Social Security Legislation Amendment (Improved Support for Carers) (Consequential and Transitional) Bill 2009

No.  , 2009

(Families, Housing, Community Services and Indigenous Affairs)

A Bill for an Act to amend the Social Security Act 1991, and for related purposes
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i Social Security Legislation Amendment (Improved Support for Carers) (Consequential and Transitional) Bill 2009 No. , 2009
A Bill for an Act to amend the *Social Security Act 1991*, and for related purposes

The Parliament of Australia enacts:

1 **Short title**

This Act may be cited as the *Social Security Legislation Amendment (Improved Support for Carers) (Consequential and Transitional) Act 2009*.

2 **Commencement**

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

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<td>1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table</td>
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<td>2. Schedules 1, 2 and 3</td>
<td>Immediately after the commencement of the Social Security Legislation Amendment (Improved Support for Carers) Act 2009.</td>
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1. 
2. 
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Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

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

### 3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.
Schedule 1—Amendment of the Social Security Act 1991

1 Subsection 197(1)

Insert:

care child means:
(a) a sole care child; or
(b) a combined care child; or
(c) a multiple care child.

2 Subsection 197(1)

Insert:
combined care child has the meaning given by subsection (4).

3 Subsection 197(1) (definition of guardian)

Repeal the definition.

4 Subsection 197(1)

Insert:
multiple care child has the meaning given by subsection (5).

5 Subsection 197(1)

Insert:
parent of:
(a) a child with a severe disability or severe medical condition;
or
(b) a child with a disability or medical condition; or
(c) a child who has a terminal condition;
includes a person who has been granted guardianship of the child
under a law of the Commonwealth, a State or a Territory.

6 Subsection 197(1)

Insert:
sole care child has the meaning given by subsections (2) and (3).
7 Subsection 197(3)

Repeal the subsection, substitute:

Sole care child

(2) Subject to subsections (6) and (7), a person with a severe disability or severe medical condition is a **sole care child** if the provisions listed in one of the following paragraphs apply in relation to him or her as a care receiver:

(a) paragraphs 197B(1)(a), (b) and (c);
(b) subparagraph 197G(1)(a)(i) and paragraphs 197G(1)(b) and (c);
(c) paragraphs 197H(1)(a) and (b).

(3) Subject to subsection (7), a person who has a terminal condition is a **sole care child** if paragraphs 197E(1)(a) and (b) apply in relation to the person as a care receiver. For the purposes of this subsection, assume that paragraph 197E(1)(a) continues to apply in relation to the person if:

(a) the person has turned 16; and
(b) subsection 197E(2) applies in relation to him or her as a care receiver.

Combined care child

(4) Subject to subsections (6) and (7), a person with a disability or medical condition is a **combined care child** if the provisions listed in one of the following paragraphs apply in relation to him or her as a care receiver or as one of 2 or more care receivers:

(a) paragraphs 197C(1)(a), (b) and (c);
(b) subparagraph 197G(1)(a)(ii) and paragraphs 197G(1)(b) and (c);
(c) paragraphs 197H(1)(a) and (b).

Multiple care child

(5) Subject to subsections (6) and (7), a person with a disability or medical condition is a **multiple care child** if the provisions listed in one of the following paragraphs apply in relation to him or her as a care receiver or as one of 2 or more care receivers:
(a) subparagraph 197D(1)(a)(ii) and paragraphs 197D(1)(b) and (c);
(b) subparagraph 197G(1)(a)(ii) and paragraphs 197G(1)(b) and (c);
(c) paragraphs 197H(1)(a) and (b).

Person may be over 16

(6) For the purposes of subsections (2), (4) and (5), assume that paragraph 197B(1)(a) or 197C(1)(a), subparagraph 197D(1)(a)(ii) or paragraph 197G(1)(b) or 197H(1)(b) (as the case requires) continues to apply in relation to the person if:
(a) the person has turned 16; and
(b) the person has not been assessed and rated and given a score under the Adult Disability Assessment Tool.

Constant care

(7) If section 197F applies in relation to the person as a care receiver or as one of 2 or more care receivers, it does not matter that the care provided for the person is not constant care.

8 At the end of section 197F
Add:

Application of income and assets tests

(5) In applying the income and assets tests under section 198A or 198D in working out whether a parent qualifies under section 197B, 197C, 197D, 197E, 197G or 197H because of this section, disregard the other parent for the purposes of the following:
(a) subsections 198B(1B) and 198D(1A), (1C) and (1DA);
(b) subparagraph 198N(5)(aa)(ii);
(c) paragraphs (b), (d) and (e) of the definition of FPC in subsection 198N(6).

