

**2010-2011**

**THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA**

**HOUSE OF REPRESENTATIVES**

**SOCIAL SECURITY AND OTHER  
LEGISLATION AMENDMENT BILL 2011**

**EXPLANATORY MEMORANDUM**

**(Circulated by the authority of the  
Minister for Families, Housing, Community Services and  
Indigenous Affairs, the Hon Jenny Macklin MP)**

## **SOCIAL SECURITY AND OTHER LEGISLATION AMENDMENT BILL 2011**

### **OUTLINE**

This Bill will introduce several measures affecting, primarily, the Families, Housing, Community Services and Indigenous Affairs portfolio, including two Budget 2011-12 measures and a Budget 2009-10 measure.

#### ***Bereavement allowance***

The Bill gives parenting payment recipients access to bereavement allowance on the death of a partner.

#### ***Special benefit***

The Bill aligns access to special benefit for certain visa holders with other migrants, by removing the family member exemption from the two year newly arrived resident's waiting period before special benefit is payable. The amendments support the Budget 2011-12 measure *Provisional Partner Visa Holders – Entitlement to Special Benefit*.

#### ***Impairment Tables for disability support pension***

As part of the *Disability Support Pension – Better and Fairer Assessments* 2009-10 Budget measure, the Government undertook to update the *Tables for the Assessment of Work-related Impairment for Disability Support Pension* (the Impairment Tables) to ensure that they are consistent with contemporary medical and rehabilitation practice. The Bill removes the current outdated Impairment Tables from 1 January 2012, and enables the Minister to introduce new Impairment Tables through a legislative instrument.

#### ***Disability advocacy services***

The Bill provides for the introduction of a third party certification quality assurance system for disability advocacy services. The new quality assurance system will provide greater assurances about the quality of disability advocacy support, by introducing mechanisms independent from government to assess the compliance of disability advocacy services against a tailored set of new Disability Advocacy Standards.

#### ***Asset-test exempt income streams***

The Bill makes a number of amendments aimed at enhancing and improving the integrity of treatment of certain asset-test exempt income streams.

### ***Termination payments***

The Bill clarifies that payments made by an employer to an employee in lieu of notice of termination are regarded as redundancy payments for the purposes of the social security law.

### **Financial impact statement**

#### ***Bereavement allowance***

##### **Total resourcing**

<b>2011-12</b>	<b>2012-13</b>	<b>2013-14</b>	<b>2014-15</b>
\$0.2 m	\$0.2 m	\$0.2 m	\$0.2 m

#### ***Special benefit***

##### **Total resourcing**

<b>2011-12</b>	<b>2012-13</b>	<b>2013-14</b>	<b>2014-15</b>
0.2 m	-11.3 m	-13.4 m	-13.6 m

#### ***Impairment Tables for disability support pension***

This Bill gives effect to the final component of the 2009-10 Budget measure *Disability Support Pension – better and fairer assessments*, which also included: fast tracking for claimants who are clearly or manifestly eligible for disability support pension; the introduction of assessments for disability support pension being undertaken by Senior Job Capacity Assessors; the establishment of the Health Professional Advice Unit within Centrelink; and new payments for claimants' treating doctors when they provide additional diagnostic or further information at the request of the Health Professional Advice Unit. These measures form an integrated package and the costs of each component cannot be disaggregated. The financial impacts provided are the impacts of this integrated package.

##### **Total resourcing**

<b>2009-10</b>	<b>2010-11</b>	<b>2011-12</b>	<b>2012-13</b>
\$13.9 m	\$19.1 m	- \$4.8 m	- \$35.4 m

### ***Disability advocacy services***

Funding for this measure was introduced in the 2007-2008 financial year and is linked to the costs incurred in the three-year certification cycle under this measure. Costs are higher in the 2011-2012 financial year due to one-off costs associated with practical supports to assist disability advocacy services achieve certification.

#### **Total resourcing**

<b>2011-12</b>	<b>2012-13</b>	<b>2013-14</b>	<b>2014-15</b>
\$1.02 m	\$0.74 m	\$0.69 m	\$0.61 m

### ***Asset-test exempt income streams***

Nil impact.

### ***Termination payments***

Nil impact.

**SOCIAL SECURITY AND OTHER LEGISLATION  
AMENDMENT BILL 2011**

**NOTES ON CLAUSES**

**Clause 1** sets out how the Act is to be cited, that is, as the *Social Security and Other Legislation Amendment Act 2011*.

**Clause 2** provides a table that sets out the commencement dates of the various sections in, and Schedules to, the Act.

**Clause 3** provides that each Act that is specified in a Schedule is amended or repealed as set out in that Schedule.

This explanatory memorandum uses the following abbreviation:

- 'Social Security Act' means the *Social Security Act 1991*.

## **Schedule 1 – Bereavement allowance**

### **Summary**

This Schedule gives parenting payment recipients access to bereavement allowance on the death of a partner.

### **Background**

Paragraph 315(1)(c) of the Social Security Act precludes a parenting payment recipient from qualifying for bereavement allowance on the death of his or her partner. The original intent of the legislation was that the surviving member of a couple who had dependent children would continue to receive parenting payment (single), rather than transferring temporarily to the equivalent of bereavement allowance and then back to parenting payment (single). Historically, there was no financial advantage in transferring between these payment types.

The introduction of the Secure and Sustainable Pension Reform package in September 2009 saw a substantial increase to the single rate of certain pension types, including bereavement allowance. Allowing parenting payment recipients to transfer temporarily to bereavement allowance will provide additional assistance during a difficult time.

The amendments made by this Schedule commence on 1 January 2012.

### **Explanation of the changes**

**Item 1** repeals paragraph 315(1)(c) of the Social Security Act. In doing so, it allows persons qualified for a parenting payment to transfer to bereavement allowance during the 14 week bereavement period under the Act. This removes the current financial disadvantage that affects parenting payment recipients, compared to other income support recipients who are in the same circumstances.

**Item 2** provides that the amendments made by this Schedule apply in relation to deaths occurring on or after the commencement of this Schedule.

## **Schedule 2 – Special benefit**

### **Summary**

The Schedule aligns access to special benefit for certain visa holders with other migrants, by removing the family member exemption from the two year newly arrived resident's waiting period before special benefit is payable. The amendments support the Budget 2011-12 measure *Provisional Partner Visa Holders – Entitlement to Special Benefit*.

### **Background**

Temporary visa holders may qualify for special benefit if the visa is included in a class of visas set out in a determination made by the Minister under subparagraph 729(2)(f)(v) of the Social Security Act.

Currently, special benefit is payable to these temporary visa holders on arrival in Australia if suffering hardship, whereas other migrants would be subject to the newly arrived resident's waiting period and must wait two years before special benefit is payable, unless they can demonstrate both financial hardship and a substantial change in circumstances beyond their control after arrival in Australia.

An exemption from the newly arrived resident's waiting period is provided to a 'family member' under paragraph 3(1)(e) or (g) of the *Social Security Legislation Amendment (Newly Arrived Resident's Waiting Periods and Other Measures) Act 1997*. Paragraph 7(6D) of the Social Security Act defines a 'family member' as a 'partner' or a 'dependent child' in relation to paragraphs 3(1)(e) or (g).

As a result, unlike other newly arrived migrants, these temporary visa holders can receive special benefit much earlier than migrants entering with permanent visas.

