THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

SOCIAL SECURITY AND INDIGENOUS LEGISLATION AMENDMENT (BUDGET AND OTHER MEASURES) BILL 2010

EXPLANATORY MEMORANDUM

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

The bill contains one Budget measure, and two non-Budget measures, as described below.

**Carer allowance**

The qualification criteria and assessment process for carer allowance for care provided to a child or children with disability will be amended to provide a fairer and more equitable process for determining a person’s qualification, based on the level of care required and the level of care provided, rather than the functional assessment criteria used currently. From 1 July 2010, there will be one assessment tool used for both carer payment and carer allowance paid to a person caring for a child aged under 16. A further amendment provides that a person may, in some circumstances, remain qualified for carer allowance paid in respect of a child for three months after that child has turned 16.

**Income management regime**

This bill makes some minor improvements to the income management provisions in the social security law, on administrative matters such as appropriation, debt recovery and financial transactions.

**Aboriginal and Torres Strait Islander Land Account**

Amendments are made by this bill to ensure a reliable income stream for the Indigenous Land Corporation by providing for a minimum guaranteed annual payment of $45 million from 1 July 2010, which will be indexed for later years according to the Consumer Price Index. The bill also provides for additional payments to be made to the Indigenous Land Corporation where the actual capital value of the Aboriginal and Torres Strait Islander Land Account exceeds the real capital value of the account. The amount to be paid is the excess above the real capital value. An independent review of the effectiveness of the funding arrangements after three years is also introduced.
Financial impact statement

Carer allowance

The carer allowance amendments in this bill are part of a 2008 Budget measure of which the legislative component has financial impact as set out below. Other legislative components were enacted in the Social Security Legislation Amendment (Improved Support for Carers) Act 2009 and the Social Security Legislation Amendment (Improved Support for Carers) (Consequential and Transitional) Act 2009.

| Total resourcing (all portfolios) – includes 2008 Budget measures previously enacted |
|---------------------------------|-----------------|-----------------|-----------------|-----------------|
| 2008-09                        | 2009-10         | 2010-11         | 2011-12         |
| $15.5 m                        | $72.8 m         | $89.9 m         | $93.3 m         |

Income management regime

The income management amendments have nil or negligible financial impact.

Aboriginal and Torres Strait Islander Land Account

The amendments relating to the Aboriginal and Torres Strait Islander Land Account have nil financial impact.
NOTES ON CLAUSES

Clause 1 sets out how the Act is to be cited, that is, as the *Social Security and Indigenous Legislation Amendment (Budget and Other Measures) Act 2010*.

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

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

This explanatory memorandum uses the following abbreviations:

- ‘Social Security Act’ means the *Social Security Act 1991*; and
- ‘Social Security Administration Act’ means the *Social Security (Administration) Act 1999*. 
Schedule 1 – Carer allowance

Summary

This Schedule completes the Government’s response to the Report of the Carer Payment (child) Review Taskforce, Carer Payment (child): A New Approach, and gives effect to a number of measures aimed at improving assistance to carers from 1 July 2010.

The qualification criteria and assessment process for carer allowance for care provided to a child or children with disability will be amended to provide a fairer and more equitable process for determining a person’s qualification, based on the level of care required and the level of care provided, rather than the functional assessment criteria used currently.

Specifically, this Schedule replaces the Child Disability Assessment Tool (CDAT), which is presently used in the assessment process to determine a person’s qualification for carer allowance paid in respect of a child, with the Disability Care Load Assessment (Child) Determination 2009. From 1 July 2010, there will be one assessment tool used for both carer payment and carer allowance paid to a person caring for a child aged under 16.

Further, this Schedule provides that a person may remain qualified for carer allowance paid in respect of a child for three months after that child has turned 16.

Background

Part 2.19 of the Social Security Act sets out the qualification criteria to be met in order for a person to qualify for carer allowance paid in respect of a person under the age of 16 years (a child), or in respect of a combination of care receivers (children) under the age of 16 years.

Presently, paragraph 953(1)(c) of the Social Security Act provides for qualification on the basis that either the care receiver is suffering from a disability declared under subsection 38D(3) of the Social Security Act to be a recognised disability (a disability set out in the List of Recognised Disabilities presently to be found as a Schedule to the Child Disability Assessment Determination 2001), or the care receiver is assessed and rated under the CDAT.
The amendments in this Schedule provide that the CDAT will be repealed. However, the amendments retain the List of Recognised Disabilities, which will be inserted into the Disability Care Load Assessment (Child) Determination. The amendments simplify the assessment process for a person where the care receiver’s disability is not set out in the List of Recognised Disabilities in that the Disability Care Load Assessment (Child) Determination (presently used for carer payment paid in respect of a child) will now also be used for qualification purposes for carer allowance paid in respect of a child.

Further, the amendments provide that a person may remain qualified for carer allowance up to three months after the child turns 16. There is presently a similar provision which applies to a person in receipt of carer payment.

The amendments made by this Schedule commence on 1 July 2010.

**Explanation of the changes**

**Amendments to the Social Security Act**

**Item 1** repeals section 38D because the CDAT will cease to be used as an assessment tool for carer allowance in respect of a child from 1 July 2010.

**Item 2** inserts a new subsection (3) into section 38E. The amendment preserves the List of Recognised Disabilities.

**Item 3** omits the reference to the Child Disability Assessment Tool in section 38F.

**Item 4** repeals the definition of the Child Disability Assessment Tool in section 952.

**Item 5** inserts a definition of *Disability Care Load Assessment (Child) Determination* into section 952. For the purposes of Part 2.19 of the Social Security Act, the Disability Care Load Assessment (Child) Determination has the meaning given in subsection 38E(1). To avoid doubt, the Disability Care Load Assessment (Child) Determination referred to in subsection 38E(1) is the same Determination referred to in existing subsection 38E(2).

**Item 6** repeals paragraph 953(1)(c) as it refers to qualification under the CDAT.

**Item 7** inserts after paragraph 953(1)(d) a new qualification criterion for carer allowance in respect of a single child.

