income tests, see Fringe Benefits (Concession Cards) – income tests
    Parenting Payment recipients, 437–8
    Pension Loans Scheme participants, 396
    see also Health Care Cards; Pharmaceutical Allowance; Seniors Health Card; Telephone Allowance
Fringe Benefits (Concession Card) – income tests, 22, 91, 243
    abolished, 269
    compensation recovery provisions, 204
    deeming rule savings provision, 189
    indexation, 4, 61
fringe benefits (employer-provided), 290, 449
    housing-related, 290, 327, 354–5, 361–2
    Youth Allowance parental income, 534
Fringe Benefits Tax Assessment Act, 290, 534
Fringe Benefits Tax Rate, 534
full-time students, see students; study loads
Funeral Benefit (introduced 1943 [see 1968–1982 compendium]; replaced 1 January 1990 by Bereavement Payments), 4, 22, 27, 60–1, 75
funeral expenses, prepaid, 24, 57
funeral investments, 209
gainful work, 494–5
goals, see prisoners
German restitution payments, 108
gift car scheme for veterans, 24
gifts, 598–605
  farms, 497–9, 572, 597, 603
Goods and Services Tax (GST) compensation measures, 529–32, 564, 567, 572
government body employees, housing benefits received by, 290
government housing authority tenants, 44, 79, 454
granny flats, 182, 248
gross business income, 188, 208–9
group enterprises, participation in, 323
Guardian (Mother’s/Guardian’s) Allowance (introduced 1963 as Mother’s Allowance and 1965 as
  Guardian’s Allowance [see 1908–1982 compendium]; replaced 1 July 2000 by Family Tax Benefit), 43, 241–2, 594
abolished, 533
beneficiaries, 8
‘Guardian Allowance’ used for first time, 201
maintenance action requirements, 171, 192
prisoners’ spouses, 378
rates, 4, 21, 37, 140, 378: Disaster Relief Payment, 199
separated couples due to illness or infirmity, 3, 5
Guardian (Mother’s/Guardian’s) Allowance – qualifying children, 127, 154
overseas temporarily, 447
students, 154, 155, 157, 165
guest house residents, see board and lodgings
‘halving rule’, 17, 252
Rent Assistance, 53
Handicapped Child’s Allowance (introduced 1974 [see 1908–1982 compendium]; replaced
  15 November 1987 by Child Disability Allowance), 29, 94
child absent from home, 40, 50
payees, 15
rates, 65
residency requirements, 11
handicapped persons, see disabilities, persons with
Handicapped Persons Assistance Act, payments under, 3
hardship, see financial hardship provisions
health
  benefits/payments received for illness, infirmity or old age, 2
  emergencies when overseas, 569, 570
  HIV infection, medically acquired, 247, 284, 398
  insurance provided by employer, 290
  medical certificates, 258, 380: period of grace to renew, 414
  medical examinations, 78, 202, 218, 265, 451, 453
  personal injury compensation settlements, 114, 249, 355
  Tuberculosis Allowance, 29, 39, 42, 76
  see also carers; separated persons due to illness or infirmity; temporary incapacity for work
Health Benefits Cards, 178, 189
Health Care Cards, 179, 189
  children with disabilities, 216, 221, 441
  Community Development Employment Projects (CDEP) Scheme participants, 542
  low income earners, 356
  Parenting Payment recipients, 438
  students, 346
  see also Pharmaceutical Allowance
hearing aids and services, 291
high-school education leaver benefit waiting period, 251
Higher Education Contribution Scheme, 478
HIV infection, medically acquired, 247, 284, 398
Holland (Netherlands), 215
home (family home), 24, 25, 27, 537
  boarding school regarded as, 470
  ex-spouse co-residents, 79, 86, 116
  land around, 25, 56, 499
  life interests, 24, 182, 310, 499
  loans to carry out vocation in, 19
  persons forced to leave due to extreme circumstances, 547–8
  retirement villages, 134, 182
  unrealisable asset, 223
  see also absence from family home; board and lodgings; housing and accommodation;
  mortgages; moving; rent; sale of home
‘home base maintenance’ training supplement component, 245
Home Child Care Allowance (introduced 29 September 1994; replaced 1 July 1995 by Parenting Allowance), 307–8, 329
home help payment, New Zealand, 115
home nursing benefits, 3, 526–8
home owners, 25, 27
  Rent Assistance, 374
  retirement village residents, 134
  Youth Allowance families, 473
  see also sale of home
homeless persons, 3, 162
Homeless Persons Assistance Act services, 3
homeless rate/Young Homeless Allowance (introduced 1 July 1986; ceased to be payment in own right 1 January 1990 and became homeless rate; became sub-category of independent young persons rate 1 January 1995), 51, 67, 162, 164, 340
  rates, 51, 97, 127, 164
  Rent Assistance, 225, 304
hospital patients (medical treatment), 78
  for alcohol or drug abuse, 220
  Carer Allowance/Payment care recipients, 524, 527
  children, 39, 143: see also approved care organisations (institutions) receiving family assistance payments; hospital patients – children with disabilities
disability support pensioners aged under 18 years, 260
  long-term, 25
  overseas, 569, 570
  sickness beneficiaries without dependants, 17
  see also psychiatric hospital patients; rehabilitation; residential care
hospital patients (medical treatment) – children with disabilities
  Carer Allowance payments, 527
  Child Disability Allowance payments, 94, 123, 125, 284, 442: on leave, 235
  Handicapped Child’s Allowance payments, 40, 50
hostel residents, see board and lodgings; residential care
hotel residents, see board and lodgings
housekeepers, 16
housing and accommodation, 3
  accommodated independent person rate, 469, 477, 593
  fringe benefits, 290, 327, 354–5, 361–2
  New Zealand payments, 115
  right to, 24, 182
  special maintenance income payments, 106, 149, 262, 539
  see also home; residential care
housing assistance payments, 3
housing loans, see mortgages
‘husband’, 13
husbands, see couples; family relationships

illness, see health
immigrants, 7, 84, 139, 316
assurance of support, 187, 245
see also refugees; residency requirements; visas
immigrants – newly arrived residents’ waiting period, 425–7, 550, 573–4
Austudy Payment, 483
Pensioner Education Supplement, 485
26-weeks, 273, 285, 316
Youth Allowance, 474

imprisonment, 445
impairment, see disabilities, persons with
impairment tables, 218, 453
imprisonment, see prisoners
incapacity for work, see continuing inability to work

Incentive Allowance (introduced 1974 [see 1908–1982 compendium]; phased out and no new grants made after introduction of Disability Support Pension on 12 November 1991), 216, 218
overseas payments (portability provisions), 568, 569
rates, 22, 135, 157, 159
saving provision, 218, 219, 261

income
children, 119; students, 369
overseas, 208, 292, 353, 586
see also exempt income; income tests
income disregard in respect of children, see child concession/disregard
income from employment, 392
activity (work) tests earnings threshold, 163, 271
beneficiaries earnings credit, 297, 389, 417
children, 154
Community Development Employment Projects (CDEP) Scheme participants, 540, 542
family actual means test, 586
loss of due to incapacity, 220, 415
male total average weekly earnings benchmark for pension rates, 435
refusal/failure to provide information about, 411
seasonal work preclusion period, 510–11
special employment advance, 544–6
see also average weekly earnings; Disability Wage Supplement; Employment Entry Payment;
pensioner earnings credit; vocational training – allowances-supplements
income maintenance period, 413, 439, 474, 566
annual leave, 145
financial hardship provision, 444
sick leave payments, 415
sole parents, 437

income streams, 503–9
see also superannuation and annuities
Income Support Supplement, 313, 364
income tax
business loss deductions, 586
children paying/liable for, 119
net rental property loss deductions (negative gearing), 320
rebates, 296, 308, 309, 533
repayment of Student Financial Supplement Scheme debt, 584
Income Tax Assessment Act, 328, 508
Income Tax Rates Act unearned income of minors’ provisions, 119
Income Tax Rates Amendment (Family Tax Initiative) Act 1996, 400
Income Tax Zones, see Remote Area Allowance

income tests
benefits, see income tests – benefits
Employment Entry Payment earnings threshold, 200, 259, 266, 285, 357
Family Allowance, see Family Allowance – income tests; Family Allowance/Payment – income tests
Family Allowance Supplement, see Family Allowance Supplement income test
Family Income Supplement, 64
Family Payment, see Family Allowance/Payment – income tests
Family Tax Assistance, 400–1
Family Tax Payment, 401–2, 529
Fringe Benefits (Concession Cards), see Fringe Benefits – income tests
Funeral Benefit, 22
Goods and Services Tax (GST) compensation provisions, 529, 530
Home Child Care Allowance, 307
Low Income Health Care Card, 356
Maternity Allowance, 365, 469
Parenting Allowance, see Parenting Allowance – income tests
Parenting Payment, see Parenting Payment – income tests
Rent Assistance, 43, 44, 53, 98
Seniors Health Card, 291, 515
see also assets tests; child concession/disregard; compensation recovery provisions; exempt income; indexation – income limits; maintenance income test; parental income tests; permissible income limits

income tests – benefits (includes references applying to all [or all but one] benefits; references applying to only one or a selection of benefits are indexed under ‘income tests’ under the name of the benefit[s]), 43, 100, 331, 484

Abstudy payments, 235, 606
Austudy partner, 173
business income, 188, 208–9
Community Development Employment Projects (CDEP) Scheme: earnings, 540, 542; Participant Supplement, 543
on couples, see couples – beneficiaries – income tests
deprivation provisions, 88, 181, 190: private company and private trust disposals, 605
investment income, see investment income
lump-sum payments, 16, 78, 502: for unused leave, see income maintenance period
maintenance income, 105–6, 149, 202, 213
New Enterprise Incentive Scheme (NEIS) payments, 35
parental, see parental income tests
periodic payments, 78
permissible income limits, see permissible income limits – benefits
private companies and private trusts, 598–605
residential accommodation bonds and charges, 434, 537, 538
superannuation, see superannuation and annuities – income test treatments
see also assets tests – benefits

income tests – pensions (includes references applying to all [or all but one] pensions; references applying to only one or a selection of pensions are indexed under ‘income tests’ under the name of the pension[s]), 43, 530
business income, 188, 208–9
Community Development Employment Projects (CDEP) Scheme earnings, 540, 542
on couples, see couples – pensioners – income tests
deprivation provisions, 88, 181, 190: private company and private trust disposals, 605
investment income, see investment income
maintenance income, 105–6, 149, 213
New Enterprise Incentive Scheme (NEIS) payments, 35, 289
Pension Loans Scheme, 395–6
permissible income limits, see permissible income limits – pensions
private companies and private trusts, 598–605
residential accommodation bonds and charges, 434, 537, 538
superannuation, see superannuation and annuities – income test treatments
see also assets tests – pensions
independent living skills training, 514
independent young persons (independent rate), 164, 224, 262
changes based on Youth Training Allowance, 340, 341
15 year-old persons, 224, 246, 379
Rent Assistance, 225, 304
independent young persons – Youth Allowance recipients, 465, 475–6, 592
15 year-old persons, 465, 595
rates, 469, 477, 593
Rent Assistance, 470
see also Youth Allowance – family assets test
indexation – asset threshold amounts, 25, 60–1, 210
Austudy Payment, 483
beneficiaries’ parents, 175
Family Allowance Supplement, 120
Family Payment, 294, 448
Fringe Benefits (Concession Cards), 27, 60–1, 75
Funeral Benefit, 27, 60–1, 75
Maternity Allowance, 448
Youth Allowance, 462, 473
indexation – income limits, 158
beneficiary parental income test, 128, 272
children’s employment income, 154
Family Allowance, 81
Family Allowance Supplement, 119, 227
Family Payment, 272, 294
Family Tax Payment, 402
financial investments deeming provisions, 386
Fringe Benefits (Concession Cards), 4, 61
Funeral Benefit, 4, 61
maintenance income test, 213
pensioner earnings credit, 231
Seniors Health Card, 291
student children’s income, 369
indexation – rates, 529, 530
Carer Allowance, 528
Child Disability Allowance, 228
Home Child Care Allowance, 308, 329
Incentive Allowance, 157
independent/homeless young persons, 164
Maternity Allowance, 365
Mobility Allowance, 265
Parenting Allowance, 330
Pharmaceutical Allowance (pharmaceutical payment limit), 178, 179, 192, 213, 233
Rent Assistance, 157, 268, 529
Student Financial Supplement Scheme debt, 583, 584
Telephone Allowance, 244
Youth Disability Supplement, 228
indexation – rates – benefits, 529, 530
ad hoc payments in absence of/addition to, 8, 23, 41, 166
Austudy Payment, 479, 483
brought forward, 140
couples aged 16 to 20 years, 174
single persons aged under 18 years with dependants, 23
single persons aged under 18 years without dependants, 66
single persons aged 18 and over without dependants, 8, 82
single persons aged 18 to 20 years without dependants, 41, 66, 174
single persons aged 21 and over, 41
Youth Allowance, 462, 470
indexation – rates – pensions, 217, 435, 529, 530
ad hoc payments in absence of/addition to, 21, 158, 269
brought forward, 140
defered, 61
Goods and Services Tax (GST) compensation provisions, 530
Pension Supplement, 530
Indigenous Australians, see Aboriginal and Torres Strait Islander Australians
industrial actions, 412, 569
infirmity, see health
information – failure to provide, 177, 206, 410
disability support pensioners, 218
about employment income, 411
Mobility Allowance recipients, 265
‘inhabitant of Australia’, 194, 316
inheritances not received, 24
injury compensation settlements, 114, 249, 355
institutional inmates, see approved care organisations; hospital patients; prisoners; residential care
insurance bonds, see managed investments
insurance payments, see compensation payments
insurance policies, 234
private health, provided by employers, 290
interest on financial institution accounts, 189, 248, 385–6, 422
interest on loans, 59
deeming provisions, 180, 385–6
employer-provided, 290
Pension Loans Scheme, 26, 396
intermittent (seasonal) work, preclusion period following, 510–12, 543
international agreements, see Social Security Agreements
international payments, see overseas payments
interposed structures, 598–605
invalid marriages, 14
Invalid Pension [introduced 1910 [see 1908–1982 compendium]; replaced 9 October 1991 by Disability Support Pension], 14, 61, 80
activity (work) tests, 78, 103
age qualification, 156
assets tests, see Invalid Pension – assets tests
Bereavement Payments, 160, 244
Disaster Relief Payment, 199

40 Index Occasional Paper No. 13
family relationships, see Invalid Pension – family relationships
income tests, see Invalid Pension – income tests
Mobility Allowance, 54, 68
overseas payments (portability provisions), 47, 115, 141
Pharmaceutical Allowance/Supplement, 178–9, 192, 198, 213
rates, see Invalid Pension – rates
rehabilitation treatment and training, 19, 54
Remote Area Allowance, 2, 191: child addition, 2, 12, 154
replaced, 216–17, 219
residency requirements, 11, 13, 33, 47: dependent children, 33, 87, 89
student eligibility, 69
see also Additional Pension for Children; Guardian Allowance; Incentive Allowance; Rent Assistance
Invalid Pension – assets tests, 24–7, 43, 56–61
deprivation provisions, 25–6, 56, 88, 181, 190
financial hardship provisions, 26–7, 88
Fringe Benefits (Concession Cards), 27, 60–1, 75
Funeral Benefit, 27, 60, 61, 75
funeral expenses and cemetery plots, prepaid, 24, 57
funeral investments, 209
indexation, 25, 60–1, 210
insurance and compensation payments, 188
loans, 59, 151
nursing home residents, 25, 59, 189
retirement village residents, 134, 182
superannuation and annuities, 24, 57, 151
Invalid Pension – family relationships, 13, 146–7
couples living together under age of consent, 76
ex-spouse co-residents, 79, 86, 116
Invalid Pension – income tests, 2–3, 43–4
blind war service pensioners, 55
board and lodgings, value of, 152
business income, 188, 208–9
compensation recovery provisions, 68, 114–15, 177, 211
deemed interest rates, 180, 189
deprivation provisions, 88, 181, 190
domestic payments, 55
education supplement, 56, 108
Fringe Benefits (Concession Cards), 4, 61, 22, 91, 204
Funeral Benefit, 4, 22, 61
investment income, 87, 131, 153, 191, 208, 210: exempt, 3, 209
legal and official proceedings, jurors and witnesses before, 186
loans, 151, 186: provided by pensioners, 180
maintenance income, 105–6, 149, 213
National Socialist compensation (restitution) payments, 108, 171
New Enterprises Incentive Scheme (NEIS) payments, 35
overseas payments, 115
permissible income limits, see Invalid Pension – permissible income limits
personal care support service payments, 186
superannuation benefits, 151, 153, 156: overseas derived, 208
training allowances, 152, 186
Invalid Pension – permissible income limits (free area), 43, 201
child concession/disregard, 44, 49, 201: student payments, 107, 158, 192
deemed interest rate (deeming rule) exemption, 189
earnings credit, 89, 155, 190
indexation, 158
Invalid Pension – rates, 21, 37, 61, 140, 158
partner in respite care, 157
war widow’s pensioners, 63
investment income, 3, 208, 287
deeming provisions, 180, 189, 248, 385–6, 422
employer-provided fringe benefits, 449
funeral investments, 209
realisation, 191, 210, 236, 247, 287
residential care accommodation bonds/bond balances not treated as, 434
unlisted property trusts, 247
see also liquid assets test; managed investments; market-linked investments; superannuation
and annuities
Ireland, 236
Italy, 70, 311, 345
jails, see prisoners
job search activities, 67, 206, 432
advance payments for, 324
intensive assistance, 466
job applications, 298
job interviews, refusal/failure to attend, 411, 468
Mobility Allowance recipients, see Mobility Allowance – persons undertaking job search
activities
outside area persons live, 555
see also activity tests; vocational training
Job Search Activity Agreements, 298, 299, 323–4, 325
Job Search Allowance (introduced 1 January 1988, replacing Unemployment Benefit for unemployed
persons aged 16 to 17 years; abolished and replaced 1 July 1991 with a different Job Search
Allowance payable also to short-term unemployed persons aged 18 years and over; no new
grants made to under 18 year-olds following the introduction 1 January 1995 of Youth Training
Allowance; abolished 20 September 1996, its provisions being absorbed into Newstart), 95,
205–7, 391–2
activity tests, see Job Search Allowance – activity tests
advance payments, 324–5
age qualifications, see Job Search Allowance – age qualifications
assets tests, see Job Search Allowance – assets tests
assurance of support, 187, 245
Bereavement Payments, 160, 229, 244, 346
Commonwealth funded employment program participants, 225
Disaster Relief Payment, 199
Education Entry Payment, 299, 351
Employment Entry Payment, 168, 299
family relationships, 146–7: ex-spouse co-residents, 116
farmers special assistance measures, 233–4
homeless rate/Young Homeless Allowance, 162, 164: Rent Assistance, 225, 304
incapacity to work due to sickness/accident, 95, 298, 387–8
income tests, see Job Search Allowance – income tests
independent rate, 164, 224, 246, 262: Rent Assistance, 225, 304
Landcare and Environment Action Program (LEAP) participants, 288
Mobility Allowance eligibility, 358
Partner Allowance eligibility, 309, 332: see also Parenting Allowance
rates, see Job Search Allowance – rates
Rent Assistance eligibility, 111
residency requirements, 111, 257, 316: refugees, 347
student eligibility, 129, 197, 299, 350
Telephone Allowance, 243–4
waiting periods, see Job Search Allowance – waiting periods
after Youth Training Allowance introduced, 338, 339
see also Additional Benefit for Children; definitions; Health Care Cards
Job Search Allowance – activity (work) tests, 95, 206–7, 298–9, 325–6
Activity Agreements, 298, 299, 323–4, 325
breaches, see Job Search Allowance – breach penalty rules
Defence Force reservists, 125
education starters, 350
incapacity due to sickness/accident, 387–8
paid work, 206, 326
rehabilitation programs, 299
reporting requirements, 126, 271
unemployment status of persons complying with, 254
vocational training requirements, 103, 162, 206–7, 254, 299
voluntary work exemption, 162, 271
Job Search Allowance – age qualifications, 95, 205, 224, 338
farmers, 234
independent rate, 164, 246, 262
Telephone Allowance, 243
Job Search Allowance – assets tests, 176
care recipients, 375
carers, 375
deprivation provisions, 181, 190, 196, 256
encumbrances and charges, 230
farmers and families, 230, 234
financial hardship provisions, 223, 234
funeral investments, 209
indexation, 210: beneficiaries’ parents, 175
insurance and compensation payments, 188
life interests, 182, 310
liquid assets waiting period, 196, 321
loans, 100, 151, 230
native title rights and interests, 354
parental, 175
sale/leaseback arrangements, 248
superannuation and annuities, 275, 276, 319
Job Search Allowance – breach penalty rules, 103, 206, 254, 337, 362
continuous period on income support, 392
duration of non-payment periods, 177, 319: after moving to areas with lower employment prospects, 149, 173
Job Search Allowance – compensation recovery provisions, 114–15, 211, 301–3
action to claim, 303
periodic payments, 232, 249, 253, 302, 356: lump-sum payments treated as, 303, 378
personal contributions, 318
Job Search Allowance – compensation recovery provisions – lump-sum payments, 228
Low Income Health Care Card income test, 356
partner qualified for Veterans’ Entitlements Act payment, 378–9
as periodic payments, 303, 378
personal injury compensation settlements, 114, 249, 355
preclusion period, 249, 301
Job Search Allowance – income tests, 95
Aboriginal Employment Incentive Scheme payments, 236
board and lodgings, value of, 152, 167
business income, 188, 208–9
compensation recovery provisions, see Job Search Allowance – compensation recovery provisions
couples, 173, 235, 252, 331
deprivation provisions, 181, 190
exchange trading system arrangements, 363–4
investment income, see Job Search Allowance – income tests – investment income
legal and official proceedings, jurors and witnesses before, 186
loans, 151, 186: provided by beneficiaries, 180; see also Job Search Allowance – income tests – investment income
maintenance income, 105–6, 149, 202, 213
medically acquired HIV payments, 247, 284
National Socialist compensation (restitution) payments, 108, 171
parental, see Job Search Allowance – parental income test
permissible income limits, see Job Search Allowance – permissible income limits
personal care support service payments, 186
scholarships awarded outside Australia, 210
Student Financial Supplement Scheme payments, 346
superannuation, see Job Search Allowance – income tests – superannuation and annuities
training and work experience payments, 381
unused annual leave, 145

