





# **Budget Savings (Omnibus) Act 2016**

**No. 55, 2016**

**An Act relating to budget savings, and for other purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation (<https://www.legislation.gov.au/>)



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# Budget Savings (Omnibus) Act 2016

No. 55, 2016

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## An Act relating to budget savings, and for other purposes

[Assented to 16 September 2016]

The Parliament of Australia enacts:

### 1 Short title

This Act is the *Budget Savings (Omnibus) Act 2016*.

### 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>Provisions</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 this Act receives the Royal Assent.	16 September 2016
2. Schedule 1	1 July 2018.	1 July 2018
3. Schedule 2	1 January 2018.	1 January 2018
4. Schedule 3	1 July 2017.	1 July 2017
5. Schedule 4	The later of: (a) 1 January 2017; and (b) the day after this Act receives the Royal Assent.	1 January 2017 (paragraph (a) applies)
6. Schedules 5 and 6	The day after this Act receives the Royal Assent.	17 September 2016
7. Schedule 7	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
8. Schedule 8, Part 1	A day or days to be fixed by Proclamation. However, if any of the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
9. Schedule 8, Part 2	The day after this Act receives the Royal Assent.	17 September 2016
10. Schedule 8, Part 3	The 28th day after this Act receives the Royal Assent.	14 October 2016
12. Schedule 10	As follows: (a) if this Act receives the Royal Assent before 1 January 2017—1 January 2017; (b) if this Act receives the Royal Assent on	1 January 2017 (paragraph (a) applies)

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
	or after 1 January 2017—the first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives the Royal Assent.	
13. Schedule 11	As follows: (a) if this Act receives the Royal Assent before 1 January 2017—1 July 2017; (b) if this Act receives the Royal Assent on or after 1 January 2017—the first 1 January or 1 July to occur after the day this Act receives the Royal Assent.	1 July 2017 (paragraph (a) applies)
14. Schedule 12	As follows: (a) if this Act receives the Royal Assent before 1 January 2017—1 January 2017; (b) if this Act receives the Royal Assent on or after 1 January 2017—the 28th day after this Act receives the Royal Assent.	1 January 2017 (paragraph (a) applies)
15. Schedule 13	The later of: (a) 1 January 2017; and (b) the day after this Act receives the Royal Assent.	1 January 2017 (paragraph (a) applies)
16. Schedule 14	The first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives the Royal Assent.	1 October 2016
17. Schedule 15	The first 1 January or 1 July to occur after the day this Act receives the Royal Assent.	1 January 2017
18. Schedule 16	The later of: (a) 1 January 2017; and (b) the day after this Act receives the Royal Assent.	1 January 2017 (paragraph (a) applies)
19. Schedule 17	The day this Act receives the Royal Assent.	16 September 2016
20. Schedule 18	The first 1 January or 1 July to occur after the day this Act receives the Royal Assent.	1 January 2017
21. Schedule 19	1 July 2018.	1 July 2018
23. Schedule 21,	20 March 2017.	20 March 2017

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
Parts 1 to 6		
24. Schedule 21, Part 7	1 July 2017.	1 July 2017
24A. Schedule 21A	1 July 2016.	1 July 2016
25. Schedules 22 and 23	The first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives the Royal Assent.	1 October 2016
26. Schedule 24	The later of: (a) 1 January 2017; and (b) the day after this Act receives the Royal Assent.	1 January 2017 (paragraph (a) applies)

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 Schedules

Legislation 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—Minimum repayment income for HELP debts

### *Higher Education Support Act 2003*

#### **1 Paragraph 154-10(a)**

Repeal the paragraph, substitute:

- (a) for the 2018-19 income year—\$51,956; or

#### **2 Section 154-20 (table)**

Repeal the table, substitute:

<b>Applicable percentages</b>		
<b>Item</b>	<b>If the person's repayment income is:</b>	<b>The percentage applicable is:</b>
1	More than the *minimum repayment income, but less than: (a) for the 2018-19 *income year—\$57,730; or (b) for a later income year—that amount indexed under section 154-25.	2%
2	More than the amount under item 1, but less than: (a) for the 2018-19 *income year—\$64,307; or (b) for a later income year—that amount indexed under section 154-25.	4%
3	More than the amount under item 2, but less than: (a) for the 2018-19 *income year—\$70,882; or (b) for a later income year—that amount indexed under section 154-25.	4.5%
4	More than the amount under item 3, but less than: (a) for the 2018-19 *income year—\$74,608; or (b) for a later income year—that amount indexed under section 154-25.	5%
5	More than the amount under item 4, but less than: (a) for the 2018-19 *income year—\$80,198; or (b) for a later income year—that amount indexed under section 154-25.	5.5%

## Schedule 1 Minimum repayment income for HELP debts

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<b>Applicable percentages</b>		
<b>Item</b>	<b>If the person's repayment income is:</b>	<b>The percentage applicable is:</b>
6	More than the amount under item 5, but less than: (a) for the 2018-19 *income year—\$86,856; or (b) for a later income year—that amount indexed under section 154-25.	6%
7	More than the amount under item 6, but less than: (a) for the 2018-19 *income year—\$91,426; or (b) for a later income year—that amount indexed under section 154-25.	6.5%
8	More than the amount under item 7, but less than: (a) for the 2018-19 *income year—\$100,614; or (b) for a later income year—that amount indexed under section 154-25.	7%
9	More than the amount under item 8, but less than: (a) for the 2018-19 *income year—\$107,214; or (b) for a later income year—that amount indexed under section 154-25.	7.5%
10	More than the amount under item 9.	8%

### 3 Subsection 154-25(1)

Repeal the subsection, substitute:

- (1) The following amounts for the 2019-20 \*income year, or a later income year:
  - (a) the \*minimum repayment income;
  - (b) the amounts referred to in paragraph (a) of the second column of items 1 to 9 of the table in section 154-20;are indexed by multiplying the corresponding amounts for the 2018-19 income year by the amount worked out using the formula:

$$\frac{\text{AWE for that income year}}{\text{AWE for the 2018-19 income year}}$$

### 4 Section 154-30

Omit “2006-07”, substitute “2019-20”.

**5 Paragraph 154-30(b)**

Omit “items 1 to 8”, substitute “items 1 to 9”.

**6 Application of amendments**

The amendments made by this Schedule apply in relation to income years commencing on and after the day this Schedule commences.

## Schedule 2—Indexation of higher education support amounts

### *Higher Education Support Act 2003*

#### **1 Subsection 198-10(1)**

Repeal the subsection, substitute:

- (1) An amount is indexed on 1 January each year, by multiplying it by the \*indexation factor for the year.

#### **2 Subsection 198-15(1) (formula)**

Repeal the formula, substitute:

$$\frac{\text{The *index number for the December reference quarter}}{\text{The *index number for the December base quarter}}$$

where:

***December base quarter*** means the \*quarter ending on the 31 December that is 2 years and a day before the relevant 1 January.

***December reference quarter*** means the \*quarter ending on the 31 December that is a year and a day before the relevant 1 January.

#### **3 Section 198-20**

Repeal the section, substitute:

##### **198-20 Meaning of *index number***

- (1) The ***index number*** for a \*quarter is the All Groups Consumer Price Index number (being the weighted average of the 8 capital cities) published by the \*Australian Statistician in respect of that quarter.
- (2) Subject to subsection (3), if, at any time before or after the commencement of this subsection:
  - (a) the \*Australian Statistician has published or publishes an index number in respect of a \*quarter; and

- (b) that index number is in substitution for an index number previously published by the Australian Statistician in respect of that quarter;  
disregard the publication of the later index number for the purposes of this section.
- (3) If, at any time before or after the commencement of this subsection, the \*Australian Statistician has changed or changes the index reference period for the Consumer Price Index, then, for the purposes of applying this section after the change took place or takes place, have regard only to \*index numbers published in terms of the new index reference period.

**4 Subclause 1(1) of Schedule 1 (definition of *indexation period*)**

Repeal the definition.

## **Schedule 3—Removal of HECS-HELP benefit**

### *Higher Education Support Act 2003*

#### **1 Paragraphs 140-1(2)(d) and (e)**

Repeal the paragraphs, substitute:

(d) \*compulsory repayment amounts in respect of the debt.

#### **2 Subsection 140-5(1) (method statement, step 4A)**

Repeal the step.

#### **3 Subsection 140-5(1) (example)**

Omit “Step 4A: Does not apply because Lorraine does not satisfy the eligibility requirements for the HECS-HELP benefit.”.

#### **4 Subsection 140-5(3)**

Repeal the subsection.

#### **5 Section 148-1**

Omit:

<p>Repayment amounts may be reduced by the HECS-HELP benefit. To receive the benefit, a person must satisfy eligibility requirements and apply for it. The Commissioner determines whether a person is eligible for the benefit, and if so, the amount of the benefit.</p>
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#### **6 Section 148-5**

Repeal the section.

#### **7 Subsection 154-1(1)**

Omit “Subject to section 154-3, if”, substitute “If”.

#### **8 Section 154-3**

Repeal the section.

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**9 Section 154-35 (note)**

Repeal the note.

**10 Section 154-40**

Repeal the section, substitute:

**154-40 Notification of notices of assessment of tax**

If:

- (a) the \*Commissioner is required to serve on a person a notice of assessment in respect of the person's income of an \*income year under section 174 of the *Income Tax Assessment Act 1936*; and
- (b) the Commissioner has made, in respect of the person, an assessment under section 154-35 of this Act of the amounts referred to in that section; and
- (c) notice of the assessment under that section has not been served on the person;

notice of the assessment under that section may be served by specifying the amounts concerned in the notice referred to in paragraph (a).

**11 Section 154-85**

Repeal the section.

**12 Division 157**

Repeal the Division.

**13 Section 206-1 (table item 4A)**

Repeal the item.

**14 Subsection 238-10(1) (table item 4A)**

Repeal the item.

**15 Subclause 1(1) of Schedule 1 (definition of *HECS-HELP benefit*)**

Repeal the definition.

***Income Tax Assessment Act 1997***

**16 Section 11-15 (table item headed “education and training”)**

Omit:

HECS-HELP benefit, recipient of..... 51-10

**17 Subsection 51-10 (table item 2.9)**

Repeal the item.

**18 Subsection 995-1(1) (definition of *HECS-HELP benefit*)**

Repeal the definition.

**19 Application and saving provision**

(1) In this item:

*Act* means the *Higher Education Support Act 2003*.

*commencement* means the day this Schedule commences.

*earlier income year* means an income year commencing before commencement.

(2) The amendments made by this Schedule do not apply in relation to HECS-HELP benefit for an earlier income year.

(3) Without limiting subitem (2):

(a) a person may, after commencement, make an application in respect of an earlier income year in accordance with Subdivision 157-A of Division 157 of the Act as in force immediately before commencement; and

(b) the Commissioner must make a determination for any application in respect of an earlier year in accordance with Subdivision 157-C of Division 157 of the Act as in force immediately before commencement; and

(c) section 140-5 of the Act, as in force immediately before commencement, continues to apply after commencement in relation to working out a former accumulated HELP debt of a person in respect of whom HECS-HELP benefit has been determined for an earlier income year; and

(d) section 154-3 of the Act, as in force immediately before commencement, continues to apply after commencement in relation to working out the amount that a person in respect of

- whom a HECS-HELP benefit has been determined for an earlier income year is liable to pay under section 154-1 of the Act; and
- (e) a person may apply, after commencement, for review of a decision referred to in item 4A of the table in section 206-1 of the Act as in force immediately before commencement; and
  - (f) such a decision may be reviewed and given effect in accordance with the Act as in force immediately before commencement; and
  - (g) a provision of a taxation law (within the meaning of the *Income Tax Assessment Act 1997*) has the effect necessary to give effect to this item.
- (4) The HECS-HELP Benefit Guidelines in force immediately before commencement continue in force for the purposes of the application of the *Higher Education Support Act 2003* in relation to HECS-HELP benefit for earlier income years. The Guidelines as continued under this subitem may be amended or repealed as if they were Guidelines made under section 238-10 of the Act.

## **Schedule 4—Job commitment bonus**

### **Part 1—Main amendments**

#### *Social Security Act 1991*

**1 Subsection 23(1) (definition of *job commitment bonus*)**

Repeal the definition.

**2 Part 2.16A**

Repeal the Part.

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

**3 Subsection 13(6)**

Repeal the subsection.

**4 Subdivision FD of Division 1 of Part 3**

Repeal the Subdivision.

**5 Subsection 37(6A)**

Repeal the subsection.

**6 Paragraph 47(1) (paragraph (hsa) of the definition of *lump sum benefit*)**

Repeal the paragraph.

**7 Section 47BA**

Repeal the section.

## **Part 2—Consequential amendments**

### *Farm Household Support Act 2014*

#### **8 Section 95 (table item 1A)**

Repeal the item.

### *Income Tax Assessment Act 1997*

#### **9 Section 11-15 (table item headed “social security or like payments”)**

Omit:

job commitment bonus under the *Social Security Act 1991*

52-10

#### **10 Paragraph 52-10(1)(wb)**

Repeal the paragraph.

#### **11 Subsection 52-10(1EB)**

Repeal the subsection.

#### **12 Section 52-40 (table item 14)**

Repeal the item.

## Part 3—Saving and transitional provisions

### 13 Saving and transitional provisions

- (1) To avoid doubt, a person cannot become qualified for a job commitment bonus on or after the commencement of this item.
- (2) Despite the amendments made by this Schedule, Chapter 5 of the *Social Security Act 1991*, as in force immediately before the commencement of this item, continues to apply on and after that commencement in relation to a payment of a job commitment bonus before, on or after that commencement.
- (3) Despite the amendments made by this Schedule, section 27D of the *Social Security (Administration) Act 1999*, as in force immediately before the commencement of this item, continues to apply on and after that commencement in relation to a person making a claim for a job commitment bonus where the person qualified for the bonus before that commencement.
- (4) Despite the amendments made by this Schedule, Part 3 of the *Social Security (Administration) Act 1999*, as in force immediately before the commencement of this item, continues to apply on and after that commencement in relation to:
  - (a) deciding claims for a job commitment bonus made before, on or after that commencement; or
  - (b) determinations made under that Part before, on or after that commencement in relation to job commitment bonus; or
  - (c) making payments of a job commitment bonus on or after that commencement.
- (5) Despite the amendments made by this Schedule, Parts 4 and 4A of the *Social Security (Administration) Act 1999*, as in force immediately before the commencement of this item, continue to apply on and after that commencement in relation to a decision under the social security law in relation to a job commitment bonus made before, on or after that commencement.
- (6) Despite the amendments made by this Schedule, subsection 52-10(1EB) of the *Income Tax Assessment Act 1997*, as in force immediately before the commencement of this item, continues to apply on and after that

commencement in relation to payments of job commitment bonus made before, on or after that commencement.

## Schedule 5—Australian Renewable Energy Agency's finances

### *Australian Renewable Energy Agency Act 2011*

#### **1 Subsection 64(1) (table items 5 to 9)**

Repeal the items, substitute:

5	2017-2018	\$257,925,000.00
6	2018-2019	\$235,296,000.00
7	2019-2020	\$254,704,000.00
8	2020-2021	\$134,035,000.00
9	2021-2022	\$132,474,000.00

## **Schedule 6—Indexation of private health insurance thresholds**

### *Private Health Insurance Act 2007*

#### **1 Subsection 22-45(3A)**

Omit “or 2017-18”, substitute “, 2017-18, 2018-19, 2019-20 or 2020-21”.

## Schedule 7—Abolishing the National Health Performance Authority

### Part 1—Amendments

#### *National Health Reform Act 2011*

##### **1 Paragraph 3(b)**

Repeal the paragraph.

##### **2 Section 4**

Omit:

- This Act sets up:
  - (a) the Australian Commission on Safety and Quality in Health Care; and
  - (b) the National Health Performance Authority; and
  - (c) the Independent Hospital Pricing Authority; and
  - (d) the office of Administrator of the National Health Funding Pool; and
  - (e) the National Health Funding Body.

substitute:

- This Act sets up:
  - (a) the Australian Commission on Safety and Quality in Health Care; and
  - (b) the Independent Hospital Pricing Authority; and
  - (c) the office of Administrator of the National Health Funding Pool; and
  - (d) the National Health Funding Body.

##### **3 Section 4**

Omit:

- The main function of the National Health Performance Authority is to monitor, and report on, the performance of the following:
  - (a) local hospital networks;
  - (b) public hospitals;
  - (c) private hospitals;
  - (d) primary health care organisations;
  - (e) other bodies or organisations that provide health care services.

**4 Section 5 (definition of *local hospital network*, first occurring)**

Repeal the definition.

**5 Section 5 (definition of *local hospital network*, second occurring)**

Omit “, in Part 5.2.”.

**6 Section 5**

Repeal the following definitions:

- (a) definition of *member of the Performance Authority*;
- (b) definition of *official of the Performance Authority*;
- (c) definition of *Performance Authority*;
- (d) definition of *Performance Authority CEO*;
- (e) definition of *personal information*;
- (f) definition of *primary health care organisation*;
- (g) definition of *protected Performance Authority information*;
- (h) definition of *staff of the Performance Authority*.

**7 Section 5 (paragraph (b) of the definition of *vacancy*)**

Repeal the paragraph.

**8 Subsection 6(2)**

Repeal the subsection.

**9 Paragraph 54H(1)(a)**

Repeal the paragraph.

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**10 Chapter 3**

Repeal the Chapter.

**11 Paragraph 220(1)(a)**

Repeal the paragraph.

**12 Paragraph 275(1)(b)**

Repeal the paragraph.

**13 Paragraph 279(1)(b)**

Repeal the paragraph.

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

### **Division 1—Interpretation**

#### **14 Interpretation**

In this Part:

*AIHW* means the Australian Institute of Health and Welfare.

*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:

- (a) under a law of the Commonwealth, a State or a Territory; or
- (b) under a trust instrument; or
- (c) otherwise;

has responsibility for keeping a register in relation to assets of the kind concerned.

*Director* means the Director of the Australian Institute of Health and Welfare.

*Health Department* means the Department administered by the Health Minister.

*Health Minister* means the Minister responsible for administering the *Australian Institute of Health and Welfare Act 1987*.

*Health Secretary* means the Secretary of the Health Department.

*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.

*NHPA* means the National Health Performance Authority.

*NHPA CEO* means the Chief Executive Officer of the National Health Performance Authority.

*transition time* means the commencement of this Schedule.

## **Division 2—Transfer of assets and liabilities**

### **15 Vesting of assets**

- (1) This item applies to the assets of the NHPA immediately before the transition time.
- (2) At the transition time, the assets cease to be assets of the NHPA and become assets of the AIHW, without any conveyance, transfer or assignment. The AIHW becomes the successor in law in relation to the assets.

### **16 Vesting of liabilities**

- (1) This item applies to the liabilities of the NHPA immediately before the transition time.
- (2) At the transition time, the liabilities cease to be liabilities of the NHPA and become liabilities of the AIHW, without any conveyance, transfer or assignment. The AIHW becomes the successor in law in relation to the liabilities.

### **17 Transfers of land may be registered**

- (1) This item applies if:
    - (a) any land vests in the AIHW under this Division; and
    - (b) there is lodged with a land registration official a certificate that:
      - (i) is signed by the Health 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 AIHW under this Division.
  - (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.

(3) A certificate under paragraph (1)(b) is not a legislative instrument.

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

(1) This item applies if:

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

(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 in relation to assets of that kind as are necessary, having regard to the effect of this Division.

(3) A certificate under paragraph (1)(b) is not a legislative instrument.

### **Division 3—Transfer of other matters**

#### **19 Things done by, or in relation to, the NHPA or the NHPA CEO**

- (1) Anything done by, or in relation to, the NHPA before the transition time has effect at and after that time as if it had been done by the AIHW.
- (2) Anything done by, or in relation to, the NHPA CEO before the transition time has effect at and after that time as if it had been done by the Director.
- (3) This item does not limit the operation of items 15 and 16.

#### **20 References in certain instruments to the NHPA or the NHPA CEO**

- (1) This item applies to an instrument that:
-

- (a) is in force immediately before the transition time; and
  - (b) contains a reference to the NHPA or the NHPA CEO.
- (2) If the instrument relates to:
  - (a) an asset or liability of the NHPA that, as a result of the operation of item 15 or 16, becomes an asset or liability of the AIHW; or
  - (b) a thing done by, or in relation to, the NHPA or the NHPA CEO, that, as a result of the operation of item 19, is taken to have been done by, or in relation to, the AIHW or the Director;then:
  - (c) a reference in the instrument to the NHPA has effect, at and after the transition time, as if it were a reference to the AIHW; and
  - (d) a reference in the instrument to the NHPA CEO has effect, at and after the transition time, as if it were a reference to the Director.
- (3) In this item:  
*instrument:*
  - (a) includes:
    - (i) a contract, undertaking, deed or agreement; and
    - (ii) a notice, authority, order or instruction; and
    - (iii) an instrument made under an Act or under a legislative instrument; but
  - (b) does not include:
    - (i) an Act; or
    - (ii) an instrument made under this Act; or
    - (iii) an instrument specified in rules made under item 34.

## **21 Transfer of appropriated money**

- (1) For the purposes of the operation of an Appropriation Act after the transition time, references to the National Health Performance Authority are to be read as references to the Australian Institute of Health and Welfare.
  - (2) In this item:
-

**Appropriation Act** means an Act appropriating money for expenditure out of the Consolidated Revenue Fund.

## **22 Legal proceedings of the NHPA**

- (1) If any proceedings to which the NHPA was a party were pending in any court or tribunal immediately before the transition time, the AIHW is substituted for the NHPA, from the transition time, as a party to those proceedings.
- (2) If any proceedings to which the NHPA CEO was a party were pending in any court or tribunal immediately before the transition time, the Director is substituted for the NHPA CEO, from the transition time, as a party to those proceedings.

## **23 Transfer of NHPA's records and documents**

- (1) This item applies to any records or documents that were in the possession of the NHPA immediately before the transition time.
- (2) The records and documents are to be transferred to the AIHW after the transition time.
- (3) Sections 37 and 41 of the *Public Governance, Performance and Accountability Act 2013* apply in relation to records or documents transferred to a Commonwealth entity (within the meaning of that Act) under this item as if the records or documents related to that entity.

Note: Records and documents transferred under this item are Commonwealth records for the purposes of the *Archives Act 1983*.

## **24 Safety, Rehabilitation and Compensation Act 1988**

- (1) This item applies in relation to a person if:
  - (a) the person was a member of the staff of the NHPA at any time before the transition time; and
  - (b) the person was an employee (within the meaning of the *Safety, Rehabilitation and Compensation Act 1988* (the **SRC Act**)) of the NHPA when the person was such a member; and
  - (c) the person suffered an injury (within the meaning of that Act) before the transition time.

- (2) The SRC Act applies, after the transition time, as if the person had been an employee of the AIHW during the period that the person was a member of the staff of the NHPA as mentioned in paragraph (1)(a).
- (3) This item does not limit item 19 or 20 of this Schedule.

## **25 No transfer of appointment, engagement or employment of staff**

Nothing in this Part produces the result that the appointment, engagement or employment of an official of the Performance Authority immediately before the transition time has effect, at or after that time, as if it were an appointment, engagement or employment of the person in relation to the AIHW.

## **Division 4—Annual reporting obligation**

### **26 Final annual report for the NHPA**

- (1) The Health Secretary must prepare and give to the Health Minister, for presentation to the Parliament, a report (the *final report*) on the activities of the NHPA during the final reporting period.
- (2) Sections 39, 40, 42, 43 and 46 of the *Public Governance, Performance and Accountability Act 2013*, and rules made for the purposes of those sections, apply subject to this item in relation to the NHPA and the final reporting period as if:
  - (a) references in those sections and rules to an annual report for a Commonwealth entity were references to the final report; and
  - (b) references in those sections and rules to a reporting period for a Commonwealth entity were references to the final reporting period; and
  - (c) references in those sections and rules to a Commonwealth entity were references to the NHPA; and
  - (d) references in those sections and rules to the accountable authority for a Commonwealth entity were references to the Health Secretary; and
  - (e) references in those sections and rules to the responsible Minister for a Commonwealth entity were references to the Health Minister.

- (3) The Health Secretary must give the final report to the Health Minister by the 15th day of the fourth month after the end of the final reporting period. The Health Minister may grant an extension of time in special circumstances.
- (4) The Health Minister must table the final report in each House of the Parliament as soon as practicable after receiving the report.
- (5) The Health Secretary must publish the final report on the Health Department's website as soon as practicable after the report is tabled in the House of Representatives.

- (6) In this item:

**annual report** means a report under section 46 of the *Public Governance, Performance and Accountability Act 2013*.

**final reporting period** means the period:

- (a) beginning:

- (i) if, by the transition time, no annual report for the NHPA has been given to the Health Minister for the most recent reporting period for the NHPA that ended before the transition time—at the start of that reporting period; or

- (ii) otherwise—at the start of the reporting period for the NHPA that includes the transition time; and

- (b) ending immediately before the transition time.

**reporting period** for the NHPA means the reporting period for the NHPA under the *Public Governance, Performance and Accountability Act 2013*.

## **Division 5—Disclosure and use of information**

### **27 Protected Performance Authority information**

- (1) Section 113 (secrecy) of the *National Health Reform Act 2011*, as in force immediately before the transition time, continues to apply after that time in relation to a person who was at any time an official of the Performance Authority, despite the repeal of that section by Part 1 of this Schedule.
- (2) Subsection 120(3) (disclosure to agencies, bodies or persons other than the NHPA) of the *National Health Reform Act 2011*, as in force

immediately before the transition time, continues to apply after that time in relation to an agency, body or person that was given protected Performance Authority information before that time, despite the repeal of that subsection by Part 1 of this Schedule.

## **28 Personal information—reports**

Section 127 (use of personal information in reports) of the *National Health Reform Act 2011*, as in force immediately before the transition time, applies after that time in relation to a report prepared or published for the purposes of this Part as if:

- (a) the report were a report prepared or published by the Performance Authority in the performance of the Performance Authority's functions; and
- (b) the reference in subsection 127(3) of that Act to an official of the Performance Authority were a reference to the Health Secretary or an APS employee in the Health Department.

## **29 Protection of patient confidentiality**

Section 279 (protection of patient confidentiality) of the *National Health Reform Act 2011*, as in force immediately before the transition time, applies after that time in relation to the performance by a person of a function under this Part of preparing or publishing a report as if that function were a function of the NHPA.

## **Division 6—Miscellaneous**

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

- (1) No stamp duty or other tax is payable under a law of a State or a Territory in respect of an exempt matter, or anything connected with an exempt matter.
  - (2) For the purposes of this item, an *exempt matter* is:
    - (a) the vesting of an asset or liability under this Part; or
    - (b) the operation of this Part in any other respect.
  - (3) The Health Minister may certify in writing:
    - (a) that a specified matter is an exempt matter; or
    - (b) that a specified thing was connected with a specified exempt matter.
-

- (4) In all courts, and for all purposes (other than for the purposes of criminal proceedings), a certificate under subitem (3) is prima facie evidence of the matters stated in the certificate.
- (5) A certificate under subitem (3) is not a legislative instrument.

### **31 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.

### **32 Delegation by Health Minister**

- (1) The Health Minister may, by writing, delegate all or any of his or her powers and functions under this Part to:
  - (a) the Health Secretary; or
  - (b) an SES employee, or acting SES employee, in the Health Department.

Note: The expressions *SES employee* and *acting SES employee* are defined in the *Acts Interpretation Act 1901*.

- (2) In exercising powers or functions under a delegation, the delegate must comply with any directions of the Health Minister.
- (3) Subitem (1) does not apply to a power to make, vary or revoke a legislative instrument.

### **33 Compensation for acquisition of property**

- (1) If the operation of this Part would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph), 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 the Federal Court of Australia or the Federal Circuit Court of Australia for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

### **34 Transitional rules**

- (1) The Health Minister may, by legislative instrument (and subject to subitem (3)), make rules prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments or repeals made by this Schedule.
- (2) Without limiting subitem (1), rules made for the purposes of that subitem, before the end of the period of 12 months starting at the transition time, may:
  - (a) confer functions on the AIHW; and
  - (b) provide that the following have effect with any modifications prescribed by the rules:
    - (i) this Part;
    - (ii) the *Australian Institute of Health and Welfare Act 1987*.
- (3) To avoid doubt, the rules may not do the following:
  - (a) create an offence or civil penalty provision;
  - (b) provide:
    - (i) powers of arrest or detention; or
    - (ii) powers relating to entry, search or seizure;
  - (c) impose a tax;
  - (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
  - (e) directly amend the text of this Act.
- (4) This Schedule (other than subitem (3)) does not limit the rules that may be made for the purposes of subitem (1).

## **Schedule 8—Aged care**

### **Part 1—Compliance**

#### *Aged Care Act 1997*

##### **1 After subsection 25-1(3)**

Insert:

- (3A) Without limiting paragraph (3)(c), the Classification Principles may require the Secretary to take into account (including as part of a method or procedure specified for the purposes of subsection (2)) specified matters relating to care provided, or to be provided, to the care recipient, including:
- (a) the manner in which the care was, is or is to be provided; or
  - (b) the qualifications of any person involved in providing the care.

##### **2 Validation of Classification Principles**

- (1) This item applies to a thing purportedly done under the *Aged Care Act 1997* at any time before the commencement of this item, to the extent that the thing purportedly done would, apart from this item, be invalid because the Classifications Principles required the Secretary to take into account a matter relating to care provided, or to be provided, to a care recipient, including:
- (a) the manner in which the care was, is or is to be provided; or
  - (b) the qualifications of any person involved in providing the care.
- (2) The thing purportedly done is as valid and effective, and is taken always to have been as valid and effective, as it would have been had subsection 25-1(3A) of that Act, as amended by this Part, been in force.
- (3) All persons are, by force of this subitem, declared to be, and always to have been, entitled to act on the basis that the thing purportedly done is valid and effective.
- (4) This item does not affect rights or liabilities of parties to proceedings for which leave to appeal to the High Court of Australia has been given on or before the day this item commences, if the fact that the

Classification Principles required the Secretary to take into account the matter is in issue in the proceedings.

