2008-2009

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

SOCIAL SECURITY LEGISLATION AMENDMENT (IMPROVED SUPPORT FOR CARERS) (CONSEQUENTIAL AND TRANSITIONAL) BILL 2009

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Minister for Families, Housing, Community Services and Indigenous Affairs, the Hon Jenny Macklin MP)
The Social Security Legislation Amendment (Improved Support for Carers) Bill 2009 (the Improved Support for Carers Bill) provides part of the Government’s response to the report of the Carer Payment (child) Review Taskforce and gives effect to a number of measures aimed at improving assistance to carers from 1 July 2009.

This bill makes amendments as a consequence of the measures contained in the Improved Support for Carers Bill. The Improved Support for Carers Bill makes substantive changes to the qualification provisions for carer payment paid in respect of a child. That bill changes the qualification criteria and assessment process for carer payment for care provided to children with disability or medical condition to provide a fairer and more equitable process, based on the level of care required, rather than the rigid medical criteria used currently.

This bill removes references in the social security law that, from 1 July 2009, will be redundant and replaces those references with new terms found in the Improved Support for Carers Bill or created by this bill. Most of the amendments are made to Part 2.5 of the Social Security Act. This bill also contains transitional arrangements for the amendments made by this bill. Other amendments clarify intended policy.

Financial impact statement

The measures in this bill are part of a 2008 Budget measure of which the legislative component has financial impact as follows:

Total resourcing – all portfolios
2008-09 $15.5 m
2009-10 $72.8 m
2010-11 $89.9 m
2011-12 $93.3 m
NOTES ON CLAUSES

Clause 1 sets out how the Act is to be cited, that is, as the Social Security Legislation Amendment (Improved Support for Carers) (Consequential and Transitional) Act 2009.

Clause 2 provides a table that sets out the commencement dates of the various provisions in 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Clause 3 provides that each Act that is specified in a Schedule is amended or repealed as set out in that Schedule.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 abbreviations:

- ‘Social Security Act’ means the Social Security Act 1991;
- ‘Social Security Administration Act’ means the Social Security (Administration) Act 1999; and
Schedule 1 – Amendment of the Social Security Act 1991

Summary

From 1 July 2009, a person will be able to qualify for carer payment if one of the following circumstances applies:

- care is provided to a child with a severe disability or severe medical condition;
- care is provided to two or more children each with a disability or medical condition;
- care is provided to a disabled adult and one or more children, each with a disability or medical condition;
- care is provided to a child who has a terminal condition;
- the care of two or more children each with a severe disability or severe medical condition is exchanged between the separated or divorced parents of the children;
- care is provided to a child or children on a short-term or episodic basis;
- care is provided to a disabled adult or a disabled adult and a dependent child; or
- care is provided to any of the above while they are in hospital.

The qualification provisions for carer payment where care is provided to a child with a severe disability or severe medical condition, or care is provided to two or more children each with disability or medical condition, or care is provided to a child with a terminal condition, replace the current qualification provisions for care provided to a profoundly disabled child or two or more disabled children. Qualification for care provided to a disabled adult and one or more children each with a disability or medical condition is a new qualification provision that is additional to the current qualification provision for care provided to a disabled adult and a dependent child of the disabled adult.

This Schedule repeals references to the terms profoundly disabled child and disabled child (where the use of the term is associated with carer payment) from the Social Security Act. These terms are replaced with terminology related to the new qualification provisions inserted by the Improved Support for Carers Bill. The amendments contained in this Schedule ensure that provisions contained in the Social Security Act, such as the care receiver’s income and assets tests, will apply to a person who makes a claim for carer payment after the commencement of the Improved Support for Carers Bill.
Amendments are also made to special benefit provisions to ensure that the improved qualification criteria for carer payment is reflected in the relief from the activity test that is applied to people who are not residentially qualified for carer payment.

This Schedule also makes amendments so that a person who is qualified for carer payment for care provided on a short term or episodic basis is not qualified for a pensioner concession card but is qualified for a health care card.

Finally, the provisions that relate to who can be the principal beneficiary of a special disability trust are amended in line with the improved qualification criteria for carer payment.

**Background**

From 1 July 2009, the qualification requirements for carers who provide care to a child or children with disability will be replaced with a fairer set of qualification criteria for carer payment paid in respect of a child. The new qualification requirements will be based on the level of care required by a child or children, rather than the rigid medical criteria currently used. Various terms that are relevant to the current qualification requirements are used throughout the Social Security Act and the Social Security Administration Act. Upon commencement of the new qualification requirements, this terminology will no longer be relevant and consequently needs to be repealed and, in most cases, replaced with terms that apply to the new qualification requirements.

**Explanation of the changes**

Items 1, 2, 4, 6 and 7 insert definitions of *care child*, *combined care child*, *multiple care child* and *sole care child* into section 197 of the Social Security Act. The insertion of these new terms is consequential to the new qualification provisions for carer payment, which are inserted into the Social Security Act by the Improved Support for Carers Bill.

