



**Families, Community Services and  
Indigenous Affairs and Other Legislation  
(2006 Budget and Other Measures) Act  
2006**

**No. 82, 2006**

**An Act to amend the law relating to social security,  
veterans' affairs, family assistance, family law,  
child support and taxation, and for related  
purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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**An Act to amend the law relating to social security,  
veterans' affairs, family assistance, family law,  
child support and taxation, and for related  
purposes**

*[Assented to 30 June 2006]*

**The Parliament of Australia enacts:**

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## 1 Short title

This Act may be cited as the *Families, Community Services and Indigenous Affairs and Other Legislation (2006 Budget and Other Measures) Act 2006*.

## 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	30 June 2006
2. Schedule 1, items 1 to 4	1 July 2006.	1 July 2006
3. Schedule 1, item 5	The day on which this Act receives the Royal Assent.	30 June 2006
4. Schedules 2 and 3	1 July 2006.	1 July 2006
5. Schedule 4	1 December 2006.	1 December 2006
6. Schedules 5 and 6	1 July 2006.	1 July 2006
7. Schedule 7	20 September 2006.	20 September 2006
8. Schedule 8	1 July 2006.	1 July 2006
9. Schedule 9	1 July 2005.	1 July 2005
10. Schedule 10	1 July 2006.	1 July 2006
11. Schedule 11	1 July 2002.	1 July 2002

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
12. Schedule 12, item 1	Immediately after the commencement of Schedule 9 to the <i>Family Law Amendment (Shared Parental Responsibility) Act 2006</i> .	
13. Schedule 12, item 2	Immediately after the commencement of items 3 to 104 of Schedule 8 to the <i>Family Law Amendment (Shared Parental Responsibility) Act 2006</i> .	
14. Schedule 12, item 3	Immediately after the commencement of Schedule 9 to the <i>Family Law Amendment (Shared Parental Responsibility) Act 2006</i> .	
15. Schedule 13	The day on which this Act receives the Royal Assent.	30 June 2006

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

### **3 Schedule(s)**

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## Schedule 1—FTB Part A income free area

### *A New Tax System (Family Assistance) Act 1999*

#### **1 Clause 19 of Schedule 1**

Omit “\$28,200”, substitute “\$40,000”.

#### **2 Subclause 3(1) of Schedule 4 (table item 13)**

Omit “1999”, substitute “2005”.

#### **3 Application**

- (1) The amendment made by item 1 applies in relation to family tax benefit for the 2006-2007 income year and later income years.
- (2) The amendment made by item 2 applies in relation to family tax benefit for the 2007-2008 income year and later income years.

#### **4 Transitional**

The amount referred to in column 1 of item 13 of the table in subclause 3(1) of Schedule 4 to the *A New Tax System (Family Assistance) Act 1999*, as amended by this Schedule, is not to be indexed on 1 July 2006.

### *Family Assistance, Social Security and Veterans' Affairs Legislation Amendment (2005 Budget and Other Measures) Act 2006*

#### **5 Schedule 1**

Repeal the Schedule.



## **Schedule 2—Large family supplement**

### ***A New Tax System (Family Assistance) Act 1999***

#### **1 Clause 34 of Schedule 1**

Omit “4 or more”, substitute “3 or more”.

#### **2 Clause 35 of Schedule 1 (formula)**

Omit “3”, substitute “2”.

## **Schedule 3—Extension of eligibility for utilities allowance**

### *Social Security Act 1991*

#### **1 Paragraphs 1061T(a) and (b)**

Repeal the paragraphs, substitute:

(a) either:

- (i) has reached pension age and is receiving an income support payment; or
- (ii) is receiving a widow allowance, a mature age allowance or a partner allowance; and

## **Schedule 4—Australian Government Disaster Recovery Payment**

### **Part 1—Main amendments**

#### *Social Security Act 1991*

##### **1 Subsection 23(1)**

Insert:

*adversely affected*, in relation to a major disaster, has the meaning given by section 1061L.

##### **2 Subsection 23(1)**

Insert:

*AGDRP*: see Australian Government Disaster Recovery Payment.

##### **3 Subsection 23(1)**

Insert:

*Australian Government Disaster Recovery Payment* or *AGDRP* means a payment under Part 2.24.

##### **4 Section 36**

Repeal the section, substitute:

##### **36 Major disaster**

- (1) The Minister may determine in writing that an event is a major disaster if the Minister is satisfied that the event is a disaster that has such a significant impact on individuals that a government response is required.
  - (2) Without limiting the matters to which the Minister may have regard in considering the impact of the event on individuals, the Minister must have regard to:
    - (a) the number of individuals affected; and
    - (b) the extent to which the nature or extent of the disaster is unusual.
-

- (3) The event:
  - (a) may be one that occurs naturally or otherwise; and
  - (b) may be one that occurs in Australia or outside Australia.
- (4) If the same event has an impact in 2 or more locations, the Minister may:
  - (a) make a single declaration under this section relating to some or all of the locations; or
  - (b) make 2 or more declarations under this section, each relating to one or more of the locations (whether or not the declarations cover all of the locations).

However, the Minister must not make a determination that relates both to a location in Australia and a location outside Australia.
- (5) A determination made under this section is not a legislative instrument.

## **5 Part 2.24 of Chapter 2**

Repeal the Part, substitute:

# **Part 2.24—Australian Government Disaster Recovery Payment**

## **Division 1—Qualification for Australian Government Disaster Recovery Payment**

### **1061K Qualification for Australian Government Disaster Recovery Payment**

- (1) A person is qualified for an Australian Government Disaster Recovery Payment if:
  - (a) the person is at least 16 years old, or is receiving a social security payment; and
  - (b) the person:
    - (i) is an Australian resident; or
    - (ii) is the holder of a visa that is in a class of visas determined by the Minister for the purposes of subparagraph 729(2)(f)(v); or
    - (iii) is receiving a social security payment; or

(iv) is an Australian citizen who is not an Australian resident and who is covered by a determination under subsection (3); and

(c) the person is adversely affected by a major disaster.

Note 1: For *Australian resident* see section 7.

Note 2: For *adversely affected* see section 1061L.

Note 3: For *major disaster* see section 36.

(2) The Minister may determine in writing that a specified class of Australian citizens who are not Australian residents can qualify for an AGDRP.

Note: For *Australian resident* see section 7.

(3) A determination made under subsection (2) is a legislative instrument, but section 42 of the *Legislative Instruments Act 2003* does not apply to the determination.

(4) A person cannot be qualified for more than one AGDRP in relation to the same major disaster.

### **1061L Meaning of *adversely affected***

(1) For the purposes of this Act, a person is *adversely affected* by a major disaster if the person is affected by the disaster in a way determined by the Minister in relation to the disaster.

(2) The Minister may determine in writing, in relation to a major disaster, the circumstances in which persons are to be taken to be adversely affected by the disaster.

(3) A determination made under this section is a legislative instrument, but section 42 of the *Legislative Instruments Act 2003* does not apply to the determination.

## **Division 2—Amount of Australian Government Disaster Recovery Payment**

### **1061M Amount of payment for disasters in Australia**

(1) The amount of an AGDRP payable to a person in relation to a major disaster that occurs in Australia is the sum of:

- (a) the adult rate for the financial year in which the major disaster is declared under section 36; and
- (b) if the person is the principal carer of one or more children—the amount worked out by multiplying the child rate for that financial year by the number of children for whom the person is the principal carer.

Note 1: For *major disaster* see section 36.

Note 2: For *principal carer* see subsections 5(15) to (24).

- (2) For the purposes of this Division, the *adult rate* for a financial year is:
  - (a) the amount that the Minister determines under subsection 1061P(1) to be the adult rate for the financial year; or
  - (b) if the Minister has not determined an adult rate for the financial year—the amount that the Minister last determined to be the adult rate for a previous financial year; or
  - (c) if the Minister has never determined an adult rate for any financial year—\$1,000.
- (3) For the purposes of this Division, the *child rate* for a financial year is:
  - (a) the amount that the Minister determines under subsection 1061P(2) to be the child rate for the financial year; or
  - (b) if the Minister has not determined a child rate for the financial year—the amount that the Minister last determined to be the child rate for a previous financial year; or
  - (c) if the Minister has never determined a child rate for any financial year—\$400.

### **1061N Amount of payment for disasters outside Australia**

The amount of an AGDRP payable to a person in relation to a major disaster that occurs outside Australia is the sum of:

- (a) the amount that the Minister determines under subsection 1061P(4) in relation to the disaster; and
- (b) if the person is the principal carer of one or more children—the amount worked out by multiplying the amount that the Minister determines under subsection 1061P(5) in relation to the disaster by the number of children for whom the person is the principal carer.

Note 1: For *major disaster* see section 36.

Note 2: For *principal carer* see subsections 5(15) to (24).

### **1061P Determinations of rates**

- (1) The Minister may determine in writing for the purposes of subsection 1061M(2) the adult rate for a financial year.
- (2) The Minister may determine in writing for the purposes of subsection 1061M(3) the child rate for a financial year.
- (3) A determination under subsection (1) or (2) must be made in the financial year preceding the year to which the determination relates.
- (4) The Minister may determine in writing for the purposes of paragraph 1061N(a) an amount not exceeding the adult rate for the financial year in which the determination is made.
- (5) The Minister may determine in writing for the purposes of paragraph 1061N(b) an amount not exceeding the child rate for the financial year in which the determination is made.
- (6) A determination made under this section is a legislative instrument, but section 42 of the *Legislative Instruments Act 2003* does not apply to the determination.

## Part 2—Other amendments

### *Income Tax Assessment Act 1997*

#### **6 Section 52-10 (after table item 2.1)**

Insert:

2AA.1	<b>Australian Government Disaster Recovery Payment</b>	Exempt	Exempt	Not applicable	Not applicable
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#### **7 Section 52-10 (table item 8.1)**

Repeal the item.

#### **8 Section 52-40 (after table item 2)**

Insert:

2AA	Australian Government Disaster Recovery Payment	Part 2.24	Not applicable	Not applicable
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#### **9 Section 52-40 (table item 8)**

Repeal the item.

### *Social Security Act 1991*

#### **10 Subsection 14A(1) (after paragraph (d) of the definition of *liquid assets*)**

Insert:

- (da) an amount of an AGDRP that the person received, if the Secretary is satisfied that the length of time since receiving the payment is still reasonable in the circumstances; or

#### **11 Subsection 19B(1) (definition of *liquid assets*)**

Omit all the words after paragraph (e), substitute:

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but does not include:

- (f) an amount that is a qualifying eligible termination payment for the purposes of Subdivision AA of Division 2 of Part III of the Income Tax Assessment Act; or
- (g) an amount of an AGDRP that the person received, if the Secretary is satisfied that the length of time since receiving the payment is still reasonable in the circumstances.

**12 Subsection 746(2)**

Omit “Subject to Part 2.24 (major disaster), the”, substitute “The”.

**13 Subsection 746(2) (note)**

Repeal the note.

**14 Subsection 771KE(2)**

Omit “Subject to Part 2.24 (major disaster), the”, substitute “The”.

**15 Subsection 771KE(2) (note)**

Repeal the note.

**16 Section 1061JJ**

Before “A crisis payment”, insert “(1)”.

**17 Section 1061JJ**

Omit “a disaster relief payment”, substitute “an AGDRP or other disaster relief payment”.

**18 At the end of section 1061JJ**

Add:

- (2) However, this section does not affect a person’s entitlement to a crisis payment in respect of an extreme circumstance if:
  - (a) the person has claimed the crisis payment; and
  - (b) the person subsequently qualifies for an AGDRP or other disaster relief payment in respect of the same extreme circumstance.