New subparagraph 953(1)(e)(i) provides that, if the disability from which the child is suffering is declared on the List of Recognised Disabilities, then the person claiming carer allowance will satisfy new paragraph 953(1)(e).
New subparagraph 953(1)(e)(ii) provides that, if a person claiming carer allowance in respect of a child has been given the qualifying rating of intense under the Disability Care Load Assessment (Child) Determination, then that person will satisfy new paragraph 953(1)(e). To avoid doubt, if a child is suffering from a disability on the List of Recognised Disabilities, the person does not need to complete the Disability Care Load Assessment (Child).

Therefore, to qualify for carer allowance paid in respect of a single child under subsection 953(1), a person, either by themselves or together with another person, must be providing daily care and attention in the private home that is the residence of the person and the care receiver, and the care receiver is a disabled child (see section 952), an Australian resident and a dependent child of the person, and:

- the disability from which the carer receiver is suffering appears in the List of Recognised Disabilities; or

- the carer has been assessed and been given a qualifying rating of intense under the Disability Care Load Assessment (Child) Determination for the care provided to the child.

Example – Qualification under subparagraph 953(1)(e)(i) – the List of Recognised Disabilities

Juanita applies for carer allowance for her son, Mario. Mario suffers from Duchenne’s muscular dystrophy. Mario’s condition is on the List of Recognised Disabilities. As long as Juanita meets the other qualification criteria for Mario, that is, Juanita is an Australian resident and she is providing daily care and attention, and Mario is a dependent child under the Social Security Act, Juanita is qualified for carer allowance.

Example – Qualification under subparagraph 953(1)(e)(ii) – the Disability Care Load Assessment (Child) Determination

Min Xi applies for carer allowance for her daughter, Lin. Lin suffers from chronic fatigue syndrome. Lin’s condition is not listed on the List of Recognised Disabilities. In order for Min Xi to qualify for carer allowance, she will need to be assessed and given a qualifying rating of intense under the Disability Care Load Assessment (Child) Determination. As long as Min Xi meets the other qualification criteria for carer allowance, that is, Min Xi is an Australian resident and she is providing daily care and attention to Lin, and Lin is a dependent child under the Social Security Act, and Min Xi receives a qualifying rating of intense under the Disability Care Load Assessment (Child) Determination, she is qualified for carer allowance.

Item 8 repeals paragraphs 953(2)(c) and 953(2)(ca).
Item 9 inserts a new qualification criterion for carer allowance in respect of care for two disabled children.

New paragraph 953(2)(e) provides that, if a person claiming carer allowance in respect of two disabled children has been given a qualifying rating of intense under the Disability Care Load Assessment (Child) Determination, then that person will satisfy new paragraph 953(2)(e).

Therefore, to qualify for carer allowance paid in respect of two disabled children under subsection 953(2), a person, either by themselves or together with another person, must be providing daily care and attention in the private house that is the residence of the person and the care receivers, and the care receivers are disabled children (see section 952), Australian residents and are the dependent children of the person, and the carer has been assessed and been given a qualifying rating of intense under the Disability Care Load Assessment (Child) Determination for the care provided to the two children.

Example – Qualification under paragraph 953(2)(e)

On 8 August 2010, Julie lodges a claim for carer allowance in respect of Anthony and Malcolm. Both Anthony and Malcolm are dependent children and Australian residents. Julie will be caring for both in a private home that is the residence of Julie, Anthony and Malcolm. Julie will need to be assessed and be given a qualifying rating of intense under the Disability Care Load Assessment (Child) Determination for caring for Anthony and Malcolm in order to qualify for carer allowance.

Item 10 inserts new section 953A. New subsection 953A(1) provides that a person remains qualified for carer allowance for a period up to three months after a care receiver who is a child turns 16, if the criteria set out in new section 953A are satisfied. The criteria in new subsection 953A(1) are:

- the person is qualified for carer allowance under subsection 953(1) in respect of a disabled child;
- the care receiver turns 16; and
- the care receiver has not been assessed and rated and given a score under the Adult Disability Assessment Tool (ADAT).

This provision will allow a person a longer period of time to complete the ADAT and lodge the tool with the Secretary. This provision mirrors section 197K in relation to carer payment.
Example

Helen qualifies for carer allowance in respect of her daughter, Bella. Due to her caring commitments, Helen is unable to complete the ADAT prior to Bella turning 16. Helen lodges a competed ADAT two months after Bella’s birthday. Helen will remain qualified for carer allowance until Bella is given a score under the ADAT. In the event that Bella does not receive the requisite score on the ADAT to qualify for carer allowance paid in respect of an adult, then Helen’s carer allowance should be cancelled as of the date the Secretary calculates Bella’s score.

If, in the above example, Helen did not provide a new claim under the ADAT for Bella prior to the date three months after Bella’s 16th birthday, Helen’s carer allowance would be cancelled on that date.

New subsection 953A(2) provides that a person remains qualified for carer allowance for a period of up to three months when caring for two disabled children. A person will remain qualified for carer allowance in respect of two disabled children until either or both of the care receivers turn 16 years and three months old. That is, the person will remain qualified for carer allowance until:

- either or both of the care receiver(s) is/are assessed and is/are given a score under the ADAT; or

- either or both of the care receiver(s) turns 16 years and three months.

In both of these events, the person will continue to receive carer allowance until the day before either the ADAT score is given or the child/ren turn/s 16 years and three months.

Example

Ijaz qualifies for carer allowance in respect of his two sons, Ahmed and Ali. Ahmed is aged 14 and Ali aged 16 as at 1 January. Due to his caring commitments, Ijaz is unable to complete the ADAT and to receive a score for Ali until 27 February. Ijaz remains qualified for carer allowance for his care in respect of Ahmed and Ali under subsection 953A(2) until 26 February.