As a result of the changes made by this Schedule, in respect of claims for special benefit lodged on or after 1 January 2012, the exemption from the newly arrived resident's waiting period will no longer apply to a holder of a visa that is in a class of visas determined under both subparagraph 729(2)(f)(v) and subsection 739A(8)(c) of the Social Security Act, unless another exception applies (such as demonstrating a substantial change of circumstances after their arrival in Australia).

This change means that Provisional Partner Visa Holders will need to demonstrate that they have experienced a 'substantial changes of circumstances beyond their control' after arrival in Australia, in addition to financial hardship, in order to access special benefit.

## Explanation of the changes

**Item 1** inserts new subsection 739A(8) into the Social Security Act.

This subsection provides that paragraphs 3(1)(e) and (g) of the *Social Security Legislation Amendment (Newly Arrived Resident's Waiting Periods and Other Measures) Act 1997* do not apply to a person if the person makes a claim for special benefit on or after 1 January 2012 and the person holds a visa that is in a class of visas determined by the Minister under subparagraph 729(2)(f)(v) of the Social Security Act *and* is in a class of visas determined by the Minister for the purposes of new paragraph 739A(8)(c) of the Social Security Act.

As a result, a person who holds such a visa will be subject to the newly arrived resident's waiting period under section 739A of the Social Security Act, unless the Secretary is of the opinion that the person has suffered a substantial change in circumstances beyond the person's control under subsection 739A(7) of the Social Security Act or another exception applies.

Irrespective of when a person applies for their visa or when their visa is granted by the Department of Immigration and Citizenship, the new measure applies to a person who is in Australia holding a visa in a class of visas for the purpose of paragraph 739A(8)(c), and who applies for special benefit on or after 1 January 2012.

Examples of the operation of new subsection 739A(8) of the Social Security Act follow. These examples refer to a visa subclass called 'visa subclass XYZ'. This subclass of visas has been named, and is referred to, for illustrative purposes only and does not represent any particular extant subclass of visas.

### ***Example 1***

For the purposes of this example:

- visa subclass XYZ is a visa in a class of visas determined by the Minister for the purposes of paragraph 739A(8)(c) of the Social Security Act; and
- subparagraph 729(2)(f)(v) of the Social Security Act applies to Jennifer; and
- Jennifer is a 'family member' of a person who has lawfully been a permanent resident of Australia for a continuous period of not less than two years, for paragraph 3(1)(g) of the *Social Security Legislation Amendment (Newly Arrived Resident's Waiting Periods and Other Measures) Act 1997* (the 1997 Act).

Jennifer applies for a visa subclass XYZ on 1 May 2011, is granted the visa on 1 October 2011 and enters Australia on 1 November 2011.

Jennifer applies for special benefit on 1 December 2011.

As her claim for special benefit is lodged prior to 1 January 2012, new subsection 739A(8) of the Social Security Act does not apply to Jennifer (paragraph 739A(8)(a)).

Therefore, paragraph 3(1)(g) of the 1997 Act applies to Jennifer and, if she is qualified for special benefit under section 729 of the Social Security Act, she will not be subject to the newly arrived resident's waiting period under section 739A (because of the operation of paragraph 3(1)(g) of the 1997 Act).

### **Example 2**

For the purposes of this example:

- visa subclass XYZ is a visa in a class of visas determined by the Minister for the purposes of paragraph 739A(8)(c) of the Social Security Act; and
- subparagraph 729(2)(f)(v) of the Social Security Act applies to Raymond; and
- Raymond is a 'family member' of a person who is an Australian citizen, for paragraph 3(1)(e) of the *Social Security Legislation Amendment (Newly Arrived Resident's Waiting Periods and Other Measures) Act 1997* (the 1997 Act).

Raymond applies for a visa subclass XYZ on 1 May 2011, is granted the visa on 1 October 2011 and enters Australia on 1 November 2011.

Raymond applies for special benefit on 1 November 2012.

As his claim for special benefit is lodged after 1 January 2012, new subsection 739A(8) of the Social Security Act applies to Raymond (paragraph 739A(8)(a)).

Subsection 739A(8) has the effect that paragraph 3(1)(e) of the 1997 Act does not apply to Raymond. Therefore, if Raymond is qualified for special benefit under section 729 of the Social Security Act, he will be subject to the newly arrived resident's waiting period under section 739A and special benefit will not be payable to Raymond until the end of that period (unless an exception, other than paragraph 3(1)(e) or (g) of the 1997 Act, applies to his situation).

### **Example 3**

For the purposes of this example:

- visa subclass XYZ is a visa in a class of visas determined by the Minister for the purposes of paragraph 739A(8)(c) of the Social Security Act; and
- subparagraph 729(2)(f)(v) of the Social Security Act applies to Benjamin; and
- Benjamin is a 'family member' of a person who is an Australian citizen, for paragraph 3(1)(e) of the *Social Security Legislation Amendment (Newly Arrived Resident's Waiting Periods and Other Measures) Act 1997* (the 1997 Act).

Benjamin applies for a visa subclass XYZ on 1 May 2011, is granted the visa on 1 October 2011 and enters Australia on 1 November 2011.

Benjamin applies for special benefit on 1 December 2011.

As his claim for special benefit is lodged prior to 1 January 2012, new subsection 739A(8) of the Social Security Act does not apply to Benjamin (paragraph 739A(8)(a)).

Therefore, paragraph 3(1)(e) of the 1997 Act applies to Benjamin and, if he is qualified for special benefit under section 729 of the Social Security Act, he will not be subject to the newly arrived resident's waiting period under section 739A (because of the operation of paragraph 3(1)(e) of the 1997 Act).

Benjamin remains on special benefit for three weeks. He finds casual employment on 20 December 2011 and, as a result, his special benefit is cancelled.

After three months, Benjamin's employment ends, and he claims special benefit again on 1 March 2012.

As his new claim for special benefit is lodged after 1 January 2012, new subsection 739A(8) of the Social Security Act applies to Benjamin in relation to that new claim (paragraph 739A(8)(a)).

Subsection 739A(8) has the effect that paragraph 3(1)(e) of the 1997 Act does not apply to Benjamin in relation to his new claim for special benefit. Therefore, if Benjamin is qualified for special benefit under section 729 of the Social Security Act, he will be subject to the newly arrived resident's waiting period under section 739A and special benefit will not be payable to Benjamin until the end of that period (unless an exception, other than paragraph 3(1)(e) or (g) of the 1997 Act, applies to his situation).

## **Schedule 3 – Impairment Tables for disability support pension**

### **Summary**

As part of the *Disability Support Pension – Better and Fairer Assessments* 2009-10 Budget measure, the Government undertook to update the *Tables for the Assessment of Work-related Impairment for Disability Support Pension* (the Impairment Tables) to ensure that they are consistent with contemporary medical and rehabilitation practice. This Schedule removes the current outdated Impairment Tables from 1 January 2012, and enables the Minister to introduce new Impairment Tables through a legislative instrument.

### **Background**

This measure was announced in the 2009-10 Budget. It is an important element of the Government's reforms to disability support pension to make it simpler, fairer and sustainable for those who need it.

Disability support pension provides income support to people who, because of an ongoing physical, intellectual or psychiatric impairment are prevented from working or from being re-trained for work. This qualification for disability support pension requires, amongst other things, that a person's impairment is of 20 points or more under the Impairment Tables.

The Impairment Tables are currently in Schedule 1B to the Social Security Act, and are used in the assessment of a person's work-related impairments. This assessment is used in determining a person's qualification for disability support pension.

