



**Families, Housing, Community Services
and Indigenous Affairs and Other
Legislation Amendment (Budget and
Other Measures) Act 2011**

No. 34, 2011

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

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

Contents

| | | |
|--|---|----|
| 1 | Short title | 2 |
| 2 | Commencement | 2 |
| 3 | Schedule(s) | 2 |
| Schedule 1—Special disability trusts | | 3 |
| | <i>Social Security Act 1991</i> | 3 |
| | <i>Veterans' Entitlements Act 1986</i> | 5 |
| Schedule 2—Disability support pension | | 8 |
| | <i>Social Security Act 1991</i> | 8 |
| Schedule 5—Family tax benefit | | 11 |
| | <i>A New Tax System (Family Assistance) Act 1999</i> | 11 |
| | <i>A New Tax System (Family Assistance) (Administration) Act 1999</i> | 13 |
| Schedule 6—Pension reform measures | | 15 |
| | <i>Social Security Act 1991</i> | 15 |
| | <i>Veterans' Entitlements Act 1986</i> | 16 |
| Schedule 7—Minor corrections | | 18 |
| | <i>Social Security Act 1991</i> | 18 |
| | <i>Social Security (Administration) Act 1999</i> | 18 |



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

[Assented to 26 May 2011]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Budget and Other Measures) Act 2011*.

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.

| Commencement information | | |
|---|---|---------------------|
| Column 1 | Column 2 | Column 3 |
| Provision(s) | Commencement | Date/Details |
| 1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table | The day this Act receives the Royal Assent. | 26 May 2011 |
| 2. Schedule 1 | 1 January 2011. | 1 January 2011 |
| 3. Schedule 2 | 1 July 2011. | 1 July 2011 |
| 4. Schedules 5, 6 and 7 | The day this Act receives the Royal Assent. | 26 May 2011 |

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in Column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be 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—Special disability trusts

Social Security Act 1991

1 After paragraph 1209L(e)

Insert:

- (ea) the trust expenditure requirements, if any (see section 1209RA);

2 Paragraph 1209M(2)(c)

Repeal the paragraph, substitute:

- (c) the beneficiary must have a disability as a result of which either:
 - (i) he or she is not working, and has no likelihood of working, for more than 7 hours a week for a wage that is at or above the relevant minimum wage; or
 - (ii) he or she is working for wages set in accordance with the program administered by the Commonwealth known as the supported wage system.

3 Subsection 1209N(1)

Omit “sole”, substitute “primary”.

Note: The heading to subsection 1209N(1) is altered by omitting “Sole” and substituting “Primary”.

4 Subsections 1209N(2), (3) and (4)

Repeal the subsections, substitute:

Other purposes

- (2) The trust may have other purposes that are:
 - (a) both ancillary to the primary purpose and necessary or desirable to facilitate the achievement of that purpose; or
 - (b) primarily for the benefit of the principal beneficiary.

Note 1: A particular purpose may be covered by both of paragraphs (2)(a) and (b).

Note 2: The application of the income and assets of the trust for purposes (other than the primary purpose) that are primarily for the benefit of the principal beneficiary is dealt with by section 1209RA.

Guidelines relating to purposes

- (3) If guidelines are made under subsection (4) then, for the purposes of this section:
- (a) the reasonable care and accommodation needs of a principal beneficiary of a special disability trust must be decided in accordance with the guidelines if they deal with those needs; and
 - (b) purposes, other than the primary purpose of a special disability trust, that are primarily for the benefit of the principal beneficiary of a trust must be decided in accordance with the guidelines if they deal with those other purposes.
- (4) The Secretary may, by legislative instrument, make guidelines for deciding either or both of the following for the purposes of this section:
- (a) what are, and what are not, reasonable care and accommodation needs for beneficiaries of trusts;
 - (b) what are, and what are not, trusts' purposes, other than the primary purpose described in subsection (1), that are primarily for the benefit of beneficiaries of the trusts.

5 After section 1209R

Insert:

1209RA Trust expenditure requirements

Limit on expenditure for purposes other than primary purpose

- (1) If:
- (a) a determination has been made under subsection (3); and
 - (b) the trust has one or more purposes, other than its primary purpose described in subsection 1209N(1), that are primarily for the benefit of the principal beneficiary;
- the total value of the income and assets of the trust applied for those other purposes in a financial year must not exceed the value specified in the determination for that year.

Instruments fixing limits and purposes to be taken into account

- (2) If guidelines are made under paragraph 1209N(4)(b), the question whether a purpose for which income and assets of a trust have been applied is one of the other purposes described in subsection (1) must be decided in accordance with the guidelines.

Note: Paragraph 1209N(4)(b) provides for guidelines for deciding what are, and what are not, trusts' purposes, other than the primary purpose described in subsection 1209N(1), that are primarily for the benefit of beneficiaries of the trusts.