- (5) Subject to subitem (4), subitems (1), (2) and (3) have effect in relation to:
- (a) proceedings (whether original or appellate) that begin on or after the commencement of this item; and
  - (b) proceedings (whether original or appellate) that began before that commencement, being proceedings that had not been finally determined as at that commencement.
- (6) To avoid doubt, a reference in this item to the Classification Principles includes a reference to a provision of the Classification Principles applying, adopting or incorporating any matter contained in any other instrument or writing.
- (7) This item does not apply to the extent (if any) to which its operation would result in the acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph).

**3 Paragraph 25-4(1)(b)**

Omit “29-1; and”, substitute “29-1.”.

**4 Paragraph 25-4(1)(c)**

Repeal the paragraph.

**5 At the end of subsection 25-4(1)**

Add:

Note: See also section 27-3 (reappraisal required by Secretary) and Division 29A (civil penalty for incorrect classifications).

**6 Before subsection 27-3(1)**

Insert:

*False, misleading or inaccurate information*

**7 Paragraph 27-3(1)(b)**

Omit “and”.

## **8 Paragraph 27-3(1)(c)**

Repeal the paragraph.

## **9 Application of amendments**

The amendments of subsections 25-4(1) and 27-3(1) of the *Aged Care Act 1997* made by this Part apply in relation to a change of classification mentioned in paragraph 25-4(1)(b) or 27-3(1)(b) that occurs on or after the commencement of this item, whether the appraisal or reappraisal mentioned in paragraph 25-4(1)(a) or 27-3(1)(a) occurred before, on or after that commencement.

## **10 At the end of subsection 27-3(1)**

Add:

Note: See also section 25-4 (suspending approved providers from making appraisals and reappraisals) and Division 29A (civil penalty for incorrect classifications).

## **11 After subsection 27-3(3)**

Insert:

*Significant decrease in care needs*

- (3A) The Secretary may give an approved provider a written notice requiring a reappraisal to be made of the level of care needed by a care recipient if:
- (a) the approved provider provides care to the care recipient; and
  - (b) the Secretary reasonably suspects that the care needs of the care recipient have decreased significantly since the last appraisal under section 25-3, or reappraisal under section 27-4, of the level of care needed by the care recipient.
- (3B) The Classification Principles may specify the circumstances in which the care needs of a care recipient are taken to decrease significantly.
- (3C) The notice must specify a period within which the reappraisal is to be made.

*Varying or revoking notice*

**12 Subsection 27-3(4)**

After “subsection (1)”, insert “or (3A)”.

**13 Before subsection 27-3(5)**

Insert:

*Authorised reappraisers*

**14 At the end of subsection 27-3(5)**

Add “or (3A)”.

**15 Section 29-2**

Repeal the section, substitute:

**29-2 Date of effect of change**

A change of a classification under subsection 29-1(1) is taken to have had effect from the day on which the classification took effect.

**16 Application of amendments**

- (1) The amendment of section 29-2 of the *Aged Care Act 1997* made by this Part applies in relation to a change of classification if the Secretary gives written notice of the change to an approved provider under subsection 29-1(4) of that Act on or after the commencement of this item, whether the classification took effect before, on or after that commencement.
- (2) Subitem (1) has no effect to the extent (if any) to which:
  - (a) its operation would result in the acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph); or
  - (b) it imposes taxation (within the meaning of section 55 of the Constitution).

**17 At the end of Part 2.4**

Add:

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## **Division 29A—Civil penalty for incorrect classifications**

### **29A-1 Warning notices**

- (1) The Secretary may notify an approved provider in writing if the Secretary:
  - (a) reasonably suspects that the approved provider, or a person acting on the approved provider's behalf, gave false or misleading information in an appraisal or reappraisal connected with a classification reviewed under subsection 29-1(3); and
  - (b) changes the classification under section 29-1.

Note: See also sections 25-4 (suspending approved providers from making appraisals and reappraisals) and 27-3 (reappraisal required by Secretary).

- (2) The Secretary may also notify an approved provider in writing if:
  - (a) the approved provider makes 2 or more of any of the following:
    - (i) an appraisal under section 25-3;
    - (ii) a reappraisal under section 27-4; and
  - (b) the Secretary changes 2 or more classifications under section 29-1 because the Secretary is satisfied that the appraisals or reappraisals were incorrect or inaccurate; and
  - (c) the Secretary is satisfied that the changes, taken together, are significant (see section 29A-3).
- (3) A notice under this section must:
  - (a) specify the classification or classifications the Secretary changed; and
  - (b) include a statement that the Secretary suspects the matter mentioned in paragraph (1)(a), or is satisfied of the matter mentioned in paragraph (2)(c), and the Secretary's reasons for this; and
  - (c) include a statement of the effect of section 29A-2.

### **29A-2 Civil penalty**

- (1) An approved provider is liable to a civil penalty if:
  - (a) the Secretary changes a classification under section 29-1; and

- (b) the change occurs in the following circumstances:
  - (i) the change occurs within 2 years (the *warning period*) after the Secretary gives a notice to the approved provider under subsection 29A-1(1) or (2);
  - (ii) during the warning period, the approved provider, or a person acting on the approved provider's behalf, gives false or misleading information in an appraisal under section 25-3, or reappraisal under section 27-4, connected with the classification.

Civil penalty: 60 penalty units.

- (2) An approved provider is liable to a civil penalty if:
  - (a) the Secretary changes a classification under section 29-1; and
  - (b) the change occurs in the following circumstances:
    - (i) the change occurs within 2 years (the *warning period*) after the Secretary gives a notice to the approved provider under subsection 29A-1(1) or (2);
    - (ii) during the warning period, the approved provider makes one or more appraisals under section 25-3 or reappraisals under section 27-4;
    - (iii) the Secretary changes the classification as mentioned in paragraph (a) of this subsection because the Secretary is satisfied that any of the appraisals or reappraisals mentioned in subparagraph (ii) of this paragraph was incorrect or inaccurate;
    - (iv) the Secretary changes one or more other classifications under section 29-1 during the warning period because the Secretary is satisfied that any of the appraisals or reappraisals mentioned in subsection (ii) of this paragraph was incorrect or inaccurate;
    - (v) the changes mentioned in subparagraphs (iii) and (iv), taken together, are significant (see section 29A-3).

Civil penalty: 60 penalty units.

- (3) To avoid doubt, the approved provider may be liable to a separate civil penalty under subsection (1) or (2) for each classification the Secretary changes under section 29-1 during the warning period.

### **29A-3 When changes are significant**

In determining, for the purposes of paragraph 29A-1(2)(c) or subparagraph 29A-2(2)(b)(v), whether changes, taken together, are significant, regard must be had to the following matters:

- (a) the number of classifications changed, relative to the number of care recipients to whom the approved provider provides care;
- (b) the significance of each change;
- (c) the frequency of the incorrect or inaccurate appraisals and reappraisals that led to the changes;
- (d) any other matters specified by the Classification Principles.

### **18 Before subsection 85-5(1)**

Insert:

*Request for reconsideration of reviewable decision*

### **19 After subsection 85-5(4)**

Insert:

- (4A) The person's request must comply with section 85-6 (application fee) if the \*reviewable decision was made under subsection 29-1(1) (a decision to change the classification of a care recipient).

*Reconsideration of reviewable decision*

### **20 After section 85-5**

Insert:

### **85-6 Application fee for reconsideration of decision to change classification of care recipient**

- (1) A request made under subsection 85-5(1) for reconsideration of a \*reviewable decision made under subsection 29-1(1) (a decision to change the classification of a care recipient) must be accompanied by the application fee (if any) specified in, or worked out in accordance with, the Classification Principles.
- (2) The amount of the fee must not be such as to amount to taxation.

- (3) The Classification Principles may deal with other matters in relation to the fee, including the following:
- (a) the circumstances in which the Secretary may waive the fee;
  - (b) the circumstances in which an approved provider is exempt from paying the fee;
  - (c) the circumstances in which the fee may be refunded, in whole or in part.

## **21 Before Division 96**

Insert:

### **Division 95C—Civil penalties**

#### **95C-1 Civil penalty provisions**

##### *Enforceable civil penalty provisions*

- (1) Each \*civil penalty provision of this Act is enforceable under Part 4 of the \*Regulatory Powers Act.

Note: Part 4 of the Regulatory Powers Act allows a civil penalty provision to be enforced by obtaining an order for a person to pay a pecuniary penalty for the contravention of the provision.

##### *Authorised applicant*

- (2) For the purposes of Part 4 of the \*Regulatory Powers Act, the Secretary is an authorised applicant in relation to the \*civil penalty provisions of this Act.

##### *Relevant court*

- (3) For the purposes of Part 4 of the \*Regulatory Powers Act, each of the following courts is a relevant court in relation to the \*civil penalty provisions of this Act:
- (a) the Federal Court of Australia;
  - (b) the Federal Circuit Court of Australia;
  - (c) a court of a State or Territory that has jurisdiction in relation to the matter.

**22 Section 96-1 (at the end of the cell at table item 9, column headed “Part or provision”)**

Add “and section 85-6”.

**23 Clause 1 of Schedule 1**

Insert:

*civil penalty provision* has the same meaning as in the \*Regulatory Powers Act.

*Regulatory Powers Act* means the *Regulatory Powers (Standard Provisions) Act 2014*.

## Part 2—Adviser and administrator panels

### *Aged Care Act 1997*

#### **24 Paragraph 25-4A(1)(b)**

Omit “, approved by the Secretary,”.

#### **25 Subsection 25-4A(2)**

Repeal the subsection.

#### **26 Subsection 25-4A(3)**

Repeal the subsection, substitute:

- (3) If the agreement requires the approved provider to appoint an adviser, the approved provider must appoint the adviser within the period specified in the agreement.

#### **27 At the end of section 25-4A**

Add:

- (4) The Classification Principles may exclude a class of persons from being appointed as an adviser.
- (5) The Classification Principles may specify matters that the Secretary must take into account in specifying, in the agreement, the period within which an approved provider that is required to appoint an adviser must appoint an adviser.

#### **28 Paragraph 25-4B(1)(a)**

Omit “subsection 25-4A(2) or (3)”, substitute “subsection 25-4A(3)”.

#### **29 Subparagraphs 66-2(1)(a)(iii) and (iv)**

Omit “approved by the Commonwealth”.

#### **30 Subsections 66-2(2) and (3)**

After “Commonwealth”, insert “, or a Commonwealth officer or employee,”.

### **31 Division 66A (heading)**

Repeal the heading, substitute:

## **Division 66A—Appointing administrators and advisers**

### **32 Sections 66A-1, 66A-2 and 66A-3**

Repeal the sections, substitute:

#### **66A-2 Appointment of advisers**

- (1) The Sanctions Principles may exclude a class of persons from being appointed as an adviser.
- (2) A person is not eligible to be appointed as an adviser in accordance with this section if the person is within a class of persons that the Sanctions Principles exclude from being appointed as an adviser.
- (3) If an approved provider has agreed to the appointment of an adviser in accordance with this section, the approved provider must appoint the adviser within the period specified in the agreement.
- (4) The Sanctions Principles may specify matters that the Secretary must take into account in specifying a period mentioned in subsection (3).

#### **66A-3 Appointment of administrators**

- (1) The Sanctions Principles may exclude a class of persons from being appointed as an administrator.
- (2) A person is not eligible to be appointed as an administrator in accordance with this section if the person is within a class of persons that the Sanctions Principles exclude from being appointed as an administrator.
- (3) If an approved provider has agreed to the appointment of an administrator in accordance with this section, the approved provider must appoint the administrator within the period specified in the agreement.
- (4) The Sanctions Principles may specify matters that the Secretary must take into account in specifying a period mentioned in subsection (3).

### **33 Application of amendments**

- (1) The amendments of sections 25-4A and 25-4B of the *Aged Care Act 1997* made by this Part apply in relation to agreements entered into on or after the commencement of this item.
- (2) The amendments of section 66-2 of the *Aged Care Act 1997* made by this Part apply in relation to sanctions imposed on or after the commencement of this item.

## **Part 3—Approved provider obligations**

### *Aged Care Act 1997*

#### **34 Subsection 9-1(1)**

Repeal the subsection, substitute:

- (1) An approved provider must notify the Secretary of a change of circumstances that materially affects the approved provider's suitability to be a provider of \*aged care (see section 8-3). The notification must occur within 28 days after the change occurs.

Note: Approved providers have a responsibility under Part 4.3 to comply with this obligation. Failure to comply with a responsibility can result in a sanction being imposed under Part 4.4.

#### **35 Subsection 9-1(3)**

Repeal the subsection.

#### **36 Paragraph 9-1(3A)(a)**

Omit “there is a change of any of an”, substitute “a change of circumstances that materially affects the approved provider's suitability to be a provider of \*aged care involves a change in any of the”.

#### **37 Subsections 9-1(6), (7) and (8)**

Repeal the subsections.

#### **38 Application of amendments**

The amendments of section 9-1 of the *Aged Care Act 1997* made by this Part do not apply in relation to a change of circumstances, or a change of key personnel, that occurred before the commencement of this item.

## Schedule 10—Newly arrived resident's waiting period

### Part 1—Social security amendments

#### *Social Security Act 1991*

#### **1 Subsection 7(1) (definition of *designated temporary entry permit*)**

Repeal the definition.

#### **2 Subsection 7(1) (definitions of *permanent visa, special category visa, temporary visa and visa*)**

Repeal the definitions, substitute:

*permanent visa, special category visa and visa* have the same meaning as in the *Migration Act 1958*.

#### **3 Subsection 7(6)**

Repeal the subsection, substitute:

- (6) A person has a *qualifying residence exemption* for a social security pension (other than carer payment) or a social security benefit (other than youth allowance, austudy payment, newstart allowance, sickness allowance, special benefit or partner allowance) if, and only if, the person:
- (a) resides in Australia; and
  - (b) is either:
    - (i) a refugee; or
    - (ii) a former refugee.

#### **4 Paragraph 7(6AA)(b)**

Before “was”, insert “except in relation to pension PP (single), benefit PP (partnered), youth allowance, austudy payment, newstart allowance, sickness allowance, partner allowance, carer payment, mobility allowance, a seniors health card or a health care card—”.

**5 Paragraph 7(6AA)(f)**

Before “holds”, insert “in any case—”.

**6 Subsection 23(1) (definition of *designated temporary entry permit*)**

Repeal the definition.

**7 Subsection 23(1) (paragraph (b) of the definition of *newly arrived resident's waiting period*)**

Repeal the paragraph.

**8 Subsection 23(1) (definition of *temporary visa*)**

Repeal the definition.

**9 Subsection 23(1) (paragraph (ab) of the definition of *waiting period*)**

Repeal the paragraph.

**10 Paragraph 201AA(1)(a)**

Repeal the paragraph, substitute:

- (a) has entered Australia; and

**11 At the end of subsection 201AA(2)**

Add:

Note: For *qualifying residence exemption* in relation to carer payment, see paragraph 7(6AA)(f).

**12 Subsection 201AA(5)**

Repeal the subsection, substitute:

(5) Subsection (1) does not apply to a person if, at the time the person made the claim for a carer payment, the person holds a visa that is in a class of visas determined in an instrument under subsection (5B).

(5A) Subsection (1) does not apply to a person if:

- (a) the person is a refugee, or a former refugee, at the time the person made the claim for a carer payment; or
- (b) the following apply:

- (i) before the person made the claim for a carer payment, the person was a family member of another person at the time the other person became a refugee;
- (ii) the person is a family member of that other person at the time the person made the claim for a carer payment or, if that other person has died, the person was a family member of that other person immediately before that other person died; or
- (c) the person is an Australian citizen at the time the person made the claim for a carer payment.

(5B) The Minister may, by legislative instrument, determine a class of visas for the purposes of subsection (5). The class must not be a class covered by paragraph 7(6AA)(f).

### 13 Subsection 201AA(6)

Insert:

*family member* has the meaning given by subsection 7(6D).

*former refugee* has the meaning given by subsection 7(1).

*refugee* has the meaning given by subsection 7(6B).

### 14 Subparagraphs 408BA(2)(d)(i) and (ia)

Repeal the subparagraphs.

### 15 Subparagraph 408BA(2)(d)(ib)

Omit “if the woman entered Australia on or after the commencement day—”.

### 16 Subsection 408BA(6)

Repeal the subsection.

### 17 After subparagraph 500(1)(d)(iii)

Insert:

; (iv) the person satisfies subsection (3).

### 18 Subsection 500(1) (note 1)

Repeal the note, substitute:

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Note 1: For *Australian resident*, see section 7. For *qualifying residence exemption* in relation to parenting payment, see subsection 7(6) and paragraph 7(6AA)(f).

## **19 At the end of section 500**

Add:

- (3) A person satisfies this subsection if the following apply:
- (a) before the person made the claim for parenting payment, the person was a family member of another person at the time the other person became a refugee;
  - (b) the person is a family member of that other person at the time the person made the claim for parenting payment or, if that other person has died, the person was a family member of that other person immediately before that other person died.
- (4) For the purposes of subsection (3):
- (a) *family member* has the meaning given by subsection 7(6D); and
  - (b) *refugee* has the meaning given by subsection 7(6B).

## **20 Paragraph 549D(1)(a)**

Omit “on or after 4 March 1997”.

## **21 Subsection 549D(2) (note)**

Repeal the note, substitute:

Note: For *qualifying residence exemption* in relation to youth allowance, see paragraph 7(6AA)(f).

## **22 Subsections 549D(3) to (5)**

Repeal the subsections.

## **23 At the end of section 549D**

Add:

*Exception—other*

- (7) Subsection (1) does not apply to a person if:
- (a) the person is a refugee, or a former refugee, at the time the person made the claim for a youth allowance; or
  - (b) the following apply:
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- (i) before the person made the claim for a youth allowance, the person was a family member of another person at the time the other person became a refugee;
  - (ii) the person is a family member of that other person at the time the person made the claim for a youth allowance or, if that other person has died, the person was a family member of that other person immediately before that other person died; or
  - (c) the person is an Australian citizen at the time the person made the claim for a youth allowance.
- (8) For the purposes of subsection (7):
- (a) *family member* has the meaning given by subsection 7(6D); and
  - (b) *former refugee* has the meaning given by subsection 7(1); and
  - (c) *refugee* has the meaning given by subsection 7(6B).

**24 Paragraph 549E(a)**

Omit “on which the person first entered Australia on or after 4 March 1997”, substitute “the person first became an Australian resident”.

**25 Paragraph 575D(1)(a)**

Omit “on or after 4 March 1997”.

**26 Subsection 575D(2) (note)**

Repeal the note, substitute:

Note: For *qualifying residence exemption* in relation to austudy payment, see paragraph 7(6AA)(f).

**27 Subsections 575D(3) and (4)**

Repeal the subsections, substitute:

*Exception—other*

- (3) Subsection (1) does not apply to a person if:
- (a) the person is a refugee, or a former refugee, at the time the person made the claim for an austudy payment; or
  - (b) the following apply:

- (i) before the person made the claim for an austudy payment, the person was a family member of another person at the time the other person became a refugee;
- (ii) the person is a family member of that other person at the time the person made the claim for an austudy payment or, if that other person has died, the person was a family member of that other person immediately before that other person died; or
- (c) the person is an Australian citizen at the time the person made the claim for an austudy payment.

(4) For the purposes of subsection (3):

- (a) *family member* has the meaning given by subsection 7(6D);  
and
- (b) *former refugee* has the meaning given by subsection 7(1);  
and
- (c) *refugee* has the meaning given by subsection 7(6B).

### **28 Paragraph 575E(a)**

Omit “on which the person first entered Australia”, substitute “the person first became an Australian resident”.

### **29 Paragraph 623A(1)(a)**

Omit “on or after 1 January 1993”.

### **30 Subsection 623A(2) (note)**

Repeal the note, substitute:

Note: For *qualifying residence exemption* in relation to newstart allowance, see paragraph 7(6AA)(f).

### **31 Subsections 623A(3) to (6)**

Repeal the subsections.

### **32 At the end of section 623A**

Add:

- (8) Subsection (1) does not apply to a person if:
  - (a) the person is a refugee, or a former refugee, at the time the person made the claim for a newstart allowance; or

- (b) the following apply:
  - (i) before the person made the claim for a newstart allowance, the person was a family member of another person at the time the other person became a refugee;
  - (ii) the person is a family member of that other person at the time the person made the claim for a newstart allowance or, if that other person has died, the person was a family member of that other person immediately before that other person died; or
- (c) the person is an Australian citizen at the time the person made the claim for a newstart allowance.

- (9) For the purposes of subsection (8):
- (a) *family member* has the meaning given by subsection 7(6D);  
and
  - (b) *former refugee* has the meaning given by subsection 7(1);  
and
  - (c) *refugee* has the meaning given by subsection 7(6B).

**33 Subsection 623B(2)**

Repeal the subsection.

**34 Subsection 623B(3)**

Omit “If subsection (2) does not apply, the”, substitute “The”.

**35 Subsection 623B(3) (note)**

Repeal the note.

**36 Paragraph 696B(1)(a)**

Omit “on or after 1 January 1993”.

**37 Subsection 696B(2) (note)**

Repeal the note, substitute:

Note: For *qualifying residence exemption* in relation to sickness allowance, see paragraph 7(6AA)(f).

**38 Subsections 696B(3) to (6)**

Repeal the subsections, substitute:

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- (3) Subsection (1) does not apply to a person if:
- (a) the person is a refugee, or a former refugee, at the time the person made the claim for sickness allowance; or
  - (b) the following apply:
    - (i) before the person made the claim for sickness allowance, the person was a family member of another person at the time the other person became a refugee;
    - (ii) the person is a family member of that other person at the time the person made the claim for sickness allowance or, if that other person has died, the person was a family member of that other person immediately before that other person died; or
  - (c) the person is an Australian citizen at the time the person made the claim for sickness allowance.
- (4) For the purposes of subsection (3):
- (a) *family member* has the meaning given by subsection 7(6D); and
  - (b) *former refugee* has the meaning given by subsection 7(1); and
  - (c) *refugee* has the meaning given by subsection 7(6B).

**39 Subsection 696C(2)**

Repeal the subsection.

**40 Subsection 696C(3)**

Omit “If subsection (2) does not apply, the”, substitute “The”.

**41 Subsection 696C(3) (note)**

Repeal the note.

**42 At the end of subsection 739A(7) (before the note)**

Add “after the person first entered Australia”.

**43 Subsection 739A(8)**

Repeal the subsection, substitute:

- (8) Neither subsection (1) nor (2) applies to a person if:

- (a) the person is a refugee, or a former refugee, at the time the person made the claim for a special benefit; or
  - (b) the following apply:
    - (i) before the person made the claim for a special benefit, the person was a family member of another person at the time the other person became a refugee;
    - (ii) the person is a family member of that other person at the time the person made the claim for a special benefit or, if that other person has died, the person was a family member of that other person immediately before that other person died; or
  - (c) the person is an Australian citizen at the time the person made the claim for a special benefit.
- (9) For the purposes of subsection (8):
- (a) *family member* has the meaning given by subsection 7(6D);  
and
  - (b) *former refugee* has the meaning given by subsection 7(1);  
and
  - (c) *refugee* has the meaning given by subsection 7(6B).

#### **44 Paragraph 771HNA(1)(a)**

Omit "on or after 1 January 1993".

#### **45 Subsection 771HNA(2) (note)**

Repeal the note, substitute:

Note: For *qualifying residence exemption* in relation to partner allowance, see paragraph 7(6AA)(f).

#### **46 Subsections 771HNA(4) and (5)**

Repeal the subsections, substitute:

- (3) Subsection (1) does not apply to a person if:
  - (a) the person is a refugee, or a former refugee, at the time the person made the claim for a partner allowance; or
  - (b) the following apply:
    - (i) before the person made the claim for a partner allowance, the person was a family member of another person at the time the other person became a refugee;

- (ii) the person is a family member of that other person at the time the person made the claim for a partner allowance or, if that other person has died, the person was a family member of that other person immediately before that other person died; or
  - (c) the person is an Australian citizen at the time the person made the claim for a partner allowance.
- (4) For the purposes of subsection (3):
- (a) *family member* has the meaning given by subsection 7(6D); and
  - (b) *former refugee* has the meaning given by subsection 7(1); and
  - (c) *refugee* has the meaning given by subsection 7(6B).

#### **47 Subsection 771HNB(3) (note)**

Repeal the note.

#### **48 Subsection 1039AA(1)**

Omit “subsections (2), (3) and (4), a person who, on or after the commencement of this subsection”, substitute “this section, a person who”.

#### **49 Subsection 1039AA(2) (note)**

Repeal the note, substitute:

Note: For *qualifying residence exemption* in relation to mobility allowance, see paragraph 7(6AA)(f).

#### **50 Subsection 1039AA(3)**

Repeal the subsection.

#### **51 Subsection 1039AA(5)**

Repeal the subsection, substitute:

- (5) Subsection (1) does not apply to a person if:
  - (a) the person is a refugee, or a former refugee, at the time the person made the claim for a mobility allowance; or
  - (b) the following apply:

- (i) before the person made the claim for a mobility allowance, the person was a family member of another person at the time the other person became a refugee;
  - (ii) the person is a family member of that other person at the time the person made the claim for a mobility allowance or, if that other person has died, the person was a family member of that other person immediately before that other person died; or
  - (c) the person is an Australian citizen at the time the person made the claim for a mobility allowance.
- (6) For the purposes of subsection (5):
- (a) *family member* has the meaning given by subsection 7(6D); and
  - (b) *former refugee* has the meaning given by subsection 7(1); and
  - (c) *refugee* has the meaning given by subsection 7(6B).

**52 Paragraph 1061PU(1)(a)**

Omit “on or after 4 March 1997”.

**53 Subsection 1061PU(2) (note)**

Repeal the note, substitute:

Note: For *qualifying residence exemption* in relation to austudy payment, see paragraph 7(6AA)(f).

**54 Subsections 1061PU(3) and (4)**

Repeal the subsections, substitute:

*Exception—other*

- (3) Subsection (1) does not apply to a person if:
- (a) the person is a refugee, or a former refugee, at the time the person made the claim for a pensioner education supplement; or
  - (b) the following apply:
    - (i) before the person made the claim for a pensioner education supplement, the person was a family member of another person at the time the other person became a refugee;

- (ii) the person is a family member of that other person at the time the person made the claim for a pensioner education supplement or, if that other person has died, the person was a family member of that other person immediately before that other person died; or
  - (c) the person is an Australian citizen at the time the person made the claim for a pensioner education supplement.
- (4) For the purposes of subsection (3):
- (a) **family member** has the meaning given by subsection 7(6D); and
  - (b) **former refugee** has the meaning given by subsection 7(1); and
  - (c) **refugee** has the meaning given by subsection 7(6B).

**55 Paragraph 1061PV(a)**

Omit “on which the person first entered Australia”, substitute “the person first became an Australian resident”.

**56 Subsection 1061ZH(1)**

Omit “subsections (2), (3) and (4)”, substitute “this section”.

**57 Paragraph 1061ZH(1)(a)**

Omit “on or after 1 February 2000”.

**58 At the end of subsection 1061ZH(2)**

Add:

Note: For **qualifying residence exemption** in relation to a seniors health card, see paragraph 7(6AA)(f).

**59 Subsections 1061ZH(3) to (5)**

Repeal the subsections, substitute:

- (3) Subsection (1) does not apply to a person if:
  - (a) the person is a refugee, or a former refugee, at the time the person made the claim for a seniors health card; or
  - (b) the following apply:

- (i) before the person made the claim for a seniors health card, the person was a family member of another person at the time the other person became a refugee;
- (ii) the person is a family member of that other person at the time the person made the claim for a seniors health card or, if that other person has died, the person was a family member of that other person immediately before that other person died; or
- (c) the person is an Australian citizen at the time the person made the claim for a seniors health card.

(4) For the purposes of subsection (3):

- (a) *family member* has the meaning given by subsection 7(6D);  
and
- (b) *former refugee* has the meaning given by subsection 7(1);  
and
- (c) *refugee* has the meaning given by subsection 7(6B).

**60 Subsection 1061ZQ(1)**

Omit “subsection (2)”, substitute “this section”.

**61 Subsection 1061ZQ(1)**

Omit “on or after 1 February 2000”.

**62 Paragraph 1061ZQ(2)(b)**

Repeal the paragraph.

**63 At the end of subsection 1061ZQ(2)**

Add:

Note: For paragraph (a): for *qualifying residence exemption* in relation to a health care card, see paragraph 7(6AA)(f).

**64 At the end of section 1061ZQ**

Add:

- (3) Subsection (1) does not apply to a person if:
  - (a) the person is a refugee, or a former refugee, at the time the person made the claim for a health care card; or
  - (b) the following apply:

- (i) before the person made the claim for a health care card, the person was a family member of another person at the time the other person became a refugee;
  - (ii) the person is a family member of that other person at the time the person made the claim for a health care card or, if that other person has died, the person was a family member of that other person immediately before that other person died; or
  - (c) the person is an Australian citizen at the time the person made the claim for a health care card.
- (4) For the purposes of subsection (3):
- (a) *family member* has the meaning given by subsection 7(6D); and
  - (b) *former refugee* has the meaning given by subsection 7(1); and
  - (c) *refugee* has the meaning given by subsection 7(6B).

#### **65 Section 1061ZR**

Omit "If", substitute "(1) Subject to subsection (2), if".

#### **66 At the end of section 1061ZR**

Add:

- (2) If:
- (a) a person is subject to a newly arrived resident's waiting period; and
  - (b) before, on or after the commencement of this subsection, the person applied for a visa that is in a class of visas determined by the Minister for the purposes of paragraph 739A(3)(b);
- the waiting period:
- (c) starts on the day on which the person applied for that visa; and
  - (d) ends when the person has been in Australia for a period of, or for periods totalling, 104 weeks after that day.

#### **67 Clause 121 of Schedule 1A**

Repeal the clause.

### **68 Application provision—qualifying residence exemption**

The amendments of section 7 of the *Social Security Act 1991* made by this Schedule apply in relation to:

- (a) claims for a social security pension or a social security benefit made on or after the commencement of this item; and
- (b) claims for a mobility allowance or a pensioner education supplement made on or after that commencement; and
- (c) claims for a seniors health card made on or after that commencement; and
- (d) claims for a health care card made on or after that commencement.