An important element of the Government's reform of the disability support pension has been a comprehensive review, by medical and allied health experts and disability advocates, of the current Impairment Tables. Announced in the 2009-10 Budget, this will ensure the Impairment Tables are in line with contemporary medical and rehabilitation practices and modern expectations about functional ability. The Impairment Tables were last reviewed in 1993.

An Advisory Committee was established to oversee the review of the current Impairment Tables and provide advice on updating the Impairment Tables, drawing on consultations with the medical, allied health and rehabilitation sector, disability peak bodies, mental health advocates and relevant Government agencies.

This Schedule provides that the Minister may make a legislative instrument setting out the new Impairment Tables and guidelines containing the rules relating to the new Impairment Tables. The Minister has committed to consult widely on the introduction of the new Impairment Tables.

The placement of the Impairment Tables in a legislative instrument will enable the Impairment Tables to be updated regularly in response to developments in medical or rehabilitation practice.

The amendments made by this Schedule commence on 1 January 2012.

### **Explanation of the changes**

**Item 1** is consequential to the repeal of Schedule 1B to the Social Security Act by **item 4**. **Item 1** repeals the definition of 'Impairment Tables' in subsection 23(1) of the Social Security Act and substitutes a new definition of 'Impairment Tables' in subsection 23(1). The new definition of 'Impairment Tables' reflects the movement of the Impairment Tables from Schedule 1B to the Social Security Act to a legislative instrument made by the Minister under new subsection 26(1) as introduced by **item 2**.

**Item 2** inserts new sections 26 and 27. These new sections establish the framework for the new Impairment Tables.

New subsection 26(1) inserts a power for the Minister to make a legislative instrument containing tables relating to the assessment of work-related impairment for disability support pension and the rules for applying the tables. These will also be referred to as the 'Impairment Tables'.

New subsection 26(2) provides that an instrument made under subsection 26(1) may contain such ancillary or incidental provisions relating to the Impairment Tables as the Minister considers appropriate. 'Ancillary or incidental provisions' include rules that are applicable to a particular table in the Impairment Tables.

New subsection 26(3) provides that the Minister may, in a legislative instrument made under subsection 26(1), set out rules that must be complied with in applying the Impairment Tables and the ancillary or incidental provisions made under new subsections 26(1) and (2). Concepts fundamental to the determination of impairment ratings will be contained in the rules made under this new subsection.

New subsection 26(4) provides that an instrument made under subsection 26(1) may contain such ancillary or incidental provisions relating to the rules for applying the Impairment Tables as the Minister considers appropriate. 'Ancillary or incidental provisions' include rules that are relevant to the application of all of the Impairment Tables.

New section 27 sets out the regime for the application of the Impairment Tables and rules for applying the Impairment Tables.

New subsection 27(1) provides that if a person makes a new claim, or is taken to have made a new claim for disability support pension, the Impairment Tables to apply in determining whether the person is qualified for disability support pension are the Impairment Tables in effect at the date the person makes the claim, or is taken to have made the claim. This is so even if the Impairment Tables were amended within the 13 weeks of the date of claim.

The note to new subsection 27(1) refers the reader to sections 12, 13 and 15 of the *Social Security (Administration) Act 1999* (the Administration Act) and clause 4 of Schedule 2 to that Act. These provisions address when claims for disability support pension are taken to have been made.

New subsection 27(2) provides that if the Secretary makes a decision in relation to a claim referred to in subsection 27(1) (the original decision) and the Secretary, the Social Security Appeals Tribunal (the SSAT) or the Administrative Appeals Tribunal (the AAT) is reviewing the original decision or a later decision arising out of the original decision, the Secretary, the SSAT or the AAT must apply the Impairment Tables in effect at the date the person made the claim, or was taken to have made the claim.

The note to new subsection 27(2) informs the reader and clarifies that the effect of subsection 27(2) is that any change to the Impairment Tables between the date of making of a claim to the making of a decision on the review must be disregarded.

New subsection 27(3) provides that if a person is receiving disability support pension and the Secretary gives the person an assessment notice under subsection 63(2) ('Requirement to attend Department etc.'), or subsection 63(4) ('Requirement to undergo medical examination etc.'), of the Administration Act, in assessing the person's qualification for disability support pension, the Secretary must apply the Impairment Tables in force on the day that the assessment notice was given.

New subsection 27(4) provides that if, after assessing the person's qualification, the Secretary makes a determination under section 80 of the Administration Act to either cancel or suspend the person's payment of disability support pension, and the Secretary, the SSAT or the AAT reviews that determination or a later decision arising out of that determination, then the Secretary, the SSAT or the AAT must apply the Impairment Tables in effect at the date that the assessment notice was given.

The note to new subsection 27(4) informs the reader and clarifies that the effect of subsection 27(4) is that any change to the Impairment Tables between the giving of the assessment notice to the making of a decision on the review must be disregarded.

The effect of section 27 is to apply the Impairment Tables in force and fix the Impairment Tables in time for the consideration of a new claim or, where a person is already receiving disability support pension, a review of qualification, from the date of claim or review throughout any subsequent appeal process (if any) until the final determination of the claim or review.

**Item 3** repeals note 2 after subsection 94(1) and substitutes new note 2. The new note reflects the amendments to the Social Security Act which insert new section 26 and 27 and refers the reader to the new sections when considering Impairment Tables.

**Item 4** repeals the current Impairment Tables.

**Item 5** sets out the application provision which sets out the persons to whom the amendments made by this Schedule will apply.

**Subitem 5(1)** provides that, for the purposes of working out a person's qualification for disability support pension in respect of days on or after 1 January 2012, the changes made by items 1, 2 (to the extent that it inserts section 26 of the Social Security Act), 3, 4 and 5 apply. Therefore, the new Impairment Tables must be used after 1 January 2012 to work out qualification for disability support pension. The phrase 'working out a person's qualification' is sufficiently broad to include new claims, review of a person's qualification and reconsideration of a decision to suspend after 1 January 2012.

**Subitem 5(2)** provides that, if a claim for disability support pension is made, or is taken to have been made, before 1 January 2012 and the Secretary had not determined the claim before 1 January 2012, the changes made by items 1, 2 (to the extent that it inserts section 26 of the Social Security Act), 3, 4 and 5 do not apply in relation to working out a person's qualification for disability support pension in respect of days occurring on or before the day on which the Secretary determines the claim.

Therefore the new Impairment Tables cannot be used in respect of any claims made, or taken to have been made, before 1 January 2012 to work out qualification for disability support pension. The current Impairment Tables will apply to these claims.

**Subitem 5(3)** provides that the rules set out in subsections 27(1) and (2) apply to claims for disability support pension made, or taken to have been made, on or after 1 January 2012.

**Subitem 5(4)** provides that the rules set out in subsections 27(3) and (4) apply to a person receiving disability support pension on or after 1 January 2012 regardless of whether the person started to receive disability support pension, before, on or after 1 January 2012.

The note to **item 5** refers the reader to sections 12, 13 and 15 of the Administration Act and clause 4 of Schedule 2 to that Act. These provisions address when claims for disability support pension are taken to have been made.

The effect of the operation of clause 4 of Schedule 2 to the Administration Act in the following situation should be noted: if a person makes a claim on a date before 1 January 2012, is not qualified on the date of claim but becomes qualified within 13 weeks of the date of claim on a date after 1 January 2012, the effect of the operation of clause 4 of Schedule 2 to the Administration Act is that the claim is taken to have been made on the first day on which the person is qualified (that is, on a date after 1 January 2012). In these circumstances, the Impairment Tables to be applied to determine the person's qualification will be the Impairment Tables in force after 1 January 2012.