**Item 1** inserts a definition of *care child* into subsection 197(1) of the Social Security Act. Care child means a sole care child, or a combined care child or a multiple care child. **Item 2** inserts a definition of combined care child into subsection 197(1), with the meaning given by subsection 4. **Item 4** inserts a definition of multiple care child into subsection 197(1), with the meaning given by subsection 5. **Item 6** inserts a definition of sole care child into subsection 197(1), with the meaning given by subsections (2) and (3). **Item 7** repeals current subsection 197(3) and inserts new subsections 197(2), (3), (4), (5), (6) and (7), which contain definitions of sole care child, combined care child and multiple care child.
Under new subsection 197(2), a sole care child is a care receiver aged under 16 with a severe disability or severe medical condition in respect of whom a carer has been given a qualifying rating of intense under the Disability Care Load Assessment (Child) Determination. Additionally, a treating health professional will have certified in writing that, because of that disability or condition the care receiver will need personal care for six months or, in the case where the care receiver is suffering from a short term or episodic conditions, more or for three months or more and less than six months, and the personal care is required to be provided by a specified number of carers. Under new subsection 197(6), a person remains a sole care child after they turn 16, until they are 16 and three months, if they have not been assessed, rated and given a score under the Adult Disability Assessment Tool.

Under new subsection 197(3), a person with a terminal condition who is under 16 is also a sole care child provided they meet the requirements of paragraphs 197E(1)(a) and (b). That is, another person is personally providing care to the child and a medical practitioner has certified that: (i) the child has a terminal condition; (ii) the average life expectancy for a child with the same or a similar condition is not substantially longer than 24 months; (iii) because of the condition, the child will need personal care for the remainder of his or her life; and (iv) the personal care is required to be provided by a specified number of persons. A child who has a terminal condition and turns 16 continues to be a sole care child while another person remains qualified for carer payment in respect of that person or until the child turns 18, whichever is the sooner.

A combined care child is defined in subsection 197(4) to be a care receiver aged under 16 with a disability or medical condition for whose care, when combined with either another child or children with a disability or medical condition, a carer has been given a qualifying rating of intense. Additionally, a treating health professional will have certified in writing that, because of that disability or condition the care receiver will need personal care for six months or, in the case where the care receiver is suffering from a short term or episodic conditions, more or for three months or more and less than six months, and the personal care is required to be provided by a specified number of carers. A person remains a combined care child after they turn 16, until they are 16 and three months, if they have not been assessed, rated and given a score under the Adult Disability Assessment Tool.
A multiple care child is defined in subsection 197(5) to be a person aged under 16 with a disability or medical condition for whose care, when combined with either a disabled adult, or a disabled adult and another child or children with a disability or medical condition, a carer has been given a qualifying rating of intense. Additionally, a treating health professional will have certified in writing that, because of that disability or condition the care receiver will need personal care for six months or, in the case where the care receiver is suffering from a short term or episodic conditions, more or for three months or more and less than six months, and the personal care is required to be provided by a specified number of carers. Under new subsection 197(6), a person remains a multiple care child after they turn 16, until they are 16 and three months, if they have not been assessed, rated and given a score under the Adult Disability Assessment Tool.

Subsection 197(7) provides that, if a person is a care receiver because another person is qualified for carer payment because of section 197F (that is, if the carer is exchanging with another person the care of the care receiver and at least one other child), then it does not matter that the care provided to the care receiver by the carer is not constant care.

**Item 3** repeals the definition of *guardian*. **Item 3** is consequential to the insertion of the definition of *parent* in subsection 197(1) by **item 5**. Under subsection 197(1) a parent of a child with a severe disability or severe medical condition, or a child with a disability or medical condition, or 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 Territory.

**Item 8** adds new subsection 197F(5) at the end of section 197F. Section 197F is inserted into the Social Security Act by the Improved Support for Carers Bill and provides for qualification for carer payment in situations where the care of two or more children is exchanged between the children’s parents. New subsection 197F(5) provides that, when the income and assets tests under section 198A and 198D are applied to determine whether a parent qualifies for carer payment because of the operation of section 197F, the income and assets of the other parent are to be disregarded.

**Example**

Mykal and Leeca are the parents of two children each of whom has a severe disability. Mykal and Leeca exchange the care of the children on a week-about basis.

Mykal claims carer payment and would qualify under section 197B because of the application of section 197F if both children pass the income test and both either pass the assets test under section 198D or are the subject of a decision in force under subsection 198N(2), (3), or (4).
In determining whether the children pass the income test under section 198A, Leeca’s income is not to be included as the taxable income of either of the children under subsection 198B(1B).

In determining whether the children pass the assets test under subsection 198D(1A), Leeca’s income is not to be included in the assets of either child.

Item 9 repeals section 198AAA and inserts new section 198AAA. Current section 198AAA provides that a carer payment continues to be payable to a person for 14 weeks after a care receiver permanently enters an institution.

New section 198AAA will apply if:

- a carer payment is payable to a person who has been providing constant care for a care receiver or care receivers; or

- carer payment is payable to a person who has ordinarily been providing care for a care receiver or care receivers (because of the application of section 197F); and

the person would cease to be qualified for carer payment because they cease to provide constant care, or care, because the care receiver is admitted permanently to an institution where care is provided for the care receiver. Subsection 198AAA(2) provides that, if section 198AAA applies, then the person remains qualified for carer payment for 14 weeks after the care receiver is admitted to an institution.