9 Section 198AAA
Repeal the section, substitute:
198AAA Continuation of qualification when person receiving care admitted to institution

(1) This section applies if:

(a) carer payment is payable:

(i) to a person who has ordinarily been providing constant care for a care receiver or care receivers; or

(ii) because of section 197F, to a person who has ordinarily been providing care for a care receiver or care receivers; and

(b) the person would, apart from this section, cease to be qualified for the payment because he or she ceases to provide constant care (or, if section 197F applies to the person, care) for the care receiver or any of the care receivers as a result of the care receiver being admitted permanently to an institution where care is provided for the care receiver.

(2) The person remains qualified for the carer payment during the 14 weeks after the care receiver is admitted permanently to an institution.

10 Section 198AB

Repeal the section, substitute:

198AB Care not required to be in private residence during portability period

(1) This section applies if a person:

(a) is qualified for a carer payment; and

(b) is absent from Australia for a period:

(i) throughout which Division 2 of Part 4.2 applies to the person; and

(ii) that is before the end of the person’s portability period for carer payment (within the meaning of that Division).

(2) The person does not cease to be qualified for a carer payment:

(a) merely because the constant care for the care receiver or care receivers is not provided in a private residence that is the home of the care receiver or care receivers; or

(b) if the person is qualified because of section 197F—merely because the care for the care receiver or care receivers is not
provided in a private residence that is a home of the care
receiver or care receivers.

11 Paragraph 198AC(1)(a)

Repeal the paragraph, substitute:

(a) a person is qualified (except under section 197G or 197H) for
a carer payment:

(i) because the person is personally providing constant care
for a care receiver or care receivers; or

(ii) if the person is qualified because of section 197F—
because the person is personally providing care for care
receivers; and

12 Subsection 198AC(2)

Repeal the subsection, substitute:

(1A) Subject to subsections (3) and (3A), if:

(a) a person is qualified for a carer payment:

(i) under section 197G or 197H because the person is
personally providing constant care for a care receiver or
care receivers; or

(ii) under section 197G or 197H because of section 197F
because the person is personally providing care for care
receivers; and

(b) the person temporarily ceases to provide that care for the care
receiver or care receivers;

the person does not cease to be qualified for the carer payment
merely because of that cessation.

Continuation of payment after hospitalisation—section 198AA
ceases to apply

(2) Subject to subsections (3) and (3A), if:

(a) a person is qualified for a carer payment under
section 198AA because the person is participating in the care
of an adult or child in hospital; and

(b) apart from this subsection, the person would later cease to be
qualified for carer payment under that section; and

(c) either:
Schedule 1 Amendment of the Social Security Act 1991

(i) the person would not cease to be qualified for a carer payment if the person were providing constant care for the adult or child, or the adult or child and another person; or

(ii) if the person qualified under section 198AA because of section 197F—the person would not cease to be providing care for the adult or child, or the adult or child and another person;

the person does not cease to be qualified for carer payment merely because of the lack of provision of that care.

13 Subsection 198AC(3)

Omit “However”, substitute “Subject to subsection (3B)”.

14 After subsection 198AC(3)

Insert:

(3A) The period (or the sum of the periods) for which subsection (1A) or (2) (or a combination of those subsections) can apply to the person in a calendar year is the number of whole days worked out in accordance with the formula:

$$\frac{\text{Carer payment period}}{\text{Number of days in calendar year}} \times \text{Limit}$$

where:

**carer payment period**, in relation to a calendar year, means:

(a) if only 197G applied to the person to any extent in the calendar year—the number of days in the period determined under that section that fall in the calendar year; or

(b) if sections 197G and 197H applied to the person to any extent in the calendar year—the number of days worked out by adding the days in each period determined under those sections to the extent that those days fall in the calendar year.

It does not matter whether section 197G or 197H (or both of them) apply because of section 197F or not.

**limit**, in relation to a calendar year, means:

(a) 63 days; or

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(b) another number of days in the calendar year that the Secretary, for any special reason in the particular case, decides to be appropriate.

(3B) If:

(a) because of subsection (1A), the person does not cease to be qualified in a calendar year for a carer payment under section 197G or 197H for a care receiver or care receivers; and

(b) the number of days (the qualifying days) for which the person does not cease to be qualified (whether under subsection (1A) or (2), or a combination of them) in the calendar year is not more than the number of days worked out under subsection (3A) in relation to the person; and

(c) subsequently in the calendar year, the person begins to qualify for a carer payment because of section 197J for the care receiver or care receivers;

subsection (3) applies as if the periods referred to in whichever of paragraphs (a) and (b) of that subsection apply were reduced by the number of qualifying days.

15 Subsection 198B(1B)

Omit "profoundly disabled child, or a disabled child,", substitute “sole care child, combined care child or multiple care child”.

Note: The heading to subsection 198B(1B) is replaced by the heading "Taxable income of sole care child, combined care child or multiple care child".

16 Subsection 198B(1B)

Omit “is a disabled child”, substitute “is a combined care child or a multiple care child”.

17 At the end of subsection 198B(1B)

Add:

Note: See also subsection 197F(5).

18 Paragraph 198B(1BA)(a)

After “care receiver”, insert “or other care receivers”.