### **69 Application and saving provisions—carer payment**

- (1) Paragraph 201AA(1)(a) of the *Social Security Act 1991* applies on and after the commencement of this item in relation to entries to Australia occurring before, on or after that commencement.
- (2) Subsections 201AA(5) to (5B) of the *Social Security Act 1991*, as substituted by this Schedule, apply in relation to claims for a carer payment made on or after the commencement of this item.
- (3) Subsection 201AA(5) of the *Social Security Act 1991*, as in force immediately before the commencement of this item, continues to apply on and after that commencement in relation to claims for a carer payment made before that commencement.
- (4) A determination in force under paragraph 201AA(5)(d) of the *Social Security Act 1991* immediately before the commencement of this item has effect on and after that commencement as if it were a determination in force under subsection 201AA(5B) of that Act.

### **70 Application provision—widow allowance**

The amendments of section 408BA of the *Social Security Act 1991* made by this Schedule apply in relation to claims for widow allowance made on or after the commencement of this item.

### **71 Application provision—parenting payment**

The amendments of section 500 of the *Social Security Act 1991* made by this Schedule apply in relation to claims for parenting payment made on or after the commencement of this item.

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## **72 Application and saving provisions—youth allowance**

- (1) Paragraph 549D(1)(a) of the *Social Security Act 1991* applies on and after the commencement of this item in relation to entries to Australia occurring before, on or after that commencement.
- (2) Subsections 549D(3) to (5) of the *Social Security Act 1991*, as in force immediately before the commencement of this item, continue to apply on and after that commencement in relation to claims for a youth allowance made before that commencement.
- (3) Subsections 549D(7) and (8) of the *Social Security Act 1991*, as added by this Schedule, apply in relation to claims for a youth allowance made on or after the commencement of this item.
- (4) The amendment of paragraph 549E(a) of the *Social Security Act 1991* made by this Schedule applies in relation to claims for a youth allowance made on or after the commencement of this item.

## **73 Application and saving provisions—austudy payment**

- (1) Paragraph 575D(1)(a) of the *Social Security Act 1991* applies on and after the commencement of this item in relation to entries to Australia occurring before, on or after that commencement.
- (2) Subsections 575D(3) and (4) of the *Social Security Act 1991*, as substituted by this Schedule, apply in relation to claims for an austudy payment made on or after the commencement of this item.
- (3) Subsections 575D(3) and (4) of the *Social Security Act 1991*, as in force immediately before the commencement of this item, continue to apply on and after that commencement in relation to claims for an austudy payment made before that commencement.
- (4) The amendment of paragraph 575E(a) of the *Social Security Act 1991* made by this Schedule applies in relation to claims for an austudy payment made on or after the commencement of this item.

## **74 Application and saving provisions—newstart allowance**

- (1) Paragraph 623A(1)(a) of the *Social Security Act 1991* applies on and after the commencement of this item in relation to entries to Australia occurring before, on or after that commencement.

- (2) Subsections 623A(3) to (6) and 623B(2) of the *Social Security Act 1991*, as in force immediately before the commencement of this item, continue to apply on and after that commencement in relation to claims for a newstart allowance made before that commencement.
- (3) Subsections 623A(8) and (9) of the *Social Security Act 1991*, as added by this Schedule, apply in relation to claims for a newstart allowance made on or after the commencement of this item.

### **75 Application and saving provisions—sickness allowance**

- (1) Paragraph 696B(1)(a) of the *Social Security Act 1991* applies on and after the commencement of this item in relation to entries to Australia occurring before, on or after that commencement.
- (2) Subsections 696B(3) and (4) of the *Social Security Act 1991*, as substituted by this Schedule, apply in relation to claims for sickness allowance made on or after the commencement of this item.
- (3) Subsections 696B(3) to (6) and 696C(2) of the *Social Security Act 1991*, as in force immediately before the commencement of this item, continue to apply on and after that commencement in relation to claims for sickness allowance made before that commencement.

### **76 Application provision—special benefit**

The amendments of section 739A of the *Social Security Act 1991* made by this Schedule apply in relation to claims for a special benefit made on or after the commencement of this item.

### **77 Application and saving provisions—partner allowance**

- (1) Paragraph 771HNA(1)(a) of the *Social Security Act 1991* applies on and after the commencement of this item in relation to entries to Australia occurring before, on or after that commencement.
  - (2) Subsections 771HNA(3) and (4) of the *Social Security Act 1991*, as substituted by this Schedule, apply in relation to claims for a partner allowance made on or after the commencement of this item.
  - (3) Subsections 771HNA(4) and (5) of the *Social Security Act 1991*, as in force immediately before the commencement of this item, continue to apply on and after that commencement in relation to claims for a partner allowance made before that commencement.
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## **78 Application and saving provisions—mobility allowance**

- (1) Subsection 1039AA(1) of the *Social Security Act 1991* applies on and after the commencement of this item in relation to entries to Australia occurring before, on or after that commencement.
- (2) Subsections 1039AA(3) and (5) of the *Social Security Act 1991*, as in force immediately before the commencement of this item, continue to apply on and after that commencement in relation to claims for a mobility allowance made before that commencement.
- (3) Subsections 1039AA(5) and (6) of the *Social Security Act 1991*, as substituted by this Schedule, apply in relation to claims for a mobility allowance made on or after the commencement of this item.

## **79 Application and saving provisions—pensioner education supplement**

- (1) Paragraph 1061PU(1)(a) of the *Social Security Act 1991* applies on and after the commencement of this item in relation to entries to Australia occurring before, on or after that commencement.
- (2) Subsections 1061PU(3) and (4) of the *Social Security Act 1991*, as substituted by this Schedule, apply in relation to claims for a pensioner education supplement made on or after the commencement of this item.
- (3) Subsections 1061PU(3) and (4) of the *Social Security Act 1991*, as in force immediately before the commencement of this item, continue to apply on and after that commencement in relation to claims for a pensioner education supplement made before that commencement.
- (4) The amendment of paragraph 1061PV(a) of the *Social Security Act 1991* made by this Schedule applies in relation to claims for a pensioner education supplement made on or after the commencement of this item.

## **80 Application and saving provisions—seniors health card**

- (1) Paragraph 1061ZH(1)(a) of the *Social Security Act 1991* applies on and after the commencement of this item in relation to entries to Australia occurring before, on or after that commencement.
- (2) Subsections 1061ZH(3) and (4) of the *Social Security Act 1991*, as substituted by this Schedule, apply in relation to claims for a seniors health card made on or after the commencement of this item.

- (3) Subsections 1061ZH(3) to (5) of the *Social Security Act 1991*, as in force immediately before the commencement of this item, continue to apply on and after that commencement in relation to claims for a seniors health card made before that commencement.

### **81 Application and saving provisions—health care card**

- (1) Subsection 1061ZQ(1) of the *Social Security Act 1991* applies on and after the commencement of this item in relation to entries to Australia occurring before, on or after that commencement.
- (2) Paragraph 1061ZQ(2)(b) of the *Social Security Act 1991*, as in force immediately before the commencement of this item, continues to apply on and after that commencement in relation to claims for a health care card made before that commencement.
- (3) Subsections 1061ZQ(3) and (4) of the *Social Security Act 1991*, as added by this Schedule, apply in relation to claims for a health care card made on or after the commencement of this item.
- (4) Section 1061ZR of the *Social Security Act 1991*, as amended by this Schedule, applies in relation to claims for a health care card made on or after the commencement of this item.

## ***Social Security Legislation Amendment (Newly Arrived Resident's Waiting Periods and Other Measures) Act 1997***

### **82 Section 3**

Repeal the section.

### **83 Saving provision**

Despite the repeal of section 3 of the *Social Security Legislation Amendment (Newly Arrived Resident's Waiting Periods and Other Measures) Act 1997* made by this Schedule, that section, as in force immediately before the commencement of this item, continues to apply on and after that commencement in relation to:

- (a) claims for a social security payment made before that commencement; and
- (b) claims for a seniors health card made before that commencement; and

(c) claims for a health care card made before that commencement.

## Part 2—Farm household support amendments

### *Farm Household Support Act 2014*

#### **84 Subsection 5(1)**

Insert:

*eligible family member* has the same meaning as *family member* has for the purposes of subsection 7(6AA) of the Social Security Act.

*former refugee* has the meaning given by subsection 7(1) of the Social Security Act.

*refugee* has the meaning given by subsection 7(6B) of the Social Security Act.

#### **85 Paragraphs 42(2)(a), (b), (d), (e), (f) and (g)**

Repeal the paragraphs.

#### **86 At the end of subsection 42(2)**

Add:

- ; (i) a person who is a refugee, or a former refugee, at the time the person made the claim for farm household allowance;
- (j) a person in relation to whom the following apply:
  - (i) before the person made the claim for farm household allowance, the person was an eligible family member of another person at the time the other person became a refugee;
  - (ii) the person is an eligible family member of that other person at the time the person made the claim for farm household allowance or, if that other person has died, the person was an eligible family member of that other person immediately before that other person died;
- (k) a person who is an Australian citizen at the time the person made the claim for farm household allowance.

#### **87 Subsection 43(1)**

Omit "(1)".

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**88 Paragraph 43(1)(b)**

Omit "(subject to subsection (2))".

**89 Subsection 43(2)**

Repeal the subsection.

**90 Application provision**

The amendments of sections 42 and 43 of the *Farm Household Support Act 2014* made by this Schedule apply in relation to claims for farm household allowance made on or after the commencement of this item.

## **Schedule 11—Student start-up scholarships**

### *Social Security Act 1991*

**1 Section 19AA (definition of *scholarship-entitled person*)**

Repeal the definition.

**2 Subsection 23(1) (definition of *scholarship-entitled person*)**

Repeal the definition.

**3 Division 1 of Part 2.11B**

Repeal the Division.

**4 Subsection 1061ZVBC(1)**

Omit “(1)”.

**5 Subparagraph 1061ZVBC(1)(a)(iii)**

Repeal the subparagraph.

**6 Subsection 1061ZVBC(2)**

Repeal the subsection.

**7 Section 1190 (table item 68)**

Repeal the item.

**8 Subsection 1191(1) (table item 40)**

Repeal the item.

**9 Subsection 1192(8A)**

Repeal the subsection.

**10 Subsection 1222(2) (table item 4D, column 2)**

After “of”, insert “relocation”.

**11 Section 1223ABE (heading)**

Repeal the heading, substitute:

**1223ABE Debts in respect of relocation scholarship payments**

**12 Paragraphs 1223ABE(1)(a), (2)(a) and (3)(a)**

Omit “a student start-up scholarship payment or”.

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

**13 Section 12H (heading)**

Repeal the heading, substitute:

**12H Relocation scholarship payment**

**14 Section 12H**

Omit “a student start-up scholarship payment or”.

**15 Subsection 47(1) (paragraph (ba) of the definition of *lump sum benefit*)**

Repeal the paragraph.

**16 Section 47DA (heading)**

Repeal the heading, substitute:

**47DA Relocation scholarship payments**

**17 Paragraph 47DA(a)**

Omit “a student start-up scholarship payment, or a relocation scholarship payment,”, substitute “a relocation scholarship payment”.

**18 Subdivision DC of Division 5 of Part 3B (heading)**

Repeal the heading, substitute:

**Subdivision DC—Relocation scholarship payments**

**19 Section 123XPF**

Repeal the section.

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### ***Student Assistance Act 1973***

#### **20 Subsection 3(1) (definition of *scholarship-entitled person*)**

Repeal the definition.

#### **21 Subsection 7D(1)**

Omit “(1)”.

#### **22 Subparagraph 7D(1)(a)(iii)**

Repeal the subparagraph.

#### **23 Subsection 7D(2)**

Repeal the subsection.

#### **24 Application and saving provisions**

- (1) Despite the repeal of Division 1 of Part 2.11B of the *Social Security Act 1991* made by this Schedule, that Division, as in force immediately before the commencement of this item, continues to apply on and after that commencement in relation to a qualification time occurring before that commencement.
  - (2) The amendments of section 1061ZVBC of the *Social Security Act 1991* made by this Schedule apply in relation to a qualification period starting on or after the day this item commences.
  - (3) Despite the amendments of section 1223ABE of the *Social Security Act 1991* made by this Schedule, that section, as in force immediately before the commencement of this item, continues to apply on and after that commencement in relation to a student start-up scholarship payment made before, on or after that commencement.
  - (4) Despite the amendments of section 12H of the *Social Security (Administration) Act 1999* made by this Schedule, that section, as in force immediately before the commencement of this item, continues to apply on and after that commencement in relation to a student start-up scholarship payment for which a person was qualified before that commencement.
  - (5) Despite the amendments of sections 47 and 47DA of the *Social Security (Administration) Act 1999* made by this Schedule, those sections, as in force immediately before the commencement of this item, continue to
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apply on and after that commencement in relation to a student start-up scholarship payment made after that commencement for which a person was qualified before that commencement.

- (6) Despite the amendments made by this Schedule, Part 3B of the *Social Security (Administration) Act 1999*, as in force immediately before the commencement of this item, continues to apply on and after that commencement in relation to a student start-up scholarship payment, whether it is payable before, on or after that commencement.
- (7) The amendments of section 7D of the *Student Assistance Act 1973* made by this Schedule apply in relation to a qualification period starting on or after the day this item commences.

## Schedule 12—Interest charge

### Part 1—Amendments

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

##### **1 After paragraph 77(1)(e)**

Insert:

- (ea) the effect of sections 78 and 78A; and

##### **2 Subsections 77(3) and (4)**

Repeal the subsections, substitute:

- (3) The Secretary may give more than one notice under subsection (1) in relation to a person and a debt of the person.

##### **3 Sections 78 to 79A**

Repeal the sections, substitute:

##### **78 Interest charge—no repayment arrangement in effect**

(1) If:

- (a) a notice is given to a person under subsection 77(1) in relation to a debt; and
- (b) an amount (the *unpaid amount*) of the debt remains unpaid at the end of the day (the *due day*) on which the debt is due to be paid; and
- (c) at the end of the due day, there is no arrangement in effect under section 91 in relation to the debt;

then the person is liable to pay, by way of penalty, interest charge, worked out under subsection (3), for each day in the period described in subsection (2).

Note: For exemptions, see sections 78D and 78E.

(2) The period starts at the beginning of the day after the due day and ends at the end of the earlier of the following days:

- (a) the last day at the end of which any of the following remains unpaid:

- (i) the unpaid amount;
    - (ii) interest charge on any of the unpaid amount;
  - (b) the day before the first day, after the due day, on which the person makes a payment under an arrangement under section 91 in relation to the debt.
- (3) The interest charge for a day in the period described in subsection (2) is worked out by multiplying the interest charge rate for that day by the sum of so much of the following amounts as remains unpaid:
- (a) the unpaid amount;
  - (b) the interest charge from previous days.

Note 1: For *interest charge rate* see section 78C.

Note 2: The interest charge for a day is due and payable to the Commonwealth at the end of that day and is a debt due to the Commonwealth: see section 78B.

### **78A Interest charge—failure to comply with or termination of repayment arrangement**

- (1) If:
- (a) an arrangement is in effect under section 91 in relation to a person and a debt; and
  - (b) the person fails to make a payment under the arrangement;
- then the person is liable to pay, by way of penalty, interest charge, worked out under subsection (3), for each day in the period described in subsection (2).

Note: For exemptions, see sections 78D and 78E.

- (2) The period starts at the beginning of the day after the day (the *due day*) on which the payment was required to be made under the arrangement and ends at the end of the earliest of the following days:
- (a) the last day at the end of which any of the following remains unpaid:
    - (i) the outstanding amount of the debt;
    - (ii) interest charge on any of the outstanding amount of the debt;

- (b) the day before the first day, after the due day, on which the person has paid all the payments that have so far become due and payable under the arrangement;
  - (c) the day before the day the arrangement is terminated under section 91.
- (3) The interest charge for a day in the period described in subsection (2) is worked out by multiplying the interest charge rate for that day by the sum of so much of the following amounts as remains unpaid:
- (a) the outstanding amount of the debt;
  - (b) the interest charge from previous days.

Note 1: For *interest charge rate* see section 78C.

Note 2: The interest charge for a day is due and payable to the Commonwealth at the end of that day and is a debt due to the Commonwealth: see section 78B.

*Repayment arrangement is terminated*

- (4) If:
- (a) an arrangement is in effect under section 91 in relation to a person and a debt; and
  - (b) the arrangement is then terminated under section 91 on a day (the *termination day*);
- then:
- (c) the following amounts (if any) are due and payable on the 14th day after the termination day:
    - (i) the outstanding amount of the debt;
    - (ii) interest charge on any of the outstanding amount of the debt; and
  - (d) if, at the end of that 14th day, any of those amounts remains unpaid, the person is liable to pay, by way of penalty, interest charge, worked out under subsection (6), for each day in the period described in subsection (5).

Note: For exemptions, see sections 78D and 78E.

- (5) The period starts at the beginning of the day after that 14th day and ends at the end of the earlier of the following days:
- (a) the last day at the end of which any of the following remains unpaid:
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- (i) the outstanding amount of the debt;
  - (ii) interest charge on any of the outstanding amount of the debt;
  - (b) the day before the first day, after that 14th day, on which the person makes a payment under another arrangement under section 91 in relation to the debt.
- (6) The interest charge for a day in the period described in subsection (5) is worked out by multiplying the interest charge rate for that day by the sum of so much of the following amounts as remains unpaid:
- (a) the outstanding amount of the debt;
  - (b) the interest charge from previous days.

Note 1: For *interest charge rate* see section 78C.

Note 2: The interest charge for a day is due and payable to the Commonwealth at the end of that day and is a debt due to the Commonwealth: see section 78B.

### **78B Other rules for interest charge**

#### *When interest charge is due and payable*

- (1) The interest charge under section 78 or 78A for a day is due and payable to the Commonwealth at the end of that day.

#### *Interest charge is a debt*

- (2) The interest charge under section 78 or 78A for a day is a debt due to the Commonwealth by the person.

#### *Provisions that do not apply to interest charge debt*

- (3) Subsection 77(1) does not apply in relation to the debt referred to in subsection (2) of this section.

### **78C What is the *interest charge rate*?**

- (1) For the purposes of sections 78 and 78A, the *interest charge rate* for a day is the rate worked out by adding 7 percentage points to the base interest rate for that day, and dividing that total by the number of days in the calendar year.

## Schedule 12 Interest charge

### Part 1 Amendments

- (2) The **base interest rate** for a day depends on which quarter of the year the day is in. For each day in a quarter in column 1 of the table, it is the monthly average yield of 90-day Bank Accepted Bills published by the Reserve Bank of Australia for the month in column 2 of the table.

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<b>Base interest rate</b>		
<b>Item</b>	<b>Column 1 For days in this quarter:</b>	<b>Column 2 the monthly average yield of 90-day Bank Accepted Bills for this month applies:</b>
1	1 January to 31 March	the preceding November
2	1 April to 30 June	the preceding February
3	1 July to 30 September	the preceding May
4	1 October to 31 December	the preceding August

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- (3) If the monthly average yield of 90-day Bank Accepted Bills for a particular month in column 2 of the table in subsection (2) is not published by the Reserve Bank of Australia before the beginning of the relevant quarter, assume that it is the same as the last monthly average yield of 90-day Bank Accepted Bills published by the Reserve Bank of Australia before that month.
- (4) The base interest rate must be rounded to the second decimal place (rounding .005 upwards).

### **78D Exemption from interest charge—general**

- (1) A person is not liable to pay interest charge under section 78 or 78A if on the day before the start of the period in respect of which the person would otherwise have been liable to pay that charge:
- the person is receiving instalments of family tax benefit; or
  - the person is receiving a social security payment; or
  - the person is receiving a payment of pension or allowance under the *Veterans' Entitlements Act 1986*; or
  - the person is receiving instalments under the ABSTUDY scheme (also known as the Aboriginal Study Assistance Scheme) that includes an amount identified as living allowance; or
  - the person is receiving instalments under the Assistance for Isolated Children Scheme; or

- (f) the circumstances determined in an instrument under subsection (2) apply in relation to the person.
- (2) The Minister may, by legislative instrument, determine circumstances for the purposes of paragraph (1)(f).

**78E Exemption from interest charge—Secretary’s determination**

- (1) The Secretary may determine that interest charge is not payable, or is not payable in respect of a particular period, by a person on the outstanding amount of a debt.
- (2) The Secretary may make a determination under this section in circumstances that include (but are not limited to) the Secretary being satisfied that the person has a reasonable excuse for:
  - (a) failing to enter into an arrangement under section 91 to pay the outstanding amount of the debt; or
  - (b) having entered an arrangement, failing to make a payment in accordance with that arrangement.
- (3) The determination may relate to a period before, or to a period that includes a period before, the making of the determination.
- (4) The determination may be expressed to be subject to the person complying with one or more specified conditions.
- (5) If the determination is expressed to be subject to the person complying with one or more specified conditions, the Secretary must give written notice of the determination to the person as soon as practicable after the determination is made.
- (6) If:
  - (a) the determination is expressed to be subject to the person complying with one or more specified conditions; and
  - (b) the person contravenes a condition or conditions without reasonable excuse;the determination ceases to have effect from and including the day on which the contravention or the earliest of the contraventions occurred.
- (7) The Secretary may cancel or vary the determination by written notice given to the person.

### **78F Guidelines on interest charge provisions**

The Minister may, by legislative instrument, determine guidelines relating to the operation of the provisions of this Division dealing with interest charge.

### **4 Subsection 82(3) (paragraph (a) of the definition of debt)**

Omit “78”, substitute “78B”.

### **5 After subsection 91(1A)**

Insert:

- (1B) If a payment is required to be made under an arrangement entered into under subsection (1) or (1A) before the end of a particular day, the payment must be made before the end of that day.

## ***Paid Parental Leave Act 2010***

### **6 Section 6**

Repeal the following definitions:

- (a) definition of *date of the further debt notice*;
- (b) definition of *date of the initial debt notice*;
- (c) definition of *final debt payment day*;
- (d) definition of *further debt notice*.

### **7 Section 6**

Insert:

*interest charge rate*: see section 177.

### **8 Section 6 (definition of *interest exemption determination*)**

Repeal the definition.

### **9 Section 6 (definition of *penalty interest rate*)**

Repeal the definition.

### **10 Section 164**

Omit “An administrative charge of \$50 is also payable if interest is charged.”.

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**11 Section 165 (paragraph (a) of the note)**

Omit “section 177”, substitute “section 176”.

**12 Section 165 (paragraph (b) of the note)**

Repeal the paragraph.

**13 Section 173 (heading)**

Repeal the heading, substitute:

**173 Notices in respect of debt**

**14 Subsection 173(1) (heading)**

Repeal the heading.

**15 Paragraph 173(1)(a)**

Omit “(the *date of the initial debt notice*)”, substitute “(the *date of the notice*)”.

**16 Paragraph 173(1)(e)**

Omit “initial debt notice”, substitute “notice”.

**17 After paragraph 173(1)(f)**

Insert:

(fa) the effect of sections 174 and 175;

**18 Subsection 173(2)**

Omit “initial debt notice”, substitute “notice”.

**19 Subsection 173(3)**

Repeal the subsection, substitute:

*Multiple notices*

(3) The Secretary may give more than one notice under subsection (1) in relation to a person and a debt of the person.

**20 Sections 174 to 180**

Repeal the sections, substitute:

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### 174 Interest charge—no debt payment arrangement in effect

- (1) If:
- (a) a notice is given to a person under subsection 173(1) in relation to a debt; and
  - (b) an amount (the *unpaid amount*) of the debt remains unpaid at the end of the day (the *due day*) on which the debt is due to be paid; and
  - (c) at the end of the due day, there is no debt payment arrangement in effect in relation to the debt;
- then the person is liable to pay, by way of penalty, interest charge, worked out under subsection (3), for each day in the period described in subsection (2).

Note: For exemptions, see sections 178 and 179.

- (2) The period starts at the beginning of the day after the due day and ends at the end of the earlier of the following days:
- (a) the last day at the end of which any of the following remains unpaid:
    - (i) the unpaid amount;
    - (ii) interest charge on any of the unpaid amount;
  - (b) the day before the first day, after the due day, on which the person makes a payment under a debt payment arrangement in relation to the debt.
- (3) The interest charge for a day in the period described in subsection (2) is worked out by multiplying the interest charge rate for that day by the sum of so much of the following amounts as remains unpaid:
- (a) the unpaid amount;
  - (b) the interest charge from previous days.

Note 1: For *interest charge rate* see section 177.

Note 2: The interest charge for a day is due and payable to the Commonwealth at the end of that day and is a debt due to the Commonwealth: see section 176.

### 175 Interest charge—failure to comply with or termination of debt payment arrangement

- (1) If:
-

- (a) a debt payment arrangement is in effect in relation to a person and a debt; and
- (b) the person fails to make a payment under the arrangement; then the person is liable to pay, by way of penalty, interest charge, worked out under subsection (3), for each day in the period described in subsection (2).

Note: For exemptions, see sections 178 and 179.

- (2) The period starts at the beginning of the day after the day (the **due day**) on which the payment was required to be made under the arrangement and ends at the end of the earliest of the following days:
  - (a) the last day at the end of which any of the following remains unpaid:
    - (i) the outstanding amount of the debt;
    - (ii) interest charge on any of the outstanding amount of the debt;
  - (b) the day before the first day, after the due day, on which the person has paid all the payments that have so far become due and payable under the arrangement;
  - (c) the day before the day the arrangement is terminated under section 190.
- (3) The interest charge for a day in the period described in subsection (2) is worked out by multiplying the interest charge rate for that day by the sum of so much of the following amounts as remains unpaid:
  - (a) the outstanding amount of the debt;
  - (b) the interest charge from previous days.

Note 1: For **interest charge rate** see section 177.

Note 2: The interest charge for a day is due and payable to the Commonwealth at the end of that day and is a debt due to the Commonwealth: see section 176.

*Debt payment arrangement is terminated*

- (4) If:
  - (a) a debt payment arrangement is in effect in relation to a person and a debt; and

- (b) the arrangement is then terminated under section 190 on a day (the *termination day*);  
then:
- (c) the following amounts (if any) are due and payable on the 14th day after the termination day:
- (i) the outstanding amount of the debt;
  - (ii) interest charge on any of the outstanding amount of the debt; and
- (d) if, at the end of that 14th day, any of those amounts remains unpaid, the person is liable to pay, by way of penalty, interest charge, worked out under subsection (6), for each day in the period described in subsection (5).
- Note: For exemptions, see sections 178 and 179.
- (5) The period starts at the beginning of the day after that 14th day and ends at the end of the earlier of the following days:
- (a) the last day at the end of which any of the following remains unpaid:
    - (i) the outstanding amount of the debt;
    - (ii) interest charge on any of the outstanding amount of the debt;
  - (b) the day before the first day, after that 14th day, on which the person makes a payment under another debt payment arrangement in relation to the debt.
- (6) The interest charge for a day in the period described in subsection (5) is worked out by multiplying the interest charge rate for that day by the sum of so much of the following amounts as remains unpaid:
- (a) the outstanding amount of the debt;
  - (b) the interest charge from previous days.

Note 1: For *interest charge rate* see section 177.

Note 2: The interest charge for a day is due and payable to the Commonwealth at the end of that day and is a debt due to the Commonwealth: see section 176.

## 176 Other rules for interest charge

*When interest charge is due and payable*

- (1) The interest charge under section 174 or 175 for a day is due and payable to the Commonwealth at the end of that day.

*Interest charge is a debt*

- (2) The interest charge under section 174 or 175 for a day is a debt due to the Commonwealth by the person.

*Provisions that do not apply to interest charge debt*

- (3) Subsection 173(1) does not apply in relation to the debt referred to in subsection (2) of this section.

## 177 What is the *interest charge rate*?

- (1) The *interest charge rate* for a day is the rate worked out by adding 7 percentage points to the base interest rate for that day, and dividing that total by the number of days in the calendar year.
- (2) The *base interest rate* for a day depends on which quarter of the year the day is in. For each day in a quarter in column 1 of the table, it is the monthly average yield of 90-day Bank Accepted Bills published by the Reserve Bank of Australia for the month in column 2 of the table.

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<b>Base interest rate</b>		
<b>Item</b>	<b>Column 1</b>	<b>Column 2</b>
	<b>For days in this quarter:</b>	<b>the monthly average yield of 90-day Bank Accepted Bills for this month applies:</b>
1	1 January to 31 March	the preceding November
2	1 April to 30 June	the preceding February
3	1 July to 30 September	the preceding May
4	1 October to 31 December	the preceding August

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- (3) If the monthly average yield of 90-day Bank Accepted Bills for a particular month in column 2 of the table in subsection (2) is not published by the Reserve Bank of Australia before the beginning of

the relevant quarter, assume that it is the same as the last monthly average yield of 90-day Bank Accepted Bills published by the Reserve Bank of Australia before that month.

- (4) The base interest rate must be rounded to the second decimal place (rounding .005 upwards).

### **178 Exemption from interest charge—general**

A person is not liable to pay interest charge under section 174 or 175 if on the day before the start of the period in respect of which the person would otherwise have been liable to pay that charge:

- (a) the person is receiving instalments of family tax benefit (within the meaning of the *A New Tax System (Family Assistance) Act 1999*); or
- (b) the person is receiving a social security payment (within the meaning of the *Social Security Act 1991*); or
- (c) the person is receiving a payment of pension or allowance under the *Veterans' Entitlements Act 1986*; or
- (d) the person is receiving instalments under the ABSTUDY scheme (also known as the Aboriginal Study Assistance Scheme) that includes an amount identified as living allowance; or
- (e) the person is receiving instalments under the Assistance for Isolated Children Scheme; or
- (f) the circumstances prescribed by the PPL rules apply in relation to the person.

### **179 Exemption from interest charge—Secretary's determination**

- (1) The Secretary may determine that interest charge is not payable, or is not payable in respect of a particular period, by a person on the outstanding amount of a debt.
- (2) The Secretary may make a determination under this section in circumstances that include (but are not limited to) the Secretary being satisfied that the person has a reasonable excuse for:
  - (a) failing to enter into a debt payment arrangement to pay the outstanding amount of the debt; or
  - (b) having entered an arrangement, failing to make a payment in accordance with that arrangement.

- (3) The determination may relate to a period before, or to a period that includes a period before, the making of the determination.
- (4) The determination may be expressed to be subject to the person complying with one or more specified conditions.
- (5) If the determination is expressed to be subject to the person complying with one or more specified conditions, the Secretary must give written notice of the determination to the person as soon as practicable after the determination is made.
- (6) If:
  - (a) the determination is expressed to be subject to the person complying with one or more specified conditions; and
  - (b) the person contravenes a condition or conditions without reasonable excuse;the determination ceases to have effect from and including the day on which the contravention or the earliest of the contraventions occurred.
- (7) The Secretary may cancel or vary the determination by written notice given to the person.