- (3) The Secretary may, by legislative instrument, determine the total value of income and assets of a special disability trust that may be applied in a specified financial year for purposes, other than the primary purpose described in subsection 1209N(1), that are primarily for the benefit of the principal beneficiary of the trust.

Veterans' Entitlements Act 1986**6 After paragraph 52ZZZW(e)**

Insert:

- (ea) the trust expenditure requirements, if any (see section 52ZZZW(e));

7 Paragraph 52ZZZWA(2)(c)

Repeal the paragraph, substitute:

- (c) the beneficiary must have a disability as a result of which either:
- (i) he or she is not working, and has no likelihood of working, for more than 7 hours a week for a wage that is at or above the relevant minimum wage within the meaning of subsection 23(1) of the Social Security Act; or
 - (ii) he or she is working for wages set in accordance with the program administered by the Commonwealth known as the supported wage system.

8 Subsection 52ZZZWB(1)

Omit "sole", substitute "primary".

Note: The heading to subsection 52ZZZWB(1) is altered by omitting "Sole" and substituting "Primary".

9 Subsections 52ZZZWB(2), (3) and (4)

Repeal the subsections, substitute:

Other purposes

- (2) The trust may have other purposes that are:
- (a) both ancillary to the primary purpose and necessary or desirable to facilitate the achievement of that purpose; or
 - (b) primarily for the benefit of the principal beneficiary.

Note 1: A particular purpose may be covered by both of paragraphs (2)(a) and (b).

Note 2: The application of the income and assets of the trust for purposes (other than the primary purpose) that are primarily for the benefit of the principal beneficiary is dealt with by section 52ZZZWEA.

Guidelines relating to purposes

- (3) If guidelines are made under subsection (4) then, for the purposes of this section:
- (a) the reasonable care and accommodation needs of a principal beneficiary of a special disability trust must be decided in accordance with the guidelines if they deal with those needs; and
 - (b) purposes, other than the primary purpose of a special disability trust, that are primarily for the benefit of the principal beneficiary of a trust must be decided in accordance with the guidelines if they deal with those other purposes.
- (4) The Commission may, by legislative instrument, make guidelines for deciding either or both of the following for the purposes of this section:
- (a) what are, and what are not, reasonable care and accommodation needs for beneficiaries of trusts;
 - (b) what are, and what are not, trusts' purposes, other than the primary purpose described in subsection (1), that are primarily for the benefit of beneficiaries of the trusts.

10 After section 52ZZZWE

Insert:

5ZZZZWEA Trust expenditure requirements

Limit on expenditure for purposes other than primary purpose

- (1) If:
- (a) a determination has been made under subsection (3); and
 - (b) the trust has one or more purposes, other than its primary purpose described in subsection 5ZZZZWB(1), that are primarily for the benefit of the principal beneficiary;
- the total value of the income and assets of the trust applied for those other purposes in a tax year must not exceed the value specified in the determination for that year.

Note: For *tax year* see subsection 5Q(1).

Instruments fixing limits and purposes to be taken into account

- (2) If guidelines are made under paragraph 5ZZZZWB(4)(b), the question whether a purpose for which income and assets of a trust have been applied is one of the other purposes described in subsection (1) must be decided in accordance with the guidelines.

Note: Paragraph 5ZZZZWB(4)(b) provides for guidelines for deciding what are, and what are not, trusts' purposes, other than the primary purpose described in subsection 5ZZZZWB(1), that are primarily for the benefit of beneficiaries of the trusts.

- (3) The Commission may, by legislative instrument, determine the total value of income and assets of a special disability trust that may be applied in a specified tax year for purposes, other than the primary purpose described in subsection 5ZZZZWB(1), that are primarily for the benefit of the principal beneficiary of the trust.

11 Application

The amendments made by this Schedule apply to trusts:

- (a) whether they were created before, on or after the commencement of this Schedule; and
- (b) whether or not they were special disability trusts under the *Social Security Act 1991* or the *Veterans' Entitlements Act 1986* before the commencement of this Schedule.

Schedule 2—Disability support pension

Social Security Act 1991

1 After paragraph 94(1)(e)

Insert:

(ea) either:

- (i) the person is an Australian resident; or
- (ii) the person is absent from Australia and all the circumstances described in paragraphs 1218AA(1)(a), (b), (c), (d) and (e) exist in relation to the person; and

2 After paragraph 94A(1)(j)

Insert:

(ja) either:

- (i) the person is an Australian resident; or
- (ii) the person is absent from Australia and all the circumstances described in paragraphs 1218AA(1)(a), (b), (c), (d) and (e) exist in relation to the person; and

3 At the end of subsection 94A(1)

Add:

Note: For *Australian resident* see section 7.