Because Ali is now aged 16, he has to be assessed separately under either section 954 or 954A. In the event that Ali does not receive the requisite score on the ADAT to qualify for Ijaz’s carer allowance paid in respect of an adult, then Ijaz’s carer allowance should be cancelled as from 26 February.

If Ali does receive the requisite score on the ADAT, then Ijaz will continue to qualify for carer allowance in respect of Ali.
Item 11 provides that the amendments made by items 6 to 9 apply for the purposes of working out a person’s qualification for carer allowance on and from 1 July 2010.

Therefore, unless a care receiver’s disability is declared on the List of Recognised Disabilities, the Disability Care Load Assessment (Child) Determination will be used from 1 July 2010 in the assessment process to determine qualification for carer allowance in respect of a single child.

In respect of the care provided to two children, the Disability Care Load Assessment (Child) Determination will be used from 1 July 2010 to determine qualification for carer allowance.

Item 12 inserts a transitional provision which preserves the List of Recognised Disabilities as a pathway to qualification for carer allowance. Subitem 12(1) provides that the List of Recognised Disabilities made under subsection 38D(3) will, after commencement of the amendments on 1 July 2010, be taken to be made under new subsection 38E(3).

Subitem 12(2) provides that any instrument made under section 38E may be varied or revoked.
Schedule 2 – Income management regime

Summary

This Schedule makes some minor improvements to the income management provisions in the social security law, on administrative matters such as appropriation, debt recovery and financial transactions.

Background

These amendments to the income management regime include: removing the concept of ‘Special Account’ and replacing it with the Income Management Record; allowing the collection of income management debts through the social security debt collection system; allowing recovery where funds have been paid to an income management account in error; allowing the Secretary to credit the income management of certain customers earlier in some circumstances; giving the Minister the power to specify the amount of the deductible portion of two new student scholarships; and some other amendments relating to financial management of income management accounts.

Part 1 – Income Management Record

Part 3B of the Social Security Administration Act establishes an income management regime for recipients of certain social security payments. As a result of a person being subject to the income management regime, amounts are deducted from the person’s welfare payments, with equivalent amounts credited to the Income Management Special Account and the person’s (notional) income management account, under Division 5 of Part 3B.

Part 3B established the Income Management Special Account, which is a Special Account for the purposes of the Financial Management and Accountability Act 1997 (Financial Management and Accountability Act). Under the Financial Management and Accountability Act, a Special Account is an appropriation mechanism that notionally sets aside an amount within the Consolidated Revenue Fund to be expended for specific purposes. The concept of ‘Special Account’ under Part 3B, however, was to provide a vehicle to record and track a person’s welfare payment that was subject to the income management regime. In other words, the Special Account was intended to be used merely as an accounting mechanism, rather than an appropriation mechanism.

As the ‘Special Account’ under the income management regime should be used as a ledger, recording the total notional balances of all income management accounts, rather than as the appropriation authority for paying out income managed funds from the income management account, this Schedule clarifies the legislation by removing the concept of ‘Special Account’ from the social security law.
Part 2 – Debt recovery

These changes will allow the Secretary to recover income management debts, which arise under Division 8 of Part 3B of the Social Security Administration Act, through methods identical to the debt recovery methods in Part 5.3 of the Social Security Act.

Whilst the provisions in Division 8 of Part 3B of the Social Security Administration Act are effective to ‘raise’ debts, there is inflexibility in the methods that can be used to recover such debts. Whilst Division 8, Part 3B debts are debts under the Financial Management and Accountability Act, they are not debts that can be recovered under Chapter 5 of the Social Security Act.

Chapter 5 of the Social Security Act is a code providing for the recovery of ‘social security payments’.

For debts that arise under the Social Security Act, there is a range of recovery methods available, including:

- deductions from the person’s pension, benefit or allowance (section 1231);
- legal proceedings (section 1232);
- garnishee notice (section 1233);
- arrangement for payment of debt (section 1234);
- recovery of amounts from financial institutions (section 1234AA); and
- deductions by consent from the social security payment of a third party (section 1234A).

These changes will also allow the non-recovery provisions in Part 5.4 of the Social Security Act to apply to this category of debts. That is, in certain circumstances, it will be possible for the Secretary to waive or write-off this type of debt.

Part 3 – Credit of income management accounts in error

Under section 1234AA of the Social Security Act, the Secretary is able to recover amounts held in an account kept with a financial institution in circumstances where the Secretary has mistakenly credited funds into the wrong account, or where the Secretary continues to make payments of a social security payment into an account after a person has died.
This amendment is to enable the Secretary similarly to recover funds wrongly credited to an income management account in circumstances where a person has died, or where funds are otherwise mistakenly credited to a person’s income management account.

**Part 4 – Credit of income management accounts before debt recovery**

Under sections 123YI and 123YJ of the Social Security Administration Act, the Secretary is able to direct funds from a person’s income management account to a third party on condition that the third party will credit the amount to an account held by the first person with the third party for the purposes of acquisition of goods or services by the person. In practice, this arrangement has mostly been utilised by giving funds to a community store; the funds being held in the name of a person who can obtain goods from the community store, having the goods charged to their store account.

There have been certain issues in the past where, for example, a store goes out of business while holding funds on behalf of income-managed people. In these circumstances, while the store is under an obligation to repay these amounts if required to do so, there can be a substantial delay before the funds are actually recovered. During the delay, the income-managed person can be out-of-pocket until action is eventually taken to ‘recredit’ their income management account (that is, when the Commonwealth has actually recovered the funds from the store). The same situation can occur where a store breaches a condition – in this case, there can be a delay before recovered funds are finally recredited to a person’s income management account.

Additionally, section 123ZG of the Social Security Administration Act currently provides that, if an unauthorised person uses a customer’s stored value card, for example, the BasicsCard, without the customer’s consent, this will result in a debt being due by that unauthorised person to the Commonwealth. Under section 123ZG, if the Commonwealth receives an amount, by way of reimbursement, from the unauthorised person, the customer’s income management account is credited by the amount received, but only after the actual recovery of the funds. This can leave the customer out-of-pocket until the funds are actually recovered.