***Social Security (Administration) Act 1999***

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### **19 Subsection 16(6)**

Repeal the subsection, substitute:

- (6) The Secretary may approve a place or person outside Australia for the purposes of subsection (4) for the lodgment of:
  - (a) claims made under a scheduled international social security agreement; or
  - (b) claims for AGDRP in relation to a major disaster that occurred outside Australia.

### **20 After Subdivision F of Division 1 of Part 3**

Insert:

#### **Subdivision FA—Time limit for claims for AGDRP**

##### **27A Time limit for claim**

- (1) A claim for an AGDRP relating to a major disaster must be lodged within 6 months after the determination of the disaster under section 36 of the 1991 Act.
- (2) However, the claim may be lodged more than 6 months after the declaration if the Secretary is satisfied that:
  - (a) there are special circumstances applying to the person's claim that justify a late lodgment; and
  - (b) the claim is lodged within a reasonable period having regard to those circumstances.

### **21 Before subsection 31(2)**

Insert:

- (1) Section 29 does not apply to a claim for an AGDRP if the claim relates to a major disaster that occurred outside Australia.

### **22 After section 46**

Insert:

#### **46A Payment of AGDRP**

- (1) Unless the Secretary makes a determination under subsection (2), a person's AGDRP is to be paid in accordance with section 47.
-

- (2) If the Secretary considers that it is appropriate for a person's AGDRP to be paid by instalments, the Secretary may determine that the person's AGDRP is to be so paid.

**23 Subsection 47(1) (after paragraph (a) of the definition of *lump sum benefit*)**

Insert:

- (aa) AGDRP, except where the Secretary has made a determination under subsection 46A(2); or

**24 Subsection 47(1) (paragraph (c) of the definition of *lump sum benefit*)**

Repeal the paragraph.

**25 Paragraph 13(a) of Schedule 2**

Omit "a disaster relief payment", substitute "an AGDRP".

Note: The heading to clause 13 of Schedule 2 is altered by omitting "disaster relief payment" and substituting "AGDRP".

**26 After paragraph 13(b) of Schedule 2**

Insert:

- (ba) is in Australia when making that claim; and

**27 Clause 13 of Schedule 2**

Omit "the disaster relief payment", substitute "the AGDRP".

## Schedule 5—Maintenance income credit balances

### Part 1—Amendments

#### *A New Tax System (Family Assistance) Act 1999*

##### 1 Subsection 3(1)

Insert:

*maintenance income credit balance* has the meaning given by clause 24A of Schedule 1.

##### 2 Subsection 3(1)

Insert:

*registered entitlement*, of an individual, means the individual's entitlement to receive maintenance income from a particular payer, if the payer's liability to pay that maintenance income is an enforceable maintenance liability within the meaning of the *Child Support (Registration and Collection) Act 1988*.

##### 3 Before clause 19A of Schedule 1

Insert:

#### Subdivision A—Maintenance income test

##### 4 Clause 20 of Schedule 1

Before "This is", insert "(1)".

##### 5 Clause 20 of Schedule 1 (method statement, paragraph (b) of step 1)

Omit "paragraph (a).", substitute "paragraph (a); and".

##### 6 Clause 20 of Schedule 1 (method statement, at the end of step 1)

Add:

- (c) disregard any amount that, for the income year for which the individual's reduction for maintenance income is being worked out, is required under clause 24E to be depleted from a maintenance income credit balance of the individual and, if the individual is a member of a couple, from a maintenance income credit balance of the individual's partner.

### **7 At the end of clause 20 of Schedule 1**

Add:

- (2) Paragraph (c) of step 1 of the method statement in subclause (1) does not apply unless and until the individual has satisfied the FTB reconciliation conditions in section 32B of the Family Assistance Administration Act for all of the same-rate benefit periods (within the meaning of that section) that are included in the income year for which the individual's reduction for maintenance income is being worked out.

### **8 At the end of Division 5 of Part 2 of Schedule 1**

Add:

## **Subdivision B—Maintenance income credit balances**

### **24A Maintenance income credit balances**

- (1) A *maintenance income credit balance*, for a registered entitlement of an individual, is, at any particular time, the balance at that time of the accruals under clause 24B and the depletions under clause 24E in relation to that entitlement.
- (2) Despite subclause (1), a maintenance income credit balance for a registered entitlement at any particular time cannot exceed the total arrears owing from that registered entitlement for all income years for which the entitlement has existed.
- (3) If:
- (a) but for the condition in subclause 24B(3) not being met in relation to an income year, there would be an accrual to a

maintenance income credit balance of an individual for a day in that income year; and

- (b) after there has been an accrual under clause 24C for a day in a later income year or a depletion under clause 24E for a later income year, that condition is met in relation to the earlier income year;

the maintenance income credit balance is recalculated, taking into account the accrual for the day in the earlier income year before taking into account the accrual or depletion mentioned in paragraph (b).

- (4) This Subdivision continues to apply in relation to a maintenance income credit balance of an individual whether or not the individual or the individual's partner continues to be eligible for family tax benefit.

## **24B Accruals to a maintenance income credit balance**

### *Accrual if conditions are satisfied*

- (1) There is an accrual to a maintenance income credit balance for a registered entitlement of an individual, for a day in an income year, of the amount worked out under clause 24C for that day, if all the conditions in this clause are satisfied.

### *Conditions that must be satisfied*

- (2) Either or both of the following must apply:
- (a) the individual is eligible for family tax benefit for the day;
  - (b) if the individual is a member of a couple on the day—the individual's partner is eligible for family tax benefit for the day.
- (3) The eligible person must have satisfied the FTB reconciliation conditions in section 32B of the Family Assistance Administration Act for all of the same-rate benefit periods (within the meaning of that section) that are included in the income year.
- (4) The annualised amount of the maintenance income of the eligible person for the day must be less than the maintenance income free area that applied to the eligible person for that day.

- (5) The maintenance income that the individual received in the income year from the registered entitlement must be less than the amount due in the income year from the registered entitlement.

#### **24C Amount of accrual to a maintenance income credit balance**

- (1) This is how to work out the amount of the accrual under clause 24B, for a day in an income year, to a maintenance income credit balance for a registered entitlement of an individual who is, or is the partner of, an eligible person under subclause 24B(2):

*Method statement*

*Step 1.* Work out the global maintenance entitlement of the eligible person for the day using clause 24D.

*Step 2.* Identify the lower of:

- (a) that global maintenance entitlement; and
- (b) the maintenance income free area that applied to the eligible person for the day.

*Step 3.* Subtract from the lower amount identified in step 2 the annualised amount of the maintenance income of the eligible person for the day.

*Step 4.* Divide the result of step 3 by 365.

*Step 5.* Unless subclause (2) applies to the individual, the amount that accrues to the maintenance income credit balance of the individual for the day is the amount worked out under step 4.

If subclause (2) applies to the individual, take the amount worked out under step 4 and apply the method statement in subclause (2).

- (2) If either or both of the following apply:
- (a) the individual has more than one registered entitlement for the day in respect of which the condition in subclause 24B(5) is met;

- (b) if the individual is a member of a couple on the day—the individual’s partner has one or more registered entitlements for the day in respect of which the condition in subclause 24B(5) is met;

this is how to work out the amount of the accrual under clause 24B, for a day in an income year, to each of the maintenance income credit balances (the *relevant balances*) for those entitlements:

*Method statement*

- Step 1.* Work out the daily cap for each relevant balance. The **daily cap** for a relevant balance is the excess of the amount due in the income year from the registered entitlement to which the balance relates over the maintenance income received in the income year from the registered entitlement, divided by 365.
- Step 2.* Distribute the amount worked out under step 4 of the method statement in subclause (1) equally among each relevant balance, up to the amount of the daily cap for the relevant balance.
- Step 3.* Distribute any remaining amount equally among each relevant balance for which the daily cap has not been reached, up to the amount of the daily cap for the relevant balance.
- Step 4.* Reapply step 3 to any remaining amount until:
- (a) there is no remaining amount to distribute; or
  - (b) the daily cap for each relevant balance is reached.
- Step 5.* The amount that accrues to each of the relevant balances for the day is the sum of the amount distributed under step 2 and any additional amounts distributed under steps 3 and 4.

- (3) To avoid doubt, clauses 24B and 24C apply only once for a day in relation to any relevant balance.



## **24D Global maintenance entitlement of an eligible person**

- (1) For the purposes of step 1 of the method statement in subclause 24C(1), the *global maintenance entitlement* of the eligible person under subclause 24B(2) for the day is the sum of:
- (a) the amounts worked out using the formula in subclause (2) for:
    - (i) each registered entitlement for the day of the eligible person; and
    - (ii) if the eligible person is a member of a couple on the day—each registered entitlement for the day of the eligible person's partner; and
  - (b) any amounts worked out under subclause (3); and
  - (c) the annualised amount of any capitalised maintenance income of the eligible person and, if the eligible person is a member of a couple on the day, of the eligible person's partner, for the day; and
  - (d) the annualised amount of any maintenance income of the eligible person and, if the eligible person is a member of a couple on the day, of the eligible person's partner, for the day:
    - (i) that is not from a registered entitlement; and
    - (ii) that is not capitalised maintenance income.
- (2) For the purposes of paragraph (1)(a), the formula is:

$$\frac{\text{Amount due in the income year from the registered entitlement}}{\times} \frac{\text{Number of days in the income year}}{\text{Number of days in the income year for which the eligible person or partner had the registered entitlement}}$$

- (3) If:
- (a) in respect of:
    - (i) a registered entitlement for the day of the eligible person; or
    - (ii) if the eligible person is a member of a couple on the day—a registered entitlement for the day of the eligible person's partner;
- the maintenance income received by the eligible person or partner for the income year exceeds the amount due in the income year from the entitlement; and
-

- (b) that excess, or any part of it (the *relevant excess*), is not disregarded for the purposes of paragraph (c) of step 1 of the method statement in clause 20;

an amount for the purposes of paragraph (1)(b) is worked out by using this formula:

$$\text{Amount of the relevant excess in respect of the registered entitlement} \times \frac{\text{Number of days in the income year}}{\text{Number of days in the income year for which the eligible person or partner had the registered entitlement}}$$

#### **24E Depletions from a maintenance income credit balance**

- (1) There is a depletion from the maintenance income credit balance for a registered entitlement of an individual, for an income year, of the amount worked out under subclause (2), if:
- (a) the income year has ended; and
  - (b) the maintenance income that the individual received in the income year from the entitlement is more than the amount due in the income year from the entitlement.
- (2) The amount by which the maintenance income credit balance is depleted is the lower of:
- (a) the excess of the maintenance income that the individual received in the income year from the entitlement over the amount due in the income year from the entitlement; and
  - (b) the amount of the maintenance income credit balance.
- (3) For the purposes of paragraphs (1)(b) and (2)(a), in working out the maintenance income received in an income year or the amount of maintenance income due in an income year:
- (a) disregard any maintenance income received or due for an FTB child for whom the FTB child rate under clause 7 does not exceed the base FTB child rate (see clause 8); and
  - (b) disregard the operation of clause 11 (sharing of family tax benefit) in applying paragraph (a).

## **Part 2—Application and transitional provisions**

### **9 Application**

- (1) Paragraph (c) of step 1 of the method statement in subclause 20(1) of Schedule 1 to the *A New Tax System (Family Assistance) Act 1999* applies to family tax benefit for the 2006-2007 income year and later income years.
- (2) Subdivision B of Division 5 of Part 2 of Schedule 1 to the *A New Tax System (Family Assistance) Act 1999* applies to the 2000-2001 income year and later income years.