19 After subsection 198B(3)

Insert:
(3A) If the care receivers are a lower ADAT score adult and one or more multiple care children, the lower ADAT score adult may give the Secretary a written estimate of each child’s taxable income for a tax year.

20 Subsection 198B(5)

After “(3)”, insert “or (3A)”.

21 Subsection 198D(1A)

Omit “profoundly disabled child”, substitute “sole care child”.

Note: The heading to subsection 198D(1A) is replaced by the heading “Sole care child passing the assets test”.

22 Paragraphs 198D(1A)(a) and (b)

Omit “disabled”.

23 At the end of subsection 198D(1A)

Add:

Note: See also subsection 197F(5).

24 Subsection 198D(1B)

Omit “disabled” (wherever occurring).

25 Subsection 198D(1C)

Omit “disabled children” (first occurring), substitute “combined care children”.

Note: The heading to subsection 198D(1C) is replaced by the heading “Combined care children passing the assets test”.

26 Paragraphs 198D(1C)(a) and (b)

Omit “disabled”.

27 At the end of subsection 198D(1C)

Add:

Note: See also subsection 197F(5).

28 Subsection 198D(1D)

Omit “disabled” (wherever occurring).
29 After subsection 198D(1D)

Insert:

Lower ADAT score adult and multiple care child or children passing the assets test

(1DA) Care receivers who are a lower ADAT score adult and one or more multiple care children pass the assets test if the total value of the assets of the following people is less than $571,500:

(a) the adult;
(b) each child;
(c) if any of the children lives with his or her parent:
   (i) the parent; and
   (ii) if the parent is a member of a couple—the parent’s partner; and
   (iii) if the parent or the partner has one or more FTB children—those FTB children;
(d) if the adult is a member of a couple—the adult’s partner;
(e) if the adult or the partner has one or more FTB children—the FTB children.

However, assets of the same person are not to be taken into account more than once.

(1DB) For the purposes of this Division (other than subsection (1DA)), if any of the multiple care children lives with his or her parent, the child’s assets are taken to include the assets listed in paragraph (1DA)(c) in relation to the child. However, assets of the same person are not to be included in the assets of more than one child.

30 Subsection 198F(1A)

Omit “profoundly disabled child, a disabled child”, substitute “care child”.

31 Subsection 198JE(1)

Omit “profoundly disabled child”, substitute “sole care child”.

Note: The heading to section 198JE is replaced by the heading “Disposal of assets in income year—sole care children”.

32 Subsections 198JE(2) and (3)
Schedule 1  Amendment of the Social Security Act 1991

Omit “disabled” (wherever occurring).

Note:  The heading to subsection 198JE(3) is replaced by the heading “Increase in value of child’s assets”.

33 Subsection 198JF(1)

Omit “profoundly disabled child”, substitute “sole care child”.

Note:  The heading to section 198JF is replaced by the heading “Disposal of assets in 5 year period—sole care child”.

34 Subsections 198JF(2) and (3)

Omit “disabled” (wherever occurring).

Note:  The heading to subsection 198JF(3) is replaced by the heading “Increase in value of child’s assets”.

35 Subsection 198JG(1)

Omit “a lower ADAT score adult and a dependent child”, substitute “a lower ADAT score adult and one or more multiple care children, or a lower ADAT score adult and a dependent child,”.

Note:  The heading to section 198JG is altered by omitting “dependent child” and substituting “child or children”.

36 Paragraph 198JG(2)(b)

Repeal the paragraph, substitute:

(b) each multiple care child or dependent child;

37 Subsection 198JH(1)

Omit “a lower ADAT score adult and a dependent child”, substitute “a lower ADAT score adult and one or more multiple care children, or a lower ADAT score adult and a dependent child,”.

Note:  The heading to section 198JH is altered by omitting “dependent child” and substituting “child or children”.

38 Paragraph 198JH(2)(b)

Repeal the paragraph, substitute:

(b) each multiple care child or dependent child;

39 Section 198MA

Repeal the section, substitute:
198MA Other disposals to be disregarded for care receiver assets

test

This Division does not apply to a disposal by a person (the disposer) of an asset of a child:

(a) more than 5 years before the carer became qualified for a care payment because the carer was providing care for the child and the child was a care receiver or one of 2 or more care receivers; and

(b) less than 5 years before the time referred to in paragraph (a) but before the time when the disposer could, in the Secretary’s opinion, reasonably have expected that the carer would become qualified for carer payment because the carer was providing care for the child.

Note: Subsections 198D(1B), (1D) and (1DB) provide that if a sole care child, a combined care child or a multiple care child lives with a parent, the assets listed in subsection 198D(1A) and paragraphs 198D(1C)(b) and (1DA)(c) are taken to be the assets of the child.