This Schedule seeks to remedy this situation by allowing the Secretary to credit to the customer’s income management account the amount of any debt raised against a third party prior to the debt actually being recovered. This will mean that the income-managed person will not have to wait for the funds actually to be recovered.
Part 5 – Student start-up scholarship payments and relocation scholarship payments

The Social Security and Other Legislation Amendment (Income Support for Students) Bill 2009 [No. 2], which provides for a new Part 2.11B in the Social Security Act, was introduced into the Parliament on 25 September 2009 by the Deputy Prime Minister, Minister for Education, Employment and Workplace Relations. Subject to enactment, that bill will establish two new student payments – the student start-up scholarship payment (which will be paid six-monthly during the period the student is studying) and the relocation scholarship payment (which is an annual payment made each year that the student continues to study). Sections 123XPF and 123XPG under the bill will provide for deductions to be made from both scholarship payments if the person is subject to the income management regime. The amount of the deductible portion is 100 per cent of the amount of the payment.

This Schedule amends sections 123XPF and 123XPG (subject to their enactment), giving the Minister the capacity to specify that a lower percentage amount, rather than the current 100 per cent, is to be deducted from a person’s scholarship payment, if the person is subject to the income management regime and one of the above scholarship payments is payable to the person.

Part 6 – Other amendments

Where the processing of a transaction has been delayed, often through administrative error, from being debited to a customer’s income management account, and the balance of that account has fallen below the value of the delayed debit transaction, at any point prior to the debit being applied to the account, then these changes provide the Secretary with the option either to debit the transaction to the customer’s income management account, as would have happened in the past, or to raise a debt against the customer that can be recovered using any of the debt recovery mechanisms allowed for under Chapter 5 of the Social Security Act. These changes are beneficial to the customer and allow an affected customer to pay off a debt owed to the Commonwealth in a more flexible manner than simply having his or her income management account debited, thus preventing potential hardship or customers being unable to meet the priority needs of themselves or their families.

To assist with this process, a further consequential change is being made to make it clear that a person’s income management account is only credited or debited at such time as the corresponding accounting entry is made, rather than by force of law at the time of a transaction.

The amendments made by this Schedule commence on Royal Assent.
Explanation of the changes

Part 1 – Income management record

Amendments to the Social Security Administration Act

Item 1 repeals the definition of Finance Minister in section 123TC because the amendment made by item 11 below makes the definition redundant.

Item 2 inserts into section 123TC a definition of Income Management Record, which means the Income Management Record established by section 123VA.

Item 3 repeals the definition of Special Account in section 123TC. That term is being replaced with Income Management Record.

Item 4 repeals the heading to Division 3 of Part 3B and replaces it with the new heading ‘Division 3 – Establishment of the Income Management Record’.

Item 5 repeals sections 123VA and 123VB and substitutes a new section 123VA. New section 123VA establishes the Income Management Record as a means of recording and reporting the collective balances of all the individual income management accounts. For most purposes, the Income Management Record is simply a renaming of the previous Income Management Special Account.

Item 6 removes the words ‘Special Account’ from section 123VC and replaces them with the words ‘Income Management Record’.

Item 7 removes the words ‘Special Account’ from subsection 123WA(1) and replaces them with the words ‘Income Management Record’.

Item 8 inserts a new subsection 123WA(3) into section 123WA. New subsection 123WA(3) provides that an amount standing to the credit of the Income Management Record is not held on trust for the individuals concerned. This has not changed from the arrangements in place for the previous Income Management Special Account.

Items 9 and 10 provide for the term ‘Special Account’ to be omitted from paragraphs 123WJ(6)(a), 10(a), (13)(a) and (16)(a) and paragraph 123WL(5)(a) and replaced with ‘Income Management Record’.

Item 11 removes the words ‘and the Finance Minister’ from section 123WN. Accordingly, only the Minister administering Part 3B of the Social Security Administration Act may, by legislative instrument, now make rules as provided by section 123WN.

Items 12, 13 and 14 removes the words ‘Special Account’ from the provisions identified in these items and replaces them with ‘Income Management Record’.
Items 15 and 19 replaces the words ‘Special Account’ with the words ‘Income Management Record’ in paragraphs 123XJA(2)(b), 123XJB(2)(b), 123XJC(2)(b), 123XJD(2)(b), 123XPH(2)(b) and 123XPI(2)(b). Subject to their enactment, these provisions are being inserted into Part 3B of the Social Security Administration Act by the Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009, which was introduced into the Parliament on 25 November 2009.

Item 16 removes the words ‘Special Account’ and replaces them with ‘Income Management Record’ in the provisions identified in this item.

Item 17 replaces the words ‘Special Account’ with the words ‘Income Management Record’ in paragraph 123XPE(2)(b). Subject to its enactment, this provision is being inserted into Part 3B of the Social Security Administration Act by the Carbon Pollution Reduction Scheme Amendment (Household Assistance) Bill 2010, which was introduced into the Parliament on 2 February 2010.

Item 18 replaces the words ‘Special Account’ with the words ‘Income Management Record’ in paragraphs 123XPF(2)(b) and 123XPG(2)(b). Subject to their enactment, these provisions are being inserted into Part 3B of the Social Security Administration Act by the Social Security and Other Legislation Amendment (Income Support for Students) Bill 2009 [No. 2], which was introduced into the Parliament on 25 November 2009.

Items 20 to 36 replace the words ‘Special Account’ with the words ‘Income Management Record’ in the provisions identified in these items. The notes to these items direct the reader to the change in the name of the heading to the relevant provisions.

Item 37 provides transitional rules. Subitem 37(1) provides that an amount that is equal to the balance of the Income Management Special Account, immediately before commencement of this item, is to be transferred and credited to the new Income Management Record immediately after commencement of this item.