### **10 Transitional**

- (1) In working out whether there is an accrual to a maintenance income credit balance for a day in the 2000-2001, 2001-2002 or 2002-2003 income year, the condition in subclause 24B(3) of Schedule 1 to the *A New Tax System (Family Assistance) Act 1999* is taken to require that, in relation to the income year for which the accrual is being worked out, the eligible person under subclause 24B(2) of Schedule 1 to that Act does not have a non-lodger debt.
- (2) For the purposes of subitem (1), an eligible person has a non-lodger debt in relation to an income year if:
  - (a) the conditions in subsection 28(1) of the *A New Tax System (Family Assistance) (Administration) Act 1999* are satisfied for a determination that relates to the eligible person; and
  - (b) the Secretary has varied the determination under subsection 28(2) or (6) of that Act; and
  - (c) because of that variation, the amount of family tax benefit paid in respect of the income year has become a debt under section 71 of that Act; and
  - (d) as at 1 July 2006, the Secretary has not varied that determination under subsection 28(3) or (4) of that Act.

## Schedule 6—Extension of carer payment for carers of severely disabled children

### *Social Security Act 1991*

#### **1 Subsection 197(1) (definition of *profoundly disabled child*)**

After “(2)”, insert “, (2AA)”.

#### **2 After subsection 197(2)**

Insert:

(2AA) A child is a *profoundly disabled child* if:

- (a) the child has either:
  - (i) a severe intellectual, psychiatric or behavioural disability; or
  - (ii) a severe intellectual, psychiatric or behavioural medical condition; and
- (b) the child, because of the disability or condition, needs continuous personal care for:
  - (i) 6 months or more; or
  - (ii) if the child’s condition is terminal and the child’s life expectancy is less than 6 months—the remainder of the child’s life; and
- (c) the child is at least 6, and under 16, years of age; and
- (d) because of the child’s disability or condition, the child does one or more of the following:
  - (i) repeatedly engages in dangerous behaviour that is, or that gives rise to, a significant risk (whether immediate or long-term) to the child’s health or safety and that, without carer intervention, would result in the child suffering sustained tissue or bodily damage, or death;
  - (ii) repeatedly engages in aggressive or violent behaviour that is, or that gives rise to, a significant risk to the health or safety of others, or that results in significant property damage, as a result of which the child is regularly or permanently excluded from community programs, activities, services or facilities;

- (iii) repeatedly engages in severe sexually deviant or sexually inappropriate behaviour, as a result of which the child is regularly or permanently excluded from community programs, activities, services or facilities.

### **3 Subsection 198(8)**

After “profoundly disabled child”, insert “within the meaning of subsection 197(2) or (2A)”.

### **4 At the end of section 198**

Insert:

*Carers of certain profoundly disabled children*

- (10) If the care receiver is a profoundly disabled child within the meaning of subsection 197(2AA):
  - (a) the person must provide continuous personal care for the child within the meaning of paragraph (b) of that subsection; and
  - (b) the provision of that care by the person must severely restrict the person’s capacity to undertake paid employment.

## Schedule 7—Special disability trusts

### Part 1—Amendment of the Social Security Act 1991

#### 1 Subsection 23(1)

Insert:

*immediate family member*, of a person, means an individual:

- (a) who is a natural parent, adoptive parent or step-parent of the person; or
- (b) who is, or was when the person was under 18 years of age, a legal guardian of the person; or
- (c) who is a grandparent of the person; or
- (d) who is a sibling of the person.

#### 2 Subsection 23(1)

Insert:

*principal beneficiary*, of a special disability trust, has the meaning given by subsection 1209M(1).

#### 3 Subsection 23(1)

Insert:

*sibling*, of a person, includes a half-brother, half-sister, adoptive brother, adoptive sister, stepbrother or stepsister of the person, but does not include a foster-brother or foster-sister of the person.

#### 4 Subsection 23(1)

Insert:

*special disability trust* has the meaning given by section 1209L.

#### 5 Subsection 1123(1) (note)

Repeal the note, substitute:

Note 1: If Part 3.14A or 3.14B applies in relation to the transfer by a person of a qualifying interest or an eligible interest in a farm or relevant farm asset, that transfer and certain transfers by the person's partner are taken not to be disposal of assets (see sections 1185D and 1185T).

Note 2: Under Division 4 of Part 2.24, certain transfers of assets to special disability trusts can be taken not to be disposals of the assets (but this can be subject to a limit on the aggregate value of the transfers).

## 6 At the end of section 1124

Add:

Note: If subsection 1209ZA(2) applies in relation to the transfer of an asset to a special disability trust, that subsection has the effect of reducing the amount of the disposal or disposition.

## 7 Section 1190 (after table item 34)

Insert:

35. Assets value limit of special disability trust (see section 1209Y) special disability trust AVL [subsection 1209Y(3)]

## 8 Subsection 1191(1) (after table item 24)

Insert:

- |     |                              |        |          |   |          |
|-----|------------------------------|--------|----------|---|----------|
| 25. | special disability trust AVL | 1 July | December | most recent December quarter before reference quarter | \$250.00 |
|-----|------------------------------|--------|----------|---|----------|

## 9 After subsection 1192(5)

Insert:

- (5A) The first indexation of an amount under item 25 of the CPI Indexation Table in subsection 1191(1) is to take place on 1 July 2007.

## 10 After subsection 1207X(2)

Insert:

- (2A) The only *attributable stakeholder* of a special disability trust is the principal beneficiary of the trust.

Note 1: For *special disability trust*, see section 1209L.

Note 2: For *principal beneficiary* of a special disability trust, see subsection 1209M(1).

## 11 At the end of subsection 1207Y(1)

Add:

Note: For attribution of the income of a special disability trust, see section 1209V.

## 12 At the end of subsection 1208E(1)

Add:

Note: For attribution of the assets of a special disability trust, see section 1209Y.

## 13 After Part 3.18

Insert:

# Part 3.18A—Private financial provision for certain people with disabilities

## Division 1—Special disability trusts

### 1209L What is a *special disability trust*?

A trust is a *special disability trust* if the following requirements of this Division are complied with:

- (a) the beneficiary requirements (see section 1209M);
- (b) the trust purpose requirements (see section 1209N);
- (c) the trust deed requirements (see section 1209P);
- (d) the trustee requirements (see section 1209Q);
- (e) the trust property requirements (see section 1209R);
- (f) the reporting requirements (see section 1209S);
- (g) the audit requirements (see section 1209T).

Note: The Secretary may waive one or more requirements in certain circumstances (see section 1209U).

### 1209M Beneficiary requirements

#### *Single beneficiary rule*

- (1) The trust must have no more than one beneficiary (the *principal beneficiary*), not including any residuary beneficiary.



*Impairment or disability conditions*

- (2) If the principal beneficiary has reached 16 years of age:
- (a) the beneficiary must:
    - (i) have an impairment that would qualify the person for disability support pension; or
    - (ii) be receiving invalidity service pension under Part III of the Veterans' Entitlements Act; or
    - (iii) be receiving income support supplement granted on the ground set out in subparagraph 45A(1)(b)(iii) of the Veterans' Entitlements Act; and
  - (b) the beneficiary must:
    - (i) have a disability that would, if the person had a sole carer, qualify the carer for carer payment or carer allowance; or
    - (ii) be living in an institution, hostel or group home in which care is provided for people with disabilities, and for which funding is provided (wholly or partly) under an agreement, between the Commonwealth, the States and the Territories, nominated by the Secretary under subsection (3); and
  - (c) the beneficiary must have a disability as a result of which he or she is not working, and has no likelihood of working, for a wage that is at or above the relevant minimum wage.

Note: For *relevant minimum wage*, see subsection 23(1).

- (3) The Secretary may, by legislative instrument, nominate an agreement for the purpose of subparagraph (2)(b)(ii).
- (4) If the principal beneficiary is under 16 years of age, he or she must be a profoundly disabled child within the meaning of section 197.

*Living beneficiary rule*

- (5) A trust stops being a special disability trust when the principal beneficiary dies.

*Single trust rule*

- (6) A trust is not a special disability trust for a particular principal beneficiary if, at the time of its creation, there is already another trust in existence for that person that is:

- (a) a special disability trust; or
- (b) a special disability trust within the meaning of the Veterans' Entitlements Act.

### **1209N Trust purpose requirements**

*Sole purpose—care and accommodation for principal beneficiary*

- (1) Subject to this section, the sole purpose of the trust during the lifetime of the principal beneficiary, as provided by the trust deed for the trust, must be to meet reasonable care and accommodation needs of the beneficiary.

Note: The provision of care and accommodation for the principal beneficiary is also dealt with at section 1209R.

- (2) The trust may have purposes, ancillary to the purpose mentioned in subsection (1), that are necessary or desirable to facilitate the achievement of that purpose.

*Reasonable care and accommodation needs*

- (3) If guidelines are made under subsection (4), for the purposes of this section the reasonable care and accommodation needs of a principal beneficiary of a special disability trust must be decided in accordance with the guidelines.
- (4) The Secretary may, by legislative instrument, make guidelines for deciding what are, and what are not, reasonable care and accommodation needs for principal beneficiaries of special disability trusts.

### **1209P Trust deed requirements**

*Compliance with determination*

- (1) If a determination is made under subsection (2), the trust deed for the trust must comply with the determination.
  - (2) The Secretary may, by legislative instrument, determine one or more of the following:
    - (a) the form of the trust deed required for a special disability trust;
    - (b) provisions which must be included in the trust deed;
-

- (c) the form of those provisions;
- (d) provisions which cannot be included in the trust deed.

*Contravention of trust deed*

- (3) A person must not contravene a provision of the trust deed that is required by this section to be included in the deed (whether or not the provision is required to be included in any particular form).

**1209Q Trustee requirements**

- (1) A trustee of the trust who is an individual must:
  - (a) be an Australian resident; and
  - (b) not have been convicted at any time (including a time before the commencement of this section) of any of the following offences:
    - (i) an offence of dishonest conduct against, or arising out of, a law of the Commonwealth, a State, a Territory or a foreign country;
    - (ii) an offence against, or arising out of, this Act, the Administration Act or the Veterans' Entitlement Act; and
  - (c) not have been disqualified at any time (including a time before the commencement of this section) from managing corporations under the *Corporations Act 2001*.
- (2) In addition, if a trustee of the trust is a corporation, subsection (1) applies to each director of the trustee.

**1209R Trust property requirements**

- (1) The assets of the trust must not include any asset transferred to the trust by the principal beneficiary of the trust, or the principal beneficiary's partner, unless:
    - (a) the transferred asset is all or part of a bequest, or of a superannuation death benefit; and
    - (b) the transferor received the bequest or superannuation death benefit not more than 3 years before transferring the transferred asset.
  - (2) The assets of the trust must not include any compensation received by or on behalf of the principal beneficiary.
-

- (3) The trust must not be used to pay an immediate family member, or a child, of the principal beneficiary for the provision to the beneficiary of:

- (a) care services; or
- (b) services for the repair or maintenance of the beneficiary's accommodation.

Note: For *immediate family member*, see subsection 23(1).

- (4) The trust must not be used to purchase or lease property from an immediate family member, or a child, of the principal beneficiary, even if the property is to be used for the beneficiary's accommodation.

Note: For *immediate family member*, see subsection 23(1).

- (5) In this section:

*child*, of a principal beneficiary, means the natural child, adopted child or step-child of the beneficiary (no matter how old the child or step-child is).

*property* includes:

- (a) a right to accommodation for life in a residence; and
- (b) a life interest in a residence.

### **1209S Reporting requirements**

- (1) The trustees of the trust must, on or before 31 March each year, give the Secretary written financial statements about the trust in relation to the financial year ending on 30 June in the previous year.
- (2) The financial statements must be prepared by:
- (a) if a determination is made under subsection (4) that requires such financial statements to be prepared by a person with stated qualifications—such a person; or
  - (b) whether or not such a determination is made—a person approved by the Secretary for the purpose.
- (3) If a determination is made under subsection (4) that requires financial statements to include information of a stated kind, the financial statements must include information of that kind.