Job Search Allowance – income tests – investment income, 131, 153, 208, 274, 287, 315
financial assets deeming provisions, 180, 189, 248, 385–6
funeral investments, 209
listed shares and securities, 275, 287, 315
realisation, 191, 210, 236, 247, 287
residential care accommodation bonds/bond balances not treated as, 434
unlisted property trusts, 247

Job Search Allowance – income tests – superannuation and annuities, 274, 287, 328
access before Age Pension age, 275
allocated, 276, 319
overseas derived, 353

Job Search Allowance – parental income test, 99, 112, 128, 207
child maintenance payments, 99, 257
foreign income, 292
fringe benefits, 290, 327, 354–5, 361–2
permissible income limits (free area), 99, 128, 272
tax deductions for rental property losses (negative gearing), 320
tax year, 99, 112, 212

Job Search Allowance – permissible income limits (free area), 281, 331
couples, 166, 175, 281, 331
deemed interest rate (deeming rule) exemption, 189, 248, 385–6
earnings credit, 297, 389
parental income test, 99, 128, 272

Job Search Allowance – rates, 95, 174, 293
couples, 166, 174, 232: separated, 97, 111, 173, 283
disaster relief, 176, 199
effect of parental assets test on, 175
effect of parental income test on, 99
homeless rate/Young Homeless Allowance, 51, 97, 127, 164
independent rate, 164
indexation, 140, 164, 165
newly released prisoners, 129
sole parents, 246, 277
training supplement, 206, 245

Job Search Allowance – waiting periods, 167, 282, 379
breach penalties and, 337: see also Job Search Allowance – breach penalty rules
education leavers, 150, 251, 349
Employment Secretary’s power to waive, 349
financial hardship provisions, 197, 282
Landcare and Environment Action Program (LEAP) participants, 288
liquid assets test, 196, 321
lump-sum compensation payment recipients, 249, 301
newly arrived residents, 273, 285, 316
unused annual leave non-payment period, 145
see also Rent Assistance – waiting periods
Job Search Training Supplement, 206, 245, 363, 519
Jobskills Program, 277, 282, 295
jury service, payments for, 186

labour market training/programs, see vocational training
land around home, 25, 56, 499
Landcare and Environment Action Program (LEAP), 288
Large Family Supplement, 367
leave payments, 145
Family Allowance Supplement, 110
see also income maintenance period
legal custody, see children – custody, care and control
legal proceedings
ex-spouse co-residents undertaking, 79
jurors and witnesses before, 186
overseas, 569, 570
see custody, persons in; prisoners
life expectancy streams, 505–7
life insurance policies, 234
life insurance retirement savings accounts (income streams), 503–9
life interests, 24, 57, 182, 310, 499
see also superannuation and annuities
life skills training, 514
lifetime income streams, 505–7
liquid assets tests
Family Allowance Supplement, 226
Pharmaceutical Allowance/Supplement advance payment, 179, 233
special employment advance, 546
liquid assets tests waiting period, 196, 321, 566
amount (available funds) required, 196, 414
Austudy Payment, 483
couples, 196, 321, 414, 484
deductions before applying, 321, 488
financial hardship provisions, 196, 382, 442–3
length of period, 196, 414, 489
Participant Supplement, 543
Youth Allowance, 474
listed shares and securities, 275, 287, 315
see also investment income
livestock, 234
living at home rate, Youth Allowance, 469, 477, 593
living away from home
child special beneficiaries, 76
disability support pensioners aged under 18 years, because of medical condition, 260
homeless rate qualification, 164
independent young persons (independent rate) qualification, 164, 262
Sickness Allowance category, 341
unemployment payments training supplement components, 245
Young Homeless Allowance qualification, 51, 162
living away from home – Youth Allowance recipients, 477
family actual means test, 588
Fares Allowance, 576–7
rate, 469, 477, 593
Rent Assistance, 470
loans
to persons completing rehabilitation, 19
Pension Loans Scheme, 26, 58, 59–60, 395–6: sole parents, 439
Student Financial Supplement Scheme, 346, 419: incorporation into Social Security Act, 486–7, 560, 578–84
see also advance payments; investment income; mortgages
loans – interest on, 59
deeing rate, 180, 385–6
employer provided, 290, 354–5, 361–2
lodgings, see board and lodgings
lone parents, see sole parents
long service leave see income maintenance period
long-term asset-tested income streams, 508
long-term caravan residents, 12
long-term income support student rate, 469–70, 476–7, 593
Austudy Payment, 482–3, 593
‘long-term recipient’, 229, 346
long-term unemployment, see Newstart Allowance
loss, insurance or compensation payments for, 3, 188
Low Income Health Care Card, 356
lump-sum payments
Crisis Payment, 547–8, 557–8
Disaster Relief Payment, 199, 316
Family Allowance bonus payment, 239
Family Payment advances, 252
Maternity Allowance, 365–6, 446, 448–9, 450, 531, 533
Maternity Immunisation Allowance, 445–6, 531, 533
Pension Bonus Scheme, 492–6, 572
to repay debt deducted before applying liquid assets test, 321, 488
special employment advance, 544–6
see also Bereavement Payments; Education Entry Payment; Employment Entry Payment
lump-sum payments – income test treatments, 502
employment termination payments, 16, 78, 110
Family Allowance Supplement, 110
maintenance, 106
see also compensation recovery provisions – lump-sum payments; income maintenance period
machinery on farms, 234
maintenance income (child support), 127
action to obtain requirement, 107, 381: family assistance payments, 171, 192, 312, 438
Employment Entry Payment earnings threshold, 259, 266
see also children – custody, care and control; spouse maintenance
maintenance income (child support) – income test treatments, 15
Family Allowance, 518
beneficiaries’ parents, 99, 257, 472
maintenance income test, 105–6, 213
beneficiary couples, 202
Family Allowance/Payment, 242, 262, 539
special, 106, 149, 262, 539
major disasters, see disasters and disaster relief
male average weekly earnings, see average weekly earnings
Malta, 201
managed investments, 274, 287, 315
 accruing return investments, 87, 274: realisation, 191, 210, 236
 allocated pensions and annuities, 276, 319
 listed shares and securities, 275, 287, 315
 see also market-linked investments
marital status, see couples; family relationships
Mark Fitzpatrick Trust payments, 247, 398
market-linked investments, 87, 131, 274
 realisation, 191, 210, 236, 247
 superannuation benefits, 153
 unlisted property trusts, 247
 see also managed investments
Marriage Act prohibited relationships, 147
marriages, invalid, 14
married persons, see couples
Maternity Allowance, 365–6, 446, 448–9, 450, 531, 533
Maternity Immunisation Allowance, 445–6, 531, 533
maternity leave, see income maintenance period
matrimonial home, see family home
Mature Age Allowance (introduced 20 March 1994 under pension conditions; modified 1 July 1996 and regarded as a benefit for all new claimants), 295–6, 393, 519
Abstudy payment recipients, 606–7
advance payments, 377–8, 423, 556, 558–9: special employment advance, 544–6
Age Pension claims, 420
assets tests, see Mature Age Allowance – assets tests
backdating rules, 557
Community Development Employment Projects (CDEP) Scheme participation, 540–3: Participant Supplement, 519, 543, 564
income tests, see Mature Age Allowance – income tests
overseas payments (portability provisions), 296, 568–70
Pension Supplement, 529, 530
persons engaged in industrial actions, 412
prisoners and confined persons, 549, 557–9
rates, 296, 393, 435, 529, 530, 549
residency requirements, 296, 393, 420: refugees, 322, 347
waiting periods, see Mature Age Allowance – waiting periods
see also definitions; Mobility Allowance; Pharmaceutical Allowance; Remote Area Allowance; Rent Assistance; Telephone Allowance
Mature Age Allowance – assets tests, 393, 484, 530
care recipients, 375, 537
carers, 375
life interests, 310
Index

A compendium of legislative changes in social security 1983–2000

medically acquired HIV payments, 398
money, 597
native title rights and interests, 354
Pension Loans Scheme, 395–6
private companies and private trusts, 598–605
residential care accommodation bonds and charges, 434, 537, 538
special employment advance, 546
superannuation and annuities, 319, 403, 457: income streams, 503–9
Mature Age Allowance – income tests, 393, 484, 530
Abstudy payments, 606, 607
Community Development Employment Projects (CDEP) Scheme: earnings, 540, 542;
Participant Supplement, 543
compensation recovery provisions, 355–6, 378–9, 421, 484; personal contributions, 318
exchange trading system arrangements, 363–4
financial investment (assets) deeming provisions, 385–6, 422
lump-sum payments, see Mature Age Allowance – income tests – lump-sum payments
managed investments, 315, 319
Pension Loans Scheme, 395–6
permissible income limits, see Mature Age Allowance – permissible income limits
private companies and private trusts, 598–605
residential care accommodation bonds and charges, 434, 537, 538
special employment advance, 546
Student Financial Supplement Scheme payments, 346
superannuation and annuities, 319, 328, 353, 403: income streams, 503–9
training and work experience payments, 381
Mature Age Allowance – income tests – lump-sum payments, 502
compensation recovery provisions, 355–6, 378–9, 421
income maintenance period applying to leave payments, 413, 439, 444
Mature Age Allowance – permissible income limits (free area), 530
deemed interest rate (deeming rule) exemption, 385–6, 422
earnings credit, 296, 389, 417
Mature Age Allowance – waiting periods
income maintenance period, 413, 439, 444
lump-sum compensation payment recipients, 421
newly arrived residents, 425–7, 550, 573–4
after seasonal work, 510–12
mature age beneficiaries
activity (work) tests exemption, 162–3, 271, 296, 406
Fringe Benefits (Concession Cards), 269, 293, 394; Partner Allowance recipients, 332, 333
reporting requirements, 65, 77, 271
see also Age Pension Age; Mature Age Allowance
mature age beneficiaries – single
rates, 164, 293, 394
Rent Assistance waiting period, 166, 231
see also Widow Allowance
Mature Age Partner Allowance (introduced 20 March 1994; phased out and no new grants made
after 1 July 1995, being replaced by Parenting Allowance from that date for persons with
children), 295, 296, 399, 519
advance payments, 377–8, 423: special employment advance, 544–6
assets tests, see Mature Age Partner Allowance – assets tests
Community Development Employment Projects (CDEP) Scheme participation, 540, 542:
Participant Supplement, 519, 543, 564
Education Entry Payment, 335, 531
income tests, see Mature Age Partner Allowance – income tests
overseas payments (portability provisions), 568–70: comparable claim requirement, 300
Pension Supplement, 529, 530
phased out, 336: replaced by Parenting Allowance, 330
rates, 435, 529, 530
residency requirements, 296: refugees, 322, 347
see also definitions; Mobility Allowance; Pharmaceutical Allowance; Remote Area Allowance;
Rent Assistance; Telephone Allowance

Mature Age Partner Allowance – assets test, 530
care recipients, 375, 537
carers, 375
life interests, 310
medically acquired HIV payments, 398
money, 597
native title rights and interests, 354
Pension Loans Scheme, 395–6
private companies and private trusts, 598–605
residential care accommodation bonds and charges, 434, 537, 538
special employment advance, 546
superannuation and annuities (income streams), 319, 403, 457: income streams, 503–9

Mature Age Partner Allowance – income tests, 530
Abstudy payments, 606, 607
Community Development Employment Projects (CDEP) Scheme earnings, 540, 542
compensation recovery provisions, 355–6, 378–9, 421, 484: personal contributions, 318
exchange trading system arrangements, 363–4
financial investment (assets) deeming provisions, 385–6, 422
managed investments, 315, 319
Pension Loans Scheme, 395–6
permissible income limits, see Mature Age Partner Allowance – permissible income limits
private companies and private trusts, 598–605
residential care accommodation bonds and charges, 434, 537, 538
special employment advance, 546
Student Financial Supplement Scheme payments, 346
superannuation and annuities, 319, 328, 353, 403: income streams, 503–9
training and work experience payments, 381

Mature Age Partner Allowance – permissible income limits (free area), 530
deemed interest rate (deeming rule) exemption, 385–6, 422
earnings credit, 417
mature age pensioners, 403
see also Age Pension age; Mature Age Allowance; Mature Age Partner Allowance
maximum rates, see rates
meals for homeless persons, 3
means tests, see assets tests; family actual means test; income tests
medical certificates, 258, 380
period of grace to renew, 414
medical examinations, 78, 202, 218, 265, 451, 453
medical treatment, see hospital patients
medically acquired HIV, 247, 284, 398
‘member of couple’, 484
mental hospitals, see psychiatric hospital patients
Migration Act, see visas
Migration Legislation Amendment Act 1989, 139
migrants, see immigrants
military, see Defence Force personnel
minors, see children
misconduct, 67, 83, 411, 468
mobile home and caravan residents, 12, 132, 404
Mobility Allowance, 54, 216, 265, 514, 519
  Education Department payment recipients, 289
  newly arrived residents waiting period, 425–7, 550, 573–4
  overseas payments (portability provisions), 568, 569
  ‘period of grace’ payments, 352
  rates, 68, 219, 265
Mobility Allowance – persons undertaking job search activities, 289
  under activity plans, 265, 352, 566
  under Competitive Employment Placement and Training Program, 310, 352
  ‘period of grace’ payments, 352
  unemployment payment recipients, 358
mobility supplement, United Kingdom, 115
money, 597
  see also income
mooring charges, 12, 132, 404
mortgages, 151, 186, 230
  employer-provided fringe benefits, 290, 327, 354–5
  special maintenance income, 106, 149, 262, 539
Mother’s/Guardian’s Allowance, see Guardian Allowance
motor vehicles, 24
  employer-provided fringe benefits, 290
  used as homes, 12, 132, 404
moving, 407
  to area with lower employment prospects, 149, 173, 411, 474, 555
Multiple Birth Allowance (Multiple Birth Payment), 39, 122, 367
  backdating rules, 172, 228
multiple births, 365
  Large Family Supplement, 367
  see also children – more than one
mutual obligation, 431
National Health Act
  benefits under Part VA, 125
  Domiciliary Nursing Home Benefit, 3, 526–8
  residents of homes approved by, 25
  see also Pharmaceutical Benefits Scheme
National Socialist (Nazi) persecution victims, 108, 171
National Welfare Fund Repeal Act 1985, 31
natural disasters, see disasters and disaster relief
Navy, see Defence Force personnel
negative gearing, 320
  ‘net market value’, 25
  ‘net passive business losses’, 472
Netherlands, 215
new arrivals in Australia, see migrants
New Enterprise Incentive Scheme (NEIS), 35, 307
New South Wales Medically-Acquired HIV Trust, 284
A New Tax System (Family Assistance and Related Measures) Act 2000, 563–4, 571
A New Tax System (Family Assistance) (Consequential and Related Measures) Act (No. 1) 1999, 532–4
A New Tax System (Family Assistance) (Consequential and Related Measures) Act (No. 2) 1999, 535, 563
New Zealand, 74, 136, 320, 397
  payments excluded from income tests, 115
New Zealand citizens
  newly arrived residents waiting period, 550
  Special Benefit residency test, 197, 246
Newcastle earthquake, 176
newly arrived residents, see immigrants
newly released prisoners, see prisoners – newly released
Newstart Activity Agreements, 207, 323, 429, 432
  administrative responsibility, 207, 513
  Jobskills Program participation, 277
  Newstart Allowance advances, 324
  prospective qualification conditions, 390
  reasonable steps to comply with, 325
  rehabilitation programs, 299