Ordinarily, if a person who is qualified for carer payment ceases to provide constant care, or care, the person ceases to be qualified for carer payment. However, if a care receiver is permanently admitted to an institution which provides care, qualification for carer payment will continue for 14 weeks from the date of the care receiver’s admission to the institution. This will allow the carer time to adjust to their changed circumstances. The usual rules in relation to whether carer payment remains payable to the person will apply.

Section 198AAA only applies in a situation where, in light of available evidence, the care receiver’s admission to an institution is likely to continue for the foreseeable future. A care receiver admitted to hospital or a hospice for an operation or procedure, and who is expected to return home at some future time, would not meet this definition. An institution could be a nursing home or hostel providing a level of care that would normally meet carer payment criteria. A self-care unit or a hostel providing only meals would not meet the definition.
**Item 10** is consequential to the amendments made by the Improved Support for Carers Bill. **Item 10** repeals current section 198AB and inserts new section 198AB. Under section 198AB, a person who travels with, and provides care for, a care receiver overseas may be absent from Australia for up to 13 weeks without losing qualification for carer payment (provided that they continue to satisfy other qualification criteria – except for the requirement to provide constant care in ‘a private residence that is the home of the care receivers’ or care in ‘a private residence that is a home of the care receivers’).

Section 198AC provides for situations in which a person may temporarily cease to provide constant care and remain qualified for carer payment. That is, section 198AC allows a person’s carer payment to continue while they have respite, or they temporarily cease to provide constant care for up to 25 hours a week in order to undertake training, education, unpaid voluntary work or paid employment.

**Item 11** is consequential to amendments made by the Improved Support for Carers Bill and repeals paragraph 198AC(1)(a) and inserts new paragraph 198AC(1)(a). Under subsection 198AC(1), a person may cease providing constant care (if they qualify other than because of section 197F), or care (if they qualify because of the application of section 197F), for up to 63 days in a calendar year without ceasing to qualify for carer payment. The amendments made by **item 11** ensure that subsection 198AC(1) applies to a person who qualifies for carer payment under a new qualification provision inserted into the Social Security Act by the Improved Support for Carers Bill (apart from a person who is qualified for carer payment for care provided on a short-term or episodic basis), as well as to a person who is qualified for carer payment for care provided to a higher ADAT score adult or a lower ADAT score adult and their dependent child. New subsection 198AC(1A), which is inserted by **item 12**, will apply to a person who is qualified for carer payment for a specified period under section 197G or 197H.

**Item 12** repeals subsection 198AC(2) and inserts subsection 198AC(1A) and new subsection 198AC(2). Under subsection 198AC(1A), a person who is qualified for carer payment under section 197G or 197H does not cease to qualify for carer payment simply because they cease to provide constant care or, if they are qualified because they exchange the care of children, cease to provide care, to a care receiver or care receivers. Subsection 198AC(1A) is subject to subsections 198AC(3) and (3A), which place limits on the number of days a person can remain qualified for carer payment under section 198AC.

New subsection 198AC(2), which is also subject to subsections (3) and (3A), provides that a person who is qualified for carer payment under section 198AA because they are participating in the care of an adult or child in hospital, and who would cease to be qualified for carer payment under section 198AA, does not cease to be qualified for carer payment merely because they are not providing constant care (if they are qualified for carer payment other than because of section 197F) or they are not providing care (if they are qualified under section 197F).
**Item 13** is consequential to **Item 14** and inserts ‘Subject to subsection (3B),’ in subsection 198AC(3).

**Item 14** inserts new subsections 198AC(3A) and (3B). New subsection 198AC(3A) provides the maximum number of days for which a person who is qualified for carer payment for care provided on a short-term or episodic basis (that is, they are qualified under section 197G or 197H, which are inserted into the Social Security Act by the Improved Support for Carers Bill) can remain qualified for carer payment when they are not providing constant care. The maximum number of days respite that a person who is qualified for carer payment on a short-term or episodic basis is the carer payment period (that is, the number of days for which carer payment is granted that fall within the calendar year) divided by the number of days in the calendar year, times the limit. The limit is either 63 days or another number of days in the calendar year that the Secretary, for any special reason in the particular case, decides to be appropriate. The respite days for a person who is qualified for care provided on a short-term or episodic basis is on a pro-rata basis for the number of days in a year they are qualified.

**Example**

Enrique’s son, Booth, is injured in a car accident in September 2009. Enrique applies for, and is granted, under section 197G, carer payment for a period of 126 days. As the Secretary has not determined that a limit other than the usual 63 day limit should apply, the number of days for which Enrique can cease to provide constant care to Booth is 21, which is:

\[
\frac{126}{365} \times 63
\]

New subsection 198AC(3B) provides that, if a person is initially qualified for carer payment for care provided on a short-term or episodic basis and they subsequently qualify for carer payment under another provision (other than section 197G or 197H) then any days that have been counted towards their limit of temporary cessation of care days in the calendar year should be included in their 63 day limit.