- (4) The Secretary may, by legislative instrument, make determinations for the purposes of this section.

### **1209T Audit requirements**

#### *Trustee duties*

- (1) The trustees of the trust must, within a reasonable time after receiving a request under subsection (3):
- (a) cause an audit of the trust to be carried out in relation to the period mentioned in subsection (2); or
  - (b) if, at the time of the request for the audit, an audit (the ***earlier requested audit***) of the trust had already been carried out, or was being carried out, for the purpose of this section in relation to that period—give a copy of the report of the earlier requested audit to the person making the request.

#### *Audit period*

- (2) The audit must relate to:
- (a) the financial year ending on the 30 June last preceding the request; or
  - (b) if a determination is made under subsection (7) that provides for a different period—that period.

#### *Who may request audit*

- (3) The following persons may request an audit of the trust for the purposes of this section:
- (a) the principal beneficiary;
  - (b) an immediate family member of the principal beneficiary;
  - (c) a person who is, under the law of the Commonwealth, a State or a Territory, the legal guardian or financial administrator of the principal beneficiary;
  - (d) a person who is otherwise acting as the principal beneficiary's guardian on a long-term basis;
  - (e) the Secretary.

Note: For ***immediate family member***, see subsection 23(1).

*Copies of audit report*

- (4) If an audit report for a trust is given to the trustees for the purpose of subsection (1), the trustees must, within a reasonable time, give a copy of the report to:
- (a) the person requesting the audit; and
  - (b) if the guardian or administrator mentioned in paragraph (3)(c) did not request the audit—the guardian or administrator; and
  - (c) if the Secretary did not request the audit—the Secretary.

*Auditor qualifications and required information*

- (5) The audit must be prepared by:
- (a) if a determination is made under subsection (7) that requires such audits to be prepared by a person with stated qualifications—such a person; or
  - (b) whether or not such a determination is made—a person approved by the Secretary for the purpose.
- (6) If a determination is made under subsection (7) that requires audits requested under this section to include information of a stated kind, the audit must include information of that kind.
- (7) The Secretary may, by legislative instrument, make determinations for the purposes of this section.

**1209U Waiver of contravention of this Division**

- (1) A contravention of a requirement of this Division concerning a particular matter, in relation to a trust that would be a special disability trust if it were not for the contravention, does not prevent the trust being a special disability trust if:
- (a) the Secretary, by written notice (a *waiver notice*) to the trustees, waives the requirement as it concerns that matter; and
  - (b) in a case where the waiver notice requires the trustees to comply with any conditions relating to the matter—the trustees comply with those conditions within the time or times (if any) stated in the waiver notice.

- (2) A waiver notice has effect, subject to any conditions mentioned in paragraph (1)(b):
  - (a) from:
    - (i) the time of the contravention; or
    - (ii) if the waiver notice states a time for the start of its period of effect that is after the time of the contravention—the stated time; and
  - (b) if the waiver notice states a time for the end of its period of effect—until the stated time.
- (3) If guidelines are made under subsection (4), a decision in relation to giving a waiver notice to the trustees of the trust must be made in accordance with the guidelines.
- (4) The Secretary may, by legislative instrument, make guidelines for deciding any or all of the following:
  - (a) whether or not to give waiver notices to trustees of trusts;
  - (b) what conditions to include in waiver notices;
  - (c) the periods during which waiver notices are to have effect.

## **Division 2—Income of special disability trusts**

### **1209V Attribution of income**

- (1) For the purposes of this Act, an amount of income that a special disability trust derives is taken not to be income received by any individual.

Note: For *special disability trust*, see section 1209L.

- (2) This section has effect despite Division 7 of Part 3.18 and any other provisions of this Act.

### **1209X Income amounts from special disability trusts**

An income amount that the principal beneficiary of a special disability trust receives is not income of the beneficiary for the purposes of this Act to the extent that consideration for the income amount was provided by a distribution from the trust.

Note 1: For *income amount*, see section 8.

Note 2: For *special disability trust*, see section 1209L.

### Division 3—Assets of special disability trusts

#### 1209Y Attribution of assets

- (1) For the purposes of this Act, the assets of a special disability trust are not to be included in the assets of the principal beneficiary of the trust.

Note: For *special disability trust*, see section 1209L.

- (2) However, this section does not apply to the extent that the value of the assets owned by the trust exceeds the trust's asset value limit.

- (3) The *asset value limit* of a special disability trust is \$500,000.

Note: This amount is indexed annually on 1 July (see sections 1191 to 1194).

- (4) For the purposes of subsection (2), disregard the value of any right or interest of the trust in the principal home of the principal beneficiary of the trust.

Note: For *principal home*, see subsections 11(5) to (7).

- (5) This section has effect despite Division 8 of Part 3.18 and any other provisions of this Act.

### Division 4—Transfers to special disability trusts

#### 1209Z Effect of certain transfers to special disability trusts

- (1) If a person transfers an asset (the *transferred asset*) to a special disability trust, the transfer is taken not to be a disposal of the asset (within the meaning of section 1123) if:

(a) the person is an immediate family member of the principal beneficiary of the trust; and

(b) the person, or the person's partner:

(i) is receiving a social security pension and has reached pension age; or

(ii) is receiving a service pension and has reached pension age within the meaning of the Veterans' Entitlements Act; or



- (iii) is receiving income support supplement and has reached qualifying age within the meaning of subsection 45A(2) of the Veterans' Entitlements Act; and
- (c) the person receives no consideration, and is not entitled to any consideration, for the transfer; and
- (d) the transfer is unconditional; and
- (e) the value of the transferred asset does not exceed \$500,000; and
- (f) in a case where there has already been a transfer to which this section has applied (an *exempt transfer*), by that person or any other person, to the trust or any other special disability trust that had the same principal beneficiary—the sum of:
  - (i) the values of all of the assets transferred, by exempt transfers that have already been made, to the trust or any other special disability trust that had the same principal beneficiary; and
  - (ii) the value of the transferred asset;does not exceed \$500,000.

Note 1: For *special disability trust*, see section 1209L.

Note 2: For *immediate family member*, see subsection 23(1).

Note 3: For *pension age* (except for the purposes of subparagraph (1)(b)(ii) of this section), see subsections 23(5A) to (5D).

Note 4: For *social security pension*, *service pension* and *income support supplement*, see subsection 23(1).

(2) This section has effect subject to sections 1209ZA and 1209ZD.

(3) In this section:

*other special disability trust* includes a special disability trust within the meaning of the Veterans' Entitlements Act.

*value*, of an asset transferred to a special disability trust, means the market value of the asset at the time of the transfer.

### **1209ZA The effect of exceeding the \$500,000 limit**

- (1) If section 1209Z would apply to a transfer of an asset except for the fact that the value of the transferred asset exceeds \$500,000, that section does not prevent the transfer from being a disposal or

disposition of the asset, but the amount of the disposal or disposition is taken to be the amount of the excess.

- (2) If:
- (a) section 1209Z would apply to a transfer of an asset but for the fact that the sum of:
    - (i) the values of all of the exempt transfers that have already been made to the trust or any other special disability trust that had the same principal beneficiary; and
    - (ii) the value of the transferred asset; exceeds \$500,000; and
  - (b) that sum would not exceed \$500,000 if the value of the transferred asset were disregarded;
- that section does not prevent the transfer from being a disposal of the asset, but the amount of the disposal or disposition is taken to be the amount of the excess referred to in paragraph (a).
- (3) This section has effect subject to section 1209ZD.
- (4) In this section:

*other special disability trust* includes a special disability trust within the meaning of the Veterans' Entitlements Act.

*value*, of an asset transferred to a special disability trust, means the market value of the asset at the time of the transfer.

**1209ZB Transfers by the immediate family members prior to reaching pension age etc.**

- (1) If:
- (a) an immediate family member of the principal beneficiary of a special disability trust transfers an asset to the trust; and
  - (b) at the time of the transfer, neither the immediate family member nor the partner of the immediate family member is a person who:
    - (i) is receiving a social security pension and has reached pension age; or
    - (ii) is receiving a service pension and has reached pension age within the meaning of the Veterans' Entitlements Act; or
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- (iii) is receiving income support supplement and has reached qualifying age within the meaning of subsection 45A(2) of the Veterans' Entitlements Act;

the immediate family member is taken for the purposes of this Division only to transfer the asset to the trust at the earliest time at which subparagraph (b)(i), (ii) or (iii) applies to the immediate family member or partner.

Note 1: For *immediate family member*, see subsection 23(1).

Note 2: For *special disability trust*, see section 1209L.

Note 3: For *pension age* (except for the purposes of subparagraph (1)(b)(ii) of this section), see subsections 23(5A) to (5D).

Note 4: For *social security pension, service pension and income support supplement*, see subsection 23(1).

- (2) However, if under subsection (1) transfers of assets to the trust by different immediate family members are taken to have been made on the same day, the transfers are taken to have been made on that day in the order in which they would have been taken to be made but for this Division.

Note: For *immediate family member*, see subsection 23(1).

- (3) This section does not affect the operation of Part 3.12 or any other provision of this Act outside of this Division.

### **1209ZC Transfers by principal beneficiaries or partners**

- (1) If a person transfers an asset to a special disability trust, the transfer is taken not to be a disposal of the asset (within the meaning of section 1123) if:
- (a) the person is the principal beneficiary of the trust, or the principal beneficiary's partner; and
  - (b) the person receives no consideration, and is not entitled to any consideration, for the transfer; and
  - (c) the transfer is unconditional.

Note 1: For *special disability trust* see section 1209L.

Note 2: Section 1209R limits the circumstances in which the principal beneficiary or the principal beneficiary's partner can transfer assets to the trust.

- (2) This section has effect subject to section 1209ZD.

### 1209ZD Cessation of special disability trusts

- (1) If:
- (a) a special disability trust ceases to exist or ceases to be a special disability trust; and
  - (b) a person had transferred an asset to the trust during the period of 5 years immediately preceding the cessation; and
  - (c) section 1209Z, 1209ZA or 1209ZC applied to the transfer;
- then the transfer is taken, after the cessation, to be a disposal or disposition of the asset that occurred at the time of the transfer.
- (2) The amount of the disposal or disposition is taken to be the amount worked out using the formula:

$$\left( \text{Asset value} \times \frac{\text{Final value of trust assets}}{\text{Initial value of trust assets}} \right) + \text{Subsection 1209ZA(2) amount}$$

where:

**asset value** means:

- (a) if section 1209Z or 1209ZC applied to the transfer—the value of the asset at the time of the transfer; or
- (b) if subsection 1209ZA(1) applied to the transfer—\$500,000; or
- (c) if subsection 1209ZA(2) applied to the transfer—the difference between the value of the asset at the time of the transfer and the amount that was taken under that subsection to be the amount of the disposal or disposition of the asset.

**final value of trust assets** means the value of all of the assets of the trust at the time of the cessation.

**initial value of trust assets** means the value of all of the assets of the trust at the time of the transfer.

**subsection 1209ZA(2) amount** means the amount (if any) that was taken under subsection 1209ZA(2) to be the amount of the disposal or disposition of the asset.

- (3) If the special disability trust ceases to exist, or ceases to be a special disability trust, because the principal beneficiary dies, the value of the asset at the time of the transfer is taken for the purposes of this section to be the value of so much (if any) of the
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asset as has not been returned to the person who had transferred the asset to the trust.

- (4) This section does not affect the application of section 1209Z, 1209ZA or 1209ZC to the transfer prior to the cessation.

### **1209ZE Effect of this Division**

This Division (other than section 1209ZB) has effect despite Division 2 of Part 3.12 and any other provisions of this Act.