Newstart Allowance (introduced 1 July 1991, replacing Unemployment Benefit; absorbed provisions
  of Job Search Allowance when that payment was abolished 20 September 1996; replaced
  1 July 1998 for under 21 year-olds by Youth Allowance), 205–7, 390–2, 513–14, 519
  activity tests, see Newstart Allowance – activity tests
  advance payments, 324–5, 377–8, 423, 556, 558–9: special employment advance, 544–6
  assets tests, see Newstart Allowance – assets tests
  assurance of support, 245
  backdating rules, 417, 455, 557
  Bereavement Payments, 207, 229, 244, 346
  Commonwealth funded employment program participants, 225
  Community Development Employment Projects (CDEP) Scheme participation, 225, 540–3:
    Participant Supplement, 519, 543, 564
  Disability Support Pension claimants, 456
  Education Entry Payment, 299, 351, 391, 531
  Employment Entry Payment, 207, 391, 531
  farmers special assistance measures, 233–4
  Fringe Benefits (Concession Cards), 269, 394
  incapacity to work due to sickness/accident, 387–8
  income tests, see Newstart Allowance – income tests
  Landcare and Environment Action Program (LEAP) participants, 288
  Mobility Allowance eligibility, 358
  overseas payments (portability provisions), 568–70
  Partner Allowance eligibility, 309, 332: see also Parenting Allowance
  prisoners and confined persons, 549, 557–9: spouses of, 283
  prospective qualification, 390–1
  rates, see Newstart Allowance – rates
  replaced by Youth Allowance, 461, 462–77
  replaced Job Search Allowance, 391
  residency requirements, 257, 316: refugees, 347
  student eligibility, 299, 350: Abstudy payment recipients, 299, 606, 607
  Telephone Allowance, 243–4, 394: portability provisions, 568, 569
  waiting periods, see Newstart Allowance – waiting periods
  see also definitions; Pharmaceutical Allowance; Telephone Allowance; Work for the Dole
Newstart Allowance – activity (work) tests, 206–7, 298–9, 406–10
  breaches, see Newstart Allowance – breach penalty rules
  education starters, 350
  incapacity to work due to sickness/accident, 387–8, 390, 416: renewal of medical certificates, 414
  job applications, 298
Jobskills Program participation, 277, 282
paid work, 206, 271: unsuitable, 326, 407, 554–5
pregnant women, 430
prospective qualification conditions, 390
rehabilitation programs, 299
reporting requirements, 271, 391
unemployment status of persons complying with, 254
vocational training requirements, 206–7, 254, 299
voluntary work requirements, 271, 390, 406
see also Newstart Activity Agreement
Newstart Allowance – assets tests, 207, 484, 530
deprivation provisions, 256, 538, 605
custodians and charges, 230: residential care accommodation bonds/charges, 434, 537, 538
family home, see Newstart Allowance – assets tests – family home
farmers and families, 230, 234, 603
financial hardship provisions, 223, 234, 442–3
funeral investments, 209
indexation, 210
life interests, 310
liquid assets, 321, 414, 442–3, 484, 488, 566: special employment advance, 546
medically acquired HIV payments, 398
money, 597
native title rights and interests, 354
parental, 406
private companies and private trusts, 598–605
superannuation and annuities, 275, 276, 319, 403, 457: income streams, 503–9
Newstart Allowance – assets tests – family home, 538
absent when caring, 375
absent when in care situations/residential care, 375, 537
life interests, 310
mortgages, 230
sale/leaseback arrangements, 248
unrealisable asset, 223
Newstart Allowance – breach penalty rules, 206, 337, 408–12, 428–9
Approved Program of Work Supplement (Work for the Dole), 432
continuous period on income support and, 392
non-payment periods, length of, 319, 408, 411–12, 428: moving to areas with lower employment prospects, 411, 555
reduction in rates, 408, 410, 428, 429
Secretary’s discretion/power, 362, 410: Employment Secretary’s exemption, 254
Newstart Allowance – compensation recovery provisions, 211, 301–3, 421, 484
action to claim, 303
periodic payments, 232, 249, 253, 302, 356: lump-sum payments treated as, 303, 378
personal contributions, 318
Newstart Allowance – compensation recovery provisions – lump-sum payments, 228
Low Income Health Care Card income test, 356
partner qualified for Veterans’ Entitlements Act payment, 378–9
as periodic payments, 303, 378
personal injury compensation settlements, 114, 249, 355
preclusion period, 249, 301, 421
Newstart Allowance – income tests, 207, 484
Aboriginal Employment Incentive Scheme payments, 236
Abstudy payments, 606
business income, 208–9
Community Development Employment Projects (CDEP) Scheme: earnings, 540, 542; Participant Supplement, 543

compensation recovery provisions, see Newstart Allowance – compensation recovery provisions

couples, 235, 252, 331: deemed interest rate (deeming rule) exemption, 248, 385–6, 422

exchange trading system arrangements, 363–4

investment income, see Newstart Allowance – income tests – investment income

lump-sum payments, see Newstart Allowance – income tests – lump-sum payments

maintenance income, 105–6, 149, 202, 213

medically acquired HIV payments, 247, 284

parental, 406

permissible income limits, see Newstart Allowance – permissible income limits

private companies and private trusts, 598–605

residential care accommodation bonds and charges, 434, 537, 538

scholarships awarded outside Australia, 210

special employment advance, 546

Student Financial Supplement Scheme payments, 346

supernannuation, see Newstart Allowance – income tests – supernannuation and annuities

training and work experience payments, 381

Newstart Allowance – income tests – investment income, 208, 274, 287, 315

financial assets deeming provisions, 248, 385–6, 422

funeral investments, 209

listed shares and securities, 275, 287, 315

realisation, 210, 236, 247, 287

residential care accommodation bonds/bond balances not treated as, 434

supernannuation, see Newstart Allowance – income tests – supernannuation and annuities

unlisted property trusts, 247

Newstart Allowance – income tests – lump-sum payments, 502

income maintenance period applying to leave payments, 413, 439, 444, 566

see also Newstart Allowance – compensation recovery provisions – lump-sum payments

Newstart Allowance – income tests – supernannuation and annuities, 274–5, 287, 328, 403

access before Age Pension age, 275

allocated, 276, 319

income streams, 503–9

overseas derived, 208, 353

Newstart Allowance – permissible income limits (free area), 281, 331, 530

deemed interest rate (deeming rule) exemption, 248, 385–6, 422

earnings credit, 297, 389, 417

Newstart Allowance – rates, 207, 269, 293, 394

couples, 232, 269: partner in confinement, 283

Goods and Services Tax (GST) compensation provisions, 529, 530

newly released prisoners and confined persons, 549

single recipients under 18 years, 406

sole parents, 246, 277, 451

training supplement, 206, 245

Newstart Allowance – waiting periods, 207, 282, 379

breach penalties and, 337: see also Job Search Allowance – breach penalty rules

education leavers, 349, 491

Employment Secretary’s power to waive, 349

financial hardship provisions, 282, 442–3

income maintenance period, 413, 439, 444, 566

Jobs Skills Program participants, 277, 282

Landcare and Environment Action Program (LEAP) participants, 288

liquid assets, 321, 414, 442–3, 484, 488, 566

lump-sum compensation payment recipients, 249, 301, 421
newly arrived residents, 273, 285, 316, 425–7, 550, 573–4
Rent Assistance, 225, 231, 239, 304
after seasonal work, 510–12
Newstart Training Supplement, 206, 245, 363, 539
‘non-assessable purchase price’, 328
non-defined benefit streams, 507, 508
non-expert witnesses, 186
‘non-grossed up’ value of fringe benefits, 534
non-payment periods, see breach penalty rules; waiting periods
non-profit company employees, housing benefits received by, 290
non-resident superannuation funds, 353
non-residents, see residency requirements
normal amount of full-time study, see study loads
northern Australia, see Remote Area Allowance
nursing homes, see residential care
Nursing Homes Assistance Act, 59

Occupational Health and Safety (Commonwealth Employees) Act – section 9, 432
official proceedings, witnesses before, 186
old age, benefits/payments received for, 2
old age pension, see Age Pension
older beneficiaries, see mature age beneficiaries
on-the-job training, 348
one-off payments, see lump-sum payments
one-parent families, see sole parents
optometry services, 291
oral health, 291
orphans, see Double Orphan Pension
other children of claimants, see children – more than one
overpayment of Family Payment, 368
overseas assets, 586
overseas emergencies, 569, 570
overseas income, 208, 292, 353, 586
overseas military training camps, 257, 467
overseas payments (portability provisions) (includes references to requirements applying at the time of a payment’s introduction, or unique to the payment; all requirements applying to a payment are indexed under the payment’s name), 17, 111, 259, 551–3, 568–71

Additional Pension/Benefit for Children, 85
Austudy Payment, 481
Carer Allowance, 527
Carer Payment/Pension, 85, 263, 357, 527
comparable claim requirement, 300, 438
Disability Support Pension, 218
Double Orphan Pension, 571
Family Allowance, 85, 121, 194
Family Payment, 241, 322, 447
Guardian Allowance, 447
Home Child Care Allowance, 307
income test exemptions, 115
Mature Age Allowance, 296
National Socialist compensation (restitution), 108, 171
Parenting Payment, 437, 438
proportional portability rules, 47, 141, 551–2, 568, 569, 570–1
sole parents/widowed persons, 118, 211, 437
Special Benefit, 256
Widow Allowance, 334
Widow (Widow’s) Class B Pension, 172, 214
Wife (Wife’s) Pension, 172, 214
Youth Allowance, 467
see also Social Security Agreements
overseas residents, see residency requirements
overseas scholarships, 210
overseas superannuation, 208, 353
paid work, see employment
parental assets tests, 175, 207
Family Allowance Supplement, 120, 188–90, 226
minimum rate abolished, 406
Sickness Allowance, 340, 342, 370
see also family actual means test
parental income tests, 99, 112, 128, 207
child maintenance payments, 99, 257
foreign income, 292
fringe benefits, 290, 327, 354–5, 361–2, 534
minimum rate abolished, 406
permissible income limits (free area), 99, 128, 272
Sickness Allowance changes based on Youth Training Allowance, 340, 342
Student Financial Supplement Scheme Category 2 students, 580
tax deductions for rental property losses (negative gearing), 320
tax year, 99, 112, 212
Youth Allowance, 471–2: family actual means test, 473
see also Family Allowance – income tests; Family Allowance Supplement – income tests; Family Allowance/Payment – income tests
Parenting Allowance (introduced 1 July 1995, replacing Home Child Care Allowance; replaced 20 March 1998 by Parenting Payment), 329–30
assets tests, 329, 354, 375, 398, 434: superannuation and annuities, 403, 457
backdating provisions, 455
Bereavement Payments, 450
early lodgement provisions, 450
Education Entry Payment, 335
Pharmaceutical Allowance eligibility, 394
replaced, 436–9
residency requirements, 347
waiting periods, 425–7: income maintenance, 413
Parenting Allowance – income tests, 329, 330
accommodation bonds/bond balances, 434
compensation recovery provisions, 355–6, 378–9, 421
exchange trading system arrangements, 363–4
financial investments (assets) deeming provisions, 385–6, 422
income maintenance period applying to lump-sum leave payments, 413
permissible income limits, see Parenting Allowance – permissible income limits
Student Financial Supplement Scheme payments, 346
superannuation and annuities, 353, 403
training and work experience payments, 381
Parenting Allowance – permissible income limits (free area), 331
deemed interest rate (deeming rule) exemption, 385–6, 422
earnings credit, 389, 417
Parenting Payment (introduced 20 March 1998, replacing Sole Parent Pension and Parenting Allowance; replaced 1 July 2000 by Family Tax Benefit), 436–9, 519, 533
Abstudy payment recipients, 606–7
advance payments, 556, 558–9: special employment advance, 544–6
assets tests, see Parenting Payment – assets tests
backdating rules, 438, 557
Community Development Employment Projects (CDEP) Scheme participation, 540–3:
Participant Supplement, 519, 543, 564
Goods and Services Tax (GST) compensation provisions, 529, 530
income tests, see Parenting Payment – income tests
overseas payments (portability provisions), 437, 438, 553, 568–70
Pension Supplement, 529, 530
Pensioner Education Supplement, 485–6
prisoners and confined persons, 549, 557–9
qualifying child, 438, 517: leaving care temporarily, 560
waiting periods, 439, 444, 510–12, 573–4
see also definitions; Pharmaceutical Allowance; Remote Area Allowance; Rent Assistance; Telephone Allowance
Parenting Payment – assets tests, 437, 484, 530
income streams, 503–9
money, 597
private companies and private trusts, 598–605
residential care accommodation bonds and charges, 537, 538
special employment advance, 546
Parenting Payment – income tests, 436, 484, 530
Abstudy payments, 606, 607
Community Development Employment Projects (CDEP) Scheme: earnings, 540, 542;
Participant Supplement, 543
compensation recovery provisions, 484
income maintenance period applying to lump-sum leave payments, 439, 444
income streams, 503–9
permissible income limits (free area), 530, 532
private companies and private trusts, 598–605
residential care accommodation bonds and charges, 537, 538
special employment advance, 546
parents, see children; relatives and family members
Participant Supplement, 519, 543, 564
Partner Allowance, 309, 332–3, 418–19, 519
Abstudy payment recipients, 606, 607
advance payments, 556, 558–9
Age Pension claims, 420
assets tests, see Partner Allowance – assets tests
backdating rules, 359, 418, 455, 557
Community Development Employment Projects (CDEP) Scheme participation, 540–3:
Participant Supplement, 519, 543, 564
Education Entry Payment, 335, 531
Fringe Benefits (Concession Cards) eligibility, 394
Goods and Services Tax (GST) compensation provisions, 529, 530
income tests, see Partner Allowance – income tests
loss of income provisions, 415
not payable in lieu of Newstart Allowance breach penalty rate reduction, 429
overseas payments (portability provisions), 568–70
persons engaged in industrial actions, 412
persons on reduced rate of Newstart Allowance, 410
prisoners and confined persons, 549, 557–9
rates, 309, 394, 529, 530, 549
residency requirements, 347, 420
Telephone Allowance, 394: portability provisions, 568, 569
waiting periods, see Partner Allowance – waiting periods
see also definitions; Pharmaceutical Allowance; Remote Area Allowance; Rent Assistance
Partner Allowance – assets tests, 484, 530
care recipients, 375, 537
carers, 375
medically acquired HIV payments, 398
money, 597
native title rights and interests, 354
private companies and private trusts, 598–605
residential care accommodation bonds and charges, 434, 537, 538
superannuation and annuities, 403, 457: income streams, 503–9
Partner Allowance – income tests, 331, 484, 530
Abstudy payments, 606
Community Development Employment Projects (CDEP) Scheme: earnings, 540, 542;
Participant Supplement, 543
compensation recovery provisions, 355–6, 378–9, 421, 484
exchange trading system arrangements, 363–4
financial investments (assets) deeming provisions, 385–6, 422
lump-sum payments, see Partner Allowance – income tests – lump-sum payments
permissible income limits, see Partner Allowance – permissible income limits
private companies and private trusts, 598–605
residential care accommodation bonds and charges, 434, 537, 538
Student Financial Supplement Scheme payments, 346
superannuation and annuities (income streams), 353, 403: income streams, 503–9
training and work experience payments, 381
Partner Allowance – income tests – lump-sum payments, 502
compensation recovery provisions, 355–6, 378–9, 421
income maintenance period applying to leave payments, 413, 439, 444
Partner Allowance – permissible income limits (free area), 331, 530
deeded interest rate (deeming rule) exemption, 385–6, 422
earnings credit, 389, 417
Partner Allowance – waiting periods
income maintenance period, 413, 439, 444
lump-sum compensation payment recipients, 421
newly arrived residents, 425–7, 550, 573–4
after seasonal work, 510–12
partners, see couples; family relationships
partnerships in business, 586, 589
‘passive businesses’, 472
payees
Additional Pension for Children, 5, 90
Child Disability Allowance, 94, 143, 235: ex-spouse co-residents, 116
Family Allowance Supplement, 92
Family Income Supplement, 7
Family Payment, 241, 242, 368
Fares Allowance, 575, 577
Handicapped Child’s Allowance, 15
Home Child Care Allowance, 308
Maternity Allowance, 366
Maternity Immunisation Allowance, 446
A compendium of legislative changes in social security 1983–2000