**Example**

Enrique’s son, Booth, fails to recover as quickly as doctors had thought he would. Booth will now require constant care for a period of more than six months. During the period that Enrique was qualified under section 197G he utilised 15 days of respite care. Therefore, Enrique will have a further 48 days on which he can temporarily cease to provide constant care to Booth in 2009.
Items 15 and 30 are consequential to the repeal of the qualification provisions for carer payment that contain the terms profoundly disabled child and disabled child. Item 15 repeals the phrase 'profoundly disabled child, or a disabled child' from subsection 198B(1B) and substitutes the phrase 'sole care child, combined care child or multiple care child'. The heading to subsection 198B(1B) is also amended to reflect the repeal of the qualification provisions containing the terms profoundly disabled child and disabled child from Part 2.5 of the Social Security Act. Item 30 repeals the phrase 'profoundly disabled child, a disabled child' from subsection 198F(1A) and substitutes the phrase 'care child'.

Item 16 is consequential to the repeal of the qualification provisions for carer payment that contain the term disabled child. The phrase 'is a disabled child' is omitted from subsection 198B(1B) and is replaced with the phrase 'is a combined care child or a multiple care child'.

Item 17 inserts a note at the end of subsection 198B(1B) to refer the reader to subsection 197F(5). For the effect of the insertion of subsection 197F(5), see item 8.

Items 18, 19 and 20 are consequential to the insertion of section 197D into the Social Security Act by the Improved Support for Carers Bill. Section 197D provides for qualification for carer payment for care provided to a disabled adult and one or more children each with disability or medical condition. Item 18 amends paragraph 198B(1BA)(a), to provide that, if a care receiver is a lower ADAT score adult, the care receiver’s taxable income includes the taxable income of the adult and the adult’s partner as well as any FTB children of the adult or the partner, or, if the lower ADAT score adult does not have a partner, then their taxable income includes income of any FTB child of the adult (apart from the other care receiver or care receivers).

Item 19 inserts new subsection 198B(3A) and item 20 amends subsection 198B(5). These amendments will ensure that a lower ADAT score adult may give the Secretary an estimate of each multiple care child’s taxable income for a tax year. The effect of new subsection 198B(3A) and the amendment to subsection 198B(5) is that, in a multiple care situation, either the child’s parent or the lower ADAT score adult may give the Secretary an estimate of the child’s or children’s income for a tax year.

Item 21 is consequential to the repeal of the qualification provisions for carer payment for care provided to a profoundly disabled child by the Improved Support for Carers Bill and replaces 'profoundly disabled child' with 'sole care child' in subsection 198D(1A). The heading to subsection 198D(1A) is replaced with the heading, Sole care child passing the assets test.
Items 22, 24, 26, 28, 32 and 34 are consequential to the removal of the term disabled child from the qualifying provisions for carer payment. These items omit the word disabled from paragraphs 198D(1A)(a) and (b), subsection 198D(1B), paragraphs 198D(1C)(a) and (b), subsection 198D(1D), subsections 198JE(2) and (3), and subsections 198JF(2) and (3). Items 32 and 34 also amend the headings to subsections 198JE(3) and 198JF(3) to repeal the word disabled.

Items 23 and 27 insert a note at the end of subsections 198D(1A) and 198D(1C) to refer the reader to subsection 197F(5). For the effect of the insertion of subsection 197F(5), see Item 8.

Item 25 amends subsection 198D(1C) to omit the first occurring reference to the phrase disabled children and replace it with the phrase combined care children. This amendment is consequential to the repeal of the qualification provisions for carer payment that contain the term disabled child by the Improved Support for Carers Bill. The heading to subsection 198D(1C) is also amended to replace the term disabled children with the term combined care children.

Item 29 inserts new subsection 198D(1DA) after subsection 198D(1D). New subsection 198D(1DA) provides the assets test that is applicable to a lower ADAT score adult and a multiple care child or children. The lower ADAT score adult and child/children pass the assets test if the total assets of the adult, each child and, where applicable, the adult's partner and other FTB children of the adult or partner, do not exceed the assets limit. The asset limit for a lower ADAT score adult and a multiple care child or children is $571,500 and is consistent with the asset limit that is currently applicable to all other care receivers. The assets limits are increased by the automatic indexation provisions in section 1190 of the Social Security Act. Item 78 inserts a reference to new subsection 198D(1DA) into column 4 of item 27A of the table in section 1190 of the Social Security Act.