## **14 Transitional—trusts created before 20 September 2006**

- (1) For a trust created before 20 September 2006, a failure to comply with a requirement of Division 1 of Part 3.18A of the *Social Security Act 1991* concerning a particular matter does not prevent the trust being a special disability trust if:
- (a) the Secretary, by written notice (an *exemption notice*) to the trustees, exempts the trust from the requirement as it concerns that matter; and
  - (b) in a case where the exemption notice requires the trustees to comply with any conditions relating to the matter—the trustees comply with those conditions within the period (if any) stated in the exemption notice.

Note: For *special disability trust*, see section 1209L of the *Social Security Act 1991*.

- (2) A period stated in an exemption notice for the purpose of paragraph (1)(b) must end at or before the end of 30 June 2007.
- (3) An exemption notice has effect, subject to any conditions mentioned in paragraph (1)(b):
- (a) from:
    - (i) the start of 20 September 2006; or
    - (ii) if the exemption notice states a time for the start of its period of effect that is after 20 September 2006—the stated time; and
  - (b) until:
    - (i) the end of 30 June 2007; or
    - (ii) if the exemption notice states a time for the end of its period of effect that is before the end of 30 June 2007—the stated time.

**Schedule 7** Special disability trusts

**Part 1** Amendment of the Social Security Act 1991

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- (4) If guidelines are made under subitem (5), a decision in relation to giving an exemption notice to the trustees of the trust must be made in accordance with the guidelines.
- (5) The Secretary may, by legislative instrument, make guidelines for deciding any or all of the following:
  - (a) whether or not to give exemption notices to trustees of trusts;
  - (b) what conditions to include in exemption notices;
  - (c) the periods for compliance with conditions in exemption notices;
  - (d) the periods during which exemption notices are to have effect.

## **Part 2—Amendment of the Veterans' Entitlements Act 1986**

### **15 Section 5 (index of definitions)**

Insert the following entry in its appropriate alphabetical position, as determined on a letter-by-letter basis:

immediate family member 5Q(1)

### **16 Section 5 (index of definitions)**

Insert the following entry in its appropriate alphabetical position, as determined on a letter-by-letter basis:

principal beneficiary 5Q(1)

### **17 Section 5 (index of definitions)**

Insert the following entry in its appropriate alphabetical position, as determined on a letter-by-letter basis:

sibling 5Q(1)

### **18 Section 5 (index of definitions)**

Insert the following entry in its appropriate alphabetical position, as determined on a letter-by-letter basis:

special disability trust 5Q(1)

### **19 Subsection 5Q(1)**

Insert:

*immediate family member*, of a person, means an individual:

- (a) who is a natural parent, adoptive parent or step-parent of the person; or
- (b) who is, or was when the person was under 18 years of age, a legal guardian of the person; or
- (c) who is a grandparent of the person; or
- (d) who is a sibling of the person.

### **20 Subsection 5Q(1)**

Insert:

*principal beneficiary*, of a special disability trust, has the meaning given by subsection 52ZZZWA(1).

## 21 Subsection 5Q(1)

Insert:

*sibling*, of a person, except for the purposes of sections 123 to 123E, includes a half-brother, half-sister, adoptive brother, adoptive sister, stepbrother or stepsister of the person, but does not include a foster-brother or foster-sister of the person.

Note: For the meaning of *sibling* in sections 123 to 123E, see subsection 123(1).

## 22 Subsection 5Q(1)

Insert:

*special disability trust* has the meaning given by section 52ZZZW.

## 23 Subsection 52E(1)

Omit "(1)".

## 24 Subsection 52E(1) (note)

Repeal the note, substitute:

Note 1: If Division 8 or 8A applies in relation to the transfer by a person of a qualifying interest or an eligible interest in a farm or relevant farm asset, that transfer and certain transfers by the person's partner are taken not to be disposal of assets (see sections 49C and 49S).

Note 2: Under Subdivision B of Division 11A of Part IIIB, certain transfers of assets to special disability trusts can be taken not to be disposals of the assets (but this can be subject to a limit on the aggregate value of the transfers).

## 25 At the end of section 52F

Add:

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

## 26 After subsection 52ZZJ(2)

Insert:



(2A) The only *attributable stakeholder* of a special disability trust is the principal beneficiary of the trust.

Note 1: For *special disability trust*, see section 52ZZZW.

Note 2: For *principal beneficiary* of a special disability trust, see subsection 52ZZZWA(1).

## **27 At the end of subsection 52ZZK(1)**

Add:

Note: For attribution of the income of a special disability trust, see section 52ZZZWI.

## **28 At the end of subsection 52ZZR(1)**

Add:

Note: For attribution of the assets of a special disability trust, see section 52ZZZWK.

## **29 After Division 11A of Part IIIB**

Insert:

### **Division 11B—Private financial provision for certain people with disabilities**

#### **Subdivision A—Special disability trusts**

##### **52ZZZW What is a *special disability trust*?**

A trust is a *special disability trust* if the following requirements of this Subdivision are complied with:

- (a) the beneficiary requirements (see section 52ZZZWA);
- (b) the trust purpose requirements (see section 52ZZZWB);
- (c) the trust deed requirements (see section 52ZZZWC);
- (d) the trustee requirements (see section 52ZZZWD);
- (e) the trust property requirements (see section 52ZZZWE);
- (f) the reporting requirements (see section 52ZZZWF);
- (g) the audit requirements (see section 52ZZZWG).

Note: The Commission may waive one or more requirements in certain circumstances (see section 52ZZZWH).

## 5ZZZWA Beneficiary requirements

### *Single beneficiary rule*

- (1) The trust must have no more than one beneficiary (the ***principal beneficiary***), not including any residuary beneficiary.

### *Impairment or disability conditions*

- (2) If the principal beneficiary has reached 16 years of age:
  - (a) the beneficiary must:
    - (i) be eligible for invalidity service pension; or
    - (ii) be eligible for income support supplement on the ground set out in subparagraph 45A(1)(b)(iii); or
    - (iii) have an impairment that would qualify the person for disability support pension under the Social Security Act; and
  - (b) the beneficiary must:
    - (i) have a disability that would, if the person had a sole carer, qualify the carer for carer payment, or carer allowance, under the Social Security Act; or
    - (ii) be living in an institution, hostel or group home in which care is provided for people with disabilities, and for which funding is provided (wholly or partly) under an agreement, between the Commonwealth, the States and the Territories, nominated by the Commission under subsection (3); and
  - (c) the beneficiary must have a disability as a result of which he or she is not working, and has no likelihood of working, for a wage that is at or above the relevant minimum wage within the meaning of subsection 23(1) of the Social Security Act.
- (3) The Commission may, by legislative instrument, nominate an agreement for the purpose of subparagraph (2)(b)(ii).
- (4) If the principal beneficiary is under 16 years of age, he or she must be a profoundly disabled child within the meaning of section 197 of the Social Security Act.

*Living beneficiary rule*

- (5) A trust stops being a special disability trust when the principal beneficiary dies.

*Single trust rule*

- (6) A trust is not a special disability trust for a particular principal beneficiary if, at the time of its creation, there is already another trust in existence for that person that is:
- (a) a special disability trust; or
  - (b) a special disability trust within the meaning of the Social Security Act.

**52ZZZWB Trust purpose requirements**

*Sole purpose—care and accommodation for principal beneficiary*

- (1) Subject to this section, the sole purpose of the trust during the lifetime of the principal beneficiary, as provided by the trust deed for the trust, must be to meet reasonable care and accommodation needs of the beneficiary.

Note: The provision of care and accommodation for the principal beneficiary is also dealt with at section 52ZZZWE.

- (2) The trust may have purposes, ancillary to the purpose mentioned in subsection (1), that are necessary or desirable to facilitate the achievement of that purpose.

*Reasonable care and accommodation needs*

- (3) If guidelines are made under subsection (4), for the purposes of this section the reasonable care and accommodation needs of a principal beneficiary of a special disability trust must be decided in accordance with the guidelines.
- (4) The Commission may, by legislative instrument, make guidelines for deciding what are, and what are not, reasonable care and accommodation needs for principal beneficiaries of special disability trusts.

### **52ZZZWC Trust deed requirements**

#### *Compliance with determination*

- (1) If a determination is made under subsection (2), the trust deed for the trust must comply with the determination.
- (2) The Commission may, by legislative instrument, determine one or more of the following:
  - (a) the form of the trust deed required for a special disability trust;
  - (b) provisions which must be included in the trust deed;
  - (c) the form of those provisions;
  - (d) provisions which cannot be included in the trust deed.

#### *Contravention of trust deed*

- (3) A person must not contravene a provision of the trust deed that is required by this section to be included in the deed (whether or not the provision is required to be included in any particular form).

### **52ZZZWD Trustee requirements**

- (1) A trustee of the trust who is an individual must:
  - (a) be an Australian resident; and
  - (b) not have been convicted at any time (including a time before the commencement of this section) of any of the following offences:
    - (i) an offence of dishonest conduct against, or arising out of, a law of the Commonwealth, a State, a Territory or a foreign country;
    - (ii) an offence against, or arising out of, this Act, the Social Security Act or the *Social Security (Administration) Act 1999*; and
  - (c) not have been disqualified at any time (including a time before the commencement of this section) from managing corporations under the *Corporations Act 2001*.
- (2) In addition, if a trustee of the trust is a corporation, subsection (1) applies to each director of the trustee.

### **52ZZZWE Trust property requirements**

- (1) The assets of the trust must not include any asset transferred to the trust by the principal beneficiary of the trust, or the principal beneficiary's partner, unless:
  - (a) the transferred asset is all or part of a bequest, or of a superannuation death benefit; and
  - (b) the transferor received the bequest or superannuation death benefit not more than 3 years before transferring the transferred asset.
- (2) The assets of the trust must not include any compensation received by or on behalf of the principal beneficiary.
- (3) The trust must not be used to pay an immediate family member, or a child, of the principal beneficiary for the provision to the beneficiary of:
  - (a) care services; or
  - (b) services for the repair or maintenance of the beneficiary's accommodation.

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

- (4) The trust must not be used to purchase or lease property from an immediate family member, or a child, of the principal beneficiary, even if the property is to be used for the beneficiary's accommodation.

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

- (5) In this section:

*child*, of a principal beneficiary, means the natural child, adopted child or step-child of the beneficiary (no matter how old the child or step-child is).

*property* includes:

- (a) a right to accommodation for life in a residence; and
- (b) a life interest in a residence.

### **52ZZZWF Reporting requirements**

- (1) The trustees of the trust must, on or before 31 March each year, give the Commission written financial statements about the trust in

relation to the financial year ending on 30 June in the previous year.

- (2) The financial statements must be prepared by:
  - (a) if a determination is made under subsection (4) that requires such financial statements to be prepared by a person with stated qualifications—such a person; or
  - (b) whether or not such a determination is made—a person approved by the Commission for the purpose.
- (3) If a determination is made under subsection (4) that requires financial statements to include information of a stated kind, the financial statements must include information of that kind.
- (4) The Commission may, by legislative instrument, make determinations for the purposes of this section.

### **52ZZZWG Audit requirements**

#### *Trustee duties*

- (1) The trustees of the trust must, within a reasonable time after receiving a request under subsection (3):
  - (a) cause an audit of the trust to be carried out in relation to the period mentioned in subsection (2); or
  - (b) if, at the time of the request for the audit, an audit (the **earlier requested audit**) of the trust had already been carried out, or was being carried out, for the purpose of this section in relation to that period—give a copy of the report of the earlier requested audit to the person making the request.

#### *Audit period*

- (2) The audit must relate to:
  - (a) the financial year ending on the 30 June last preceding the request; or
  - (b) if a determination is made under subsection (7) that provides for a different period—that period.