40 Before subsection 198N(1)

Insert:

Application by parent or carer of sole care child

(1AA) Subsections (2), (3), (4), (5) and (6) have effect if:

(a) subparagraph 197B(4)(d)(i) or 197E(5)(d)(i) would disqualify from carer payment a person caring for a care receiver who is a sole care child; and

(b) the parent or the carer of the care receiver lodges with the Department, in a form approved by the Secretary, a request that the carer not be disqualified by that subparagraph; and

(c) the request includes a written estimate of the taxable income of the care receiver for the current financial year under subsection 198B(3); and

(d) the Secretary accepts the estimate under subsection 198B(4).

Application by parent or carer of combined care children

(1AB) Subsections (2), (3), (4), (5) and (6) have effect if:

(a) subparagraph 197C(4)(d)(i) would disqualify from carer payment a person caring for 2 or more care receivers each of whom is a combined care child; and
(b) the parent or the carer of any of the care receivers lodges
with the Department, in a form approved by the Secretary, a
request that the carer not be disqualified by that
subparagraph; and
(c) the request includes written estimates of the taxable incomes
of the care receivers for the current financial year under
subsection 198B(3); and
(d) the Secretary accepts the estimate under subsection 198B(4).

Application by lower ADAT score adult (multiple care child or
children)

(1AC) Subsections (2), (3), (4), (5) and (6) have effect if:
(a) subparagraph 197D(4)(d)(i) would disqualify from carer
payment a person caring for care receivers who are a lower
ADAT score adult and one or more multiple care children;
and
(b) the lower ADAT score adult lodges with the Department, in a
form approved by the Secretary, a request that the carer not
be disqualified by that subparagraph; and
(c) the request includes written estimates of the taxable incomes
of the lower ADAT score adult and each child under
subsection 198B(3A); and
(d) the Secretary accepts the estimate under subsection 198B(4).

41 Subsection 198N(1A)
Repeal the subsection.

42 Subsections 198N(2), (3) and (4)
After “subparagraph”, insert “197B(4)(d)(i), 197C(4)(d)(i),
197D(4)(d)(i), 197E(5)(d)(i) or”.

43 Paragraph 198N(5)(aa)
Omit “profoundly disabled child or a disabled child”, substitute “sole
care child, combined care child or multiple care child”.

44 Paragraph 198N(5)(aa)
Omit “is a disabled child”, substitute “is a combined care child or a
multiple care child”.

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and Transitional) Bill 2009 No. , 2009
45 Subparagraphs 198N(5)(ab)(ii) and (iii)  
Omit “dependent child who is the other care receiver”, substitute “child who is the other care receiver or the children who are the other care receivers”.

46 Subparagraph 198N(5)(ab)(iii)  
Omit “receiver); and”, substitute “receiver)”..

47 At the end of paragraph 198N(5)(ab) (before the note)  
Add:  
However, liquid assets of the same person are not to be taken into account in respect of any of the other care receivers; and

48 Paragraph 198N(5)(ab) (note)  
Omit “dependent child who is the other care receiver”, substitute “child who is the other care receiver or the children who are the other care receivers”.

49 Subsection 198N(5) (note 2)  
Repeal the note, substitute:  
Note 2: Subsections 198D(1B), (1D) and (1DB) provide that if a sole care child, a combined care child or a multiple care child lives with a parent, the assets listed in subsection 198D(1A) and paragraphs 198D(1C)(b) and (1DA)(c) are taken to be assets of the child.

Note 3: For subparagraph (5)(aa)(ii), see also subsection 197F(5).

50 Subsection 198N(6) (paragraphs (b) and (c) of the definition of FPC)  
Omit “profoundly disabled child”, substitute “sole care child”.

51 Subsection 198N(6) (paragraph (d) of the definition of FPC)  
Omit “disabled children”, substitute “combined care children”.

52 Subsection 198N(6) (paragraph (e) of the definition of FPC)  
Omit “a lower ADAT score adult and a dependent child”, substitute “a lower ADAT score adult and one or more multiple care children, or a lower ADAT score adult and a dependent child”.
53 Subsection 198N(6) (note)

Omit “Note”, substitute “Note 1”.

54 At the end of subsection 198N(6)

Add:

Note 2: For paragraphs (b), (d) and (e) of the definition of FPC, see also subsection 197F(5).

55 Subsection 198P(1)


56 Subparagraph 198P(3)(b)(ii)

Repeal the subparagraph, substitute:

(ii) in the case of a care receiver who is a sole care child—to his or her parent or carer; or

57 Subparagraph 198P(3)(b)(iii)

Omit “disabled children”, substitute “combined care children”.

58 After subparagraph 198P(3)(b)(iii)

Insert:

(iiiia) in the case of care receivers who are a lower ADAT score adult and one or more multiple care children—to the lower ADAT score adult or the person caring for that adult; or

59 Subparagraph 198P(4)(b)(ii)

Repeal the subparagraph, substitute:

(ii) in the case of a care receiver who is a sole care child—to his or her parent or carer; or

60 Subparagraph 198P(4)(b)(iii)

Omit “disabled children”, substitute “combined care children”.