Items 31 and 33 omit the term profoundly disabled child in subsections 198JE(1) and 198JF(1) and replace it with the term sole care child. These amendments are consequential to the repeal of the qualification provisions by the Improved Support for Carers Bill that contain the term profoundly disabled child.
Items 35, 36, 37 and 38 are consequential to the insertion of section 197D into the Social Security Act by the Improved Support for Carers Bill. Section 197D provides for qualification where a person cares for a lower ADAT score adult and one or more children each with a disability or medical condition. Item 35 amends subsection 198JG(1) and item 37 amends subsection 198JH(1) by omitting the words ‘a lower ADAT score adult and a dependent child’ and substituting the words ‘a lower ADAT score adult and one or more multiple care children, or a lower ADAT score adult and their dependent child’, while items 36 and 38 repeal paragraphs 198JG(2)(b) and 198JH(2)(b) and insert new paragraphs 198JG(2)(b) and 198JH(2)(b). The effect of these amendments is that sections 198JG and 198JH will apply in the situation where a person is caring for a lower ADAT score adult and their dependent child or where a person is caring for a lower ADAT score adult and one or more multiple care children. Items 35 and 37 also amend the headings to sections 198JG and 198JH by removing the reference to dependent child and substituting the phrase child or children.

Item 39 repeals section 198MA and inserts new section 198MA. New section 198MA provides for the exemption of certain assets of a care receiver from the assets test in specified circumstances where a person disposes of the assets of a child with severe disability or severe medical condition or a child with disability or medical condition. New section 198MA provides that an asset that has been disposed of is not to be included in a child’s assets if:

- the disposal occurred more than five years before the carer became qualified for carer payment because the carer was caring for the child; or
- the disposal occurred 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 caring for the child.

The note to section 198MA advises the reader that, if a sole care child, a combined care child or a multiple care child lives with a parent then the assets of the parent, as listed in subsection 198D(1A) and paragraphs 198D(1C)(b) and (1DA)(c), are taken to be the assets of the child.

Item 40 inserts new subsections 198N(1AA), 198N(1AB) and 198N(1AC) and item 42 includes a reference to new qualification sections 197B, 197C, 197D and 197E. The effect of these amendments is that the exemption from the care receiver assets test may be applied to the assets of a sole care child (new subsection 198N(1AA)), combined care children (new subsection 198N(1AB)) or a multiple care child or children (new subsection 198N(1AC)).

Item 41 repeals subsection 198N(1A), which allows for the exemption from the care receiver assets test if a parent or carer or a profoundly disabled child or disabled child makes an application.
**Item 43**, omits the phrase ‘profoundly disabled child or a disabled child’ in paragraph 198N(5)(aa) and substitutes the phrase ‘sole care child, combined care child or multiple care child’. **Item 44** omits the phrase ‘is a disabled child’ in paragraph 198N(5)(aa) and substitutes the phrase ‘is a combined care child or a multiple care child’.

**Item 49** repeals note 2 to subsection 198N(5) and replaces it with a new note 2 and note 3. Note 2 informs the reader that subsections 198D(1B), (1D) and (1DB) provide that, if a sole care child, a combined care child or a multiple care child live 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. Note 3 informs the reader that subsection 197F(5) should be read in conjunction with subparagraph 198N(5)(aa)(ii).

**Items 45** and **48** are consequential to the insertion of new section 197D into the Social Security Act by the Improved Support for Carers Bill, under which a person can qualify for carer payment for care provided to a lower ADAT score adult and one or more children each with a disability or medical condition. These items omit the phrase ‘dependent child who is the other care receiver’ and substitute the phrase ‘child who is the other care receiver or the children who are the other care receivers’.

**Item 46** is a technical amendment that omits ‘receiver); and’ and substitutes ‘receiver).’

**Item 47** inserts the phrase ‘However, liquid assets of the same person are not to be taken into account in respect of any of the other care receivers; and’. This clarifies that the assets of a multiple care child or children or the assets of a dependent child of a lower ADAT score adult are not counted in the assets of the lower ADAT score adult. This ensures that the assets of each care receiver are only counted once towards the asset limit of the care receivers.

**Item 48** omits the phrase ‘dependent child who is the other care receiver’ and substitutes ‘child who is the other care receiver or the children who are the other care receivers’ in the note at the end of paragraph 198N(5)(ab).

**Item 50** omits the phrase profoundly disabled child and substitutes sole care child in paragraphs (b) and (c) of the definition of FPC in subsection 198N(6) of the Social Security Act.

**Item 51** omits the term disabled children in subsection 198N(6) (paragraph (d) of the definition of FPC) and replaces it with the term combined care children.

**Item 52** amends subsection 198N(6) (paragraph (e) of the definition of FPC) by omitting the words ‘a lower ADAT score adult and a dependent child’ and substituting the words ‘a lower ADAT score adult and one or more multiple care children, or a lower ADAT score adult and a dependent child’.
**Item 54** inserts note 2 at the end of subsection 198N(6), which refers the reader of paragraph (b) of the definition of FPC to subsection 197F(5). For the effect of the insertion of subsection 197F(5), see **item 8**. **Item 53** is consequential to **item 54** and changes the note at the end of paragraph 198N(6) to Note 1.

**Items 55 to 62** amend section 198P of the Social Security Act, which provides for the date of effect of favourable decisions under section 198N. These items make amendments to ensure that the section applies to a care receiver who is: a sole care child; care receivers who are two or more combined care children; or care receivers who are a lower ADAT score adult and one or more multiple care children. The amendments provide that, in the case where a care receiver is a sole care child or combined care children, notice of the decision may be given to the carer, or to the parent of any of the children. In the case of the lower ADAT score adult and one or multiple care children, notice of the decision may be given to the carer or to the lower ADAT score adult.