4 At the end of subsection 95(1)

Add:

; and (d) either:

- (i) the person is an Australian resident; or
- (ii) the person is absent from Australia and all the circumstances described in paragraphs 1218AA(1)(a), (b), (c), (d) and (e) exist in relation to the person.

5 Section 1212

Insert:

Australian resident disability support pensioner means a person who qualifies for disability support pension only because he or she is an Australian resident.

6 Section 1212

Insert:

terminally ill overseas disability support pensioner means a person who qualifies for disability support pension because all the circumstances described in paragraphs 1218AA(1)(a), (b), (c), (d) and (e) exist in relation to the person.

7 Section 1217 (table item 3)

Repeal the item, substitute:

| | | | | |
|---|----------------------------|--|-----------------------|--|
| 2 | Disability support pension | Australian resident disability support pensioner | Any temporary absence | 13 weeks (but see also sections 1218AA, 1218AB and 1218) |
| 3 | Disability support pension | Terminally ill overseas disability support pensioner | Any absence | Unlimited period |

7A After section 1218AA

Insert:

1218AB Extended portability period for disability support pension

- (1) The Secretary may, by written determination, extend the person's portability period for disability support pension if all of the following circumstances (the ***qualifying circumstances***) exist:
- the person is severely disabled (see subsection 23(4B));
 - the person is receiving disability support pension;
 - the person is wholly or substantially dependent on a family member of the person (see subsection 23(14));
 - the Secretary is satisfied that the person will be living with the family member of the person throughout the period of absence;

- (e) the family member of the person is engaged in employment in Australia for an employer immediately before the start of the period of absence;
 - (f) the Secretary is satisfied that the family member of the person will be engaged in employment outside Australia for that employer throughout the period of absence.
- (2) If the Secretary extends a person's portability period under subsection (1), the person's portability period for disability support pension, for the purposes of this Part, is the extended period.
 - (3) The Secretary may revoke the determination if any of the qualifying circumstances ceases to exist.
 - (4) A determination under subsection (1) is not a legislative instrument.

Note: The heading to section 1218AA is altered by omitting "**Extended**" and substituting "**Unlimited**".

8 At the end of Part 3 of Schedule 1A

Add:

150 Persons exempt from requirement to be Australian residents to qualify for disability support pension

Paragraphs 94(1)(ea), 94A(1)(ja) and 95(1)(d) do not affect the qualification for disability support pension of:

- (a) a person to whom the provisions mentioned in subclause 128(1) continue to apply as described in that subclause; or
- (b) a person who is covered by a determination under clause 135.

Note: Those paragraphs are in Subdivision A of Division 1 of Part 2.3, which is about qualification for disability support pension.

Schedule 5—Family tax benefit

A New Tax System (Family Assistance) Act 1999

1 Subsection 3(1)

Insert:

studying overseas full-time: see section 3C.

2 At the end of Division 1 of Part 2

Add:

3C Meaning of *studying overseas full-time*

For the purposes of this Act, *studying overseas full-time* has the meaning given by a legislative instrument made by the Minister for the purposes of this section.

3 At the end of subsection 17B(1)

Add:

; or (c) the individual is studying overseas full-time in a way that would, in the Secretary’s opinion, assist or allow the individual to complete the final year of secondary school or an equivalent level of education.

4 Subsection 17B(4)

Omit “either or both”, substitute “one or more”.

5 After paragraph 17B(4)(a)

Insert:

(aa) paragraph (1)(c);

6 Subsection 17B(5)

Omit “paragraph (1)(b) or (2)(c)”, substitute “paragraph (1)(b) or (c) or (2)(c)”.

7 At the end of paragraph 22(6)(d)

Add “or is studying overseas full-time”.

Note: The heading to subsection 22(6) is altered by adding at the end “*or studying overseas full-time*”.

8 Subsection 22A(1) (paragraph (a) of the cell at table item 1, column headed “then the individual cannot be an FTB child of the adult if:”)

Repeal the paragraph, substitute:

(a) none of the following subparagraphs applies:

- (i) the individual is undertaking full-time study;
- (ii) the individual is studying overseas full-time;
- (iii) the individual is undertaking primary education;

and the individual has adjusted taxable income, for the income year in which the particular time occurs, that equals or exceeds the cut-out amount (see subsection (2)); or

9 Paragraph 31(3)(a)

After “undertaking full-time study”, insert “or was studying overseas full-time”.

10 Subparagraph 34(1)(a)(iii)

After “undertaking full-time study”, insert “or is studying overseas full-time”.

11 Subsection 35(1) (paragraph (a) of the cell at table item 1, column headed “then the approved care organisation is not eligible for family tax benefit in respect of the individual if:”)

Repeal the paragraph, substitute:

- (a) none of the following subparagraphs applies:
- (i) the individual is undertaking full-time study;
 - (ii) the individual is studying overseas full-time;
 - (iii) the individual is undertaking primary education; and

12 Paragraph 65(2)(a)

After “undertaking full-time study”, insert “or was studying overseas full-time”.