Mother’s/Guardian’s Allowance, 5
Parenting Allowance, 329
Parenting Payment, 436; shared care arrangements, 438
Youth Allowance, 474
Student Financial Supplement Scheme, 578, 582
see also approved care organisations
payment arrangements, 31, 519
Double Orphan Pension, 123
family payments paydays, 120, 242, 519
Mature Age Allowance, 296
Telephone Allowance, 244, 519
see also advance payments; backdating rules; overseas payments; reimbursement of payments; reporting requirements
payment periods
Community Development Employment Projects (CDEP) Scheme additional payments option, 541
Disability Wage Supplement after full award wage applicable, 314
Fares Allowance, 488
Rehabilitation Allowance, 19
Sickness Allowance, 220–1, 258, 380, 416
Student Financial Supplement Scheme, 582
Widowed Person (Person’s) Allowance, 117, 229
see also breach penalty rules
Payment Processing Legislation Amendment (Social Security and Veterans’ Entitlements) Act 1998, 519, 521–6
penalties, see breach penalty rules
Pension Bonus Scheme, 492–6, 572
Pension Loans Scheme, 26, 58, 59–60, 395–6, 439
Pension Supplement, 529, 530
‘pension valuation factor’, 508
pensioner earnings credit, 89, 155, 231, 296
abolished, 417
carer pensioners, 264
couples, 89, 190
Pensioner Education Supplement, 485–6, 519
Fares Allowance, 488, 575–7
income test exemption, 56, 108
name change from ‘education supplement’, 267
prisoners and confined persons, 549
rates, 485, 531: two-tiered, 556, 564
Student Financial Supplement Scheme, 486–7, 560, 578–84
see also Education Entry Payment
Pensioner Health Benefit Cards, see Fringe Benefits (Concession Cards)
pensioner tax rebate, 296
pensions, see Age Pension; Bereavement Payment; Carer Payment; Disability Support Pension; Mature Age Allowance; Mature Age Partner Allowance; Parenting Payment; Rehabilitation Allowance; Widow B Pension; Wife Pension
People’s Republic of China temporary entry permit holders, 194, 197, 273
periodic compensation payments, 204, 232, 249, 253, 302, 356
lump-sum payments treated as, 53, 303, 378
permanent incapacity for work, see continuing inability to work
permissible income limits (free area), 530
employer-provided fringe benefits, 290
Family Allowance Supplement, 92, 119, 227
Family Payment, 272, 294
Fringe Benefits (Concession Cards), 22
Funeral Benefit, 22
Home Child Care Allowance, 307, 308
maintenance income test, 106, 202, 213
Parenting Allowance, 330
Seniors Health Card, 291, 515
‘with child’ dependent spouse rebate, 308
permissible income limits (free area) – benefits, 9, 42, 281, 331, 530
Austudy Payment, 483
couples, 166, 175, 281, 331
deemed interest rate (deeming rule) exemption, 189, 248, 385–6, 422
earnings credit, 297, 389
Parenting Payment, 532
Youth Allowance, 470–1
permissible income limits (free area) – benefits – parental income test, 99, 128, 272
Sickness Allowance changes based on Youth Training Allowance, 342
Student Financial Supplement Scheme Category 2 students, 580
Youth Allowance, 471–2
permissible income limits (free area) – pensions, 43, 530
child concession/disregard, 1, 44, 49, 201, 530: student payments, 107, 158, 192
deemed interest rate (deeming rule) exemption, 189, 248, 385–6, 422
indexation, 158
see also pensioner earnings credit
‘person under age 18 without dependants’, 16
personal care support services, payments for, 186
personal effects, insurance or compensation payments for loss or damage, 3, 188
personal injury compensation settlements, 114, 249, 355
Pharmaceutical Allowance/Supplement, 178–9, 198, 519
advance payments, 179, 233, 292, 336
Austudy Payment recipients, 483
Community Development Employment Projects (CDEP) Scheme participants, 540, 541
couples, 179, 232: separated by illness/infirmity or because in gaol, 437–8
indexation, 178, 179, 192, 213, 233
Mature Age Allowance recipients, 296, 393
overseas payments (portability provisions), 568, 569
Partner Allowance recipients, 418
payable only at maximum rate, 256
Youth Allowance recipients, 470
Pharmaceutical Benefits Concession Card, 179, 269
Pharmaceutical Benefits Scheme, 178, 291
pharmaceutical payments limit, 213, 233
Phone Allowance, see Telephone Allowance
physical disabilities, persons with, see disabilities, persons with
plant, insurance or compensation payments for loss or damage, 3, 188
political unrest, overseas, 569
portability provisions, see overseas payments; Social Security Agreements
Portugal, 237
post-graduate awardees, 110, 111
postponement rules, see breach penalty rules
preclusion periods, see waiting periods
pregnant women, 117, 430, 465, 466, 468
see also children; Maternity Allowance; multiple births
prepaid cemetery plots and funeral expenses, 24, 57
primary producers, see farmers and families
prisoners, 20, 35, 68–9, 485, 549
  payments made before release, 558
  Youth Allowance recipients undertaking community service or juvenile justice orders, 466
prisoners – newly released, 547–9, 557–9
  benefit rates, 129, 549
  Rent Assistance waiting period, 136
prisoners’ children, 20, 475
  Double Orphan Pension, 565
  Pensioner Education Supplement, 486
prisoners’ spouses, 20, 283
  Guardian Allowance, 440
  Parenting Payment, 437
  Senior Health Card, 291, 515
  supporting parent’s beneficiaries, 6, 74
private companies, 598–605
private health insurance, 290
private hotel residents, see board and lodgings
private renters, see Rent Assistance
private transport fares, 577
private trusts, 598–605
profession, disposal of assets on ceasing, 88
  ‘profoundly disabled’, 501
prohibited/illegal migrants/entrants/non-citizens, 7, 84, 139, 316
property, see real estate
property trusts, unlisted, 247
proportional portability rules, 47, 141, 551, 568, 569, 570–1
proprietary company interests, 586, 589
psychiatric examinations, 218, 265, 453
psychiatric hospital (mental hospital) patients, 25
  children, 382
psychiatric hospital (mental hospital) patients – confined, 35, 485, 549
  newly released, 547–9, 557–9
  partners of, 283
  undertaking rehabilitation, 69
psychological examinations, 78, 202, 218, 265, 453
public company interests, 586, 589
public housing authority tenants, 44, 79, 454
public transport fares, 577
public unit trusts, see managed investments
purchase price of income streams, 507
quadruplets, see multiple births
  ‘qualifying study’, 481, 486
questionnaires, 218, 265
Racial Discrimination Act, 427
rail transport, 577
rates, 529, 530–1
  Additional Allowance for Children, 240
  Additional Benefit/Pension for Children, see Additional Benefit/Pension for Children – rates
  Approved Program of Work Supplement (Work for the Dole), 432, 531
  Carer Allowance, 526, 528, 564
  Child Disability Allowance, 94, 124–5, 140, 228: on death of qualifying child, 222
  Crisis Payment, 548
Disability Wage Supplement, 314
Disaster Relief Payment, 199
Double Orphan (Orphan’s) Pension, 64, 123, 140, 565: on death of qualifying child, 222
Education Entry Payment, 267, 531
Employment Entry Payment, see Employment Entry Payment – rates
Family Allowance, see Family Allowance – rates
Family Allowance/Payment, 241, 318, 367, 489, 536: adequacy benchmark, 242, 360
Family Allowance Supplement, 92, 116, 141–2, 240
Family Income Supplement, 3, 21, 37, 62
Fares Allowance, 577
Guardian Allowance (Mother’s/Guardian’s Allowance), 4, 21, 37, 140, 378
Handicapped Child’s Allowance, 65
Home Child Care Allowance, 307, 308
homeless rate/Young Homeless Allowance, 51, 97, 127, 164
Incentive Allowance, 22, 135, 157, 159
independent rate, 164
interest on loans, 180, 385–6: employer-provided, 290
Maternity Allowance, 365, 446, 531
Maternity Immunisation Allowance, 446, 531
Mobility Allowance, 68, 219, 265
Parenting Allowance, 329, 330
Participant Supplement, 543, 564
pension bonus payment amount, 495–6, 572
Pensioner Education Supplement, 485, 531, 556, 564
Pharmaceutical Allowance, 178, 179, 232, 256
Remote Area Allowance, 2, 232, 278, 531
Rent Assistance, see Rent Assistance – rates
Residential Care Allowance, 373
special employment advance, 545–6
Supplementary Allowance/Assistance, 22
Telephone Allowance, 244
Youth Disability Supplement, 217, 228
Youth Training Allowance, 339
see also assets tests; income tests; indexation – rates
rates – benefits (includes references applying to all benefits and all beneficiaries; references applying to only one or a selection of benefits are indexed under the name of the benefit[s]—generally under the subheading ‘rates’—and those applying to a group of beneficiaries are indexed under the group (some of which are indicated in see also references below))
1983, 1, 8
1984, 23
1985, 23, 41
1986, 41
1987, 96
1988, 66, 96–7
1989, 66, 96–7
1990, 166, 174
1993, 269
1994, 293
2000, 529, 530
breach penalty reductions, 408, 410, 428, 429
Goods and Services Tax (GST) compensation provisions, 529, 530
indexation, see indexation rates – benefits
see also couples – beneficiaries – rates; single persons – beneficiaries – rates; sole parents – benefit rates; young beneficiaries – rates
rates – pensions (includes references applying to all benefits and all beneficiaries; references
applying to only one or a selection of benefits are indexed under the name of the benefit[s]—
gen generally under the subheading ‘rates’—and those applying to a group of beneficiaries are
indexed under the group (some of which are indicated in see also references below), 21, 61,
140, 158, 269
assets test pension reduction, 25, 281
Goods and Services Tax (GST) compensation provisions, 529, 530
Secretary’s discretion to reduce, 37
see also couples – pensioners – rates; single pensioners – rates
rates – returns from investments, see returns from investments
Ready Reserve Education Assistance Scheme, 596
real estate, 395, 396
net property losses (negative gearing), 320
see also assets tests; home; investment income
realisation of investments, 191, 210, 236, 287
unlisted property trusts, 247
‘reasonable costs of living’, 443
reassessment of Family Payment, 368
‘recent work experience’, 332, 333, 393, 418
recreation leave, see income maintenance period
refugees, 322, 347
Family Allowance, 194
Special Benefit residency requirements, 197, 347
Youth Allowance, 466
see also immigrants – newly arrived residents’ waiting period
refunds from accommodation charges, 538
refusal to grant powers, 14, 78, 103, 300, 303
rehabilitation, 54
Employment Secretary’s power to waive beneficiaries’ waiting and non-payment periods, 349
Incentive Allowance recipients, 261
loans on completing, 19
psychiatric patients charged (but not convicted of) an offence, 69
Sickness Allowance recipients, 220–1, 258
see also vocational training
rehabilitation – activity test requirements, 78
Disability Support Pension, 218
Sickness Allowance, 258, 299, 380
Newstart Allowance, 410
Youth Allowance, 467
Rehabilitation Allowance (introduced in 1948 [see 1908–1982 compendium]; phased out and no
new grants made after 12 November 1991; savings provisions removed 27 June 2000), 219,
519, 566
activity (work) tests, 78, 103
assets test, see Rehabilitation Allowance – assets test
Bereavement Payments, 160, 244
Community Development Employment Projects (CDEP) Scheme participation, 540, 542:
Participant Supplement, 519, 543
Disaster Relief Payment, 199
family relationships, see Rehabilitation Allowance – family relationships
income tests, see Rehabilitation Allowance – income tests
Partner Allowance eligibility, 332–3
prisoners and confined persons, 20, 35, 68–9: spouses of, 20, 283
rates, see Rehabilitation Allowance – rates
rehabilitation treatment and training, 54: payment period after, 19
residency requirements, 11: dependent children, 33, 87
single persons under 16 years, 35
students, 69
Telephone Allowance, 243–4, 270, 519
see also Additional Pension for Children; definitions; Guardian Allowance; Pensioner Education Supplement; Pharmaceutical Allowance; Remote Area Allowance; Rent Assistance