#### *Who may request audit*

- (3) The following persons may request an audit of the trust for the purposes of this section:
-

- (a) the principal beneficiary;
- (b) an immediate family member of the principal beneficiary;
- (c) a person who is, under the law of the Commonwealth, a State or a Territory, the legal guardian or financial administrator of the principal beneficiary;
- (d) a person who is otherwise acting as the principal beneficiary's guardian on a long-term basis;
- (e) the Commission.

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

*Copies of audit report*

- (4) If an audit report for a trust is given to the trustees for the purpose of subsection (1), the trustees must, within a reasonable time, give a copy of the report to:
  - (a) the person requesting the audit; and
  - (b) if the guardian or administrator mentioned in paragraph (3)(c) did not request the audit—the guardian or administrator; and
  - (c) if the Commission did not request the audit—the Commission.

*Auditor qualifications and required information*

- (5) The audit must be prepared by:
  - (a) if a determination is made under subsection (7) that requires such audits to be prepared by a person with stated qualifications—such a person; or
  - (b) whether or not such a determination is made—a person approved by the Commission for the purpose.
- (6) If a determination is made under subsection (7) that requires audits requested under this section to include information of a stated kind, the audit must include information of that kind.
- (7) The Commission may, by legislative instrument, make determinations for the purposes of this section.

**52ZZZWH Waiver of contravention of this Division**

- (1) A contravention of a requirement of this Division concerning a particular matter, in relation to a trust that would be a special
-

disability trust if it were not for the contravention, does not prevent the trust being a special disability trust if:

- (a) the Commission, by written notice (a *waiver notice*) to the trustees, waives the requirement as it concerns that matter; and
  - (b) in a case where the waiver notice requires the trustees to comply with any conditions relating to the matter—the trustees comply with those conditions within the time or times (if any) stated in the waiver notice.
- (2) A waiver notice has effect, subject to any conditions mentioned in paragraph (1)(b):
- (a) from:
    - (i) the time of the contravention; or
    - (ii) if the waiver notice states a time for the start of its period of effect that is after the time of the contravention—the stated time; and
  - (b) if the waiver notice states a time for the end of its period of effect—until the stated time.
- (3) If guidelines are made under subsection (4), a decision in relation to giving a waiver notice to the trustees of the trust must be made in accordance with the guidelines.
- (4) The Commission may, by legislative instrument, make guidelines for deciding any or all of the following:
- (a) whether or not to give waiver notices to trustees of trusts;
  - (b) what conditions to include in waiver notices;
  - (c) the periods during which waiver notices are to have effect.

## **Subdivision B—Income of special disability trusts**

### **52ZZZWI Attribution of income**

- (1) For the purposes of this Act, an amount of income that a special disability trust derives is taken not to be income received by any individual.

Note: For *special disability trust*, see section 52ZZZW.

- (2) This section has effect despite Subdivision G of Division 11A of Part IIIB and any other provisions of this Act.



### **52ZZZWJ Income amounts from special disability trusts**

An income amount that the principal beneficiary of a special disability trust receives is not income of the beneficiary for the purposes of this Act to the extent that consideration for the income amount was provided by a distribution from the trust.

Note 1: For *income amount*, see section 5H.

Note 2: For *special disability trust*, see section 52ZZZW.

### **Subdivision C—Assets of special disability trusts**

#### **52ZZZWK Attribution of assets**

- (1) For the purposes of this Act, the assets of a special disability trust are not to be included in the assets of the principal beneficiary of the trust.

Note: For *special disability trust*, see section 52ZZZW.

- (2) However, this section does not apply to the extent that the value of the assets owned by the trust exceeds the trust's asset value limit.
- (3) The *asset value limit* of a special disability trust is \$500,000.

Note: This amount is indexed annually on 1 July (see sections 59B to 59E).

- (4) For the purposes of subsection (2), disregard the value of any right or interest of the trust in the principal home of the principal beneficiary of the trust.

Note: For *principal home*, see subsections 5L(5) to (7).

- (5) This section has effect despite Subdivision H of Division 11A of Part IIIB and any other provisions of this Act.

### **Subdivision D—Transfers to special disability trusts**

#### **52ZZZWL Effect of certain transfers to special disability trusts**

- (1) If a person transfers an asset (the *transferred asset*) to a special disability trust, the transfer is taken not to be a disposal of the asset (within the meaning of section 52E) if:
  - (a) the person is an immediate family member of the principal beneficiary of the trust; and
  - (b) the person, or the person's partner:

- (i) is receiving a service pension and has reached pension age; or
  - (ii) is receiving income support supplement and has reached qualifying age within the meaning of subsection 45A(2); or
  - (iii) is receiving a social security pension and has reached pension age within the meaning of the Social Security Act; and
- (c) the person receives no consideration, and is not entitled to any consideration, for the transfer; and
- (d) the transfer is unconditional; and
- (e) the value of the transferred asset does not exceed \$500,000; and
- (f) in a case where there has already been a transfer to which this section has applied (an *exempt transfer*), by that person or any other person, to the trust or any other special disability trust that had the same principal beneficiary—the sum of:
- (i) the values of all of the assets transferred, by exempt transfers that have already been made, to the trust or any other special disability trust that had the same principal beneficiary; and
  - (ii) the value of the transferred asset;
- does not exceed \$500,000.

Note 1: For *special disability trust*, see section 52ZZZW.

Note 2: For *immediate family member*, see subsection 5Q(1).

Note 3: For *pension age* (except for the purposes of subparagraph (1)(b)(iii) of this section), see subsection 5Q(1).

Note 4: For *service pension* and *social security pension*, see subsection 5Q(1).

Note 5: Part IIIA deals with income support supplement.

(2) This section has effect subject to sections 52ZZZWM and 52ZZZWP.

(3) In this section:

*other special disability trust* includes a special disability trust within the meaning of the Social Security Act.

*value*, of an asset transferred to a special disability trust, means the market value of the asset at the time of the transfer.

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**52ZZZW M The effect of exceeding the \$500,000 limit**

- (1) If section 52ZZZW L would apply to a transfer of an asset except for the fact that the value of the transferred asset exceeds \$500,000, that section does not prevent the transfer from being a disposal of the asset, but the amount of the disposal or disposition is taken to be the amount of the excess.
- (2) If:
  - (a) section 52ZZZW L would apply to a transfer of an asset but for the fact that the sum of:
    - (i) the values of all of the exempt transfers that have already been made to the trust or any other special disability trust that had the same principal beneficiary; and
    - (ii) the value of the transferred asset; exceeds \$500,000; and
    - (b) that sum would not exceed \$500,000 if the value of the transferred asset were disregarded;that section does not prevent the transfer from being a disposal or disposition of the asset, but the amount of the disposal or disposition is taken to be the amount of the excess referred to in paragraph (a).
- (3) This section has effect subject to section 52ZZZW P.
- (4) In this section:

*other special disability trust* includes a special disability trust within the meaning of the Social Security Act.

*value*, of an asset transferred to a special disability trust, means the market value of the asset at the time of the transfer.

**52ZZZW N Transfers by the immediate family members prior to reaching pension age etc.**

- (1) If:
  - (a) an immediate family member of the principal beneficiary of a special disability trust transfers an asset to the trust; and

(b) at the time of the transfer, neither the immediate family member nor the partner of the immediate family member is a person who:

- (i) is receiving a service pension and has reached pension age; or
- (ii) is receiving income support supplement and has reached qualifying age within the meaning of subsection 45A(2); or
- (iii) is receiving a social security pension and has reached pension age within the meaning of the Social Security Act;

the immediate family member is taken for the purposes of this Division only to transfer the asset to the trust at the earliest time at which subparagraph (b)(i), (ii) or (iii) applies to the immediate family member or partner.

Note 1: For *special disability trust*, see section 52ZZZW.

Note 2: For *immediate family member*, see subsection 5Q(1).

Note 3: For *pension age* (except for the purposes of subparagraph (1)(b)(iii) of this section), see subsection 5Q(1).

Note 4: For *service pension* and *social security pension*, see subsection 5Q(1).

Note 5: Part IIIA deals with income support supplement.

(2) However, if under subsection (1) transfers of assets to the trust by different immediate family members are taken to have been made on the same day, the transfers are taken to have been made on that day in the order in which they would have been taken to be made but for this Division.

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

(3) This section does not affect the operation of Division 11 of Part IIIB or any other provision of this Act outside of this Division.

### **52ZZZWO Transfers by principal beneficiaries or partners**

(1) If a person transfers an asset to a special disability trust, the transfer is taken not to be a disposal of the asset (within the meaning of section 52E) if:

- (a) the person is the principal beneficiary of the trust, or the principal beneficiary's partner; and

- (b) the person receives no consideration, and is not entitled to any consideration, for the transfer; and
- (c) the transfer is unconditional.

Note 1: For *special disability trust*, see section 52ZZZW.

Note 2: Section 52ZZZWE limits the circumstances in which the principal beneficiary or the principal beneficiary's partner can transfer assets to the trust.

- (2) This section has effect subject to section 52ZZZWP.

### **52ZZZWP Cessation of special disability trusts**

- (1) If:

- (a) a special disability trust ceases to exist or ceases to be a special disability trust; and
- (b) a person had transferred an asset to the trust during the period of 5 years immediately preceding the cessation; and
- (c) section 52ZZZWL, 52ZZZWM or 52ZZZWO applied to the transfer;

then the transfer is taken, after the cessation, to be a disposal or disposition of the asset that occurred at the time of the transfer.

- (2) The amount of the disposal or disposition is taken to be the amount worked out using the formula:

$$\left( \text{Asset value} \times \frac{\text{Final value of trust assets}}{\text{Initial value of trust assets}} \right) + \text{Subsection 52ZZZWM(2) amount}$$

where:

**asset value** means:

- (a) if section 52ZZZWL or 52ZZZWO applied to the transfer—the value of the asset at the time of the transfer; or
- (b) if subsection 52ZZZWM(1) applied to the transfer—\$500,000; or
- (c) if subsection 52ZZZWM(2) applied to the transfer—the difference between the value of the asset at the time of the transfer and the amount that was taken under that subsection to be the amount of the disposal or disposition of the asset.

*final value of trust assets* means the value of all of the assets of the trust at the time of the cessation.

*initial value of trust assets* means the value of all of the assets of the trust at the time of the transfer.

*subsection 52ZZZW(2) amount* means the amount (if any) that was taken under subsection 52ZZZW(2) to be the amount of the disposal or disposition of the asset.

- (3) If the special disability trust ceases to exist, or ceases to be a special disability trust, because the principal beneficiary dies, the value of the asset at the time of the transfer is taken for the purposes of this section to be the value of so much (if any) of the asset as has not been returned to the person who had transferred the asset to the trust.
- (4) This section does not affect the application of section 52ZZZW, 52ZZZW or 52ZZZO to the transfer prior to the cessation.

### **52ZZWQ Effect of this Subdivision**

This Subdivision (other than section 52ZZWN) has effect despite Subdivision B of Division 11 of Part IIIB and any other provisions of this Act.

### **30 Section 59A (after table item 13)**

Insert:

13A.	Assets value limit of special disability trust	special disability trust AVL	<b>subsection 52ZZWK(3)</b>
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### **31 Subsection 59B(1) (after table item 8)**

Insert:

8A.	special disability trust AVL	1 July	December	most recent December quarter before reference quarter	\$250.00
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### **32 After subsection 59C(2)**

Insert:

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- (2A) The first indexation of an amount under item 8A of the CPI Indexation Table in subsection 59B(1) is to take place on 1 July 2007.