61 After subparagraph 198P(4)(b)(iii)

Insert:

(iiiia) in the case of care receivers who are a lower ADAT score adult and one or more multiple care children—to
the lower ADAT score adult or the person caring for
that adult; or

62 Subparagraph 198P(4)(b)(iv)
Omit “a lower ADAT score adult and a dependent child”, substitute “a
lower ADAT score adult and one or more multiple care children, or a
lower ADAT score adult and a dependent child”.

63 Section 198Q
After “subparagraph”, insert “197B(4)(d)(i), 197C(4)(d)(i),
197D(4)(d)(i), 197E(5)(d)(i) or”.

64 After subparagraph 235(1A)(b)(i)
Insert:

(i) the person or any of the persons for whom the carer
would qualify for carer payment as mentioned in
subsection 198AA(4) or (5); or

65 Subparagraph 235(1A)(b)(ii)
Omit “constant”.

66 Paragraph 236B(a)
Repeal the paragraph, substitute:

(a) either:

(i) a lower ADAT score adult and one or more multiple
care children die at the same time; or

(ii) a lower ADAT score adult and a dependent child of the
adult die at the same time; and

67 After subsection 237(1A)
Insert:

(1AB) Subsection (1) or (1A) does not apply in relation to care receivers
who are a lower ADAT score adult and one or more multiple care
children if:

(a) the person is receiving carer payment under section 235
because of the death of the child or children; and

(b) the person’s partner is the lower ADAT score adult.

68 Paragraph 243(a)
Schedule 1 Amendment of the Social Security Act 1991


Repeal the paragraph, substitute:

(a) either:

(i) a lower ADAT score adult and one or more multiple care children die at the same time; or

(ii) a lower ADAT score adult and a dependent child of the adult die at the same time; and

69 After section 731H

Insert:

731HA Relief from activity test—persons who would be qualified for carer payment under section 197B, 197C, 197D or 197E

Person taken to satisfy the activity test

(1) A person to whom this Subdivision applies is taken to satisfy the activity test during any period during which:

(a) subsection (2) (personally providing care to another person) applies to the person; or

(b) subsection (3) (participating in the care in hospital of another person) applies to the person.

If subsection (3) applies to the person, subsection (4) sets out a limit on the period during which the person is taken to satisfy the activity test for participating in the care of a disabled adult in hospital.

Personally providing care

(2) This subsection applies to the person if:

(a) if the provisions referred to in subsection (5) were disregarded, the person would qualify for a carer payment under section 197B, 197C, 197D or 197E (whether or not because of section 197F) for caring for one or more of the following or for persons who include the following:

(i) a child with a severe disability or severe medical condition;

(ii) a child who has a terminal condition;

(iii) a child with a disability or medical condition;

(iv) a lower ADAT score adult; and

(b) either:
(i) the care is provided in a private residence that is the home of the person or persons for whom care is provided; or
(ii) if a section referred to in paragraph (a) applies to the person because of section 197F—the care is provided in a private residence that is a home of the person or persons for whom care is provided.

**Participating in care of person in hospital**

(3) This subsection applies to the person if:

(a) the person is participating in the care in hospital of another person (the hospitalised person); and
(b) it is reasonable to assume that, if the hospitalised person were not in hospital and the provisions referred to in subsection (5) were disregarded, the person would qualify under section 197B, 197C, 197D or 197E (whether or not because of section 197F) for a carer payment for caring for the hospitalised person, or for the hospitalised person and one or more other persons; and
(c) one of the following applies:
   (i) the hospitalised person is terminally ill;
   (ii) it is reasonable to expect that, upon leaving hospital, the hospitalised person will reside in a private residence that is the home of the hospitalised person.

(4) The period, or the sum of the periods, for which a person to whom this Subdivision applies is taken to satisfy the activity test because of subsection (3) for participating in the care in hospital of a disabled adult must not exceed:

(a) 63 days in any calendar year; or
(b) another period that the Secretary, for any special reason in a particular case, decides to be appropriate.

Note: There is no limit for a hospitalised person who is a child.

**Disregard certain provisions of sections 197B, 197C, 197D and 197E**

(5) For the purposes of paragraphs (2)(a) and (3)(b), disregard the following:

(a) subsection 197B(3) and paragraphs 197B(4)(b), (c) and (d);
(b) subsection 197C(3) and paragraphs 197C(4)(b), (c) and (d);
(c) subsection 197D(3) and paragraphs 197D(4)(b), (c) and (d);
(d) subsection 197E(4) and paragraphs 197E(5)(b), (c) and (d).

Meaning of expressions in this section

(6) An expression used in this section that is defined for the purposes of Part 2.5 has the same meaning in this section as it has in that Part.