Rehabilitation Allowance – assets tests, 24–7, 43, 56–61, 530
depreciation provisions, see Rehabilitation Allowance – assets tests – depreciation provisions
encumbrances and charges, 24, 58, 230: residential care accommodation bonds/charges, 434, 537, 538
family home, see Rehabilitation Allowance – assets tests – family home
farmers and families, 230
financial hardship provisions, 26–7, 88, 223
Fringe Benefits (Concession Cards), 27, 60–1, 75, 243: abolished, 269
Funeral Benefit, 27, 60, 61, 75
funeral expenses and cemetery plots, prepaid, 24, 57
funeral investments, 209
indexation, 25, 60–1, 210
insurance and compensation payments, 188
life interests, 24, 57, 310
loans, 59
medically acquired HIV payments, 398
native title rights and interests, 354
Pension Loans Scheme, 26, 58, 59–60, 395–6
pension reduction amounts, 25, 281
superannuation, see superannuation and annuities – assets test treatment
Rehabilitation Allowance – assets tests – deprivation provisions, 25–6, 181, 190
applied to disposal of exempt assets, 56, 538
on ceasing employment, business or profession, 88
period applying, 26, 181, 256
Rehabilitation Allowance – assets tests – family home, 24, 25, 27
absent when caring, 375
absent when in care situations/residential care, 25, 59, 189, 375, 537
Fringe Benefit (Concession Cards)/Funeral Benefit, 27
life interests, 24, 182, 310
mortgages, 151, 230
retirement village residents, 134, 182
sale, 24, 58: to pay accommodation bonds, 538
sale/leaseback arrangements, 248
unrealisable asset, 223
Rehabilitation Allowance – compensation recovery provisions, 68, 114–15, 211, 301–3, 484
action to claim, 177, 303
Fringe Benefits (Concession Cards), 204
periodic payments, 232, 249, 253, 302, 356: lump-sum payments treated as, 303, 378
personal contributions, 318
Rehabilitation Allowance – compensation recovery provisions – lump-sum payments, 228
Low Income Health Care Card income test, 356
partner qualified for Veterans’ Entitlements Act payment, 378–9
as periodic payments, 303, 378
personal injury compensation settlements, 114, 249, 355
preclusion period, 249, 301, 421
Rehabilitation Allowance – family relationships, 13, 146–7
couples living together under age of consent, 76
ex-spouse co-residents, 79, 86, 116
Rehabilitation Allowance – income tests, 2–3, 43–4, 530
Aboriginal Employment Incentive Scheme payments, 236
blind war service pensioners, 55
board and lodgings, value of, 152
business income, 188, 208–9
Community Development Employment Projects (CDEP) Scheme earnings, 540, 542
compensation recovery provisions, see Rehabilitation Allowance – compensation recovery provisions
deprivation provisions, 88, 181, 190
domestic payments, 55
education supplement, 56, 108
exchange trading system arrangements, 363–4
Fringe Benefits, see Fringe Benefits (Concession Cards) – income tests
Funeral Benefit, 4, 22, 61
investment income, see investment income
legal and official proceedings, jurors and witnesses before, 186
loans, 151, 186: provided by pensioners, 180
maintenance income, 105–6, 149, 213
medically acquired HIV payments, 247, 284
National Socialist compensation (restitution) payments, 108, 171
New Enterprises Incentive Scheme (NEIS) payments, 35
Pension Loans Scheme, 395–6
overseas payments, 115
permissible income limits, see Rehabilitation Allowance – permissible income limits
personal care support service payments, 186
residential care accommodation bonds and charges, 434, 537, 538
scholarships awarded outside Australia, 210
Student Financial Supplement Scheme payments, 346
superannuation, see superannuation and annuities – income test treatments
training and work experience payments, 152, 186, 381
Rehabilitation Allowance – permissible income limits (free area), 43, 201, 530
child concession/disregard, 44, 49, 201, 530: student payments, 107, 158, 192
deemed interest rate (deeming rule) exemption, 189, 248, 385–6, 422
earnings credit, 89, 155, 190, 231, 417
indexation, 158
Rehabilitation Allowance – rates, 21, 158, 269
Goods and Services Tax (GST) compensation provisions, 529, 530
indexation, see indexation – rates – pensions
male total average weekly earnings benchmark, 435
partner in confinement, 283
partner not receiving pension, benefit etc., 232
Secretary’s discretion to pay reduced, 37
war widow’s pensioners, 63
reimbursement of payments
advance payments, 325
assurance of support providers, 187
Education Entry Payment, 255, 299
Pension Loans Scheme, 26, 60
special employment advance, 546
Student Financial Supplement Scheme, 487, 582, 583–4
see also debts
relatives and family members, 38
gifting farms to younger generation, 497–9, 603
living in unrealisable assets, 223
overseas crises, 569, 570
persons moving to live with or near, 149, 173
private companies and private trusts, 598–605
see also Carer Allowance; Carer Pension; children; death of spouse
‘relevant number’, 507
religious institution employees, housing benefits received by, 290
relocation, see moving
remainder interest, 57
Remote Area Allowance, 2, 28, 470, 483
child addition eligibility, 2, 12, 154
extension to Income Tax Zone B and areas near, 191
not paid as part of advances, 324
overseas payments (portability provisions), 568, 569, 570
rates, 2, 232, 278, 531
remote areas
employer-provided housing benefits, 290
unemployed people’s reporting requirements, 126
rent, 537
net property losses (negative gearing), 320
payment by employers, 327
see also Incentive Allowance
Rent Assistance (introduced 1958 as Supplementary Assistance for eligible pensioners, and 1970 as Supplementary Allowance for eligible sickness beneficiaries [see 1908–1982 compendium]; renamed 5 September 1985), 12, 132, 144
assets test, 25, 134
beneficiaries, extensions to, 41, 98, 111, 136, 137
board and lodging style accommodation, 132, 133, 516
care recipients, see Rent Assistance – care recipients
carers not residing at home, 374
Community Development Employment Projects (CDEP) Scheme participants, 540, 541
disability support pensioners, 217: young, 225, 239, 260
Family Allowance Supplement recipients, 98, 135
Family Payment component, 241–2
income tests, 43, 44, 53, 98
independent young beneficiaries, 225, 304, 340, 470
name changed, 36
overseas payments (portability provisions), 17, 111, 568, 569
public housing authority tenants, 44, 79, 454
rates, see Rent Assistance – rates
removal of savings provisions, 44, 79, 137, 372
rent threshold, 63, 134, 193, 268, 372
retirement village residents, 132, 134, 454
single persons sharing, 404, 516
waiting periods, see Rent Assistance – waiting periods
Youth Allowance recipients, 470
Rent Assistance – care recipients, 374
in residential care, 132, 133, 373, 433–4
in respite care, 152, 433
Rent Assistance – rates, 22, 135, 157, 159, 268, 372
beneficiaries, 22, 41, 98: receiving independent/homeless rate, 225
disability support pensioners, 217
Goods and Services Tax (GST) compensation measures, 529, 567
‘halving rule’, 53
Rent Assistance – waiting periods, 225, 231
abolished, 166, 239, 304
after losing then regaining entitlement to benefit, 75, 127
newly released prisoners, 136
sickness beneficiaries, 52
repayment of debt, see debts; reimbursement of payments
‘reportable fringe benefits total’, 534
reporting requirements, 65, 77, 126, 271, 391
Family Allowance Supplement, 119
Republic of Cyprus, 261
required to live away from home, see living away from home
residence, see home
residency requirements (includes references to requirements applying at the time of a payment’s introduction, or unique to the payment; all requirements applying to a payment are indexed under the payment’s name), 13, 111, 259, 316–17, 561, 573–4
‘absent resident’, 11
Age Pension, 33, 420
‘Australian resident’, 84, 86, 139, 316, 573
Austudy Payment, 480–1
Bereavement Allowance, 574
Carer Allowance, 526, 528
Carer Pension care recipients, 263, 376
children, see children – residency requirements
Chinese temporary entry permit holders, 194, 197, 273
Crisis Payment, 548
Disability Support Pension, 217, 260
Disaster Relief Payment, 199, 316
Double Orphan Pension, 563
Family Allowance, 7, 34, 121, 194
Family Payment, 241
Family Tax Payment, 401, 402
Fares Allowance, 576
Home Child Care Allowance, 307
‘inhabitant of Australia’, 194, 316, 573
Invalid Pension, 33, 89
Maternity Allowance, 365
Mature Age Allowance, 296, 393
Mature Age Partner Allowance, 296
military training overseas, 257, 467
Parenting Payment, 437
Pension Bonus Scheme, 493
Pensioner Education Supplement, 485
Pharmaceutical Supplement/Allowance, 198
proportional portability rules, 47, 551, 568, 569, 570–1
refugees, 194, 197, 322, 347, 466
Remote Area Allowance, 2
Seniors Health Card, 291
Sickness Allowance, 286, 316
Special Benefits, see Special Benefit – residency requirements
special employment advance, 545
Widow Allowance, 333, 574
Youth Allowance, 466–7, 592: family actual assets means test, 586
see also immigrants; overseas payments; visas
residential care, 14, 382
accommodation bonds and charges, 434, 537–8
assets tests, 25, 59, 189
Carer Pension payment after care recipient enters, 376
Rent Assistance, 132, 133, 373, 433–4: for respite care, 152, 433
   sole surviving parents of children in, 93
see also hospital patients
Residential Care Allowance, 373, 433
   respite care, 157
      carers of children with disability, 284
   Rent Assistance, 152, 433
Retirement Assistance for Farmers Scheme, 497–9, 572, 597
Retirement Assistance for Farmers Scheme Extension Act 2000, 597
retirement savings accounts (income streams), 503–9
   retirement village residents, 134, 182
      Rent Assistance, 132, 134, 454
   returns from investments, 87, 131, 274, 287, 315
      deeming provisions, 180, 189, 248, 385–6
      funeral investments, 209
      superannuation, 153, 274, 287
reversionary beneficiaries of asset-test exempt income streams, 505, 506
reversionary interests, 24, 57
   ‘roll-over purchase price’, 328
rooming house residents, see board and lodgings
Rural Adjustment Scheme, 233–4
   rural producers, see farmers and families
Safety, Rehabilitation and Compensation Act – section 5, 432
salaries, see income from employment
sale of home (residence), 24, 58
   ex-spouse co-residents undertaking proceedings to obtain, 79
   liquid assets test waiting period on benefits, 321
   to pay accommodation bonds, 538
   Rent Assistance after, 132
   sale/leaseback arrangements, 248
scholarships awarded outside Australia, 210
school fees, 290
school leavers/starters, see education leavers; education starters
seasonal work preclusion period, 510–12, 543
Second World War National Socialist compensation (restitution), 108, 171
Secondary Allowances Scheme, 38
secondary education leavers benefit waiting period, 251
securities, 275, 287, 315
   see also investment income
self-employment, 323
self-harm, 387, 388
‘self-supporting person’, 476, 592
semiannual adjustments, see indexation
Seniors Health Card, 291, 352, 515
   newly arrived residents’ waiting period, 425–7, 550, 573–4
separated persons, 13–14
   benefit rates, 50: when partner overseas, 111
   Family Allowance provision precluding, 49
   Parenting Payment, 560
   sole parent pensioners, 359–60
   see also maintenance income; prisoners’ spouses; sole parents; Widow Allowance; Widow B Pension
separated persons due to illness or infirmity
Additional Pension for Children, 5
assets test treatment of family home, 189
benefit rates, 97, 173
Mother’s/Guardian’s Allowance, 3, 5
Parenting Payment, 437–8
Seniors Health Card income test threshold, 291
Special Temporary Allowance, 9
Supporting Parent’s Benefit, 6–7, 9
Telephone Allowance, 244
see also residential care
separated persons due to respite care, 157
Rent Assistance, 152
Seniors Health Card income test threshold, 291, 515
Telephone Allowance, 244
service pension, see Veterans’ Entitlements Act payments
severe financial hardship, see financial hardship provisions
severely handicapped persons, see disabilities, persons with
shared accommodation, 404, 516
see also board and lodgings; residential care
shared care arrangements, 438
shares, 275, 287, 315
see also investment income
Sheltered Employment Allowance (introduced 1967 [see 1908–1982 compendium]; replaced by
Disability Support Pension on 12 November 1991), 29, 114
activity (work) tests, 78, 103
assets tests, see Sheltered Employment Allowance – assets tests
Bereavement Payments, 160, 244
Disaster Relief Payment, 199
family relationships, see Sheltered Employment Allowance – family relationships
income tests, see Sheltered Employment Allowance – income tests
Mobility Allowance, 54, 68
Pharmaceutical Allowance/Supplement, 178–9, 192, 198, 213
prisoners and confined persons, 20, 35, 68–9
rates, 21, 37, 61, 140, 158: war widow’s pensioners, 63
rehabilitation treatment and training, 19, 54
Remote Area Allowance, 2, 191: child addition, 2, 12, 154
replaced, 216, 218
residency requirements, 11: dependent children, 33, 87
students, 69
see also Additional Pension for Children; definitions; Guardian Allowance; Incentive Allowance;
Rent Assistance
Sheltered Employment Allowance – assets test, 24–7, 43, 56–61
deprivation provisions, 25–6, 56, 88, 181, 190
financial hardship provisions, 26–7, 88
Fringe Benefits (Concession Cards), 27, 60–1, 75
Funeral Benefit, 27, 60–1, 75
funeral expenses and cemetery plots, prepaid, 24, 57
funeral investments, 209
indexation, 25, 60–1, 210
insurance and compensation payments, 188
loans, 59, 151
nursing home residents, 25, 59, 189
retirement village residents, 134, 182
superannuation and annuities, 24, 57, 151
Sheltered Employment Allowance – family relationships, 13, 146–7
  couples living together under age of consent, 76
  ex-spouse co-residents, 79, 86, 116
Sheltered Employment Allowance – income tests, 2–3, 43–4
  blind war service pensioners, 55
  board and lodgings, value of, 152
  business income, 188, 208–9
  compensation recovery provisions, 68, 114–15, 177, 211
  deemed interest rates, 180, 189
  deprivation provisions, 88, 181, 190
  domestic payments, 55
  education supplement, 56, 108
Fringe Benefits (Concession Cards), 4, 61, 22, 91, 204
Funeral Benefit, 4, 22, 61
investment income, 87, 131, 153, 191, 208, 210: exempt, 3, 209
legal and official proceedings, jurors and witnesses before, 186
loans, 151, 186: provided by pensioners, 180
maintenance income, 105–6, 149, 213
National Socialist compensation (restitution) payments, 108, 171
New Enterprises Incentive Scheme (NEIS) payments, 35
overseas payments, 115
permissible income limits, see Sheltered Employment Allowance – permissible income limits
personal care support service payments, 186
scholarships awarded outside Australia, 210
superannuation and annuities, 151, 153, 156: overseas derived, 208
training allowances, 152, 186
Sheltered Employment Allowance – permissible income limits (free area), 43, 201
  child concession/disregard, 44, 49, 201: student payments, 107, 158, 192
  deemed interest rate (deeming rule) exemption, 189
  earnings credit, 89, 155, 190
  indexation, 158
short-term asset-tested income streams, 508
siblings, see relatives and family members
sick leave payments, see income maintenance period
Sickness Allowance (introduced 12 November 1991, replacing Sickness Benefit; replaced 1 July 1998
  for under 21 year-olds by Youth Allowance), 216, 220–1, 258, 379–80, 387–8, 413–17
Abstudy payment recipients, 607
activity (work) tests, 224, 262, 379, 489
advance payment of first instalment, 556, 558–9
age qualifications, 338, 459: 15 year-olds, 224, 258, 262, 379
assets tests, see Sickness Allowance – assets tests
backdating rules, 258, 417, 455, 557
Bereavement Payments, 229, 244
Community Development Employment Projects (CDEP) Scheme preclusion, 541, 542
Fringe Benefits (Concession Cards), 269, 394
homeless young persons, 164: Rent Assistance, 225, 304
income test, see Sickness Allowance – income tests
independent rate, 224, 246, 262, 339–42: Rent Assistance, 225, 304
loss of income provisions, 220, 415
medical certificates, 258, 380: period of grace to renew, 414
overseas payments (portability provisions), 568–70
Partner Allowance eligibility, 309: see also Partner Allowance
  payment period, 220–1, 258, 380, 416
  payment processing procedures, 519
prisoners and confined persons, 549, 557–9; spouses of, 283
rates, see Sickness Allowance – rates
replaced for under 21 year-olds, 461, 462–77
residency requirements, 286, 316: refugees, 347
student eligibility, 258, 387, 489: Abstudy payment recipients, 342, 387, 606, 607
Telephone Allowance, 270, 394: portability provisions, 568, 569
waiting periods, see Sickness Allowance – waiting periods
after Youth Training Allowance introduced, 331, 338, 339–42
see also definitions; Health Care Cards
Sickness Allowance – assets tests, 220, 484, 530
debt provisions, 256, 538, 605
carbon and charges, 230: residential care accommodation bonds and charges, 434, 537, 538
family home, see Sickness Allowance – assets tests – family home
farmers and families, 230, 603
financial hardship provisions, 223
life interests, 310
liquid assets tests, see Sickness Allowance – liquid assets tests
medically acquired HIV payments, 398
money, 507
native title rights and interests, 354
parental, 340, 342, 370, 406
private companies and private trusts, 598–605
superannuation and annuities, 275, 276, 319, 403, 457: income streams, 503–9
after Youth Training Allowance introduced, 340, 341–2
Sickness Allowance – assets tests – family home, 538
absent when caring, 375
absent when in care situations/residential care, 375, 537
life interests, 310
mortgages, 230
sale/leaseback arrangements, 248
unrealisable asset, 223
Sickness Allowance – compensation recovery provisions, 301–3, 421, 484
action to claim, 303
periodic payments, 232, 249, 253, 302, 356: lump-sum payments treated as, 303, 378
personal contributions, 318
Sickness Allowance – compensation recovery provisions – lump-sum payments, 228
Low Income Health Care Card income test, 356
partner qualified for Veterans’ Entitlements Act payment, 378–9
as periodic payments, 303, 378
personal injury compensation settlements, 249, 355
preclusion period, 249, 301, 421
Sickness Allowance – income tests, 331, 353, 484
Aboriginal Employment Incentive Scheme payments, 236
Abstudy payments, 606
Community Development Employment Projects (CDEP) Scheme: earnings, 540, 542; Participant
Supplement, 543
compensation recovery provisions, see Sickness Allowance – compensation recovery provisions
couples, 235, 252, 331
exchange trading system arrangements, 363–4
investment income, see Sickness Allowance – income tests – investment income
lump-sum payments, see Sickness Allowance – income tests – lump-sum payments
medically acquired HIV payments, 247, 284
parental, see parental income tests
permissible income limits, see Sickness Allowance – permissible income limits
private companies and private trusts, 598–605
residential care accommodation bonds and charges, 434, 537, 538
Student Financial Supplement Scheme payments, 346
superannuation, see Sickness Allowance – income tests – superannuation and annuities
training and work experience payments, 381
Sickness Allowance – income tests – investment income, 236, 274, 287, 315
financial assets deeming provisions, 248, 385–6, 422
listed shares and securities, 275, 287, 315
residential care accommodation bonds/bond balances not treated as, 434
unlisted property trusts, 247
Sickness Allowance – income tests – lump-sum payments, 502
income maintenance period applying to leave payments, 413, 415, 439, 444, 566
see also Sickness Allowance – compensation recovery provisions – lump-sum payments
Sickness Allowance – income tests – superannuation and annuities, 274, 275, 287, 328, 403
access before Age Pension age, 275
allocated, 276, 319
income streams, 503–9
overseas derived, 353
Sickness Allowance – liquid assets test, 321, 484
amount (available funds) required, 414
deductions before applying, 321, 488
financial hardship provisions, 382, 442–3
income maintenance period and, 566
length of period, 489
special employment advance, 546
Sickness Allowance – permissible income limits (free area), 281, 331, 530
deemed interest rate (deeming rule) exemption, 248, 385–6, 422
earnings credit, 297, 389, 417
Sickness Allowance – rates, 220, 269, 293, 340–1, 394
couples, 232, 269, 341: partner in confinement, 283
Goods and Services Tax (GST) compensation provisions, 529, 530
prisoners and confined persons, newly released, 549
sole parents, 246, 277, 341
Sickness Allowance – waiting periods, 220, 282, 379
education leavers, 251, 349, 491
financial hardship provisions, 282, 362, 442–3
income maintenance period, 413, 415, 439, 444, 566
liquid assets test, see Sickness Allowance – liquid assets test
lump-sum compensation payment recipients, 249, 301, 421
newly arrived residents, 273, 285, 316, 425–7, 550, 573–4
Rent Assistance, 225, 239, 304
vocational rehabilitation program participants, 299
Sickness Benefit (introduced 1945 [see 1908–1982 compendium]; replaced 12 November 1991 by
Sickness Allowance), 29
activity (work) tests, 78, 103, 202
assets tests, see Sickness Benefit – assets tests
backdating rules, 82, 113, 202
Bereavement Payments, 160
Disaster Relief Payment, 199
Employment Entry Payment, 144
family relationships, see Sickness Benefit – family relationships
homeless rate/Young Homeless Allowance, 162, 164: Rent Assistance, 225, 304
income tests, see Sickness Benefit – income tests
independent young persons, 164
Mother’s/Guardian’s Allowance eligibility, 8: see also Guardian Allowance
Pharmaceutical Allowance (Pharmaceutical Supplement), 178–9, 192, 198, 213
prisoners and confined persons, 20, 35, 68–9
rates, see Sickness Benefit – rates
rehabilitation treatment and training, 19, 54
Remote Area Allowance, 2, 191: child addition, 2, 12, 154
Rent Assistance eligibility, 98, 111, 136, 137
replaced, 216, 220–1
reporting requirements, 65, 77
residency requirements, 111: dependent children, 33, 87
student eligibility, 29, 54, 67, 197
Supplementary Allowance, 12, 22, 17, 36, 44
waiting periods, see Sickness Benefit – waiting periods
see also Additional Benefit for Children; definitions
Sickness Benefit – assets tests, 100, 196
couples where one not receiving payment, 113
deprivation provisions, 181, 190: liquid assets, 196
funeral investments, 209
indexation, 210: beneficiaries’ parents, 175
insurance and compensation payments, 188
loans, 100, 151
nursing home residents, 189
retirement village residents, 134, 182
superannuation, 151
young persons, 176: parental, 175
Sickness Benefit – family relationships, 13, 16, 146–7
couples living together under age of consent, 76
ex-spouse co-residents, 79, 116
Sickness Benefit – income tests, 3, 43, 100
board and lodgings, value of, 152, 167
business income, 188, 208–9
compensation recovery provisions, 18, 35, 75, 114–15, 211
couples, 17–18, 75, 173: see also Sickness Benefit – permissible income limits – couples
deemed interest rates, 180, 189
deprivation provisions, 88, 181, 190
domestic payments, 55
investment income, 87, 131, 153, 191, 208, 210: exempt, 3, 209
legal and official proceedings, jurors and witnesses before, 186
loans, 151, 186: provided by beneficiaries, 180
lump-sum payments, 16, 53, 78, 106, 114: for unused annual leave, 145
maintenance income, 105–6, 149, 213
National Socialist compensation (restitution) payments, 108, 171
New Enterprises Incentive Scheme (NEIS) payments, 35
overseas payments, 115
parental, 99, 112, 128, 212
periodic payments, 53, 78
permissible income limits, see Sickness Benefit – permissible income limits
personal care support service payments, 186
scholarships awarded outside Australia, 210
superannuation and annuities, 151, 153, 156: overseas derived, 208
training allowances, 186
Sickness Benefit – permissible income limits (free area), 9, 42
parental income test, 99, 128
Sickness Benefit – permissible income limits (free area) – couples, 166, 175
deemed interest rate (deeming rule) exemption, 189
maintenance income, 106, 202
Sickness Benefit – rates
  couples, 16, 23, 111, 166, 174: separated by illness, 97, 173
disaster relief, 176, 199
homeless rate/Young Homeless Allowance, 51, 97, 127, 164
indexation, 23, 61, 82, 96–7, 140
prisoners, newly released, 129
separated persons, 50
single persons, see Sickness Benefit – rates – single persons
  war widow’s pensioners, 63
Sickness Benefit – rates – single persons, 8, 23, 82, 96, 165
  sole parents (single with dependants), 23, 165, 166, 246, 277
Sickness Benefit rates – single persons – young, 8, 23, 34, 41
  aged 18 to 20 years, 41, 96, 174
effect of parental assets test on, 175
effect of parental income test on, 99
homeless rate/Young Homeless Allowance, 51, 97, 127, 164
independent rate, 164
independent/homeless young persons, 164
indexation, 23, 66, 164, 165
Sickness Benefit – waiting periods, 9, 42
  education leavers, 177
  liquid assets test, 196
  non-payment period for unused annual leave, 145
  Rent Assistance, 52, 75, 127, 136, 166
single persons
  Seniors Health Card income test threshold, 291, 515
  see also couples; separated persons; sole parents
single persons – beneficiaries
  assets test deprivation provision annual limits, 181
  income tests, see single persons – beneficiaries – income tests
  liquid assets test application limits, 196, 414
  Mother’s/Guardian’s Allowance eligibility, 8
  rates, see single persons – beneficiaries – rates
  Rent Assistance eligibility, 41
  seasonal work preclusion period, 510–11
  Supplementary Allowance eligibility, 17
  Youth Allowance family assets test limits, 473
  see also young beneficiaries
single persons – beneficiaries – income tests, 9, 42, 281, 331
deemed interest rate (deeming rule) exemption, 189, 385, 422
earnings credit, 297, 389
single persons – beneficiaries – rates
  1983, 1, 8
  1984, 23
  1985, 23, 41
  1986, 41
  1987, 66, 96
  1988, 66, 96–7
  1989, 66, 96–7
  1990, 164, 166, 174
  1993, 269
1994, 293
1998, 469
2000, 593
aged under 18 years, see young beneficiaries – single – rates
aged 18 to 20 years, 41, 66, 96, 174
aged 60 years and over, 164, 293, 394
with dependants, see sole parents – beneficiaries – rates
Remote Area Allowance, 2, 278, 531
Rent Assistance, 135, 159, 268, 372: sharing accommodation, 404, 516
separated persons, 50: by illness, 97, 173
Telephone Allowance, 244
war widow’s pensioners, 63
single persons – pensioners, 6
assets tests, 25–6, 181: Fringe Benefits (Concession Card)/Funeral Benefit, 27, 75
Bereavement Payments, 160
pension bonus payment amount, 496
see also young pensioners
single persons – pensioners – income tests, 43
deemed interest rate (deeming rule) exemption, 189, 385, 422
Fringe Benefits (Concession Cards)/Funeral Benefit, 22
persons aged 70 years and over, 1
see also pensioner earnings credit
single pensioners – rates, 21, 158, 269
disability support pensioners aged under 21 years, 217, 591
Incentive Allowance, 135, 159
male total average weekly earnings benchmark, 435
partner in confinement, 283
partner in respite care, 157
Remote Area Allowance, 2, 278, 531
Rent Assistance, 135, 159, 268, 372: sharing accommodation, 404, 516
Telephone Allowance, 244
six-monthly adjustments, see indexation
Social Security Agreements, 85, 553, 561
Austria, 250
Canada, 130, 211
compensable overseas payments claim requirement, 300
Cyprus, 261
Ireland, 236
Italy, 70, 311, 345
Malta, 201
Netherlands, 215
New Zealand, 74, 136, 320, 397
Portugal, 237
Spain, 178
United Kingdom, 74, 200, 237
see also overseas payments
Social Security Act 1947, 185, 186
extension to external territories, 11, 28
Social Security Act 1991, 185, 186, 201–4, 213
Social Security (Administration) Act 1999, 561
Social Security (Administration and International Agreements) (Consequential Amendments) Act 1999, 561
Social Security Amendment Act 1983, 1
Social Security Amendment Act 1987, 73–8
Social Security Amendment Act 1992, 251
Social Security Amendment Act (No. 2) 1992, 252, 277
Social Security Amendment Act 1993, 281–2
Social Security Amendment Act (No. 2) 1993, 293–4
Social Security Amendment (Reciprocity with Italy) Act 1986, 70
Social Security and Repatriation (Budget Measures) Amendment Act 1985, 37–42
Social Security and Repatriation (Budget Measures and Assets Test) Act 1984, 21–7
Social Security and Repatriation Legislation Amendment Act 1983, 1
Social Security and Repatriation Legislation Amendment Act 1984, 11–20
Social Security and Repatriation Legislation Amendment Act (No. 2) 1984, 29
Social Security and Repatriation Legislation Amendment Act 1985, 32–6
Social Security and Veterans’ Affairs Legislation Amendment Act 1988, 131–8, 144
Social Security and Veterans’ Affairs Legislation Amendment Act 1989, 140–4
Social Security and Veterans’ Affairs Legislation Amendment Act (No. 2) 1989, 73, 132, 133, 144–5
Social Security and Veterans’ Affairs Legislation Amendment Act (No. 3) 1989, 146–50
Social Security and Veterans’ Affairs Legislation Amendment Act (No. 4) 1989, 135, 151–68
Social Security and Veterans’ Affairs Legislation Amendment Act 1990, 171–8
Social Security and Veterans’ Affairs Legislation Amendment Act (No. 2) 1990, 180–2
Social Security and Veterans’ Affairs Legislation Amendment Act 1992, 239–40
Social Security and Veterans’ Affairs Legislation Amendment Act 1995, 385–97
Social Security and Veterans’ Affairs Legislation Amendment (Budget and Other Measures) Act 1998, 500–14
Social Security and Veterans’ Affairs Legislation Amendment (Family and Other Measures) Act 1997, 445–57, 513
Social Security and Veterans’ Affairs Legislation Amendment (Male Total Average Weekly Earnings Benchmark) Act 1997, 435
Social Security and Veterans’ Affairs Legislation Amendment (Pension Bonus Scheme) Act 1998, 492–6
Social Security and Veterans’ Affairs Legislation Amendment (Retirement Assistance for Farmers) Act 1998, 497–9
Social Security and Veterans’ Affairs (Miscellaneous Amendments) Act 1986, 55–69
Social Security and Veterans’ Entitlements Amendment Act 1987, 73, 79–85, 86
Social Security and Veterans’ Entitlements Amendment Act (No. 2) 1987, 85, 86–103, 137
Social Security and Veterans’ Entitlements Legislation Amendment (Miscellaneous Matters) Act 2000, 568–74
Social Security and Veterans’ Entitlements (Maintenance Income Test) Act 1988, 105–7
Social Security (Budget And Other Measures) Legislation Amendment Act 1993, 295–304
Social Security (Disability and Sickness Support) Amendment Act 1991, 216–21
Social Security (Family Allowance and Related Matters) Legislation Amendment Act 1999, 536
Social Security (Family Payment) Amendment Act 1992, 241–2, 252
Social Security (Fares Allowance) Rules, 575
Social Security (Home Child Care and Partner Allowances) Legislation Amendment Act 1994, 307–9, 359
Social Security (International Agreements) Act 1999, 561
Social Security (Job Search and Newstart) Amendment Act 1991, 185, 186, 205–7
Social Security Legislation Amendment Act 1983, 2–9
Social Security Legislation Amendment Act 1985, 31
Social Security Legislation Amendment Act 1988, 115–30, 137
Social Security Legislation Amendment Act 1990, 185, 186–201
Social Security Legislation Amendment Act (No. 2) 1991, 186, 210, 212–15
Social Security Legislation Amendment Act (No. 3) 1991, 222–30
Social Security Legislation Amendment Act (No. 4) 1991, 231–7, 292, 336
Social Security Legislation Amendment Act (No. 2) 1992, 252–61
Social Security Legislation Amendment Act (No. 3) 1992, 262–78
Social Security Legislation Amendment Act 1993, 283–9
Social Security Legislation Amendment Act (No. 2) 1993, 290–2
Social Security Legislation Amendment Act 1994, 310–12
Social Security Legislation Amendment Act (No. 2) 1994, 316–20
Social Security Legislation Amendment Act (No. 1) 1995, 345–56
Social Security Legislation Amendment Act (No. 1) 1996, 398–9
Social Security Legislation Amendment (Budget and Other Measures) Act 1996, 405–23, 428
Social Security Legislation Amendment (Family Measures) Act 1995, 365–70
Social Security Legislation Amendment (Further Budget and Other Measures) Act 1996, 403–4, 457
Social Security (New Zealand Agreement) Amendment Act 1994, 320
Social Security (Poverty Traps Reduction) Act 1985, 43–4, 69
Social Security (Proportional Portability of Pensions) Amendment Act 1986, 47
Social Security (Rewrite) Amendment Act 1991, 185, 212
Social Security (Rewrite) Transition Act 1991, 185
Social Services Act (No. 3) 1974, 137
Social Services Amendment Act (No. 3) 1976, 137
Social Services Amendment Act 1979, 137
Social Services Amendment Act 1981, 137
Social unrest, overseas, 569
soldiers, see Defence Force personnel; Veterans’ Entitlements Act payments
Sole Parent Pension (introduced 1 March 1989, replacing Widow’s Class A Pension and Supporting Parent’s Benefits; replaced by Parenting Payment on 20 March 1998), 117, 436–9
Additional Pension for Children, 141–2, 154–5, 171, 199, 240–2: see also Family Allowance/ Payment
advance payments, 377–8, 423
assets tests, see Sole Parent Pension – assets tests
benevolent home references in Act, 382
Bereavement Payments, 160, 244
Disaster Relief Payment, 199
Education Entry Payment, 222, 255
Employment Entry Payment, 200, 211, 259, 285
family relationships, 146–7, 257, 359–60
income tests, see Sole Parent Pension – income tests
maintenance action requirement, 381
overseas payments (portability provisions), 118, 141, 211, 259: comparable claim requirement, 300
Index