### **33 Transitional—trusts created before 20 September 2006**

- (1) For a trust created before 20 September 2006, a failure to comply with a requirement of Subdivision A of Division 11B of Part IIIB of the *Veterans' Entitlements Act 1986* concerning a particular matter does not prevent the trust being a special disability trust if:
- (a) the Commission, by written notice (an *exemption notice*) to the trustees, exempts the trust from the requirement as it concerns that matter; and
  - (b) in a case where the exemption notice requires the trustees to comply with any conditions relating to the matter—the trustees comply with those conditions within the period (if any) stated in the exemption notice.

Note: For *special disability trust*, see section 52ZZZW of the *Veterans' Entitlements Act 1986*.

- (2) A period stated in an exemption notice for the purpose of paragraph (1)(b) must end at or before the end of 30 June 2007.
- (3) An exemption notice has effect, subject to any conditions mentioned in paragraph (1)(b):
- (a) from:
    - (i) the start of 20 September 2006; or
    - (ii) if the exemption notice states a time for the start of its period of effect that is after 20 September 2006—the stated time; and
  - (b) until:
    - (i) the end of 30 June 2007; or
    - (ii) if the exemption notice states a time for the end of its period of effect that is before the end of 30 June 2007—the stated time.
- (4) If guidelines are made under subitem (5), a decision in relation to giving an exemption notice to the trustees of the trust must be made in accordance with the guidelines.
- (5) The Commission may, by legislative instrument, make guidelines for deciding any or all of the following:
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**Schedule 7** Special disability trusts

**Part 2** Amendment of the Veterans' Entitlements Act 1986

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- (a) whether or not to give exemption notices to trustees of trusts;
- (b) what conditions to include in exemption notices;
- (c) the periods for compliance with conditions in exemption notices;
- (d) the periods during which exemption notices are to have effect.



## **Schedule 8—Australian Institute of Family Studies**

### **Part 1—Amendments**

#### *Family Law Act 1975*

##### **1 Section 114A (definition of *Board*)**

Repeal the definition.

##### **2 Section 114A (definition of *member*)**

Repeal the definition.

##### **3 After subsection 114B(1)**

Insert:

(1A) There is to be a Director of the Institute.

(1B) The Institute consists of:

(a) the Director; and

(b) the staff referred to in section 114M.

Note: The Institute does not have a legal identity separate from the Commonwealth.

##### **4 Subsection 114B(2)**

Omit “Institute”, substitute “Director”.

##### **5 After subsection 114B(2)**

Insert:

(2A) The function of the Institute (other than the Director) is to assist the Director in the performance of his or her functions.

##### **6 Paragraph 114B(3)(a)**

Omit “Board”, substitute “Director”.

##### **7 Paragraph 114B(3)(b)**

Omit “Board”, substitute “Director”.

**8 Subsection 114B(4)**

Repeal the subsection.

**9 Sections 114BA, 114BB, 114C, 114D, 114E, 114F, 114G, 114H, 114J, 114K and 114L**

Repeal the sections, substitute:

**114C Minister may give directions to Director**

- (1) Subject to subsection (2), the Minister may, by legislative instrument, give directions to the Director as to the performance of his or her functions.
- (2) Directions given by the Minister under subsection (1) must be of a general nature only.
- (3) The Director must comply with any direction given by the Minister under subsection (1).

**114D Appointment of Director**

- (1) The Director is to be appointed by the Minister by written instrument.

Note: The Director is eligible for reappointment: see subsection 33(4A) of the *Acts Interpretation Act 1901*.

- (2) The Director is to be appointed on a full-time basis.

**114E Term of appointment**

The Director holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

**114F Acting appointments**

- (1) The Minister may appoint a person to act as the Director:
  - (a) during a vacancy in the office of Director, whether or not an appointment has previously been made to the office; or
  - (b) during any period, or during all periods, when the Director is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office.

- (2) Anything done by or in relation to a person purporting to act under an appointment is not invalid merely because:
- (a) the occasion for the appointment had not arisen; or
  - (b) there was a defect or irregularity in connection with the appointment; or
  - (c) the appointment had ceased to have effect; or
  - (d) the occasion to act had not arisen or had ceased.

#### **114G Director's remuneration**

- (1) The Director is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the Director is to be paid the remuneration that is prescribed.
- (2) The Director is to be paid the allowances that are prescribed.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

#### **114H Outside employment**

The Director must not engage in paid employment outside the duties of the Director's office without the Minister's approval.

#### **114J Leave of absence**

- (1) The Director has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Minister may grant the Director leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.

#### **114K Disclosure of interests**

The Director must give written notice to the Minister of all interests, pecuniary or otherwise, that the Director has or acquires and that could conflict with the proper performance of the Director's functions.

### **114L Other terms and conditions**

The Director holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

### **114LA Resignation**

- (1) The Director may resign his or her appointment by giving the Minister a written resignation.
- (2) The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

### **114LB Termination of appointment**

- (1) The Minister may terminate the appointment of the Director for misbehaviour or physical or mental incapacity.
- (2) The Minister may terminate the appointment of the Director if:
  - (a) the Director:
    - (i) becomes bankrupt; or
    - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
    - (iii) compounds with his or her creditors; or
    - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
  - (b) the Director is absent, except on leave of absence, without reasonable excuse; or
  - (c) the Director fails, without reasonable excuse, to comply with section 114H (outside employment); or
  - (d) the Director fails, without reasonable excuse, to comply with section 114K (disclosure of interests).

### **114LC Annual reports**

The Director must, as soon as practicable after 30 June in each year, prepare and give to the Minister, for presentation to the Parliament, a report on the Institute's operations during the year ending on that 30 June.

Note: See also section 34C of the *Acts Interpretation Act 1901*, which contains extra rules about annual reports.

### **114LD Delegation**

- (1) The Director may delegate all or any of his or her functions or powers under this Part to an SES employee, or an acting SES employee, of the Institute. The delegation must be in writing.

Note: For other powers of delegation, see section 53 of the *Financial Management and Accountability Act 1997* and section 78 of the *Public Service Act 1999*.

- (2) In performing a delegated function or exercising a delegated power, a delegate must comply with any written directions of the Director.

### **10 Subsection 114M(3)**

Omit “on behalf of the Institute and”.

### **11 Sections 114MA, 114MC, 114MD, and 114MF**

Repeal the sections.

## Part 2—Transitional provisions

### Division 1—Preliminary

#### 12 Definitions

(1) In this Part:

**acquisition of property** has the same meaning as in paragraph 51(xxxi) of the Constitution.

**amend** includes repeal and remake.

**asset** means:

- (a) any legal or equitable estate or interest in real or personal property, whether actual, contingent or prospective; and
- (b) any right, power, privilege or immunity, whether actual, contingent or prospective.

**assets official**, in relation to an asset other than land, means the person or authority who, under a law of the Commonwealth, a State or a Territory, under a trust instrument or otherwise, has responsibility for keeping a register in relation to assets of the kind concerned.

**Board** means the Board of Management of the old Institute.

**commencement time** means the time when this Part commences.

**instrument**:

- (a) includes:
  - (i) a contract, deed, undertaking or agreement; and
  - (ii) a notice, authority, order or instruction; and
  - (iii) an instrument made under an Act or regulations; and
  - (iv) regulations; but
- (b) does not include an Act.

**just terms** has the same meaning as in paragraph 51(xxxi) of the Constitution.

**land** means any legal or equitable estate or interest in real property, whether actual, contingent or prospective.

**land registration official**, in relation to land, means the Registrar of Titles or other proper officer of the State or Territory in which the land is situated.

**liability** means any liability, duty or obligation, whether actual, contingent or prospective.

**new Institute** means the Australian Institute of Family Studies established by the new law.

**new law** means the *Family Law Act 1975* as in force immediately after the commencement time.

**old Institute** means the Australian Institute of Family Studies established by the old law.

**old law** means the *Family Law Act 1975* as in force immediately before the commencement time.

- (2) Subject to subitem (1), an expression used in this Part that is also used in the new law has the same meaning in this Part as it has in the new law.

## **Division 2—Assets, liabilities and legal proceedings**

### **13 Vesting of assets of old Institute**

- (1) This item applies to the assets of the old Institute immediately before the commencement time.
- (2) At the commencement time, the assets to which this item applies cease to be assets of the old Institute and become assets of the Commonwealth without any conveyance, transfer or assignment. The Commonwealth becomes the successor in law in relation to these assets.

### **14 Vesting of liabilities of old Institute**

- (1) This item applies to the liabilities of the old Institute immediately before the commencement time.
- (2) At the commencement time, the liabilities to which this item applies cease to be liabilities of the old Institute and become liabilities of the Commonwealth without any conveyance, transfer or assignment. The Commonwealth becomes the successor in law in relation to these liabilities.

### **15 Certificates relating to vesting of land**

- (1) This item applies if:
- (a) any land vests in the Commonwealth under this Division; and

- (b) there is lodged with a land registration official a certificate that:
  - (i) is signed by the Minister; and
  - (ii) identifies the land, whether by reference to a map or otherwise; and
  - (iii) states that the land has become vested in the Commonwealth under this Division.

Note: Certificates under paragraph (1)(b) are presumed to be authentic: see item 27.

- (2) The land registration official may:
  - (a) register the matter in a way that is the same as, or similar to, the way in which dealings in land of that kind are registered; and
  - (b) deal with, and give effect to, the certificate.

## **16 Certificates relating to vesting of assets other than land**

- (1) This item applies if:
  - (a) any asset other than land vests in the Commonwealth under this Division; and
  - (b) there is lodged with an assets official a certificate that:
    - (i) is signed by the Minister; and
    - (ii) identifies the asset; and
    - (iii) states that the asset has become vested in the Commonwealth under this Division.

Note: Certificates under paragraph (1)(b) are presumed to be authentic: see item 27.

- (2) The assets official may:
  - (a) deal with, and give effect to, the certificate as if it were a proper and appropriate instrument for transactions in relation to assets of that kind; and
  - (b) make such entries in the register as are necessary having regard to the effect of this Part.

## **17 Substitution of Commonwealth as a party to pending proceedings**

If any proceedings to which the old Institute was a party were pending in any court or tribunal immediately before the commencement time, the Commonwealth is substituted for the old Institute, from the commencement time, as a party to the proceedings.



## **18 Transfer of custody of old Institute records**

- (1) This item applies to any records or documents that, immediately before the commencement time, were in the custody of the old Institute.
- (2) The records and documents are to be transferred into the custody of the Director at or after the commencement time.

## **19 Access by Board members to records**

For the purposes of the operation of subsection 27L(4) of the *Commonwealth Authorities and Companies Act 1997* in relation to the books of the old Institute, the reference in that subsection to a Commonwealth authority is to be read, after the commencement time, as a reference to the Director.

## **Division 3—Reference to, and things done by or in relation to, old Institute**

### **20 References in instruments**

*References to old Institute taken to be references to Director or Commonwealth*

- (1) If:
  - (a) an instrument is in force immediately before the commencement time; and
  - (b) the instrument contains a reference to the old Institute (including a reference to the Board);the instrument has effect from the commencement time as if the reference were a reference to the Director.
- (2) However, if:
  - (a) an instrument is in force immediately before the commencement time; and
  - (b) the instrument relates to assets or liabilities covered by item 13 or 14; and
  - (c) the instrument refers to the old Institute (including a reference to the Board);the reference is to be read as a reference to the Commonwealth as necessary to give effect to item 13 or 14, as the case requires.

*References to staff of old Institute taken to be references to staff of new Institute*

- (3) If:
- (a) an instrument is in force immediately before the commencement time; and
  - (b) the instrument contains a reference to a member of the staff of the old Institute;
- the instrument has effect from the commencement time as if the reference to the member of the staff of the old Institute were a reference to a member of the staff of the new Institute.