Subitem 37(2) provides that notional accounts which are kept, immediately before commencement of this item, within the Income Management Special Account are to be transferred and kept within the Income Management Record on and after commencement of this item.
Subitem 37(3) applies to any rules made under section 123WN of the Social Security Administration Act that were in force immediately before commencement of this item in respect of the Income Management Special Account and a person’s income management account. If any such rules were previously made, they continue to have effect on or after commencement of this item as if they were in force under section 123WN in relation to the Income Management Record and a person’s income management account. That is, any legislative instrument previously made under section 123WN remains valid, but any reference to the Special Account in the instrument should be read as a reference to Income Management Record.

**Part 2 – Debt recovery**

**Amendments to the Social Security Act**

**Item 38** inserts new paragraph 1222(1)(ba), so that the appropriate methods to recover a debt owed by a person to the Commonwealth, set out in Chapter 5, now also apply to debts arising under Part 3B of the Social Security Administration Act.

**Item 39** inserts a new item into the table in subsection 1222(2), which sets out that debts arising under Part 3B of the Social Security Administration Act (that is, income management debts) can be recovered by way of deductions, legal proceedings, garnishee notice or repayment by instalments under the Social Security Act.

**Item 40** amends paragraph 1230(1)(a) so that section 1230 now also applies in relation to debts raised under Part 3B of the Social Security Administration Act.

**Item 41** amends subsections 1230C(1) and (2) so that section 1230C now also applies in relation to debts raised under Part 3B of the Social Security Administration Act. This means that any of the debt recovery methods listed in subsection 1230C(1), among others, can be used to recover income management debts. These changes also have the consequential effect that the non-recovery of debt provisions in Part 5.4 will now also apply to income management debts.

**Item 42** amends subsection 1234A(1) to allow the recovery of an income management debt, owed by one person, from a third party by way of deduction from that third party’s social security payment, with the third party’s consent.

**Item 43** amends subsection 1237AB(1) to allow income management debts to be specified, by the Minister, as part of a class of debts that the Secretary may waive in certain circumstances.
Item 44 provides that those amendments made in items 38 to 43 above apply in relation to debts arising after the commencement of those items, or prior to commencement, where any part of that debt was still outstanding immediately prior to commencement. The application of the amendment made by item 43 is in addition to the rule in subsection 1236A(2).

Amendments to the Social Security Administration Act

Item 45 inserts new subsection 123WJ(16A), which makes it clear that the set-off power in subsection 123WJ(14) is not limited by the fact that the ‘debt amount’ is now recoverable using Chapter 5 of the Social Security Act.

Item 46 adds notes at the end of subsections 123ZF(2) and 123ZG(2) and (3) to alert readers to the fact that debts arising under sections 123ZF and 123ZG are now recoverable using Chapter 5 of the Social Security Act.

Item 47 amends subsection 123ZH(2) to make it clear that an obligation, of a third person, to repay an amount to the Commonwealth is, in fact, a debt owed to the Commonwealth and can be recovered using Chapter 5 of the Social Security Act.

Item 48 adds notes at the end of subsections 123ZH(2), 123ZI(2) and 123ZJ(5) to alert readers to the fact that debts arising under sections 123ZH, 123ZI and 123ZJ are now recoverable using Chapter 5 of the Social Security Act.

Part 3 – Credit of income management accounts in error

Amendments to the Social Security Administration Act

Item 49 inserts new section 123YR, which allows the Secretary to reverse a credit to a person’s income management account where that credit was made in error. This power will most commonly be used where a number of income management amounts have been credited to a person’s income management account after they have passed away. This provision largely replicates the power that already exists in respect of payments of a social security payment to a deceased person’s bank account.

Item 50 provides that that the amendment made by item 49 applies in respect of credits that occur on or after the commencement of this item.

Part 4 – Credit of income management accounts before debt recovery

Amendments to the Social Security Administration Act

Item 51 repeals subsections 123ZG(4) and (5) and replaces them with new subsections 123ZG(4) to (7). These provisions relate to misuse of vouchers and stored value cards.
New subsection 12ZG(4) provides that, where a customer has been issued with a voucher and, without the person’s consent, the voucher has been used by a third party, then the Secretary may recredit the person’s income management account by an amount equal to the value of the voucher.

New subsection 123ZG(5) provides that, where the Secretary decides to recredit a person’s income management account under subsection (4), then the value of the voucher in question is credited to both the Income Management Record and the person’s income management account.

New subsection 12ZG(6) provides that, where a customer has been issued with a stored value card and, without the person’s consent, the card has been used by a third party, then the Secretary may recredit the person’s income management account by an amount equal to the value of unauthorised use.

New subsection 123ZG(7) provides that, where the Secretary decides to recredit a person’s income management account under subsection (6), then the value of the unauthorised use of the card is credited to both the Income Management Record and the person’s income management account.

Item 52 repeals and substitutes subsections 123ZH(3) and (4). These provisions relate to funds paid to a third person to be held on credit for the income management customer (for example, funds held by a store for an income management customer), where some of those funds are yet to be spent by the customer.

New subsection 123ZH(3) provides that, where the Secretary has issued a notice to a person (store) requiring repayment of funds held for the benefit of the income-managed customer, which have not been used to acquire goods or services, and the Secretary is aware of the amount of those unspent funds, then the Secretary may recredit the person’s income management account by that amount.

New subsection 123ZH(4) provides that, where the Secretary decides to recredit a person’s income management account under subsection (3), then the amount in question is credited to both the Income Management Record and the person’s income management account.

Item 53 repeals and substitutes subsections 123ZI(3) and (4). These provisions relate to funds paid to a third person to be held on credit for the income management customer (for example, funds held by a store for an income management customer), where the third person (store) has breached a condition upon which the funds were paid to them.

New subsection 123ZI(3) provides that, where a third person (store) owes a debt to the Commonwealth, due to their having breached a condition upon which the funds were paid, and the Secretary is aware of the amount of unused funds still held by the store, then the Secretary may recredit the customer’s income management account by that amount.
New subsection 123ZI(4) provides that, where the Secretary decides to recredit a person’s income management account under subsection (3), then the amount in question is credited to both the Income Management Record and the person’s income management account.