**Item 55** inserts into subsection 198P(1) of the Social Security Act a reference to subparagraphs 197B(4)(d)(i), 197C(4)(d)(i), 197D(4)(d)(i) and 197E(5)(d)(i) so that section 198P applies to the new qualification provisions.

**Items 56 and 59** repeal paragraphs 198P(3)(b)(ii) and 198P(4)(b)(ii) and replace them with new paragraphs 198P(3)(b)(ii) and 198P(4)(b)(ii). This repeals the reference to a care receiver who is a profoundly disabled child and replaces it with a reference to a sole care child. These amendments are consequential to the repeal of the qualification provisions for carer payment that use the term profoundly disabled child and the insertion of new qualification criteria for carer payment into the Social Security Act by the Improved Support for Carers Bill.

**Items 57 and 60** omit references to the term disabled children from subparagraphs 198P(3)(b)(iii) and 198P(4)(b)(iii) and substitute references to combined care children. These amendments are consequential to the removal of the qualification provisions for carer payment that contain the term disabled child and the insertion of new qualification provisions by the Improved Support for Carers Bill.

**Items 58 and 61** insert new subparagraphs 198P(3)(b)(iiia) and 198P(4)(b)(iiia). These amendments are consequential to the insertion of new section 197D in the Social Security Act by the Improved Support for Carers Bill, which provides for qualification for carer payment for care provided to a lower ADAT score adult and one or more children each with disability or medical condition. **Item 62** is also consequential to the insertion of new section 197D in the Social Security Act by the Improved Support for Carers Bill and amends subparagraph 198P(4)(b)(iv) so that it refers to the new qualification provisions.
Item 63 amends section 198Q of the Social Security Act, which provides for the date of effect of an adverse decision under section 198N. Section 198Q will apply in situations where subparagraphs 197B(4)(d)(i), 197C(4)(d)(i), 197D(4)(d)(i) and 197E(5)(d)(i) disqualify a person for carer payment and no exemption from the assets test is granted. This amendment is consequential to the insertion of new qualification provisions for carer payment into the Social Security Act by the Improved Support for Carers Bill.

Items 64 and 65 amend section 235 of the Social Security Act. Section 235 provides for the continuation of carer payment for a bereavement period where a care receiver dies. Section 235 will apply to a person qualified for a carer payment without the need for amendment with the exception of qualification under sections 197G and 197H if the care receiver is in hospital. These amendments ensure that a person will remain qualified for carer payment during the bereavement period in the situation where a person is qualified for carer payment for care provided on a short-term or episodic basis and the care receiver is in hospital when they pass away.

Item 66 repeals paragraph 236B(a) and substitutes new paragraph 236B(a). Item 68 repeals paragraph 243(a) and substitutes new paragraph 243(a). Sections 236B and 243, as amended, will prevent more than one bereavement payment being made if the care receivers are a lower ADAT score adult and their dependent child or a lower ADAT score adult and one or more children each with disability or medical condition if the lower ADAT score adult and one or more of the children die at the same time. These sections apply where the lower ADAT score adult is the carer's partner. The combined effect of the sections is that, if the carer would be qualified for bereavement payments in respect of the child/children (under section 235) and the adult (under Subdivision B, which provides for bereavement payments on the death of the partner), the carer will be qualified for only one set of payments. The payments will be made under either section 235 or Subdivision B; and the sum payable will be whichever is the greater amount in the particular case.

Item 67 inserts new subsection 237(1AB) into the Social Security Act, which provides that, in the case of a lower ADAT score adult and child or children each with disability or medical condition, if bereavement payments are being paid to the carer because of the death of the child or children, the carer does not qualify for a further set of bereavement payments if the lower ADAT score adult is the carer’s partner and the partner dies within the bereavement period.

Nominated visa holders cannot qualify for carer payment as they do not meet the residence requirement. These visa holders may be granted special benefit. However, they must satisfy the activity test or be granted an exemption. An exemption from the activity test is currently available under section 731J, which exempts a nominated visa holder from the activity test where, but for the residence requirement, the person would have satisfied the basic elements of qualification for carer payment or carer allowance.
Item 69 inserts new sections 731HA and 731HB into the Social Security Act. New sections 731HA and 731HB provide that a nominated visa holder may be exempt from the activity test for special benefit if they are providing constant care, and, but for the residence requirements, the person would have satisfied the basic elements of qualification for carer payment (whether that care is provided on a short-term or episodic basis or whether the care receiver is in hospital). New sections 731HA and 731HB reflect the new qualification provisions inserted into the Social Security Act by the Improved Support for Carers Bill.

Item 70 amends section 731J to provide that the section only applies to a person who would qualify for carer payment for care provided to a higher ADAT score adult or a lower ADAT score adult and their dependent child. Items 71, 72, 73, 74 and 75 amend section 731J to remove the limit of days for which a person can remain exempt from the activity test while the dependent child of a lower ADAT score adult or a disabled child (who would qualify the person for carer allowance) is in hospital. The limit of 63 days of exemption from the activity test while a disabled adult is hospitalised remains.