*Minister and regulations may provide otherwise*

- (4) The Minister may, by legislative instrument, determine that subitem (1), (2) or (3):
- (a) does not apply in relation to a specified reference; or
  - (b) applies as if:
    - (i) in the case of subitem (1)—the reference in that subitem to the Director were a reference to the Commonwealth; or
    - (ii) in the case of subitem (2)—the reference in that subitem to the Commonwealth were a reference to the Director; or
    - (iii) in the case of subitem (3)—the reference in that subitem to a member of the staff of the new Institute were a reference to the Director.

A determination under this subitem has effect accordingly.

- (5) The regulations may provide that an instrument containing a reference specified in a determination under paragraph (4)(a) has effect from the commencement time as if:
- (a) in the case of an instrument covered by subitem (1) or (2)—the reference were a reference to a specified person or body other than the Commonwealth or the Director; or
  - (b) in the case of an instrument covered by subitem (3)—the reference were a reference to a specified person or body other than the Director or a member of the staff of the new Institute.

## **21 Operation of laws**

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*Things done by old Institute taken to be done by Director*

- (1) If, before the commencement time, a thing was done by, or in relation to, the old Institute (including the Board), then, for the purposes of the operation of any law of the Commonwealth after the commencement time, the thing is taken to have been done by, or in relation to, the Director.
- (2) For the purposes of subitem (1), a thing done before the commencement time under a provision that is amended by this Schedule has effect from that time as if it were done under that provision as amended. However, this is not taken to change the time at which the thing was actually done.

*Minister and regulations may provide otherwise*

- (3) The Minister may, by legislative instrument, determine that subitem (1):
  - (a) does not apply in relation to a specified thing done by, or in relation to, the old Institute; or
  - (b) applies as if the reference in that subitem to the Director were a reference to the Commonwealth.

A determination under this subitem has effect accordingly.

- (4) The regulations may provide for a thing specified in a determination under paragraph (3)(a) to be taken to have been done by, or in relation to, a specified person or body other than the Commonwealth or the Director.

*Meaning of **doing***

- (5) To avoid doubt, for the purposes of this item, **doing** a thing includes making an instrument.

## **22 Financial statements and other reporting requirements**

*Reporting requirements*

- (1) If:
  - (a) immediately before the commencement time, a law required the old Institute (including the Director) to provide a report (whether financial statements or otherwise) for a period; and
  - (b) the period ends after the commencement time;

the Director must provide the report, as required, for so much of the period as occurs before the commencement time.

- (2) If:
- (a) under subitem (1), the Director is required to provide a report for a part of a period; and
  - (b) the Director is also required to provide a similar report for the remainder of the period;
- the Director may meet the requirements in a single report for the period.

#### *Outstanding reporting requirements*

- (3) If:
- (a) a law required the old Institute (including the Director) to provide a report (whether financial statements or otherwise) for a period that ended before the commencement time; and
  - (b) the report has not been provided by the commencement time;
- the Director must provide the report as required.

### **23 Director**

- (1) The person holding office as Director under subsection 114C(4) of the old law immediately before the commencement time continues, on and after that time, by force of this item, to hold office as the Director.
- (2) The person referred to in subitem (1):
- (a) is taken to have been duly appointed by the Minister under subsection 114D(1) of the new law for the balance of the term of appointment under section 114E of the old law; and
  - (b) is taken to have been so appointed on the same terms and conditions as applied to the person immediately before the commencement time.

## **Division 4—Miscellaneous**

### **24 Appropriation of money**

- (1) For the purposes of the operation of an Appropriation Act after the commencement time, references to the old Institute are to be read as references to the new Institute.

- (2) If an amount of money (the *original amount*) becomes an asset of the Commonwealth under item 13 of this Schedule, an amount equal to the original amount may be paid out of the Consolidated Revenue Fund, which is appropriated accordingly, for the purposes of the new Institute.
- (3) In this item:  
*Appropriation Act* means an Act appropriating money for expenditure out of the Consolidated Revenue Fund.

## **25 Exemption from stamp duty and other State or Territory taxes**

No stamp duty or other tax is payable under a law of a State or Territory in respect of, or in respect of anything connected with:

- (a) the transfer of an asset or liability under this Part; or
- (b) the operation of this Part in any other respect.

## **26 Constitutional safety net—acquisition of property**

- (1) If the operation of this Part would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in a court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

## **27 Certificates taken to be authentic**

A document that appears to be a certificate made or issued under a particular provision of this Part:

- (a) is taken to be such a certificate; and
- (b) is taken to have been properly given;

unless the contrary is established.

## **28 Delegation by Minister**

- (1) The Minister may delegate all or any of his or her powers and functions under this Part to the Secretary of the Department or to the Director. The delegation must be in writing.

- (2) In exercising or performing powers or functions under a delegation, the delegate must comply with any directions of the Minister.
- (3) A power or function delegated to the Director under subitem (1) must not be sub-delegated under subsection 114LD(1) of the new law.

## **29 Regulations**

- (1) The Governor-General may make regulations prescribing matters:
  - (a) required or permitted by this Part to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Part.
- (2) In particular, regulations may be made prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments or repeals made by this Schedule.

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## **Schedule 9—FTB Part B quarantining**

### ***A New Tax System (Family Assistance) Act 1999***

#### **1 Paragraph 3B(3)(c)**

Repeal the paragraph, substitute:

- (c) the Secretary is notified in writing that the individual returned to paid work during that year:
  - (i) during the income year following that year and in accordance with subsection (4); or
  - (ii) if a claim is made under the Family Assistance Administration Act for payment of family tax benefit for a past period that occurs in that year and the claim is made during the second income year following that year—in accordance with subsection (5).

#### **2 Subsection 3B(4)**

Omit “subsection (3)”, substitute “subparagraph (3)(c)(i)”.

#### **3 At the end of section 3B**

Add:

- (5) For the purposes of subparagraph (3)(c)(ii), the Secretary is notified in accordance with this subsection if the Secretary is notified in the claim that the individual returned to paid work during that year.

#### **4 Paragraph 29A(1)(b) of Schedule 1**

Omit “(7)”, substitute “(8)”.

#### **5 After subclause 29A(4) of Schedule 1**

Insert:

- (4A) If, in different income years, more than one secondary earner returns to paid work for the first time in respect of the same child, the Part B rate of the individual is not calculated under this clause in respect of a return to paid work that is not the earliest return to paid work.

- (4B) If, in the same income year, more than one secondary earner returns to paid work for the first time in respect of the same child, the Part B rate of the individual is not calculated under this clause in respect of a secondary earner for whom the period mentioned under paragraph 29C(1)(a) does not begin first.

**6 Subclause 29A(7) of Schedule 1**

Omit “Either”, substitute “If subclause (8) does not apply—either”.

**7 At the end of clause 29A of Schedule 1**

Add:

- (8) If, during the second income year following a particular income year, a claim is made under the Family Assistance Administration Act for payment of family tax benefit for a past period that occurs in the particular income year, the Secretary is notified in the claim that the secondary earner returned to paid work during the particular income year.

**8 Application of amendments**

- (1) Subject to subitem (2), the amendments made by this Schedule apply in respect of the 2005-2006 income year and later income years.
- (2) Subclause 29A(4A) of Schedule 1 to the *A New Tax System (Family Assistance) Act 1999* (as inserted by item 5 of this Schedule) applies in respect of a return to paid work whether the return happens before, on or after 1 July 2005.



## **Schedule 10—Technical amendments relating to income estimates**

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

#### **1 Subsection 20C(3)**

Repeal the subsection, substitute:

- (3) The reference is taken to be a reference to eligibility for, or rate of, family tax benefit being determined or worked out on the basis of the indexed estimate, or the indexed actual income, for that individual or stated in that notice, combined with:
  - (a) the most recent indexed estimate or indexed actual income for the individual's partner (see subsection (6)); or
  - (b) if there is no such indexed estimate or indexed actual income—a reasonable estimate of the adjusted taxable income of the individual's partner (disregarding the effect of clause 3 of Schedule 3 to the Family Assistance Act) that has been given to the Secretary by the individual.

#### **2 At the end of paragraph 20C(5)(b)**

Add “or, if there is no such indexed estimate or indexed actual income, a reasonable estimate of the adjusted taxable income of the individual's partner (disregarding the effect of clause 3 of Schedule 3 to the Family Assistance Act) that has been given to the Secretary by the individual”.

#### **3 Subsection 55AC(3)**

Repeal the subsection, substitute:

- (3) The reference is taken to be a reference to CCB % being determined or worked out on the basis of the indexed estimate, or the indexed actual income, for that individual or stated in that notice, combined with:
  - (a) the indexed estimate or indexed actual income for the individual's partner stated in a notice given to:
    - (i) if the individual is the claimant for child care benefit—the individual; or

- (ii) if the individual is the partner of the claimant for child care benefit—the individual’s partner;  
under subsection 55AA(2) or 55AB(2) with a start day that has arrived or passed (or, if the Secretary has given more than one such notice—the notice with the most recent start day); or
- (b) if there is no such indexed estimate or indexed actual income—a reasonable estimate of the adjusted taxable income of the individual’s partner (disregarding the effect of clause 3 of Schedule 3 to the Family Assistance Act) that has been given to the Secretary by the individual.

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## Schedule 11—Definition

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

#### **1 Subsection 3(1) (definition of *income tax refund*)**

Repeal the definition, substitute:

*income tax refund* means an amount payable to a person:

- (a) in respect of an overpayment of income tax imposed by the *Income Tax Act 1986*; or
- (b) in respect of an overpayment of Medicare levy payable in accordance with Part VIIB of the *Income Tax Assessment Act 1936*; or
- (c) in respect of an overpayment of an amount payable by the person by an assessment made under Part IV of the *Income Tax Assessment Act 1936* because of:
  - (i) subsection 106U(1) of the *Higher Education Funding Act 1988*; or
  - (ii) section 154-60 of the *Higher Education Support Act 2003*; or
  - (iii) subsection 12ZN(1) of the *Student Assistance Act 1973*; or
- (d) as a refund of a tax offset that is subject to the refundable tax offset rules under Division 67 of the *Income Tax Assessment Act*.

#### **2 Application of amendment**

- (1) The amendment made by this Schedule applies in relation to a debt owed in respect of family tax benefit against which an income tax refund is to be applied, if the income tax refund is determined on or after 1 July 2002 (irrespective of the income year to which the refund relates or when the debt is determined).
  - (2) The amendment made by this Schedule applies in relation to a debt owed in respect of child care benefit against which an income tax refund is to be applied, if both:
    - (a) the debt is determined on or after 1 July 2006; and
-

- (b) the income tax refund is determined on or after 1 July 2007  
(irrespective of the income year to which the refund relates).

## **Schedule 12—Shared parental responsibility**

### ***A New Tax System (Family Assistance) Act 1999***

**1 Subsection 3(1) (paragraph (b) of the definition of *family law order*)**

Omit “section 60D”, substitute “section 4”.

**2 Paragraph 22(3)(c)**

Omit “have contact”, substitute “spend time”.

### ***Child Support (Assessment) Act 1989***

**3 Subsection 8A(7) (paragraph (b) of the definition of *court order*)**

Omit “section 60D”, substitute “section 4”.

## Schedule 13—Other amendments

### *Social Security Act 1991*

#### **1 Subsection 19B(1)**

Omit “(1)”.

### *Social Security (Administration) Act 1999*

#### **2 Subparagraph 212(1)(d)(iii)**

Omit “person; or”, substitute “person.”.

#### **3 Subparagraph 212(1)(d)(iv)**

Repeal the subparagraph.

#### **4 Paragraph 212(2)(d)**

Repeal the paragraph.

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*[Minister’s second reading speech made in—  
House of Representatives on 25 May 2006  
Senate on 13 June 2006]*

(71/06)

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