**Item 54** inserts new subsection 123ZJ(2A), which clarifies that, where an action that overdraws a person’s income management account is validated by the operation of section 123ZJ, then the funds used as a result of that transaction are validly appropriated under section 123ZN. This is merely a clarification, rather than a change to the law.

**Item 55** repeals and substitutes subsection 123ZJ(4). This new subsection provides that, where there is a relevant excess caused by an action described in subsection 123ZJ(1), then this amount is credited to both the Income Management Record and the person’s income management account. In effect, this means that, where a person’s income management account is overdrawn, the balance of that account is ‘reset’ to zero, and the amount by which the account was overdrawn becomes a debt owing to the Commonwealth, which can be recovered under Chapter 5 of the Social Security Act. This change is beneficial to customers, allowing them to repay an overdraft gradually, rather than it affecting their ability to pay for priority needs, as may have been the case previously.

**Item 56** repeals subsections 123ZJ(6) and (7).

**Item 57** provides a number of application rules. It provides that **item 51** above applies to the use of a voucher or stored value card after the commencement of that item, or to its use prior to the commencement of that item, where no amount has yet been recovered by the Secretary from the unauthorised person.

**Item 52** applies in respect of a notice given to a third person (store) after the commencement of that item, or where a notice has been given prior to the commencement of that item, where no amount has yet been recovered by the Secretary from the third person.

**Item 53** applies in respect of an amount paid to a third person (store) after the commencement of that item, or where funds have been paid to that person prior to the commencement of that item, where no amount has yet been recovered by the Secretary from the third person.
New paragraph 123ZJ(4)(a), as inserted by item 55, applies where a relevant excess arises on or after the commencement of that item, whereas new paragraph 123ZJ(4)(b) applies both where a relevant excess arises on or after commencement, and where it arises prior to commencement if no amount has yet been received. The reason for the different application for new paragraphs 123ZJ(4)(a) and (b) is that, where a relevant excess arose prior to the commencement of these new provisions, then the value of that excess has already been credited to the ‘old’ Income Management Special Account (now renamed the Income Management Record) under ‘old’ subsection 123ZJ(4). Accordingly, there is no need to process a second credit for the same amount to the Income Management Record.

**Part 5 – Student start-up scholarship payments and relocation scholarship payments**

**Amendments to the Social Security Administration Act**

**Item 58** repeals and substitutes subsection 123XPF(3). New subsection 123XPF(3) provides that the deductible portion of a student start-up scholarship payment, for the purposes of subsection 123XPF(2), is either 100 per cent of the amount of the payment or a lower percentage of the amount of the payment, if a lower percentage is specified in a legislative instrument made by the Minister.

**Item 59** repeals and substitutes a new subsection 123XPG(3). New subsection 123XPG(3) provides that the deductible portion of a relocation scholarship payment, for the purposes of subsection 123XPG(2), is either 100 per cent of the amount of the payment or a lower percentage of the amount of the payment, if a lower percentage is specified in a legislative instrument made by the Minister.

**Item 60** provides that the amendments made by **items 58 and 59** apply to the student start-up scholarship payment and the relocation scholarship payment, if those payments become payable on or after commencement of those items. This is consistent with other provisions in Division 5 of Part 3B of the Social Security Administration Act and allows for a more beneficial treatment for people who are subject to the income management regime in appropriate circumstances.
Part 6 – Other amendments

Amendments to the Social Security Administration Act

Item 61 inserts new section 123ZIA. New subsections 123ZIA(1), (2) and (4) provide, in effect, that, where the Secretary takes action under Division 6 (that is, debits a customer’s income management account) and, at any time between the time the Secretary took that action and the time at which the customer’s account is debited for the value of the transaction, the balance of the customer’s account falls below the value of the transaction in question, then the Secretary has the option either to debit the customer’s income management account or to raise a debt against the person for the value of the transaction.

New subsections 123ZIA(3) provides that, where the Secretary decides to raise a debt against the customer, then an amount equal to the amount of the debt will be credited to both the customer’s income management account and the Income Management Record.

New section 123ZIA is beneficial to customers and allows them, in certain circumstances, to repay an amount more slowly (through the mechanisms set out in Chapter 5 of the Social Security Act) than would otherwise be the case if the amount were simply debited in one go from their income management account.

Item 62 inserts new section 123ZNA, which provides that, where any provision in Part 3B provides that the Income Management Record or a person’s income management account are to be debited or credited, then this does not occur by force of law, as was the case previously, but at such time as the transaction is actually credited or debited in the accounts or records of the Department or Centrelink. This provision is necessary, among other reasons, for the smooth operation of item 61, above.

Item 63 provides that item 61, above, applies in relation to actions taken by the Secretary under Division 6 that occur after the commencement of that item.
Schedule 3 – Aboriginal and Torres Strait Islander Land Account

Summary

Amendments are made by this Schedule to the Aboriginal and Torres Strait Islander Act 2005 (Aboriginal and Torres Strait Islander Act) to ensure a reliable income stream for the Indigenous Land Corporation (the ILC), by providing for a minimum guaranteed annual payment of $45 million from 1 July 2010, which will be indexed for later years according to the Consumer Price Index (CPI). The Schedule also provides for additional payments to be made to the ILC where the actual capital value of the Aboriginal and Torres Strait Islander Land Account (Land Account) exceeds the real capital value of the account. The amount to be paid is the excess above the real capital value. An independent review of the effectiveness of the funding arrangements after three years is also introduced.

Background

The purpose of the ILC is to assist Aboriginal people and Torres Strait Islanders to acquire and manage Indigenous-held land so as to provide economic, environmental, social and cultural benefits.

The ILC is not budget-funded. The ILC’s main source of funding in a financial year is the payment made to it under section 193C of the Aboriginal and Torres Strait Islander Act. This amount is equal to the realised real return on the investments of the Land Account in the previous financial year. The Land Account is administered by the Families, Housing, Community Services and Indigenous Affairs portfolio.