qualifying children, 117, 154, 371
rates, 117, 140, 158, 269: male total average weekly earnings benchmark, 435
residence requirements, 259: refugees, 322, 347
Telephone Allowance, 243–4, 270
training and work experience payments, 152, 381
see also definitions; Guardian Allowance; Pharmaceutical Allowance; Remote Area Allowance; Rent Assistance

Sole Parent Pension – assets tests, 210
derivation provisions, 181, 190, 256
encumbrances and charges, 230: residential care accommodation bonds/bond balances, 434
farmers and families, 230
financial hardship provisions, 223
Fringe Benefits (Concession Cards), 243, 269
funeral investments, 209
insurance and compensation payments, 188
life interests, 310
medically acquired HIV payments, 398
native title rights and interests, 354
Pension Loans Scheme, 395–6
pension reduction amount, 281
superannuation and annuities, 151, 275, 276, 319, 403, 457

Sole Parent Pension – assets tests – family home, 223
absent when caring, 375
absent when in care situations/residential care, 189, 375
life interests, 182, 310
mortgages, 151, 230
retirement village residents, 134, 182
sale/leaseback arrangements, 248

Sole Parent Pension – compensation recovery provisions, 231–2, 301–3
action to claim, 303
lump-sum payments, 249, 301, 303, 355–6, 378–9, 421
periodic payments, 232, 249, 253, 302, 356: lump-sum payments treated as, 303, 378
personal contributions, 318

Sole Parent Pension – income tests
Aboriginal Employment Incentive Scheme payments, 236
board and lodgings, value of, 152
business income, 188, 208–9
children aged under 16 years in employment, 154
compensation recovery provisions, see Sole Parent Pension – compensation recovery provisions
derivation provisions, 181, 190
exchange trading system arrangements, 363–4
Fringe Benefits (Concession Cards), 189, 243: abolished, 269
investment income, see Sole Parent Pension – income tests – investment income
legal and official proceedings, jurors and witnesses before, 186
loans, 151, 186: provided by pensioners, 180; see also Sole Parent Pension – income tests – investment income
maintenance income, 149, 213
medically acquired HIV payments, 247, 284
National Socialist compensation (restitution) payments, 171
Pension Loans Scheme, 395–6
permissible income limits, see Sole Parent Pension – permissible income limits
personal care support service payments, 186
scholarships awarded outside Australia, 210
Student Financial Supplement Scheme payments, 346
superannuation, see Sole Parent Pension – income tests – superannuation and annuities
training allowances, 152, 186
Sole Parent Pension – income tests – investment income, 131, 153, 208, 274, 287, 315
financial assets deeming provisions, 180, 189, 248, 385–6
funeral investments, 209
financial asset deeming provisions, 180, 189, 248, 385–6, 422
listed shares and securities, 275, 287, 315
realisation, 191, 210, 236, 247, 287
residential care accommodation bonds/bond balances not treated as, 434
unlisted property trusts, 247
Sole Parent Pension – income tests – superannuation and annuities, 153, 274, 287, 328
access before Age Pension age, 275
allocated, 276, 319
compulsorily preserved benefits, 151, 156
deeing provisions, 386
exempted, 151, 275, 403
immediate, 156
overseas derived, 208, 353
Sole Parent Pension – permissible income limits (free area), 158, 201
child concession/disregard, 158, 192, 201
deeed interest rate (deeming rule) exemption, 189, 248, 385–6, 422
earnings credit, 155, 231, 417
sole parents (single persons with dependant children), 211
Guardian Allowance eligibility, 241
Rent Assistance, 268
tax rebate, 533
see also maintenance income
sole parents (single persons with dependant children) – beneficiaries
liquid assets test, 196, 414
Pensioner Education Supplement, 485–6
sole parents (single persons with dependant children) – beneficiaries – rates, 23, 165, 166, 246, 277
Austudy Payment, 482, 593
Newstart Allowance, 451
Sickness Allowance changes based on Youth Training Allowance, 341
Youth Allowance, 469, 593
Spain, 178
Special Benefit, 29, 519
breach penalty rules, 67, 78, 103, 411: persons reducing employment prospects by moving, 149
advance payments, 84, 556, 558–9
age qualifications, 76, 338, 596
assets tests, see Special Benefit – assets tests
Bereavement Payments, 203, 229
Community Development Employment Projects (CDEP) Scheme participation, 540–3:
Participant Supplement, 519, 543, 564
Education Entry Payment, 267, 531
Employment Entry Payment, 144, 266, 531
family relationships, see Special Benefit – family relationships
Fringe Benefits (Concession Cards), 269, 394
homeless rate/Young Homeless Allowance, 51, 162, 164; Rent Assistance, 225, 304
income tests, see Special Benefit – income tests
independent rate, 164, 224, 246, 262, 339–42: Rent Assistance, 225, 304
Mother’s/Guardian’s Allowance eligibility, 8: see also Guardian Allowance
not payable in lieu of Newstart Allowance breach penalty, 411, 429, 491
not payable in lieu of Unemployment Benefit non-payment, 67
overseas payment (portability provisions), 256, 568–70
Partner Allowance, 309, 332: see also Parenting Allowance
Pensioner Education Supplement, 485–6
prisoners and confined persons, 20, 35, 68–9, 557–9: spouses of, 20, 283
rates, see Special Benefit – rates
rehabilitation treatment and training, 19, 54
Rent Assistance eligibility, 41, 111
residency requirements, see Special Benefit – residency requirements
Supplementary Allowance, 12, 22, 17, 36, 44
Telephone Allowance, 243–4, 394: portability provisions, 568, 569
waiting periods, see waiting periods
after Youth Training Allowance introduced, 338, 339–42
see also Additional Benefit for Children; Disaster Relief Payment; Family Income Supplement;
homeless rate: independent young persons; Pharmaceutical Allowance; Remote Area Allowance
Special Benefit – assets test, 100, 484, 530
couples where one not receiving payment, 113
depreciation provisions, 181, 190, 256, 548, 605
encumbrances and charges, 230: residential care accommodation bonds and charges, 434, 537, 538
family home, see Special Benefit – assets tests – family home
farmers and families, 230, 603
financial hardship provisions, 100, 223
funeral investments, 209
insurance and compensation payments, 188
life interests, 310
liquid assets waiting period, 196, 321, 414, 442–3, 484: income maintenance period and, 566
money, 597
native title rights and interests, 354
private companies and private trusts, 598–605
young persons, 176: parental, 175, 406
superannuation and annuities, 457: income streams, 503–9
young persons, 176: parental, 175
Special Benefit – compensation recovery provisions, 68, 114–15, 211, 301–3, 421
absent when caring, 375
absent when in care situations/residential care, 189, 375, 537
life interests, 182, 310: farmers
magnates, 151, 230
retirement village residents, 134, 182
sale/leaseback arrangements, 248
unrealisable asset, 223
Special Benefit – compensation recovery provisions – lump-sum payments, 228
Low Income Health Care Card income test, 356
partner qualified for Veterans’ Entitlements Act payment, 378–9
as periodic payments, 303, 378
personal injury compensation settlements, 114, 249, 355
preclusion period, 249, 301, 401
Special Benefit – family relationships, 13, 16, 146–7
couples living together under age of consent, 76
ex-spouse co-residents, 79, 116
Special Benefit – income tests, 3, 43, 100
Aboriginal Employment Incentive Scheme payments, 236
Abstudy payments, 235, 606
board and lodgings, value of, 152, 167
business income, 188, 208–9
Community Development Employment Projects (CDEP) Scheme: earnings, 540, 542; Participant Supplement, 543
compensation recovery provisions, see Special Benefit – compensation recovery provisions
couples, see Special Benefit – income tests – couples
deprivation provisions, 88, 181, 190, 605
domestic payments, 55
exchange trading system arrangements, 363–4
investment income, see investment income
legal and official proceedings, jurors and witnesses before, 186
loans, 151, 186: provided by beneficiaries, 180; see also investment income
lump-sum payments, see Special Benefit – income tests – lump-sum payments
maintenance income, 105–6, 149, 213
medically acquired HIV payments, 247, 284
National Socialist compensation (restitution) payments, 108, 171
New Enterprises Incentive Scheme (NEIS) payments, 35
overseas payments, 115
parental, see parental income tests
periodic payments, 78: see also Special Benefit – compensation recovery provisions
permissible income limits, see Special Benefit – permissible income limits
personal care support service payments, 186
private companies and private trusts, 598–605
residential care accommodation bonds and charges, 434, 537, 538
scholarships awarded outside Australia, 210
Student Financial Supplement Scheme payments, 346
superannuation, see superannuation and annuities – income test treatments
training and work experience payments, 186, 381
Special Benefit – income tests – couples, 17–18, 252, 331
with Abstudy recipient, 235
with Austudy recipient, 173
compensation recovery provisions, 68, 75, 421, 484
permissible income limits, see Special Benefit – permissible income limits – couples
Special Benefit – income tests – lump-sum payments, 16, 78, 106, 502
income maintenance period applying to leave payments, 145, 413, 439, 444
see also Special Benefit – compensation recovery provisions – lump-sum payments
Special Benefit – permissible income limits (free area), 9, 42, 281, 331, 530
deemed interest rate (deeming rule) exemption, 189, 248, 385–6, 422
parental income test, 99, 128
Special Benefit – permissible income limits (free area) – couples, 166, 175, 331
deemed interest rate (deeming rule) exemption, 189, 248, 385–6, 422
maintenance income, 106, 202
Special Benefit – rates, 203
1983, 1, 8
1984, 23
1985, 23, 41
1986, 41, 61
1987, 61, 66, 96
1988, 66, 96–7, 140
1989, 66, 96–7
1990, 140, 164, 165–6
1991, 164, 174
1993, 269
1994, 293
1995, 341
1999, 529
2000, 530

couples, see Special Benefit – rates – couples
disaster relief, 176, 199
Goods and Services Tax (GST) compensation provisions, 529, 530
mature age beneficiaries, 164, 293, 394
prisoners and confined persons, newly released, 129, 549
separated persons, 50, 97, 173, 283
sole parents, 23, 165, 166, 246, 277
war widow’s pensioners, 63
young persons, see Special Benefit – rates – young persons
Special Benefit – rates – couples, 23, 166, 269
aged under 21 years, 174
partner in confinement, 283
partner not receiving pension, benefit etc., 232
partner receiving Austudy, 173
separated by illness, 97, 173
single man with housekeeper, 16
Pharmaceutical Allowance/Supplement, 179, 232
Remote Area Allowance, 2, 232, 278, 531
Rent Assistance “halving rule”, 53
separated persons, 50: by illness, 97, 173
Telephone Allowance, 244

Special Benefit – rates – young persons (under 18 year-olds, except where otherwise indicated), 8, 16, 23, 41, 66, 165
aged 18 to 20 years, 41, 66, 96, 174
aged under 21 years with dependents, 23
effect of parental assets test on, 175
effect of parental income test on, 99
homeless rate/Young Homeless Allowance, 51, 97, 127, 164
independent rate, 164
students, 34
Telephone Allowance, 244

Special Benefit – residency requirements, 212, 316, 573
Chinese temporary entry permit holders, 197
dependent children, 33, 87, 267
extended eligibility (spouse) entry permit holders, 212
New Zealand citizens, 197, 246
prohibited non-citizens/illegal entrants, 85, 139
refugees, 197, 347
special employment advance, 544–6
special maintenance income, 106, 149, 262, 539
special needs pensions, 336, 571
Special Temporary Allowance (replaced 1 January 1990 by Bereavement Payments), 9, 160
A compendium of legislative changes in social security 1983–2000