Item 76 inserts new subsection 1061ZA(1A) into the Social Security Act. Section 1061ZA provides for qualification for a pensioner concession card. Currently, only recipients of social security pensions, or long-term recipients of social security benefits, are qualified for a pensioner concession card. New subsection 1061ZA(1A) provides that a person who is qualified for carer payment under section 197G or 197H (that is, for care provided on a short term or episodic basis) is not qualified for a pensioner concession card. New subsection 1061ZK(3A), which is inserted by item 77, provides that a person who is qualified for carer payment under section 197G or 197H will qualify for a health care card. A person will be qualified for a health care card in their own name and the child for whom they are providing care will also qualify for a health care card under subsection 1061ZK(2).

Item 79 is consequential to the repeal of the qualification provisions for carer payment in respect of care given to a profoundly disabled child and the insertion of new qualification provisions for carer payment in the Social Security Act by the Improved Support for Carers Bill. Item 79 amends section 1209M to provide that those care receivers under the age of 16 who qualify a person for carer payment under the new qualification provisions can be principal beneficiaries of special disability trusts. Additionally, the carer of the care receiver must have certified in writing that the care receiver will require the same level of care, or an increased level of care, to be provided in the future.

Items 80 and 81 add new application and savings provisions to Schedule 1A to the Social Security Act in the form of new clauses 139A, 139B, 139C, 142 and 143.
Subclause 139A(1) is an application provision which provides that the amendments made by items 1 to 68 and 76 to 77, that is, the items in this Schedule that relate to carer payment, will apply to claims for carer payment made on or after the commencement of clause 139A. Subclause 139A(1) is subject to clause 139B, which is inserted by this Schedule and clause 141 which is inserted by the Improved Support for Carers Bill.

Clause 139B provides that sections 198AA and 198AB as amended by this Schedule apply to a person who is receiving a carer payment immediately before 1 July 2009 as well as to a person who makes a claim for carer payment on or after 1 July 2009. Subclause 141(1), inserted by the Improved Support for Carers Bill, provides that if a person was receiving a carer payment immediately before 1 July 2009 because they were qualified for care they provide to a profoundly disabled child or two or more disabled children then the Social Security Act, as in force immediately before 1 July 2009, continues to apply to the person. However, subclauses 141(2), (3) and (4) provide that the beneficial changes that allow a person to remain qualified for carer payment for up to 3 months after a child turns 16; provide for qualification to continue for an unlimited period when a care receiver is hospitalised and for automatic qualification for carer allowance to also apply to a person who is qualified for carer payment for care provided to a profoundly disabled child or two or more disabled children.

Subclause 139A(2) is an application provision that provides that that amendments made by items 69 to 75 (that is, the amendments that relate to special benefit) apply to claims for special benefit made on or after the commencement of this clause. Subclause 139A(2) is subject to clauses 139C and 143. Clause 139C is inserted into the Social Security Act to allow a person who is caring for a child immediately before 1 July 2009 to be taken to satisfy the activity test in 731J despite the hospitalisation beyond 63 days of a dependent child (731J(2)) or a disabled child (731J(6)).

Clause 143 is a savings provision that is inserted into the Social Security Act so that the Social Security Law, as in force immediately before 1 July 2009 continues to apply to a person who is providing care to a profoundly disabled child or two or more disabled children and is taken to satisfy the activity test immediately before 1 July 2009. Subclause 143(2) ensures that, despite the application of the Social Security Law as in force immediately before 1 July 2009 a person can continue to satisfy the activity test for 3 months after a child for whom they are providing care turns 16 if the conditions in subsection 143(2) are met. Subclause 143(2) provides that a person who is saved by subclause 143(1) can continue to satisfy the activity test for an unlimited time if a child for whom they are providing care is hospitalised.

New clause 139C provides an application provision for subsections 731J(2) and (6).
New clause 139D provides a savings provision for a principal beneficiary of a special disability trust. Clause 139D provides that the Social Security Act as in force immediately before 1 July 2009 continues to apply to a child who is a profoundly disabled child and was the principal beneficiary of a special disability trust immediately before 1 July 2009.
Schedule 2 – Amendment of the Social Security Administration Act 1999

Summary

This Schedule makes amendments to the Social Security Administration Act consequential to the repeal of the qualification provisions for carer payment that utilise the terms profoundly disabled child and disabled children and the insertion of new qualification provisions for carer payment.

This Schedule also provides for the backdating of claims for carer payment made on or after 1 July 2009 and before 1 October 2009.

Explanation of the changes

Item 1 is consequential to the insertion of section 197F into the Social Security Act by the Improved Support for Carers Bill. If a person is qualified for carer payment because of the application of section 197F the care that they provide, while constant, is not constant in respect of the same care receiver. Item 1 inserts the phrase ‘(or, if section 197F applies to the person, care)’ into subsection 70(1) of the Social Security Administration Act.