Since 2004–05, the value of payments to the ILC from the Land Account has fluctuated as a result of changes in the value of the realised real return on investments. These fluctuations have caused difficulties for the ILC in its long-term strategic planning.

Starting in the 2010-11 financial year, an annual payment of $45 million, indexed in future years by the CPI, is to be paid to the ILC. These indexed payments would be made in all years, even if the amount paid would reduce the real capital value of the Land Account.

In addition to the annual amount, the amendments allow for the payment of additional amounts to the ILC from the Land Account in years where the actual balance of the Land Account is greater than that required to maintain its real capital value.

The amendments to the legislation also require an independent review of the effectiveness of the funding arrangements. The review will be designed to determine whether the amended funding formula was effective in producing the outcome proposed by the amendments. A report of the findings of the review will be given to the Minister.
The amendments made by this Schedule commence on Royal Assent

**Explanation of the changes**

**Item 1** repeals the definition of *category A year*, as it is spent.

**Item 2** repeals the definition of *category B year*, as a consequence of other amendments in this Schedule.

**Items 3 and 4** repeal spent provisions (subsections 191L(2) to (5)) and make a consequential numbering change.

**Item 5** makes an amendment required as a consequence of repealing the spent provision, subsection 191L(2).

**Item 6** repeals sections 192Y to 193E and substitutes new sections 192Y and 193, whose effect is described below.

**New section 192Y** provides, in new subsection (1), a different formula for calculating adjustments to the amounts to be paid to the ILC to reflect inflation. Where the Aboriginal and Torres Strait Islander Act provides that an amount (such as the annual payment to the ILC or the guarantee limit) is indexed each year, this formula, called the *indexation factor*, would be applied to determine the indexed amount.

The indexation factor is calculated by dividing the sum of the index numbers for the four quarters of one year; the *first June year*, by the sum of the index numbers for the four quarters in the year immediately before that year, the *second June year*.

New subsection 192Y(2) provides for the indexation factor to be calculated to three decimal places (rounded up in specified circumstances), and new subsection (3) states that, if the value of the indexation factor is less than 1, then the indexation factor is taken to be equal to 1. This is necessary so that the amount calculated in a subsequent year is not less than the amount for the prior year.

The *index number* that applies under the current legislation is defined to be the implicit price deflator for the gross non-farm product (trend) index as the measure of inflation. The use of this index number has been problematic and this index number can differ significantly from the more commonly used CPI.

New section 192Y provides that the *index number* for a quarter is the All Groups CPI Index number, being the weighted average of the eight capital cities, as published by the Australian Statistician for that quarter.
Annual payments

New section 193 primarily prescribes the manner in which the value of the annual payment to the ILC is to be calculated. Under the current provisions, the ILC is entitled to receive an annual payment, which is paid on the last business day of the financial year. Under the amendments, the ILC will receive one payment of $45 million on the first business day of October in the financial year commencing on 1 July 2010. In subsequent years, the ILC may receive two payments, one on the first business day of October, paid under subsection (2), and an additional payment on the first business day of December, paid under subsection (3).

New subsection 193(1) provides that, on the first business day in October in the financial year commencing on 1 July 2010, an amount of $45 million will be paid to the ILC from the Land Account. This payment will be made on 1 October 2010, which will be a business day in the Australian Capital Territory, noting that the Land Account is administered from Canberra.

New subsection 193(2) provides for the manner in which annual payments to the ILC will be calculated for financial years commencing on 1 July 2011 and following. The formula in subsection (2) provides that the ILC will receive an amount equal to $45 million, indexed by the index number. Under this formula, if the value of CPI is greater than 1, the ILC will receive an amount greater than $45 million in the second year and each year after that. The formula provides that the amount for the current year is the amount paid in the previous year, indexed by CPI. Thus, each year, the amount would increase to reflect inflation for all previous years.

If the index number is less than 1, the ILC will receive the same amount under this subsection as it received in the previous year. The amount paid in a later year cannot be less than the amount paid in a previous year.

All payments to the ILC are made from the Land Account. As the ILC will always receive a minimum amount of $45 million, indexed by CPI, the actual balance held in the Land Account may be reduced from the previous year’s balance in those years where the return on investments is less than the amount needed to meet this annual payment.

Additional payments

New subsection 193(3) provides that an additional payment will be made out of the Land Account to the ILC in the year commencing on 1 July 2011 and subsequent years if threshold criteria are met. Before any additional payments can be made in respect of a financial year, the actual capital value of the Land Account calculated at 30 June in the previous financial year must be greater than the real capital value of the Land Account at 30 June in the same financial year. These additional payments, if any, will be made on the first business day in December in the following financial year.
The amount to be paid is equal to the difference between the actual capital value of the Land Account and the real capital value of the Land Account. The actual capital value of the Land Account is reported in the audited financial statements in the annual report of the Department of Families, Housing, Community Services and Indigenous Affairs each year.

In a year where the actual capital value of the Land Account is less than the real capital value of the Land Account, no additional payment will be made. No additional payments would be made until the actual capital value of the Land Account was restored to a sum greater than the real capital value of the Land Account.

The real capital value of the Land Account is calculated with reference to the actual value of the Land Account in the base year, which is the balance on the last business day immediately before the financial year commencing on 1 July 2010, that is, 30 June 2010. This amount is then indexed each year by reference to the index number to maintain the real capital value of the Land Account over time.

The actual capital value of the Land Account is calculated by reference to the amounts held to the credit of the Land Account, plus investments. Section 192W establishes the Land Account and provides that any money standing to the credit of the Land Account that is not needed to meet annual payments to the ILC must be invested under section 39 of the Financial Management and Accountability Act 1997. Thus, in any year, the greater proportion of any balance held in respect of the Land Account will be invested and not actually held in the Land Account.

Additional payments will only be made after maintaining the real capital value of the Land Account over time. In order to take account of this, the actual capital value of the Land Account is defined as the amount standing to the credit of the Land Account plus the value of its investments. This value is accurately reported as at 30 June in any year as the ‘total equity’ (net assets) amount in the Land Account’s audited annual financial statements.