731HB Relief from activity test—persons who would be qualified for carer payment under section 197G or 197H

Person taken to satisfy the activity test

(1) A person to whom this Subdivision applies is taken to satisfy the activity test during any period during which subsection (2) (personally providing care to another person) applies to the person.

Personally providing care during period determined

(2) This subsection applies to the person if:
   (a) if the provisions referred to in subsection (7) were disregarded, the person would qualify for a carer payment under section 197G or 197H for a period for caring for one or more of the following or for persons who include the following:
      (i) a child with a severe disability or severe medical condition;
      (ii) a child with a disability or medical condition;
      (iii) a lower ADAT score adult; and
   (b) either:
      (i) the care is provided in a private residence that is the home of the person or persons for whom care is provided; or
      (ii) if the person would qualify for a carer payment because of section 197F—the care is provided in a private residence that is a home of the person or persons for whom care is provided.
A person to whom this Subdivision and subsection (4) apply is taken to satisfy the activity test during any period that does not exceed the period, or the sum of the periods, (as the case requires) determined under paragraph (4)(b).

This subsection applies to a person if:

(a) the person is participating in the care, in hospital, of one of the following persons (the hospitalised person):
   (i) a child with a severe disability or severe medical condition;
   (ii) a child with a disability or medical condition;
   (iii) a lower ADAT score adult; and
(b) the Secretary determines in writing that, if the hospitalised person were not in hospital and the provisions referred to in subsection (7) were disregarded, the person would qualify under section 197G or 197H for a carer payment for a period or periods for:
   (i) the hospitalised person; or
   (ii) the hospitalised person and one or more other persons; and
(c) it is reasonable to expect that, upon leaving hospital, the hospitalised person:
   (i) will reside in a private residence that is the home of the hospitalised person; or
   (ii) if the carer would qualify for a carer payment because of section 197F for the hospitalised person—will reside in a private residence that is a home of the hospitalised person.

A person to whom this Subdivision and subsection (6) apply is taken to satisfy the activity test during any period that does not exceed the balance of the period referred to in paragraph (6)(b).

This subsection applies to a person if:
(a) subsection (2) applies to the person for a period for caring for one or more of the following or for persons who include the following:
   (i) a child with a severe disability or medical condition;
   (ii) a child with a disability or medical condition;
   (iii) a lower ADAT score adult; and
(b) if the provisions referred to in subsection (7) were disregarded, the person would cease to qualify under section 197G or 197H for a carer payment for the balance of the period only because the person is participating in the care, in hospital, of:
   (i) a child referred to in paragraph (a) of this subsection (the hospitalised person); or
   (ii) the hospitalised person and one or more other persons; and
(c) it is reasonable to expect that, upon leaving hospital, the hospitalised person:
   (i) will reside in a private residence that is the home of the hospitalised person; or
   (ii) if the carer would qualify for a carer payment because of section 197F for the hospitalised person—will reside in a private residence that is a home of the hospitalised person.

Disregard certain provisions of sections 197B, 197C and 197D

For the purposes of paragraphs (2)(a), (4)(b) and (6)(b), disregard the following:
   (a) subsection 197B(3) and paragraphs 197B(4)(b), (c) and (d);
   (b) subsection 197C(3) and paragraphs 197C(4)(b), (c) and (d);
   (c) subsection 197D(3) and paragraphs 197D(4)(b), (c) and (d).

Meaning of expressions

An expression used in this section that is defined for the purposes of Part 2.5 has the same meaning in this section as it has in that Part.

70 Paragraph 731J(1)(a)

Omit “, (8)”.

Social Security Legislation Amendment (Improved Support for Carers) (Consequential and Transitional) Bill 2009 No. , 2009
Note 1: The heading to section 731J is replaced by the heading “Relief from activity test—persons who would be qualified for carer payment under section 198 or for carer allowance”.

Note 2: The following heading to subsection 731J(1) is inserted “Qualification conditions for carer payment under section 198”.

71 Paragraph 731J(1)(b)
Repeal the paragraph, substitute:
(b) the following apply:
   (i) the person is participating in the care in hospital of another person (the hospitalised person) who is a disabled adult or a dependent child of a disabled adult;
   (ii) it is reasonable to assume that, if the hospitalised person were not in hospital, the carer would meet the qualification conditions for a carer payment set out in subsections 198(2), (3) and (9) for the hospitalised person or for the hospitalised person and one or more other persons;
   (iii) either the hospitalised person is terminally ill or it is reasonable to expect that the hospitalised person will reside in the private home of the carer and the hospitalised person upon leaving hospital.

72 Subsection 731J(2)
After “paragraph (1)(b)”, insert “for participating in the care in hospital of a disabled adult”.

73 At the end of subsection 731J(2)
Add:
Note: There is no limit for a hospitalised person who is a dependent child.

74 Subsection 731J(6)
After “paragraph (4)(c)”, insert “for participating in the care in hospital of a disabled adult”.

75 At the end of subsection 731J(6)
Add:
Note: There is no limit for a hospitalised person who is a child.
76 After subsection 1061ZA(1)

Insert:

(1A) Paragraph (1)(a) does not apply to a carer payment payable to the person because the person is qualified for that payment for that day under section 197G or 197H or subsection 198AA(4) or (5) (whether or not because of section 197F).