## **Schedule 4 – Disability advocacy services**

### **Summary**

This Schedule provides for the introduction of a third party certification quality assurance system for disability advocacy services. The new quality assurance system will provide greater assurances about the quality of disability advocacy support, by introducing mechanisms independent from government to assess the compliance of disability advocacy services against a tailored set of new Disability Advocacy Standards.

### **Background**

The need for improvement in the quality assurance system for disability advocacy agencies has been highlighted in a number of reviews. Most recently the 2005 Social Options review of the National Disability Advocacy Program noted that tailored Standards should be developed for advocacy agencies, and an independent system of auditing be introduced similar to that in place for employment services. Development of a robust, quality assured disability advocacy sector will help meet the objectives of the National Disability Strategy, and will also help meet Australia's obligations under the United Nations Convention on the Rights of Persons with Disabilities.

The current quality assurance system has not changed since 1997 and does not provide assurances about the quality of disability advocacy support being provided. Under the new quality assurance system, the compliance of disability advocacy services with the new Disability Advocacy Standards (which will be set out in a legislative instrument) is assessed by an independent certification body over a three year cycle. The quality assurance system is based on the Joint Accreditation System of Australian and New Zealand (JAS-ANZ), under which JAS-ANZ is the accreditation body that accredits certification bodies to undertake certification assessments of disability advocacy services. This third-party certification system has been successfully in place for disability employment services since 2002.

The new quality assurance system has been successfully trialled and independently evaluated in consultation with the disability advocacy services sector. The evaluation recommended formal implementation.

The amendments made by this Schedule commence the day after Royal Assent.

## Explanation of the changes

### ***Accreditation and certification***

**Items 3, 4, 5 and 6** of this Schedule make amendments to the *Disability Services Act 1986* (the Disability Services Act) that are relevant to accreditation and certification.

#### New section 6DA – Accredited certification body may give certificates of compliance to providers of advocacy services

**Item 6** inserts new section 6DA into the Disability Services Act. New section 6DA deals with certification of advocacy services. This provision is expressed in similar terms to existing sections 6D (employment services) and 6E (rehabilitation services) of the Disability Services Act.

New subsection 6DA(1) provides that, if an accredited certification body is requested by a State, or by an eligible organisation, to give the State, or eligible organisation, a certificate under this section in respect of a disability advocacy service being so provided by either the State or the eligible organisation, and if the accredited certification body is satisfied that the State or eligible organisation's disability advocacy service meets the advocacy standards, then the accredited certification body must issue a certificate of compliance to the State or eligible organisation stating that the advocacy standards have been met. This certificate is called a ***certificate of compliance***.

New subsection 6DA(2) provides that, in the circumstances where a State or eligible organisation holds a certificate of compliance but then ceases to meet the advocacy standards, the accredited certification body must, by written notice given to the State or eligible organisation, revoke the certificate.

New subsection 6DA(3) provides that, where an accredited certification body either gives, or revokes, a certificate of compliance for a State or eligible organisation, the accredited certification body must, as soon as practicable, notify the Secretary in writing of the reasons for either the giving of, or the revoking of, the certificate.

New subsection 6DA(4) provides that a certificate of compliance continues to be in force until it is revoked under new subsection 6DA(2) or, in a case where the accredited certification body that issued the certificate of compliance itself ceases to be accredited, until the end of the period of 3 months from the time that the certification body ceases to be accredited.

New subsection 6DA(5) makes it clear that a certificate made under subsection 6DA(1) is not a legislative instrument for the purposes of section 5 of the *Legislative Instruments Act 2003*. This provision is included to assist readers, as the instrument is not a legislative instrument within the meaning of section 5 of the Legislative Instruments Act. In other words, this provision is merely declaratory of the law.

Items **3**, **4** and **5** are consequential to item **6** and amend definitions in section 6A of the Disability Services Act.

**Item 3** inserts a reference to new section 6A in the definition of ‘certificate of compliance’. The definition of ‘certificate of compliance’ will apply to an accredited certification body that may give certificates of compliance in relation to advocacy services.

**Item 4** inserts a new subparagraph (ia) in the definition of ‘certifying functions’. Advocacy services must also comply with relevant key performance indicators set out in the disability advocacy standards.

**Item 5** amends paragraph (b) of the definition of certifying functions’ by including advocacy services.

The accompanying note explains to the reader that there is a minor amendment to the heading of section 6D which inserts the words ‘providers of employment services’ in place of ‘States or eligible organisation’.

### ***Convention***

**Item 9** inserts into section 7 of the Disability Services Act a new defined term, ‘Disabilities Convention’. ‘Disabilities Convention’ is defined as the Convention on the Rights of Persons with Disabilities done at New York on 13 December 2006 that was ratified by the Australian Government in 2008. This definition has been inserted into the Act to reflect that Australia is a party to the Convention.

The accompanying note informs the reader of where to find the text of the Convention.

### ***Advocacy services***

**Items 7, 8, 11, 12 and 23** make amendments relevant to the definition of and approval of additional advocacy services.

**Item 7** inserts a new definition of ‘advocacy service’ into section 7 of the Disability Services Act. This definition reflects the findings of the National Disability Advocacy Framework developed under the National Disability Agreement as enabling people with disability to participate in the decision-making processes that safeguard and advance their human rights as provided by the Disabilities Convention. There are three broad types of ‘advocacy service’, comprising two current types and a third type which could be approved by the Minister in the future.

The first type of advocacy service is a service that seeks to support persons with disabilities to exercise their rights and freedoms, being rights and freedoms recognised or declared by the Disabilities Convention through either one-to-one support between the service and the person with disability or through the service supporting the person with disability to advocate for themselves, whether individually, through a third party (for example, their guardian) or on a group basis (subsection 7(a) refers). This type of advocacy service is known as individual advocacy.

The second type of advocacy service is a service that seeks to introduce and influence long-term changes to ensure that the rights and freedoms of persons with disabilities (being rights and freedoms recognised or declared by the Disabilities Convention) are attained and upheld so as to positively affect the quality of the lives of persons with disabilities (subsection 7(b) refers). This type of advocacy service is known as systemic advocacy.

The third type of an advocacy service, and one that involves the Minister approving a new class of services, can be found in new subsection 7(c), which states that an advocacy service is a service that is included in a class of services that has been approved by the Minister under new section 9B of the Disability Services Act.

**Item 12** inserts new section 9B at the end of Division 1 of Part II of the Disability Services Act. New section 9B gives the Minister the power to approve a class of services for the purposes of paragraph (c) of the definition of 'advocacy service' (see **item 7**). The Minister may, by legislative instrument, approve a class of service if the Minister is satisfied that the provision of a service in that class of service would do two things: further the objects of the Act as set out in section 3 and the principles and objectives formulated under section 5, *and* further the implementation of the Disabilities Convention.

**Item 23** is consequential to **item 12**. **Item 23** amends paragraph 33(1)(ca) of the Disability Services Act. This provision inserts new paragraph 33(1)(caa) so that the Minister may delegate her or his power to approve additional advocacy services under new section 9B.

**Items 8** and **11** are consequential to **item 7**. **Item 8** repeals the current definition of the term 'advocacy services'. **Item 11** repeals paragraph (b) of the definition of 'eligible service' in section 7 of the Disability Services Act.