## **180 Guidelines on interest charge provisions**

The PPL rules may prescribe guidelines for the operation of the provisions of this Division dealing with interest charge.

## **21 Section 181 (paragraph (b) of the note)**

Omit “sections 177, 179”, substitute “sections 176”.

## **22 After subsection 190(1)**

Insert:

- (1A) If a person is required to make a payment under a debt payment arrangement before the end of a particular day, the person must make that payment before the end of that day.

## **23 Subsection 193(1) (paragraph (b) of the note)**

Omit “sections 177, 179”, substitute “sections 176”.

**24 Subsection 194(1) (paragraph (b) of the note)**

Omit “sections 177, 179”, substitute “sections 176”.

***Social Security Act 1991***

**25 Subsection 1222(2) (table item 16)**

Omit “1229A”, substitute “1229C”.

**26 Subsection 1222(2) (table item 17)**

Repeal the item.

**27 Subsection 1223AA(1) (note)**

Repeal the note.

**28 Subsection 1224B(1) (note)**

Repeal the note.

**29 Section 1224C (note)**

Repeal the note.

**30 Subsection 1224D(1) (note)**

Repeal the note.

**31 After subsection 1228B(2)**

Insert:

(2A) To avoid doubt, the amount added by way of penalty is part of the debt.

**32 Subsection 1228B(5)**

Omit “section 1229A or 1229AB”, substitute “section 1229C”.

**33 After paragraph 1229(1)(e)**

Insert:

(ea) the effect of sections 1229A and 1229B; and

**34 Subsections 1229(3) and (4)**

Repeal the subsections, substitute:

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- (3) The Secretary may give more than one notice under subsection (1) in relation to a person and a debt of the person.

### **35 Sections 1229A to 1229C**

Repeal the sections, substitute:

#### **1229A Interest charge—no repayment arrangement in effect**

- (1) If:
- (a) a notice is given to a person under subsection 1229(1) in relation to a debt; and
  - (b) an amount (the *unpaid amount*) of the debt remains unpaid at the end of the day (the *due day*) on which the debt is due to be paid; and
  - (c) at the end of the due day, there is no arrangement in effect under section 1234 in relation to the debt;
- then the person is liable to pay, by way of penalty, interest charge, worked out under subsection (3), for each day in the period described in subsection (2).

Note: For exemptions, see sections 1229E and 1229F.

- (2) The period starts at the beginning of the day after the due day and ends at the end of the earlier of the following days:
- (a) the last day at the end of which any of the following remains unpaid:
    - (i) the unpaid amount;
    - (ii) interest charge on any of the unpaid amount;
  - (b) the day before the first day, after the due day, on which the person makes a payment under an arrangement under section 1234 in relation to the debt.
- (3) The interest charge for a day in the period described in subsection (2) is worked out by multiplying the interest charge rate for that day by the sum of so much of the following amounts as remains unpaid:
- (a) the unpaid amount;
  - (b) the interest charge from previous days.

Note 1: For *interest charge rate* see section 1229D.

Note 2: The interest charge for a day is due and payable to the Commonwealth at the end of that day and is a debt due to the Commonwealth: see section 1229C.

**1229B Interest charge—failure to comply with or termination of repayment arrangement**

- (1) If:
- (a) an arrangement is in effect under section 1234 in relation to a person and a debt; and
  - (b) the person fails to make a payment under the arrangement;
- then the person is liable to pay, by way of penalty, interest charge, worked out under subsection (3), for each day in the period described in subsection (2).

Note: For exemptions, see sections 1229E and 1229F.

- (2) The period starts at the beginning of the day after the day (the *due day*) on which the payment was required to be made under the arrangement and ends at the end of the earliest of the following days:
- (a) the last day at the end of which any of the following remains unpaid:
    - (i) the outstanding amount of the debt;
    - (ii) interest charge on any of the outstanding amount of the debt;
  - (b) the day before the first day, after the due day, on which the person has paid all the payments that have so far become due and payable under the arrangement;
  - (c) the day before the day the arrangement is terminated under section 1234.
- (3) The interest charge for a day in the period described in subsection (2) is worked out by multiplying the interest charge rate for that day by the sum of so much of the following amounts as remains unpaid:
- (a) the outstanding amount of the debt;
  - (b) the interest charge from previous days.

Note 1: For *interest charge rate* see section 1229D.

Note 2: The interest charge for a day is due and payable to the Commonwealth at the end of that day and is a debt due to the Commonwealth: see section 1229C.

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*Repayment arrangement is terminated*

- (4) If:
- (a) an arrangement is in effect under section 1234 in relation to a person and a debt; and
  - (b) the arrangement is then terminated under section 1234 on a day (the **termination day**);
- then:
- (c) the following amounts (if any) are due and payable on the 14th day after the termination day:
    - (i) the outstanding amount of the debt;
    - (ii) interest charge on any of the outstanding amount of the debt; and
  - (d) if, at the end of that 14th day, any of those amounts remains unpaid, the person is liable to pay, by way of penalty, interest charge, worked out under subsection (6), for each day in the period described in subsection (5).

Note: For exemptions, see sections 1229E and 1229F.

- (5) The period starts at the beginning of the day after that 14th day and ends at the end of the earlier of the following days:
- (a) the last day at the end of which any of the following remains unpaid:
    - (i) the outstanding amount of the debt;
    - (ii) interest charge on any of the outstanding amount of the debt;
  - (b) the day before the first day, after that 14th day, on which the person makes a payment under another arrangement under section 1234 in relation to the debt.
- (6) The interest charge for a day in the period described in subsection (5) is worked out by multiplying the interest charge rate for that day by the sum of so much of the following amounts as remains unpaid:
- (a) the outstanding amount of the debt;
  - (b) the interest charge from previous days.

Note 1: For **interest charge rate** see section 1229D.

Note 2: The interest charge for a day is due and payable to the Commonwealth at the end of that day and is a debt due to the Commonwealth: see section 1229C.

**1229C Other rules for interest charge**

*When interest charge is due and payable*

- (1) The interest charge under section 1229A or 1229B for a day is due and payable to the Commonwealth at the end of that day.

*Interest charge is a debt*

- (2) The interest charge under section 1229A or 1229B for a day is a debt due to the Commonwealth by the person.

*Provisions that do not apply to interest charge debt*

- (3) Subsection 1229(1) does not apply in relation to the debt referred to in subsection (2) of this section.

**1229D What is the *interest charge rate*?**

- (1) For the purposes of sections 1229A and 1229B, the ***interest charge rate*** for a day is the rate worked out by adding 7 percentage points to the base interest rate for that day, and dividing that total by the number of days in the calendar year.
- (2) The ***base interest rate*** for a day depends on which quarter of the year the day is in. For each day in a quarter in column 1 of the table, it is the monthly average yield of 90-day Bank Accepted Bills published by the Reserve Bank of Australia for the month in column 2 of the table.

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<b>Base interest rate</b>		
<b>Item</b>	<b>Column 1 For days in this quarter:</b>	<b>Column 2 the monthly average yield of 90-day Bank Accepted Bills for this month applies:</b>
1	1 January to 31 March	the preceding November
2	1 April to 30 June	the preceding February
3	1 July to 30 September	the preceding May
4	1 October to 31 December	the preceding August

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- (3) If the monthly average yield of 90-day Bank Accepted Bills for a particular month in column 2 of the table in subsection (2) is not
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published by the Reserve Bank of Australia before the beginning of the relevant quarter, assume that it is the same as the last monthly average yield of 90-day Bank Accepted Bills published by the Reserve Bank of Australia before that month.

- (4) The base interest rate must be rounded to the second decimal place (rounding .005 upwards).

#### **1229E Exemption from interest charge—general**

- (1) A person is not liable to pay interest charge under section 1229A or 1229B if on the day before the start of the period in respect of which the person would otherwise have been liable to pay that charge:
- (a) the person is receiving a social security payment; or
  - (b) the person is receiving a payment of pension or allowance under the Veterans' Entitlements Act; or
  - (c) the person is receiving instalments of family tax benefit; or
  - (d) the person is receiving instalments under the ABSTUDY scheme (also known as the Aboriginal Study Assistance Scheme) that includes an amount identified as living allowance; or
  - (e) the person is receiving instalments under the Assistance for Isolated Children Scheme; or
  - (f) the circumstances determined in an instrument under subsection (2) apply in relation to the person.
- (2) The Minister may, by legislative instrument, determine circumstances for the purposes of paragraph (1)(f).

#### **1229F Exemption from interest charge—Secretary's determination**

- (1) The Secretary may determine that interest charge is not payable, or is not payable in respect of a particular period, by a person on the outstanding amount of a debt.
- (2) The Secretary may make a determination under this section in circumstances that include (but are not limited to) the Secretary being satisfied that the person has a reasonable excuse for:
- (a) failing to enter into an arrangement under section 1234 to pay the outstanding amount of the debt; or

- (b) having entered an arrangement, failing to make a payment in accordance with that arrangement.
- (3) The determination may relate to a period before, or to a period that includes a period before, the making of the determination.
- (4) The determination may be expressed to be subject to the person complying with one or more specified conditions.
- (5) If the determination is expressed to be subject to the person complying with one or more specified conditions, the Secretary must give written notice of the determination to the person as soon as practicable after the determination is made.
- (6) If:
  - (a) the determination is expressed to be subject to the person complying with one or more specified conditions; and
  - (b) the person contravenes a condition or conditions without reasonable excuse;the determination ceases to have effect from and including the day on which the contravention or the earliest of the contraventions occurred.
- (7) The Secretary may cancel or vary the determination by written notice given to the person.

### **1229G Guidelines on interest charge provisions**

The Minister may, by legislative instrument, determine guidelines relating to the operation of the provisions of this Part dealing with interest charge.

### **36 Subsection 1230(1) (note 3)**

Repeal the note.

### **37 Subsection 1230A(1) (note 3)**

Repeal the note.

### **38 After subsection 1234(1)**

Insert:

- (1A) If a person is required to make a payment under an arrangement entered into under subsection (1) before the end of a particular day, the person must make that payment before the end of that day.

### ***Student Assistance Act 1973***

#### **39 Subsection 3(1) (definition of *late payment charge*)**

Repeal the definition.

#### **40 Section 38 (heading)**

Repeal the heading, substitute:

#### **38 Definitions**

#### **41 Section 38 (paragraph (c) of the definition of *debt*)**

Omit “section 40”, substitute “section 41B”.

#### **42 Section 38**

Insert:

*relevant debt* means:

- (a) an amount paid under the ABSTUDY Scheme (also known as the Aboriginal Study Assistance Scheme) that should not have been paid; or
- (b) an amount paid under the Assistance for Isolated Children Scheme that should not have been paid; or
- (c) an ABSTUDY student start-up loan overpayment.

Note: The amount in paragraph (a) or (b) is a debt under paragraph (a) of the definition of *debt* in this section. The amount in paragraph (c) is a debt under paragraph (aa) of the definition of *debt* in this section.

#### **43 Sections 39A, 40 and 41**

Repeal the sections, substitute:

#### **40 Notice in respect of relevant debt**

- (1) If a relevant debt owed by a person to the Commonwealth has not been wholly paid, the Secretary must give the person a notice specifying:

- (a) the date on which it was issued (the *date of the notice*); and
  - (b) the reason the debt was incurred, including a brief explanation of the circumstances that led to the debt being incurred; and
  - (c) the period to which the debt relates; and
  - (d) the outstanding amount of the debt at the date of the notice; and
  - (e) the day on which the outstanding amount is due and payable; and
  - (f) the effect of sections 41 and 41A; and
  - (g) that a range of options is available for repayment of the debt; and
  - (h) the contact details for inquiries concerning the debt.
- (2) The outstanding amount of the debt is due and payable on the 28th day after the date of the notice.
- (3) The Secretary may give more than one notice under subsection (1) in relation to a person and a relevant debt of the person.

#### **41 Interest charge—no repayment arrangement in effect**

- (1) If:
- (a) a notice is given to a person under subsection 40(1) in relation to a relevant debt; and
  - (b) an amount (the *unpaid amount*) of the debt remains unpaid at the end of the day (the *due day*) on which the debt is due to be paid; and
  - (c) at the end of the due day, there is no arrangement in effect under section 41F in relation to the debt;
- then the person is liable to pay, by way of penalty, interest charge, worked out under subsection (3), for each day in the period described in subsection (2).
- Note: For exemptions, see sections 41D and 41E.
- (2) The period starts at the beginning of the day after the due day and ends at the end of the earlier of the following days:
- (a) the last day at the end of which any of the following remains unpaid:
    - (i) the unpaid amount;

- (ii) interest charge on any of the unpaid amount;
  - (b) the day before the first day, after the due day, on which the person makes a payment under an arrangement under section 41F in relation to the debt.
- (3) The interest charge for a day in the period described in subsection (2) is worked out by multiplying the interest charge rate for that day by the sum of so much of the following amounts as remains unpaid:
- (a) the unpaid amount;
  - (b) the interest charge from previous days.

Note 1: For *interest charge rate* see section 41C.

Note 2: The interest charge for a day is due and payable to the Commonwealth at the end of that day: see section 41B.

#### **41A Interest charge—failure to comply with or termination of repayment arrangement**

- (1) If:
- (a) an arrangement is in effect under section 41F in relation to a person and a relevant debt; and
  - (b) the person fails to make a payment under the arrangement;
- then the person is liable to pay, by way of penalty, interest charge, worked out under subsection (3), for each day in the period described in subsection (2).

Note: For exemptions, see sections 41D and 41E.

- (2) The period starts at the beginning of the day after the day (the *due day*) on which the payment was required to be made under the arrangement and ends at the end of the earliest of the following days:
- (a) the last day at the end of which any of the following remains unpaid:
    - (i) the outstanding amount of the debt;
    - (ii) interest charge on any of the outstanding amount of the debt;
  - (b) the day before the first day, after the due day, on which the person has paid all the payments that have so far become due and payable under the arrangement;

- (c) the day before the day the arrangement is terminated under section 41F.
- (3) The interest charge for a day in the period described in subsection (2) is worked out by multiplying the interest charge rate for that day by the sum of so much of the following amounts as remains unpaid:
- (a) the outstanding amount of the debt;
  - (b) the interest charge from previous days.

Note 1: For *interest charge rate* see section 41C.

Note 2: The interest charge for a day is due and payable to the Commonwealth at the end of that day: see section 41B.

*Repayment arrangement is terminated*

- (4) If:
- (a) an arrangement is in effect under section 41F in relation to a person and a relevant debt; and
  - (b) the arrangement is then terminated under section 41F on a day (the *termination day*);
- then:
- (c) the following amounts (if any) are due and payable on the 14th day after the termination day:
    - (i) the outstanding amount of the debt;
    - (ii) interest charge on any of the outstanding amount of the debt; and
  - (d) if, at the end of that 14th day, any of those amounts remains unpaid, the person is liable to pay, by way of penalty, interest charge, worked out under subsection (6), for each day in the period described in subsection (5).

Note: For exemptions, see sections 41D and 41E.

- (5) The period starts at the beginning of the day after that 14th day and ends at the end of the earlier of the following days:
- (a) the last day at the end of which any of the following remains unpaid:
    - (i) the outstanding amount of the debt;
    - (ii) interest charge on any of the outstanding amount of the debt;

- (b) the day before the first day, after that 14th day, on which the person makes a payment under another arrangement under section 41F in relation to the debt.
- (6) The interest charge for a day in the period described in subsection (5) is worked out by multiplying the interest charge rate for that day by the sum of so much of the following amounts as remains unpaid:
- (a) the outstanding amount of the debt;
  - (b) the interest charge from previous days.

Note 1: For *interest charge rate* see section 41C.

Note 2: The interest charge for a day is due and payable to the Commonwealth at the end of that day: see section 41B.

#### **41B When interest charge becomes due and payable**

The interest charge under section 41 or 41A for a day is due and payable to the Commonwealth at the end of that day.

Note: The interest charge for a day is a debt owed to the Commonwealth: see section 39.

#### **41C What is the *interest charge rate*?**

- (1) For the purposes of sections 41 and 41A, the *interest charge rate* for a day is the rate worked out by adding 7 percentage points to the base interest rate for that day, and dividing that total by the number of days in the calendar year.
- (2) The *base interest rate* for a day depends on which quarter of the year the day is in. For each day in a quarter in column 1 of the table, it is the monthly average yield of 90-day Bank Accepted Bills published by the Reserve Bank of Australia for the month in column 2 of the table.

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<b>Base interest rate</b>		
<b>Item</b>	<b>Column 1 For days in this quarter:</b>	<b>Column 2 the monthly average yield of 90-day Bank Accepted Bills for this month applies:</b>
1	1 January to 31 March	the preceding November
2	1 April to 30 June	the preceding February

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## Schedule 12 Interest charge

### Part 1 Amendments

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#### Base interest rate

Item	Column 1 For days in this quarter:	Column 2 the monthly average yield of 90-day Bank Accepted Bills for this month applies:
3	1 July to 30 September	the preceding May
4	1 October to 31 December	the preceding August

- (3) If the monthly average yield of 90-day Bank Accepted Bills for a particular month in column 2 of the table in subsection (2) is not published by the Reserve Bank of Australia before the beginning of the relevant quarter, assume that it is the same as the last monthly average yield of 90-day Bank Accepted Bills published by the Reserve Bank of Australia before that month.
- (4) The base interest rate must be rounded to the second decimal place (rounding .005 upwards).

#### 41D Exemption from interest charge—general

- (1) A person is not liable to pay interest charge under section 41 or 41A if on the day before the start of the period in respect of which the person would otherwise have been liable to pay that charge:
- (a) the person is receiving instalments under the ABSTUDY scheme (also known as the Aboriginal Study Assistance Scheme) that includes an amount identified as living allowance; or
  - (b) the person is receiving instalments under the Assistance for Isolated Children Scheme; or
  - (c) the person is receiving instalments of family tax benefit (within the meaning of the *A New Tax System (Family Assistance) Act 1999*); or
  - (d) the person is receiving a social security payment (within the meaning of the *Social Security Act 1991*); or
  - (e) the person is receiving a payment of pension or allowance under the *Veterans' Entitlements Act 1986*; or
  - (f) the circumstances determined in an instrument under subsection (2) apply in relation to the person.
- (2) The Minister may, by legislative instrument, determine circumstances for the purposes of paragraph (1)(f).

#### **41E Exemption from interest charge—Secretary’s determination**

- (1) The Secretary may determine that interest charge is not payable, or is not payable in respect of a particular period, by a person on the outstanding amount of a relevant debt.
- (2) The Secretary may make a determination under this section in circumstances that include (but are not limited to) the Secretary being satisfied that the person has a reasonable excuse for:
  - (a) failing to enter into an arrangement under section 41F to pay the outstanding amount of the debt; or
  - (b) having entered an arrangement, failing to make a payment in accordance with that arrangement.
- (3) The determination may relate to a period before, or to a period that includes a period before, the making of the determination.
- (4) The determination may be expressed to be subject to the person complying with one or more specified conditions.
- (5) If the determination is expressed to be subject to the person complying with one or more specified conditions, the Secretary must give written notice of the determination to the person as soon as practicable after the determination is made.
- (6) If:
  - (a) the determination is expressed to be subject to the person complying with one or more specified conditions; and
  - (b) the person contravenes a condition or conditions without reasonable excuse;the determination ceases to have effect from and including the day on which the contravention or the earliest of the contraventions occurred.
- (7) The Secretary may cancel or vary the determination by written notice given to the person.

#### **41F Arrangement for payment of relevant debt**

- (1) The Secretary may, on behalf of the Commonwealth, enter into an arrangement with a person under which the person is to pay a relevant debt, owed by the person to the Commonwealth, or the

outstanding amount of such a debt, in a way set out in the arrangement.

- (2) If a person is required to make a payment under an arrangement entered into under subsection (1) before the end of a particular day, the person must make that payment before the end of that day.
- (3) An arrangement entered into under subsection (1) has effect, or is taken to have had effect, on and after the day specified in the arrangement as the day on which the arrangement commences (whether that day is the day on which the arrangement is entered into or an earlier or later day).
- (4) If an arrangement entered into under subsection (1) does not specify a day as mentioned in subsection (3), it has effect on and after the day on which it is entered into.
- (5) The Secretary may terminate or alter an arrangement entered into under subsection (1):
  - (a) at the debtor's request; or
  - (b) after giving 28 days' notice to the debtor of the proposed termination or alteration; or
  - (c) without notice, if the Secretary is satisfied that the person has failed to disclose material information about his or her true capacity to repay the debt.

#### **41G Guidelines on interest charge provisions**

The Minister may, by legislative instrument, determine guidelines relating to the operation of the provisions of this Division dealing with interest charge.

#### **44 Paragraph 51(1)(b)**

Omit "subsection 40(1A)", substitute "subsection 40(1)".

#### ***Veterans' Entitlements Act 1986***

#### **45 Section 205AAE**

Repeal the section, substitute:

**205AAE Penalty interest rate**

- (1) The penalty interest rate is:
  - (a) 3% per year; or
  - (b) if another percentage is determined in an instrument under subsection (2)—that percentage per year.
- (2) The Minister may, by legislative instrument, determine a percentage for the purposes of paragraph (1)(b).

## Part 2—Application, saving and transitional provisions

### 46 Application and transitional provisions—family assistance amendments

- (1) Paragraph 78(1)(a) of the *A New Tax System (Family Assistance) (Administration) Act 1999*, as amended by this Act, applies in relation to a notice given on or after the commencement of this item (whether the debt arose before, on or after that commencement).
- (2) If:
  - (a) before the commencement of this item, the Secretary gave a person a notice under subsection 77(1) of the *A New Tax System (Family Assistance) (Administration) Act 1999* in relation to a debt; and
  - (b) the whole or a part of that debt is outstanding immediately before that commencement;then, on or after the commencement of this item, the Secretary must give the person another notice under subsection 77(1) of that Act, as amended by this Act, in relation to the debt.
- (3) Paragraph 78A(1)(b) of the *A New Tax System (Family Assistance) (Administration) Act 1999*, as amended by this Act, applies in relation to a failure that occurs on or after the commencement of this item (whether the arrangement was entered into before, on or after that commencement).
- (4) Paragraph 78A(4)(b) of the *A New Tax System (Family Assistance) (Administration) Act 1999*, as amended by this Act, applies in relation to a termination that occurs on or after the commencement of this item (whether the arrangement was entered into before, on or after that commencement).
- (5) Subsection 91(1B) of the *A New Tax System (Family Assistance) (Administration) Act 1999*, as amended by this Act, applies in relation to a requirement to make a payment on or after the commencement of this item (whether the arrangement was entered into before, on or after that commencement).

#### **47 Application and transitional provisions—paid parental leave amendments**

- (1) Paragraph 174(1)(a) of the *Paid Parental Leave Act 2010*, as amended by this Act, applies in relation to a notice given on or after the commencement of this item (whether the debt arose before, on or after that commencement).
- (2) If:
  - (a) before the commencement of this item, the Secretary gave a person a notice under subsection 173(1) of the *Paid Parental Leave Act 2010* in relation to a debt; and
  - (b) the whole or a part of that debt is outstanding immediately before that commencement;then, on or after the commencement of this item, the Secretary must give the person another notice under subsection 173(1) of that Act, as amended by this Act, in relation to the debt.
- (3) Paragraph 175(1)(b) of the *Paid Parental Leave Act 2010*, as amended by this Act, applies in relation to a failure that occurs on or after the commencement of this item (whether the arrangement was entered into before, on or after that commencement).
- (4) Paragraph 175(4)(b) of the *Paid Parental Leave Act 2010*, as amended by this Act, applies in relation to a termination that occurs on or after the commencement of this item (whether the arrangement was entered into before, on or after that commencement).
- (5) Subsection 190(1A) of the *Paid Parental Leave Act 2010*, as amended by this Act, applies in relation to a requirement to make a payment on or after the commencement of this item (whether the arrangement was entered into before, on or after that commencement).

#### **48 Application and transitional provisions—social security amendments**

- (1) Paragraph 1229A(1)(a) of the *Social Security Act 1991*, as amended by this Act, applies in relation to a notice given on or after the commencement of this item (whether the debt arose before, on or after that commencement).
  - (2) If:
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**Schedule 12** Interest charge

**Part 2** Application, saving and transitional provisions

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(a) before the commencement of this item, the Secretary gave a person a notice under subsection 1229(1) of the *Social Security Act 1991* in relation to a debt; and

(b) the whole or a part of that debt is outstanding immediately before that commencement;

then, on or after the commencement of this item, the Secretary must give the person another notice under subsection 1229(1) of that Act, as amended by this Act, in relation to the debt.

- (3) Paragraph 1229B(1)(b) of the *Social Security Act 1991*, as amended by this Act, applies in relation to a failure that occurs on or after the commencement of this item (whether the arrangement was entered into before, on or after that commencement).
- (4) Paragraph 1229B(4)(b) of the *Social Security Act 1991*, as amended by this Act, applies in relation to a termination that occurs on or after the commencement of this item (whether the arrangement was entered into before, on or after that commencement).
- (5) Subsection 1234(1A) of the *Social Security Act 1991*, as amended by this Act, applies in relation to a requirement to make a payment on or after the commencement of this item (whether the arrangement was entered into before, on or after that commencement).

**49 Application, saving and transitional provisions—student assistance amendments**

- (1) Sections 40 to 41G of the *Student Assistance Act 1973*, as amended by this Act, apply in relation to:
- (a) a relevant debt that arises on or after the commencement of this item; and
- (b) a relevant debt that arose before the commencement of this item, to the extent that the debt was outstanding immediately before that commencement.
- (2) The repeal of section 39A of the *Student Assistance Act 1973* made by this Schedule does not affect the validity of a decision under subsection 39A(1) of that Act before the commencement of this item.
- (3) A decision made under subsection 39A(1) of the *Student Assistance Act 1973* before the commencement of this item in relation to a person and a debt does not prevent the application of the provisions of Division 2
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of Part 6 of that Act, as amended by this Act, on and after that commencement in relation to the person and the debt.

## Schedule 13—Debt recovery

### Part 1—Departure prohibition orders

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

##### **1 Subsection 3(1) (at the end of the definition of *Australia*)**

Add:

Note: In Division 5 of Part 4 of the Family Assistance Administration Act (about departure prohibition orders), *Australia* has an extended meaning.

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

##### **2 Subsection 3(1)**

Insert:

*departure authorisation certificate* means a certificate under Subdivision D of Division 5 of Part 4.

*departure prohibition order* means an order under Subdivision A of Division 5 of Part 4 (including such an order varied under Subdivision C of that Division).

##### **3 At the end of Part 4**

Add:

### Division 5—Departure prohibition orders

#### Subdivision A—Secretary may make departure prohibition orders

##### **102A Secretary may make departure prohibition orders**

- (1) The Secretary may make an order (a *departure prohibition order*) prohibiting a person from departing from Australia for a foreign country if:

- (a) the person has one or more debts to the Commonwealth under this Part; and
- (b) there are not arrangements satisfactory to the Secretary for the one or more debts to be wholly paid; and
- (c) the Secretary believes on reasonable grounds that it is desirable to make the order for the purpose of ensuring that the person does not depart from Australia for a foreign country without:
  - (i) having wholly paid the one or more debts; or
  - (ii) there being arrangements satisfactory to the Secretary for the one or more debts to be wholly paid.

*Matters to be taken into account in making order*

- (2) Before making an order under this section, the Secretary must have regard to the following matters:
  - (a) the capacity of the person to pay the one or more debts;
  - (b) whether any action has been taken to recover any such debt, and the outcome of the recovery action;
  - (c) the length of time for which any such debt has remained unpaid after the day on which it became due and payable;
  - (d) such other matters as the Secretary considers appropriate.

*Form of order*

- (3) A departure prohibition order must be in a form approved by the Secretary.

**Subdivision B—Departure from Australia of debtors prohibited**

**102B Departure from Australia of debtors prohibited**

A person must not depart from Australia for a foreign country if:

- (a) a departure prohibition order in respect of the person is in force, and the person knows that the order is in force, or is reckless as to whether the order is in force; and
- (b) the person's departure is not authorised by a departure authorisation certificate, and the person knows that the

departure is not authorised by such a certificate, or is reckless as to whether the departure is authorised by such a certificate.

Penalty: Imprisonment for 12 months.

### **Subdivision C—Other rules for departure prohibition orders**

#### **102C Notification requirements for departure prohibition orders**

- (1) This section applies if the Secretary makes a departure prohibition order in respect of a person.

##### *Notifying person of order*

- (2) The Secretary must notify the person that the order has been made.
- (3) The notice must be in a form approved by the Secretary and must be given as soon as practicable after making the order.

##### *Notifying other persons of order*

- (4) Unless the Secretary is satisfied that the person is an Australian citizen, the Secretary must give the Secretary of the Department administered by the Minister administering the *Migration Act 1958* a copy of the order, and information likely to facilitate identification of the person, for the purposes of administering that Act.
- (5) The Secretary must also give a copy of the order, and information likely to facilitate identification of the person for the purposes of this Division, to such other persons as the Secretary considers appropriate in the circumstances, being persons declared in an instrument under subsection (6).
- (6) The Secretary may, by legislative instrument, declare persons for the purposes of subsection (5).
- (7) The Secretary must give a copy of the order or information under subsection (4) or (5) as soon as practicable after making the order.

### **102D Operation of departure prohibition order**

- (1) A departure prohibition order comes into force when it is made, and continues in force until it is revoked, or until it is set aside by a court.

Note: Subdivision E deals with appeals to the Federal Court of Australia or the Federal Circuit Court of Australia against the making of departure prohibition orders.

- (2) However, a departure prohibition order in respect of a person is not in force during any period when a deportation order in respect of the person is in force under the *Migration Act 1958*.