13 Paragraph 29(3)(a) of Schedule 1

After “undertaking full-time study”, insert “or is studying overseas full-time”.

14 Subparagraph 36(2)(b)(i) of Schedule 1

After “undertaking full-time study”, insert “or is studying overseas full-time”.

15 Subparagraph 36(2)(b)(ii) of Schedule 1

After “undertaking full-time study”, insert “or are studying overseas full-time”.

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

16 Paragraph 32K(1)(b)

Repeal the paragraph, substitute:

- (b) none of the following subparagraphs applies:
- (i) the other individual is undertaking full-time study;
 - (ii) the other individual is studying overseas full-time;
 - (iii) the other individual is undertaking primary education;

17 Application

- (1) The amendments made by items 3 to 8, 10, 11 and 13 to 16 apply in relation to working out an individual’s or approved care organisation’s

entitlement (if any) to family tax benefit in respect of days occurring on or after the commencement of those items.

- (2) The amendments made by items 9 and 12 apply in relation to deaths occurring on or after the commencement of those items.

Schedule 6—Pension reform measures

Social Security Act 1991

1 Paragraph 8(1A)(b)

Repeal the paragraph, substitute:

- (b) that includes, but is not limited to:
 - (i) salary, wages, commissions and employment-related fringe benefits that are so earned, derived or received or taken to have been so earned, derived or received; and
 - (ii) if the person is engaged on a continuing basis in that employer/employee relationship—a leave payment to the person;

2 Paragraph 8(1A)(e)

Repeal the paragraph, substitute:

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

3 Subsection 8(1C)

Omit “paragraph (1A)(e)”, substitute “subsection (1A)”.

4 Paragraph 8(1C)(a)

Omit “sick leave”, substitute “personal/carer’s leave”.

5 Subsection 1073AA(6)

Repeal the subsection (not including the examples), substitute:

- (6) If the person is a member of a couple, apply this section in relation to the person, and to the person’s partner, before applying point 1064-E2 or point 1066-E2 (whichever is relevant).

6 Subsection 1073AA(6) (example 1)

After “couple”, insert “and subsection (1) applies to David and Amy”.

7 Subsection 1073AA(6) (example 2)

After “couple”, insert “and subsection (1) applies to Ian and Simone”.

8 At the end of section 1073AA

Add:

(7) In working out a person’s employment income for the purposes of this section, disregard subsection 8(1B).

(8) If:

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

(b) the person’s partner has an amount (the *exempt amount*) of employment income (within the meaning of section 46AB of the *Veterans’ Entitlements Act 1986*) disregarded under section 46AA of that Act;

then, in applying point 1064-E2 or point 1066-E2 (whichever is relevant), the ordinary income of the person’s partner is to be reduced by an amount equal to the exempt amount.

Veterans’ Entitlements Act 1986

9 Subsection 46AA(5)

Repeal the subsection (not including the examples), substitute:

Interpretation

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

10 Subsection 46AA(5) (example 1)

After “couple”, insert “and subsection (1) applies to David and Amy”.

11 Subsection 46AA(5) (example 2)

After “couple”, insert “and subsection (1) applies to Ian and Simone”.

12 After subsection 46AA(5)

Insert:

(5A) If:

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

- (b) the person's partner has an amount (the *exempt amount*) of employment income (within the meaning of the *Social Security Act 1991*) disregarded under section 1073AA of that Act;

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

13 Paragraph 46AB(1)(b)

Repeal the paragraph, substitute:

- (b) that includes, but is not limited to:
 - (i) salary, wages, commissions and employment-related fringe benefits that are so earned, derived or received or taken to have been so earned, derived or received; and
 - (ii) if the person is engaged on a continuing basis in that employer/employee relationship—a leave payment to the person;

14 Paragraph 46AB(1)(e)

Repeal the paragraph, substitute:

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

15 Subsection 46AB(2)

Omit “paragraph (1)(e)”, substitute “subsection (1)”.

16 Paragraph 46AB(2)(a)

Omit “sick leave”, substitute “personal/carer's leave”.

Schedule 7—Minor corrections

Social Security Act 1991

1 Subsection 1218(3)

After “not”, insert “to”.

Social Security (Administration) Act 1999

2 At the end of subsection 202(1)

Add:

; or (f) the Digital Switch-over Household Assistance Program.

3 Paragraph 202(2)(db) (the paragraph (db) inserted by item 2 of Schedule 1 to the *Social Security Legislation Amendment (Digital Television Switch-over) Act 2009*)

Reletter as paragraph (dc).

[Minister's second reading speech made in—
House of Representatives on 20 October 2010
Senate on 22 November 2010]

(250/10)