***Disability advocacy standards – introduction of the standards, failure to meet the applicable standards or hold a certificate of compliance***

Presently the Act provides for three sets of standards to be observed: eligibility standards to be observed by providers of eligible services; disability employment standards to be observed by providers of disability employment; and rehabilitation program standards to be observed by providers of rehabilitation programs.

**Items 1, 2 and 10** introduce standards applicable to providers of disability advocacy services. **Items 15, 16, 17 and 18** address the consequences for a provider if they fail to meet the standards or hold a certificate of compliance against the standards.

#### Introduction of the standards

**Item 10** inserts, into section 7 of the Disability Services Act, a definition of 'disability advocacy standards'. 'Disability advocacy standards' means the standards determined by the Minister under paragraph 5A(1)(ba) in relation to the provision of an advocacy service.

**Items 1 and 2** amend paragraph 5A(1)(b) and subsection 5A(2) of the Disability Services Act respectively.

**Item 1** inserts new paragraph 5A(1)(ba) in subsection 5A(1), and provides that the Minister may, by legislative instrument, determine that disability advocacy standards are to be observed when a provider or a service provides an 'advocacy service'.

**Item 2** inserts a reference to advocacy standards in subsection 5A(2) and provides that, once the Minister has determined standards in relation to advocacy standards (see **item 1**), the Minister must then, by legislative instrument, approve key performance indicators to be applied in assessing whether the standards have been observed.

#### Failure by the providers to meet the applicable standards or to hold a certificate of compliance

**Item 15** repeals subsections 14GA(1) and (2) of the Disability Services Act, and substitutes new subsections 14GA(1) and (2). The new subsections remove references to section 12AB (because this section is now spent) but refer to the new disability advocacy services.

New paragraph 14GA(1)(a) provides that new section 14GA (consequences of the failure to hold certificate of compliance) applies where an eligible organisation is receiving a grant of financial assistance in respect of the provisions of an employment service or a disability advocacy service *and* the organisation is in breach of the condition of grant as prescribed by subsection 12AD(5) (in respect of an employment service) or subsection 13(6) (in respect of an advocacy service).

New subsection 14GA(2) states that, where an organisation fails to hold a certificate of compliance, the Minister may make a declaration stating that the organisation is in breach of that condition of the grant of financial assistance (paragraph 14GA(2)(a) refers). New paragraph 14GA(2)(b) provides that the Minister's declaration will specify what actions will be taken as a result of the organisation's breach of that condition.

**Item 16** amends paragraph 14GA(3)(a) of the Disability Services Act. The amendment omits the words “specified under paragraph (2)(a)” and substitutes the phrase “referred to in subsection 12AD(5) or 13(5), as the case requires”. This amendment incorporates the introduction of advocacy services whilst maintaining the reference to employment services.

**Items 17**, inserts a provision that a declaration made under new subsection 14GA(2) is not a legislative instrument for the purposes of section 5 the *Legislative Instruments Act 2003* as it is not legislative in nature. This provision is included to assist readers, as the instrument is not a legislative instrument within the meaning of section 5 of the Legislative Instruments Act. In other words, this provision is merely declaratory of the law.

**Item 18** amends paragraph 14J(1)(a) by omitting the phrase “or an employment service” and substitutes the words “an employment service or an advocacy service” to incorporate the introduction of an advocacy service.

***Amendment to Division 2 of Part II of the Disability Services Act – Grants for eligible services and research and development activities***

**Item 13** amends subsection 12AE(4) of the Disability Services Act: the word “Part” is to be substituted by the word “Division”.

***New Division 3 of Part II of the Disability Services Act – Grants of financial assistance for disability advocacy services***

**Item 14** inserts new Division 3 after Division 2A of Part II of the Disability Services Act.

Part II of the Disability Services Act contains provisions relating to approval of grants of financial assistance for the provision of services.

New Division 3, which is inserted by **item 14**, deals with grants for advocacy services.

New section 13 sets out the conditions for approval of a grant of financial assistance for advocacy services.

New subsection 13(1) provides that the Minister may approve the making of a grant of financial assistance to a State, or to an eligible organisation, where the State or eligible organisation is providing disability advocacy services for persons included in the target group.

New subsection 13(2) sets out the criteria the Minister must take into account when approving a grant of financial assistance under new subsection 13(1).

First, the Minister must be satisfied that the making of the grant would further the objects of the Disability Services Act as set out in section 3 and the principles and objectives formulated under section 5 (new subparagraph 13(2)(a)(i) refers) *and* that the making of the grant would comply with the guidelines formulated under section 5 that are applicable to the making of grants under subsection 13(1) (new subparagraph 13(2)(a)(ii) refers).

In addition to both these criteria being fulfilled, the State or eligible organisation (as applicable) must already hold a current certificate of compliance in respect of a disability advocacy service, *or* the Minister must have determined a day (under new section 13) by which the State or eligible organisation must obtain a certificate of compliance, and the State or eligible organisation must have given a written undertaking to obtain its certificate by that date.

New subsections 13(3) and 13(4) relate to Ministerial determinations. New subsection 13(3) provides that the Minister may make a determination specifying a day for the purposes of subparagraph 13(2)(b)(ii). That is, the Minister may make a determination specifying a day by which the State or organisation must obtain their certificate of compliance.

New subsection 13(4) applies where subparagraph 13(2)(b)(ii) applies. This new subsection provides that the Minister may vary a determination under subsection 13(3) to specify a later day in which a State or eligible organisation may obtain its certificate of compliance in respect of the advocacy service it provides. The Minister cannot specify a date later than 18 months after the day on which the grant of financial assistance is approved.

The date of grant of financial assistance may be made on a different day to the determination under subparagraph 13(2)(b)(ii). Subsection 13(4) ensures that the State or eligible organisation has 18 months in which to obtain its certificate of compliance from the date of grant. This provision takes into account that a service may need that timeframe to meet the new Standards in order to obtain its certificate of compliance.

New subsection 13(5) sets out statutory conditions which attach to a grant of financial assistance in relation to the period of time a State or eligible organisation must hold a certificate of compliance. Subject to new paragraphs 13(5)(a) and 13(5)(b), a grant of financial assistance can only be made to a State or eligible organisation which is providing an advocacy service where the State or eligible organisation holds a current certificate of compliance in respect of that advocacy service.

If a State or eligible organisation holds a current certificate of compliance in respect of an advocacy service at the time the grant of financial assistance is approved, new paragraph 13(5)(a) provides that the State or eligible organisation must continue to hold a certificate of compliance for the entire period to which the grant of financial assistance relates.

If a grant of financial assistance to a State or eligible organisation for an advocacy service is approved, and the State or eligible organisation does not hold a certificate of compliance at the time the grant of financial assistance is approved, the State or eligible organisation must obtain a certificate of compliance by, or before, the day determined by the Minister and continue to hold the certificate of compliance for so much of remaining period to which the grant relates (new subparagraphs 13(5)(b)(i) and (ii)).

New subsection 13(6) makes it clear that approvals and determinations made under new subsection 13(1) and new subsection 13(3) are not legislative instruments for the purposes of section 5 of the *Legislative Instruments Act 2003* as they are not legislative in nature. This provision is included to assist readers, as the instrument is not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act*. In other words, this provision is merely declaratory of the law.

New section 14 provides for ancillary provisions relating to grants of financial assistance in respect of disability advocacy services.