### **102E Revocation and variation of departure prohibition orders**

- (1) The Secretary must revoke a departure prohibition order in respect of a person if:
  - (a) the person no longer has any debts to the Commonwealth under this Part; or
  - (b) there are arrangements satisfactory to the Secretary for the one or more debts the person has to the Commonwealth under this Part to be wholly paid; or
  - (c) the Secretary is satisfied that the one or more debts the person has to the Commonwealth under this Part are completely irrecoverable.
- (2) The Secretary may revoke or vary a departure prohibition order in respect of a person if the Secretary considers it desirable to do so.
- (3) A revocation or variation, under this section, of a departure prohibition order may be:
  - (a) on application by the person in a form approved by the Secretary; or
  - (b) on the Secretary's own initiative.

### **102F Notification requirements for revocations and variations**

- (1) If the Secretary revokes or varies a departure prohibition order in respect of a person, the Secretary must give notice of the revocation or variation to:
  - (a) the person; and

- (b) each person to whom a copy of the departure prohibition order was given under subsection 102C(4) or (5).
- (2) If:
  - (a) a person makes an application under paragraph 102E(3)(a) for the revocation or variation of a departure prohibition order; and
  - (b) the Secretary refuses to revoke or vary the order; the Secretary must give notice of the refusal to the person.
- (3) A notice under this section must be in a form approved by the Secretary and must be given as soon as practicable after the decision concerned is made.

### **Subdivision D—Departure authorisation certificates**

#### **102G Application for departure authorisation certificate**

- (1) A person in respect of whom a departure prohibition order is in force may apply for a certificate (a *departure authorisation certificate*) authorising the person to depart from Australia for a foreign country.
- (2) The application must be in a form approved by the Secretary.

#### **102H When Secretary must issue departure authorisation certificate**

- (1) This section applies if a person makes an application under section 102G for a departure authorisation certificate.
- (2) The Secretary must issue the departure authorisation certificate if the Secretary is satisfied:
  - (a) that, if the certificate is issued:
    - (i) it is likely that the person will depart from Australia and return to Australia within a period that the Secretary considers appropriate; and
    - (ii) it is likely that, within a period that the Secretary considers appropriate, the Secretary will be required by subsection 102E(1) to revoke the departure prohibition order in respect of the person; and
  - (b) that it is not necessary for the person to give security under section 102J for the person's return to Australia.

- (3) If the Secretary is not satisfied as mentioned in subsection (2), the Secretary must issue the departure authorisation certificate if:
- (a) the person has given security under section 102J for the person's return to Australia; or
  - (b) if the person is unable to give such security, the Secretary is satisfied:
    - (i) that the certificate should be issued on humanitarian grounds; or
    - (ii) that refusing to issue the certificate will be detrimental to Australia's interests.

### **102J Security for person's return to Australia**

- (1) A person may give such security as the Secretary considers appropriate by bond, deposit or any other means, for the person's return to Australia by such day as is agreed by the person and the Secretary and is specified in the departure authorisation certificate.
- (2) The Secretary may substitute a later day for the day mentioned in subsection (1):
- (a) on application by the person in a form approved by the Secretary; or
  - (b) on the Secretary's own initiative.
- (3) The Secretary may refuse an application by a person to substitute a later day if:
- (a) the person refuses to increase the value of the security already given to a level that the Secretary considers appropriate; or
  - (b) the person refuses to give such further security as the Secretary considers appropriate; or
  - (c) the Secretary considers that it would not be appropriate to substitute the later day.

### **102K What departure authorisation certificate must authorise**

- (1) A departure authorisation certificate in respect of a person must authorise the departure of the person on or before the seventh day after a day specified in the certificate.

- (2) The day specified in the certificate must be a day that is after the day on which the certificate is issued, but not more than 7 days after that day.

**102L Notification requirements for departure authorisation certificates**

- (1) If the Secretary issues a departure authorisation certificate in respect of a person, the Secretary must, as soon as practicable, give a copy of the certificate to:
- (a) the person; and
  - (b) each person to whom a copy of the departure prohibition order in respect of the person was given under subsection 102C(4) or (5).
- (2) If:
- (a) a person makes an application under section 102G for a departure authorisation certificate; and
  - (b) the Secretary refuses to issue the certificate;
- the Secretary must give notice of the refusal to the person.
- (3) The notice must be in a form approved by the Secretary and must be given as soon as practicable after the refusal.

**102M Notification requirements for substituted days**

- (1) If, under section 102J, the Secretary substitutes a later day for a person's return to Australia, the Secretary must give notice of that decision to:
- (a) the person; and
  - (b) each person to whom a copy of the departure prohibition order in respect of the person was given under subsection 102C(4) or (5).
- (2) If:
- (a) a person makes an application under paragraph 102J(2)(a) to substitute a later day for the person's return to Australia; and
  - (b) the Secretary refuses the application;
- the Secretary must give notice of the refusal to the person.

- (3) A notice under this section must be in a form approved by the Secretary and must be given as soon as practicable after the decision concerned is made.

**Subdivision E—Appeals and review in relation to departure prohibition orders and departure authorisation certificates**

**102N Appeals to courts against making of departure prohibition orders**

- (1) A person aggrieved by the making of a departure prohibition order may appeal to the Federal Court of Australia or the Federal Circuit Court of Australia against the making of the order.
- (2) This section has effect subject to Chapter III of the Constitution.

**102P Jurisdiction of courts**

The jurisdiction of a court under section 102N must be exercised by a single Judge.

**102Q Orders of court on appeal**

A court hearing an appeal under section 102N against the making of a departure prohibition order may, in its discretion:

- (a) make an order setting aside the order; or  
(b) dismiss the appeal.

**102R Review of decisions**

- (1) Applications may be made to the Administrative Appeals Tribunal for review of a decision of the Secretary under section 102E, 102H or 102J.
- (2) Despite any provision of Part 5, that Part does not apply in relation to any decision of the Secretary under this Division.

## Subdivision F—Enforcement

### 102S Powers of officers of Customs and members of the Australian Federal Police

- (1) This section applies if an officer (within the meaning of the *Customs Act 1901*), or a member of the Australian Federal Police, believes on reasonable grounds that:
  - (a) a person is about to depart from Australia for a foreign country; and
  - (b) a departure prohibition order in respect of the person is in force; and
  - (c) the person's departure is not authorised by a departure authorisation certificate.
- (2) The officer or member may:
  - (a) take such steps as are reasonably necessary to prevent the person's departure, including, but not limited to, steps to prevent the person going on board, or to remove the person from, a vessel or aircraft in which the officer or member believes on reasonable grounds the departure will take place; and
  - (b) require the person to answer questions or produce documents to the officer or member for the purposes of working out whether:
    - (i) a departure prohibition order in respect of the person is in force; and
    - (ii) if such an order in respect of the person is in force—whether the person's departure is authorised by a departure authorisation certificate.
- (3) A person commits an offence if:
  - (a) the person is subject to a requirement under paragraph (2)(b); and
  - (b) the person refuses or fails to comply with the requirement.

Penalty: 30 penalty units.

- (4) Subsection (3) does not apply if the person answers the question or produces the document to the extent that the person is capable of answering the question or producing the document.

Note: A defendant bears an evidential burden in relation to the matters mentioned in subsection (4): see subsection 13.3(3) of the *Criminal Code*.

### **102T Privilege against self-incrimination**

- (1) An individual is not excused from answering a question, or producing a document, under paragraph 102S(2)(b) on the ground that the answer to the question or the production of the document might tend to incriminate the individual or expose the individual to a penalty.
- (2) However:
  - (a) the answer given or document produced; and
  - (b) answering the question or producing the document; and
  - (c) any information, document or thing obtained as a direct or indirect consequence of the answering of the question or producing the document;are not admissible in evidence against the individual in any criminal proceedings, other than proceedings under section 137.1 or 137.2 of the *Criminal Code* in relation to answering the question or producing the document.

### **102U Production of authority to depart**

- (1) If:
  - (a) a departure prohibition order in respect of a person is in force; and
  - (b) the person is about to depart from Australia for a foreign country; and
  - (c) the person's departure is authorised by a departure authorisation certificate;an officer (within the meaning of the *Customs Act 1901*), or a member of the Australian Federal Police, may request the person to give a copy of the certificate to the officer or member for inspection.
- (2) A person commits an offence of strict liability if:
  - (a) an officer (within the meaning of the *Customs Act 1901*), or a member of the Australian Federal Police, has made a request of the person under subsection (1); and

(b) the person refuses or fails to comply with the request.

Penalty for contravention of this subsection: 5 penalty units.

## Subdivision G—Interpretation

### 102V Interpretation—departure from Australia for foreign country

A reference in this Division to the departure of a person from Australia for a foreign country is a reference to the departure of the person from Australia for a foreign country, whether or not the person intends to return to Australia.

### 102W Meaning of *Australia*

For the purposes of this Division, *Australia*, when used in a geographical sense, includes the external Territories.

## 4 Part 5 (after the heading)

Insert:

Note: This Part does not apply in relation to any decision of the Secretary under Division 5 of Part 4 (about departure prohibition orders).

## *Paid Parental Leave Act 2010*

### 5 Section 6 (at the end of the definition of *Australia*)

Add:

Note: In Division 7A of Part 4-3 (about departure prohibition orders), *Australia* has an extended meaning.

### 6 Section 6

Insert:

*departure authorisation certificate* means a certificate under Subdivision D of Division 7A of Part 4-3.

*departure prohibition order* means an order under Subdivision A of Division 7A of Part 4-3 (including such an order varied under Subdivision C of that Division).

## **7 Section 164**

After:

Division 7 allows the Secretary to waive debts in various circumstances.

insert:

Division 7A deals with when a departure prohibition order, prohibiting a person from departing from Australia for a foreign country, can be made if the person has a debt due to the Commonwealth under this Act.

## **8 After Division 7 of Part 4-3**

Insert:

### **Division 7A—Departure prohibition orders**

#### **Subdivision A—Secretary may make departure prohibition orders**

##### **200A Secretary may make departure prohibition orders**

- (1) The Secretary may make an order (a *departure prohibition order*) prohibiting a person from departing from Australia for a foreign country if:
  - (a) the person has one or more debts to the Commonwealth under this Act; and
  - (b) there are not arrangements satisfactory to the Secretary for the one or more debts to be wholly paid; and
  - (c) the Secretary believes on reasonable grounds that it is desirable to make the order for the purpose of ensuring that the person does not depart from Australia for a foreign country without:
    - (i) having wholly paid the one or more debts; or
    - (ii) there being arrangements satisfactory to the Secretary for the one or more debts to be wholly paid.

*Matters to be taken into account in making order*

- (2) Before making an order under this section, the Secretary must have regard to the following matters:
- (a) the capacity of the person to pay the one or more debts;
  - (b) whether any action has been taken to recover any such debt, and the outcome of the recovery action;
  - (c) the length of time for which any such debt has remained unpaid after the day on which it became due and payable;
  - (d) such other matters as the Secretary considers appropriate.

*Form of order*

- (3) A departure prohibition order must be in a form approved by the Secretary.

*Debts under section 168 disregarded*

- (4) A debt that a person has under section 168 is to be disregarded for the purposes of this section.

**Subdivision B—Departure from Australia of debtors prohibited**

**200B Departure from Australia of debtors prohibited**

A person must not depart from Australia for a foreign country if:

- (a) a departure prohibition order in respect of the person is in force, and the person knows that the order is in force, or is reckless as to whether the order is in force; and
- (b) the person's departure is not authorised by a departure authorisation certificate, and the person knows that the departure is not authorised by such a certificate, or is reckless as to whether the departure is authorised by such a certificate.

Penalty: Imprisonment for 12 months.

## **Subdivision C—Other rules for departure prohibition orders**

### **200C Notification requirements for departure prohibition orders**

- (1) This section applies if the Secretary makes a departure prohibition order in respect of a person.

#### *Notifying person of order*

- (2) The Secretary must notify the person that the order has been made.
- (3) The notice must be in a form approved by the Secretary and must be given as soon as practicable after making the order.

#### *Notifying other persons of order*

- (4) Unless the Secretary is satisfied that the person is an Australian citizen, the Secretary must give the Secretary of the Department administered by the Immigration Minister a copy of the order, and information likely to facilitate identification of the person, for the purposes of administering the *Migration Act 1958*.
- (5) The Secretary must also give a copy of the order, and information likely to facilitate identification of the person for the purposes of this Division, to such other persons as the Secretary considers appropriate in the circumstances, being persons prescribed by the PPL rules.
- (6) The Secretary must give a copy of the order or information under subsection (4) or (5) as soon as practicable after making the order.

### **200D Operation of departure prohibition order**

- (1) A departure prohibition order comes into force when it is made, and continues in force until it is revoked, or until it is set aside by a court.

Note: Subdivision E deals with appeals to the Federal Court or the Federal Circuit Court against the making of departure prohibition orders.

- (2) However, a departure prohibition order in respect of a person is not in force during any period when a deportation order in respect of the person is in force under the *Migration Act 1958*.

### **200E Revocation and variation of departure prohibition orders**

- (1) The Secretary must revoke a departure prohibition order in respect of a person if:
  - (a) the person no longer has any debts to the Commonwealth under this Act; or
  - (b) there are arrangements satisfactory to the Secretary for the one or more debts the person has to the Commonwealth under this Act to be wholly paid; or
  - (c) the Secretary is satisfied that the one or more debts the person has to the Commonwealth under this Act are completely irrecoverable.
- (2) The Secretary may revoke or vary a departure prohibition order in respect of a person if the Secretary considers it desirable to do so.
- (3) A revocation or variation, under this section, of a departure prohibition order may be:
  - (a) on application by the person in a form approved by the Secretary; or
  - (b) on the Secretary's own initiative.

#### *Debts under section 168 disregarded*

- (4) A debt that a person has under section 168 is to be disregarded for the purposes of this section.

### **200F Notification requirements for revocations and variations**

- (1) If the Secretary revokes or varies a departure prohibition order in respect of a person, the Secretary must give notice of the revocation or variation to:
  - (a) the person; and
  - (b) each person to whom a copy of the departure prohibition order was given under subsection 200C(4) or (5).
- (2) If:
  - (a) a person makes an application under paragraph 200E(3)(a) for the revocation or variation of a departure prohibition order; and
  - (b) the Secretary refuses to revoke or vary the order;

the Secretary must give notice of the refusal to the person.

- (3) A notice under this section must be in a form approved by the Secretary and must be given as soon as practicable after the decision concerned is made.

## **Subdivision D—Departure authorisation certificates**

### **200G Application for departure authorisation certificate**

- (1) A person in respect of whom a departure prohibition order is in force may apply for a certificate (a *departure authorisation certificate*) authorising the person to depart from Australia for a foreign country.
- (2) The application must be in a form approved by the Secretary.

### **200H When Secretary must issue departure authorisation certificate**

- (1) This section applies if a person makes an application under section 200G for a departure authorisation certificate.
- (2) The Secretary must issue the departure authorisation certificate if the Secretary is satisfied:
  - (a) that, if the certificate is issued:
    - (i) it is likely that the person will depart from Australia and return to Australia within a period that the Secretary considers appropriate; and
    - (ii) it is likely that, within a period that the Secretary considers appropriate, the Secretary will be required by subsection 200E(1) to revoke the departure prohibition order in respect of the person; and
  - (b) that it is not necessary for the person to give security under section 200J for the person's return to Australia.
- (3) If the Secretary is not satisfied as mentioned in subsection (2), the Secretary must issue the departure authorisation certificate if:
  - (a) the person has given security under section 200J for the person's return to Australia; or
  - (b) if the person is unable to give such security, the Secretary is satisfied:

- (i) that the certificate should be issued on humanitarian grounds; or
- (ii) that refusing to issue the certificate will be detrimental to Australia's interests.

### **200J Security for person's return to Australia**

- (1) A person may give such security as the Secretary considers appropriate by bond, deposit or any other means, for the person's return to Australia by such day as is agreed by the person and the Secretary and is specified in the departure authorisation certificate.
- (2) The Secretary may substitute a later day for the day mentioned in subsection (1):
  - (a) on application by the person in a form approved by the Secretary; or
  - (b) on the Secretary's own initiative.
- (3) The Secretary may refuse an application by a person to substitute a later day if:
  - (a) the person refuses to increase the value of the security already given to a level that the Secretary considers appropriate; or
  - (b) the person refuses to give such further security as the Secretary considers appropriate; or
  - (c) the Secretary considers that it would not be appropriate to substitute the later day.

### **200K What departure authorisation certificate must authorise**

- (1) A departure authorisation certificate in respect of a person must authorise the departure of the person on or before the seventh day after a day specified in the certificate.
- (2) The day specified in the certificate must be a day that is after the day on which the certificate is issued, but not more than 7 days after that day.

**200L Notification requirements for departure authorisation certificates**

- (1) If the Secretary issues a departure authorisation certificate in respect of a person, the Secretary must, as soon as practicable, give a copy of the certificate to:
  - (a) the person; and
  - (b) each person to whom a copy of the departure prohibition order in respect of the person was given under subsection 200C(4) or (5).
- (2) If:
  - (a) a person makes an application under section 200G for a departure authorisation certificate; and
  - (b) the Secretary refuses to issue the certificate;the Secretary must give notice of the refusal to the person.
- (3) The notice must be in a form approved by the Secretary and must be given as soon as practicable after the refusal.

**200M Notification requirements for substituted days**

- (1) If, under section 200J, the Secretary substitutes a later day for a person's return to Australia, the Secretary must give notice of that decision to:
  - (a) the person; and
  - (b) each person to whom a copy of the departure prohibition order in respect of the person was given under subsection 200C(4) or (5).
- (2) If:
  - (a) a person makes an application under paragraph 200J(2)(a) to substitute a later day for the person's return to Australia; and
  - (b) the Secretary refuses the application;the Secretary must give notice of the refusal to the person.
- (3) A notice under this section must be in a form approved by the Secretary and must be given as soon as practicable after the decision concerned is made.

**Subdivision E—Appeals and review in relation to departure prohibition orders and departure authorisation certificates**

**200N Appeals to courts against making of departure prohibition orders**

- (1) A person aggrieved by the making of a departure prohibition order may appeal to the Federal Court or the Federal Circuit Court against the making of the order.
- (2) This section has effect subject to Chapter III of the Constitution.

**200P Jurisdiction of courts**

The jurisdiction of a court under section 200N must be exercised by a single Judge.

**200Q Orders of court on appeal**

A court hearing an appeal under section 200N against the making of a departure prohibition order may, in its discretion:

- (a) make an order setting aside the order; or
- (b) dismiss the appeal.

**200R Review of decisions**

- (1) Applications may be made to the Administrative Appeals Tribunal for review of a decision of the Secretary under section 200E, 200H or 200J.
- (2) Despite any provision of Chapter 5, that Chapter does not apply in relation to any decision of the Secretary under this Division.

## **Subdivision F—Enforcement**

### **200S Powers of officers of Customs and members of the Australian Federal Police**

- (1) This section applies if an officer (within the meaning of the *Customs Act 1901*), or a member of the Australian Federal Police, believes on reasonable grounds that:
  - (a) a person is about to depart from Australia for a foreign country; and
  - (b) a departure prohibition order in respect of the person is in force; and
  - (c) the person's departure is not authorised by a departure authorisation certificate.
- (2) The officer or member may:
  - (a) take such steps as are reasonably necessary to prevent the person's departure, including, but not limited to, steps to prevent the person going on board, or to remove the person from, a vessel or aircraft in which the officer or member believes on reasonable grounds the departure will take place; and
  - (b) require the person to answer questions or produce documents to the officer or member for the purposes of working out whether:
    - (i) a departure prohibition order in respect of the person is in force; and
    - (ii) if such an order in respect of the person is in force—whether the person's departure is authorised by a departure authorisation certificate.
- (3) A person commits an offence if:
  - (a) the person is subject to a requirement under paragraph (2)(b); and
  - (b) the person refuses or fails to comply with the requirement.

Penalty: 30 penalty units.

- (4) Subsection (3) does not apply if the person answers the question or produces the document to the extent that the person is capable of answering the question or producing the document.

Note: A defendant bears an evidential burden in relation to the matters mentioned in subsection (4): see subsection 13.3(3) of the *Criminal Code*.

### **200T Privilege against self-incrimination**

- (1) An individual is not excused from answering a question, or producing a document, under paragraph 200S(2)(b) on the ground that the answer to the question or the production of the document might tend to incriminate the individual or expose the individual to a penalty.
- (2) However:
  - (a) the answer given or document produced; and
  - (b) answering the question or producing the document; and
  - (c) any information, document or thing obtained as a direct or indirect consequence of the answering of the question or producing the document;are not admissible in evidence against the individual in any criminal proceedings, other than proceedings under section 137.1 or 137.2 of the *Criminal Code* in relation to answering the question or producing the document.

### **200U Production of authority to depart**

- (1) If:
  - (a) a departure prohibition order in respect of a person is in force; and
  - (b) the person is about to depart from Australia for a foreign country; and
  - (c) the person's departure is authorised by a departure authorisation certificate;an officer (within the meaning of the *Customs Act 1901*), or a member of the Australian Federal Police, may request the person to give a copy of the certificate to the officer or member for inspection.
- (2) A person commits an offence of strict liability if:
  - (a) an officer (within the meaning of the *Customs Act 1901*), or a member of the Australian Federal Police, has made a request of the person under subsection (1); and

(b) the person refuses or fails to comply with the request.

Penalty for contravention of this subsection: 5 penalty units.

## **Subdivision G—Interpretation**

### **200V Interpretation—departure from Australia for foreign country**

A reference in this Division to the departure of a person from Australia for a foreign country is a reference to the departure of the person from Australia for a foreign country, whether or not the person intends to return to Australia.

### **200W Meaning of *Australia***

For the purposes of this Division, *Australia*, when used in a geographical sense, includes the external Territories.

## **9 Chapter 5 (after the heading)**

Insert:

Note: This Chapter does not apply in relation to any decision of the Secretary under Division 7A of Part 4-3 (about departure prohibition orders).

## ***Social Security Act 1991***

### **10 Subsection 23(1) (definition of *Australia*, before the note)**

Insert:

Note 1: In Part 5.5 of Chapter 5 (about departure prohibition orders), *Australia* has an extended meaning.

### **11 Subsection 23(1) (note at the end of the definition of *Australia*)**

Omit “Note”, substitute “Note 2”.

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

Insert:

*departure authorisation certificate* means a certificate under Division 4 of Part 5.5.

*departure prohibition order* means an order under Division 1 of Part 5.5 (including such an order varied under Division 3 of that Part).

### 13 At the end of Chapter 5

Add:

## Part 5.5—Departure prohibition orders

### Division 1—Secretary may make departure prohibition orders

#### 1240 Secretary may make departure prohibition orders

- (1) The Secretary may make an order (a *departure prohibition order*) prohibiting a person from departing from Australia for a foreign country if:
  - (a) the person has one or more debts to the Commonwealth under the social security law; and
  - (b) there are not arrangements satisfactory to the Secretary for the one or more debts to be wholly paid; and
  - (c) the Secretary believes on reasonable grounds that it is desirable to make the order for the purpose of ensuring that the person does not depart from Australia for a foreign country without:
    - (i) having wholly paid the one or more debts; or
    - (ii) there being arrangements satisfactory to the Secretary for the one or more debts to be wholly paid.

*Matters to be taken into account in making order*

- (2) Before making an order under this section, the Secretary must have regard to the following matters:
  - (a) the capacity of the person to pay the one or more debts;
  - (b) whether any action has been taken to recover any such debt, and the outcome of the recovery action;
  - (c) the length of time for which any such debt has remained unpaid after the day on which it became due and payable;
  - (d) such other matters as the Secretary considers appropriate.

*Form of order*

- (3) A departure prohibition order must be in a form approved by the Secretary.

## **Division 2—Departure from Australia of debtors prohibited**

### **1241 Departure from Australia of debtors prohibited**

A person must not depart from Australia for a foreign country if:

- (a) a departure prohibition order in respect of the person is in force, and the person knows that the order is in force, or is reckless as to whether the order is in force; and
- (b) the person's departure is not authorised by a departure authorisation certificate, and the person knows that the departure is not authorised by such a certificate, or is reckless as to whether the departure is authorised by such a certificate.

Penalty: Imprisonment for 12 months.

## **Division 3—Other rules for departure prohibition orders**

### **1242 Notification requirements for departure prohibition orders**

- (1) This section applies if the Secretary makes a departure prohibition order in respect of a person.

*Notifying person of order*

- (2) The Secretary must notify the person that the order has been made.
- (3) The notice must be in a form approved by the Secretary and must be given as soon as practicable after making the order.

*Notifying other persons of order*

- (4) Unless the Secretary is satisfied that the person is an Australian citizen, the Secretary must give the Secretary of the Department administered by the Minister administering the *Migration Act 1958* a copy of the order, and information likely to facilitate

identification of the person, for the purposes of administering that Act.

- (5) The Secretary must also give a copy of the order, and information likely to facilitate identification of the person for the purposes of this Part, to such other persons as the Secretary considers appropriate in the circumstances, being persons declared in an instrument under subsection (6).
- (6) The Secretary may, by legislative instrument, declare persons for the purposes of subsection (5).
- (7) The Secretary must give a copy of the order or information under subsection (4) or (5) as soon as practicable after making the order.

### **1243 Operation of departure prohibition order**

- (1) A departure prohibition order comes into force when it is made, and continues in force until it is revoked, or until it is set aside by a court.

Note: Division 5 deals with appeals to the Federal Court of Australia or the Federal Circuit Court of Australia against the making of departure prohibition orders.

- (2) However, a departure prohibition order in respect of a person is not in force during any period when a deportation order in respect of the person is in force under the *Migration Act 1958*.

### **1244 Revocation and variation of departure prohibition orders**

- (1) The Secretary must revoke a departure prohibition order in respect of a person if:
  - (a) the person no longer has any debts to the Commonwealth under the social security law; or
  - (b) there are arrangements satisfactory to the Secretary for the one or more debts the person has to the Commonwealth under the social security law to be wholly paid; or
  - (c) the Secretary is satisfied that the one or more debts the person has to the Commonwealth under the social security law are completely irrecoverable.
- (2) The Secretary may revoke or vary a departure prohibition order in respect of a person if the Secretary considers it desirable to do so.

- (3) A revocation or variation, under this section, of a departure prohibition order may be:
  - (a) on application by the person in a form approved by the Secretary; or
  - (b) on the Secretary's own initiative.

#### **1245 Notification requirements for revocations and variations**

- (1) If the Secretary revokes or varies a departure prohibition order in respect of a person, the Secretary must give notice of the revocation or variation to:
  - (a) the person; and
  - (b) each person to whom a copy of the departure prohibition order was given under subsection 1242(4) or (5).
- (2) If:
  - (a) a person makes an application under paragraph 1244(3)(a) for the revocation or variation of a departure prohibition order; and
  - (b) the Secretary refuses to revoke or vary the order;the Secretary must give notice of the refusal to the person.
- (3) A notice under this section must be in a form approved by the Secretary and must be given as soon as practicable after the decision concerned is made.

### **Division 4—Departure authorisation certificates**

#### **1246 Application for departure authorisation certificate**

- (1) A person in respect of whom a departure prohibition order is in force may apply for a certificate (a *departure authorisation certificate*) authorising the person to depart from Australia for a foreign country.
- (2) The application must be in a form approved by the Secretary.

#### **1247 When Secretary must issue departure authorisation certificate**

- (1) This section applies if a person makes an application under section 1246 for a departure authorisation certificate.

- (2) The Secretary must issue the departure authorisation certificate if the Secretary is satisfied:
- (a) that, if the certificate is issued:
    - (i) it is likely that the person will depart from Australia and return to Australia within a period that the Secretary considers appropriate; and
    - (ii) it is likely that, within a period that the Secretary considers appropriate, the Secretary will be required by subsection 1244(1) to revoke the departure prohibition order in respect of the person; and
  - (b) that it is not necessary for the person to give security under section 1248 for the person's return to Australia.
- (3) If the Secretary is not satisfied as mentioned in subsection (2), the Secretary must issue the departure authorisation certificate if:
- (a) the person has given security under section 1248 for the person's return to Australia; or
  - (b) if the person is unable to give such security, the Secretary is satisfied:
    - (i) that the certificate should be issued on humanitarian grounds; or
    - (ii) that refusing to issue the certificate will be detrimental to Australia's interests.

#### **1248 Security for person's return to Australia**

- (1) A person may give such security as the Secretary considers appropriate by bond, deposit or any other means, for the person's return to Australia by such day as is agreed by the person and the Secretary and is specified in the departure authorisation certificate.
- (2) The Secretary may substitute a later day for the day mentioned in subsection (1):
  - (a) on application by the person in a form approved by the Secretary; or
  - (b) on the Secretary's own initiative.
- (3) The Secretary may refuse an application by a person to substitute a later day if:

- (a) the person refuses to increase the value of the security already given to a level that the Secretary considers appropriate; or
- (b) the person refuses to give such further security as the Secretary considers appropriate; or
- (c) the Secretary considers that it would not be appropriate to substitute the later day.

#### **1249 What departure authorisation certificate must authorise**

- (1) A departure authorisation certificate in respect of a person must authorise the departure of the person on or before the seventh day after a day specified in the certificate.
- (2) The day specified in the certificate must be a day that is after the day on which the certificate is issued, but not more than 7 days after that day.

#### **1250 Notification requirements for departure authorisation certificates**

- (1) If the Secretary issues a departure authorisation certificate in respect of a person, the Secretary must, as soon as practicable, give a copy of the certificate to:
  - (a) the person; and
  - (b) each person to whom a copy of the departure prohibition order in respect of the person was given under subsection 1242(4) or (5).
- (2) If:
  - (a) a person makes an application under section 1246 for a departure authorisation certificate; and
  - (b) the Secretary refuses to issue the certificate;the Secretary must give notice of the refusal to the person.
- (3) The notice must be in a form approved by the Secretary and must be given as soon as practicable after the refusal.

### **1251 Notification requirements for substituted days**

- (1) If, under section 1248, the Secretary substitutes a later day for a person's return to Australia, the Secretary must give notice of that decision to:
  - (a) the person; and
  - (b) each person to whom a copy of the departure prohibition order in respect of the person was given under subsection 1242(4) or (5).
- (2) If:
  - (a) a person makes an application under paragraph 1248(2)(a) to substitute a later day for the person's return to Australia; and
  - (b) the Secretary refuses the application;the Secretary must give notice of the refusal to the person.
- (3) A notice under this section must be in a form approved by the Secretary and must be given as soon as practicable after the decision concerned is made.