77 After subsection 1061ZK(3)

Insert:

(3A) This section applies to a person on a day if a person is qualified under section 197G or 197H or subsection 198AA(4) or (5) (whether or not because of section 197F) for a carer payment on that day.

78 Section 1190 (table item 27A)

After “(1C)”, insert “, (1DA)”.

79 Subsection 1209M(4)

Repeal the subsection, substitute:

(4) If the principal beneficiary is under 16 years of age, subsection (4A) must apply to him or her.

(4A) This subsection applies if:

(a) the principal beneficiary is a person with a severe disability or a severe medical condition; and

(b) another person (the carer) has been given a qualifying rating of intense under the Disability Care Load Assessment (Child) Determination for caring for the principal beneficiary; and

(c) a treating health professional has certified in writing that, because of that disability or condition:

(i) the principal beneficiary will need personal care for 6 months or more; and

(ii) the personal care is required to be provided by a specified number of persons; and

(d) the carer has certified in writing that the principal beneficiary will require the same care, or an increased level of care, to be provided to him or her in the future.
After clause 139 of Schedule 1A

Insert:

139A Application—general

(1) Subject to clauses 139B and 141, the amendments made by items 1 to 68 and 76 to 77 of Schedule 1 to the Social Security Legislation Amendment (Improved Support for Carers) (Consequential and Transitional) Act 2009 apply to claims for a carer payment made on or after the commencement of this clause.

(2) Subject to clauses 139C and 143, the amendments made by items 69 to 75 of Schedule 1 to the Social Security Legislation Amendment (Improved Support for Carers) (Consequential and Transitional) Act 2009 apply to claims for special benefit made on or after the commencement of this clause.

139B Application—sections 198AAA and 198AB

The amendments made by items 9 and 10 of Schedule 1 to the Social Security Legislation Amendment (Improved Support for Carers) (Consequential and Transitional) Act 2009 apply to a person who:

(a) is receiving a carer payment immediately before 1 July 2009; or

(b) makes a claim for a carer payment on or after 1 July 2009.

139C Application—subsections 731J(2) and (6)

(1) Subsection 731J(2) of this Act as amended by Schedule 1 to the Social Security Legislation Amendment (Improved Support for Carers) (Consequential and Transitional) Act 2009 applies to a person who:

(a) is taken to satisfy the activity test under subsection 731J(1) of this Act immediately before 1 July 2009; or

(b) makes a claim for special benefit on or after 1 July 2009.

(2) Subsection 731J(6) of this Act as amended by Schedule 1 to the Social Security Legislation Amendment (Improved Support for Carers) (Consequential and Transitional) Act 2009 applies to a person who:
(a) is taken to satisfy the activity test under subsection 731J(4) of this Act immediately before 1 July 2009; or
(b) makes a claim for special benefit on or after 1 July 2009.

139D Saving—principal beneficiary of a special disability trust

Despite the amendment made by item 79 of Schedule 1 to the Social Security Legislation Amendment (Improved Support for Carers) (Consequential and Transitional) Act 2009, this Act as in force immediately before the commencement of this clause continues to apply to a person who was a principal beneficiary (within the meaning of section 1209M of this Act) under 16 years of age immediately before that time.

81 At the end of Schedule 1A

Add:

142 Person whose special benefit was cancelled on or after 1 July 2008 and before 1 July 2010

Circumstances in which clause applies

(1) This clause applies if:
(a) a person received or receives special benefit on or after 1 July 2008; and
(b) while the person received or receives special benefit, the person was or is taken to satisfy the activity test under subsection 731J(1) of this Act because the person was or is caring for a child or children referred to in paragraph 198(2)(b) or (c) of this Act (whether or not because of clause 143); and
(c) the special benefit was cancelled:
   (i) with effect before the commencement of this clause; or
   (ii) with effect on or after that commencement and before 1 July 2010; and
(d) on or after 1 July 2009 and before 1 July 2010, the carer makes a claim for special benefit; and
(e) the person is caring for the same child or children aged under 16.
Claim may be assessed as if paragraphs 198(2)(b) and (c) had not been repealed

(2) In addition to being assessed against this Act as in force after the commencement of this clause, the person’s claim may be assessed as if paragraphs 198(2)(b) and (c) of this Act had not been repealed.

Note: The effect of subclause (2) is that the person may be taken to satisfy the activity test under section 731HA, 731HB or 731J of this Act because the person is caring for the child or children.

(3) Subject to clause 143, if, because of subclause (2), the person is taken to satisfy the activity test under section 731J of this Act because the person is caring for the child or children, this Act (as in force immediately before 1 July 2009) applies in relation to the person.