‘specified veterans’ payment’, see Veterans’ Entitlements Act payments
‘spouse’, 6, 13
Spouse Carer’s Pension (introduced 1 December 1983; replaced 1 November 1985 by Carer’s Pension [which was renamed Carer Payment in 1997]), 5, 29, 38
Additional Pension for Children, 21
assets test, 24–7
Fringe Benefits (Concession Cards), 22, 27
Funeral Benefit, 22, 27
New Enterprises Incentive Scheme (NEIS) payments, 35
prisoners and confined persons, 20, 35
rates, 5, 21
rehabilitation treatment and training loans, 19
Remote Area Allowance, 2, 12
residency requirements, 11, 13: dependent children, 33
Supplementary Assistance, 12, 22, 25, 36
spouse maintenance, 13–14
action to obtain requirement, 107, 171, 192, 381, 438
income tests, treatment in, 15, 36: Employment Entry Payment earnings threshold, 259, 266
see also maintenance income test
spouses, see couples; family relationships
state care, Youth Allowance recipients in, 469
state mortgage assistance payments, 186
stillborn children, 365, 366, 445
strikes (industrial actions), 412, 569
Student and Youth Assistance Act, payments transferred from, 485–6
Student Assistance Act
post-graduate awards under, 110, 111
see also Austudy
student children, 32, 154–5, 369
Additional Pension/Benefit payments for, 62, 73, 90, 154–5: rates, 37, 90, 109
ceasing education, 73
Child Disability Allowance, 94, 284
disregarded in determining another person’s social security entitlement, 29
Family Allowance, 31, 38, 154–5, 187, 195: income test, 39, 64, 81
Family Allowance Supplement, 92, 111, 154–5: income test, 110, 148
Family Income Supplement, 37, 62, 64
Family Payment, 242, 288, 367, 536: Youth Allowance effect, 461, 462–3, 474–5
income test disregard/reduction, 107, 158, 192, 342
Mother’s/Guardian’s Allowance, 154, 155, 157, 165
Remote Area Allowance, 2
school fees, 290
sharing accommodation solely with, 404
Sickness Allowance parental income test changes based on Youth Training Allowance, 342
of sole parent beneficiaries, 165, 277
of supporting parent’s beneficiaries, 15, 80, 110
of widow’s class A pensioners, 80, 110
Student Financial Supplement Scheme, 346, 419
incorporation into Social Security Act, 486–7, 560, 578–84
student income bank, 471, 483
students, 73, 346
Family Allowance Supplement recipients, 110
Family Payment recipients, 288, 293
Fares Allowance, 488, 575–7
Partner Allowance eligibility, 419
Ready Reserve Education Assistance Scheme payment recipients, 596
see also Abstudy; Austudy; vocational training
students – beneficiaries, 54, 67, 129, 197
education leavers, see education leavers
education starters, 299, 349–350: Education Entry Payment, 267, 335, 531
higher rate, 34
partner receiving Abstudy, 235
partner receiving Austudy, 173
scholarships awarded outside Australia, 210
Sickness Allowance, 258, 387
Special Benefit, 76: Pensioner Education Supplement eligibility, 485
waiting period, 349
Young Homeless Allowance, 51, 67
see also Austudy Payment; education leavers; education starters; Youth Allowance
students – pensioners, 69
carers, 263
scholarships awarded outside Australia, 210
see also Education Entry Payment: Pensioner Education Supplement
study loads, 478, 590
Austudy, 481
Pensioner Education Supplement, 486
see also concessional study-load students
substitute care, young beneficiaries in, 224, 246
suitable work, see paid work
superannuation and annuities – assets test treatment, 275, 403, 503–9
allocated, 276, 319
compulsorily preserved benefits, 151
Mature Age Allowance recipients, 296
Minister’s exemption power, 403, 457
Secretary’s exemption discretion, 24, 57
superannuation and annuities – income test treatments, 153, 274, 287, 328, 403
access before Age Pension age, 275
allocated, 276, 319
compulsorily preserved benefits, 151, 156
deeming provisions, 386
immediate, 156
income streams, 503–9
Mature Age Allowance recipients, 296
overseas derived, 208, 353
Supernannuation Guarantee (Administration) Act, 432
Supplementary Allowance/Assistance, see Incentive Allowance; Rent Assistance
support, assurance of, 187, 245
supported employment services, 114
supported state care, Youth Allowance recipients in, 469
supported wage system participants, see Disability Wage Supplement
‘supporting parent’, 6
assets test, 24–7, 43, 56–61, 88, 134: Fringe Benefits (Concession Cards)/Funeral Benefit, 27, 60–1, 75
backdating rules, 6
family relationships, 6, 76, 79, 116
income tests, see Supporting Parent’s Benefit – income tests
maintenance action requirement, 107
overseas payments (portability provisions), 47, 115, 118
prisoners and confined persons, 20, 35, 68–9: spouses of, 6, 20, 74
rates, 21, 37, 61: war widow’s pensioners, 63
Remote Area Allowance, 2, 12
residency requirements, 11, 13, 47, 118: dependent children, 33, 87
Special Temporary Allowance eligibility, 9
students, 69: parents of, 15, 80, 110
vocational rehabilitation and training, 19–20, 54
see also Additional Pension for Children; definitions; Guardian Allowance; Rent Assistance
Supporting Parent’s Benefit – income tests, 2–3, 43–4
child concession/disregard, 44, 49, 107
depprivation provisions, 88
domestic payments, 55
earnings credit, 89
education supplement, 56, 108
Fringe Benefits (Concession Cards), 4, 22, 61, 91
Funeral Benefit, 4, 22, 61
investment income, 3, 87
maintenance income, 15, 36, 105–6
National Socialist compensation (restitution) payments, 108
New Enterprises Incentive Scheme (NEIS) payments, 35
overseas payments, 115
spouses separated due to illness or infirmity, 7
suspension of payments, see breach penalty rules
tapered assets tests, 25, 437
see also asset threshold amounts (free area)
tapered income tests, 530
benefits, 17, 252
family actual means test, 588
Family Allowance, 81, 142, 148, 161, 195
Family Allowance (Family Payment), 367, 530
Family Allowance Supplement, 92, 119, 147–8
Home Child Care Allowance, 308
Parenting Payment, 532
Rent Assistance, 53, 98
see also permissible income limits
taxable income, see income tests
taxation, see fringe benefits (employer-provided); income tax
taxi fares, 577
Telephone Allowance, 243–4, 394: portability provisions, 568, 569
Telephone Allowance, 243–4, 270, 519
beneficiaries aged 60 years and over, 243–4, 270, 393, 394
Community Development Employment Projects (CDEP) Scheme participants, 540, 541
Disability Wage Supplement recipients, 351
Mature Age Allowance recipients, 296, 393
overseas payments (portability provisions), 568, 569
telephone inquiries by persons with medical conditions, 417, 455
temporary entry permits, see visas
temporary incapacity for work, 95, 298, 387–8, 390, 416
medical certificate renewals, 414
work aggravating condition, 407
Youth Allowance recipients, 465, 466, 468, 470
see also Sickness Allowance
‘term elapsed’, 508
termination of employment payments, 16, 78, 110
territories, 11, 28
mortgage assistance payments by, 186
‘three-year absence rule’, 121, 194
Torres Strait Islanders, see Aboriginal and Torres Strait Islander Australians
trade union payments, 2
training see rehabilitation; vocational training
teach documents, see visas
travel expenses
Fares Allowance, 488, 575–7
witnesses before courts, tribunals or commissions, 186
see also Mobility Allowance
tribunal proceedings, witnesses before, 186
triplets, see multiple births
trusts, interests in, 586, 589–90, 598–605
Tuberculosis Allowance, 29, 39, 42, 76
25 per cent concessional study-load student, see concessional study-load students
‘25 per cent rule’, 81, 142, 148, 161, 195
Family Allowance Supplement, 147–8
twins, see multiple births

‘unavoidable or reasonable expenditure’, 443
‘undertaking full-time study’, 478, 590
‘undertaking qualifying study’, 481, 486
unearned income of minors’ provisions, 119
unemployment
due to industrial actions, 412
due to voluntary act, 67, 409
Unemployment Benefit (introduced 1945 [see 1908–1982 compendium]; replaced 1 January 1988 for unemployed persons aged 16 to 17 years by Job Search Allowance; replaced 1 July 1991 by Newstart Allowance), 29, 95, 205–7
activity tests, see Unemployment Benefit – activity tests
assets tests, see Unemployment Benefit – assets tests
assurance of support, 187
Bereavement Payments, 160
Disaster Relief Payment, 199
Employment Entry Payment, 130, 144
family relationships, see Unemployment Benefit – family relationships
income tests, see Unemployment Benefit – income tests
Mother’s/Guardian’s Allowance eligibility, 8
Pharmaceutical Supplement/Allowance, 178–9, 192, 198
prisoners and confined persons, 20, 35, 68–9
rates, see Unemployment Benefit – rates
registration requirement, 65, 67, 82: education leavers, 83, 102, 150
rehabilitation treatment and training, 19, 54
Remote Area Allowance, 2, 191: child addition, 2, 12, 154
Rent Assistance eligibility, 41, 111
residency requirements, 111: dependent children, 33, 87
student eligibility, 29, 54, 67, 129, 197
Supplementary Allowance, 12, 22, 17, 36, 44
waiting periods, see Unemployment Benefit – waiting periods
Young Homeless Allowance, 51
see also Additional Benefit for Children; definitions; Family Allowance Supplement; Job Search Allowance; Newstart Allowance; Rent Assistance

Unemployment Benefit – activity (work) tests, 78, 101, 103
exemptions, 125, 126, 162–3
after moving to areas with lower employment prospects, 149, 173
postponement period duration, 19, 67, 83, 149, 177
reporting requirements, 65, 77, 126

Unemployment Benefit – assets tests, 100, 196
couples where one not receiving payment, 113
deprivation provisions, 181, 190; liquid assets, 196
insurance and compensation payments, 188
loans, 100, 151
nursing home residents, 189
retirement village residents, 134, 182
superannuation, 151

Unemployment Benefit – family relationships, 13, 16, 146–7
couples living together under age of consent, 76
ex-spouse co-residents, 79, 116

Unemployment Benefit – income tests, 3, 43, 100
board and lodgings, value of, 152, 167
business income, 188
compensation recovery provisions, 68, 114–15
couples, see Unemployment Benefit – income tests – couples
dehemed interest rates, 180, 189
deprivation provisions, 88, 181, 190
domestic payments, 55
investment income, 3, 87, 131, 153, 191
legal and official proceedings, jurors and witnesses before, 186
loans, 151, 186: provided by beneficiaries, 180
lump-sum payments, 16, 78, 106, 114, 145
maintenance income, 105–6, 149
National Socialist compensation (restitution) payments, 108, 171
New Enterprises Incentive Scheme (NEIS) payments, 35
overseas payments, 115
periodic payments, 78
permissible income limits (free area), 9, 42: deemed interest rate (deeming rule) exemption, 189
personal care support service payments, 186
superannuation and annuities, 151, 153, 156
training allowances, 186

Unemployment Benefit – income tests – couples, 17
with Austudy recipient, 173
compensation recovery provisions, 68, 75
permissible income limits (free area), 166, 175: maintenance income, 106, 202

Unemployment Benefit – rates, 1, 8, 23, 41, 96
couples, 16, 23, 111, 166: separated by illness, 97, 173
disaster relief, 176, 199
indexation, 8, 23, 41, 61, 66, 96–7, 140
prisoners, newly released, 129
separated persons, 50
single persons aged under 18 years, 8, 16, 23, 34, 41
single persons aged 18 to 20 years without dependants, 41, 66, 96, 174
single persons aged 60 years and over, 164
sole parents, 23, 165, 166
war widow's pensioners, 63
Young Homeless Allowance, 51
Unemployment Benefit – waiting periods, 9, 18, 42, 129
education leavers, 83, 102, 150
financial hardship provisions, 197
liquid assets test, 196
non-payment period for unused annual leave, 145
registration requirements, 82, 83, 102, 150
Rent Assistance, 75, 127, 136, 166
union payments, 2
unit trusts, see managed investments
United Kingdom, 74, 200, 237
payments excluded from income tests, 115
university students, see student children; students
unlawful/prohibited citizens/migrants, 7, 84, 139, 316
unlisted property trusts, 247
unlisted public company interests, 586, 589
‘unmarried person’, 6
unmarried persons, see single persons
unpaid voluntary work, see voluntary work
unrealisable assets, 223
farmers, 234
‘unreasonable to live at home’, 476
‘unsuitable work’, 326, 407, 554–5
unused leave, payments for, see income maintenance period
vaccination, see Maternity Immunisation Allowance
valour awards, 24
value of assets, see assets tests
vehicles, see motor vehicles
vessel residents, 12, 132, 404
Veterans’ Entitlements Act payments
armed services widows/widowers, 63, 74, 313, 531
benefit waiting period, 42
care recipients receiving, 193
compensation recovery provisions when partner qualified for payment, 378–9
Family Allowance income test for student children, 39
Home Child Care Allowance income test, 307
Income Support Supplement recipients, 313, 364
Mature Age Allowance eligibility, 295, 312
pension assets test, 24
Pension Bonus Scheme, 492
Pensioner Education Supplement, 485–6
Seniors Health Card, 291
sharing accommodation with child/children receiving, 404
visas (entry permits), 84, 86, 139, 316, 573–4
benefits, 197, 212, 273, 316, 573–4
Double Orphan Pension, 563, 571
Family Allowance, 194
New Zealand citizens, 246
payment waiting period, 273, 316, 426
skilled migrants, 586
see also migrants; refugees
vocational training, 19–20
  activity (work) tests, see vocational training – activity (work) test requirements
  allowances, see vocational training – allowance/supplements
  benefits payable during, 34, 197: waiting period, 129, 282
  Carer Payment/Pension recipients undertaking, 263, 405
  Incentive Allowance recipients undertaking, 261
  military, 125, 257, 467, 468
  New Zealand payments, 115
  persons with disability, 217–18: when Mobility Allowance payable, 54, 289, 310, 514
  training supplement paid to beneficiaries, 206, 245
  ‘undertaking full-time study’, 478, 590
  young immigrants undertaking, 34
  see also Education Entry Payment; education leavers; education starters; rehabilitation
  vocational training – activity (work) test requirements, 103, 126, 206–7
    age and, 162–3
    breach penalties (cancellation, non-payment etc.), 78, 101, 103, 254, 410
    disability support pensioners, 217–18
    labour market programs, ceasing/dismissal from, 411
    Widow Allowance recipients, 334
    Youth Allowance recipients, 467
  vocational training – allowances/supplements, 152, 186, 381
    payments for part-time, 152, 186, 381
    unemployment beneficiaries, 206, 245, 363, 519
    widows, 186, 334, 519
    see also Youth Training Allowance
  voluntary work
    Carer Payment recipients undertaking, 405
    Landcare and Environment Action Program (LEAP), 288
    when Mobility Allowance payable, 265, 514
  voluntary work – activity (work) test requirements, 126, 207, 271, 406
    age and, 162–3; 271
    Mobility Allowance ‘period of grace’ payments, 352
    prospective qualification conditions, 390
    restrictions in Job Search Activity Agreements removed, 324
    Youth Allowance recipients, 468

wages, see income from employment

waiting (preclusion) periods, 42, 207, 220, 379
  breach penalties and, 337: see also breach penalty rules
  education leavers, 83, 102, 150, 177, 251, 349: abolished, 491
  lump-sum compensation payment recipients, 249, 301, 421
  Participant Supplement, 543
  registration requirements, 82, 83, 102, 150, 251
  after seasonal work, 510–12
  vocational rehabilitation program participants, 299
  see also immigrants – newly arrived residents’ waiting period; income maintenance period;
    liquid assets test waiting period; Rent Assistance – waiting periods

waiting (preclusion) periods – exemptions/waiving, 9, 18, 167, 282, 362
  education leavers, 83, 150, 251
  Employment Secretary’s power, 349
  financial hardship provisions, 197, 282, 442–3
  Jobskills Program participants, 277, 282
  Landcare and Environment Action Program (LEAP) participants, 288
  vocational trainees, 129, 282
war

National Socialist compensation (restitution), 108, 171
overseas, 569

see also Veterans’ Entitlements Act payments

war (armed services) widows/widowers, 63, 74, 313, 531

Widow Allowance, 333–4, 418, 519

Abstudy payment recipients, 606, 607
advance payments, 377–8, 423, 556, 558–9: special employment advance, 544–6
Age Pension claims, 420
assets tests, see Widow Allowance – assets tests
backdating rules, 557
Community Development Employment Projects (CDEP) Scheme participation, 540–3:
  Participant Supplement, 519, 543, 564
Education Entry Payment, 335, 531
Fringe Benefits (Concession Cards) eligibility, 394
Goods and Services Tax (GST) compensation provisions, 529, 530
income tests, see Widow Allowance – income tests
overseas payments (portability provisions), 334, 568–70
Pensioner Education Supplement eligibility, 485–6
prisoners and confined persons, 549, 557–9
rates, 334, 394, 529, 530, 549
residency requirements, 333, 420, 574: refugees, 347
Telephone Allowance, 394
training supplement, 334, 519
waiting periods, see Widow Allowance – waiting periods
see also definitions; Pharmaceutical Allowance; Remote Area Allowance; Rent Assistance

Widow Allowance – assets tests, 334, 484, 530

care recipients, 375, 537
carers, 375
medically acquired HIV payments, 398
money, 597
native title rights and interests, 354
private companies and private trusts, 598–605
residential care accommodation bonds and charges, 434, 537, 538
special employment advance, 546
superannuation and annuities, 403, 457: income streams, 503–9

Widow Allowance – income tests, 334, 484, 530

Abstudy payments, 606
Community Development Employment Projects (CDEP) Scheme: earnings, 540, 542:
  Participant Supplement, 543
compensation recovery provisions, 355–6, 378–9, 421, 484
exchange trading system arrangements, 363–4
financial investments (assets) deeming provisions, 385–6, 422
lump-sum payments, see Widow Allowance – income tests – lump-sum payments
permissible income limits, see Widow Allowance – permissible income limits
private companies and private trusts, 598–605
residential care accommodation bonds and charges, 434, 537, 538
special employment advance, 546
Student Financial Supplement Scheme payments, 346
superannuation and annuities (income streams), 353, 403: income streams, 503–9
training and work experience payments, 381

Widow Allowance – income tests – lump-sum payments, 502
compensation recovery provisions, 355–6, 378–9, 421
income maintenance period applying to leave payments, 413, 439, 444
Widow Allowance – permissible income limits (free area), 331, 530
d beacon interest rate (deeming rule) exemption, 385–6, 422
earnings credit, 389, 417

Widow Allowance – waiting periods
income maintenance period, 413, 439, 444
lump-sum compensation payment recipients, 421
newly arrived residents waiting period, 425–7, 550, 573–4
after seasonal work, 510–12

Widow B (Widow’s Class B) Pension (introduced 1942 [see 1908–1982 compendium]; phased out, restricting new grants made after 1 July 1976 and no new grants made after 20 March 1997), 14, 29, 519