## **Division 5—Appeals and review in relation to departure prohibition orders and departure authorisation certificates**

### **1252 Appeals to courts against making of departure prohibition orders**

- (1) A person aggrieved by the making of a departure prohibition order may appeal to the Federal Court of Australia or the Federal Circuit Court of Australia against the making of the order.
- (2) This section has effect subject to Chapter III of the Constitution.

### **1253 Jurisdiction of courts**

The jurisdiction of a court under section 1252 must be exercised by a single Judge.

### **1254 Orders of court on appeal**

A court hearing an appeal under section 1252 against the making of a departure prohibition order may, in its discretion:

- (a) make an order setting aside the order; or
- (b) dismiss the appeal.

### **1255 Review of decisions**

- (1) Applications may be made to the Administrative Appeals Tribunal for review of a decision of the Secretary under section 1244, 1247 or 1248.
- (2) Despite any provision of Parts 4 and 4A of the Administration Act, those Parts do not apply in relation to any decision of the Secretary under this Part.

## **Division 6—Enforcement**

### **1256 Powers of officers of Customs and members of the Australian Federal Police**

- (1) This section applies if an officer (within the meaning of the *Customs Act 1901*), or a member of the Australian Federal Police, believes on reasonable grounds that:
  - (a) a person is about to depart from Australia for a foreign country; and
  - (b) a departure prohibition order in respect of the person is in force; and
  - (c) the person's departure is not authorised by a departure authorisation certificate.
- (2) The officer or member may:
  - (a) take such steps as are reasonably necessary to prevent the person's departure, including, but not limited to, steps to prevent the person going on board, or to remove the person from, a vessel or aircraft in which the officer or member believes on reasonable grounds the departure will take place; and

- (b) require the person to answer questions or produce documents to the officer or member for the purposes of working out whether:
  - (i) a departure prohibition order in respect of the person is in force; and
  - (ii) if such an order in respect of the person is in force—whether the person’s departure is authorised by a departure authorisation certificate.
- (3) A person commits an offence if:
  - (a) the person is subject to a requirement under paragraph (2)(b); and
  - (b) the person refuses or fails to comply with the requirement.

Penalty: 30 penalty units.

- (4) Subsection (3) does not apply if the person answers the question or produces the document to the extent that the person is capable of answering the question or producing the document.

Note: A defendant bears an evidential burden in relation to the matters mentioned in subsection (4): see subsection 13.3(3) of the *Criminal Code*.

### **1257 Privilege against self-incrimination**

- (1) An individual is not excused from answering a question, or producing a document, under paragraph 1256(2)(b) on the ground that the answer to the question or the production of the document might tend to incriminate the individual or expose the individual to a penalty.
- (2) However:
  - (a) the answer given or document produced; and
  - (b) answering the question or producing the document; and
  - (c) any information, document or thing obtained as a direct or indirect consequence of the answering of the question or producing the document;are not admissible in evidence against the individual in any criminal proceedings, other than proceedings under section 137.1 or 137.2 of the *Criminal Code* in relation to answering the question or producing the document.

### **1258 Production of authority to depart**

- (1) If:
- (a) a departure prohibition order in respect of a person is in force; and
  - (b) the person is about to depart from Australia for a foreign country; and
  - (c) the person's departure is authorised by a departure authorisation certificate;
- an officer (within the meaning of the *Customs Act 1901*), or a member of the Australian Federal Police, may request the person to give a copy of the certificate to the officer or member for inspection.
- (2) A person commits an offence of strict liability if:
- (a) an officer (within the meaning of the *Customs Act 1901*), or a member of the Australian Federal Police, has made a request of the person under subsection (1); and
  - (b) the person refuses or fails to comply with the request.

Penalty for contravention of this subsection: 5 penalty units.

## **Division 7—Interpretation**

### **1259 Interpretation—departure from Australia for foreign country**

A reference in this Part to the departure of a person from Australia for a foreign country is a reference to the departure of the person from Australia for a foreign country, whether or not the person intends to return to Australia.

### **1260 Meaning of *Australia***

- (1) For the purposes of this Part, ***Australia***, when used in a geographical sense, includes the external Territories.
- (2) For the purposes of this section:
- (a) the definition of ***external Territory*** in subsection 23(1) does not apply; and
  - (b) ***external Territory*** has the meaning given by section 2B of the *Acts Interpretation Act 1901*.

## *Student Assistance Act 1973*

### **14 Subsection 3(1) (at the end of the definition of *Australia*)**

Add:

Note: In Division 4 of Part 6 (about departure prohibition orders), *Australia* has an extended meaning.

### **15 Subsection 3(1)**

Insert:

*departure authorisation certificate* means a certificate under Subdivision D of Division 4 of Part 6.

*departure prohibition order* means an order under Subdivision A of Division 4 of Part 6 (including such an order varied under Subdivision C of that Division).

### **16 At the end of Part 6**

Add:

## **Division 4—Departure prohibition orders**

### **Subdivision A—Secretary may make departure prohibition orders**

#### **43G Secretary may make departure prohibition orders**

- (1) The Secretary may make an order (a *departure prohibition order*) prohibiting a person from departing from Australia for a foreign country if:
  - (a) the person has one or more debts to the Commonwealth under this Part; and
  - (b) there are not arrangements satisfactory to the Secretary for the one or more debts to be wholly paid; and
  - (c) the Secretary believes on reasonable grounds that it is desirable to make the order for the purpose of ensuring that the person does not depart from Australia for a foreign country without:
    - (i) having wholly paid the one or more debts; or

- (ii) there being arrangements satisfactory to the Secretary for the one or more debts to be wholly paid.

*Matters to be taken into account in making order*

- (2) Before making an order under this section, the Secretary must have regard to the following matters:
  - (a) the capacity of the person to pay the one or more debts;
  - (b) whether any action has been taken to recover any such debt, and the outcome of the recovery action;
  - (c) the length of time for which any such debt has remained unpaid after the day on which it became due and payable;
  - (d) such other matters as the Secretary considers appropriate.

*Form of order*

- (3) A departure prohibition order must be in a form approved by the Secretary.

## **Subdivision B—Departure from Australia of debtors prohibited**

### **43H Departure from Australia of debtors prohibited**

A person must not depart from Australia for a foreign country if:

- (a) a departure prohibition order in respect of the person is in force, and the person knows that the order is in force, or is reckless as to whether the order is in force; and
- (b) the person's departure is not authorised by a departure authorisation certificate, and the person knows that the departure is not authorised by such a certificate, or is reckless as to whether the departure is authorised by such a certificate.

Penalty: Imprisonment for 12 months.

## **Subdivision C—Other rules for departure prohibition orders**

### **43J Notification requirements for departure prohibition orders**

- (1) This section applies if the Secretary makes a departure prohibition order in respect of a person.

*Notifying person of order*

- (2) The Secretary must notify the person that the order has been made.
- (3) The notice must be in a form approved by the Secretary and must be given as soon as practicable after making the order.

*Notifying other persons of order*

- (4) Unless the Secretary is satisfied that the person is an Australian citizen, the Secretary must give the Secretary of the Department administered by the Minister administering the *Migration Act 1958* a copy of the order, and information likely to facilitate identification of the person, for the purposes of administering that Act.
- (5) The Secretary must also give a copy of the order, and information likely to facilitate identification of the person for the purposes of this Division, to such other persons as the Secretary considers appropriate in the circumstances, being persons declared in an instrument under subsection (6).
- (6) The Secretary may, by legislative instrument, declare persons for the purposes of subsection (5).
- (7) The Secretary must give a copy of the order or information under subsection (4) or (5) as soon as practicable after making the order.

**43K Operation of departure prohibition order**

- (1) A departure prohibition order comes into force when it is made, and continues in force until it is revoked, or until it is set aside by a court.

Note: Subdivision E deals with appeals to the Federal Court of Australia or the Federal Circuit Court of Australia against the making of departure prohibition orders.

- (2) However, a departure prohibition order in respect of a person is not in force during any period when a deportation order in respect of the person is in force under the *Migration Act 1958*.

#### **43L Revocation and variation of departure prohibition orders**

- (1) The Secretary must revoke a departure prohibition order in respect of a person if:
  - (a) the person no longer has any debts to the Commonwealth under this Part; or
  - (b) there are arrangements satisfactory to the Secretary for the one or more debts the person has to the Commonwealth under this Part to be wholly paid; or
  - (c) the Secretary is satisfied that the one or more debts the person has to the Commonwealth under this Part are completely irrecoverable.
- (2) The Secretary may revoke or vary a departure prohibition order in respect of a person if the Secretary considers it desirable to do so.
- (3) A revocation or variation, under this section, of a departure prohibition order may be:
  - (a) on application by the person in a form approved by the Secretary; or
  - (b) on the Secretary's own initiative.

#### **43M Notification requirements for revocations and variations**

- (1) If the Secretary revokes or varies a departure prohibition order in respect of a person, the Secretary must give notice of the revocation or variation to:
  - (a) the person; and
  - (b) each person to whom a copy of the departure prohibition order was given under subsection 43J(4) or (5).
- (2) If:
  - (a) a person makes an application under paragraph 43L(3)(a) for the revocation or variation of a departure prohibition order; and
  - (b) the Secretary refuses to revoke or vary the order;the Secretary must give notice of the refusal to the person.
- (3) A notice under this section must be in a form approved by the Secretary and must be given as soon as practicable after the decision concerned is made.

## Subdivision D—Departure authorisation certificates

### 43N Application for departure authorisation certificate

- (1) A person in respect of whom a departure prohibition order is in force may apply for a certificate (a *departure authorisation certificate*) authorising the person to depart from Australia for a foreign country.
- (2) The application must be in a form approved by the Secretary.

### 43P When Secretary must issue departure authorisation certificate

- (1) This section applies if a person makes an application under section 43N for a departure authorisation certificate.
- (2) The Secretary must issue the departure authorisation certificate if the Secretary is satisfied:
  - (a) that, if the certificate is issued:
    - (i) it is likely that the person will depart from Australia and return to Australia within a period that the Secretary considers appropriate; and
    - (ii) it is likely that, within a period that the Secretary considers appropriate, the Secretary will be required by subsection 43L(1) to revoke the departure prohibition order in respect of the person; and
  - (b) that it is not necessary for the person to give security under section 43Q for the person's return to Australia.
- (3) If the Secretary is not satisfied as mentioned in subsection (2), the Secretary must issue the departure authorisation certificate if:
  - (a) the person has given security under section 43Q for the person's return to Australia; or
  - (b) if the person is unable to give such security, the Secretary is satisfied:
    - (i) that the certificate should be issued on humanitarian grounds; or
    - (ii) that refusing to issue the certificate will be detrimental to Australia's interests.

### **43Q Security for person's return to Australia**

- (1) A person may give such security as the Secretary considers appropriate by bond, deposit or any other means, for the person's return to Australia by such day as is agreed by the person and the Secretary and is specified in the departure authorisation certificate.
- (2) The Secretary may substitute a later day for the day mentioned in subsection (1):
  - (a) on application by the person in a form approved by the Secretary; or
  - (b) on the Secretary's own initiative.
- (3) The Secretary may refuse an application by a person to substitute a later day if:
  - (a) the person refuses to increase the value of the security already given to a level that the Secretary considers appropriate; or
  - (b) the person refuses to give such further security as the Secretary considers appropriate; or
  - (c) the Secretary considers that it would not be appropriate to substitute the later day.

### **43R What departure authorisation certificate must authorise**

- (1) A departure authorisation certificate in respect of a person must authorise the departure of the person on or before the seventh day after a day specified in the certificate.
- (2) The day specified in the certificate must be a day that is after the day on which the certificate is issued, but not more than 7 days after that day.

### **43S Notification requirements for departure authorisation certificates**

- (1) If the Secretary issues a departure authorisation certificate in respect of a person, the Secretary must, as soon as practicable, give a copy of the certificate to:
  - (a) the person; and

- (b) each person to whom a copy of the departure prohibition order in respect of the person was given under subsection 43J(4) or (5).
- (2) If:
  - (a) a person makes an application under section 43N for a departure authorisation certificate; and
  - (b) the Secretary refuses to issue the certificate;the Secretary must give notice of the refusal to the person.
- (3) The notice must be in a form approved by the Secretary and must be given as soon as practicable after the refusal.

**43T Notification requirements for substituted days**

- (1) If, under section 43Q, the Secretary substitutes a later day for a person's return to Australia, the Secretary must give notice of that decision to:
  - (a) the person; and
  - (b) each person to whom a copy of the departure prohibition order in respect of the person was given under subsection 43J(4) or (5).
- (2) If:
  - (a) a person makes an application under paragraph 43Q(2)(a) to substitute a later day for the person's return to Australia; and
  - (b) the Secretary refuses the application;the Secretary must give notice of the refusal to the person.
- (3) A notice under this section must be in a form approved by the Secretary and must be given as soon as practicable after the decision concerned is made.

## **Subdivision E—Appeals and review in relation to departure prohibition orders and departure authorisation certificates**

### **43U Appeals to courts against making of departure prohibition orders**

- (1) A person aggrieved by the making of a departure prohibition order may appeal to the Federal Court of Australia or the Federal Circuit Court of Australia against the making of the order.
- (2) This section has effect subject to Chapter III of the Constitution.

### **43V Jurisdiction of courts**

The jurisdiction of a court under section 43U must be exercised by a single Judge.

### **43W Orders of court on appeal**

A court hearing an appeal under section 43U against the making of a departure prohibition order may, in its discretion:

- (a) make an order setting aside the order; or
- (b) dismiss the appeal.

### **43X Review of decisions**

- (1) Applications may be made to the Administrative Appeals Tribunal for review of a decision of the Secretary under section 43L, 43P or 43Q.
- (2) Despite any provision of Part 9, that Part does not apply in relation to any decision of the Secretary under this Division.
- (3) In this section:

*decision* has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

## Subdivision F—Enforcement

### 43Y Powers of officers of Customs and members of the Australian Federal Police

- (1) This section applies if an officer (within the meaning of the *Customs Act 1901*), or a member of the Australian Federal Police, believes on reasonable grounds that:
  - (a) a person is about to depart from Australia for a foreign country; and
  - (b) a departure prohibition order in respect of the person is in force; and
  - (c) the person's departure is not authorised by a departure authorisation certificate.
- (2) The officer or member may:
  - (a) take such steps as are reasonably necessary to prevent the person's departure, including, but not limited to, steps to prevent the person going on board, or to remove the person from, a vessel or aircraft in which the officer or member believes on reasonable grounds the departure will take place; and
  - (b) require the person to answer questions or produce documents to the officer or member for the purposes of working out whether:
    - (i) a departure prohibition order in respect of the person is in force; and
    - (ii) if such an order in respect of the person is in force—whether the person's departure is authorised by a departure authorisation certificate.
- (3) A person commits an offence if:
  - (a) the person is subject to a requirement under paragraph (2)(b); and
  - (b) the person refuses or fails to comply with the requirement.

Penalty: 30 penalty units.

- (4) Subsection (3) does not apply if the person answers the question or produces the document to the extent that the person is capable of answering the question or producing the document.
-

Note: A defendant bears an evidential burden in relation to the matters mentioned in subsection (4): see subsection 13.3(3) of the *Criminal Code*.

#### **43Z Privilege against self-incrimination**

- (1) An individual is not excused from answering a question, or producing a document, under paragraph 43Y(2)(b) on the ground that the answer to the question or the production of the document might tend to incriminate the individual or expose the individual to a penalty.
- (2) However:
  - (a) the answer given or document produced; and
  - (b) answering the question or producing the document; and
  - (c) any information, document or thing obtained as a direct or indirect consequence of the answering of the question or producing the document;are not admissible in evidence against the individual in any criminal proceedings, other than proceedings under section 137.1 or 137.2 of the *Criminal Code* in relation to answering the question or producing the document.

#### **43ZA Production of authority to depart**

- (1) If:
  - (a) a departure prohibition order in respect of a person is in force; and
  - (b) the person is about to depart from Australia for a foreign country; and
  - (c) the person's departure is authorised by a departure authorisation certificate;an officer (within the meaning of the *Customs Act 1901*), or a member of the Australian Federal Police, may request the person to give a copy of the certificate to the officer or member for inspection.
- (2) A person commits an offence of strict liability if:
  - (a) an officer (within the meaning of the *Customs Act 1901*), or a member of the Australian Federal Police, has made a request of the person under subsection (1); and

(b) the person refuses or fails to comply with the request.

Penalty for contravention of this subsection: 5 penalty units.

### **Subdivision G—Interpretation**

#### **43ZB Interpretation—departure from Australia for foreign country**

A reference in this Division to the departure of a person from Australia for a foreign country is a reference to the departure of the person from Australia for a foreign country, whether or not the person intends to return to Australia.

#### **43ZC Meaning of *Australia***

For the purposes of this Division, *Australia*, when used in a geographical sense, includes the external Territories.

### **17 Application provision**

The amendments made by this Part apply in relation to:

- (a) a debt that arises on or after the commencement of this item;  
and
- (b) a debt that arose before the commencement of this item, to the extent that the debt was outstanding immediately before that commencement.

## **Part 2—Removal of 6-year limit on debt recovery**

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

#### **18 Section 86**

Repeal the section.

#### **19 Subsections 87(3) and (4)**

Repeal the subsections.

#### **20 Subsection 88(1)**

Omit “(1)”.

#### **21 Subsections 88(2) to (6)**

Repeal the subsections.

#### **22 Section 90**

Repeal the section.

#### **23 At the end of Division 3 of Part 4**

Add:

#### **93B No time limit on debt recovery action**

For the purposes of this Part, legal proceedings, or any action under a provision of this Part, for the recovery of a debt may be commenced or taken at any time.

#### **24 Paragraph 95(3)(a)**

Repeal the paragraph.

### ***Paid Parental Leave Act 2010***

#### **25 Section 183 (note)**

Repeal the note.

**26 Subsection 184(1) (note 1)**

Omit “Note 1”, substitute “Note”.

**27 Subsection 184(1) (note 2)**

Repeal the note.

**28 Section 189**

Repeal the section.

**29 At the end of Division 5 of Part 4-3**

Add:

**192A No time limit on debt recovery action**

For the purposes of this Part, legal proceedings, or any action under a provision of this Part, for the recovery of a debt may be commenced or taken at any time.

**30 Paragraph 193(3)(a)**

Omit “, for example because a time limit for recovery action under that Division has elapsed”.

***Social Security Act 1991***

**31 Subsection 1231(2)**

Omit “Subject to subsections (2A) to (2E), the”, substitute “The”.

**32 Subsections 1231(2A) to (2E)**

Repeal the subsections.

**33 Subsection 1232(1)**

Omit “(1)”.

**34 Subsections 1232(2) to (6)**

Repeal the subsections.

**35 Subsections 1233(7A) to (7E)**

Repeal the subsections.

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**36 At the end of Part 5.3**

Add:

**1234B No time limit on debt recovery action**

For the purposes of this Chapter, legal proceedings, or any action under a provision of this Chapter, for the recovery of a debt or overpayment may be commenced or taken at any time.

**37 Paragraphs 1236(1B)(a) and (aa)**

Repeal the paragraphs.

*Student Assistance Act 1973*

**38 At the end of Division 2 of Part 6**

Add:

**42B No time limit on debt recovery action**

For the purposes of this Part, any action under a provision of this Part for the recovery of a debt may be taken at any time.

**39 Application provisions—family assistance amendments**

- (1) The amendments of the *A New Tax System (Family Assistance) (Administration) Act 1999* made by this Part apply in relation to:
  - (a) a debt that arises on or after the commencement of this item; and
  - (b) a debt that arose before the commencement of this item, to the extent that the debt was outstanding immediately before that commencement.
- (2) Paragraph (1)(b) applies in relation to a debt only if, immediately before the commencement of this item, action under section 84, 84A, 87, 87A or 89, or legal proceedings under section 88, of the *A New Tax System (Family Assistance) (Administration) Act 1999* could be commenced or taken for the recovery of the debt.

#### **40 Application provisions—paid parental leave amendments**

- (1) The amendments of the *Paid Parental Leave Act 2010* made by this Part apply in relation to:
  - (a) a debt that arises on or after the commencement of this item; and
  - (b) a debt that arose before the commencement of this item, to the extent that the debt was outstanding immediately before that commencement.
- (2) Paragraph (1)(b) applies in relation to a debt only if, immediately before the commencement of this item, legal proceedings under section 183, or action under section 184, of the *Paid Parental Leave Act 2010* could be started or commenced for the recovery of the debt.

#### **41 Application provisions—social security amendments**

- (1) The amendments of the *Social Security Act 1991* made by this Part apply in relation to:
  - (a) a debt or overpayment that arises on or after the commencement of this item; and
  - (b) a debt or overpayment that arose before the commencement of this item, to the extent that the debt or overpayment was outstanding immediately before that commencement.
- (2) Paragraph (1)(b) applies in relation to a debt or overpayment only if, immediately before the commencement of this item, action under section 1231 or 1233, or legal proceedings under section 1232, of the *Social Security Act 1991* could be commenced for the recovery of the debt or overpayment.

#### **42 Application provision—student assistance amendments**

The amendment of the *Student Assistance Act 1973* made by this Part applies in relation to:

- (a) a debt that arises on or after the commencement of this item; and
- (b) a debt that arose before the commencement of this item, to the extent that the debt was outstanding immediately before that commencement.

## **Schedule 14—Parental leave payments**

### **Part 1—Parental leave pay and dad and partner pay to count as income**

#### ***Social Security Act 1991***

##### **1 At the end of subsection 8(1A)**

Add:

- ; or (h) an instalment of parental leave pay; or
- (i) dad and partner pay.

##### **2 Paragraphs 8(8)(d) and (da)**

Repeal the paragraphs.

#### ***Veterans' Entitlements Act 1986***

##### **3 Paragraphs 5H(8)(d) and (da)**

Repeal the paragraphs.

##### **4 Application provision**

The amendments made by this Part apply in relation to an instalment of parental leave pay, or to dad and partner pay, that is paid on or after the commencement of this item in respect of a claim for a child:

- (a) who is born on or after that commencement; or
- (b) who becomes entrusted to the care of a person (as mentioned in subsection 275(2) of the *Paid Parental Leave Act 2010*) on or after that commencement;

whether the claim was made before, on or after that commencement.

## Part 2—Parental leave pay and dad and partner pay deductions to avoid overpayments

### *Paid Parental Leave Act 2010*

#### 5 Section 6

Insert:

*income support payment* has the same meaning as in section 23 of the Social Security Act.

#### 6 Subsection 66(2)

Omit “and 69”, substitute “, 69 and 69A”.

#### 7 After section 69

Insert:

#### 69A Deductions to avoid overpayment of income support payment

If:

- (a) a payability determination that parental leave pay is payable to a person is made; and
- (b) an instalment for an instalment period becomes payable to the person by the Secretary on a particular day; and
- (c) before that day, the person was paid an amount of income support payment under the social security law or *Veterans’ Entitlements Act 1986* for a period (the *income support period*) that falls within, or overlaps with, the instalment period; and
- (d) the Secretary is satisfied that the amount of income support payment so paid exceeds the amount of income support payment that would have been payable to the person for the income support period under that law or Act had the instalment been taken into account when working out the amount of income support payment payable to the person for that period under that law or Act;

then the Secretary may deduct from the instalment an amount equal to the excess.

Note: A person's income is taken into account when working out the amount of income support payment that is payable to the person under the social security law or the *Veterans' Entitlements Act 1986*. An instalment is income so payment of an instalment may reduce the amount of income support payment that is payable to the person.

### **8 Subsection 70(1)**

Omit "or 69", substitute ", 69 or 69A".

### **9 After subsection 101(3)**

Insert:

*When employer determination must not be made*

(3A) The Secretary must not make an employer determination for a person and the person's employer if the person is receiving an income support payment.

### **10 Subsection 108(1) (after table item 2)**

Insert:

2A The person is receiving an income support payment. The day of the revocation.

### **11 Subsection 115EG(2)**

Omit "section 115EH", substitute "sections 115EH and 115EP".

### **12 After section 115EH**

Insert:

### **115EI Deductions to avoid overpayment of income support payment**

If:

- (a) a payability determination that dad and partner pay is payable to a person is made; and
- (b) an amount of dad and partner pay relating to the person's DAPP period becomes payable to the person by the Secretary on a particular day; and
- (c) before that day, the person was paid an amount of income support payment under the social security law or *Veterans' Entitlements Act 1986* for a period (the *income support*

## Schedule 14 Parental leave payments

### Part 2 Parental leave pay and dad and partner pay deductions to avoid overpayments

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*period*) that falls within, or overlaps with, the person's DAPP period; and

- (d) the Secretary is satisfied that the amount of income support payment so paid exceeds the amount of income support payment that would have been payable to the person for the income support period under that law or Act had the amount of dad and partner pay been taken into account when working out the amount of income support payment payable to the person for that period under that law or Act;

then the Secretary may deduct from the amount of dad and partner pay an amount equal to the excess.

Note: A person's income is taken into account when working out the amount of income support payment that is payable to the person under the social security law or the *Veterans' Entitlements Act 1986*. An amount of dad and partner pay is income so payment of such an amount may reduce the amount of income support payment that is payable to the person.

## 13 Section 115EJ

After "section 115EH", insert "or 115EI".

## 14 Application provisions

### *Deductions from instalments of parental leave pay*

- (1) Paragraph 69A(a) of the *Paid Parental Leave Act 2010*, as inserted by this Part, applies in relation to a payability determination that is made on or after the commencement of this item.
- (2) Paragraph 69A(b) of the *Paid Parental Leave Act 2010*, as inserted by this Part, applies in relation to an instalment of parental leave pay that is payable on or after the commencement of this item in respect of a claim for a child:
- (a) who is born on or after that commencement; or
  - (b) who becomes entrusted to the care of a person (as mentioned in subsection 275(2) of the *Paid Parental Leave Act 2010*) on or after that commencement;

whether the claim was made before, on or after that commencement.

*Employer determinations*

- (3) The amendment of section 101 of the *Paid Parental Leave Act 2010* made by this Part applies in relation to claims made on or after the commencement of this item.
- (4) The amendment of section 108 of the *Paid Parental Leave Act 2010* made by this Part applies in relation to an employer determination made before, on or after the commencement of this item, where the claim was for a child:
- (a) who was born on or after that commencement; or
  - (b) who became entrusted to the care of a person (as mentioned in subsection 275(2) of the *Paid Parental Leave Act 2010*) on or after that commencement;
- whether the claim was made before, on or after that commencement.

*Deductions from dad and partner pay*

- (5) Paragraph 115EI(a) of the *Paid Parental Leave Act 2010*, as inserted by this Part, applies in relation to a payability determination that is made on or after the commencement of this item.
- (6) Paragraph 115EI(b) of the *Paid Parental Leave Act 2010*, as inserted by this Part, applies in relation to an amount of dad and partner pay that is to be paid on or after the commencement of this item in respect of a claim for a child:
- (a) who is born on or after that commencement; or
  - (b) who becomes entrusted to the care of a person (as mentioned in subsection 275(2) of the *Paid Parental Leave Act 2010*) on or after that commencement;
- whether the claim was made before, on or after that commencement.

## Schedule 15—Fringe benefits

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

#### **1 Clause 4 of Schedule 3**

Repeal the clause, substitute:

#### **4 Adjusted fringe benefits total**

An individual's *adjusted fringe benefits total* for an income year is the amount worked out using the formula:

$$\begin{array}{l} \text{Section 57A employer} \\ \text{fringe benefits total} \end{array} + \begin{array}{l} \text{Other employer} \\ \text{fringe benefits total} \end{array}$$

where:

*other employer fringe benefits total* is the amount that is the sum of the following:

- (a) each of the individual's reportable fringe benefits amounts for the income year under section 135P of the *Fringe Benefits Tax Assessment Act 1986*;
- (b) each of the individual's reportable fringe benefits amounts for the income year under section 135Q of the *Fringe Benefits Tax Assessment Act 1986*, to the extent that section relates to the individual's employment by an employer described in section 58 of that Act.

*section 57A employer fringe benefits total* is the amount that is the sum of each of the individual's individual quasi-fringe benefits amounts for the income year under section 135Q of the *Fringe Benefits Tax Assessment Act 1986*, to the extent that section relates to the individual's employment by an employer described in section 57A of that Act.

### *Income Tax Assessment Act 1936*

#### **2 Subsection 6(1) (definition of *adjusted fringe benefits total*)**

Repeal the definition, substitute:

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*adjusted fringe benefits total*, of a taxpayer for a year of income, has the meaning given by clause 4 of Schedule 3 to the *A New Tax System (Family Assistance) Act 1999*.

### 3 Subsection 6(1) (definition of *reportable fringe benefits total*)

Repeal the definition.

## *Social Security Act 1991*

### 4 Subpoint 1067G-F11(2)

Repeal the subpoint, substitute:

1067G-F11(2) A parent's *adjusted fringe benefits total* for a tax year is the amount worked out using the formula:

$$\text{Section 57A employer fringe benefits total} + \text{Other employer fringe benefits total}$$

where:

*other employer fringe benefits total* is the amount that is the sum of the following:

- (a) each of the parent's reportable fringe benefits amounts for the tax year under section 135P of the *Fringe Benefits Tax Assessment Act 1986*;
- (b) each of the parent's reportable fringe benefits amounts for the tax year under section 135Q of the *Fringe Benefits Tax Assessment Act 1986*, to the extent that section relates to the parent's employment by an employer described in section 58 of that Act.

*section 57A employer fringe benefits total* is the amount that is the sum of each of the parent's individual quasi-fringe benefits amounts for the tax year under section 135Q of the *Fringe Benefits Tax Assessment Act 1986*, to the extent that section relates to the parent's employment by an employer described in section 57A of that Act.

## 5 Application provisions

### *Family tax benefit*

- (1) The amendments made by this Schedule apply in relation to working out the rate of family tax benefit under the *A New Tax System (Family Assistance) Act 1999* for days on or after the commencement of this item.

### *Child care benefit*

- (2) The amendments made by this Schedule apply in relation to working out the rate of child care benefit under the *A New Tax System (Family Assistance) Act 1999* for days on or after the first Monday occurring on or after the commencement of this item.

### *Stillborn baby payment*

- (3) The amendments made by this Schedule apply in relation to working out an individual's eligibility for stillborn baby payment under the *A New Tax System (Family Assistance) Act 1999* for a child delivered on or after the commencement of this item.