**Reporting**

Any payments made under new subsection 193(3) must be applied in accordance with the National Indigenous Land Strategy (section 191N of the Aboriginal and Torres Strait Islander Act). It is intended that the ILC would report to the Minister to indicate whether the payments have been used in accordance with that strategy in each financial year.

The ILC is required to make annual reports under section 9 of the Commonwealth Authorities and Companies Act 1997. Subsection 193K(2) of the Aboriginal and Torres Strait Islander Act provides that the annual report of the ILC must include such additional information (if any) as is specified in the regulations under the Act.
It is proposed that the ILC will report annually in relation to any additional payments received under new subsection 193(3). If necessary regulations may be made to ensure that this occurs.

**Item 7** repeals subsection 193G(3) as a consequence of other amendments in this Schedule.

**Items 8 and 9** repeal spent provisions (subsections 193H(2) and (3)) and make a consequential numbering change.

**Item 10** amends paragraph 193(2)(d) to remove a reference to the term ‘realised real’ as a consequence of other amendments to the calculation of amounts to be paid to the ILC.

**Item 11** repeals subsections 193I(2A), (5) and (6). Subsections (2A) and (6) are spent and subsection (5) is repealed as a consequence of other amendments in this Schedule.

**Item 12** repeals subsection 193K(3) as a consequence of other amendments in this Schedule.

**Item 13** omits a sentence from subsection 193L(2) as a consequence of other amendments in this Schedule.

**Item 14** repeals the note appearing after subsection 193L(2) as a consequence of other amendments in this Schedule.

**Item 15** repeals subsections 193L(3) to (8) and substitutes a new subsection (3) for subsection (8). Subsections (3) to (8) currently set out the manner in which the borrowing limit is to be calculated. Subsections (3) to (7) are spent.

Subsection 193L(1) provides that the ILC may borrow money. Subsection (2) provides that the ILC must not borrow any amount that is in excess of its borrowing limit. New subsection (3), which is substituted for existing subsection (8), sets out the formula for calculating the **borrowing limit** for a financial year. For the purposes of this formula, the borrowing limit for the financial year commencing on 1 July 2010 is established in **item 24(2) – transitional**. The borrowing limit for the financial year commencing on 1 July 2009 is equal to $294,170,517. So, the borrowing limit for the financial year commencing on 1 July 2010 would, as provided by the formula in new subsection 193L(3), be equal to $294,170,517 times the index number in section 192Y.

**Items 16 and 17** repeal a spent provision (subsection 193M(2)) and make a consequential numbering change.

**Item 18** omits a sentence from subsection 193N(1), as it is spent.
**Item 19** omits the note appearing after subsection 193N(1) as a consequence of other amendments in this Schedule.

**Item 20** repeals subsections 193N(2) to (7) and substitutes a new subsection (2). Section 193N provides for limits on the value of any guarantees that the ILC may give. Subsections (2) to (6) are spent.

New subsection (2) sets out the manner in which the **guarantee limit** for a financial year is to be calculated. For the purposes of this formula, the guarantee limit for the financial year commencing on 1 July 2010 is established in **item 24(2) – transitional.** The guarantee limit for the financial year commencing on 1 July 2009 is equal to $294,170,517. So, the guarantee limit for the financial year commencing on 1 July 2010 would, as provided by the formula in new subsection 193N(2), be equal to $294,170,517 times the indexation number in section 192Y. This new provision allows the repeal of subsection (7).

**Item 21** repeals paragraph (f) of the definition of **exempt matter** in subsection 193R(1) to correct a numbering error.

**Reviews**

**Item 22** adds a new Division 15 to Part 4A, consisting of new section 193U.

The Government is committed to securing a more reliable level of funding for the ILC and the amendments in this Schedule have been developed in order to achieve this. The arrangements constitute a different approach for funding the ILC. The Government is committed to reviewing the effectiveness of various matters relating to the ILC generally and the operation of the Land Account. In order to do this, it is proposed that three separate reviews will be undertaken.

**New section 193U** requires regulations to provide for independent statutory reviews of the operation of Part 4A. It is intended that a review be undertaken of the effectiveness of the new ILC funding arrangements after they have been in place for three financial years and every three financial years after the first review.

These reviews would be designed to determine whether the funding arrangements are effective in producing the outcome intended by these amendments. It would also focus on the impact that providing additional amounts has on the capacity of the ILC to perform its functions, while maintaining the real value of the Land Account. A report on the findings of each review will be provided to the Minister.

The timing, manner and content of the review and its terms of reference will be prescribed in regulations so that the specific detail of the terms of the review can be composed after the provisions have been in operation for a time and the findings of the other reviews outlined below are known.
In the first financial year of the new arrangements, the Department of Families, Housing, Community Services and Indigenous Affairs, in consultation with the Department of Finance and Deregulation and the Department of the Treasury, will conduct a review of the ongoing management arrangements of the Land Account. The review will consider the most effective administrative arrangements for the management of the Land Account to maximise the future investment returns from the Land Account.

Also within that timeframe, the ILC’s guarantee and borrowing limits will be reviewed. A report on the findings of these two reviews will be provided to the Minister for Families, Housing, Community Services and Indigenous Affairs.

**Item 23** repeals subsection 200C(2) and substitutes new subsection (2) as the existing subsection (2) is spent.

*Transitional*

**Item 24(1)** makes it clear that reports required to be made under existing section 193I of the Aboriginal and Torres Strait Islander Act about the Land Account, as in force immediately before the commencement of **items 10 and 11**, are required in relation to the financial year ending on 30 June 2010. This would have the effect that the realised real return of the Land Account must still be reported for that year.

**Item 24(2)** identifies the dollar value of the borrowing and guarantee limits at the commencement of the new arrangements (see **items 15 and 20**). These figures have been calculated under existing provisions, starting with a dollar value of $100 million that has been indexed each year since 1995.