Age Pension qualification, 420
assets tests, see Widow B Pension – assets tests
backdating rules, 84
benevolent home references in Act, 14, 25, 382
Bereavement Payments, 160, 244
Community Development Employment Projects (CDEP) Scheme participation, 540, 542:
Participant Supplement, 519, 543, 564
compensation claim action, 177
Disaster Relief Payment, 199
Education Entry Payment, 267, 531
Employment Entry Payment, 266, 531
family relationships, 146–7: ex-spouse co-residents, 79, 116
income tests, see Widow B Pension – income tests
maintenance action requirement, 107
overseas payments, see Widow B Pension – overseas payments
phased out, 80, 311, 419
Pension Supplement, 529, 530
Pensioner Education Supplement, 485–6
prisoners and confined persons, 20, 35, 68–9
rates, see Widow B Pension – rates
residency requirements, see Widow B Pension – residency requirements
special employment advance, 544–6
special needs, 571
students, 29, 69
Telephone Allowance, 243–4, 270, 519: portability provisions, 568, 569
vocational rehabilitation and training, 19–20, 54
war widow’s pensioners, 63, 74
see also Additional Pension for Children; definitions; Pharmaceutical Allowance; Remote Area Allowance; Rent Assistance

Widow B (Widow’s Class B) Pension – assets tests, 24–7, 43, 56–61, 530
deprivation provisions, see Widow B Pension – assets tests – deprivation provisions
encumbrances and charges, 24, 58, 230: residential care accommodation bonds/charges, 434, 537, 538
family home, see Widow B Pension – assets test – family home
farmers and families, 230, 603
financial hardship provisions, 26–7, 88, 223
Fringe Benefits (Concession Cards), 27, 60–1, 75, 243: abolished, 269
Funeral Benefit, 27, 60–1, 75
funeral expenses and cemetery plots, prepaid, 24, 57
funeral investments, 209
indexation, 25, 60–1, 210
insurance and compensation payments, 188
life interests, 24, 57, 310
loans, 59
medically acquired HIV payments, 398
money, 597
native title rights and interests, 354
Pension Loans Scheme, 26, 58, 59–60, 395–6
pension reduction amount, 25, 281
private companies and private trusts, 598–605
special employment advance, 546
superannuation, see superannuation and annuities – assets test treatments

**Widow B (Widow’s Class B) Pension – assets tests – deprivation provisions, 25–6, 181, 190**

applied to disposal of exempt assets, 56, 538
on ceasing employment, business or profession, 88
period applying, 26, 181, 256
private company and private trust disposals, 605

**Widow B (Widow’s Class B) Pension – assets tests – family home, 24, 25, 27**
absent when caring, 375
absent when in care situations/residential care, 25, 59, 189, 375, 537
life interests, 24, 182, 310
mortgages, 151, 230
retirement village residents, 134, 182
sale, 24, 58: to pay accommodation bonds, 538
sale/leaseback arrangements, 248
unrealisable asset, 223

**Widow B (Widow’s Class B) Pension – income tests, 2–3, 43–4, 530**
Aboriginal Employment Incentive Scheme payments, 289
board and lodgings, value of, 152
business income, 188, 208–9
Community Development Employment Projects (CDEP) Scheme earnings, 540, 542
deprivation provisions, 88, 181, 190: private company and private trust disposals, 605
domestic payments, 55
exchange trading system arrangements, 363–4
Fringe Benefits, see Fringe Benefits (Concession Cards) – income tests
Funeral Benefit, 4, 22, 61
investment income, see investment income
legal and official proceedings, jurors and witnesses before, 186
loans, 151, 186: provided by pensioners, 180
maintenance income, 36, 105–6, 149, 213
medically acquired HIV payments, 247, 284
National Socialist compensation (restitution) payments, 108, 171
New Enterprises Incentive Scheme (NEIS) payments, 289
overseas payments, 115
permissible income limits, see Widow B Pension – permissible income limits
personal care support service payments, 186
private companies and private trusts, 598–605
residential care accommodation bonds and charges, 434, 537, 538
scholarships awarded outside Australia, 210
special employment advance, 546
Student Financial Supplement Scheme payments, 346
superannuation, see superannuation and annuities – income test treatments
training and work experience payments, 186, 381

**Widow B (Widow’s Class B) Pension – overseas payments, 172, 214, 259**
comparable claim requirement, 300
income test exemption, 115
international agreement payments ceiling, 553
proportional portability rules, 47, 141, 551–2, 568, 569, 571
Widow B (Widow’s Class B) Pension – permissible income limits (free area), 43, 201, 530
  child concession/disregard, 44, 49, 201, 530: student payments, 107, 158, 192
  deemed interest rate (deeming rule) exemption, 189, 248, 385–6, 422
  earnings credit, 89, 155, 190, 231, 417
  indexation, 158
Widow B (Widow’s Class B) Pension – rates, 21, 158, 269
  Goods and Services Tax (GST) compensation provisions, 529, 530
  indexation, see indexation – rates – pensions
  male total average weekly earnings benchmark, 435
  Secretary’s discretion to pay reduced, 37
Widow B (Widow’s Class B) Pension – residency requirements, 11, 13
  Age Pension qualification, 420
  dependent children, 33, 87
  portability provisions, 47, 259, 552, 553, 571
  refugees, 322, 347
Widowed Person (Person’s) Allowance, see Bereavement Allowance
  widowed persons, see death of partner
Widow’s Class A Pension (introduced 1942 [see 1908–1982 compendium]; replaced 1 March 1989 by Sole Parent Pension), 14, 29
  backdating rules, 84
  family relationships, 76, 79, 116
  income tests, see Widow’s Class A Pension – income tests
  maintenance action requirement, 107
  overseas payments (portability provisions), 47, 115, 118
  prisoners and confined persons, 20, 35, 68–9
  rates, 21, 37, 61
  Remote Area Allowance, 2, 12
  replaced, 117
  residency requirements, 11, 13, 47, 118: dependent children, 33, 87
  students, 29, 69: parents of, 80, 110
  vocational rehabilitation and training, 19–20, 54
  war widow’s pensioners, 63, 74
  see also Additional Pension for Children; definitions; Guardian Allowance; Rent Assistance
Widow’s Class A Pension – income tests, 2–3, 43–4
  child concession/disregard, 44, 49, 107
  deprivation provisions, 88
  domestic payments, 55
  earnings credit, 89
  education supplement, 56, 108
  Fringe Benefits (Concession Cards), 4, 22, 61, 91
  Funeral Benefit, 4, 22, 61
  investment income, 3, 87
  maintenance income, 15, 36, 105–6
  National Socialist compensation (restitution) payments, 108
  New Enterprises Incentive Scheme (NEIS) payments, 35
  overseas payments, 115
Widow’s Class B Pension, see Widow B Pension
Widow’s Class C Pension (introduced 1942 [see 1908–1982 compendium]; replaced by 1 March 1989 by Widowed Person’s Allowance [which was renamed Bereavement Allowance in 1995]), 14
  assets test, 24–7, 43, 56–61, 88, 134: Fringe Benefits (Concession Cards)/Funeral Benefit, 27, 60–1, 75
  backdating rules, 84
  family relationships, 76, 79, 116
  income tests, see Widow’s Class C Pension – income tests
maintenance action requirement, 107
overseas payments (portability provisions), 47, 115
prisoners and confined persons, 20, 35, 68–9
rates, 21, 37, 61
Remote Area Allowance, 2, 12
replaced, 117
residency requirements, 11, 13, 47
students, 69
vocational rehabilitation and training, 19–20, 54
war widow’s pensioners, 63, 74
see also definitions; Rent Assistance
Widow’s Class C Pension – income tests, 2–3, 43–4
child concession/disregard, 44, 49, 107
deprivation provisions, 88
domestic payments, 55
earnings credit, 89
Fringe Benefits (Concession Cards), 4, 22, 61, 91
Funeral Benefit, 4, 22, 61
investment income, 3, 87
maintenance income, 36, 105–6
National Socialist compensation (restitution) payments, 108
New Enterprises Incentive Scheme (NEIS) payments, 35
overseas payments, 115
‘wife’, 6
wife maintenance, see spouse maintenance
Wife (Wife’s) Pension [introduced 1972 [see 1908–1982 compendium]; phased out and no new grants made after 1 July 1995, being replaced by Parenting Allowance from that date for persons with children], 29, 221, 314, 519
advance payments, 377–8, 423: special employment advance, 544–6
assets tests, see Wife Pension – assets tests
benevolent home references in Act, 14, 25, 382
Bereavement Payments, 160, 244
children’s additions payee, 5
Community Development Employment Projects (CDEP) Scheme participants, 540, 542:
Participant Supplement, 519, 543, 564
Disaster Relief Payment, 199
Education Entry Payment, 335, 531
family relationships, 76, 146–7, 484: ex-spouse co-residents, 79, 116
income tests, see Wife Pension – income tests
multiple entitlement preclusion provisions, 313
overseas payments, see Wife Pension – overseas payments
Pension Supplement, 529, 530
Pensioner Education Supplement, 485–6
phased out, 336, 399: replaced by Parenting Allowance, 330
prisoners and confined persons, 20, 35, 68–9: partners of, 20, 283
rates, see Wife Pension – rates
rehabilitation treatment and training, 19, 54
residency requirements, see Wife Pension – residency requirements
special employment advance, 544–6
special needs, 336
students, 29, 69
Telephone Allowance, 243–4, 270, 519: portability provisions, 568, 569
see also Additional Pension for Children; definitions; Pharmaceutical Allowance; Remote Area Allowance; Rent Assistance
Wife (Wife’s) Pension – assets tests, 24–7, 43, 56–61, 484, 530
  deprivation provisions, see Wife Pension – assets tests – deprivation provisions
  encumbrances and charges, 24, 58, 230: residential care accommodation bonds/charges, 434, 537, 538
  family home, see Wife Pension – assets tests – family home
  farmers and families, 230, 603
  financial hardship provisions, 26–7, 88, 223
  Fringe Benefits (Concession Cards), 27, 60–1, 75, 243: abolished, 269
  Funeral Benefit, 27, 60–1, 75
  funeral expenses and cemetery plots, prepaid, 24, 57
  funeral investments, 209
  indexation, 25, 60–1, 210
  insurance and compensation payments, 188
  life interests, 24, 57, 310
  loans, 59
  medically acquired HIV payments, 398
  money, 597
  native title rights and interests, 354
  Pension Loans Scheme, 26, 58, 59–60, 395–6
  pension reduction amount, 25, 281
  private companies and private trusts, 598–605
  special employment advance, 546
  superannuation, see superannuation and annuities – assets test treatment
Wife (Wife’s) Pension – assets tests – deprivation provisions, 25–6, 181, 190
  applied to disposal of exempt assets, 56, 538
  on ceasing employment, business or profession, 88
  period applying, 26, 181, 256
  private company and private trust disposals, 605
Wife (Wife’s) Pension – assets tests – family home, 24, 25, 27
  absent when caring, 375
  absent when in care situations/residential care, 25, 59, 189, 375, 537
  life interests, 24, 182, 310
  mortgages, 151, 230
  retirement village residents, 134, 182
  sale, 24, 58: to pay accommodation bonds, 538
  sale/leaseback arrangements, 248
  unrealisable asset, 223
Wife (Wife’s) Pension – compensation recovery provisions, 68, 114–15, 211, 301–3, 484
  action to claim, 177, 303
  Fringe Benefits (Concession Cards), 204
  periodic payments, 232, 249, 253, 302, 356: lump-sum payments treated as, 303, 378
  personal contributions, 318
Wife (Wife’s) Pension – compensation recovery provisions – lump-sum payments, 228
  Low Income Health Care Card income test, 356
  partner qualified for Veterans’ Entitlements Act payment, 378–9
  as periodic payments, 53, 303, 378
  personal injury compensation settlements, 114, 249, 355
  preclusion period, 249, 301, 421
Wife (Wife’s) Pension – income tests, 2–3, 43–4, 484, 530
  Aboriginal Employment Incentive Scheme payments, 236
  board and lodgings, value of, 152
  business income, 188, 208–9
  Community Development Employment Projects (CDEP) Scheme earnings, 540, 542
  compensation recovery provisions, see Wife Pension – compensation recovery provisions
deprivation provisions, 88, 181, 190, 605
domestic payments, 55
earnings, pensioners losing entitlement due to increase in, 358
exchange trading system arrangements, 363–4
Fringe Benefits, see Fringe Benefits (Concession Cards) – income tests
Funeral Benefit, 4, 22, 61
investment income, see investment income
legal and official proceeding, jurors and witnesses before, 186
loans, 151, 186: provided by pensioners, 180
maintenance income, 105–6, 149, 213
medically acquired HIV payments, 247, 284
National Socialist compensation (restitution) payments, 108, 171
New Enterprises Incentive Scheme (NEIS) payments, 35
overseas payments, 115
permissible income limits, see Wife Pension – permissible income limits
personal care support service payments, 186
private companies and private trusts, 598–605
residential care accommodation bonds and charges, 434, 537, 538
scholarships awarded outside Australia, 210
special employment advance, 546
Student Financial Supplement Scheme payments, 346
superannuation, see superannuation and annuities – income test treatments
training and work experience payments, 152, 186, 381
Wife (Wife’s) Pension – overseas payments, 172, 214, 259
comparable claim requirement, 300
income test exemption, 115
international agreement payments ceiling, 553
proportional portability rules, 47, 141, 551–2, 568, 569, 571
Wife (Wife’s) Pension – permissible income limits (free area), 43, 201, 530
child concession/disregard, 44, 49, 201, 530: student payments, 107, 158, 192
deeded interest rate (deeming rule) exemption, 189, 248, 385–6, 422
earnings credit, 89, 155, 190, 231, 417
indexation, 158
Wife (Wife’s) Pension – rates, 21, 158, 269
Goods and Services Tax (GST) compensation provisions, 529, 530
male total average weekly earnings benchmark, 435
partner in confinement, 283
partner not receiving pension, benefit etc., 232
Secretary’s discretion to pay reduced, 37
war widow’s pensioners, 63
Wife (Wife’s) Pension – residency requirements, 11, 13
dependent children, 33, 87
portability provisions, 47, 259, 552, 553, 571
refugees, 322, 347
‘with child’ dependent spouse rebate, 308, 309, 533
witnesses in legal proceedings, payments to, 186
wives, see couples; family relationships
women’s Age Pension age, 317
work, see employment
Work for the Dole (Approved Program of Work Supplement), 431–2, 467, 519, 531
work tests, see activity tests
Workplace Relations Act, 432
World War II National Socialist compensation (restitution), 108, 171
young beneficiaries (under 18 year-olds, except where otherwise indicated)
activity (work) tests exemption, 162, 271
assets test, 340, 341–2: extension to under 25 year-olds, 176
parental assets test, 175, 340, 342, 370
parental income test, see parental income test
see also homeless rate; independent young persons; parental income test; students
— beneficiaries
young beneficiaries – rates, 16
1983, 8
1984, 23
1985, 23, 41
1986, 41, 51
1988, 66, 97
1989, 66, 127
1990, 164, 165, 174
1991, 164
1992, 245
1995, 341
1998, 469–70, 482–3
2000, 593
couples, 174, 341, 482, 593
effect of parental assets test on, 175
effect of parental income test on, 99
homeless rate/Young Homeless Allowance, 51, 97, 127, 164
independent persons, 164, 341, 469, 593
indexation, 23, 66, 97, 165
newly released prisoners, 129
students, 34
Telephone Allowance, 244
training supplement ‘living-away-from-home’ component, 245
Youth Homeless Allowance, see homeless rate
young pensioners (under 21 year-olds), 35, 217, 591
Rent Assistance waiting period, 225, 239, 260
Telephone Allowance, 244
Wife Pension, 221
Youth Allowance (introduced 1 July 1998; replaced Austudy for students under 25 years [over 25 years in certain cases]), 459–78, 489–90, 519
Austudy payment recipients, 472, 606, 607
activity tests, 461, 467–9, 554–5; 594, 595
age qualifications, 465–6, 595
advance payments, 474, 556, 558–9: special employment advance, 544–6
assets tests, see Youth Allowance – family assets test; Youth Allowance – liquid assets test
backdating rules, 557
Community Development Employment Projects (CDEP) Scheme participation, 540–3:
Participant Supplement, 519, 543, 564
differences from Austudy Payment, 480
Fares Allowance, 488, 575–7
Goods and Services Tax (GST) compensation provisions, 529, 530
family actual means test, 473, 560, 585–90
family assets test, see Youth Allowance – family assets test
income tests, see Youth Allowance – income tests
independent persons, see independent young persons – Youth Allowance recipients
overseas payments (portability provisions), 467, 568–70
prisoners and confined persons, 549, 557–9
rates, 469–70, 476–7, 593
Ready Reserve Education Assistance Scheme payment recipients, 596
special employment advance, 544–6
Student Financial Supplement Scheme, 486–7, 560, 578–84
waiting periods, see Youth Allowance – waiting periods
Youth Allowance – family assets test, 472–3, 484, 530
business assets, 607
deprivation provisions, 538, 594, 605
money, 597
private companies and private trusts, 598–605
residential care accommodation bonds and charges, 537, 538
superannuation and annuities, 457: income streams, 503–9
Youth Allowance – income tests, 470–2, 484
Abstudy payments, 606
Community Development Employment Projects (CDEP) Scheme: earnings, 540, 542; Participant
Supplement, 543
income streams, 503–9
lump-sum payments, 502: income maintenance period applying to leave payments, 444, 566
parental, 471–2: fringe benefits, 534
permissible income limits (free area), 530
private companies and private trusts, 598–605
residential care accommodation bonds and charges, 537, 538
special employment advance, 546
Youth Allowance – liquid assets test, 474, 484, 566
deductions before applying, 488
hardship provisions, 442–3
special employment advance, 546
Youth Allowance – waiting periods
financial hardship provisions, 442–3
income maintenance period applying to leave payments, 444, 566
liquid assets test, 442–3, 474, 484, 488, 566
newly arrived residents, 474, 573–4
after seasonal work, 510–12
Youth Allowance Activity Agreements, 468–9
Youth Allowance Consolidation Act 2000, 460, 462, 535, 560, 575–96
Youth Disability Supplement, 217, 228
Youth Training Activity Agreements, 429
Youth Training Allowance, 338–42
advanced payments, 324
backdating rules, 417, 455
Education Entry Payment, 35
incapacity to work due to sickness/accident, 387–8
Mobility Allowance, 352, 358
not payable in lieu of Newstart Allowance breach penalty rate reduction, 429
replaced by Youth Allowance, 461
sharing accommodation with child/children receiving, 404
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