### *Parental leave pay and dad and partner pay*

- (4) The amendments made by this Schedule apply in relation to a claim for parental leave pay, or dad and partner pay, under the *Paid Parental Leave Act 2010* for a child:
- (a) who is born on or after the commencement of this item; or
  - (b) who becomes entrusted to the care of a person (as mentioned in subsection 275(2) of the *Paid Parental Leave Act 2010*) on or after the commencement of this item;

whether the claim was made before, on or after that commencement.

### *Youth allowance*

- (5) The amendments made by this Schedule apply in relation to working out the rate of youth allowance under the *Social Security Act 1991* for days on or after the commencement of this item.

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*Low income supplement*

- (6) The amendments made by this Schedule do not apply in relation to working out a person's qualification for a low income supplement under Division 3 of Part 2.18A of the *Social Security Act 1991* for the 2016-17 income year or an earlier income year.

*Low income superannuation contribution*

- (7) The amendments made by this Schedule do not apply in relation to working out whether a low income superannuation contribution in respect of a person is payable under Part 2A of the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003* for the 2016-17 income year or an earlier income year.

*Rebate for medical expenses*

- (8) The amendments made by this Schedule apply in relation to working out whether a taxpayer is entitled to a rebate of tax, and the amount of the rebate, under section 159P of the *Income Tax Assessment Act 1936* in respect of a year of income beginning on or after the commencement of this item.

*Rebate for low income aged persons and pensioners*

- (9) The amendments made by this Schedule apply in relation to working out whether a taxpayer is entitled to a rebate of tax under section 160AAAA of the *Income Tax Assessment Act 1936* in respect of a year of income beginning on or after the commencement of this item.
- (10) The amendments made by this Schedule apply in relation to working out whether a trustee is entitled to a rebate of tax under section 160AAAB of the *Income Tax Assessment Act 1936* in respect of a year of income beginning on or after the commencement of this item.

*Dependant (invalid and carer) tax offset*

- (11) The amendments made by this Schedule apply in relation to working out whether an individual is entitled to a tax offset, and the amount of the offset, under section 61-10 of the *Income Tax Assessment Act 1997* for an income year beginning on or after the commencement of this item.

*Dependant (non-student child under 21 or student) notional tax offset*

- (12) The amendments made by this Schedule apply in relation to working out the amount of an individual's notional tax offset under Subdivision 961-A of the *Income Tax Assessment Act 1997* for an income year beginning on or after the commencement of this item.

## **Schedule 16—Carer allowance**

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

#### **1 Clauses 16 and 17 of Schedule 2**

Repeal the clauses.

#### **2 Application provision**

The amendment made by this Schedule applies in relation to claims for carer allowance that are made on or after the commencement of this Schedule.

## **Schedule 17—Indexation of family tax benefit and parental leave thresholds**

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

#### **1 Subclause 3(7) of Schedule 4**

Omit “and 1 July 2016”, substitute “, 1 July 2016, 1 July 2017, 1 July 2018 and 1 July 2019”.

### ***Paid Parental Leave Act 2010***

#### **2 Section 30**

Omit “30 June 2017”, substitute “30 June 2020”.

#### **3 Paragraph 41(a)**

Omit “1 July 2017”, substitute “1 July 2020”.

#### **4 Subsection 42(1)**

Omit “1 July 2017”, substitute “1 July 2020”.

#### **5 Section 115CA**

Omit “30 June 2017”, substitute “30 June 2020”.

## **Schedule 18—Pension means testing for aged care residents**

### ***Social Security Act 1991***

#### **1 At the end of paragraphs 8(8)(zn), (zna) and (znaa)**

Add:

Note 3: See subsections (10A) and (10B) for the circumstances in which this paragraph does not apply in relation to a person who enters a residential care service or a flexible care service on or after the commencement of those subsections.

#### **2 After subsection 8(10)**

Insert:

- (10A) Paragraphs (8)(zn), (zna) and (znaa) do not apply in relation to a person who first enters a residential care service or a flexible care service on or after the commencement of this subsection.
- (10B) Paragraphs (8)(zn), (zna) and (znaa) do not apply, and never again apply, in relation to a person if:
- (a) the person enters a residential care service or a flexible care service on or after the commencement of this subsection; and
  - (b) that entry occurs more than 28 days after the day the person last ceased being provided with residential care or flexible care through a residential care service or a flexible care service (other than because the person was on leave).
- (10C) An expression used in subsection (10A) or (10B) and in the *Aged Care Act 1997* has the same meaning in that subsection as in that Act.

#### **3 After subsection 11A(8)**

Insert:

- (8A) Subsection (8) does not apply in relation to a person who first enters a residential care service or a flexible care service on or after the commencement of this subsection.

- (8B) Subsection (8) does not apply, and never again applies, in relation to a person if:
- (a) the person enters a residential care service or a flexible care service on or after the commencement of this subsection; and
  - (b) that entry occurs more than 28 days after the day the person last ceased being provided with residential care or flexible care through a residential care service or a flexible care service (other than because the person was on leave).
- (8C) An expression used in subsection (8A) or (8B) and in the *Aged Care Act 1997* has the same meaning in that subsection as in that Act.

### ***Veterans' Entitlements Act 1986***

#### **4 At the end of paragraph 5H(8)(nc)**

Add:

- Note 4: See subsections (11A) and (11B) for the circumstances in which this paragraph does not apply in relation to a person who enters a residential care service or a flexible care service on or after the commencement of those subsections.

#### **5 At the end of paragraph 5H(8)(nd)**

Add:

- Note 1: For *rent*, see subsection 5N(2).
- Note 2: Under subsections 5LA(8) and (9), the principal home of a person in a care situation may be a place other than the place where the person receives care.
- Note 3: See subsections (11A) and (11B) for the circumstances in which this paragraph does not apply in relation to a person who enters a residential care service or a flexible care service on or after the commencement of those subsections.

#### **6 At the end of paragraph 5H(8)(nf)**

Add:

- Note 3: See subsections (11A) and (11B) for the circumstances in which this paragraph does not apply in relation to a person who enters a residential care service or a flexible care service on or after the commencement of those subsections.

## **7 After subsection 5H(11)**

Insert:

- (11A) Paragraphs (8)(nc), (nd) and (nf) do not apply in relation to a person who first enters a residential care service or a flexible care service on or after the commencement of this subsection.
- (11B) Paragraphs (8)(nc), (nd) and (nf) do not apply, and never again apply, in relation to a person if:
  - (a) the person enters a residential care service or a flexible care service on or after the commencement of this subsection; and
  - (b) that entry occurs more than 28 days after the day the person last ceased being provided with residential care or flexible care through a residential care service or a flexible care service (other than because the person was on leave).
- (11C) An expression used in subsection (11A) or (11B) and in the *Aged Care Act 1997* has the same meaning in that subsection as in that Act.

## **8 After subsection 5LA(8)**

Insert:

- (8A) Subsection (8) does not apply in relation to a person who first enters a residential care service or a flexible care service on or after the commencement of this subsection.
- (8B) Subsection (8) does not apply, and never again applies, in relation to a person if:
  - (a) the person enters a residential care service or a flexible care service on or after the commencement of this subsection; and
  - (b) that entry occurs more than 28 days after the day the person last ceased being provided with residential care or flexible care through a residential care service or a flexible care service (other than because the person was on leave).
- (8C) An expression used in subsection (8A) or (8B) and in the *Aged Care Act 1997* has the same meaning in that subsection as in that Act.

## Schedule 19—Employment income

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

#### **1 Subsection 3(1) (subparagraph (b)(i) of the definition of receiving)**

Before “is taken”, insert “except in relation to clause 38L of Schedule 1 to this Act—”.

### *Social Security Act 1991*

#### **2 Paragraph 23(4AA)(e)**

Repeal the paragraph, substitute:  
(e) subsection 1061ZK(5);

#### **3 Paragraph 1067G-F3(c)**

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

#### **4 Paragraph 1067G-F3(d)**

Repeal the paragraph.

#### **5 Application provisions**

- (1) The amendment made by item 1 applies in relation to working out the rate of family tax benefit for days on or after the commencement of that item.
- (2) The amendments made by items 2 to 4 apply in relation to working out the rate of youth allowance for days on or after the commencement of those items.

## **Schedule 21—Closing carbon tax compensation to new welfare recipients**

### **Part 1—Energy supplement under the family assistance law**

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

##### **1 At the end of subsection 58(2)**

Add:

Note: Paragraph (b) does not apply to certain approved care organisations:  
see subsections (2C) and (2D).

##### **2 After subsection 58(2B)**

Insert:

(2C) Paragraph (2)(b) does not apply in relation to an approved care organisation on or after the commencement of this subsection unless the organisation was entitled to be paid family tax benefit in respect of 19 September 2016.

(2D) If:

(a) the approved care organisation was entitled to be paid family tax benefit in respect of 19 September 2016; and

(b) the organisation ceases to be entitled to be paid family tax benefit in respect of a day on or after 20 September 2016;

then paragraph (2)(b) does not apply, and never again applies, to the organisation from:

(c) if the cessation occurred before the commencement of this subsection—the start of the day this subsection commences;  
or

(d) if the cessation occurred on or after the commencement of this subsection—the start of the day of that cessation.

##### **3 After subsection 58A(1)**

Insert:

**Schedule 21** Closing carbon tax compensation to new welfare recipients  
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- (1A) An individual cannot make an election under subsection (1) on a day on or after the commencement of this subsection unless energy supplement (Part A) or energy supplement (Part B) is used to work out the rate of the individual's family tax benefit in respect of that day.

**4 After subsection 58A(3)**

Insert:

- (3AA) An election ceases to be in force if, disregarding the election, neither energy supplement (Part A) nor energy supplement (Part B) would be used to work out the rate of the individual's family tax benefit.

**5 Application provision**

Subsection 58A(3AA) of the *A New Tax System (Family Assistance) Act 1999*, as inserted by this Part, applies on and after the commencement of this item in relation to elections made before, on or after that commencement.

**6 Clause 3 of Schedule 1**

After "operation of clauses 5," insert "6A,".

**7 Clause 3 of Schedule 1 (at the end of step 1 of the method statement)**

Add:

Note:	Paragraph (cb) does not apply to certain individuals: see clause 6A.
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**8 At the end of Division 1 of Part 2 of Schedule 1**

Add:

**6A Energy supplement**

- (1) Paragraph (cb) of step 1 of the method statement in clause 3 does not apply to an individual on or after the commencement of this clause unless:
- (a) the individual was entitled to be paid family tax benefit in respect of 19 September 2016; and

(b) the individual's Part A rate of family tax benefit in respect of 19 September 2016 was not worked out under Part 3A of this Schedule.

(2) However, if:

(a) the individual ceases to be entitled to be paid family tax benefit in respect of a day (the *applicable day*) on or after 20 September 2016; or

(b) the individual's Part A rate of family tax benefit is worked out under Part 3A of this Schedule in respect of a day (the *applicable day*) on or after 20 September 2016;

then paragraph (cb) of step 1 of the method statement in clause 3 does not apply, and never again applies, to the individual from:

(c) if the applicable day is before the commencement of this clause—the start of the day this clause commences; or

(d) if the applicable day is on or after the commencement of this clause—the start of the applicable day.

## **9 Clause 24HA of Schedule 1**

Before "The", insert "(1)".

## **10 At the end of clause 24HA of Schedule 1**

Add:

(2) However, the individual's *above base energy supplement amount* for the maintenance income is nil if paragraph (cb) of step 1 of the method statement in clause 3 does not apply to the individual because of clause 6A.

## **11 Clause 24RA of Schedule 1**

Before "The", insert "(1)".

## **12 At the end of clause 24RA of Schedule 1**

Add:

(2) However, the individual's *energy supplement amount* for the maintenance income is nil if paragraph (e) of step 1 of the method statement in clause 25 does not apply to the individual because of clause 25C.

**13 Clause 25 of Schedule 1**

Omit “operation of clause 25A”, substitute “operation of clauses 25A and 25C”.

**14 Clause 25 of Schedule 1 (at the end of step 1 of the method statement)**

Add:

Note:	Paragraph (e) does not apply to certain individuals: see clause 25C.
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**15 At the end of Division 1 of Part 3 of Schedule 1**

Add:

**25C Energy supplement**

- (1) Paragraph (e) of step 1 of the method statement in clause 25 does not apply to an individual on or after the commencement of this clause unless:
  - (a) the individual was entitled to be paid family tax benefit in respect of 19 September 2016; and
  - (b) the individual’s Part A rate of family tax benefit in respect of 19 September 2016 was not worked out under Part 3A of this Schedule.
- (2) However, if:
  - (a) the individual ceases to be entitled to be paid family tax benefit in respect of a day (the *applicable day*) on or after 20 September 2016; or
  - (b) the individual’s Part A rate of family tax benefit is worked out under Part 3A of this Schedule in respect of a day (the *applicable day*) on or after 20 September 2016;then paragraph (e) of step 1 of the method statement in clause 25 does not apply, and never again applies, to the individual from:
  - (c) if the applicable day is before the commencement of this clause—the start of the day this clause commences; or
  - (d) if the applicable day is on or after the commencement of this clause—the start of the applicable day.

**16 Subclause 29(1) of Schedule 1**

Omit “The individual’s Part B rate”, substitute “Subject to clause 29AA, the individual’s Part B rate”.

**17 At the end of subclause 29(1) of Schedule 1**

Add:

Note: Paragraph (c) does not apply to certain individuals: see clause 29AA.

**18 Subclause 29(2) of Schedule 1 (at the end of step 1 of the method statement)**

Add:

Note: Paragraph (c) does not apply to certain individuals: see clause 29AA.
---

**19 At the end of Subdivision A of Division 1 of Part 4 of Schedule 1**

Add:

**29AA Energy supplement**

- (1) Paragraph 29(1)(c) of this Schedule, or paragraph (c) of step 1 of the method statement in subclause 29(2) of this Schedule, does not apply to an individual on or after the commencement of this clause unless:
  - (a) the individual was entitled to be paid family tax benefit in respect of 19 September 2016; and
  - (b) the individual’s Part A rate of family tax benefit in respect of 19 September 2016 was not worked out under Part 3A of this Schedule.
- (2) However, if:
  - (a) the individual ceases to be entitled to be paid family tax benefit in respect of a day (the *applicable day*) on or after 20 September 2016; or
  - (b) the individual’s Part A rate of family tax benefit is worked out under Part 3A of this Schedule in respect of a day (the *applicable day*) on or after 20 September 2016;

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then paragraph 29(1)(c) of this Schedule, or paragraph (c) of step 1 of the method statement in subclause 29(2) of this Schedule, does not apply, and never again applies, to the individual from:

- (c) if the applicable day is before the commencement of this clause—the start of the day this clause commences; or
- (d) if the applicable day is on or after the commencement of this clause—the start of the applicable day.

**20 Subclause 29A(2) of Schedule 1**

Omit “The Part B rate”, substitute “Subject to clause 29D, the Part B rate”.

**21 At the end of subclause 29A(2) of Schedule 1**

Add:

Note: Paragraph (c) does not apply to certain individuals: see clause 29D.

**22 At the end of Subdivision B of Division 1 of Part 4 of Schedule 1**

Add:

**29D Energy supplement**

- (1) Paragraph 29A(2)(c) of this Schedule does not apply to an individual on or after the commencement of this clause unless:
  - (a) the individual was entitled to be paid family tax benefit in respect of 19 September 2016; and
  - (b) the individual’s Part A rate of family tax benefit in respect of 19 September 2016 was not worked out under Part 3A of this Schedule.
- (2) However, if:
  - (a) the individual ceases to be entitled to be paid family tax benefit in respect of a day (the *applicable day*) on or after 20 September 2016; or
  - (b) the individual’s Part A rate of family tax benefit is worked out under Part 3A of this Schedule in respect of a day (the *applicable day*) on or after 20 September 2016;then paragraph 29A(2)(c) of this Schedule does not apply, and never again applies, to the individual from:

- (c) if the applicable day is before the commencement of this clause—the start of the day this clause commences; or
- (d) if the applicable day is on or after the commencement of this clause—the start of the applicable day.

**23 At the end of subclause 31B(1) of Schedule 1**

Add:

Note: For certain individuals, energy supplement (Part B) is not to be added in working out the Part B rate: see clauses 29AA and 29D.

**24 At the end of subclause 38AA(1) of Schedule 1**

Add:

Note: For certain individuals, energy supplement (Part A) is not to be added in working out the Part A rate: see clause 6A.

**25 At the end of subclause 38AF(1) of Schedule 1**

Add:

Note: For certain individuals, energy supplement (Part A) is not to be added in working out the Part A rate: see clause 25C.

## Part 2—Energy supplement under the social security law

### *Social Security Act 1991*

#### **36 Section 1061U**

Before “A”, insert “(1)”.

#### **37 At the end of section 1061U**

Add:

##### *Exceptions*

- (2) Subject to subsections (4), (6) and (8), subsection (1) applies to a person on or after the commencement of this subsection only if on 19 September 2016:
- (a) energy supplement was payable to the person under section 1061UA; or
  - (b) energy supplement was payable to the person under section 118PA of the Veterans’ Entitlements Act.

Note: For subsection (1) to apply to the person on a day on or after that commencement, the person needs to be the holder of a seniors health card on that day.

- (3) Subject to subsection (8), if:
- (a) energy supplement was payable to a person under section 1061UA, or under section 118PA of the Veterans’ Entitlements Act, on 19 September 2016; and
  - (b) energy supplement ceases to be payable to the person under either of those sections on or after 20 September 2016;
- then subsection (1) of this section does not apply, and never again applies, to the person from:
- (c) if the cessation occurred before the commencement of this subsection—the start of the day this subsection commences; or
  - (d) if the cessation occurred on or after the commencement of this subsection—the start of the day of that cessation.

- (4) If:
-

- (a) a person was not qualified for energy supplement under subsection (1) on 19 September 2016; and
  - (b) on 19 September 2016 the person was receiving an income support payment where energy supplement was used to work out the rate of that payment; and
  - (c) on a day (the *cessation day*) on or after the commencement of this subsection the person ceases to be in receipt of any income support payment; and
  - (d) on the day before the cessation day the person was receiving an income support payment where energy supplement was used to work out the rate of that payment; and
  - (e) the person is required to make a claim for a seniors health card in order for such a card to be granted to the person;
- the person can become qualified for energy supplement under subsection (1) only if the person makes a claim for a seniors health card within the period of 6 weeks beginning on the cessation day.
- (5) Subject to subsection (8), if:
- (a) as a result of a claim mentioned in subsection (4), a seniors health card is issued to a person on a day; and
  - (b) energy supplement ceases to be payable to the person under section 1061UA on or after that day;
- then subsection (1) of this section does not apply, and never again applies, to the person from the start of the day of that cessation.
- (6) If:
- (a) a person was not qualified for energy supplement under subsection (1) on 31 December 2016; and
  - (b) on that day, the person was receiving a social security pension and an amount of energy supplement was added to the rate of that pension; and
  - (c) under subsection 1061ZJA(3) or (4), the Secretary issued a seniors health card to the person;
- the person can become qualified for energy supplement under subsection (1) of this section because of holding that card.
- (7) Subject to subsection (8), if:
- (a) as mentioned in paragraph (6)(c), a seniors health card is issued to a person on a day; and

(b) energy supplement ceases to be payable to the person under section 1061UA on or after that day;

then subsection (1) of this section does not apply, and never again applies, to the person from:

- (c) if the cessation occurred before the commencement of this subsection—the start of the day this subsection commences; or
- (d) if the cessation occurred on or after the commencement of this subsection—the start of the day of that cessation.

(8) If:

- (a) on a day on or after 20 September 2016 the person ceases to hold a seniors health card under the Administration Act or the Veterans' Entitlements Act; and
- (b) on that day the person receives an income support payment where energy supplement is used to work out the rate of that payment; and
- (c) on a day (the *cessation day*) on or after the commencement of this subsection, the person ceases to be in receipt of any income support payment; and
- (d) on the day before the cessation day the person was receiving an income support payment where energy supplement was used to work out the rate of that payment; and
- (e) the person is required to make a claim for a seniors health card in order for such a card to be granted to the person;

the person can become qualified for energy supplement under subsection (1) only if the person makes a claim for a seniors health card within the period of 6 weeks beginning on the cessation day.

### **38 Transitional provision**

If:

- (a) before 19 September 2016 a person was receiving an income support payment where energy supplement was used to work out the rate of that payment; and
- (b) on a day (the *cessation day*) in the period of 6 weeks ending at the end of 19 September 2016, the person ceased to receive that payment; and
- (c) on the day before the cessation day, energy supplement was used to work out the rate of that payment; and

- (d) the person made a claim under the *Social Security (Administration) Act 1999* for a seniors health card within the period of 6 weeks beginning on the cessation day; and
- (e) the person's claim was granted and the person became the holder of a seniors health card on a day on or after 20 September 2016; and
- (f) the person held that card immediately before the commencement of this item;

then:

- (g) the person can become qualified for energy supplement under subsection 1061U(1) of the *Social Security Act 1991* (despite subsection 1061U(2) of that Act); and
- (h) paragraph 1061U(5)(a) of the *Social Security Act 1991* applies as if a reference to a claim mentioned in subsection (4) included a reference to a claim mentioned in this item.

## Part 4—Energy supplement under the Veterans' Entitlements Act

### *Veterans' Entitlements Act 1986*

#### 104 After subsection 118P(1)

Insert:

(1A) Subject to subsections (1C), (1E) and (1G), subsection (1) applies to a person on or after the commencement of this subsection only if on 19 September 2016:

- (a) energy supplement was payable to the person under section 118PA; or
- (b) energy supplement was payable to the person under section 1061UA of the *Social Security Act 1991*.

Note: For subsection (1) to apply to the person on a day on or after that commencement, the person needs to satisfy paragraphs (1)(a) to (b) on that day.

(1B) Subject to subsection (1G), if:

- (a) energy supplement was payable to a person under section 118PA, or section 1061UA of the *Social Security Act 1991*, on 19 September 2016; and
- (b) energy supplement ceases to be payable to the person under either of those sections on or after 20 September 2016;

then subsection (1) of this section does not apply, and never again applies, to the person from:

- (c) if the cessation occurred before the commencement of this subsection—the start of the day this subsection commences; or
- (d) if the cessation occurred on or after the commencement of this subsection—the start of the day of that cessation.

(1C) If:

- (a) a person was not eligible for energy supplement under subsection (1) on 19 September 2016; and
- (b) on 19 September 2016 the person was receiving an income support payment (within the meaning of the *Social Security*

*Act 1991*), where energy supplement was used to work out the rate of that payment; and

- (c) on a day (the **cessation day**) on or after the commencement of this subsection the person ceases to be in receipt of any income support payment (within the meaning of the *Social Security Act 1991*); and
- (d) on the day before the cessation day the person was receiving an income support payment (within the meaning of the *Social Security Act 1991*) where energy supplement was used to work out the rate of that payment; and
- (e) the person is required to make a claim for a seniors health card in order for such a card to be granted to the person;

the person can become eligible for energy supplement under subsection (1) only if the person makes a claim for a seniors health card within the period of 6 weeks beginning on the cessation day.

(1D) Subject to subsection (1G), if:

- (a) as a result of a claim mentioned in subsection (1C), a person becomes the holder of a seniors health card on a day; and
- (b) energy supplement ceases to be payable to the person under section 118PA on or after that day;

then subsection (1) of this section does not apply, and never again applies, to the person from the start of the day of that cessation.

(1E) If:

- (a) a person was not eligible for energy supplement under subsection (1) on 31 December 2016; and
- (b) on that day, the person was receiving a service pension and an amount of energy supplement was added to the rate of that pension; and
- (c) under subsection 118XA(3), the Commission made a determination under section 118ZG that the person is entitled to a seniors health card;

the person can become eligible for energy supplement under subsection (1) of this section because of being the holder of that card.

(1F) Subject to subsection (1G), if:

- (a) as mentioned in paragraph (1E)(c), a person becomes the holder of a seniors health card on a day; and

(b) energy supplement ceases to be payable to the person under section 118PA on or after that day;

then subsection (1) of this section does not apply, and never again applies, to the person from:

- (c) if the cessation occurred before the commencement of this subsection—the start of the day this subsection commences; or
- (d) if the cessation occurred on or after the commencement of this subsection—the start of the day of that cessation.

(1G) If:

- (a) on a day on or after 20 September 2016 the person ceases to hold a seniors health card under this Act or the *Social Security (Administration) Act 1999*; and
- (b) on that day the person receives an income support payment (within the meaning of the *Social Security Act 1991*) where energy supplement was used to work out the rate of that payment; and
- (c) on a day (the **cessation day**) on or after the commencement of this subsection the person ceases to be in receipt of any income support payment (within the meaning of the *Social Security Act 1991*); and
- (d) on the day before the cessation day the person was receiving an income support payment (within the meaning of the *Social Security Act 1991*) where energy supplement was used to work out the rate of that payment; and
- (e) the person is required to make a claim for a seniors health card in order for such a card to be granted to the person;

the person can become eligible for energy supplement under subsection (1) only if the person makes a claim for a seniors health card within the period of 6 weeks beginning on the cessation day.

## **106 At the end of section 118P**

Add:

### *Portability*

(4) If:

- (a) on 19 September 2016 energy supplement was payable to a person under section 118PA; and

- (b) either:
- (i) the person is absent from Australia on 19 September 2016 and has been so for a continuous period not exceeding 6 weeks; or
  - (ii) the person leaves Australia on a day on or after 20 September 2016 and, on the day before so leaving, energy supplement was payable to the person under section 118PA; and
- (c) the person returns to Australia, where the period of that absence has exceeded 6 weeks but not exceeded 19 weeks; and
- (d) the person is the holder of a seniors health card on the day before the person returns to Australia;

then the person is taken to have been eligible for energy supplement under this section on each day that occurs in the period beginning on the day after the end of that 6-week period of absence and ending at the end of the day before the person returned to Australia.

- (5) Subsection (4) does not limit section 118PB.

Note: After the person's period of absence exceeds 6 weeks, there will be no daily rate of energy supplement for the person: see subsection 118PB(2).

## 107 Transitional provision

If:

- (a) before 19 September 2016 a person was receiving an income support payment (within the meaning of the *Social Security Act 1991*) where energy supplement was used to work out the rate of that payment; and
- (b) on a day (the *cessation day*) in the period of 6 weeks ending at the end of 19 September 2016, the person ceased to receive that payment; and
- (c) on the day before the cessation day, energy supplement was used to work out the rate of that payment; and
- (d) the person made a claim under the *Veterans' Entitlements Act 1986* for a seniors health card within the period of 6 weeks beginning on the cessation day; and

**Schedule 21** Closing carbon tax compensation to new welfare recipients  
**Part 4** Energy supplement under the Veterans' Entitlements Act

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(e) the person's claim was granted and the person became the holder of a seniors health card on a day on or after 20 September 2016; and

(f) the person held that card immediately before the commencement of this item;

then:

(g) the person can become eligible for energy supplement under subsection 118P(1) of the *Veterans' Entitlements Act 1986* if the person satisfies paragraphs 118P(1)(a) to (b) of that Act (despite subsection 118P(1A) of that Act); and

(h) paragraph 118P(1D)(a) of the *Veterans' Entitlements Act 1986* applies as if a reference to a claim mentioned in subsection (1C) included a reference to a claim mentioned in this item.

## **Part 6—Telephone allowance**

### ***Social Security Act 1991***

#### **125 Subsection 17(1) (subparagraph (I)(ii) of the definition of *compensation affected payment*)**

Omit “, other than a telephone allowance payable to the holder of a seniors health card”.

#### **126 Subsection 1061Q(4A)**

Repeal the subsection.

#### **127 Subsection 1061SA(1) (cell at table item 10, column 2)**

Repeal the cell, substitute:

Partnered (partner getting pension or benefit) and partner getting telephone allowance at the standard rate

#### **128 Paragraphs 1061SB(2)(a) and (b)**

Repeal the paragraphs.

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

#### **129 Subsection 48(4) (definition of *telephone allowance payday*)**

Repeal the definition, substitute:

*telephone allowance payday* means the first day on which an instalment of a social security periodic payment would normally be paid to the person on or after any of the following:

- (a) 1 January;
- (b) 20 March;
- (c) 1 July;
- (d) 20 September.

#### **130 Subsection 48(4) (definition of *working day*)**

Repeal the definition.

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**131 Application provisions**

- (1) The repeal of subsection 1061Q(4A) of the *Social Security Act 1991* made by this Part applies in relation to working out if a person is qualified for a telephone allowance on a telephone allowance payday occurring on or after the commencement of this item.
- (2) The amendments of sections 1061SA and 1061SB of the *Social Security Act 1991* made by this Part apply in relation to working out the rate of telephone allowance for a telephone allowance payday occurring on or after the commencement of this item.

## **Part 7—Single income family supplement**

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

#### **132 At the end of subsection 57G(1)**

Add:

Note: This section does not apply to certain individuals: see section 57GDA.

#### **133 At the end of Subdivision A of Division 6 of Part 3**

Add:

#### **57GDA Cessation of eligibility**

- (1) Section 57G does not apply to an individual on or after the commencement of this section unless the individual was eligible for single income family supplement in respect of the day before that commencement.
- (2) Section 57G does not apply, and never again applies, to the individual from the start of the first day on or after the commencement of this section on which the individual ceases to be eligible for single income family supplement.
- (3) If:
  - (a) an individual is eligible for single income family supplement in respect of a period falling within the income year (the ***relevant income year***) ending on the day before the commencement of this section or within a later income year (also the ***relevant income year***); and
  - (b) in order to become entitled to be paid single income family supplement in respect of that period, the individual is required to make a claim for payment of single income family supplement for a past period; and
  - (c) the individual does not make the claim in accordance with section 65KD of the Family Assistance Administration Act;then section 57G of this Act does not apply, and never again applies, to the individual from the start of the first income year after the relevant income year.

## **Schedule 21A—Income limit for FTB Part A supplement**

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

#### **1 Before subclause 38A(1) of Schedule 1**

Insert:

- (1A) Despite any other provision of this clause, the amount of the FTB Part A supplement to be added in working out an individual's maximum rate under clause 3, or an individual's Method 2 base rate under clause 25, is nil if the individual's adjusted taxable income is more than \$80,000.

Note: If the individual is a member of a couple, the individual's adjusted taxable income includes the adjusted taxable income of the individual's partner: see clause 3 of Schedule 3.