New subsection 14(1) provides that without limiting the power the Minister has to approve a grant of financial assistance in relation to the provision of a disability advocacy service under new subsection 13(1). The Minister may also approve a grant of financial assistance in relation to any of the following matters:

- recurrent expenditure incurred or to be incurred by (new paragraph 14(1)(a));
- the cost of acquiring land (with or without buildings) (new paragraph 14(1)(b));
- the cost of acquiring, erecting, altering or extending buildings – new paragraph 14(1)(c);
- the costs of acquiring, altering or installing equipment – new paragraph 14(1)(d).

New subsection 14(2) provides that, wherever the Minister approves the making of a grant of financial assistance under new subsection 13(1), subject to new subsection 14(4) and the regulations, the Minister must also determine:

- the amount of financial assistance or the manner in which the amount of the financial assistance is to be calculated (new paragraph 14(2)(a));
- the time, or times, at which the instalments (if any) in which the financial assistance is to be paid (new paragraph 14(2)(b)); and
- any other terms and conditions on which the financial assistance is granted (new paragraph 14(2)(c)).

New subsection 14(3) provides examples of the types of terms and conditions the Minister may wish to incorporate into a grant of financial assistance. The list provided is not exhaustive and does not limit the operation of new paragraph 14(2)(c).

New subsection 14(4) provides that, in the event that a grant of financial assistance is paid under Division 3 of Part II by instalments, all monies to be paid by instalments must be paid to the disability advocacy service within 5 years after the approval of the making of the grant of financial assistance.

New subsection 14(5) makes it clear that a determination made by the Minister under new subsection 14(2) is not a legislative instrument for the purposes of section 5 of the *Legislative Instruments Act 2003* as it is not legislative in nature. This provision is included to assist readers, as the instrument is not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act*. In other words, this provision is merely declaratory of the law.

#### ***Amendments to Division 4 of Part II of the Disability Services Act — miscellaneous***

**Items 19, 20, 21 and 22** make consequential amendments to various sections in Division 4 of Part II of the *Disability Services Act* (which contains miscellaneous provisions).

**Item 21** repeals subsection 14K(2) of the *Disability Services Act*. Subsection 14K(2) has been repealed because there are no longer any transitional employment services. **Item 19** is consequential upon **item 21** and omits the reference to subsection (1) from section 14K.

The accompanying note informs the reader that the heading to section 14K will be amended by omitting the phrase “Division 2, or Subdivision A of Division 2A, of” to reflect that section 14K will be retitled “Review of services funded under Part II”.

**Item 20** omits the words “or an employment service” from subsection 14K(1) and substitutes the words “an employment service or an advocacy service”.

**Item 22** omits the words “or an employment service” from paragraph 15(4)(a) and substitutes the words “an employment service or an advocacy service”.

### ***Saving provisions***

**Item 24** is a saving provision in relation to accrediting authorities. A current accrediting authority will remain accredited under section 6B of the Disability Services Act despite the amendments made by this Schedule. Further, any accreditations made under section 6C by the authority will continue to be in force. Therefore the amendments made by items 4 and 5 have no effect on the validity of any approval or accreditation in force immediately before the commencement of items 4 and 5.

**Item 25** is a saving provision in relation to existing grants in respect of advocacy services. The Disability Services Act, as in force immediately before the commencement of this Schedule, continues to apply on and after the commencement in relation to grants of financial assistance approved before that commencement in respect of advocacy services.

**Item 26** is a saving provision in relation to existing declarations of failure to hold a certificate of compliance. Any declarations made under subsection 14GA(2) of the Act in effect at the time the amendments made by this Schedule come into effect, continue to have effect on and after the commencement of new subsection 14GA(2).

## Schedule 5 – Asset-test exempt income streams

### Summary

This Schedule makes a number of amendments aimed at enhancing and improving the integrity of treatment of certain asset-test exempt income streams.

### Background

Under the social security law, lifetime and life expectancy income streams receive concessional treatment for the assets test provided they meet the requirements under sections 9A and 9B of the Social Security Act. This means that the asset value of the income stream is not taken into account when determining whether a social security payment is payable to a person.

Similarly, the *Veterans' Entitlements Act 1986* (the Veterans' Entitlements Act), in sections 5JA and 5JB, also extends a concessional treatment under its assets test when the equivalent requirements are met.

Over time, the effectiveness of the policy measures designed to ensure that the requirements of sections 9A and 9B under the social security law (and sections 5JA and 5JB of the Veterans' Entitlements Act) are being met has been reduced in relation to the operation of self managed superannuation funds (SMSFs) and small APRA funds (SAFs). This has resulted in inequity between social security recipients and veterans' affairs pensioners, as inconsistencies in the treatment of these products has led to some social security recipients and veterans' affairs pensioners receiving concessions and a higher rate of social security or veterans' entitlements payment without meeting their reciprocal responsibilities.

The amendments in this Schedule are intended to strengthen the existing income stream rules and clarify existing policy in relation to these products.

Social security recipients and veterans' affairs pensioners who have lifetime or life expectancy income streams are required to provide the Secretary with an actuarial certificate stating that there is a high probability that the provider of the income stream will be able to pay the income stream as required under the contract or governing rules for the term of the income stream. The *Social Security (Actuarial Certificate – Life Expectancy Income Stream Guidelines) Determination 2003* and the *Social Security (Actuarial Certificate – Lifetime Income Stream Guidelines) Determination 2003* provide guidelines on what constitutes a high probability or positive opinion that the provider of the income stream will be able to pay the income stream as required under the contract or governing rules, in order for that income stream to be an asset-test exempt income stream.

The equivalent instruments under the Veterans' Entitlements Act are the *Veterans' Entitlements (Actuarial Certificate – Life Expectancy Income Stream Guidelines) Determination 2009* and the *Veterans' Entitlements (Actuarial Certificate – Lifetime Income Stream Guidelines) Determination 2009*.

As a general rule, the period in which these certificates are in force, for social security and veterans' entitlements purposes, is 12 months. Customers have a 26 week period from the date their current actuarial certificate ceases to be in force in which to provide a new certificate.

Due to changes in economic and market conditions, the probability that a provider of an income stream will be able to pay the income stream as required under the contract or governing rules could fluctuate quite markedly, even over a short period of time. As a result, some social security customers provide the Secretary (and, in similar circumstances, veterans' affairs pensioners to provide the Repatriation Commission) with actuarial certificates that fail to meet the high probability test (which results in their income stream becoming subject to the assets test) within the 26 week grace period, until they obtain a favourable certificate that meets the high probability test.

This Schedule clarifies that SMSFs and SAFs can only give the Secretary (or the Repatriation Commission) one actuarial certificate for each financial year to show that the fund has sufficient resources to pay an income stream for its term. In the event that a person gives the Secretary (or the Repatriation Commission) more than one certificate for a particular financial year, only the first certificate given will have effect, not any of the subsequent certificates. If the first actuarial certificate does not meet the high probability test, the income stream will lose its asset-test exemption.

This Schedule also clarifies that the grace period in which a person must provide a new actuarial certificate for an income stream applies from the beginning of the particular financial year (that is, from 1 July) and ends either when a new actuarial certificate is given to the Secretary (or the Repatriation Commission) in relation to that income stream for that financial year, or at the end of the period of 26 weeks beginning on 1 July of that financial year. If a person does not give the Secretary (or the Repatriation Commission) a new actuarial certificate in relation to the income stream by the end of the 26 week period, the income stream will lose its asset-test exemption.

The amendments made by this Schedule commence the day after Royal Assent.