Items 2 to 7 amend various paragraphs contained in section 120 which provides additional rules in the case of carer payment in relation to the date of effect of determinations. These items are consequential to the repeal of qualification provisions for carer payment that utilise the terms profoundly disabled child and disabled child. Item 2 omits the phrase ‘profoundly disabled child or a disabled child’ and substitutes the phrase ‘sole care child, combined care child or multiple care child’. Item 3 replaces ‘profoundly disabled child’ in paragraph 120(4)(a) with ‘sole care child’ and item 4 omits the word ‘disabled’ in paragraph 120(4)(d) so that the subsection 120(4) will apply to a person who qualifies for carer payment for care provided to a child with a severe disability or severe medical condition or a child with a terminal condition.

Item 5 omits ‘disabled child’ in paragraph 120(5)(a) and substitutes the phrase ‘combined care children’. Item 6 omits the term ‘disabled’ from paragraphs 120(5)(d) and (e). Subsection 120(5) will therefore apply to a person who is qualified for carer payment for care provided to two or more children each with disability or medical condition.
Item 7 is consequential to the insertion of the new qualification provision for carer payment which provides for qualification for care provided to a lower ADAT score adult and one or more children each with disability or medical condition. Item 7 inserts new subsection 120(5A) which provides for the cancellation or suspension of carer payment where the income of a lower ADAT score adult and one or more children each with disability or medical condition exceeds the income ceiling. The decision takes effect on the date that the carer or the lower ADAT score adult informed the Department that the income exceeded the ceiling (or if the Department was not so informed, the decision takes effect on the date that the income exceeded the ceiling).

Item 8 inserts new clause 15A into Schedule 2 to the Social Security Administration Act. New clause 15A provides that if a person is qualified for carer payment under one of the new qualification provisions inserted into the Social Security Act by the Improved Support for Carers Bill and the person makes a claim for carer payment on or after 1 July 2009 and before 1 October 2009, then the person’s start day is the day on which the person became qualified for the payment.

Example 1 – start date backdated to 1 July 2009

Nakita’s ten year old daughter Melysa was involved in a car accident on 30 June 2009 and admitted to hospital. Nakita ceased her employment on the date of the accident to care for Melysa in hospital. Melysa was released from hospital on 15 July 2009 and Nakita continued to care for Melysa at home on a full time basis.

Nakita did not know about the new carer payment criteria at the time of the accident and did not claim for a carer payment until 1 August 2009. Due to the high level of care required by Melysa, Nakita achieved a qualifying rating of intense under the Disability Care Load Assessment (Child) Determination. A treating health professional certified that the level of care required by Melysa necessitated full time constant care for six months or more from one person. The care that Nakita provides to Melysa severely restricts her capacity to undertake paid employment. As Nakita (and Melysa) satisfy all other qualification requirements, such as Australian residency, and Melysa passes the care receiver income and assets tests, Nakita qualifies for a carer payment under section 197B for caring for a child with a severe disability or severe medical condition.

Without this backdating provision, Nakita’s starting date for carer payment would be the day she claimed for a carer payment, that is, 1 August 2009. However, under this provision, as Nakita was qualified from 1 July 2009 (in that she had ceased her employment and started caring for Melysa, and satisfied all other qualification criteria from that date) she can have her start date backdated to 1 July 2009.
Although Nakita’s claim for a carer payment was made after 1 July 2009, because she claimed before 1 October 2009, her start day for payment is the day on which she became qualified, that is, 1 July 2009.

**Example 2 – start date backdated to first day of qualification**

If, in the example above, Nakita retained her employment until Melysa was released from hospital, and did not start providing constant care for Melysa until 15 July 2009, she did not qualify for a carer payment until that date.

Although Nakita claimed for a carer payment on 1 August 2009, under this provision, as her claim was made after 1 July 2009 and before 1 October 2009, her start date for payment is the day she became qualified. As Nakita did not cease employment until Melysa left hospital on 15 July 2009, and did not provide care in the hospital or constant care to her daughter until that day, her start date for carer payment is 15 July 2009.
Schedule 3 – Amendment of the Veterans’ Entitlements Act 1986

Summary

This Schedule makes amendments the Veterans’ Entitlements Act consequential to the repeal of the qualification provisions for carer payment that utilise the terms profoundly disabled child and the insertion of new qualification provisions for carer payment.

Explanation of the changes

Item 1 is consequential to the repeal of the qualification provisions for carer payment in respect of care given to a profoundly disabled child and the insertion of new qualification provisions for carer payment in the Social Security Act by the Improved Support for Carers Bill. Item 1 amends section 52ZZWA to provide that those care receivers under the age of 16 who would qualify a person for carer payment under the new qualification provisions can be principal beneficiaries of special disability trusts. Additionally, the carer of the care receiver must have certified in writing that the care receiver will require the same level of care, or an increased level of care, to be provided in the future.

Item 2 is a savings provision for children who are, immediately before 1 July 2009 the principal beneficiary of a special disability trust because they meet the definition of profoundly disabled child. The Veterans’ Entitlements Act as in force immediately before 1 July 2009 will continue to apply to a child who was a principal beneficiary at that time.