#### **2 Application provision**

The amendment made by this Schedule applies in relation to working out the rate of family tax benefit for days on or after the commencement of this Schedule.

## **Schedule 22—Rates of R&D tax offset**

### *Income Tax Assessment Act 1997*

**1 Subsection 355-100(1) (cell at table item 1, column headed “The percentage is:”)**

Repeal the cell, substitute:

43.5%

**2 Subsection 355-100(1) (cell at table item 2, column headed “The percentage is:”)**

Repeal the cell, substitute:

38.5%

**3 Subsection 355-100(1) (cell at table item 3, column headed “The percentage is:”)**

Repeal the cell, substitute:

38.5%

**4 Subsection 355-100(1) (note)**

Omit “45%”, substitute “43.5%”.

**5 Application of amendments**

The amendments made by this Schedule apply in relation to assessments for income years commencing on or after 1 July 2016.

## Schedule 23—Single touch payroll reporting

### Part 1—Reporting by employers

#### Division 1—Main amendments

#### *Taxation Administration Act 1953*

#### 1 After Division 388 in Schedule 1

Insert:

### Division 389—Reporting by employers

#### Guide to Division 389

#### 389-1 What this Division is about

Employers may notify to the Commissioner certain amounts that are the subject of notification or reporting obligations under other provisions of the taxation law. Substantial employers must (unless they are exempted) notify most of those amounts to the Commissioner under this Division.

In many cases this Division has the effect of bringing forward the due dates for notification or reporting under the other provisions, but notifying under this Division may reduce an employer's obligations to notify or report under the other provisions.

#### Table of sections

389-5	Required reporting by substantial employers
389-10	Exemptions
389-15	Voluntary reporting by employers
389-20	Effect on reporting requirements under Subdivision 16-C
389-25	Grace periods for correcting false or misleading notifications

#### 389-5 Required reporting by substantial employers

(1) If:

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- (a) there is an amount of a kind referred to in column 1 of an item in the following table that arises as a result of conduct of an entity (such as payment of an amount or provision of a benefit); and
- (b) the entity has been a \*substantial employer at any time on or after 1 April 2018 (whether or not the entity is currently a substantial employer);
- the entity must notify the Commissioner of the amount on or before the day referred to in column 2 of that item.

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**Amounts to be notified to the Commissioner**

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<b>Item</b>	<b>Column 1</b>	<b>Column 2</b>
	<b>The following must be notified ...</b>	<b>... on or before this day</b>
1	<p>The following amounts:</p> <p>(a) an amount the entity must withhold under Subdivision 12-B (other than section 12-55 or 12-60), paragraph 12-85(b), section 12-90, paragraph 12-110(1)(ca) or (cb) or section 12-319A;</p> <p>(b) the *withholding payment from which the amount referred to in paragraph (a) is required to be withheld</p>	<p>the day by which the amount is required to be withheld (regardless of whether it is withheld) (see section 16-5).</p>
2	<p>An amount (other than an amount covered by item 1) paid by the entity that constitutes:</p> <p>(a) the salary or wages (within the meaning of the <i>Superannuation Guarantee (Administration) Act 1992</i>) of a person who is the entity's employee (within the meaning of that Act but disregarding subsection 12(3) of that Act); or</p> <p>(b) the ordinary time earnings (within the meaning of that Act) of such an employee</p>	<p>the day on which the amount is paid.</p>
3	<p>An amount paid by the entity that:</p> <p>(a) is a contribution to a *complying superannuation fund or an *RSA, in respect of an individual's employment (within the meaning of the <i>Superannuation Guarantee</i></p>	<p>the day on which the contribution is paid.</p>

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**Schedule 23** Single touch payroll reporting  
**Part 1** Reporting by employers

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**Amounts to be notified to the Commissioner**

<b>Item</b>	<b>Column 1</b>	<b>Column 2</b>
	<b>The following must be notified ...</b>	<b>... on or before this day</b>
	<i>(Administration) Act 1992</i> ) by the entity, that: (i) is made by the entity; or (ii) is taken, under section 79A of that Act to have been made on behalf of the entity; and (b) has the effect of reducing the charge percentage for the entity (as specified in subsection 19(2) of that Act) for a *quarter	

Note: Section 286-75 provides an administrative penalty for breach of this section.

- (2) The notification must be in the \*approved form. However, the approved form must not require information about an amount unless it is:
- (a) the amount to be notified under subsection (1); or
  - (b) an amount of a kind determined by the Commissioner under subsection (3).
- (3) The Commissioner may, by legislative instrument, determine kinds of amounts for the purposes of paragraph (2)(b).
- (4) In applying item 1 of the table in subsection (1), a requirement to withhold a nil amount is to be treated as a requirement to withhold an amount.
- (5) This section does not apply to an entity to the extent (if any) that the entity is covered by an exemption under section 389-10 for the income year in which the entity's conduct occurs.
- (6) An entity is a **substantial employer** at a particular time if, on the most recent 1 April occurring before that time:
- (a) 20 or more individuals were employees of the entity; or
  - (b) if the entity was a member of a \*wholly-owned group on that 1 April—the total number of employees of all of the members of the group was 20 or more.

### **389-10 Exemptions**

#### *Exempting classes of entities*

- (1) The Commissioner may, by legislative instrument, exempt a class of entities from section 389-5 for one or more income years.
- (2) The exemption may be limited to the extent specified in the instrument.

#### *Exempting particular entities*

- (3) The Commissioner may, on application by an entity (an **exemption application**) or on the Commissioner's own initiative, exempt the entity from section 389-5 for one or more income years.
- (4) The exemption may be limited to the extent specified in the notice under paragraph (5)(a).
- (5) The Commissioner must notify the entity in writing if:
  - (a) the Commissioner exempts the entity under subsection (3); or
  - (b) refuses an exemption application by the entity.
- (6) The Commissioner is taken to have refused an exemption application if the Commissioner fails to notify the entity in writing of the Commissioner's decision on the application within 60 days after the application is made.
- (7) The entity may object, in the manner set out in Part IVC, against:
  - (a) a decision of the Commissioner to refuse an exemption application; or
  - (b) a decision of the Commissioner to limit the extent of an exemption under subsection (4).

### **389-15 Voluntary reporting by employers**

#### *Section 389-5 amounts*

- (1) An entity that is not, and has not at any time on or after 1 April 2018 been, a \*substantial employer may notify the Commissioner of an amount that it would be required to notify under section 389-5 if it were a substantial employer.

**Schedule 23** Single touch payroll reporting  
**Part 1** Reporting by employers

- (2) The notification:
- (a) must be given on or before the day on or before which the entity would be required to notify under section 389-5 if it were a \*substantial employer; and
  - (b) must be in the form approved for the purposes of subsection (2) of that section.

*Other amounts*

- (3) If:
- (a) an amount arises as a result of conduct of an entity (such as payment of an amount or provision of a benefit); and
  - (b) the amount is an amount of a kind referred to in column 1 of an item in the following table;
- the entity may notify the Commissioner of the amount on or before the day referred to in column 2 of that item.

**Amounts to be notified to the Commissioner**

Item	Column 1 This amount may be notified ...	Column 2 ... on or before this day
1	A *reportable employer superannuation contribution made by the entity in respect of a *financial year for the benefit of an employee of the entity	14 July in the next *financial year.
2	A *reportable fringe benefits amount that an employee of the entity has for an income year in respect of the employee's employment with the entity	14 July in the *financial year most closely corresponding to the next income year.

- (4) The notification must be in the \*approved form.

Note: The approved form may require information about other amounts, in addition to the amount to be notified: see paragraph 388-50(1)(c).

**389-20 Effect on reporting requirements under Subdivision 16-C**

- (1) An entity is not required to comply with a requirement of:
- (a) section 16-150 (Commissioner must be notified of amounts); or
  - (b) section 16-153 (annual reports—other payments); or

- (c) section 16-155 (annual payment summary); or
  - (d) section 16-160 (part-year payment summary); or
  - (e) section 16-165 (payment summaries for superannuation lump sums and payments for termination of employment); or
  - (f) section 16-175 in relation to compliance with any requirements under section 16-155, 16-160 or 16-165;
- to give a notice, report or statement to the extent that it would relate to an amount that the entity has notified under section 389-5 or 389-15.
- (2) However, paragraphs (1)(b), (c) and (e) do not apply, in relation to requirement to give a notice, report or statement relating to payments made in a \*financial year, unless, within 14 days after the end of the financial year, the entity makes a declaration to the Commissioner that:
- (a) states that the entity has notified under section 389-5 or 389-15 all the information that the entity would otherwise be required to give under sections 16-153, 16-155 and 16-165 relating to payments made in the financial year; and
  - (b) is in the \*approved form.

### **389-25 Grace periods for correcting false or misleading notifications**

#### *When notifications can be corrected*

- (1) An entity that has made a statement (a **withholding statement**) under section 389-5 notifying an amount under item 1 or 2 of the table in subsection 389-5(1) (and no other item in that table) may correct the statement:
- (a) within the period determined by the Commissioner under subsection (2); or
  - (b) if paragraph (a) does not apply but the entity is covered by a determination under subsection (5)—within the period specified in that determination.

Note: Correcting the statement can protect the person from liability for a false or misleading withholding statement: see subsections 8K(2A), 8N(2) and 284-75(8).

*Determinations for particular entities*

- (2) The Commissioner may determine the period within which the entity may correct a withholding statement.
- (3) The Commissioner must give the entity written notice of the determination.
- (4) The entity may object, in the manner set out in Part IVC, against a decision of the Commissioner determining a period under subsection (2) relating to the entity.

*Determinations for classes of entities*

- (5) The Commissioner may, by legislative instrument, determine the period within which entities included in a class of entities specified in the determination may correct a withholding statement.

## **Division 2—Other amendments**

### ***Income Tax Assessment Act 1997***

#### **2 Subsection 995-1(1) (at the end of the definition of *BAS provisions*)**

Add:

; and (d) Division 389 in Schedule 1 to the *Taxation Administration Act 1953*.

#### **3 Subsection 995-1(1)**

Insert:

*substantial employer* has the meaning given by subsection 389-5(6) in Schedule 1 to the *Taxation Administration Act 1953*.

### ***Taxation Administration Act 1953***

#### **4 After section 8AAZLGA**

Insert:

### **8AAZLGB Retaining refunds until notification under Division 389 or ascertainment of liability**

#### *Commissioner may retain an amount*

- (1) The Commissioner may retain an amount that he or she otherwise would have to refund to an entity under section 8AAZLF, if:
  - (a) the Commissioner reasonably believes that the entity has made a payment as a result of which the entity:
    - (i) is, or will be, required to notify the Commissioner under section 389-5 in Schedule 1; or
    - (ii) may notify the Commissioner under section 389-15 in that Schedule; and
  - (b) the entity has not notified the Commissioner of the amount under that section; and
  - (c) the notification affects or may affect the amount that the Commissioner refunds to the entity.
- (2) The Commissioner must inform the entity that he or she has retained the amount under this section. He or she must do so within 14 days after the day on which the relevant RBA surplus or credit arose.

#### *How long the amount may be retained*

- (3) The Commissioner may retain the amount until:
  - (a) the entity has given the Commissioner that notification (including notification of a nil amount); or
  - (b) if subparagraph (1)(a)(i) applied—the Commissioner becomes reasonably satisfied that the entity is not required to give that notification; or
  - (c) the Commissioner becomes reasonably satisfied that the entity does not have a liability (a **PAYGW liability**) to pay to the Commissioner an amount of a kind referred to in item 1 of the table in subsection 389-5(1) in Schedule 1; or
  - (d) the Commissioner ascertains (including as a result of making an estimate) the total amount of the entity's outstanding PAYGW liabilities;whichever happens first.

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Note: Interest is payable under the *Taxation (Interest on Overpayments and Early Payments) Act 1983* if the Commissioner is late in making the payment under subsection (3).

*Objecting to the decision to retain the amount*

- (4) The entity may object to a decision of the Commissioner to retain the amount under this section in the manner set out in Part IVC, if the entity is dissatisfied with the decision.

Note: For the start of the period for objecting to the decision, see paragraph 14ZW(1)(aae) and subsection 14ZW(4).

- (5) Before the end of the 7 days after the start of the period during which, under section 14ZW, the entity may object to the decision, the Commissioner must notify the entity, in writing, that the entity may object to the decision.
- (6) A failure to comply with subsection (5) does not affect the validity of the decision.

**5 After subsection 8K(2)**

Insert:

- (2A) Subsection (1) or (1B) does not apply if:
- (a) the statement (the **original statement**) was made under section 389-5 in Schedule 1 notifying an amount under item 1 or 2 of the table in subsection 389-5(1) in that Schedule (and no other item in that table); and
  - (b) the original statement related to the financial year in which it was made; and
  - (c) the person who made the original statement makes a further statement to a taxation officer that corrects the original statement in each of the respects in which it is false or misleading in a material particular; and
  - (d) the further statement:
    - (i) is in the approved form; and
    - (ii) if subsection 389-25(1) in that Schedule provides for a period for correcting the original statement—is made within that period; and
    - (iii) without limiting subparagraph (ii), is made within 14 days after the end of the financial year in which the original statement was made.
-

Note: A defendant bears an evidential burden in relation to the matters in subsection (2A), see subsection 13.3(3) of the *Criminal Code*.

## **6 Section 8N**

Before “A person”, insert “(1)”.

## **7 At the end of section 8N**

Add:

- (2) This section does not apply if:
- (a) the statement (the *original statement*) was made under section 389-5 in Schedule 1 notifying an amount under item 1 or 2 of the table in subsection 389-5(1) in that Schedule (and no other item in that table); and
  - (b) the original statement related to the financial year in which it was made; and
  - (c) the person who made the original statement makes a further statement to a taxation officer that corrects the original statement in each of the respects in which it is false or misleading in a material particular; and
  - (d) the further statement:
    - (i) is in the approved form; and
    - (ii) if subsection 389-25(1) in that Schedule provides for a period for correcting the original statement—is made within that period; and
    - (iii) without limiting subparagraph (ii), is made within 14 days after the end of the financial year in which the original statement was made.

Note: A defendant bears an evidential burden in relation to the matters in subsection (2), see subsection 13.3(3) of the *Criminal Code*.

## **8 After paragraph 14ZW(1)(aad)**

Insert:

- (aae) if the taxation objection is made under subsection 8AAZLGB(4) of this Act (retaining refunds until notification under Division 389 or ascertainment of liability)—the period:
- (i) starting at the end of the 60 day period after the end of the day before which, under subsection 8AAZLGB(2), the Commissioner is required to inform the entity

- mentioned in section 8AAZLGB that the Commissioner has retained an amount under that section; and
- (ii) ending on the day (if any) on which, under subsection 8AAZLGB(3), the Commissioner ceases to be entitled to retain the amount; or

**9 At the end of section 16-150 in Schedule 1**

Add:

Note: This section does not apply to amounts that an employer notifies to the Commissioner under Division 389: see section 389-20.

**10 At the end of subsection 16-153(1) in Schedule 1**

Add:

Note: A report under this subsection will not cover amounts that an employer notifies to the Commissioner under Division 389: see section 389-20.

**11 At the end of subsection 16-153(2) in Schedule 1**

Add:

Note: A report under this subsection will not cover amounts that an employer notifies to the Commissioner under Division 389: see section 389-20.

**12 At the end of subsection 16-155(2) in Schedule 1**

Add:

Note: A payment summary under this section will not cover amounts that an employer notifies to the Commissioner under Division 389: see section 389-20.

**13 At the end of subsection 16-160(1) in Schedule 1**

Add:

Note: A payment summary under this section will not cover amounts that an employer notifies to the Commissioner under Division 389: see section 389-20.

**14 Paragraph 16-160(1)(c) in Schedule 1**

Omit “or” (last occurring).

**15 Paragraph 16-160(1)(d) in Schedule 1**

Repeal the paragraph.

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**16 Subsection 16-160(2) in Schedule 1**

Repeal the subsection, substitute:

- (2) The payer must comply with the request within 14 days after receiving it, unless:
- (a) the recipient is an individual and has a \*reportable fringe benefits amount, for the income year ending at the end of that \*financial year, in respect of his or her employment (within the meaning of the *Fringe Benefits Tax Assessment Act 1986*) by the payer; or
  - (b) the payer has made \*reportable employer superannuation contributions, in respect of the recipient's employment, during the financial year.

**17 At the end of section 16-165 in Schedule 1**

Add:

Note: A payment summary under this section will not cover amounts that an employer notifies to the Commissioner under Division 389: see section 389-20.

**18 Subsection 269-30(2) in Schedule 1 (cell at table item 1, column 3)**

Repeal the cell, substitute:

to the extent the company does not, on or before the last day mentioned in column 2, notify the Commissioner:

- (a) under section 16-150 of the amount the company is obliged to pay; or
- (b) under section 389-5 of the amount the company is obliged to withhold.

**19 At the end of section 284-75 in Schedule 1**

Add:

*Further exception to subsection (1)*

- (8) You are not liable to an administrative penalty under subsection (1) if:
- (a) you made the statement (the *original statement*) under section 389-5 notifying an amount under item 1 or 2 of the table in subsection 389-5(1) (and no other item in that table); and
  - (b) the original statement related to the \*financial year in which you made it; and
  - (c) you make a further statement to a taxation officer that corrects the original statement in each of the respects in which it is false or misleading in a material particular; and
  - (d) the further statement:
    - (i) is in the \*approved form; and
    - (ii) if subsection 389-25(1) in that Schedule provides for a period for correcting the original statement—is made within that period; and
    - (iii) without limiting subparagraph (ii), is made within 14 days after the end of the financial year in which the original statement was made.

**20 At the end of subsection 286-75(1) in Schedule 1**

Add:

Note: You may not be liable to a penalty in relation to a failure to notify an amount referred to in item 1 or 2 of the table in section 389-5 during the period provided for by subitem 22(2) of Schedule 23 to the *Budget Savings (Omnibus) Act 2016*.

***Taxation (Interest on Overpayments and Early Payments)  
Act 1983***

**21 Section 12AF (paragraph (b) of the definition of *RBA interest day*)**

Repeal the paragraph, substitute:

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- (b) if, by the day applicable under paragraph (a), the person has not given the Commissioner a notification that:
  - (i) is required for the refund under section 8AAZLG or 8AAZLGB (as the case requires) of the *Taxation Administration Act 1953*; and
  - (ii) that is accurate so far as it relates to the refund; the day on which that notification is given to the Commissioner;

## **Division 3—Application**

### **22 Application—required reporting**

- (1) The amendments made by this Part apply in relation to an amount that an entity is required to notify to the Commissioner if the requirement to notify arises on or after the following day (the *application day*):
  - (a) the day determined under item 24;
  - (b) if no such day is determined:
    - (i) if the entity was a substantial employer immediately before 1 July 2018—1 July 2018; or
    - (ii) otherwise—the first 1 July after which the entity first becomes a substantial employer after 1 July 2018.
- (2) Despite subitem (1), the entity is not liable to a penalty under subsection 286-75(1) in Schedule 1 to the *Taxation Administration Act 1953* in relation to a failure to notify the Commissioner under section 389-5 in that Schedule if:
  - (a) the failure relates to an amount referred to in item 1 or 2 of the table in section 389-5 in that Schedule; and
  - (b) the failure occurs during the 12 month period following the entity's application day; and
  - (c) the Commissioner has not, during that period but before that failure, given to the entity a written notice that:
    - (i) related to an earlier failure by the entity to notify the Commissioner under section 389-5 in that Schedule; and
    - (ii) advised the entity that a further failure to comply with that section may result in the entity being liable to an administrative penalty.

### **23 Application—voluntary reporting**

The amendments made by this Part apply in relation to an amount that an entity may notify to the Commissioner if the entitlement to notify arises on or after the following day (the application day):

- (a) the day determined under item 24;
- (b) if no such day is determined—1 July 2018.

### **24 Determining the application day**

The Commissioner may, by legislative instrument, determine a day that is later than 1 July 2018 to be the application day.

## **Part 2—Choice of fund**

### ***Superannuation Guarantee (Administration) Act 1992***

#### **25 Paragraph 32C(2B)(b)**

Omit “gives the employer written notice”, substitute “or the Commissioner gives the employer notice”.

#### **26 Paragraph 32C(2B)(c)**

Omit “that the employee included in the written notice”, substitute “included in the notice”.

#### **27 Subparagraph 32C(2B)(c)(i)**

Repeal the subparagraph, substitute:

- (i) within 21 days after the employer is given the notice;  
and

#### **28 Subsection 32F(1)**

Repeal the subsection, substitute:

- (1) If an employee wants a fund to be a chosen fund for the employee, the employee must:
  - (a) give the employer written notice to that effect; or
  - (b) give the Commissioner a notice to that effect in the approved form.

Note: A fund can only be a chosen fund if the employer is able to make contributions to the fund for the benefit of the employee (see subsection 32G(2)).

#### **29 Subsection 32F(2)**

Omit “gives the notice to the employer”, substitute “or the Commissioner gives the notice to the employer”.

#### **30 Paragraph 32F(3)(a)**

After “the employer”, insert “or the Commissioner”.

**31 Subsection 32FA(1)**

Omit “if the employee does not provide, together with the notice under that section”, substitute “and notified under paragraph 32F(1)(a) if the employee does not provide, together with the notice”.

**32 Paragraph 32H(1)(b)**

Omit “the employee has not given”, substitute “neither the employee nor the Commissioner has given”.

**33 After subsection 32H(1)**

Insert:

- (1A) The employee may give the employer a written notice, or give the Commissioner a notice in the approved form, stating that the old fund continues to be a chosen fund for the employee.

**34 Before section 32X**

Insert:

**32W Disclosing tax file numbers provided in standard choice forms**

A taxation officer (within the meaning of the *Income Tax Assessment Act 1997*) may disclose another person’s tax file number (within the meaning of that Act) if:

- (a) the other person provided the number to the Commissioner in a notice given to the Commissioner under paragraph 32F(1)(b); and
- (b) the disclosure is to the other person’s employer.

***Taxation Administration Act 1953***

**35 Subsection 355-50(2) in Schedule 1 (at the end of the table)**

Add:

- |    |   |   |
|----|---|---|
| 10 | any employer (within the meaning of the <i>Superannuation Guarantee (Administration) Act 1992</i> ) | is for the purpose of disclosing to that employer information included in a notice given to the Commissioner under subsection 32F(1) or 32H(1A) of that Act by an employee (within the meaning of that Act) of that employer. |
|----|---|---|

### **36 Application**

- (1) The amendments made by items 34 and 35 apply in relation to disclosures of information on or after 1 January 2017 (whether the information was acquired before, on or after that day).
- (2) The other amendments made to the *Superannuation Guarantee (Administration) Act 1992* by this Part apply in relation to notices given on or after 1 January 2017.

## Part 3—TFN declarations

### *Income Tax Assessment Act 1936*

#### **37 Subsection 202C(2)**

After “the declaration”, insert “must be made to the payer or the Commissioner, and”.

#### **38 After subsection 202CF(1)**

Insert:

- (1A) However, subsection (1) does not apply if the recipient’s tax file number has been disclosed to the payer under section 202CG before the end of that 14 day period.

#### **39 At the end of Division 3 of Part VA**

Add:

#### **202CG Disclosing recipients’ tax file numbers to payers**

A taxation officer (within the meaning of the *Income Tax Assessment Act 1997*) may disclose a recipient’s tax file number to a payer of the recipient if the recipient provided the number to the Commissioner in a TFN declaration.

### *Superannuation Industry (Supervision) Act 1993*

#### **40 At the end of section 299C**

Add:

- (4) A disclosure of the employee’s tax file number to the employer under section 202CG of the *Income Tax Assessment Act 1936* is taken, for the purposes of this section, to be a quotation of the number by the employee to his or her employer in connection with the operation of Division 3 of Part VA of that Act.

## **41 Application**

- (1) The amendment made by item 37 applies in relation to declarations made on or after 1 January 2017.
- (2) The amendment made by item 38 applies in relation to relationships (of a kind referred to in subsection 202CF(1) of the *Income Tax Assessment Act 1936*) commenced on or after 1 January 2017.
- (3) The amendments made by items 39 and 40 apply in relation to disclosures of tax file numbers on or after 1 January 2017 (whether the information was acquired before, on or after that day).

## Part 4—TFN validation

### *Income Tax Assessment Act 1936*

#### **42 After section 202CE**

Insert:

#### **202CEA Validation notices**

- (1) The Commissioner may give a payer a notice under subsection (2) if:
  - (a) the payer gives the Commissioner information that the payer believes to be:
    - (i) the full name, tax file number and date of birth of a person; or
    - (ii) the full name, tax file number, date of birth and address of a person; and
  - (b) the Commissioner is satisfied that:
    - (i) the person is a recipient of the payer; and
    - (ii) the recipient has made a TFN declaration in relation to the payer; and
  - (c) the Commissioner is satisfied, having regard to the information (if any) that the Commissioner has recorded for the tax file number given, that it is reasonable to give the notice.
- (2) The notice must state whether or not the Commissioner is able to validate the information given.
- (3) To avoid doubt, a notice that the Commissioner is not able to validate the information is not a notice under subsection 202CE(3).
- (4) If a person states his or her tax file number in a TFN declaration in relation to the payer, the payer may use the tax file number in a manner connecting it with the person's identity for the purpose of asking the Commissioner to validate information about the person under this section.

### **43 Application**

The amendment made by this Part applies in relation to information given to the Commissioner on or after 1 January 2017.

## **Schedule 24—Single appeal path under the Military Rehabilitation and Compensation Act**

### *Military Rehabilitation and Compensation Act 2004*

#### **1 Section 344**

Omit “claimant’s rights to apply for reconsideration or review”, substitute “claimant’s right to apply for review”.

#### **2 Section 344**

Omit:

<p>There are 2 possible paths in the reconsideration and review process depending on the type of reconsideration sought by the claimant.</p>
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#### **3 Section 344**

Omit “ask the Commission to reconsider it or”.

#### **4 Section 344**

Omit “If dissatisfied with the determination on reconsideration or review”, substitute “If dissatisfied with the determination on review”.

#### **5 Paragraph 345A(2)(c)**

Repeal the paragraph.

#### **6 Subsection 346(5)**

Omit “request a reconsideration of the determination under section 349 or”.

#### **7 Section 349 (heading)**

Repeal the heading, substitute:

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**349 Chief of the Defence Force initiating reconsideration of determinations**

**8 Subsections 349(1) to (3)**

Repeal the subsections.

**9 Subsection 352(2)**

Repeal the subsection.

**10 After subsection 354(1A)**

Insert:

(1B) If:

- (a) a person applies to the Tribunal for review of a decision (the *reviewable decision*) that is a reviewable determination made by the Board; and
- (b) that reviewable determination is a determination affirming an original determination made by the Commission; and
- (c) in the course of the review by the Tribunal, the person provides to the Tribunal a document relevant to the review; and
- (d) the Tribunal is satisfied that, at the time when the Board made the reviewable determination, the Board did not have the document and the person could have provided the document to the Board without unreasonable expense or inconvenience; and
- (e) the Tribunal is satisfied that, if the Board had the document at the time when the Board made the reviewable determination, the Board would have made a determination more favourable to the claimant than the reviewable determination;

then section 42D of the *Administrative Appeals Tribunal Act 1975* applies in relation to the review by the Tribunal of the reviewable decision as if references in that section to the person who made the decision were instead references to the Commission.

(1C) If, under subsection 42D(1) of the *Administrative Appeals Tribunal Act 1975* (as modified by subsection (1B) of this section), the Tribunal remits the reviewable decision to the Commission for reconsideration of that decision by the Commission:

- (a) subsections 42D(2), (5), (6) and (7) of that Act do not apply in relation to that remittal; and
- (b) the Commission must reconsider that decision, and do one of the following things, within the period of 28 days beginning on the day on which that decision was remitted to the Commission:
  - (i) affirm that decision;
  - (ii) vary that decision;
  - (iii) set aside that decision and make a new decision in substitution for the decision set aside; and
- (c) if the Commission has not reconsidered that decision, and done one of those things, within that 28-day period, the Commission is taken to have affirmed that decision; and
- (d) subsections 42D(3), (4) and (8) of that Act apply in relation to that remittal.

Note: Section 42D of the *Administrative Appeals Tribunal Act 1975* applies normally in respect of other kinds of reviewable determinations.

## **11 After subsection 357(6)**

Insert:

- (6A) If, in any proceedings, the Tribunal varies or sets aside a reviewable determination made by the Board, the Tribunal must not make an order under subsection (2) or (4) in favour of a claimant in relation to the costs of those proceedings if:
  - (a) in the course of the review by the Tribunal, the claimant provided to the Tribunal a document relevant to the review; and
  - (b) the Tribunal is satisfied that, at the time when the Board made the reviewable determination, the Board did not have the document and the claimant could have provided the document to the Board without unreasonable expense or inconvenience; and
  - (c) the Tribunal is satisfied that, if the Board had the document at the time when the Board made the reviewable determination, the Board would have made a determination more favourable to the claimant than the reviewable determination.

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- (6B) If, in any proceedings, the Tribunal varies or sets aside a reviewable determination made by the Board, the Tribunal must not make an order under subsection (2) or (4) in favour of a claimant in relation to the costs of those proceedings if the Tribunal is satisfied that:
- (a) in connection with the review by the Tribunal or Board, the claimant was granted legal aid under a Commonwealth, State or Territory legal aid scheme or service; or
  - (b) the claimant failed, without reasonable excuse, to appear at the hearing of the review by the Board; or
  - (c) in connection with the review by the Board, the claimant failed to comply with a direction under subsection 148(4B) of the *Veterans' Entitlements Act 1986*; or
  - (d) the claimant failed to comply with a notice under section 330 before the Commission made the original determination in relation to which the reviewable determination was made.
- (6C) If, in any proceedings, the Tribunal remits a reviewable determination made by the Board to the Commission as mentioned in subsection 354(1C), the Tribunal must not make an order under subsection (2) or (4) in favour of a claimant in relation to the costs of those proceedings.

## **12 Section 359**

Omit “Sections 356, 357 and 358 do”, substitute “Section 356 does”.

## **13 Application provision**

The amendments made by this Schedule apply in relation to original determinations made on or after the commencement of this item.

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*[Minister's second reading speech made in—  
House of Representatives on 31 August 2016  
Senate on 14 September 2016]*

(114/16)

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