## Explanation of the changes

### **Part 1 - Amendments**

#### Amendments to the Social Security Act

**Item 1** makes a minor technical amendment to paragraph 9A(1)(b) as a result of the amendment made by **item 5**.

**Items 2 and 7** remove the words 'in the actuary's opinion' from paragraphs 9A(1)(b) and 9B(1A)(b) respectively, and replace them with 'the actuary is of the opinion that, for the financial year in which the certificate is given'. These amendments clarify that the actuarial certificate must state that in the actuary's opinion, for the financial year in which the certificate is given, there is a high probability that the provider of the income stream will be able to pay the income stream as required under the contract or governing rules.

The reason for basing the actuarial certificate on the financial position of the fund as at 30 June of the previous financial year is to align this requirement under the social security law with Part 4 of the *Superannuation Industry (Supervision) Act 1993* (the SIS Act). Under the SIS Act, trustees of superannuation funds (which includes SMSFs and SAFs) are required to prepare an annual operating statement and an annual statement of the financial position of the fund for the previous financial year. By linking the actuarial certificate to the financial year, the requirement for an actuarial certificate under the Social Security Act will not create an additional regulatory burden, as trustees are already required to prepare an operating statement for the financial year from which the actuarial assessment can subsequently be prepared.

**Items 3 and 8** add a note at the end of subsections 9A(1) and 9B(1A) respectively to alert readers that, for paragraphs 9A(1)(b) and 9A(1A)(b), the term 'financial year' means a period of 12 months commencing on 1 July.

**Items 4** repeals subsections 9A(1C) and replaces it with a new subsection 9A(1C). New subsection 9A(1C) provides an exception for lifetime income streams, in certain circumstances, if no actuarial certificate is in force.

New subsection 9A(1C) provides that if, on 30 June in a financial year, there is in force an actuarial certificate that is referred to in paragraph 9A(1)(b), then paragraph 9A(1)(b) does not apply in relation to the next financial year (the *later year*) for a specific period of time. That is, the requirement that the Secretary is satisfied that there is in force a current actuarial certificate (which states that, in the actuary's opinion, there is a high probability that the provider of the income stream will be able to pay the income stream as required under the contract or governing rules) will not apply for a defined period of time. This period begins on 1 July of the later year and ends either at the start of the first day that any actuarial certificate is given to the Secretary for that income stream in that later year or at the end of a period of 26 weeks beginning on 1 July of the later year, whichever is earlier.

Accordingly, if on 30 June in a financial year an actuarial certificate is in force for an income stream that is asset-test exempt, the income stream will continue to be asset-test exempt for the next financial year (the later year) until the earlier of the start of the first day the Secretary is given a new actuarial certificate that relates to the later year, or the end of the 26 week period which commenced on 1 July of the later year.

**Item 5** inserts new subsection 9A(1D) which makes it clear that, for the purposes of paragraph 9A(1)(b), the Secretary will only accept one actuarial certificate for each financial year in relation to a lifetime income stream. In the event that a social security recipient provides further new actuarial certificates for the same financial year for that income stream, these certificates will have no effect on whether the income stream meets the high probability test or not. If the first actuarial certificate given to the Secretary fails to meet the high probability test the income stream will lose its asset-test exemption and become subject to the assets test. Once the income stream loses its asset-test exemption it will not be able to regain the exemption at a later date.

For example, a customer provides the Secretary with an actuarial certificate dated 21 October 2012 which states that in the actuary's opinion there is only a 49 percent probability that the provider of the income stream will be able to pay the income stream as required under the contract or governing rules. (Guidelines for what constitutes a high probability that the provider of the income stream will be able to pay the income stream as required under the contract or governing rules in order for that income stream to be an asset-test exempt income are provided by the *Social Security (Actuarial Certificate—Life Expectancy Income Stream Guidelines) Determination 2003* and the *Social Security (Actuarial Certificate—Lifetime Income Stream Guidelines) Determination 2003*). As a result of the income stream failing to meet the high probability test, the income stream loses its asset-test exempt status. However, on 15 December 2012 the customer provides the Secretary with a further actuarial certificate which states that, in the actuary's opinion, there is a 75 percent probability that the provider of the income stream will be able to pay the income stream as required under the contract or governing rules. Although the second actuarial certificate meets the high probability test, the Secretary cannot accept this certificate as the Secretary has already received an actuarial certificate for the 2012-13 financial year. As a result, the income stream will be asset tested for the purposes of the assets test under the social security law and cannot regain its asset-test exemption.

**Item 6** makes a minor technical amendment to paragraph 9B(1A)(b) due to the amendment made by **item 10**.

The amendments made by **items 9 and 10** have the same effect on life expectancy income streams under section 9B as **items 4 and 5** have on lifetime income streams under section 9A of the Social Security Act.

The note at the end of **item 9** signposts the insertion of a heading to subsection 9B(1D).

## Amendments to the Veterans' Entitlements Act

**Item 11** makes a minor technical amendment to paragraph 5JA(1)(b) to insert a reference to new subsection 5JA(1D) due to the amendment made by **item 15**.

**Items 12 and 17** remove the words 'in the actuary's opinion' from paragraphs 5JA(1)(b) and 5JB(1A)(b) respectively and replaces them with 'the actuary is of the opinion that, for the financial year in which the certificate is given'. These amendments clarify that the actuarial certificate must state that in the actuary's opinion, for the financial year in which the certificate is given, there is a high probability that the provider of the income stream will be able to pay the income stream as required under the contract or governing rules.

The reason for basing the actuarial certificate on the financial position of the fund as at 30 June of the previous financial year is to align this requirement under the Veterans' Entitlements Act with Part 4 of the *Superannuation Industry (Supervision) Act 1993* (the SIS Act). Under the SIS Act, trustees of superannuation funds (which includes SMSFs and SAFs) are required to prepare an annual operating statement and an annual statement of the financial position of the fund for the previous financial year.

By linking the actuarial certificate to the financial year, the requirement for an actuarial certificate under the Veterans' Entitlements Act will not create an additional regulatory burden, as trustees are already required to prepare an operating statement for the financial year from which the actuarial assessment can subsequently be prepared.

**Items 13 and 18** add a note at the end of subsections 5JA(1) and 5JB(1A) respectively to alert readers that, for paragraphs 5JA(1)(b) and 5JB(1A)(b), the term 'financial year' means a period of 12 months commencing on 1 July.

**Items 14** repeals subsections 5JA(1C) and replaces it with a new subsection 5JA(1C). New subsection 5JA(1C) provides an exception for lifetime income streams, in certain circumstances, if no actuarial certificate is in force.

New subsection 5JA(1C) provides that if, on 30 June in a financial year, there is in force an actuarial certificate that is referred to in paragraph 5JA(1)(b), then paragraph 5JA(1)(b) does not apply in relation to the next financial year (the *later year*) for a specific period of time.

That is, the requirement that the Repatriation Commission is satisfied that there is in force a current actuarial certificate that states in the actuary's opinion there is a high probability that the provider of the income stream will be able to pay the income stream as required under the contract or governing rules will not apply for a defined period of time.

This period begins on 1 July of the later year and ends either at the start of the first day that any actuarial certificate is given to the Repatriation Commission for that income stream in that later year or at the end of a period of 26 weeks beginning on 1 July of the later year, whichever is earlier.

Accordingly, if on 30 June in a financial year an actuarial certificate is in force for an income stream that is asset-test exempt, the income stream will continue to be asset-test exempt for the next financial year (the later year) until the earlier of the start of the first day the Repatriation Commission is given a new actuarial certificate that relates to the later year, or the end of the 26 week period which commenced on 1 July of the later year.