143 Saving—profoundly disabled child and disabled child

Profoundly disabled child and disabled child

(1) Subject to this clause, if, immediately before 1 July 2009, a person was taken, under section 731J of this Act, to satisfy the activity test because the person met the qualification conditions for a carer payment for caring for a child or children referred to in paragraph 198(2)(b) or (c) of this Act, this Act (as in force immediately before that time) continues to apply in relation to the person.

Taken to satisfy the activity test for up to 3 months after child turns 16

(2) If:

(a) either:

(i) a person continues to be taken to satisfy the activity test in section 731J of this Act because of subclause (1) for caring for a child or children; or

(ii) a person starts to become taken to satisfy the activity test because of subclause 142(3) for caring for a child or children; and

(b) the child, or one of the children, turns 16; and

(c) the child has not been assessed and rated and given a score under the Adult Disability Assessment Tool; and
Schedule 1 Amendment of the Social Security Act 1991

(d) apart from the child turning 16, the person would remain taken to satisfy the activity test; the person continues to be taken to satisfy the activity test for 3 months after the child turns 16.

_Unlimited hospitalisation—profoundly disabled child or disabled child_

(3) Subsection 731J(2) of this Act as amended by Schedule 1 to the Social Security Legislation Amendment (Improved Support for Carers) (Consequential and Transitional) Act 2009 applies to a person who:

(a) continues to be taken to satisfy the activity test in section 731J of this Act because of subclause (1) for caring for a child or children; or

(b) starts to become taken to satisfy the activity test because of subclause 142(3) for caring for a child or children.
Schedule 2—Amendment of the Social Security (Administration) Act 1999

1 Subsection 70(1)
After “constant care”, insert “(or, if section 197F of the 1991 Act applies to the person, care)”. 

2 Subparagraph 120(2)(c)(ii)
Omit “profoundly disabled child or a disabled child”, substitute “sole care child, combined care child or multiple care child”. 

3 Paragraph 120(4)(a)
Omit “profoundly disabled child”, substitute “sole care child”. 

4 Paragraph 120(4)(d)
Omit “disabled”. 

5 Paragraph 120(5)(a)
Omit “disabled children”, substitute “combined care children”. 

6 Paragraphs 120(5)(d) and (e)
Omit “disabled”. 

7 After subsection 120(5)
Insert:

(5A) If:
(a) on the basis of the sum of the taxable incomes for a tax year of care receivers who are a lower ADAT score adult and one or more multiple care children, the Secretary makes a determination that a person (the carer) is entitled to carer payment because the carer is providing care to the care receivers; and
(b) the sum of the taxable incomes of the care receivers for a later tax year exceeds the income ceiling under section 198A of the 1991 Act; and
(c) the Secretary makes a determination under section 80 cancelling or suspending the carer’s carer payment;
the adverse determination takes effect:

(d) if the Secretary made the determination under section 80 after
the carer or the lower ADAT score adult informed the
Department that the sum of the taxable incomes exceeded the
income ceiling—on the day on which the Department was so
informed; or

(e) if, when the Secretary made the determination under
section 80, the Department had not been informed by the
carer or the lower ADAT score adult that the sum of the
taxable incomes exceeded the income ceiling—on the day on
which the sum of the taxable incomes exceeds the income
ceiling.

8 After clause 15 of Schedule 2

Insert:

15A Carer payment claimed on or after 1 July 2009 and before
1 October 2009

If:

(a) a person is qualified for a carer payment other than under
section 198 of the 1991 Act; and

(b) the person makes a claim for a carer payment on or after
1 July 2009 and before 1 October 2009;

the person’s start day in relation to the payment is the day on
which the person became qualified for a carer payment other than
under section 198 of that Act.
Schedule 3—Amendment of the Veterans’ Entitlements Act 1986

1 Subsection 52ZZZWA(4)

Repeal the subsection, substitute:

(4) If the principal beneficiary is under 16 years of age, subsection (4A) must apply to him or her.

(4A) This subsection applies if:

(a) the principal beneficiary is a person with a severe disability or a severe medical condition; and
(b) another person (the carer) has been given a qualifying rating of intense under the Disability Care Load Assessment (Child) Determination (within the meaning of the Social Security Act) for caring for the principal beneficiary; and
(c) a treating health professional (within the meaning of that Act) has certified in writing that, because of that disability or condition:
   (i) the principal beneficiary will need personal care for 6 months or more; and
   (ii) the personal care is required to be provided by a specified number of persons; and
(d) the carer has certified in writing that the principal beneficiary will require the same care, or an increased level of care, to be provided to him or her in the future.

2 Saving—principal beneficiary of a special disability trust

Despite the amendment made by item 1, the Veterans’ Entitlements Act 1986 as in force immediately before 1 July 2009 continues to apply to a person who was a principal beneficiary (within the meaning of section 52ZZZWA of that Act) under 16 years of age immediately before that time.