**Item 15** inserts new subsection 5JA(1D) which makes it clear that, for the purposes of paragraph 5JA(1)(b), the Repatriation Commission will only accept one actuarial certificate for each financial year in relation to a lifetime income stream.

In the event that a veterans' affairs pensioner provides further new actuarial certificates for the same financial year for that income stream, these certificates will have no effect on whether the income stream meets the high probability test or not. If the first actuarial certificate given to the Repatriation Commission fails to meet the high probability test, the income stream will lose its asset-test exemption and become subject to the assets test. Once the income stream loses its asset-test exemption it will not be able to regain the exemption at a later date.

For example, a customer provides the Repatriation Commission with an actuarial certificate dated 21 October 2012 which states that in the actuary's opinion there is only a 49 percent probability that the provider of the income stream will be able to pay the income stream as required under the contract or governing rules. (Guidelines for what constitutes a high probability that the provider of the income stream will be able to pay the income stream as required under the contract or governing rules in order for that income stream to be an asset-test exempt income are provided by the *Veterans' Entitlements (Actuarial Certificate—Life Expectancy Income Stream Guidelines) Determination 2009* and the *Veterans' Entitlements (Actuarial Certificate—Lifetime Income Stream Guidelines) Determination 2009*). As a result of the income stream failing to meet the high probability test, the income stream loses its asset-test exempt status. However, on 15 December 2012 the customer provides the Repatriation Commission with a further actuarial certificate that states in the actuary's opinion there is a 75 percent probability that the provider of the income stream will be able to pay the income stream as required under the contract or governing rules. Although the second actuarial certificate meets the high probability test, the Repatriation Commission cannot accept this certificate as the Repatriation Commission has already received an actuarial certificate for the 2012-13 financial year. As a result, the income stream will be asset tested for the purposes of the assets test under the Veterans' Entitlements Act and cannot regain its asset-test exemption.

**Item 16** makes a minor technical amendment to paragraph 5JB(1A)(b) to insert a reference to new subsection 5JB(1E) due to the amendment made by **item 20**.

The amendments made by **items 19 and 20** have the same effect on life expectancy income streams under section 5JB as **items 14 and 15** have on lifetime income streams under section 5JA of the Veterans' Entitlements Act.

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

**Item 21** is an application and transitional provision for the amendments made under Part 1 of this Schedule.

**Subitem 21(1)** provides that the amendments made by items 2, 5, 7, 10, 12, 15, 17 and 20 apply in relation to the financial year beginning on 1 July 2012 and all later financial years.

**Subitem 21(2)** provides that the amendments made by items 4, 9, 14 and 19 apply in relation to the financial year ending on 30 June 2012 and all later financial years.

**Subitem 21(3)** provides a transitional rule for income streams that have an actuarial certificate that is in force in relation to the financial year ending on 30 June 2012. The effect of this provision is that an actuarial certificate that is currently in force for an income stream (immediately before the commencement of this item) will continue to be in force until 30 June 2012, at which time a person will need to obtain a new actuarial certificate for the next financial year commencing 1 July 2012. The period in which a person must provide the new actuarial certificate is provided by the amendments made by items 4, 9, 14 and 19

For example, John obtained and gave the Secretary an actuarial certificate which stated that, in the actuary's opinion, there was a high probability that the provider of the income stream would be able to pay the income stream as required under the governing rules for the next 12 months (in this instance, for the period 17 August 2011 to 16 August 2012). John's income stream has been assessed as being asset-test exempt. However, due to the amendments being made by this Schedule, John must now obtain a new actuarial certificate which states, in the actuary's opinion, what the probability of the income stream provider being able to pay the income stream is, for the financial year 1 July 2012 to 30 June 2013. Although John has 26 weeks in which to provide the certificate, the period it relates to must be for the 2012-2013 financial year (that is, 1 July 2012 to 30 June 2013, not 17 August 2012 to 16 August 2013).

## **Schedule 6 – Termination payments**

### **Summary**

This Schedule clarifies that payments made by an employer to an employee in lieu of notice of termination are regarded as redundancy payments for the purposes of the social security law.

### **Background**

The Social Security Act provides for an income maintenance period to be applied to people who have claimed, or are in receipt of, certain social security payments and who have received a redundancy or leave payment. The income maintenance period is the period in which redundancy payments, or leave payments, are treated as income under the Act. Income maintenance periods are applied because people who receive leave or redundancy payments from their employer are expected to use these payments to support themselves for a period before turning to the social security system for assistance.

The amendments made by this Schedule clarify that a payment made to a person in lieu of notice of the termination of their employment is a 'redundancy payment' for the purposes of the Social Security Act. The effect of this is that a payment in lieu of notice will be included when calculating whether the person has to serve an income maintenance period, and the length of that period.

The changes made by this Schedule ensure that people who receive payments in lieu of notice are treated in the same way as people who receive other types of redundancy or termination payments.

The amendments made by this Schedule apply to payments in lieu of notice made on or after the commencement of this Schedule. The Schedule commences on the day after Royal Assent.

### **Explanation of the changes**

**Item 1** amends the definition of 'redundancy payment' contained in point 1064-F14 of Pension Rate Calculator A in the Social Security Act to refer specifically to a payment in lieu of notice, with the effect that a payment in lieu of notice is a redundancy payment for the purposes of working out the rate of disability support pension for a person who has turned 21 or who has not turned 21 but has one or more dependent children.

**Item 2** amends the definition of ‘redundancy payment’ contained in point 1066A-G14 of Pension Rate Calculator D in the Social Security Act to refer specifically to a payment in lieu of notice, with the effect that a payment in lieu of notice is a redundancy payment for the purposes of working out the rate of disability support pension for a person who has not turned 21 and has no dependent children.

**Item 3** amends the definition of ‘redundancy payment’ contained in point 1067G-H19 of the Youth Allowance Rate Calculator in the Social Security Act to refer specifically to a payment in lieu of notice, with the effect that a payment in lieu of notice is a redundancy payment for the purposes of working out the rate of youth allowance for a person.

**Item 4** amends the definition of ‘redundancy payment’ contained in point 1067L-D15 of the Austudy Payment Rate Calculator in the Social Security Act to refer specifically to a payment in lieu of notice, with the effect that a payment in lieu of notice is a redundancy payment for the purposes of working out the rate of austudy payment for a person.

**Item 5** amends the definition of ‘redundancy payment’ contained in point 1068-G7AQ of Benefit Rate Calculator B in the Social Security Act to refer specifically to a payment in lieu of notice, with the effect that a payment in lieu of notice is a redundancy payment for the purposes of working out the rate of newstart allowance, sickness allowance, partner allowance, mature age allowance (under Part 2.12B of the Act) or widow allowance for a person.

**Item 6** amends the definition of ‘redundancy payment’ contained in point 1068A-E12 of the Pension PP (Single) Rate Calculator in the Social Security Act to refer specifically to a payment in lieu of notice, with the effect that a payment in lieu of notice is a redundancy payment for the purposes of working out the rate of parenting payment (single) for a person.

**Item 7** amends the definition of ‘redundancy payment’ contained in point 1068B-D18 of the Benefit PP (Partnered) Rate Calculator in the Social Security Act to refer specifically to a payment in lieu of notice, with the effect that a payment in lieu of notice is a redundancy payment for the purposes of working out the rate of parenting payment (partnered) for a person.

**Item 8** is an application provision, and provides that the amendments made by this Schedule apply in relation to payments in lieu of notice made on or after the commencement of the Schedule. The Schedule will commence on the day after Royal Assent.